

The Most Significant Sanctions Executive Order of 2015? The Answer May Surprise You

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U.S. economic sanctions are largely guided by the President's National Security Council staff. The White House determines strategy, while it is the responsibility of the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) to make the tactical decisions that implement these goals. With this in mind, one way to anticipate the policy direction of U.S. sanctions is to consider recent Executive Orders that address continuing threats to the national security, foreign policy, and economy of the United States. President Obama issued six such Executive Orders in 2015 that terminate, create, and enhance existing sanctions programs. In light of the probable limitations of the new programs, the most significant sanctions-related Executive Order of 2015 may very likely be the one that received the least attention: a modification to the North Korea sanctions program.

Removal of Sanctions

Two of the 2015 orders ended existing “emergencies” involving the Former Liberian Regime of Charles Taylor, as well as the transfer and transition of Highly Enriched Uranium. [Executive Order 13710](#) of November 12, 2015 terminated the Liberia program. Victor Bout, the “Merchant of Death,” was one of the more infamous designees under these regulations. He remains designated pursuant to the Democratic Republic of the Congo Sanctions Regulations. As a result, any of his assets blocked under the DRC program should remain blocked.

[Executive Order 13695](#) of May 26, 2015 terminated the Highly Enriched Uranium program. The Highly Enriched Uranium (HEU) Agreement Assets Control Regulations, [31 C.F.R. Part 540](#), was a unique protective sanctions program. It was directed at the property used to carry out international agreements between the United States and the Russian Federation for the conversion of highly enriched uranium extracted from Russian nuclear weapons into low-enriched uranium for use in commercial nuclear reactors.

It is important to note that OFAC will continue to enforce sanctions violations that occurred prior to the termination of these emergencies. For example, in March 2015 OFAC [settled apparent violations](#) of the former Iraqi Sanctions Regulations that began almost two years prior to the 2004 revocation of the Iraqi-related emergency.

New Sanctions Programs

President Obama created three entirely new targeted sanctions programs in 2015. On November 22, the President issued [Executive Order 13712](#) to address the humanitarian crisis in the East African nation of Burundi. This Executive Order names four designated individuals in its Annex. OFAC has designated an additional five individuals pursuant to this authority, including former and current members of the Burundi government.

In April, the President issued [Executive Order 13694](#), which created the Cyber-related program. As we addressed in a [previous entry](#), E.O. 13694 targets both those that engage in malicious cyber-activities (hacking and Distributed Denial of Service (DDoS) attacks) and most significantly, those that receive or use stolen trade secrets. To date, OFAC has not used this authority, despite indications earlier this year that designations were imminent. The Obama administration continues to signal its measured willingness to designate Chinese hackers. James Clapper, the Director of National Intelligence, [told the Senate Armed Service Committee](#) in September that the United States could issue designations in response to continued hacking.

President Obama also issued a new targeted sanctions authority against Venezuela in early 2015. Individuals and businesses in this country have been regular targets for designation based on their involvement in narcotics trafficking and close connections with Iranian terrorism and WMD proliferation activities. [Executive Order 13692](#) broadly authorizes OFAC to designate human rights violators and corrupt public officials, in addition to any “current or former official of the Government of Venezuela.” The designations under this authority are currently limited to the seven current and former government officials listed in the annex to the Executive Order. It is unlikely that OFAC will use this authority broadly in the near future following the recent [electoral defeat](#) of the former ruling party, the United Socialist Party of Venezuela (PSUV). Probable future targets of this authority will likely be limited to ongoing U.S. investigations into corrupt officials at Petr leos de Venezuela (PDVSA), including their use of Banca Privada d’Andorra[1] to launder illicit gains.

North Korea Sanctions

The U.S. sanctions on North Korea are based on its inclusion on the State Sponsor of Terrorism List^[2] and a series of four Executive Orders. Following [Proclamation 8271](#) of June 2008, North Korea has not been subject to restrictions under the Trading With the Enemy Act (TWEA). Sanctions resulting from designation as a State Sponsor of Terrorism include prohibitions on U.S. foreign assistance, a ban on defense exports and sales, controls on exports of dual-use items, and miscellaneous financial prohibitions. These include a requirement to actively oppose World Bank and International Monetary Fund loans, and prohibit financial transactions through U.S. banks.

[Executive Order 13466](#) continued the blocking of all property blocked pursuant to TWEA as of June 16, 2000, and prohibited U.S. persons from most dealings involving North Korean flagged vessels. Following significant hostile actions by the Government of North Korea, President Obama increased sanctions in 2010 through [Executive Order 13551](#). This order authorizes OFAC to designate persons involved in the trade of arms and luxury goods, as well as actors within North Korea's illicit economy. President Obama imposed an import ban in 2011 through [Executive Order 13570](#).

Enhanced North Korea Sanctions

[Executive Order 13687](#) of January 2, 2015 further modified the North Korea sanctions program. This order broadly authorizes OFAC to designate government officials and government controlled entities. Most importantly, this E.O. authorizes OFAC to make derivative designations of individuals and entities that are owned or controlled, or provide support to government controlled entities. As a practical matter, this means that North Korea's entire network of cover companies is now susceptible to targeted sanctions. Although the North Korea sanctions remain targeted as opposed to comprehensive, the sanctions are no longer limited to any specific narrow category of trade or actors.

In November of this year, [OFAC designated](#) four individuals and an Egyptian-based entity under this new authority. Interesting, these designations could have been made under the counter-proliferation authority, E.O. 13382. OFAC likely relied on the new E.O. as a reminder of its very broad designation criteria.

A word of caution to U.S. and international businesses that summarily dismiss the compliance risks arising from the evolving sanctions on North Korea. A strict policy of refusing to trade with North Korea will not in itself eliminate the risk of non-compliance. If OFAC actively pursues designations against networks of North Korean cover companies, businesses throughout the world will be exposed.

[1] On March 10, 2015, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued a Notice of Proposed Rulemaking naming Banca Privada d'Andorra foreign financial institution of primary money laundering concern.

[2] A State Sponsor of Terrorism designation is based on Section 6(j) of the Export Administration Act, Section 40 of the Arms Export Control Act, and Section 620A of the Foreign Assistance Act, which require a demonstrable reason to believe "that the government of that country has repeatedly provided support for acts of international terrorism."

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