

From Trump to Biden: Whither US Sanctions Policy?

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From his inaugural address in January 2021 calling for “*unity not division*”, President Biden has already sought to characterise his Administration as one which will embrace multilateralism and global co-operation. Biden’s promise that the USA “*will repair our alliances and engage with the world once again*” was both a declaration of his own political ideology and a clear rejection of his predecessor’s core mantra and foreign policy (or lack of) model of ‘America First’.¹

What effect will this key shift in US values have on its sanctions policy?

In this article, we briefly look back on Trump’s sanctions regimes and then consider what impact the election of President Biden will have on US sanctions policy over the next four years and where lawyers may see a difference.

The Legacy of Trump’s Sanctions Policy

Former US President Trump’s Administration used sectoral and economic sanctions as the country’s primary response to international activity which it deemed contrary to US interests. Over four-years, the Trump administration issued approximately 3,800 new sanctions listings where, over an eight-year period, the Obama administration issued 4,300.²

¹ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/20/inaugural-address-by-president-joseph-r-biden-jr/>



As a clear embrace of its insular ‘American First’ policy, many of the sanctions imposed by Trump’s administration were unilateral and often condemned by the international community. For example, the series of executive orders in 2017 which imposed US visa bans on citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen, often called the ‘Muslim ban’, and the decision to withdraw the US from the 2015 Iran Nuclear Deal, the Joint Comprehensive Plan of Action (JCPOA). These were sanction moves which served to declare Trump’s foreign policy as both isolationist and bold.

But what success did Trump’s foreign policy approach have in bending key global powers to the US’s will?

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<https://www.complianceweek.com/sanctions/biden-will-tread-carefully-on-sanctions-see-international-consensus-experts-say/29752.article>

Iran: Trump's administration made every effort to completely dismantle the centrepiece of President Obama's foreign diplomacy: the JCPOA. Not only did President Trump reinstate all sanctions which had been lifted by his predecessor, but his administration imposed further punitive economic sanctions, such as those on Iran's financial and energy sector, and declared it had the power to enforce compliance with the UN arms embargo. These measures anticipated that Tehran would buckle under such wholesale economic exclusion and come, humbled, to America's negotiating table.

Undoubtedly, the effect of US sanctions on Iran has been significant, with the country falling into deep recession and its oil exports plummeting from 2017. However, the collapse of the JCPOA has also resulted in Iran disregarding the nuclear restrictions the deal had placed upon it: its decision in January 2021 to raise the rate of uranium enrichment to 20% and start uranium metal production were only the most recent in a series of breaches of the 2015 accord.

Although many western allies have been sympathetic to the aims of Trump's administration in its sanctions policy towards Iran, it ultimately failed in keeping Iran's proliferation activities in check.

Russia: Although Trump issued some 257 executive orders against Russia individuals and entities during his four years in office, there was a marked reluctance by the White House to respond to Kremlin activity which had been otherwise widely condemned by the international community. This included no response to allegations such as the bounties offered by Russia to Afghan fighters for killing US troops, its backing of a series of significant US cyber-attacks or the poisoning of Russia's foremost pro-democracy leader Alexei Navalny.

China: The Trump administration came to view China as America's greatest threat and, consequently, unleashed a barrage of primary and secondary sanctions measures against Chinese companies on the grounds that they were a threat to US security. In 2020 alone, Trump's administration imposed sanctions against Tiktok, Huawei and SMIC as well as removed China Mobile, China Telecom and China Unicom from the NYSE. Yet, in response, China was not diminished: on 21st January 2021, Beijing imposed sanctions on several former Trump administration officials, including ex-US secretary of state Mike Pompeo, accusing them of having "seriously violated" China's sovereignty.³

The future of US sanctions policy under Biden

In December 2020, the incoming Biden administration declared it would be conducting a full review of sanctions operations at the US Treasury Department. Indeed, one of Joe Biden's key campaign pledges was America's return to the JCPOA. This pledge was seen by many as a declaration of his administration's intention to reject Trump's policy of isolationism and turn US sanctions regimes back towards multilateral action and engagement with its UN and EU allies.

However, much has already occurred in recent days which has called for President Biden to both define and deploy his administration's sanctions policy:

Myanmar: The military coup in Myanmar has marked a first major test of Biden's pledge to collaborate more with allies on international challenges. On 2nd February 2021, President Biden called the military's takeover from the civilian-led government and its detention of the country's elected leader Aung San Suu Kyi as "a direct assault on the country's transition to democracy and the rule of law". Indeed, US removal of sanctions against Myanmar over

³ <https://www.ft.com/content/dea674f6-8ad4-4a7f-9c46-6f1435d2e1dc>

the last decade were founded on the country's "progress towards democracy". Significantly, Biden called for the international community to unite and declared that the US "will work with our partners throughout the region and the world to support the restoration of democracy and the rule of law".⁴ However, Biden's call for a collaborative response with regional partners will not be easy, as it is unlikely Myanmar's major trading partners - China, Japan, Thailand and Singapore - will elect to join any western economic sanctions response. If this is right, such a divided sanctions response would only strengthen Myanmar's dependence on its bordering nations and move it further away from democracy and western political ideologies, a result which would be wholly contrary to US and EU interests.

Iran: Notwithstanding his commitment to the US re-joining the JCPOA, Biden unequivocally stated on 7th February 2021 that the US will not lift sanctions against Iran until the country stops its uranium enrichment programme.⁵ Such a declaration will surely slow, if not entirely stall, a rapprochement between the two nations as Supreme Leader Ayatollah Ali Khamenei has demanded removal of the sanctions as a pre-requisite to Iran's return to the nuclear accord.⁶

Russia: Unlike his predecessor, in recent days Biden's administration has been vocal in its condemnation of Russia for its imprisonment of Alexei Navalny and there have been bipartisan calls for the imposition of fresh sanctions on the Kremlin which would reflect those imposed by the UK and EU last year. Unsurprisingly, Russia has declared its intention to retaliate should the US take such action.⁷ Where Trump failed to articulate a cogent or consistent sanctions policy towards Russia, Biden must now do so.

Generally, we expect that Biden will seek to unwind Trump's sanctions regimes to bring US policy more in line with the allied international community. However, as the events of only the last few weeks have demonstrated, we suspect that Biden's departure from Trump's unilateral sanctions regime towards one defined by multilateral co-ordination will be no diplomatic quick fix but the slow turn of a policy juggernaut.

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⁴ <https://www.reuters.com/article/us-myanmar-politics-usa-idUSKBN2A1322>

⁵ <https://www.bbc.co.uk/news/world-us-canada-55972619>

⁶ <https://www.cbsnews.com/news/biden-interview-iran-sanctions-nuclear-agreement/>

⁷ <https://www.newsweek.com/russia-warns-joe-biden-retaliate-us-sanctions-alexei-navalny-1566436>