Overview
This advisory provides a preliminary assessment of the expected policy approach of President-elect Biden's administration to major US sanctions programs. While specific steps to be taken will be revealed in due course, it is expected that the Biden administration will take a more nuanced approach to the imposition and implementation of sanctions than the current administration. While the imposition of unilateral sanctions will undoubtedly continue, we believe a key difference will be a greater effort by the Biden administration to promote multilateral sanctions coordination. While we do not expect to see an extreme roll-back of Trump administration actions or backstepping on the part of the new administration, especially in relation to China and Hong Kong, we do expect to see at least a partial return to past liberalization of Cuba sanctions. We expect Iran to be a complicated endeavor for the new administration, which may desire to rejoin the multilateral nuclear agreement of the Obama administration, but it is unclear whether Iran will meet the requirements under the earlier Joint Comprehensive Plan of Action (JCPOA) or a tighter modified agreement. We do not expect to see dramatic changes for other regimes, but do anticipate a greater effort to address humanitarian assistance, for example, in Venezuela.

Below is our preliminary assessment of the Biden administration’s likely policy approach to China and Hong Kong, Russia, Iran, Cuba, Venezuela, Syria, North Korea, and Sudan sanctions programs.

China and Hong Kong
As evidenced by a raft of congressional bills over the past few years, there is broad, bipartisan support for a “get tough” approach on China with regard to human rights, Hong Kong, technology control, trade, and other areas of importance to US policy and national security. The Biden administration is unlikely to challenge this consensus, although we expect a greater emphasis on multilateralism and agency-driven regulatory processes in lieu of executive orders and unilateral US maneuvers.

While a Biden administration could diverge from its predecessor on issues of trade and tariffs, in the near term, we expect that President-elect Biden will maintain pressure on China through sanctions authorized under statutes such as the Hong Kong Autonomy Act and Uyghur Human Rights Policy Act. We also expect the Biden administration to continue to target Chinese companies using US export control programs, including the Entity List, which began under the Obama administration and was escalated throughout the Trump administration.

The Democratic party platform warns of the “Chinese military’s intimidation” of neighbors in the Asia Pacific region. Candidate Biden and key surrogates spoke forcefully about the need to confront China on matters such as human rights, the South China Sea, and Taiwan.
Some commentators have suggested that economic sanctions could play a prominent, if not central, role in the Biden administration’s China policy. Soon-to-be-named officials in the State, Treasury, and Commerce Departments will have significant influence on the development and use of those tools. The Biden transition team includes several current and former staffers of think tanks that have advocated for greater use of economic sanctions in US foreign policy.

Between now and January 20, 2021, we expect the Trump administration to attempt to push through hardline policies designed to bind the hands of the president-elect. Some of these—such as recent executive orders on TikTok and WeChat—could be modified following pending court challenges.

Others—such as Executive Order 13959 prohibiting US persons’ purchases of securities of Chinese military companies, tightened controls under the Export Administration Regulations (EAR), and Hong Kong-related sanctions—are likely here to stay, albeit subject to the new administration’s discretion on regulatory guidance, licensing, and enforcement.

**North Korea**

With respect to North Korea, we anticipate an approach that is generally less personality-driven and more clearly focused on denuclearization. These changes are unlikely to have much impact on the actual substance of US sanctions policy.

The United States maintains extensive sanctions and export controls on North Korea. Most US exports to North Korea have been prohibited for several years. New investment and most financial transactions are prohibited, and pursuant to the North Korea Sanctions and Policy Enhancement Act of 2016, Countering America’s Adversaries Through Sanctions Act (CAATSA), and EO 13810, among other authorities, many commercial transactions subject third parties to secondary sanctions risks. In addition, the United Nations maintains its own North Korea sanctions program. North Korea is identified as a jurisdiction of primary money laundering concern. Travel to the country is controlled tightly by both the United States and North Korea and typically is limited to journalists, health care workers or those engaged in targeted humanitarian aid efforts. None of these policies and restrictions are likely to change under the Biden administration absent clear and genuine steps toward denuclearization and/or human rights reforms.

