



Is There a Burger in the Treasury's CAATSA Report?

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While Washington politicians and the media are engaged in heated debates about Russia, international businesses have to be vigilant in complying with the existing sanctions regimes. A January 29, 2018 report issued by the Department of the Treasury pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act ("CAATSA") may add even more headaches for compliance officers and in-house counsel.

Passed by Congress in 2017 with broad bipartisan support, CAATSA established a regime of sanctions and congressional review of presidential efforts to undo them with respect to Iran, Russia, and North Korea. Titles I and III of CAATSA impose sanctions on Iran and North Korea, respectively. Title II of the CAATSA contains the measures against Russia. President Barack Obama had previously imposed a series of sanctions against Russia through executive orders, chiefly in response to Russia's role in Crimea and Ukrainian instability. CAATSA incorporates the Obama Administration's executive order sanctions in the findings contained in Section 211 and codifies these sanctions into law in Section 222 entitled "Codification of sanctions relating to the Russian Federation."

The principal difference between CAATSA and the previous executive orders is the mandatory character of the legislation. Indeed, CAATSA does not simply authorize, but instead requires the President to impose sanctions with respect to persons involved in "undermining cybersecurity" (§ 224), Russian crude oil extraction projects (§ 225), Russian financial institutions (§ 226), persons responsible for "significant corruption" in Russia (§ 227), persons transacting with Russian "foreign sanctions evaders and serious human rights abusers" (§ 228), persons transacting with Russian intelligence or defense officials (§ 231), persons involved in the development of pipelines in the Russian Federation (§ 232), and facilitators of privatization of Russian state-owned assets (§ 233). The undoing of sanctions requires a Presidential determination that the specific sanctions are "not in the national interest of the United States" or other steps allowing congressional oversight.

In addition to mandatory sanctions, CAATSA requires that the Secretary of the Treasury, in consultation with the Secretary of State and the Director of National Intelligence, submit a report to Congress on "senior foreign political figures and oligarchs in the Russian Federation" and "Russian parastatal entities" (§ 241). The report must assess the closeness of the identified persons to the Russian regime, their relationship with President Putin and the ruling elite, identification in corruption indices, estimated net worth, and business affiliates. The report must also assess the structure and business affiliation of Russian parastatal entities. Neither the term "oligarch" nor "parastatal entities" are defined in CAATSA. The report must be unclassified but may contain a classified annex. Notably, the law does not require that sanctions be imposed on all or any of the persons listed in the report. Although it is unclear from the text of CAATSA what the purpose of the report is, presumably it is designed to allow the Congress to oversee the Presidential efforts in complying with the requirements of the law.

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On January 29, 2018, as required by CAATSA, the Treasury submitted a Section 241 report to the Congress (hereinafter, the "Report"). The unclassified Report has been circulated by the media, but the unclassified annex has not been released to public. The Report identifies 114 senior foreign political figures and 96 oligarchs. The Report states that for "purposes of this unclassified portion of the report, this determination was made based on objective criteria related to individuals' official position in the case of senior political figures, or a net worth of \$1 billion or more for oligarchs." The Report specifies that in determining the list of senior political figures, the Treasury Department considered the definition found in CAATSA Section 241(c)(2), which incorporates by reference the definition of "senior foreign political figure" in Section 1010.605, Title 31 of the Code of Federal Regulations. That regulatory definition includes members of the Presidential Administration, members of the Cabinet of Ministers, as well as senior political leaders, who are clearly senior officials in the executive, legislative, administrative, military, or judicial branches of the Russian Government. There is nothing beyond the \$1 billion net worth requirement that the Report appears to use as criteria for including individuals on the list of oligarchs. In that regard, the Report specifically states that the Treasury Department identified oligarchs based on information from "reliable public sources."

Notably, the Report does not change or impose any new sanctions on the identified persons unless they are already subject to sanctions. Moreover, the Report explicitly provides that inclusion "in this report, its appendices, or its classified annexes does not, in and of itself, imply, give rise to, or create any other restrictions, prohibitions, or limitations on dealings with such persons by either U.S. or foreign persons."

The Report was criticized by the media for over inclusion on the one hand and missing some of the key names on the other. Bloomberg, for instance, called the Report "a bizarre cut-and-paste job where some of the inclusions, and some of the omissions, make little sense" and alleged that the Report is "copied directly from the English-language websites of the Kremlin and the Russian government, as well as the Russian edition of Forbes' billionaires list." The Washington Post quoted a tweet by the Atlantic Counsel economist Anders Åslund who asserted that the broad variety of Russians included undermined the list's purpose.

In addressing the criticism, Tony Sayegh, Assistant Secretary for Public Affairs, explained that "Treasury submitted an unclassified version of this report together with classified annexes. The unclassified report was derived from open source materials which include websites, government documents, public records, and news stories among other items. The classified version was derived from classified sources and methods. Taken together, this extensive report to Congress provides thorough details as required on relevant individuals and entities." While this Report is not a sanctions list, Secretary Mnuchin has made clear that Treasury is using this Report to inform future targeted sanctions, and "there will be sanctions that come out of this."

Taking Secretary Mnuchin's words at face value, there is little doubt that the future sanctions would be imposed against a person who is presently on the list. On the other hand, one must be hard pressed to say that the mere inclusion in the Report makes a person a target of the future sanctions.

In sum, although the Report, as CAATSA permits, does not impose any new sanctions, and does not change the status quo, based on Treasury's statements, it could be viewed as a forerunner to future sanctions targeting Russia, which would largely depend on how American and Russian relations evolve. International companies must be aware of CAATSA and related developments. In order to reduce the risk of sanctions, companies should fully comply with the existing sanction regimes imposed by the United States and EU. Businesses should also consider developing a compliance program that would address the changing political and legal landscape. Businesses should also consider developing a compliance program that addresses and accounts for the changing political and legal landscape.

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