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International Trade & Regulatory ADVISORY ■

NOVEMBER 18, 2016

Previewing Trade Policy in the Trump Administration
Part 3: Sanctions

Throughout Donald Trump's campaign, a prominent theme was the candidate's willingness to address perceived shortcomings in the United States' trade policies and dealings with foreign countries. These reforms, should they come to pass, would have significant impact on U.S. trade relations and are likely to invite legal challenges at the World Trade Organization (WTO) and under other agreements. For companies engaged in international trade activities, Trump's proposals have the potential to disrupt global supply chains, investment decisions and business operations in multiple markets.

In addition to proclamations regarding trade agreements and threats to aggressively enforce the United States' trade remedy laws and regulations, the Trump campaign also tackled the Joint Comprehensive Plan of Action (JCPOA) among the U.S., EU and Iran, calling the deal "disastrous" and threatening to alternatively "rip up" or "police that contract so tough they don't have a chance." Other embargos and economic sanctions regimes, including those targeting Cuba and Russia, were called into question during Trump's campaign, leaving their status an open question following Trump's inauguration.

In the third of a three-part series, we discuss the Trump Administration's possible actions on sanctions regimes on Iran, Cuba and Russia. Part 1 explored current trade agreements. Part 2 analyzed China policy.

Stability, Then Change

As a general matter, and excepting the potential development of a new national security crisis, U.S. economic sanctions programs can be expected to remain largely stable for the first year of the Trump Administration as it fills out its staff of foreign policy advisors and develops and promulgates its larger policies and approach to various national security challenges.

Given the robust use of economic sanctions as a foreign policy tool in recent years, and the increasing involvement by Congress through sanctions-related legislation (e.g., Iran-related statutes, the Magnitsky Act and Venezuela- and North Korea-related legislation), one can expect that these tools will remain go-to options for the Trump Administration.

There are, however, several economic sanctions programs likely to see more imminent changes—such as Iran and Cuba, and perhaps Russia-related restrictions. While during the presidential campaign the Trump team tended not to elaborate on various sanctions programs, these three countries were often at least a general topic of discussion for campaign rallies and the presidential debates—and often with criticism of the Obama Administration's policies and the sanctions' current state of play.

Iran

The Obama Administration has pledged to continue implementing and honoring the terms of the JCPOA—negotiated between the "P5+1" and Iran and implemented on January 16, 2016—through January 20. Given that the Administration has roughly two more months at the helm, there is certainly the possibility that the State and Treasury Departments will undertake additional public steps to give further momentum to one of the President's signature foreign policy accomplishments.

To the extent the Administration does so, there is the distinct possibility that those steps would be reversed after January 20. Both Trump and his vice presidential running mate Mike Pence have repeatedly campaigned on the JCPOA, pledging as recently as last month to "rip up the Iran deal" and to "marshal our allies" to prevent Iran from obtaining a nuclear weapon. In a speech to the pro-Israel lobby group AIPAC last March, Trump declared that his "number-one priority is to dismantle the disastrous deal with Iran." In the same speech, however, he also pledged to "enforce it like you've never seen a contract enforced." Other Trump advisors have recently said (such as foreign policy advisor Walid Phares to the BBC on November 10), "'Ripping up' is maybe a too strong [a] word. … He will take the agreement, review it, send it to Congress, demand from the Iranians to restore [a] few issues or change [a] few issues. And there will be a discussion; it could be a tense discussion."

The JCPOA was not presented by the Obama Administration as a treaty requiring ratification, but rather simply as an Executive agreement not requiring Congress's approval. Because of a procedural sequence in the Senate, the final agreement was not considered for either a vote of support or rejection. For these reasons, there is little impediment to a President withdrawing the U.S. from the deal. The Trump Administration could also ask the new Congress early in 2017 to again conduct a vote on the JCPOA, ostensibly providing it with some level of political support for rejection and showing political unity on the matter.

In any event, while one option is to withdraw and declare the JCPOA dead, there is some initial indication that "ripping up" the deal would not be immediate. Moreover, such an immediate step could get ahead of the new Administration fully establishing its foreign policy team, having an opportunity to assess the JCPOA for itself and communicating to the world its intended big-picture approach to nuclear proliferation and state sponsors of terror and other hot-button foreign policy challenges. Iran would be very likely to assert that an immediate withdrawal by the U.S. is justification for Iran to also step away from its commitments regarding uranium enrichment.

An alternative approach is for the Trump Administration to focus on enforcement and potential triggering of the so-called "snapback" of some or all of the economic sanctions under several Iran-related statutes currently waived by the President in financial and banking activities, insurance services, energy and petrochemical services, shipping and shipbuilding, precious metals, the automotive sector and transactions with certain listed individuals. In recent months, Iran has already been deemed by the International Atomic Energy Agency (IAEA) to be in violation of its heavy-water commitment under the deal, although the IAEA has described the circumstances as not a significant violation of the deal's terms. The country has also been actively testing its ballistic missile program throughout the year, a matter not covered by the JCPOA.

