

US

Economic sanctions – a changing picture

Duane Layton, Partner; Margaret Sales, Counsel; and Mickey Leibner, Associate at Mayer Brown's Government and Global Trade practice in Washington DC assess how President Trump may use economic sanctions against certain oil producing nations in the future.

The US maintains a number of economic sanctions targeting certain countries, entities and individuals based on foreign policy and national security objectives. The election of President Trump has left many wondering whether the US will impose new sanctions on some countries, or perhaps loosen those on others, in pursuit of the new administration's policy goals. Here, we examine the ability of President Trump to make changes to US sanctions towards countries of interest to the oil and gas industry – namely Iran, Russia, Cuba and Sudan.

Iran

Over the course of the presidential campaign, President Trump sharply criticised the Joint Comprehensive Plan of Action (JCPOA), the deal under which the US and other countries lifted certain economic sanctions against Iran in exchange for the Middle East country's halting of its nuclear weapons programme. During the campaign he alternately promised to 'dismantle' the JCPOA, renegotiate a better deal, or vigorously enforce the current agreement. President Trump could unilaterally pursue any of these options through executive action. However, since taking office, he has been pressured both domestically and abroad to keep the agreement in place.

Under the JCPOA the US has lifted its nuclear-related secondary sanctions against Iran that were designed to discourage non-US persons from engaging in business with Iran. The US has also authorised foreign subsidiaries of US parent companies to engage in

transactions with Iran (including the government of Iran), subject to certain limitations.¹ Importantly, US-dollar transactions are still not permitted under these secondary sanctions waivers. Moreover, US primary sanctions against Iran, which prohibit 'US persons'² from conducting business or facilitating the business of others with Iran, remain in place with limited exceptions.

The JCPOA contains a provision that allows the US to 'snap back' sanctions if Iran does not meet its commitments.³ If the Trump administration considered Iran to be in violation of the JCPOA, it could snap back all or some US sanctions or go to the UN Security Council to pursue snap back of all previous UN Security Council sanctions against Iran. Moreover, the Trump administration, through executive action, could reverse the waivers and executive orders that President Obama used to implement US commitments under the JCPOA to relax US secondary sanctions against Iran.

Political considerations may influence the Trump administration's approach to the JCPOA and any re-imposition of secondary sanctions. Many foreign policy experts, including US critics of the initial deal, have urged President Trump not to withdraw from the JCPOA because of the risk that Iran could resume its nuclear weapons programme.

Even if the US did withdraw, however, there is no assurance that the other countries pledged to the agreement would follow suit. It is, therefore, more likely that the new administration will impose sanctions on Iran for its non-



President Trump – executive orders pending?

nuclear related activities, such as its development of ballistic missiles. Indeed, already in early February, the administration sanctioned dozens of individuals and entities from various countries, naming them as Specially Designated Nationals (SDNs) with whom US companies cannot do business, for their alleged involvement in Iran's ballistic missile programme and their support for the Iranian Revolutionary Guard Corps' Qods Force.

Russia

Meanwhile, many have speculated that the Trump administration may relax US sanctions against Russia that were imposed in response to Russia's actions in Ukraine and its annexation of Crimea. Administration officials have somewhat tempered these rumours through public statements, although it remains a strong possibility that the administration will take action nonetheless.

Since July 2014, the US has imposed a series of sanctions on Russia as a result of Russian aggression against Ukraine. These sanctions primarily target the country's financial services sector, energy sector (eg certain energy

firms and certain deepwater, Arctic offshore and shale-related crude oil projects), and defence sector.

In many respects, sanctions against Russia have narrower application than other US sanctions programmes. For example, many individuals and entities designated under the Russia sanctions are listed as Sectoral Sanctions Identifications (SSIs). Unlike dealings with SDNs, from which US individuals and entities are broadly barred, dealings with SSIs are generally permitted with the exception of a few specified types of transactions. By contrast, the Crimea region of Ukraine, now under Russian control, is subject to comprehensive economic sanctions imposed by the US.⁴ US persons are generally prohibited from having any business dealings related to the region.

Despite the strong reaction among some US policymakers to the rumoured lifting of the sanctions, President Trump does not need congressional authorisation to terminate the Russia sanctions currently in place as they have been imposed pursuant to executive orders under presidential authority. President Trump will also have to take into account the diplomatic effects of any executive action on the Russia sanctions. US allies continue to oppose Russia's territorial claims over Crimea and will likely keep in place their own Russia-targeted sanctions. Whether American allies or congressional leaders will persuade President Trump to moderate his perceived warmth toward Russia remains to be seen, but if the new President wishes to loosen the sanctions against Russia, he will have substantial authority to do so.

Cuba

Although not a major producer of oil and gas on the scale of Russia or Iran, Cuba does have the potential to increase its output thanks to the country's large offshore reserves. Given President Trump's varied stances on US-Cuba relations, the future of the relationship is uncertain. Broadly speaking, President Trump has repeatedly stated that an agreement with the Castro regime is 'fine', albeit on terms different from those reached by the Obama administration.

