

Soundings

Venezuelan Sanctions Update – are non-US entities affected?

The US Government’s sanctions against Venezuela and, specifically, PdVSA, have been a significant focus of discussion since their implementation earlier this year. In this article, we provide an update on the situation and some clarity in relation to the application of the sanctions and how they may impact Members.

Background

As reported in our February, 2019 Soundings, on 28th January, 2019, the US issued sanctions against Petróleos de Venezuela, S.A. (PdVSA), designating it as a Specially Designated National (SDN) and subjecting any transactions involving PdVSA or its majority owned entities to US sanctions.

The Office of Foreign Assets Control (OFAC) issued a general licence which authorized a wind-down period. This period came to an end on 28th April, 2019 and therefore the sanctions are now in full force. Any voyages involving PdVSA that have not been completed before the end of the wind-down period potentially will be subject to sanctions. Members should also be careful in relation to any outstanding activities

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related to a voyage carried out during the wind-down period, such as payment of final hire and bunkers, that have not been completed before 28th April, 2019.

Impact on non-US persons

There has been some uncertainty as to whether the sanctions against PdVSA affect non-US entities. This is, of course, a crucial question for many Members but OFAC has provided limited guidance and the matter has been open to interpretation. It has now become clear, however, that the US does intend to target non-US entities under the sanctions.

Material assistance?

The US SDN list, in and of itself, does not have extra-territorial effect. Therefore, non-US persons are not automatically subject to sanctions if they deal with an entity named on that list. However there are circumstances where the naming of an entity on the SDN list can impact non-US persons.

The wording of EO 13850, the Executive Order by which sanctions have been imposed on Venezuela, does not provide for any specific sanction aimed at non-US persons dealing with PdVSA. However, Section 1 of the EO provides for the blocking of property of “any person” operating in certain sectors of the Venezuelan economy, which probably now includes the oil sector, or providing “material assistance” for transactions within those sectors. The interpretation of “material assistance” and whether it could be construed to include ocean transportation is not clear but as the scope of the EO was extended to include PdVSA it now seems likely that dealings with it would attract sanctions.

OFAC issued a FAQ (no. 657) on 31st January, 2019 dealing with non-US persons. Although the answer was not very clear, at the time it was believed that a non-US person could continue to purchase petroleum and petroleum products from PdVSA, as long as there was no connection to the US. It is noteworthy that if US dollars are used as a currency for hire payments in an applicable charter, that will constitute sufficient connection to the US for sanctions to apply.

However, as time has passed, it has become clear that the transaction of business with PdVSA by non-US persons may in fact be sanctionable.

On 12th March, 2019, Mr John Bolton, US National Security Advisor, forewarned an aggressive application of

the EO in social media, stating that all oil exports to Cuba must be suspended.

Reuters reported on 25th March, 2019, that the US State Department had warned foreign suppliers of PdVSA that any type of oil trade with PdVSA would be considered to be a breach of sanctions.

The US Special Representative for Venezuela, Mr Elliot Abrams, clearly indicated in a press briefing on 29th March, 2019 that the US may consider shipments of petroleum and petroleum products to and from PdVSA from all third party countries to be sanctionable. He further indicated that the supply of petroleum products to PdVSA by non-US persons might also be treated as sanctionable.

During April, 2019 OFAC added a number of ships and their owners to the SDN list, for alleged involvement in the Venezuelan oil trade. Following the designation of these ships and entities as SDNs, the risk of sanctions for any ship engaged in trade between PdVSA and Cuba has become clearer.

A clear risk for non-US persons

Since the implementation of the EO in January, 2019, there has been increased pressure on PdVSA. Whilst the original interpretation of the relevant Executive Order was that it would not have the effect of applying secondary sanctions, the latest developments show that there may be a real risk of sanctions for non-US persons engaging in transactions with PdVSA, even where there is no US connection.

Clearly the US is prepared to place non-US persons on the SDN list for engaging in what the US considers to be sanctionable activity. Although to date, it is unclear exactly what constitutes sanctionable activity for non-US persons with respect to PdVSA, it seems possible that even a single voyage may be considered to be operating within the Venezuelan oil industry.

The risk is clear for any ship carrying petroleum between PdVSA and Cuba. OFAC considers both the purchase of petroleum products from and the supply petroleum products to PdVSA to be sanctionable. The sanctions situation in Venezuela is fluid. Recent developments increase pressure on the Venezuelan Government. Members are advised to proceed with caution and to make appropriate enquiries.