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Law360 on US financial support for Ukraine

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US Has Options Beyond Sanctions In Ukraine Response

By **Scott Flaherty**

Law360, New York (March 13, 2014, 8:16 PM ET) -- Although the U.S. has laid the groundwork for potential economic sanctions targeting Russians and Ukrainians responsible for unrest in Ukraine, experts say other U.S. responses, such as supporting an International Monetary Fund aid package or authorizing natural gas exports to Ukraine, may follow in the short to medium term.

Following Russia's move of troops into Ukraine's Crimea region, President Barack Obama on March 6 **signed an executive order** that establishes a framework for potential sanctions, including asset freezes, on Russian and Ukrainian individuals or business entities deemed to have played a role in destabilizing Ukraine. Russia's incursion into Crimea marks the latest **tension point in Ukraine**, which, after months of political turmoil, is operating under a transitional government.

Because the U.S. has yet to formally designate any individuals or entities under the sanctions framework laid out in Obama's executive order, and Secretary of State John Kerry is set to meet for diplomatic discussions on Friday with Russian Foreign Minister Sergey Lavrov, it remains to be seen whether any sanctions will ultimately go into place, or how far their reach might be.

"Sanctions can mean many, many different things," said Larry Christensen, an attorney at Miller & Chevalier Chtd., whose practice focuses on trade sanctions and export controls. "It's much too early to tell where these sanctions are headed."

But while U.S. sanctions, if they do come to pass, may be the most immediate U.S. response to the events in Ukraine and Russia's occupation of Crimea, experts say the U.S. also has options outside of punitive measures as it looks to respond to the situation. Some of those would focus on Ukraine as it undertakes political and economic reforms, while others would focus more on Russia.

On the side of support for Ukraine, the U.S. has already **unveiled an offer** of \$1 billion in loan guarantees meant to soften the blow of reduced Russian energy subsidies, and on Wednesday, the U.S. State Department issued a statement detailing other assistance efforts, including a business summit that would discuss helping Ukraine improve its economy.

With Ukraine's economy in rough shape, this type of financial support is likely to give it a boost in the short run, according to Martin Edwards, associate professor at Seton Hall University's school of diplomacy and international relations.

"The Ukrainian economy is largely stalled as far as growth goes, they have a lot of foreign debt that is outstanding, and their currency has been getting pummeled," he said. "The action has to be on the financial side."

Beyond the bilateral financial support the U.S. has offered, it also can lend its support to the IMF, which has a team on the ground in Ukraine and may put together an aid package that would include technical assistance for helping the country stabilize its economy, according to Edwards. He explained that the IMF isn't subject to political issues that might constrain the amount of financial support the U.S. could ultimately give.

"The fund's coffers are effectively greater than the U.S. can provide," Edwards said.

Beyond financial support, experts said the U.S. might consider some trade-focused options, such as reducing tariffs on Ukrainian goods — as the European Union **recently proposed** to do — or authorizing natural gas exports to Ukraine, which has relied heavily on energy imported from Russia. Those options, however, likely would take longer to put into place and as a result would not provide as immediate a benefit to Ukraine.

Authorizing natural gas exports to Ukraine, for example, would require a U.S. Department of Energy signoff, since the U.S. and Ukraine do not have a free trade agreement, and while some in Congress have proposed ways to expedite that process, no legislative action has yet been approved. With those factors in play, Miller & Chevalier's Christensen said, it isn't clear how quickly the U.S. could act, even if it does intend to export natural gas to Ukraine.

"The question is how fast can it happen as a practical matter," he said.

There's also another fundamental factor that could affect the timing of any U.S. response — the situation in Ukraine, which is still unfolding.

In addition to diplomatic meetings set for Friday between Kerry and Lavrov, Crimea, is expected to hold a referendum Sunday on seceding from Ukraine and joining Russia. And on Thursday, acting Ukrainian President Oleksandr Turchynov said there were a mass of Russian troops along Ukraine's eastern border that "are ready to intervene in Ukraine at any time."

"My sense is that the administration is waiting to see the outcome of any referendum regarding the status of Crimea," said Marney Cheek, a partner at Covington & Burling LLP.

Outside of steps the U.S. could take to further support Ukraine, experts said there may also be an opportunity down the line — if the tension caused by Russia's move into Crimea can be defrayed — to move forward with a longer-term strategy to engage with and press Russia on trade and investment issues.

Russia, according to Cheek, does not have a good track record on respecting the rule of law when it comes to trade issues, investment protections and property rights. So while sanctions might be an immediate response to Russia's actions in Ukraine, she said, it also makes sense for the U.S. to keep up efforts to address those rule-of-law concerns going forward.

"Sanctions are an appropriate response in the short term," Cheek said. "But an ultimate goal, at least after a de-escalation of the immediate crisis, would be to continue to use international institutions and bilateral relationships to press for greater respect for the rule of law by the Russian government."

--Editing by Jeremy Barker and Richard McVay.

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