The Biden Administration has been quick to respond to the unfolding situation in Myanmar (also known Burma): a day after the military, known as the Tatmadaw, seized control of the country’s government, the State Department declared the actions a coup d’état, resulting in a cutoff of many categories of foreign assistance. Other sanctions followed soon after. As a result, both new economic sanctions and export controls restrict—currently only in targeted ways—US trade with Burma.

New Sanctions

In particular, on February 11, 2021, President Biden signed Executive Order on Blocking Property with Respect to the Situation in Burma, authorizing new sanctions and export control restrictions on Myanmar in response to the February 1 military coup against the country’s democratically elected civilian parliament. Under the authority of the new Executive Order, the US Department of the Treasury’s Office of Foreign Assets Control (OFAC) designated as Specially Designated Nationals (SDNs) 10 military officials and three entities in a first round of targeted sanctions. Two of the military leaders targeted by the new measures were already subject to 2019 US sanctions under other US authority, the Global Magnitsky Act, due to their alleged involvement in serious human rights abuses against the Rohingya, an ethnic minority population in Myanmar.

As the military has responded to protests with violence, the Biden Administration has added to more sanctions. Following a February 20 clash between protestors and the Myanmar military that left two protestors dead, OFAC designated two more military officials. Additionally, OFAC designated three entities operating in Myanmar’s gem industry that are owned or controlled by Myanmar’s military. On February 22, 2021, following continued violence against pro-democracy protestors, OFAC designated two additional appointed members of the State Administration Council. On March 10, 2021, OFAC designated two adult children of military officials and six entities owned or controlled by the designees.

These designations generally prohibit US persons (as well as non-US persons when engaging in a transaction with a US touchpoint), except as authorized by OFAC, from engaging in transactions involving the recently-sanctioned 14 individuals and nine entities, and their property and interests in property.

New Export Controls

As a result of two rounds of new export controls, a significant range of goods, software and technology subject to the US Export Administration Regulations (EAR) are now subject to restrictive licensing requirements for transfer to Burma.

First, the Department of Commerce Bureau of Industry and Security (BIS) responded to the coup by imposing export controls. On February 18, 2021, BIS published a notice with immediate effect to limit exports and reexports of most goods to Burma’s military and...
security services, adopting a more restrictive license application review policy of presumption of denial of items requiring a license for export and reexport to Burma's Ministry of Defense, Ministry of Home Affairs, armed forces, and security services.

Second, days after the deadliest crackdown of the Myanmar’s security forces February 28 lead to the deaths of 18 pro-democracy protestors, BIS published a final rule that added the Ministry of Defense, the Ministry of Home Affairs, Myanmar Economic Corporation, and Myanmar Economic Holdings Limited to the Entity List, essentially banning any exports under the EAR to these entities. In addition, the final rule expands the "Military End Use and End User" Rule under the EAR to Burma (it previously only applied to Russia, China, and Venezuela), and moves Burma back into the EAR's category of arms-embargoed countries from its previously favorable listing in a more flexible category under the EAR.

Conclusion

The Biden Administration’s targeted approach in this case is likely to be the model of its use of economic coercive tools going forward. The sanctions and export controls that have been imposed have been surgical and deliberate, punishing the military junta while attempting not to impose harm on the citizens of Myanmar. The Biden Administration consulted with US allies on the appropriate US and international response, and President Biden has emphasized the need for a multilateral response. Both Canada and the United Kingdom have imposed similar tailored sanctions on military officials.

If the situation in Myanmar continues to escalate, we anticipate that the Biden Administration will continue to impose further sanctions and export control measures. If you need assistance in assessing potential US sanctions risks or undertaking compliance steps more generally these authors have significant experience helping clients understand and deal with those issues.

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1 The Myanmar military is claiming that its actions to take control of the government was in accordance to the 2008 constitution to protect democracy in Myanmar to prevent an illegitimate Union Parliament taking office, citing to irregularities in the November 2020 election. The military's takeover of the democratically elected Union Parliament and detaining of elected leader Aung San Suu Kyi is an unfortunate return to Myanmar's past. Myanmar was under military rule from 1962 to 2011. Suu Kyi was detained by the military for most of the 1990s and early 2000s. The United States has previously responded to antidemocratic actions in Myanmar with sanctions; the previous sanction regime, first enacted by President Clinton and modified over time, was only formally terminated in 2016 following election reforms.

2 (1) Commander-in-Chief Min Aung Hlaing; (2) Deputy Commander-in-Chief Soe Win; (3) First Vice President and retired Lieutenant General Myint Swe; (4) Lieutenant General Sein Win; (5) Lieutenant General Soe Htut; and (6) Lieutenant General Ye Aung. Both Min Aung Hlaing and Soe Win had already been designated on December 10, 2019 pursuant to the Global Magnitsky Act for their actions in the Rohingya genocide.

3 (1) General Mya Tun Oo, appointed Minister of Defense; (2) Admiral Tin Aung San, appointed Minister for Transport and Communications; (3) Lieutenant General Ye Win Oo, appointed Joint Secretary of the SAC; and (4) Lieutenant General Aung Lin Dwe, appointed Secretary of the SAC.

4 (1) Myanmar Ruby Enterprise; (2) Myanmar Imperial Jade Co. LTD; and (3) Cancri (Gems and Jewellery) Co., LTD.

5 (1) Lieutenant General Moe Myint Tun and (2) General Maung Maung Kyaw.

6 (1) Aung Pyae Sone and (2) Khin Thiri Thet Mon.

7 (1) A & M Mahar Company Limited; (2) Sky One Construction Company Limited; (3) The Yangon Restaurant; (4) The Yangon Gallery; (5) Everfit Company Limited; and (6) Seventh Sense Company Limited.