



Sanctions Under Biden: Q&A with Winston's Cari Stinebower

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As the Biden Administration takes shape, business leaders are anticipating how the economic sanctions environment might change. Below, Winston & Strawn's Cari Stinebower addresses the sanctions questions we most frequently hear from our clients.

The use of sanctions by the United States has increased dramatically in the last four years. Will the Biden administration reverse this trend? Probably not. Presidents at least since Clinton have embraced the use of sanctions, and there's no reason to expect President-elect Biden to be any different. One sign to watch will be resource allocation and hiring at OFAC. The agency is reported to have lost dozens of personnel to the private sector (also not a new trend) and replacing personnel in both OFAC and Counsel's Office will be key to effective sanctions administration.

There has been considerable tension over sanctions between the United States and its allies, which has led to measures such as the EU blocking statute. Will that dynamic improve?

Biden has made it clear that he will be focused on building coalitions and generally lowering the temperature between EU Members and the United States. Iran is a case in point. He's said he wants to re-open talks and give Iran "a credible path back to diplomacy." At the same time, the International Atomic Energy Agency has reported that Iran is enriching uranium above the limit set by the 2015 treaty, the country is still regarded as a State Sponsor of Terrorism, and the Financial Action Task Force considers it a high risk for financial crime, terrorist financing, and the financing of proliferation of weapons of mass destruction. In addition, there are reports that Saudi Arabia would consider developing its nuclear weapons capability if Iran continues to do so. So the new administration will definitely have its work cut out for it. There also is the consideration of Iran's barter trade with Venezuela and whether and how a Biden Administration would adjust its policy to address cross-overs between and amongst sanctioned governments.

How will Biden's desire to take a more diplomatic approach with our allies regarding sanctions play in Congress, which tends to take a harder line on sanctions than the White House?

That's the big unknown. It will be particularly important to watch how Biden and Congress interact regarding Russia. Matters are likely to come to a head over the Nord Stream II natural gas pipeline that runs from Russia to Germany through the Baltic Sea. Legislation codifying opposition to the pipeline is on track to reach Biden's desk, and while he has said he opposes the pipeline, he needs to balance that position with his desire to reset relations with

Germany and the rest of the EU. Bilateral relations with Poland also will be significant to how policy with Russia and Nord Stream II are addressed.

The Trump Administration has been heavily focused on sanctions evasion across everything from supply chains, the maritime sector, and ransomware. Will the Biden Administration maintain that emphasis?

It's going to come down to enforcement and the strategies that are developed on the front lines by Assistant U.S. Attorneys. But there's also a need for non-legal initiatives. As sanctions compliance moves into supply chain transparency and encompasses industries outside of the financial services sector, the need for private-government partnerships and innovation in technology increases. For example, the retail sector responded to the September 14, 2020 Withhold Release Orders (WROs) by calling for private sector-public partnerships to foster technological innovation that would make it easier to identify and avoid Chinese goods suspected to be manufactured with state-sponsored forced labor. The call for greater cooperation was in response to the CBP's five WROs on products from the People's Republic of China that targeted products produced with state-sponsored forced labor in the Xinjiang Uyghur Autonomous Region.

The Hong Kong Autonomy Act, as well as the Executive Order Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies issued on November 12 prohibiting investment in certain Chinese companies by U.S. entities, significantly increases sanctions risk in dealing with China. How will things develop on this front?

We are hearing from our clients, particularly those in the financial services industry, that the November 12 Executive Order is a major concern. Guidance from the Administration is needed here. We understand that various industry groups are meeting with OFAC to pose questions; and OFAC has indicated that additional guidance and FAQs are forthcoming. In particular, we note that a number of the entities subject to the Order are traded on one or more exchanges (including in certain cases, on the U.S. exchanges). The Order calls out trading in the secondary markets and derivatives, so compliance will be a challenge. As with Russia sanctions and the Venezuela sanctions targeting bonds, we anticipate the need for extensions and clarifications to the wind-down of general licenses. We also are working closely with our Shanghai colleagues to track Beijing's response to these sanctions – and the requirements financial institutions face under Chinese securities laws.

Winston & Strawn is closely monitoring developments regarding the Biden Administration and the 117th Congress, and we will be sharing our insights into the changing policy, regulatory, and legal landscape on a regular basis.

From its 15 offices around the world, Winston & Strawn's White Collar, Regulatory Defense & Investigations Practice Group helps organizations navigate the complexities of sanctions compliance.

For further information or questions on the above, please contact Cari Stinebower or your Winston relationship attorney.

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