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U.S. Sanctions: Targeting International Illicit Drug Production and Trafficking

Sanctions play a role in U.S. national drug control strategies to disrupt and deter the illicit production and trafficking of foreign-produced drugs. The 118th Congress has focused on the role of sanctions in combating synthetic opioid production and trafficking (including fentanyl). Opioids are a leading contributor to U.S. drug overdose deaths.

Overview

Counternarcotics sanctions take several forms and variously target a broad range of actors directly and indirectly involved in the global illicit drug trade.

Asset-Blocking Sanctions

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) administers and enforces three sanctions programs that block all property and interest in property within U.S. jurisdiction of foreign entities and individuals (collectively, "persons") targeted for their activities related to narcotics trafficking. These programs prohibit transactions with sanctioned persons.

Executive Order 12978. On October 21, 1995, President Bill Clinton signed Executive Order (E.O.) 12978, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers." Based on authorities in the National Emergencies Act (NEA; 50 U.S.C. §§1601 et seq.) and the International Emergency Economic Powers Act (IEEPA; §§50 U.S.C. 1701 et seq.), E.O. 12978 orders the blocking of U.S.-based assets linked to "significant foreign narcotics traffickers centered in Colombia," including entities or individuals that are owned or controlled by, or act for or on behalf of, such traffickers. Sanctions may also be imposed on those who materially assist, provide financial or technological support for, or provide goods or services in support of the narcotics-trafficking activities of designated significant foreign narcotics traffickers.

Foreign Narcotics Kingpin Designation Act. On December 3, 1999, President Clinton signed the Foreign Narcotics Kingpin Designation Act into law (Kingpin Act, Title VIII of P.L. 106-120; 21 U.S.C. §§1901 et seq.). The Kingpin Act, in effect, expands E.O. 12978 to apply globally, freezing U.S.-based assets of significant foreign narcotics traffickers, their organizations, and those who assist or support them.

Executive Order 14059 and the Fentanyl Sanctions Act. On December 15, 2021, President Joe Biden signed E.O. 14059, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," drawing on NEA and IEEPA authorities, as well as the Fentanyl Sanctions Act (FSA, Title LXXII, Div. F of P.L. 116-92; 21 U.S.C.

§§2301 et seq.). The FSA directs the President to impose sanctions on "foreign opioid traffickers," their organizations, and those who knowingly supply or source precursors for them. E.O. 14059 expands on the FSA and the Kingpin Act to direct the Secretary of the Treasury to sanction persons linked to the "international proliferation of illicit drugs or their means of production." Targets may include foreign persons who engage in activities or transactions related to international drug production and trafficking, including their organizations, their leadership (including principal executive officers or other corporate officers, if applicable), and those who provide support to any sanctioned person or the underpinning drug-related activities or transactions. Targets also may include those who knowingly receive property or an interest in property derived from illicit drug proceeds or used to facilitate illicit drug trade. Asset-blocking sanctions are one of several sanctions options that may be applied to targeted persons, pursuant to E.O. 14059 and the FSA (see discussions below on financial sanctions and procurement ban).

Financial Sanctions

In addition to asset-blocking sanctions, the FSA and E.O. 14059 authorize the imposition of other financial sanctions on persons linked to foreign opioid trafficking or the international proliferation of illicit drugs. Such additional sanctions, administered by the Secretary of the Treasury, may include prohibitions on certain banking transfers of credit or payment, the making of loans or provision of credit by U.S. financial institutions, certain transactions in foreign exchange, and investment in equity or debt associated with a targeted person. Targeted foreign financial institutions may be prohibited from being designated as a primary dealer in U.S. government debt instruments and may not serve as an agent of the U.S. government or a repository of U.S. government funds.

Procurement Ban

The FSA and E.O. 14059 also prohibit the U.S. government from procuring or entering into a contract for the procurement of any goods and services from a sanctioned person.

U.S. Visa Denial and Entry Restrictions

Drug trafficking and drug trafficking-related crimes have long been among the criminal grounds for ineligibility for U.S. visas and admission into the United States, pursuant to Section 212(a)(2) of the Immigration and Nationality Act of 1952 (INA; 8 U.S.C. §1182(a)(2)). Individuals designated for asset-blocking sanctions under E.O. 12978, E.O. 14059, or the Kingpin Act are also specifically subject to U.S. entry restrictions and U.S. visa denials.

Section 809 of the Kingpin Act amended Section 212(a)(2)(C) of the INA (8 U.S.C. §1182(a)(2)(C)) to broaden preexisting inadmissibility grounds for foreign drug traffickers to include immediate family members who have benefited from illicit drug trafficking activity. Subsequently, drawing on authority in Section 212(f) of the INA (8 U.S.C. §1182(f)), President Barack Obama issued Proclamation 8693 of July 24, 2011, to suspend U.S. entry of foreign individuals sanctioned under E.O. 12978.