Importantly, snapback cannot be blocked under the JCPOA and its associated United Nations Security Council resolution unless the parties to the deal unanimously vote to maintain sanctions relief (that is, the U.S. may veto a resolution to maintain sanctions relief). It would also remain to be seen whether any of the other signatories of the deal would in fact reimpose sanctions alongside the U.S. On November 14, 2016, European Union foreign ministers issued a statement emphasizing that they remained committed to the JCPOA and would "promote growth in trade and investment." Irrespective of whether other parties to the JCPOA honored the agreement in the face of a U.S. withdrawal, any snapback of U.S. secondary sanctions would again place tight restrictions—including the risk of losing access to the U.S. financial system or being named on the Specially Designated Nationals (SDN) List—on foreign financial institutions' and foreign entities' engagement with Iran. Even under the current JCPOA's terms, a number of major foreign financial institutions have hesitated to reengage in business with Iran—largely due to current U.S. sanctions that remain in place and issues with the lack of transparency of the Iranian business environment.

The new Administration might also take a harder line as reflected through a much tougher policy or interpretation of already promulgated Office of Foreign Assets Control (OFAC) JCPOA-related licenses (such as either under the commercial aviation "statement of licensing policy," General License H or pending applications for specific licenses) and additions of other entities to the SDN List.

In the meantime, it is highly likely that Congress will seek to influence U.S.–Iran policy for the foreseeable future, including during the upcoming lame-duck session before the end of December. This includes the Iran Sanctions Act (ISA), the underpinning of many secondary sanctions, which is set to expire on December 31. Further, many in Congress have been highly critical of both the deal and its implementation, and numerous Iran-related sanctions bills have been proposed by both the Senate and House of Representatives. These bipartisan efforts include ISA reauthorization, new terrorism or nonnuclear sanctions focused on the Iranian Revolutionary Guard Corps or ballistic missile testing, respectively, legislation regarding Iranian access to the U.S. dollar and barring the United States' purchase of heavy water from Iran. While some of these may not be considered during the lame-duck session and the current Administration would be unlikely to sign them—warning that even acting on a clean ISA reauthorization might be perceived by Iran as reneging on the deal—it seems more likely than not that similar bills will get a rapid and receptive congressional audience in 2017.

With this context, the JCPOA commitment by the parties to the deal to avoid "any policy specifically intended to directly and adversely" impact normalization of trade with Iran could be tested. In sum, Iran sanctions and the JCPOA face some degree of uncertainty in 2017.

Cuba

During the past two years, the Obama Administration has worked to normalize relations with Cuba. While many statutory sanctions against the island nation remain in place, including broad prohibitions against U.S. business involving the Cuban government, President Obama, through the modifications of OFAC's Cuban Assets Control Regulations (CACR) and the Export Administration Regulations, has loosened the reins on prior prohibitions, including through the expansion of permissible travel and business engagement by U.S. companies. However, the opening of Cuba to U.S. business remains limited to certain types of commercial activities, such as those related to travel, agriculture, medicine, telecommunications and certain types of infrastructure projects.

Any momentum brought on by recent changes to the CACR may potentially be ground to a halt by the Trump Administration. A week ahead of the election, Trump stated that his Administration would "cancel Obama's one-sided Cuban deal." Because the relaxation of Cuban sanctions has been accomplished through the modification of regulations, the new President will be able to rescind the sanctions relief unilaterally without consultation with Congress. Based on his recent rhetoric regarding Cuban sanctions, Trump may be inclined to do so, creating uncertainty on the availability of opportunities for U.S. businesses in Cuba.

In any event, outside of the selected business activities now addressed by government licensing policies, broad-based U.S. business engagement with Cuba and lifting of the trade embargo will require legislation, which appears unlikely to advance, at least in the early stages of the Trump Administration.

Russia

Any change to Ukraine-related sanctions involving Russia remains an open question. A likely scenario is that President Trump will attempt to engage with Russian President Vladimir Putin on a number of issues, almost certainly including the fight against the Islamic State in Syria. There might also be an opportunity for the new Administration to engage with Russia regarding its past aggression and conduct in Ukraine and the Crimea region in an attempt to emerge with some kind of deal. Were such engagement to succeed, the lifting or easing of Ukraine-related sanctions would likely be part of the equation. According to the *Washington Post*, last July Trump "said he 'would be looking into' the possibility of recognizing Crimea, which Moscow annexed in 2014, as Russian territory." But given the intense skepticism and distrust by members of Congress, U.S. military leaders and the intelligence community regarding Russia and its actions around the world, without any resolution or amelioration of the current situation in Ukraine and the Crimea region the current sanctions prohibitions could remain in place for the foreseeable future. At this juncture, it appears that much may depend both on whether Putin escalates provocative actions in Ukraine or the Baltics during the lame-duck period or early months of the new presidency and on what overarching foreign policy approach the new Administration communicates.

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