

Iran Sanctions in the Trump Administration/Certain Uncertainties and Probabilities

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The election results of last week put to question the shape and thrust of U.S. trade sanctions beginning in early 2017. For non-U.S. companies and financial institutions in particular, the likely profile of these sanctions could be of key importance for near term business risk analyses and strategic planning.

At this early point, distinguishing possible sanctions scenarios from probable sanctions policy is admittedly an exercise that requires qualification and appropriate caution. That said, there are some contours of probable sanctions changes as to Iran that are evident.

The President-elect and the Republican leadership in the U.S. Congress have expressed common ground in their opposition to the Joint Comprehensive Plan of Action (JCPOA) with Iran. Reflecting this common opposition, just prior to the election, Republicans in the U.S. House of Representatives proposed legislation that would have prohibited the changes President Obama had put in place per the JCPOA and prohibited funding of loans to effectuate the \$25 billion Boeing sale to Iran. Those initiatives were unlikely to succeed under the Obama or a Clinton Administration. Now, under the Trump Administration beginning in January 2017, those legislative initiatives might be unnecessary. The Administration itself has authority under U.S. law to reverse the waivers and Executive Orders which resulted in relaxation of the Iranian restrictions.

President Obama met U.S. obligations under the JCPOA through a series of waivers and Executive Orders. See <http://www.state.gov/e/eb/tfs/spi/iran/jcpoa/> for an overview of the JCPOA and Article 17 to Annex V defining U.S. measures to be taken, <http://www.state.gov/documents/organization/245324.pdf>. Those measures all rest within the discretion of the President. This means that President Trump will have a ready means to step back immediately to a more restrictive set of controls.

The Trump Administration may well use this authority to renegotiate terms of the JCPOA or use its discretion to enforce the JCPOA so aggressively that the deal would devolve. Each of these possibilities rests on the discretion that the Trump Administration will have to take immediate steps to retreat from current trade posture with Iran.

Given the alignment of opposition to the JCPOA among the President-elect

and Republican-controlled U.S. Congress and the fact that the current relief (by Executive waivers and Orders) is susceptible to rapid Executive action, it is probable that renewed restrictions will be applied --whether with the goal of renegotiating or withdrawing from the JCPOA.

As a result, lines of supply, sale, investment and financing now pursued by non-U.S. companies in the Iranian market are at probable risk of disruption. Non-U.S. subsidiaries of U.S. companies that may have re-initiated direct or indirect trade with Iran may be subject to restrictions or reporting requirements once again. Processing of payments or investments in Iran, if denominated in U.S. dollars, are at probable risk of being discontinued. While non-U.S. banks may process those transactions currently under certain circumstances, that was confirmed only recently in an agency interpretation by OFAC. That, too, is susceptible to immediate restatement or regulatory revision.

The net is that business strategies involving Iran should accommodate the probability of a step back by the United States. Once that step back is signaled, international financial institutions – to the extent that they are not already so acting – will take a conservative approach in interpreting risks presented by the probable new sanctions. That will contribute to increased costs and likely disruptions of commerce with Iran.

The team at Holland & Hart LLP continues to monitor developments as to Iranian sanctions, as well as those impacting Cuba and other markets. We look forward to addressing questions you may have as to how these likely changes could impact your operations or strategic planning.

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