

Client Update U.S. Sanctions Under a Trump Administration

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In recent years, President Obama has ordered significant changes to the long-standing U.S. sanctions on Cuba and Iran as well as imposed new sanctions on Russia. President-elect Trump has been generally critical of the Obama administration's relaxation of U.S. sanctions on Cuba and Iran, and his views on Russia appear more favorable than those of the outgoing administration.

In this client update, we examine the current status of the U.S. sanctions on Cuba, Iran and Russia and assess the legal underpinnings of these sanctions regimes with a view to potential changes that could occur under a Trump administration.

U.S. SANCTIONS ON CUBA

The U.S. trade embargo of Cuba has long restricted nearly all business between the United States and Cuba. President Obama, however, determined that a change in U.S. policy toward Cuba was warranted and, through a series of administrative actions, significantly relaxed the restrictions on activities related to Cuba by persons subject to U.S. jurisdiction.

What Is the Legal Basis of U.S. Sanctions on Cuba?

The U.S. sanctions on Cuba were established over 50 years ago by an executive order under the WWI-era Trading with the Enemy Act ("TWEA") and subsequently amended by several executive orders and acts of Congress, including the Cuban Democracy Act of 1992, the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 and the Trade Sanctions Reform and Export Enhancement Act of 2000.

The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") administers and enforces most of the sanctions on Cuba through the Cuban Assets Control Regulations. The U.S. Commerce Department's Bureau of

Industry and Security, through its Export administration Regulations, regulates the export or reexport of U.S.-origin items to Cuba.

What Changes Were Made by the Obama Administration?

The statutory basis of the U.S. trade embargo on Cuba limits the president's authority unilaterally to lift the sanctions. President Obama has thus relied on administrative authority to effect the limited relaxation of U.S. sanctions on Cuba that has occurred in the last two years. As we have discussed in previous client updates (of [October 14, 2015](#), [January 20, 2015](#) and [December 17, 2014](#)), President Obama announced a change in U.S. policy towards Cuba, and OFAC and BIS subsequently revised their regulations to permit greater interaction between the United States and Cuba.

These changes included, among others:

- Authorizing by general license 12 categories of travel to Cuba, and related transactions in Cuba, permissible for persons subject to U.S. jurisdiction;
- Allowing the importation as accompanied luggage of Cuba-origin goods (e.g., Cuban rum and cigars) for personal consumption;
- Allowing importation of certain goods from Cuba's small private sector;
- Allowing exportation of communications-related equipment to Cuba;
- Removing limits on personal remittances and allowing direct sales of goods from the United States to individual Cuban consumers;
- Permitting United States financial institutions and travel service providers to support authorized transactions; and
- Opening air and sea travel routes between the United States and Cuba to U.S. travel carriers.

Can President Trump Roll Back These Changes?

Yes; the relaxation of U.S. sanctions on Cuba could be rolled back by a Trump administration. However, U.S. business ties to Cuba have already expanded: Google recently inked a deal with Cuba to bring computer servers to the island, Starwood Hotels has obtained management of three hotels in Havana and several U.S. airlines have been granted approval to operate direct flights to Cuba.

What Will the Trump Administration Do?

It is not clear. At the top of the incoming administration, President-elect Trump, following the death of Fidel Castro in November 2016, tweeted “If Cuba is unwilling to make a better deal for the Cuban people, the Cuban/American people and the U.S. as a whole, I will terminate deal.” At a Miami campaign rally in September 2016, Mr. Trump was quoted as stating “[a]ll of the concessions Barack Obama has granted the Castro regime were done through executive order—which means the next president can reverse them. And that I will do unless the Castro regime meets our demands.”

President-elect Trump has appointed Mauricio Claver-Carone, Executive Director of Cuba Democracy Advocates, to his Treasury Department “landing team.” Mr. Claver-Carone has been a critic of the Obama administration’s Cuba policy, and his appointment may be an indication of the President-elect’s intentions.

