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US Sanctions as Diplomacy Tools and Political Weapons: Complexities and Opportunities for the Business Community

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Sanctions: Why So Hot Now?

In response to a number of foreign policy crises encountered over the past few years, the Obama Administration has sought a new and more aggressive approach to using sanctions to advance US global security goals. While the US has traditionally relied on sanctions as a mechanism for shaming or embarrassing foreign governments to influence behavior, the Obama Administration has shifted US execution of sanctions policy to reduce the collateral impact of sanctions on the US economy while increasing effectiveness by aligning more closely with the European Union's (EU) sanctions approach.

For the business community, ongoing assessment of sanctions violation risks and monitoring to predict where sanctions might be headed have become key parts of any successful global company's strategic plan. This is especially true as the US Government is no longer leveraging sanctions only against pariahs like Sudan, but also against "frenemies" central to global investment markets, such as Russia. As a result, sanctions regimes are increasingly affecting investments in and other transactions with companies in non-sanctioned countries.

The pace and volume of recent changes has resulted in increased complexities and sensitivities, not only to potential breaches, but also to the optics of doing business in certain countries and with specific foreign entities. However, the increasing amount of activity in this space has also created opportunities for companies to work with the US Government to help promote understanding of the desired impacts and the real effects of broadening and deepening or, alternatively, easing sanctions regimes.

Sanctions-Related Personnel Changes in the Federal Government

Department of the Treasury

On January 9th, President Barack Obama nominated Under Secretary of the Treasury for Terrorism and Financial Intelligence David Cohen to become the next Deputy Director of the Central Intelligence Agency (CIA). Effective February 1st, Adam Szubin, who most recently served as Director of the Office of Foreign Asset Controls (OFAC), assumed the Under Secretary role in an acting capacity. The White House could nominate Acting Under Secretary Szubin to permanently fill this position. If so, his nomination would require Senate approval and would be managed by the Senate Committee on Banking, Housing, and Urban Affairs. Acting Under Secretary Szubin's imminent promotion will leave a vacancy at the top of OFAC, the Treasury Department office tasked with administering and enforcing economic and trade sanctions. OFAC Deputy Director John Smith, who is transitioning into a new role as Acting OFAC Director, could become permanent Director once Acting Under Secretary Szubin's promotion is finalized.

Department of State

Last year, sanctions policy at the Department of State was driven primarily by Assistant Secretary of State for Counter Threat Finance and Sanctions Peter Harrell. Assistant Secretary Harrell left the State Department in December. He has been replaced by Andrew Keller, who just assumed the position in an acting capacity and is likely to become Assistant Secretary Harrell's permanent successor. Acting Assistant Secretary Keller previously served as Chief Counsel on then-Senator John Kerry's (D-MA) Foreign Relations Committee staff before joining Secretary Kerry at the State Department in the Office of the Legal Advisor.

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Emerging Political Debates on Comprehensive Country Programs

In response to global events over the past three years, there has been consistent US sanctions innovation and reinvention. The evolution of sanctions has been most recently evidenced in the use of sanctions as a weapon in response to Russian aggression in Crimea, the Obama Administration's desire to lift sanctions as part of its effort to normalize bilateral relations with Cuba, and as a diplomacy tool to help advance negotiations related to Iran's nuclear program.

Russian Sanctions: Following the killing of civilians in the shelling of the Ukrainian port city of Mariupol, EU foreign ministers met on January 29th to approve the extension of existing sanctions against Russia through September and to add additional Russian officials to the list of individuals targeted for EU travel bans and asset freezes. Because the US strategy for use of sanctions in Russia relies heavily on close alignment with the EU, the US is expected to respond in a similar fashion. However, Senate Foreign Relations Committee Ranking Member Robert Menendez (D-NJ) has urged Secretary of State John Kerry to go further in ramping up sanctions by exercising the authorities in the Ukraine Freedom Support Act, which the President signed in December. While this legislation would allow President Obama to impose additional economic sanctions on Russia, the President has previously indicated the White House may not necessarily use this new authority. The Treasury Department still has considerable leeway to block assets of additional Russian individuals and companies and to tighten significantly the graduated tiers of capital markets and foreign direct investment prohibitions under its sectoral sanctions program targeting energy, financial, telecommunications and arms conglomerates central to the Russian economy. On the other hand, the White House, the Treasury Department, and the State Department have made clear the administration remains prepared to roll back Russian sanctions, but only if certain conditions are met. For Russian sanctions to be lifted, the US would likely require the full withdrawal of Russian forces and equipment from Ukraine, the closing of the border, and the start of joint monitoring.

Cuba Sanctions: On December 17th, the White House announced a new policy aimed at re-establishing broken bilateral ties with Cuba, and on January 15th, the Treasury and Commerce Departments announced new regulations, effective January 16th, intended to ease travel and trade restrictions. While the Cuba embargo remains in place, the new regulations lifted some sanctions by authorizing certain commercial activities and the flow of information to, from, and within Cuba. For example, these new measures allow US financial institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions, authorize certain transactions with Cuban nationals located outside of Cuba, and allow a number of other commercial activities related to telecommunications, financial services, trade, and shipping. In response, Republican foreign policy leaders in Congress, including Senators John McCain (R-AZ), Marco Rubio (R-FL), and Ted Cruz (R-TX), have threatened to resist passage of legislation that would be required to more widely open US travel to Cuba and to fully lift the ongoing trade embargo. At the same time, on January 15th, Representative Charlie Rangel (D-NY) reintroduced the Free Trade With Cuba Act, which would lift the long-standing embargo on trade with Cuba. In addition, this week Representative Rangel also reintroduced the Export Freedom to Cuba Act, which would lift travel restrictions between the US and Cuba, and the Promoting American Agricultural and Medical Exports to Cuba Act, which would remove the sanctions that are restricting agricultural and medical trade.

Iran Sanctions: Following the failure of P5+1 (the five permanent members of the United Nations Security Council plus Germany) negotiators to reach a comprehensive deal for dismantling Iran's nuclear program by the self-imposed deadline in December, Republicans in Congress vowed to reintroduce legislation to ramp up economic sanctions on Iran. On January 29th, the Senate Banking, Housing, and Urban Affairs Committee approved the Nuclear Weapon Free Iran Act of 2015 by a vote of 18-4. Introduced by Senators Mark Kirk (R-IL) and Robert Menendez (D-NJ), the bill would impose escalating economic sanctions on Iran if international negotiations do not yield a final nuclear deal by June 30th and would create a congressional review period in the event a deal is reached. Because the Obama Administration is opposed to new sanctions as negotiations continue around a deal that would curtail Iran's nuclear program in exchange for the easing of sanctions already in place, Democrats on the Senate Banking Committee have made clear they oppose floor consideration of the Iran sanctions bill until after a March 24th deadline for a framework agreement in the ongoing negotiations. Meanwhile, House Foreign Affairs Committee Chairman Ed Royce (R-CA) and Ranking Member Eliot Engel (D-NY) held meetings in late January focused on developing their own Iran sanctions legislation.

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