

# Future of Sanctions on Iran, Russia and Cuba Uncertain Under Trump

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Throughout the eight years of the Obama administration, the development and implementation of economic sanctions was a key element of U.S. foreign and national security policy. This strategy continued into the post-election lame-duck period, with new sanctions against Russia, further changes to the Iran sanctions, the easing of sanctions on Sudan and the continued targeting of North Korea, terrorist networks and transnational criminal organizations.

President Donald Trump has been critical — during the campaign and since his election victory — of the Obama administration's approach to Iran, Russia and Cuba, raising the prospect of sanctions-related policy changes in his administration. Regardless of how the Trump administration deploys sanctions as a tool of U.S. foreign policy, we expect continued vigorous enforcement of sanctions violations by federal and state regulators.

## Iran

During the campaign, President Trump threatened to dismantle and renegotiate the Joint Comprehensive Plan of Action (JCPOA) negotiated by China, France, Germany, Russia, the United Kingdom and the United States (the P5+1) with Iran. In exchange for steps taken by Iran with respect to its nuclear program, the U.S. suspended certain sanctions on Iran, with a principal focus on lifting so-called secondary sanctions that targeted non-U.S. financial institutions and other non-U.S. companies doing business with Iran. (See our January 28, 2016, client alert "[Implementation Day: Key Aspects of US and EU Implementation of Iran Sanctions Relief](#)" and our July 23, 2015, client alert "[Sanctions Relief Under the P5+1 Agreement With Iran: Implications for US, EU and International Business](#).") The United Nations and European Union simultaneously lifted many of their respective sanctions on Iran.

We see four broad sanctions scenarios available to the Trump administration with respect to Iran.

- 1. Maintenance of Status Quo.** Although unlikely in view of the statements made to date, it is conceivable that the Trump administration could generally continue the path the Obama administration took if there is a determination that core U.S. objectives are being achieved under the deal. The Obama approach to Iran sanctions post-JCPOA principally involved the implementation of the JCPOA sanctions relief and a limited number of "maintenance" actions sanctioning individuals and entities for non-nuclear Iranian conduct that falls outside the scope of the negotiated relief.
- 2. Withdrawal From the JCPOA.** The JCPOA is not a treaty, but rather an executive agreement with voluntary undertakings by the parties. The Trump administration could unilaterally withdraw the United States from the JCPOA. Alternatively, the administration could reimpose some or all sanctions for which relief was provided under the deal — with or without a violation by Iran. Iran would likely respond to a reimposition of suspended sanctions, regardless of the motivation for such a step, by asserting a U.S. breach and taking counteractions of its own. In all likelihood, even if the JCPOA dispute resolution mechanism is employed, a material breach by either party would result in the deal's demise.

The U.S. would be expected to follow a collapse of the deal with a robust sanctions campaign. However, if the United States was blamed for the deal's failure, it could create diplomatic challenges for the U.S. with key allies, including European partners that were essential to sanctions efforts before the JCPOA and would be important to any renewed sanctions intended as leverage to achieve new deal terms.

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**3. Preservation of JCPOA Sanctions Relief While Increasing Non-Nuclear Sanctions.** In light of the challenges associated with withdrawal from the JCPOA, President Trump could continue implementation of the negotiated nuclear-related sanctions relief but increase non-nuclear sanctions on Iran (e.g., sanctions related to support for terrorism, human rights abuses, activities in Syria). Such measures could include the designation of additional actors under existing authorities and the imposition of new categories of sanctions by executive order. Alternatively, the administration could let Congress take the lead on new measures and then implement the statutory sanctions.

It is likely that such an approach would be met by Iranian accusations of a breach of the spirit, if not the letter, of the agreement. Whether or not this approach could trigger the end of the JCPOA will likely depend on the nature of any new sanctions, the extent of their economic impact and whether the new measures would replicate relieved sanctions in practice if not in name. Also in question is how they might play out domestically in Iran in the context of its presidential election in May 2017 and how election politics could drive the Iranian response.