However, there has been speculation that a Trump administration will favor a pragmatic approach that supports the pro-business wing of the Republican Party.

U.S. SANCTIONS ON IRAN

One of the Obama administration’s foreign policy priorities, the Joint Comprehensive Plan of Action, which suspended U.S. and EU sanctions related to Iran’s nuclear program, has been criticized by President-elect Trump (see our summary in our [client update of January 19, 2016](#)). This past March, Mr. Trump said his “number-one priority is to dismantle the disastrous deal with Iran.”

What Is the Legal Basis of the U.S. Sanctions on Iran?

The current Iran sanctions, which date back to the 1980s and 1990s, were imposed by executive order under the International Emergency Economic Powers Act in reaction to Iran’s support for terrorist groups. In the early 2010s, the sanctions were supplemented by additional executive orders and numerous acts of Congress in response to Iran’s involvement in money laundering, human rights abuses, regional destabilization and proliferation of weapons of mass destruction, including Iran’s nuclear program. As of the time of the nuclear deal, the Iran sanctions comprised the most comprehensive and wide-ranging U.S. sanctions regime in effect.

Broadly described, there are two types of U.S. sanctions involving Iran. First, “primary” sanctions involve a trade embargo and apply to U.S. exports and

imports (including banking services performed in the United States) and to transactions by U.S. persons wherever located and, to a lesser extent, by non-U.S. companies that are owned or controlled by a U.S. person. These sanctions have been imposed under a variety of authorities and include not only the trade embargo but also blocking sanctions against certain Iranian persons, including the Iranian government and those linked to the Islamic Revolutionary Guard Corps, as well as persons designated for their involvement in the proliferation of weapons of mass destruction and terrorism.

So-called “secondary” sanctions sought to discourage non-U.S. persons from engaging in certain types of trade and transactions with Iran, such as activities to develop Iran’s petroleum resources. Many of the secondary sanctions are authorized through the Iran Sanctions Act of 1996, as amended, which had as its purpose, in part, to deny Iran support for the development of nuclear weapons and other weapons of mass destruction.

What Is the Iran Nuclear Deal?

The nuclear deal with Iran is a multilateral commitment to suspend and eventually lift U.S., EU and UN sanctions on Iran in exchange for limitations on Iran’s nuclear energy program. The U.S. implementation of the deal took effect on January 16, 2016, and resulted in the waiving of most secondary sanctions by the United States, as well as most primary sanctions applicable to foreign subsidiaries of U.S. companies, subject to certain limitations. In addition, OFAC removed several hundred individuals and entities from its sanctions lists, released funds belonging to Iran that had been frozen by U.S. financial institutions and adopted a licensing policy allowing specific licenses for certain aircraft exports to Iran.

However, as noted, the trade embargo prohibiting U.S. persons from engaging in Iran-related transactions remains in full effect, as do the prohibitions on reexporting U.S. goods to Iran and the use of the U.S. banking system for Iran-related transactions.

Can a President Trump “Tear up” the Nuclear Deal?

Yes. The nuclear deal is a “political commitment,” which is not a legally binding agreement. We have discussed the implications of this legal status in our [Client Update of November 23, 2016](#). However, the participation of the European Union in the Iran sanctions was a key part of the pressure on Iran that induced it to modify its nuclear program, and it is possible that Iran and the EU could

continue to cooperate in implementing the nuclear deal without U.S. involvement.

What Will the Trump Administration Do?

As noted, President-elect Trump was a harsh critic of the Iran nuclear deal in his campaigning for the presidency. However, there has been little talk of the United States' unilateral withdrawal following the election.

Meanwhile, reports indicate that international business is slowly returning to Iran. Recently, for example, Iran confirmed to news sources that it will purchase 80 Boeing planes for \$16.8 billion.

Among Mr. Trump's candidates for senior posts, the nominee for Defense Secretary, Gen. James Mattis (ret.), has been cited as both a critic of the deal and an opponent of tearing it up. Steven Mnuchin's views, which may be relevant if he is confirmed as Treasury Secretary, are unknown, as are the views of Rex Tillerson, Mr. Trump's nominee for Secretary of State.