Pyongyang has a history of provocative action early in presidencies, and President-elect Biden has made clear what he thinks of Kim Jong Un, calling him a “thug” during a presidential debate. Together, this leaves open the possibility of a manufactured crisis early in the Biden administration, which could propel further unilaterally-imposed restrictions, as well as multi-lateral efforts to contain North Korea. In this regard, one might expect renewed efforts by the new administration, perhaps working through the United Nations, to obtain tighter trade restrictions by China and Russia vis-à-vis North Korea.

**Cuba**

President-elect Biden has criticized the Trump administration’s Cuba policy as ineffective and imposing undue harm on the Cuban people, and has indicated that he would consider loosening US restrictions on family remittances to Cuba, among other possible changes. That said, we do not expect wholesale change to the nearly 60-year-old US embargo of Cuba, much of which is mandated by statutes dating back to the 1990s and cannot easily be changed by the President. Moreover, the incoming Biden administration will likely be hesitant to offer what may be perceived as concessions to Cuba without a significant change in the situation in Venezuela, where Cuba’s role has driven more aggressive sanctions from the Trump administration.

While Congress has “codified” the existing Cuba embargo, the Biden administration would have the legal authority to make substantial changes to US sanctions on Cuba, as the last two presidential administrations have done. As with the rapprochement and loosening of sanctions on Cuba undertaken during the Obama administration, all of President Trump’s added sanctions measures on Cuba were accomplished using executive authorities and not through legislation. Given the severe economic and humanitarian crisis that Cuba faces, we would expect some moves by the Biden administration to provide relief to the Cuban people and to set a new tone in the relationship, such as through changes to remittance rules or possibly other areas like travel.

One of the biggest questions that the Biden administration will face early on when it comes to Cuba policy is whether to return to the longstanding approach of suspending the right to bring lawsuits in US federal court under Title III of the 1996 Helms-Burton Act for “trafficking” in property of a US national that had been confiscated by the Cuban government after the 1959 Cuban revolution. Given the international controversy surrounding that provision and the Trump administration’s decision to allow it to take effect for the first time since its enactment in 1996, we think there is a significant chance that the incoming Biden administration will once again suspend the right to bring actions under Title III. However, even in the event of another suspension of Title III, lawsuits already filed would not be affected.

**Venezuela**
We do not expect any significant near-term changes to US sanctions on Venezuela, including the blocking of the Government of Venezuela and Petróleos de Venezuela, S.A. (PdVSA). The Biden administration may explore additional ways in which it could facilitate humanitarian assistance to the Venezuelan people, but we would expect it to continue to rely on US sanctions as the primary means of pressuring the Maduro regime into implementing structural political changes. This essential goal of US policy toward Venezuela enjoys bipartisan support in the United States, and broad international support.

That said, because we would expect the Biden administration to have significant concerns about the humanitarian situation and economic collapse in Venezuela, it may redouble efforts to find a resolution to the political impasse. If the Biden administration is successful in putting the US relationship with Cuba back on a track toward improvement, that could increase US leverage against the Maduro regime and could also facilitate a political resolution in Venezuela.

Russia

Overall, we expect that US sanctions against Russia will largely remain stable, but could increase, under a Biden presidency.

We anticipate that comprehensive US economic sanctions and export controls will remain in place against the Ukrainian territory of Crimea, as well as the targeted new debt/new equity and frontier energy project sanctions implemented under the Office of Foreign Assets Control’s (OFAC) Sectoral Sanctions Identifications (SSI) list, and related export controls under Section 764.5 of the EAR. These measures were implemented in 2014 when Biden was Vice President and were later codified and expanded by statute in the bipartisan CAATSA in 2017. They are also consistent with similar measures that the European Union and other jurisdictions have implemented.

Similarly, there appears to be bipartisan support in Congress for additional sanctions related to the Nord Stream 2 pipeline originating from Russia, but the Biden administration may calibrate its policy on this divisive matter within Europe. Some countries, such as Germany and Austria, are in favor of the pipeline, and other countries, including Ukraine and Poland, oppose the pipeline’s completion.