Since President Obama announced on 17 December 2014 that his administration would chart a new course with Cuba, a great deal of cultural and economic engagement has occurred between the two countries. In the US, these

changes have been achieved through executive action, such as the reestablishment of diplomatic relations,⁵ increased travel between the US and Cuba, and newly authorised business activities across numerous sectors, including telecommunications, technology, health and pharmaceutical, travel and cargo, construction and infrastructure. The changes to US policy have also made it easier for US companies to export their products to Cuba.⁶

If President Trump maintains his campaign vows, no further loopholes will be carved out of the Cuba embargo. The President could roll back some or all of the changes made by the Obama administration without any Congressional involvement by issuing one or a series of executive orders. If President Trump were to undertake a blanket reversal of President Obama's executive actions on Cuba, only a few commercial activities previously authorised by Congress would remain available to US companies, such as the provision of telecommunications services, and the exportation of medicines and medical supplies and agricultural commodities.

However, US companies of all sizes and across multiple sectors have made investments to enter the Cuban market, relying on the current relaxation of sanctions. Notably, major US commercial airlines are flying from various American cities to Cuba; US telecommunications companies have entered into direct voice and roaming agreements with Cuba; Marriott has begun managing various hotels in Havana; and Cuba has become Airbnb's fastest growing market. These American companies and others conducting business in Cuba are likely to press the new administration to preserve or expand their investments.

Sudan

Like Cuba, Sudan is not a major player on the global energy scene. Nonetheless, during 2015, it produced more than 100,000 b/d of oil.⁷ At the beginning of this year, the Obama administration announced that the longstanding comprehensive sanctions against Sudan would be suspended effective from 17 January 2017, and that the sanctions would be revoked in six months if Sudan continued down a path leading to bilateral cooperation with the US, cessation of internal hostilities, regional cooperation, and improvements to humanitarian access.

The Obama administration's action transforms US sanctions against Sudan from a comprehensive programme to a narrower list-based programme. This means that only Sudanese entities and individuals identified as SDNs would be subject to sanctions in the future. The changes were issued through an executive order, which suspended previous executive orders that imposed a trade embargo against Sudan, blocked the property of its government and prohibited certain activities relating to Sudan's petroleum and petrochemical industries. US persons are now generally authorised to engage in transactions with individuals and entities in Sudan, and the property of the government of Sudan that is subject to US jurisdiction is unblocked. The recent changes do not, for the time being, alter Sudan's status as a State Sponsor of Terrorism, which entails certain US export restrictions.⁸ Strict controls on the export and re-export of many US-origin goods to Sudan remain.

As it currently stands, the suspended sanctions will be revoked effective 12 July 2017 if the government of Sudan sustains the positive actions it has taken in 2016. The Trump administration will have to decide whether Sudan has maintained its progress and whether the sanctions should be rescinded.

A final word

Although there is uncertainty about the course President Trump will chart on economic sanctions, to a large extent he has the ability through executive action to implement new sanctions and change existing ones to achieve his administration's foreign policy and national security goals.

Companies with business and investments in sanctioned countries should closely monitor developments in US policy as US sanctions may have extraterritorial effects. For instance, US sanctions apply to US citizens wherever they are located and, therefore, a US citizen working overseas for a foreign company may be restricted from engaging in certain business activities and transactions. Moreover, as it did with Iran, the US has in the past imposed secondary sanctions on non-US persons and businesses.

Companies should regularly review their economic sanctions compliance policies to make sure they are current with the policies on the ground. ●

1. Office of Foreign Assets Control, US Department of the Treasury, General License H Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person (16 Jan 2016), www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_gh.pdf
2. US sanctions law defines 'US persons' as US citizens, US permanent residents ('green card' holders), entities organised under US law (including their foreign branches), and individuals and entities located in the US.
3. Joint Comprehensive Plan of Action, Section 36 (14 July 2015), available at www.state.gov/documents/organization/245317.pdf
4. See generally, Office of Foreign Assets Control, US Department of the Treasury, Ukraine/Russia Related Sanctions Program (updated June 2016), www.treasury.gov/resourcecenter/sanctions/Programs/Documents/ukraine.pdf
5. The White House, Presidential Policy Directive – United States – Cuba Normalization, available at www.whitehouse.gov/the-pressoffice/2016/10/14/presidential-policy-directive-unitedstates-cuba-normalization
6. US Department of the Treasury, Resource Center, available at www.treasury.gov/resourcecenter/sanctions/Programs/Pages/cuba.aspx
7. *BP Statistical Review of World Energy*, June 2016, 65th edition, 2016.
8. Bureau of Counterterrorism and Countering Violent Extremism, US Department of State, State Sponsors of Terrorism, available at www.state.gov/j/ct/list/c14151.htm