International Trade Alert

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Sanctions Relief to Expect from the Nuclear Deal with Iran

On July 14, 2015, Iran and the P5+1 countries (China, France, Germany, Russia, the United Kingdom and the United States), with the High Representative of the European Union for Foreign Affairs and Security Policy, finalized the Joint Comprehensive Plan of Action (JCPOA), a nuclear agreement that would grant Iran sanctions relief in exchange for implementing significant limitations on its nuclear program.

Under the agreement, Iran will be required to remove two-thirds of its uranium-enriching centrifuges and reduce its existing low-enriched uranium stockpiles by up to 98 percent, among other nuclear-related measures. President Obama emphasized Tuesday that the agreement, which is expected to freeze most of Iran's nuclear efforts for a decade, is "not built on trust," but "verification." The International Atomic Energy Agency (IAEA) will monitor and verify Iran's nuclear-related measures and inspect its facilities, including military sites. If any issues or disputes arise over Iran's nuclear commitments, a joint commission, consisting of the P5+1 and Iran, will attempt to resolve the matter over a 30-day period. If unresolved after 30 days, the issue will be referred to the United Nations Security Council (UNSC), which will vote on whether to continue sanctions relief or re-impose sanctions on Iran.

In exchange, most European Union (EU) and U.N. sanctions against Iran will be lifted. The United States will generally remove sanctions that apply to non-U.S. persons. U.S. sanctions will continue to apply to non-U.S. entities owned or controlled by U.S. persons, but certain transactions by such entities may be licensed if they are consistent with the terms of the JCPOA. U.S. sanctions that apply to U.S. persons will largely remain in place, with the exception of a permissible licensing regime for the importation into the United States of Iranian carpets and foodstuff (including caviar and pistachios), and trade in civil aircraft and parts. In sum, Iran will still be subject to robust U.S. sanctions, but opportunities will exist for certain non-U.S., as well as U.S., companies in a limited number of industries.

Below is a more detailed discussion of what to expect in the immediate term, the timing of sanctions relief, the types of sanctions that will be lifted, and the resulting impact on U.S., and non-U.S. parties, of dealing with Iran.

What to Expect in the Immediate Term

Within five days, President Obama is expected to submit the agreement to Congress, which will have 60 days to review and vote on a joint resolution of approval or disapproval. GOP leaders have stated that they will strongly oppose any nuclear agreement, because it does not take sufficient steps to curb the Iranian nuclear threat. At this point, the extent of Democratic support for the agreement is unclear. In any event, since the President has vowed to veto any legislation to block the nuclear agreement, Congress would need to garner a two-thirds majority to override a presidential veto and enact such legislation.

The United States is also expected to submit a draft UNSC resolution on behalf of the P5+1 and the EU. That may not occur until the Congressional review process is concluded. The UNSC resolution will endorse the JCPOA and replace all existing UNSC sanctions with the new restrictions contained in the agreement. Opposition in the UNSC—where the five veto-holding members are all JCPOA participants—is considered unlikely.

The JCPOA will come into effect 90 days after the UNSC adopts the resolution ("Adoption Day"). At that point, the IAEA can start its verification of Iran's implementation of its nuclear-related commitments. Consequently, U.N. economic and financial sanctions will be terminated at once under this resolution, but not until "Implementation Day" (i.e., the date on which the IAEA verifies that Iran has implemented several nuclear commitments under the agreement).

Timing of Sanctions Relief

With the exception of continuing the terms of the Joint Plan of Action, which has been in place since November 24, 2013, the agreement does not grant any immediate sanctions relief under the U.S., EU or U.N. regimes. All of the U.N., U.S. and EU sanctions relief outlined in the JCPOA will happen "simultaneously" on Implementation Day. Conditional on IAEA verification of Iran's nuclear commitments, President Obama will issue presidential waivers suspending those U. S. economic and financial sanctions outlined below. The EU will also take similar, but broader measures, at that time. Although the parties are aiming to achieve this by the end of the year, the timing remains unclear. Moreover, the sanctions relief is subject to "snap-back" in the event of significant non-performance by Iran of its commitments.