President Biden's E.O. 14059 similarly draws on INA authorities to suspend U.S. entry of foreign individuals subject to asset-blocking sanctions. The FSA and E.O. 14059 also authorize the President to deny a U.S. visa to and exclude from the United States any alien determined to be a corporate officer or principal of, or shareholder with a controlling interest in, a sanctioned entity.

Export Controls

The U.S. Department of Commerce's Bureau of Industry and Security under the Export Administration Regulations (EAR; Title 15, Chapter VII, Subchapter C) imposes license requirements on the export, reexport, or transfer (in-country) of certain items. Section 744.8 of the EAR (as added on March 21, 2024) imposes such controls when a person subject to sanctions under E.O. 12978, E.O. 14059, or the Kingpin Act is a party to a transaction involving an item subject to the EAR. Such controls may be imposed on exports, reexports, or transfers of controlled items beyond the reach of OFAC sanctions, such as when transactions do not involve the U.S. financial system or U.S. persons. Generally, applications for an export license required by Section 744.8 would be subject to a presumption of denial.

Foreign Aid Restrictions

Section 487 of the Foreign Assistance Act of 1961 (22 U.S.C. §2291f) prohibits the U.S. government from providing foreign assistance to or through any person the President has reason to believe is or was a drug trafficker, including those convicted of a drug-related violation or those who are a knowing assister, abettor, conspirator, or colluder with others in drug trafficking. This provision is administered by U.S. Department of State's Assistant Secretary of State for International Narcotics and Law Enforcement Affairs (22 C.F.R. Part 140).

Congress also requires the President to identify each year "major illicit drug producing" and "major drug-transit" countries; a subset of these countries may be subject to U.S. foreign assistance restrictions. For FY2024, President Biden identified 23 such countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma (Myanmar), China, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela. Pursuant to Section 706 of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228; 22 U.S.C. §2291j-1), the President identified three of these countries—Bolivia, Burma, and Venezuela—as having "failed demonstrably" during the past year to meet international and U.S. standards for counternarcotics efforts. Absent a national interest waiver, which the President invoked for all three countries in 2024, certain

categories of U.S. assistance would have been prohibited, including arms sales and Export-Import Bank financing.

Anti-Money Laundering (AML) Prohibitions

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) exercises regulatory functions under the statutory framework for AML. These provisions include authority, as delegated to the FinCEN Director, to impose "special measures" on domestic financial institutions and agencies to protect the U.S. financial system from foreign jurisdictions, financial institutions, classes of transactions, or types of accounts "of primary money laundering concern" (31 U.S.C. §5318A). The fifth "special measure" prohibits U.S. financial institutions and agencies from opening or maintaining correspondent or payable-through accounts associated with a foreign target of primary money laundering concern—a move that has been imposed in several instances to prevent misuse of the U.S. financial system, at least in part, for illicit drug-related financial activity.

Section 7213A of the FSA, a provision added by the FEND Off Fentanyl Act (Div. E of P.L. 118-50; 21 U.S.C. §2313a) builds on 31 U.S.C. §5318A to authorize the Secretary of the Treasury to impose special measures in cases involving one or more foreign financial institutions, classes of transactions, or types of accounts "of primary money laundering concern in connection with illicit opioid trafficking." It adds a sixth special measure to prohibit or impose conditions on certain "transmittals of funds" by U.S. financial institutions and agencies.

Outlook for Congress

Counternarcotics-related sanctions activity in the past few Congresses has focused on addressing fentanyl-related trafficking. This includes (1) enactment of sanctions under the FSA in the 116th Congress; (2) enactment of changes in the 117th Congress to the definition of "major illicit drug producing" country to account for illicit synthetic opioids, including their precursor chemicals (the Blocking Deadly Fentanyl Imports Act, §6610 of P.L. 117-81, and the FENTANYL Results Act, Title LV, Subtitle C of P.L. 117-263); and (3) enactment of sanctions and AML prohibitions in the FEND Off Fentanyl Act in the 118th Congress.

Key areas of ongoing congressional interest may focus on sanctions effectiveness and implementation, including whether and under what circumstances the executive branch may choose to use certain sanctions and AML tools authorized by the FSA, whether the prescribed penalties for sanctions violations under current law are sufficient to deter or alter the behavior of drug traffickers, and whether sanctions impose undesirable burdens on U.S. businesses and financial institutions. Continued congressional interest in the role of China as a source of fentanyl-related inputs (e.g., precursors) may also drive policy debates regarding the effect and consequences of sanctions on both fentanyl supply chain patterns and broader bilateral relations between the United States and China. Another emerging area of interest may be the role of sanctions in disrupting links between Mexican transnational criminal organizations and PRC-linked money laundering organizations.

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