Additionally, it seems probable that more persons in or related to Russia, whether individuals, organizations, or government officials and agents, will be included on the OFAC SDN List. The Biden campaign made it a priority to support multilateral commitments to: (1) combat corruption; (2) defend against authoritarianism, including to promote election security, transparency in campaign finance, and counter the use of disinformation or hacked information in political campaigns; and (3) advance human rights. The targeted blocking of property and prohibitions on US person dealings with SDNs could be increased for activities related to Russia that the incoming Biden administration finds are concerning in light of these or other US foreign policy objectives.

At the same time, it seems unlikely that comprehensive US sanctions or export controls will be applied in the near future against the territory of the Russian Federation or its government as a whole, absent a significant change in circumstances. For example, the Biden campaign expressed a desire to pursue an extension of the New START Treaty addressing nuclear stability between the United States and Russia, which would be used as a foundation for new arms control arrangements. Such a foreign policy priority, as well as other cooperation related to space flight and the International space station, and other important diplomatic objectives (including with respect to Iran, North Korea and other areas) would be more difficult to achieve if the US government were to significantly increase sanctions against Russia in a way that led to a further serious deterioration of the bilateral relationship.

We do believe the Biden administration may be inclined to take a more aggressive approach toward Russia, including through sanctions policy, than the Trump administration has to date if circumstances were to arise that are viewed as calling for the imposition of additional costs on Russia. There are many ways in which US sanctions on Russia could be expanded, including by drawing on some of the numerous legislative proposals that have been introduced in recent years.

Iran

The Iran sanctions program is perhaps the program that could see the most dramatic changes under the Biden administration. The Obama administration granted significant sanctions relief to Iran after the 2015 Iran nuclear deal, known as the Joint Comprehensive Plan of Action (JCPOA). However, President Trump withdrew the United States from the JCPOA in 2018 and reimposed most of the sanctions lifted under the international multilateral agreement as part of the administration’s “maximum pressure campaign.” The administration has since imposed a variety of new sanctions on Iran beyond what existed before the JCPOA, with more sanctions anticipated between now and the end of the Trump administration. In an op-ed from September of this year, President-elect Biden described his intent to return to the JCPOA, as well as to begin negotiations on a broader agreement targeting other areas of concern in US-Iran relations. According to the op-ed, if Iran were to return to strict compliance with the nuclear deal, the United States would rejoin the JCPOA as a starting point for follow-on negotiations. Iranian leaders have also promised a quick return to the JCPOA if the Biden administration were to lift the sanctions reimposed by President Trump.
However, a return to the JCPOA may be more complicated than it appears. According to international inspectors, Iran is no longer in compliance with a number of its nuclear-related commitments under the JCPOA, creating a difficult chicken and egg problem for returning to the deal. In essence, what happens first: sanctions relief or Iran’s compliance with nuclear commitments?

In addition, the Trump administration has aggressively ratcheting up sanctions pressure on Iran in recent months, a trend that is likely to continue in the final weeks of the administration, and is reportedly designed, in part, to make it difficult for the Biden administration to reverse. For example, the administration has been increasing its use of terrorism-related sanctions provisions, which it believes will be politically more difficult to undo.

Finally, the prospects for a new negotiated agreement going beyond the matters covered in the JCPOA is also unclear. President Trump is reportedly considering running again in 2024, and the prospect of President Trump, or another Iran hawk returning to office in 2024, may make Iran reticent to enter into an agreement it believes could be undone in the near future. In addition, Iran is scheduled to hold a presidential election in 2021 and current Iranian President Hassan Rouhani is not eligible to run again. The outcome of that election may have a significant impact on Iranian policy with respect to negotiations with the US.

Syria

We anticipate that the Syria sanctions program, and specifically sanctions against senior leadership, will continue to be used as both an accountability mechanism and as leverage to win political concessions from the Assad government.