The views of the Republican-controlled Congress, however, are clear. On December 2, 2016, Congress presented the Iran Sanctions Extension Act, which extends the Iran Sanctions Act through 2026, to President Obama for his signature. The sponsor of the bill, Rep. Edward Royce (R-CA), has called the Obama administration's policy toward Iran a "dangerous track" that he suspects will be pressed back by the next administration.

U.S. SANCTIONS ON RUSSIA

The U.S. sanctions against Russia, one of the most recent sanctions programs, are much more limited than U.S. sanctions on Cuba or Iran.

What Is the Legal Basis for the Sanctions on Russia?

The United States' sanctions on Russia comprise four executive orders issued under the International Emergency Economic Powers Act and one act of Congress, known as the Ukraine Freedom Support Act of 2014.

Three of the executive orders authorize sanctions on entities and individuals linked, in various ways, to Russia's involvement in the crisis in Ukraine (discussed further in our client updates of [August 8, 2014](#), [July 16, 2014](#), and [March 7, 2014](#)) and on companies involved in the oil and gas, financial services and defense sectors of the Russian economy. These sanctions include the so-

called “sectoral sanctions,” which apply limited restrictions to the types of business or financial activities that U.S. persons may conduct with designated Russian companies. The fourth executive order establishes a trade embargo on the region of Crimea, prohibiting U.S. persons, with limited exceptions, from engaging in any transactions with or involving the region (see our client updates of [August 5, 2015](#) and [January 8, 2015](#)).

The Ukraine Freedom Support Act codifies parts of the first three executive orders. It does not codify the trade embargo on Crimea, which was adopted later, but it requires the president to impose sanctions on Rosoboronexport, a Russian state-owned defense company. (For more details, see our [client update](#) of April 11, 2014.)

Can President Trump Terminate the Sanctions on Russia?

Yes. President Trump could immediately terminate or modify existing sanctions on Russia through executive action.

He would have at least two options to dismantle the sanctions on Russia. First, OFAC could remove persons currently designated on U.S. sanctions lists. This would, in effect, lift all Ukraine-related sanctions on Russia apart from the trade embargo on Crimea and limited sanctions on Rosoboronexport.

Alternatively, President Trump could rescind all four of President Obama’s relevant executive orders and terminate the declaration of national emergency contained in the orders. This would result in the lifting of Ukraine-related sanctions on Russian persons already subject to U.S. sanctions (other than Rosoboronexport), as well as the termination of the trade embargo on Crimea. The president also could take lesser steps, such as modifying the executive orders, delisting some of the individuals and entities on the sanctions lists or terminating the sectoral sanctions while keeping in place the blocking sanctions and trade embargo on Crimea.

Under either scenario, the Ukraine Freedom Support Act would remain law until repealed by Congress. However, even under the Act, the imposition of sanctions is within the discretion of the president. Even the mandatory sanctions on Rosoboronexport may be waived if the president finds that a waiver would be in the national security interest and notifies Congress of the waiver. Accordingly, the Act has little practical impact on the president’s actions towards Russia.

What Will the Trump Administration Do?

Mr. Trump, when campaigning, often spoke in praise of Russian President Vladimir Putin. Recently, Mr. Trump has been dismissive of allegations that the Russian government was actively undermining the U.S. electoral process and promoting his candidacy.

Today, Mr. Trump nominated Rex Tillerson for Secretary of State. As CEO of ExxonMobil, Mr. Tillerson oversees the company's global operations, including its long standing business in Russia affected, in part, by U.S. sectoral sanctions.

Many Republicans in Congress, however, do not share Mr. Trump's favorable views on Russia and could seek to obstruct an attempt by the Trump administration to normalize relations. Additionally, the European Union recently announced it plans to renew the economic sanctions on Russia that expire on January 31, 2017, which will continue to limit Russian companies' access to Western capital.

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