

December 21, 2020

## **United States Imposes Sanctions on Turkey under CAATSA Section 231 for Purchase of Russian Missile System**

### **Introduction**

On December 14, 2020, the U.S. imposed sanctions on the Republic of Turkey's Presidency of Defense Industries ("SSB") pursuant to Section 231 of the Countering America's Adversaries Through Sanctions Act ("CAATSA"), which mandates the imposition of sanctions against non-U.S. persons who conduct "significant" transactions with Russia's defense or intelligence sectors.<sup>1</sup> The U.S. State Department determined that SSB's acquisition of a Russian S-400 surface-to-air missile from Rosoboronexport ("ROE") qualified as a significant transaction under Section 231.

This marks the first time that the United States has imposed CAATSA sanctions against a North Atlantic Treaty Organization ("NATO") ally. It is also only the second implementation of Section 231 sanctions. In September 2018 the State Department imposed Section 231 sanctions against the Chinese entity Equipment Development Department and its director for engaging in significant transactions with ROE.<sup>2</sup>

Simultaneous with the sanctions against SSB, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") added four individual SSB officers, Dr. Ismail Demir, SSB's president, Faruk Yigit, SSB's vice president, Serhat Gencoglu, SSB's Head of the Department of Air Defense and Space, and Mustafa Alper Deniz, Program Manager for SSB's Regional Air Defense Systems Directorate, to its Specially Designated Nationals and Blocked Persons List (the "SDN List").<sup>3</sup>

This client alert provides a brief background on Section 231 of CAATSA and the events leading up to the sanctions targeting SSB, as well as a discussion of the scope and implications of the sanctions for U.S and non-U.S. persons.

### **Section 231 of CAATSA**

On August 2, 2017, President Trump signed CAATSA, which, in part, significantly expanded U.S. sanctions targeting Russia.<sup>4</sup> Specifically, CAATSA enacted a series of secondary sanctions to discourage non-U.S. persons (including entities and individuals based outside of Russia) from engaging in certain conduct with Russia. Section 231 explicitly threatens sanctions against non-U.S. persons who conduct business with Russia's government-affiliated defense industries. Section 231 mandates the imposition of at least five of the 12 sanctions listed in Section 235 of CAATSA<sup>5</sup> against any person who knowingly engages in a

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“significant” transaction with a person that is part of or operates for or on behalf of, the “intelligence or defense sectors” of the Government of the Russian Federation.<sup>6</sup>

The State Department maintains a list of over eighty persons, corporations, government entities identified to be part of, or operate on behalf of, the defense and intelligence sectors of Russia (the “Section 231 List”).<sup>7</sup> OFAC’s SDN List also includes many of these entities. The State Department stated in 2017 guidance (the “2017 Guidance”) that in determining whether a transaction is “significant,” it will “consider the totality of the facts and circumstances surrounding the transaction and weigh various factors on a case-by-case basis. The factors considered in the determination may include, but are not limited to, the significance of the transaction to U.S. national security and foreign policy interests, in particular whether it has a significant adverse impact on such interests; the nature and magnitude of the transaction; and the relation and significance of the transaction to the defense or intelligence sector of the Russian government.”

The 2017 Guidance further explained that it intended to “work with” persons contemplating transactions with the identified parties: “once we have a good analysis, we’re going to start that robust engagement and talk to partners and allies about where we find transactions that may be problematic.”<sup>8</sup>

### **Imposition of Sanctions Against SSB and Related Individuals**

According to press reports, SSB finalized a deal with ROE, Russia’s primary arms export entity, for the purchase of the S-400 surface-to-air missile (the “S-400 System”) in December 2017.<sup>9</sup> ROE is identified on the Section 231 List as a person that is part of or operates for or on behalf of, the defense sector of the Government of the Russian Federation, and was designated as an SDN on April 6, 2018.<sup>10</sup>

The State Department “made clear to Turkey at the highest levels and on numerous occasions that its purchase of the S-400 System would “endanger the security of U.S. military technology and personnel and provide substantial funds to Russia’s defense sector, as well as Russian access to the Turkish armed forces and defense industry” and put Turkey at risk of sanctions under Section 231.<sup>11</sup> Despite efforts by the United States to dissuade Turkey from completing the transaction by offering the MIM-104 Patriot, a surface-to-air missile system used by the U.S. and other NATO allies, Turkey completed the transaction and according to media reports received its first shipment from ROE in July 2019.<sup>12</sup>

The U.S. Department of State further noted the sanction against SSB “are not intended to undermine the military capabilities or combat readiness of Turkey or any other U.S. ally or partner, but rather to impose costs on Russia in response to its wide range of malign activities.”<sup>13</sup>

As discussed above, Section 231 requires the imposition of at least five of the twelve sanctions described in Section 235 for violations of Section 231. The Secretary of State, in consultation with the Secretary of the Treasury, selected the following sanctions to impose against SSB:

- A prohibition on granting specific U.S. export licenses and authorizations for any goods or technology transferred to SSB;
- A prohibition U.S. financial institutions making loans or providing credits to SSB totaling more than \$10 million in any 12-month period;
- A ban on U.S. Export-Import Bank assistance for exports to SSB;
- A requirement for the United States to oppose loans benefitting SSB by international financial institutions; and
- Imposition of full blocking sanctions and visa restrictions on Dr. Ismail Demir, president of SSB; Faruk Yigit, SSB's vice president; Serhat Gencoglu, Head of SSB's Department of Air Defense and Space; and Mustafa Alper Deniz, Program Manager for SSB's Regional Air Defense Systems Directorate.<sup>14</sup>

Simultaneous with adding the SSB officers to the SDN List, OFAC announced a new non-SDN List, the NS-MBS List, to identify parties subject to non-blocking menu-based sanctions, including Section 231.<sup>15</sup>

### **Implications**

The SSB designation demonstrates that the United States is willing to impose sanctions against non-U.S. persons—even allies—that it determines to have engaged in a significant transaction with the Russian defense and intelligence sectors, particularly after the U.S. government has conducted advance outreach. Anyone receiving such outreach should carefully assess the credible risk of the imposition of secondary sanctions before proceeding with the contemplated transaction.

