

U.S. CAATSA Sanctions and India: Waivers and Geopolitical Considerations

THE ISSUE

On August 2, 2017, President Donald Trump signed the Countering America's Adversaries Through Sanctions Act (CAATSA) into law. The act provides for secondary sanctions on entities conducting particular types of transactions with Iran, Russia, and North Korea. CAATSA's segment on Russia orders the U.S. President to impose "five or more" sanctions on any entity engaged in a "significant transaction" with the intelligence or defense sectors of the Russian government. The act was passed in the wake of widespread allegations of Russian interference in the 2016 U.S. presidential election.

The Biden Administration will soon have to determine whether to impose CAATSA sanctions on India or waive them. The Indian government purchased the S-400 air defense system from Russia in 2016 and is expected to take delivery in 2021. India is a vital partner for the U.S. in the Indo-Pacific, and a co-member (along with Australia and Japan) of the "Quad," with strategic and defense ties between India and the U.S. reaching new heights in recent years.

While the intentions behind CAATSA vis-a-vis Russia were noble, in the case of India, the act has failed to achieve its intended objectives. If the Administration declines to issue a waiver for India's purchase of the S-400, it could result in a major setback for the U.S.-Indian strategic partnership, while offering Russia a geopolitical victory.

WHOM HAS THE U.S. SANCTIONED UNDER CAATSA?

- The U.S. imposed CAATSA sanctions on the Chinese military in September 2018, following China's purchase of the S-400 air

defense system and Su-35 fighter aircraft from Russia. Specifically, the U.S. sanctioned the Equipment Development Department of the People's Liberation Army and its director, Li Shangfu.

- In December 2020, the U.S. imposed CAATSA sanctions on North Atlantic Treaty Organization ally Turkey for its purchase of the Russian S-400 air defense system. The sanctions targeted Turkey's principal defense procurement agency, the Presidency of Defense Industries (SSB). SSB president Ismail Demir and other officials were also targeted with individual sanctions and visa restrictions.
- Turkey took delivery of the first S-400 system in July 2019. The Trump Administration delayed imposing or waiving sanctions until the passage of the 2021 National Defense Authorization Act on December 11, 2020, which mandated that the Trump Administration impose CAATSA sanctions on Turkey within 30 days of the bill's passage.
- According to Reuters, the U.S. has also reportedly "blacklisted another 33 people and entities associated with the Russian military intelligence [organizations]."

HAVE CAATSA SANCTIONS WORKED?

- While CAATSA sanctions have succeeded in punishing two foreign procurement agencies for transactions with the Russian defense sector, there is not yet any evidence that the act has accomplished its stated objective,

namely “impos[ing] costs on Russia for its malign behavior,” ideally by deterring foreign agencies from purchasing Russian arms.

- Since its purchase of the S-400 system and the passage of CAATSA, India has made several additional purchases of Russian defense hardware, including a \$1.5 billion deal for four frigates, a \$2.4 billion deal for MiG-29 and Su-30 fighter aircraft, and potentially a \$600 million deal for assault rifles.

HOW CAN CAATSA SANCTIONS BE WAIVED, DELAYED, OR TERMINATED?

- There are separate criteria for waiving, delaying, and terminating CAATSA sanctions. The 2019 National Defense Authorization Act expanded the executive branch’s waiver authority. Congress gave the President more flexibility to waive sanctions with U.S. strategic partners when other national interests could be affected, or when partners have longstanding defense relationships with Russia and compliance is unlikely.
- A CAATSA waiver now requires the President to certify that waiving sanctions:
 - Is in the U.S. national interest,
 - Will not endanger U.S. national security,
 - Will not adversely affect U.S. military operations, and
 - Will not compromise U.S. defense systems.
- In addition, the government in question would have to already be taking steps to reduce its inventory of Russian defense equipment *or* be cooperating with the U.S. on other security matters of critical interest. Finally, a foreign entity would not be eligible for a waiver if it was conducting business with any segment of Russia’s defense and

intelligence sector that is placed on a designated sanctions list *and* the Russian entity was found to be involved in cyber intrusions in the U.S.

- CAATSA also includes a six-month “delay” provision not subject to congressional review, which the President can exercise if he or she can certify that the target of sanctions is “substantially reducing the number of significant transactions” with Russia’s defense and intelligence sectors.
- The President may “terminate” CAATSA sanctions by notifying Congress that: (1) the entity is no longer engaging in the sanctionable activity or has taken significant verifiable steps toward stopping the activity, and (2) the U.S. government has received reliable assurances that the sanctionable entity will not knowingly engage in similar activity in the future.

IS INDIA ELIGIBLE FOR A CAATSA WAIVER?

- India would appear to meet the criteria for a CAATSA waiver if the executive branch is so inclined. The Administration could reasonably argue that such a waiver is in the U.S. national interest, would not endanger U.S. national security, would not adversely affect U.S. military operations, and would not compromise U.S. defense systems. While the Russian maker of the S-400, Almaz-Antei, is on a State Department designated sanctions list, it was not found to have been involved in U.S. cyber intrusions.
- The Administration could also seek to delay CAATSA sanctions by certifying that India is substantially reducing the number of significant transactions with Russia’s defense and intelligence sectors. However, while Russia’s share of Indian defense imports has been shrinking over the long term, India continues to make high-end purchases of

Russian defense equipment. Making the case that recent trends represent a “substantial reduction” would depend on the timeframe analyzed, among other data points.

- Since it is highly unlikely that India is prepared to substantially reduce defense purchases from Russia, it is unlikely that India would meet the criteria for *terminating* CAATSA sanctions.

SHOULD THE BIDEN ADMINISTRATION ISSUE INDIA A CAATSA WAIVER?

- Yes. Congress expanded the executive branch’s waiver authority for a reason. It recognized that CAATSA could prove counterproductive in certain circumstances. With India, CAATSA could both fail to achieve the desired result—deterring the purchase of additional Russian defense equipment—while undermining a strategic partnership identified as a cornerstone of U.S. strategy in the Indo-Pacific.
- CAATSA sanctions would provide ammunition to critics of the U.S. in New Delhi, confirming fears that a partnership with

the U.S. comes with strings attached. India’s colonial past and its historical attachment to “Non-Alignment” have instilled skepticism toward alignment with foreign powers that could constrain India’s “strategic autonomy.”

- India was gradually reducing its reliance on Russian hardware prior to CAATSA, increasing its defense purchases from the U.S. from negligible before 2008 to more than \$20 billion since then. Indian–Russian relations have also been strained in recent years by the latter’s opposition to India’s growing defense ties with the U.S. and participation in the Quad, as well as Russia’s increasingly robust partnership with China.
- For an India shifting away from Russia’s orbit on its own, punitive CAATSA sanctions could actually make Russia’s “hands-off” approach look more attractive, while aggravating long-held concerns about America’s reliability as a strategic partner. CAATSA was designed to punish Russia. Instead, it could end up providing Russia with a victory and driving a wedge between the U.S. and India.