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2017 Key Trade Issues : U.S. Embargoes and Economic Sanctions on Iran, Russia & Cuba

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Melissa Miller Proctor

602.650.2002

mproctor@polsinelli.com

What will the Trump Administration mean for U.S. international trade policy in 2017, including potential challenges and opportunities for U.S. importers and exporters? Currently, the various U.S. embargoes and economic sanctions programs target countries such as Cuba, Iran, North Korea, Sudan and Syria, as well as certain individuals, entities and industry sectors in order further certain national security and foreign policy objectives.

During the last eight years, the Obama Administration introduced sanctions on the Russian energy and defense industry sectors, lifted the U.S. nuclear sanctions on Iran under the Joint Comprehensive Plan of Action (JCPOA), and began normalization of relations with Cuba after more than 50 years of sanctions. During his presidential campaign, President-Elect Trump stated that he intended to renegotiate the JCPOA and possibly rescind the recent liberalization of trade and travel with Cuba. He also expressed his doubts as to the effectiveness of the sectoral sanctions levied against Russia.

The following provides an analysis of the current sanctions on Iran, Russia and Cuba, as well as the authority under which the Trump Administration may opt to effect change with respect to these programs.

The Lifting of Nuclear-Related Sanctions on Iran

In November 2013, the United States, the United Kingdom, France, China, Russia, and Germany (i.e., the “P5+1 Countries”) reached an understanding with Iran to suspend certain nuclear-related sanctions in return for Iran’s commitment to limit its nuclear program. Accordingly, as a result of Iran’s commitments, restrictions on ***non-US person*** transactions with Iran involving



petrochemical products, the automobile industry, sales of gold and precious metals, and exports of Iranian crude oil to China, India, Japan, South Korea, Turkey and Taiwan were lifted. In addition, U.S. persons were allowed to obtain Specific Licenses from the Treasury Department's Office of Foreign Assets Control (OFAC) to supply spare parts to Iran in support of the safe operation of civil aircraft. Subsequently, in the summer of 2015, the P5+1 agreed to provide additional economic sanctions relief to Iran, which became known as the JCPOA. The JCPOA required Iran to take certain additional steps with regard to its nuclear program. Upon verification by the International Atomic Energy Agency (IAEA) that Iran had in fact taken these steps, the P5+1 agreed to the immediate lifting of additional sanctions. In January of 2016, the IAEA verified Iran's compliance with its nuclear program-related obligations, and the United States began allowing **non-U.S. persons** to engage in:

- Transactions with certain previously blocked Iranian entities
- Trading in Iranian rials and providing banknotes to the Government of Iran
- Dealing in Iranian sovereign debt
- Bilateral trade limitations on Iranian revenues held abroad
- SWIFT messaging to the CBI and Iranian financial institutions
- Dealings in Iranian petroleum, petrochemical products, and natural gas
- Investments in the Iranian energy sector; provision of refined petroleum and petrochemical products to Iran
- Transactions with certain Iranian energy sector entities
- Transactions with Iran's shipping and shipbuilding

sectors and port operators

- Provision of goods and services to Iran's automotive sector
- Underwriting services, insurance, and reinsurance
- Trade in gold and other precious metals
- Dealings in graphite, raw or semi-finished metals, coal, and software for integrating industrial processes

In addition, **U.S. companies and their foreign affiliates** were allowed to:

- Apply for and obtain authorization from OFAC to engage in the same activities that non-U.S. persons are able to perform
- Obtain Specific Licenses from OFAC to export, reexport, and transfer commercial passenger aircraft and related parts and services to Iran
- Obtain Specific Licenses from OFAC to import Iranian-origin carpets and foodstuffs, such as pistachios and caviar, into the United States

Further, foreign subsidiaries of U.S. companies were also allowed to begin providing technical assistance, training, insurance, re-insurance, brokering, transportation or financial services "necessary and ordinarily incident" to the same activities that non-U.S. persons are able to perform. OFAC also rolled out new General License H under the Iranian Transactions Regulations that allowed foreign





subsidiaries of U.S. companies to engage in transactions involving Iran (including the Government of Iran) even if its parent is prohibited from doing so without a Specific License from OFAC.

Despite the lifting of certain nuclear-related sanctions on Iran, most of the restrictions prohibiting U.S. persons from dealing with Iran still remain in effect as they were implemented in response to Iran's human rights record, support for international terrorism, and proliferation of weapons of mass destruction—they were not imposed as a result of Iran's nuclear-related activities. Thus, for U.S. companies and their foreign affiliates, commercial opportunities with Iran still remain limited. U.S. companies continue to depend upon General Licenses which, in addition to General License H, currently cover exports of medicine and basic medical supplies, certain food items, replacement parts for certain medical devices, internet services and software, and software and hardware incident to personal communications. Where no General Licenses apply to proposed transactions or activities, U.S. companies and their foreign affiliates must either seek one-year TSRA licenses for eligible products, or obtain Specific Licenses from OFAC.