"Nuclear-Related" Sanctions

Upon IAEA verification, the U.S. and EU will lift their "nuclear-related" sanctions against Iran. The agreement provides the complete list of U.S. and EU nuclear-related sanctions and restrictive measures that will be lifted. This list includes most EU sanctions against Iran. From the U.S. perspective, the sanctions to be eased are largely those "directed at non-U.S. persons." Consequently, U.S. persons, including non-U.S. branches of U.S. companies and non-U.S. entities (e.g., subsidiaries, affiliates, joint ventures) owned or controlled by U.S. persons, will continue to be generally prohibited from conducting most transactions involving Iran without a license.

U.S. Sanctions Relief for Non-U.S. Firms

Consistent with the above, upon Implementation Day, the United States will suspend secondary sanctions that penalize non-U.S. entities and individuals who engage in certain activities with Iran. The relief particularly affects the following industries that are subject to U.S. secondary sanctions: finance/banking; insurance; energy; petrochemical; shipping, shipbuilding, and ports; gold and other precious metals; certain software and metals; and automotive. The United States will also remove sanctions targeted at certain designated individuals and entities, which will result in the release of frozen funds.

Of particular importance, non-U.S. financial institutions will be able to engage in transactions with, or involving, the Central Bank of Iran and Iranian financial institutions not on the Specially Designated

Nationals and Blocked Persons (SDN) List. The agreement also drops sanctions that prohibit transactions in the Iranian Rial or provide U.S. banknotes to the Iranian government.

Non-U.S. companies must bear in mind that U.S. persons, and entities owned or controlled by U.S. persons, will remain subject to stringent restrictions on direct or indirect dealings, with or involving, Iran. As such, transactions involving Iran should be rigorously scrutinized to ensure no U.S.-person involvement, including U.S. national employees or U.S. correspondent banks that may be processing U.S. dollar transactions.

U.S. Sanctions Relief for U.S. Firms

Most restrictions on U.S. individuals and entities will remain in effect, with few exceptions. One such exception is that the United States has agreed to license non-U.S. entities owned or controlled by a U.S. person to engage in activities with Iran that are consistent with the JCPOA. This presents potential opportunities for non-U.S. subsidiaries and affiliates of U.S. multinational corporations to, under certain conditions, engage in transactions in which their non-U.S. competitors are engaging.

The United States will also allow licensed sales by U.S. persons of commercial passenger aircraft and related parts and services to Iran, which presents a potentially significant business opportunity for U.S. aviation equipment companies to export equipment to Iran for use in civil aircraft. Licensed activities will need to include appropriate safeguards to ensure that the licensed aircraft, goods or services are not resold or retransferred to any person or entity on the SDN List. The agreement also allows for the licensing of imports to the United States of Iranian-origin carpets and foodstuff, including pistachios and caviar.

EU Sanctions Relief

The EU has agreed to lift sanctions affecting Iran’s finance and insurance; oil and gas; and transportation sectors, among others. Unlike the United States, which is initially only suspending its sanctions, the EU is terminating these sanctions, in addition to unfreezing Iranian assets belonging to Iranian financial institutions, individuals and other organizations.

For financial institutions, the EU measures broadly lift “all sanctions” related to “banking activities, including the establishment of new correspondent banking relationships and the opening of new branches and subsidiaries of Iranian banks in the territories of EU Member States.”

Conclusion

In sum, the JCPOA does not immediately lift sanctions against Iran. Certain steps need to be completed before any relief will be implemented, including a political process within the United States, a UNSC resolution, various nuclear-related measures by Iran and verification by the IAEA.

Once these steps have taken place, most U.N. and EU sanctions against Iran will be lifted. While U.S. sanctions will be eased in their application to non-U.S. companies, these sanctions will continue to apply to U.S. persons, including entities owned or controlled by U.S. persons. Consequently, significant compliance risk will continue to apply with respect to transactions involving Iran.

In light of the above, U.S. and non-U.S. companies must closely analyze potential opportunities involving Iran to assess the compliance risk associated with the transaction, identify whether restrictions may apply, and determine whether licensing may be available.

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