A key indicator of the Biden administration’s posture toward Syria will be the extent to which “Caesar” sanctions are employed. Long discussed on Capitol Hill, sanctions pursuant to the Caesar Syria Civilian Protection Act of 2019 (Caesar Act), which was passed as part of the 2019 National Defense Authorization Act, began to be rolled out in 2020 by the Trump administration, but have not been used as aggressively as many advocates expected. The Caesar Act authorizes blocking sanctions against foreign persons who knowingly provide significant support to the Syrian government and affiliated forces (including contractors, paramilitaries and, conceivably, Iranian and Russian actors supporting the military). The law also specifically targets persons supporting Syria’s oil/gas, aviation, and construction sectors. Alongside a small US troop presence in the country’s northeast and the withholding of reconstruction funds, Caesar sanctions are likely to be one of the Biden administration’s strongest tools to influence the Syrian political process.

Apart from the Caesar Act, the US government maintains a robust sanctions program on the country, specifically tied to the Syrian government’s alleged support of terrorism, destabilizing role in Lebanon and Iraq, proliferation activities, and extensive domestic human rights abuse. Absent significant political developments in Syria, these sanctions – as well as the comprehensive export controls placed on the country – are unlikely to materially change.

One further area to keep an eye on – during the transition and the first days of the Biden administration – is the designation of leading political figures in Lebanon. The Lebanese and Syrian economies are in many ways co-dependent and each has recently experienced genuine fiscal crisis. If the Biden administration continues the Trump administration’s policy of sanctioning high-profile allies of Hezbollah and Syria in Lebanon, there is likely to be a penumbral effect in Syria.

Sudan

The United States has normalized relations with Sudan on a bipartisan basis over the past four years and we expect this trend to continue. The comprehensive embargo on Sudan that had been in place for over a decade was largely lifted under the Trump administration in 2017 based on an Executive Order issued by President Obama shortly before leaving office. In October 2020, President Trump made a long-anticipated announcement that Sudan would be removed from the State Sponsors of Terrorism List (SST List), which it has been on for 27 years. While the Trump administration decision to remove Sudan from the SST List was based in part on Sudan’s normalization of relations with Israel, we do not expect the Biden administration to reverse or renegotiate this decision despite any differences in Middle East policies.

International Criminal Court

In a move condemned by international partners and human rights organizations, the Trump administration imposed sanctions on the International Criminal Court (ICC) and placed the ICC’s chief prosecutor, Fatou Bensouda, on the SDN List in response to the ICC’s investigation of US activities in Afghanistan. The United States has had an on-and-off relationship with the ICC, negotiating the text of but failing to ratify the Rome Statute establishing the court. In line with the Biden administration’s multilateral foreign policy approach, we expect the implementation of these sanctions to be rolled back, particularly the sanctioning of individual members of the ICC. It is likely that the sanctions will be completely removed, but the ICC’s continued investigations into alleged war crimes committed by the United States, Australia, and other allied partners in Afghanistan could still cause the Biden administration to deprioritize a full rescission of ICC sanctions.

Conclusion
We expect the new Biden administration to bring its own priorities and undertake actions in relation to the existing US sanctions and export controls programs; however, we do not expect a wholesale roll back of the current administration’s actions. This is especially true for certain regions or countries, such as China, where there is strong bipartisan and public support for the expansive changes to US foreign policy.

In terms of the process associated with the development of new sanctions or modification of existing ones, we expect that more input and authority for policy decisions and implementation will be vested in the career professionals and those political appointees with responsibility for the sanctions portfolio, as compared to the current administration which tended to drive sanctions policy from the White House. In addition, a clear distinction exists between sanctions that remain solely under the authority of the Biden administration, and those which are decided by Congress.

Another factor that will influence US sanctions policy is the extent of the extraterritorial reach of sanctions (for example, the use of so-called “secondary sanctions”), which remains an issue of considerable controversy, particularly with the European Union. To the extent that the new administration wishes to rebuild alliances, this may impact the proclivity of a new administration to adopt unilateral and extraterritorial sanctions.

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