Additionally, companies that engage in business with Turkey that involves U.S.-origin goods or technology should be mindful of the new export control restrictions that apply to exports to SSB. These restrictions will limit SSB's ability to source defense-related goods and technology from the United States. Similarly, U.S. financial institutions will need to ensure that they do not make loans or provide credits to SSB in excess of the new \$10 million annual threshold. Companies will also want to consider the potential commercial and reputational concerns associated with entering into or continuing business relationships with SSB.

Although SSB was not added to the SDN List and the new sanctions do not prohibit most U.S.-nexus dealings with SSB itself, those conducting U.S. nexus dealings with SSB should exercise caution to ensure that they are not engaging in prohibited dealings with SSBs newly designated officers, for example, by entering into a contract with SSB that is signed by an SDN.

We will continue to monitor sanctions developments and look forward to providing you with further updates.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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- <sup>1</sup> U.S. Dep't of State, "The United States Sanctions Turkey Under CAATSA 231" (announcing new economic sanctions against SSB pursuant to Section 231 of CAATSA), available [here](#).
  - <sup>2</sup> U.S. Dep't of State, "Sanctions Under Section 231 of the Countering America's Adversaries Through Sanctions Act of 2017," available [here](#).
  - <sup>3</sup> U.S. Dep't of the Treasury, "Introduction of the Non-SDN Menu-Based Sanctions (NS-MBS) List; CAATSA Russia-related Designations," available [here](#).
  - <sup>4</sup> The full text of CAATSA is available [here](#). For additional detail on CAATSA and its implications for U.S. Russia/Ukraine-related sanctions, see the August 3, 2017 Paul, Weiss [Client Memorandum](#) and December 20, 2017 Paul, Weiss [Client Memorandum](#).
  - <sup>5</sup> These sanctions, enumerated in Section 235 of CAATSA, include the following: (1) denial of export-import bank financing; (2) U.S. export sanctions; (3) restrictions on access to loans from U.S. financial institutions; (4) U.S. opposition to any loan from international financial institutions; (5) specific prohibitions on financial institutions, including prohibition on designation by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York as a primary dealer and

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prohibition on service as a repository of government funds; (6) U.S. procurement sanctions; (7) prohibitions on transactions in foreign exchange subject to U.S. jurisdiction; (8) prohibitions on banking transactions subject to U.S. jurisdiction; (9) prohibitions on dealings in property subject to the jurisdiction of the United States; (10) prohibitions on U.S. investment in debt or equity; (11) exclusion of corporate officers from entering the United States; and (12) imposition of any of the foregoing sanctions of principal executive officers of the sanctioned person.

- <sup>6</sup> See CAATSA § 231, available [here](#). The President delegated the authority to impose sanctions under Section 231 to the Secretary of State and the Secretary of the Treasury on September 29, 2017. Presidential Memorandum for the Secretary of State, the Secretary of the Treasury, and the Director of National Intelligence, “Delegation of Certain Functions and Authorities under the Countering America’s Adversaries Through Sanctions Act of 2017, the Ukraine Freedom Support Act of 2014, and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014,” available [here](#).
- <sup>7</sup> U.S. Dep’t of State, CAATSA Section 231(d) Lists Regarding the Defense and Intelligence Sectors of the Government of the Russian Federation, available [here](#).
- <sup>8</sup> Public Guidance on Sanctions with Respect to Russia’s Defense and Intelligence Sectors Under Section 231 of the Countering America’s Adversaries Through Sanctions Act of 2017, available [here](#).
- <sup>9</sup> See, e.g., Tuvan Gumrukcu and Ece Toksabay, Turkey, Russia signs deal on supply of S-400 missiles, REUTERS (Dec. 29, 2017), available [here](#).
- <sup>10</sup> U.S. Dep’t of State, “CAATSA Section 231(e) Defense and Intelligence Sectors of the Government of the Russian Federation” (list identifying entities that are part of, or operates for or on behalf of, the defense sector of the Government of the Russian Federation), available [here](#); U.S. Dep’t of the Treasury, “Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity,” (Apr. 6, 2018), available [here](#).
- <sup>11</sup> U.S. Dep’t of State, “CAATSA Section 231 ‘Imposition of Sanctions on Turkish Presidency of Defense Industries’” (fact sheet outlining sanctions against SSB under CAATSA), available [here](#).
- <sup>12</sup> *Id.* See, e.g., Ryan Browne, Nick Paton Walsh, and Kara Fox, Russia starts delivery of S-400 missile system to Turkey, setting up standoff with US, CNN (July 12, 2019), available [here](#); Bill Chappell, Turkey Accepts Russian S-400 Missile System, Rankling U.S. And NATO, NPR (July 12, 2019), available [here](#).
- <sup>13</sup> U.S. Dep’t of State, “The United States Sanctions Turkey Under CAATSA 231” (announcing new economic sanctions against SSB pursuant to Section 231 of CAATSA), available [here](#).
- <sup>14</sup> See CAATSA § 235(a)(2), available [here](#).
- <sup>15</sup> U.S. Dep’t of the Treasury, “Introduction of the Non-SDN Menu-Based Sanctions (NS-MBS) List; CAATSA Russia-related Designations,” available [here](#).