During his campaign, President-Elect Trump stated that he intended to renegotiate the JCPOA and allow the US to impose additional sanctions on Iran. The JCPOA itself contains provisions that would allow any P5+1 Country to reinstate sanctions if Iran were to breach its obligations; however, the Trump Administration would have the authority to revise or rescind OFAC General Licenses, modify OFAC's policy for issuing Specific Licenses vis-à-vis Iran, and reimplement restrictions on non-US person dealings with Iran, and/or add individuals and entities that were removed from the Specially Designated Nationals (SDN) Lists under the JCPOA back to the lists. Congress could also enact legislation imposing additional sanctions on Iran as well. Given that many non-US companies have increased their commercial dealings with Iran as a result of the JCPOA, it is not anticipated that the EU and other countries would agree to renegotiate the JCPOA. In addition, Iran could treat such efforts as violations of the JCPOA by the United States, and restart its nuclear program activities.

U.S. Sanctions on Russia

Beginning in 2013, in response to Russia's annexation of the Crimea Region, the United States and the European Union imposed sanctions against certain entities and individuals in the Ukraine and Russia. The United States prohibited U.S. persons from dealing with individuals and entities who were undermining democracy in the Ukraine, threatening the sovereignty of the Ukraine, and/or misappropriating Ukrainian assets. Those parties were added to OFAC's SDN Lists and the Bureau of Industry and Security's (BIS) Entity List. In addition, U.S. persons were prohibited from:

- Dealing in certain loans and equity with designated Russian firms in the financial, energy and defense sectors
- Exporting, reexporting and transferring items for certain oil exploration or production activities in Russia
- Exporting, reexporting items described in Supplement No. 2 to Part 744 of the Export Administration Regulations (EAR) to military end-users or for military end-uses in Russia—such items include certain: numerically controlled machine tools; oscilloscopes and transient recorders; computers and telecommunications equipment; sensors and lasers; and
- Exporting, reexporting or transferring certain integrated circuits for spacecraft and related items, as well as items classified in 600-series Export Control Classification Numbers (ECCNs) on the Commerce Control List





Many members of Congress have supported aggressive sanctions against Russia in view of the ongoing conflict in Syria and cyber security concerns. However, President-Elect Trump expressed doubt during his campaign as to the effectiveness of the current sanctions on Russia. Given that these sanctions were implemented by Executive Orders issued by President Obama and regulatory amendments to the Foreign Assets Control Regulations and the EAR by OFAC and the BIS, respectively, the Trump Administration will have the authority to unilaterally revise or rescind the sanctions on Russia if it so chooses.

U.S. Embargo on Cuba

In December 2014, President Obama announced that the United States would initiate diplomatic and trade relations with Cuba for the first time in over fifty years. This announcement was followed by a series of amendments to the Cuban Assets Control Regulations (CACR) and the EAR with respect to the lifting of certain travel and trade restrictions involving Cuba. Cuba was also removed from the list of state sponsors of terrorism, and the U.S. embassy in Havana was formally reopened. Additional changes were made to the U.S. sanctions on Cuba over the course of the last two years. For example:

- OFAC Specific Licenses are no longer required for travel to Cuba in the following situations: (a) U.S. persons and family members visiting close relatives (or accompanying a close relative traveling for official government business, journalistic activities, professional research, educational and religious activities, humanitarian projects, etc.); and, (b) travel that falls into one of twelve General Licenses, such as: official U.S. Government, foreign government of international organization business; journalistic activities; professional research and meetings; educational and religious activities; and, public performances, clinics, workshops, athletic competitions, and exhibitions.
- Travel agents and commercial airlines may provide

services to Cuba without the need for OFAC Specific Licenses, and travelers may bring back unlimited quantities of alcohol and tobacco from Cuba for their personal consumption.

- U.S. companies can now rely on OFAC General Licenses to provide carrier services to Cuba and offer lodging aboard their vessels.
- Under the EAR, License Exception Aircraft, Vessels and Spacecraft (“AVS”) permits: (a) the temporary sojourn of aircraft, cargo and passenger vessels, and authorized recreational vehicles to Cuba without a license; (b) the shipping of equipment and spare parts (classified as EAR99 or controlled for antiterrorism reasons only) for vessels and aircraft departing the United States, as well as ship and plane stores; and, (c) the transit of cargo aboard vessels through Cuba to third country destinations.
- Imports into the U.S. of certain commercial goods produced by independent Cuban entrepreneurs are now allowed under the CACR.
- The EAR’s License Exception Consumer Communication Devices to Cuba (CCD) authorizes exports and reexports to Cuba of items (classified as EAR99 or controlled only for antiterrorism reasons) that foster the free flow of information, including: computers and disk drives; monitors; printers; modems; keyboards; mice; mobile phones; SIM cards; digital cameras; batteries; etc.
- The EAR’s License Exception Support for the Cuban





People (SCP) permits exports and reexports to Cuba of certain items (if they are EAR99 or controlled for antiterrorism reasons only) that will improve living conditions and support independent economic activity in Cuba¹, strengthen civil society in Cuba,² or improve the free flow of information between the United States and Cuba.³ Recently, License Exception SCP was expanded further to authorize exports and reexports of certain items (classified as EAR99 or controlled only for antiterrorism reasons) sold directly to individuals in Cuba for their personal use or their immediate family's personal use—this change will facilitate direct, online retail sales to individuals in Cuba.

