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Unprecedented “Secondary Tariffs” for Oil Trade With Venezuela

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On April 2 — labeled “Liberation Day” by President Trump — the Trump administration is set to add a new sanctions-like boost to its tariff strategy, with a threat to impose unprecedented “secondary tariffs” of 25% on “all goods imported into the United States from any country that imports Venezuelan oil, whether directly from Venezuela or indirectly through third parties.” These tariffs would be in addition to other existing duties in place for a specific country and type of product. Also set to take effect on this date are the additional 25% tariffs on U.S.-Mexico-Canada Agreement (USMCA)-compliant goods, which were previously paused, as well as new “reciprocal” tariffs on major trading partners, all of which we discussed in a recent alert.

These novel measures are being referred to as “secondary tariffs,” because they resemble “secondary sanctions,” a longstanding but controversial U.S. foreign policy tool. However, these secondary tariffs are a new concept in U.S. sanctions policy (and U.S. trade policy). Secondary sanctions have been used in the past to blacklist non-U.S. parties conducting transactions entirely outside of U.S. jurisdiction in ways that implicate certain U.S. sanctions authorities, *e.g.*, targeting Iran and Russia. Historically, the implementation of secondary sanctions focused on the financial sector, but for that reason, in some cases the U.S. government was hesitant to forcefully act on these authorities due to the often devastating impacts that U.S. sanctions can have on foreign financial institutions and other non-U.S. parties. The use of secondary tariffs by the Trump administration, therefore, is an innovative new approach that fits with the President’s economic vision and expressed skepticism of U.S. sanctions due to their potential long-term threat to the primacy of the U.S. dollar and international reliance on the U.S. financial system.

Tariffs have been used in the sanctions context before, but not like this. For example, new tariffs were imposed on Russia following its 2022 full-scale invasion of Ukraine, but tariffs have played a minimal role in U.S. sanctions policy toward Russia given the small import volumes from Russia. Another example was the back-and-forth between the U.S. and Colombia in January, when President Trump threatened to impose tariffs and sanctions on the country as punishment for initially refusing to accept deportation flights from the U.S.

How will these new tariff sanctions work?

The Executive Order (EO) imposing these secondary tariffs defines “Venezuelan oil” as “crude oil or petroleum products extracted, refined, or exported from Venezuela, regardless of the nationality of the entity involved in the production or sale of such crude oil or petroleum products.” This suggests that the remaining foreign entities still involved in Venezuela’s oil sector may fall within the scope of this authority.

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In a Truth Social post, President Trump had alluded to the possibility that these tariffs would include natural gas, but that does not appear to be the case currently, based on the language of the EO.

The EO defines the term “indirectly” to include “purchases of Venezuelan oil through intermediaries or third countries where the origin of the oil can reasonably be traced to Venezuela, as determined by the Secretary of Commerce.” Because these are discretionary “secondary tariffs,” importers hit with these new duties and other impacted parties will have limited legal recourse, even if, for example, there is a disagreement regarding a Venezuelan origin determination by the Secretary of Commerce.

Because the EO only refers to tariffs on “goods imported into the United States from any country that imports Venezuelan oil,” it appears that parties other than importers that are involved in the trade of Venezuelan oil, such as shipping, financing, etc., may not be in the crosshairs of this particular authority. Rather, it appears that the EO may be focused on the location and possibly also the domicile of parties engaged in the importation of Venezuelan-origin oil and petroleum products, which could even potentially include ports, storage facilities, and other related businesses. This aspect of the EO is not well-defined, but again this is a discretionary authority, so caution is warranted.

Despite the limitations of the EO, any party involved directly or indirectly in business with the Venezuelan oil or gas sectors should be aware of the broader sanctions risks that can apply under other authorities, such as the “blocking” of the Government of Venezuela and Petroleos de Venezuela, S.A. (PdVSA), and the secondary sanctions that can apply in this context.

These “secondary tariffs” are not necessarily going to be applied automatically. Instead, the U.S. Secretary of State has the discretion to decide whether to impose them. Therefore, foreign policy considerations will likely play a role in the implementation of this new authority, as is the case with U.S. secondary sanctions.

Additionally, the U.S. Secretary of Commerce must determine “whether a country has imported Venezuelan oil, directly or indirectly.” This is unusual, given that the U.S. Department of the Treasury (Treasury) has previously been the lead agency in monitoring oil trade with Venezuela for sanctions enforcement purposes. It will be interesting to see what role Treasury will play here and how the U.S. Department of Commerce (Commerce) will manage its role in this program.

Once imposed, these tariffs will “expire 1 year after the last date on which the country imported Venezuelan oil, or at an earlier date if the Secretary of Commerce . . . determines at his discretion.” While the State Department has the discretion to impose these tariffs, Commerce has the discretion to remove them, which is a unique arrangement.

Conclusion

Just last week, Secretary of State Marco Rubio had posted on X that, “[u]nless the Maduro regime accepts a consistent flow of deportation flights, without further excuses or delays, the U.S. will impose new, severe, and escalating sanctions.” Following that threat, on March 24, Venezuela accepted its first recent deportation flight of Venezuelan migrants from the U.S., following a pause that had been implemented by the Maduro regime after the Trump administration’s decision to revoke Chevron’s license to carry out certain operations in Venezuela, which

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we discussed in a previous article. One is left to wonder why this EO was issued right after what appears to have been renewed cooperation by the Maduro regime. This also raises questions about the Trump administration's desire to use these new authorities and what may trigger that. It will be important to watch whether the Trump administration adds any clarity to its policy toward Venezuela and how this EO may be used to promote that.

A new and seemingly aggressive approach to sanctions policy by the Trump administration has not been limited to Venezuela. For example, on March 20, Treasury's Office of Foreign Assets Control (OFAC) imposed sanctions on a Chinese "teapot" refinery and its CEO for refining Iranian oil, and the State Department sanctioned a crude oil and petroleum products storage terminal in China for receiving and storing Iranian crude oil. These are aggressive sanctions actions against major economic operators in China, and reflect the seriousness of this administration's renewed "maximum pressure" sanctions policy on Iran. If a similarly aggressive approach is taken with respect to these new Venezuela secondary tariffs, global market participants will be well advised to watch this space closely.

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