**4. Return to the Negotiating Table?** If President Trump pushes for renegotiation of the JCPOA, the willingness of Iran and the other members of the P5+1 to participate will be essential. That said, it is unclear what new terms may be sought from Iran with respect to its nuclear program, or whether the negotiations could potentially expand in scope to include other areas of concern for the U.S. government, such as Iran's support for terrorist groups and its activities in Syria. Similarly, it is far from clear what the U.S. might offer with respect to sanctions relief in the context of any renewed negotiations.

At this early stage of the Trump presidency, it appears most likely that the administration will continue to provide the technical nuclear-related U.S. sanctions relief under the JCPOA but — either on its own or through Congress — increase non-nuclear sanctions on Iran.

## Russia

U.S. sanctions against Russia have received significant attention in recent weeks and months, including as a result of new U.S. sanctions targeting Russia's principal intelligence services, the FSB and the GRU. On January 11, 2017, President Trump's nominee for secretary of state, Rex Tillerson, asserted in his Senate confirmation hearing that Russia "poses a danger" to the United States. He also appeared to signal simultaneously no immediate change on policy with regard to sanctions against

Russia and a willingness to review the current approach, stating it is "important that we keep the status quo until we are able to develop what our approach is going to be." Later that same week, then-President-elect Trump stated in an [interview](#) with *The Wall Street Journal* that he would keep certain sanctions on Russia "at least for a period of time" but signaled that he would consider relieving them if Russia proved helpful on other U.S. policy objectives, such as counterterrorism.

While Congress passed two pieces of sanctions legislation in 2014 with respect to the situation in Ukraine, most U.S. sanctions on Russia have been imposed via executive order. Consequently, if the Trump administration were to adopt a shift in U.S. policy toward Russia, nearly all current U.S. sanctions on Russia could be modified or removed by executive action.

A radical shift in U.S. sanctions on Russia without a corresponding change in Russia's activities involving at least Ukraine and Syria would likely encounter significant objections, and a legislative response, by many in Congress. On January 10, 2017, five Democratic and five Republican senators announced a new Russia sanctions bill, the Countering Russian Hostilities Act of 2017, which seeks to limit the flexibility of the president and includes new measures that, if enacted, would be among the most powerful sanctions imposed on Russia since the first round of Ukraine-related sanctions were issued in March 2014. The timing of the introduction of the bill — the day before the Tillerson confirmation hearing — appeared intended to send a message that Congress plans to be an active participant in setting Russia policy.

Sanctions on Russia in response to the situation in eastern Ukraine have been a trans-Atlantic effort, with closely coordinated measures by the U.S. and the European Union. A change in U.S. policy toward Russia — or even a less resolute status quo — would likely have ramifications for EU sanctions as well, where the retention of sanctions measures requires unanimity among the 28 member states. In that regard, there are three important tests for the EU in the next six months, when the EU financial sanctions against targeted individuals and entities (March 2017), the EU restrictive measures against Crimea and Sevastopol (June 2017), and the EU sectoral sanctions on Russia (July 2017) all come up for renewal.

## Cuba

Sanctions involving Cuba received less attention than those on Iran and Russia during the U.S. presidential campaign. President Trump has criticized the Obama administration's shift in the decades-long U.S. policy toward Cuba and several rounds of sanctions easing, tweeting that "if Cuba is unwilling to make

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a better deal for the Cuban people ... I will terminate [the] deal.” During his confirmation hearing, Tillerson indicated that a review of Cuba policy would be undertaken, including “the change in the status of travel to Cuba as well as business activities in Cuba” and the appropriateness of Cuba’s 2015 delisting as a state sponsor of terrorism.

Although the Obama administration’s changes have allowed for increased travel from the United States to Cuba and more commercial activity between the two countries, most elements of the U.S. embargo remain in place. If President Trump were to reverse the easing of sanctions, he could do so easily and quickly, as the steps President Obama took were all done by executive action and could be undone in the same fashion.

Although the longer-term approach to Cuba is unclear, it appears likely in the near term that the Trump administration will hit the pause button on Cuba while it conducts the policy review Tillerson referenced. During this period, we do not expect a reversal of the Obama administration’s changes; however, further rounds of easing are unlikely.