



CLIENT ALERT:

WHAT IS THE FUTURE OF U.S. SANCTIONS?

November 14, 2016

Introduction

Regrettably, there is no clear answer to this question. With election of Donald Trump to the U.S. Presidency on November 9, we now enter a period of some uncertainty with respect to U.S. foreign policy. Never before having held public office at any level, President-elect Trump has no track record of foreign policy votes or decisions. We know only the positions he took during the election campaign and, as we all know, candidates' campaign pronouncements are not always matched by implementation once in office.

What Authority Does the U.S. President Have With Respect to Sanctions?

Foreign policy is one area where, within limits, the U.S. president has a fair amount of autonomy. As we saw in the case of the secondary sanctions imposed on Iran, many were imposed by presidential Executive Orders, with no need for any approval by Congress. Conversely, when it came time to lift the secondary sanctions against Iran under the Joint Comprehensive Plan of Action ("JCPOA"), President Obama was able to do so entirely via Executive Orders, by both reversing his own prior Executive Orders and by suspending or waiving certain statutory sanctions. While the president cannot repeal an act of Congress, many statutes provide him with the authority to conditionally suspend or waive portions of the statute.

Iran

On the campaign trail candidate Trump repeatedly criticized the JCPOA in strong terms. In a speech to the pro-Israel lobby group AIPAC in March, Mr. Trump declared that, if elected, he would attempt to dismantle the nuclear deal with Iran. He also said that as president he would call for much tougher enforcement of the terms of the deal against Iran.

The JCPOA is not a treaty approved by Congress, but a political commitment, approved by a United Nations resolution. Therefore, in theory, Mr. Trump could withdraw from the JCPOA and re-impose secondary sanctions with the stroke of a pen by signing an Executive Order. As State Department spokesman Mark Toner said on November 9, "The agreement is valid only as long as all parties uphold it."

However, given the involvement of allies in the negotiating the agreement over two years, it seems unlikely that a President Trump would simply renounce it on day one of his presidency. What seems

more probable is that he will attempt to re-negotiate the deal. There would be strong support for this approach from the Republican majority in Congress, many of whom strongly opposed the JCPOA. Any re-negotiation would, however, be quite complicated: firstly, because it would involve the five other P5+1 countries; and, secondly, because Iran has little incentive to alter the deal.

Non-U.S. companies who have resumed trading with Iran since the lifting of the U.S. and EU secondary sanctions need to be cognizant of the fact that the U.S. sanctions landscape could change again once Mr. Trump takes office.

Russia

In response to Russia's involvement in the Ukraine, the U.S. imposed, all by Executive Orders, sanctions against specific sectors of the Russian economy, and also prohibited U.S. persons from engaging in any commercial transactions involving the geographic area of Crimea. Mr. Trump has expressed admiration for President Putin of Russia as a strong leader, and throughout the presidential campaign advocated a more friendly working relationship between the U.S. and Russia, particularly with respect to combating ISIS in Syria. Those views raise the possibility that Mr. Trump, when in office, might ease the sanctions against Russia, in an attempt to foster a better working relationship.

Cuba

President Obama has initiated a policy of normalizing U.S. relations with Cuba. While the U.S. trade embargo remains in effect, and generally prohibits U.S. persons from transacting business with Cuba, the Cuban Asset Control Regulations "(CACR)" have been eased in some respects to increase trade with Cuba. U.S. persons can now travel more freely to Cuba, commercial air and ocean transport from the U.S. has been restored, and certain categories of American businesses are now authorized to have a physical presence in Cuba. In addition, on October 17, 2016 the CACR were amended to exempt foreign vessels delivering certain cargoes to Cuba from the 180 day rule, which previously prohibited them from calling at U.S. ports for 180 days after departing Cuba.

Mr. Trump had less to say about Cuba during the campaign than about Iran or Russia. While he stated that he supported relations with Cuba, he also said he would have negotiated more favorable terms before easing sanctions. Campaigning before Cuban-Americans in Florida, Mr. Trump said he would cancel President Obama's Executive Order loosening the Cuban sanctions, unless Cuba would agree to different terms. Therefore, there is no certainty that a President Trump will continue President Obama's policy of relaxing the sanctions against Cuba, and there is the possibility that they could be tightened again.

Summary

The election of Donald Trump as the U.S. president may usher in a period of uncertainty in U.S. foreign policy. In his only major foreign policy address of the campaign, Mr. Trump promised unpredictability in his foreign policy. For those engaged in international trade, due diligence should be exercised to keep abreast of any changes in U.S. foreign policy and, in particular, in U.S. sanctions regimes. We will, of course, continue to report all significant developments.

Disclaimer: This Client Alert provides only a general summary of the current easing of certain U.S. regulations relating to Cuba, and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding trade with Cuba. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

FREEHILL HOGAN & MAHAR LLP
80 Pine Street
New York, NY 10036
212-425-1900
www.freehill.com

William L. Juska, Jr. Gina M. Venezia William J. Pallas
juska@freehill.com venezia@freehill.com pallas@freehill.com