- U.S. persons may now provide services to Cuba that are related to non-US origin items outside the United States, certain software and items shipped under License Exceptions CCD, SCP or under a license from the BIS (e.g., such services may include software design, business consulting, IT management, installation, repair, replacement, etc.).
- Certain services may now be provided to organizations controlled by the Cuban Government or the Cuban Communist Party (e.g., instant messaging, chat, email, social networking); however, they may not be provided to prohibited officials of the Government of Cuba or the Cuban Communist Party.
- U.S. persons may establish offices, retail outlets, warehouses, etc. for authorized activities, establish a residence in Cuba for the duration of their employment there, and open bank accounts in Cuba.
- EAR licenses are no longer required for the deemed export or deemed reexport of EAR99 technology or source code to Cuban nationals, wherever located.
- U.S. banks and financial institutions may open correspondent accounts at Cuban financial institutions for authorized transactions.
- U.S. persons may now engage in commercial and non-commercial joint medical research projects with Cuba, as well as transactions incident to obtaining approval from the FDA of Cuban-origin pharmaceuticals, including: discovery and development; pre-clinical research; clinical research; regulatory review; regulatory approval and licensing; regulatory post-market activities; and the importation into the United States of Cuban-origin pharmaceuticals.
- Imports into the United States (as well as the marketing, sale or distribution in the United States) of FDA-approved, Cuban-origin pharmaceuticals are also authorized, and U.S. persons engaging in these activities may now also open, maintain and close bank accounts at Cuban financial institutions as long as the accounts are used solely for authorized activities.
- Foreign vessels that previously called on Cuban ports for trade ports may now enter U.S. ports provided that they were carrying only EAR99 items or items controlled only for antiterrorism reasons—previously, the CACR prohibited them from entering U.S. ports for 180 days from the date they departed from Cuba.

¹ Such items include building materials, equipment, and tools for use by the private sector for privately-owned buildings, residences, businesses, churches, etc., as well as tools and equipment for private sector agricultural activity or private sector entrepreneurs

² Such items include items for scientific, archaeological, cultural, ecological, educational, historic preservation or sporting activities; items for human rights organizations or NGOs promoting independent activity that strengthens civil society.

³ Such items include telecommunications items, news gathering items, items used by the private sector to develop software that improves the free flow of information, etc.



- U.S. persons may now negotiate and enter into contingent contracts for transactions that are prohibited by the CACR, provided that the performance of such contracts is made contingent on OFAC or another U.S. agency authorizing the underlying transactions.
- The provision of grants, scholarships, and awards in which Cuba or Cuban nationals have an interest (including as recipients) with respect to educational, humanitarian, scientific research and religious activities is now permitted.
- U.S. persons may now engage in services relating to developing, repairing, maintaining, and enhancing Cuban infrastructure.⁴

⁴ The term “infrastructure” means systems and assets used to provide the Cuban people with goods and services produced by the public transportation, water management, waste management, non-nuclear electricity generation, and electricity distribution sectors, as well as hospitals, public housing, and primary and secondary schools.

Despite the many changes that have been made to the U.S. sanctions on Cuba over the last couple of years, however, the embargo on Cuba still remains firmly in place. Only new legislation will lift the embargo completely. In addition, the changes that were made by the Obama Administration were done so through Executive Orders and regulatory amendments to existing regulations. President-Elect Trump stated during his campaign that he intends to renegotiate the lifting of the sanctions with Cuba and perhaps rescind the Executive Orders that relaxed certain trade and travel restrictions with Cuba. Many Republicans in Congress have also criticized the Obama Administration’s relaxation of certain sanctions on Cuba, and they view the reimposition of sanctions against Cuba as a priority for the 115th Congress.

Stay tuned for our next article. If you have any questions pertaining to the current U.S. sanctions on Iran, Russia and Cuba, or other international trade issues, please feel free to contact a member of Polsinelli’s International Attorneys, including Melissa Proctor at mproctor@polsinelli.com.

For More Information



If you have any questions pertaining to the current U.S. FTAs or other international trade issues, please feel free to contact a member of Polsinelli’s International Attorneys, a member of Polsinelli’s Corporate and Transactional Practice, or the author listed on page 1 of this publication.

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