

U.S. Reimposes Economic Sanctions On Military Regime in Burma

by Lawrence Ward, Justin T. Huff, Dave Townsend, and T. Augustine Lo

Effective June 1, 2021, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") published new Burmese Sanctions Regulations ("BSR") that implement President Biden's February 10, 2021, Executive Order 14014 ("E.O. 14014"), which was issued in response to a coup by the Burmese military to overthrow the country's democratically elected civilian government. The coup leaders have arrested and detained many of Burma's government and political leaders, human rights advocates, journalists, and religious leaders in an explicit repudiation of Burma's national elections that took place in November 2020. Despite widespread domestic and international protests against the coup, the Burmese military has thus far continued its use of violent repression and deadly force, killing or wounding hundreds of people, including young children.

The BSR impose U.S. economic sanctions on the Government of Burma (also known as Myanmar), certain leaders of the Burmese military or Burmese Government, persons who have acted to undermine democratic institutions and human rights in Burma (including their relatives), and the military sector or other sectors as deemed appropriate by OFAC. Since February, the Biden Administration has imposed sanctions on multiple individual Burmese government and military officials, individuals profiting from the Burmese coup, companies tied to the Burmese military and government, including precious gems and timber enterprises and other state-owned enterprises. In particular, OFAC has sanctioned the State Administration Council ("SAC"), the name given by the Burmese military to the body that has sought to displace the previous democratically elected civilian government. The SAC is comprised mostly of Burmese military officials and is headed by Commander-in-Chief Senior General Min Aung Hlaing, whom OFAC named as a "blocked person" under E.O. 14014.

E.O. 14014 and the BSR do not impose sanctions on the entire nation of Burma but, instead, are intended to be targeted in scope. As a result of the above actions by OFAC, all property and interests in property of such "blocked persons" in the United States or otherwise in the possession or control of U.S. persons have become "blocked property"

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and must therefore be reported as such to OFAC and remain frozen. Furthermore, BSR Section 525.406 provides that any business entity that is 50 percent or more owned, directly or indirectly, in the aggregate by one or more “blocked persons” will also be considered a “blocked person.” U.S. persons are also prohibited from contributing or providing funds, goods or services by, to, or for the benefit of any “blocked person” or from receiving any funds, goods or services from any such “blocked person,” unless authorized by OFAC through a general or specific license. OFAC has issued a general license authorizing certain wind-down transactions with Myanmar Economic Corporation Limited (“MEC”) and Myanmar Economic Holdings Public Company Limited (“MEHL”) until June 22, 2021. OFAC has said it will add to the BSR in the future to provide more detailed regulations.

The Bureau of Industry and Security (“BIS”) at the Commerce Department has also recently imposed new restrictions on exports of goods, software, and technology to Burma under the Export Administration Regulations (“EAR”) because of the February coup. In particular, certain listed items cannot be exported to Burmese military end users (or “MEUs”) or for military end uses without a license. Furthermore, BIS has imposed an outright ban on sending all items “subject to the EAR” (which includes EAR99 items) to certain military-intelligence end users in Burma. In addition, BIS has moved Burma from Country Group B to Country Group D:1, which means far more U.S.-origin technology will now be subject to BIS export licensing for exports to Burma and fewer license exceptions in EAR Part 740 that previously applied to some transactions will now be available to avoid such licensing. (The previous relaxation of export controls did not extend to an arms embargo of Burma enforced under the International Traffic in Arms Regulations (“ITAR”). Exports of armaments, munitions, and other defense articles continue to be subject to a strict policy of licensing denial under ITAR Section 126.1.)

It will be noted by many American trade compliance professionals that these Biden Administration measures closely resemble a long line of previous U.S. sanctions against Burma, which were a combination of Congressional action and executive decisions dating back to the first Burmese military coup against a civilian, democratically elected government in August 1988. That previous U.S. experience with limited sanctions began in earnest in May 1997 when President Bill Clinton issued Executive Order 13047 (“E.O. 13047”) to block new investments in Burma by U.S. individuals or companies. On May 21, 1998, OFAC issued its first Burmese Sanctions Regulations that were then codified as Part 537 of Title 31 in the Code of Federal Regulations.

Congress passed the Burmese Freedom and Democracy Act (“BFDA”), Pub. Law 108-61, and President George W. Bush signed that legislation in July 2003 to bar all imports by U.S. persons from Burma and the export by U.S. persons of financial services to Burma, to block the assets of certain Burmese financial institutions, and to restrict travel visas for certain Burmese officials. The BFDA contained time limits on certain forms of sanctions, and, although initially Congress renewed that authority in 2010, it did not later renew the bar on imports of Burmese goods. Congress then adopted in July 2008 the Tom Lantos Block Burmese Junta's Anti-Democratic Efforts (“JADE”) Act, Pub. L. 110–286, to block U.S. imports of any Burmese-origin ruby or jadeite gemstones from any

third countries. President Bush also issued Executive Order 13310 (“E.O. 13310”) to place sanctions against certain Burmese officials and two bodies used by the Burmese military to govern Burma, the State Peace and Development Council of Burma and the Union Development and Solidarity Association of Burma. President Bush also issued Executive Order 13448 (“E.O. 13448”) in October 2007 and Executive Order 13464 (“E.O. 13464”) in April 2008 to augment OFAC’s authority to name more leaders and officials in Burma, particularly human rights abusers, as “blocked persons.”

President Obama and his Administration then sought through diplomacy to use a “carrot and stick” approach to persuade the Burmese military to back away gradually from military rule and to return power to democratically elected officials within a parliamentary system. President Obama issued Executive Order 13651 (“E.O. 13651”) in August 2013 to revoke the parts of E.O. 13310 that had, since 2003, carried out the BFDA’s ban on U.S. imports of Burmese-origin goods but to continue blocking U.S. imports of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma that had been originally mandated under the 2008 JADE Act.

Slowly, signs of political progress materialized in Burma and civilian government in the country seemed to re-emerge. In October 2016, President Obama issued Executive Order 13742 (“E.O. 13742”) that ended President Clinton’s original May 1997 national emergency first declared by E.O. 13047. In all, E.O. 13742 cancelled Executive Orders 13047, 13310, 13448, 13464, 13619 and 13651, wiping away nearly two decades of economic sanctions on Burma. In June 2017, OFAC totally removed Part 537 from the CFR. 82 Fed. Reg. 27613 (June 16, 2017).

It now remains to be seen whether the latest BSR, augmented by whatever further sanctions efforts that may be taken by the Biden Administration, will persuade the SAC and the other Burmese military leaders behind the February 2021 coup to wind down their regime and, once again, move the pendulum of politics back toward democracy and civilian government in Burma. The history of U.S. sanctions in the 20 years between 1997 and 2017 would seem to suggest that such political changes in Burma may not come again quickly and, even if they do come, regrettably, they may not endure. For now, the new BSR shows that President Biden, like his predecessors at the White House over the past quarter century, will likely try to apply firm but measured sanctions aimed only at specific individuals and entities in the junta, but probably will not impose broader territorial sanctions of the kind used against Cuba or Iran.

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Dorsey’s attorneys in its National Security Group have had decades of experience in counseling clients on the scope and effects of U.S. economic sanctions programs such as the BSR.