

## Iran Sanctions: Where Are We and What's Next?

As has been widely reported, Iran and the P5+1 powers have reached a preliminary framework agreement easing nuclear-related sanctions on Iran in return for restrictions on Iranian nuclear programs. While an analysis of the nuclear aspects of the framework is beyond the scope of this memorandum, we discuss below the sanctions aspects of the agreement. The key takeaways are as follows:

- Agreement has been reached on the basic outlines of a deal, and the parties appear to be committed to proceeding. However, the deal is not yet final, and work remains to be done. For the moment, the sanctions regime is unchanged.
- The agreement is skeletal and preliminary, and key details regarding the timing and scope of sanctions relief are already in dispute between Iran and the United States. It remains possible that the agreement will collapse or that negotiations will extend beyond the nominal June 30 deadline.
- The broad outline of the deal appears to be suspension of most U.S. secondary sanctions against Iran (though the basic prohibition on transactions with Iran within U.S. jurisdiction will remain) and a roll-back of the European sanctions regime to a more limited pre-2010 level.
- Even if agreement is reached, domestic implementation remains a challenge in the United States, and the precise scope of U.S. sanctions relief – and the degree of divergence between U.S. and EU sanctions – is not entirely clear.

### What has been agreed?

The actual agreed statement, jointly released by the EU High Representative and the Foreign Minister of Iran, is quite brief.<sup>1</sup> It announces that the foreign ministers of China, France, Germany, Russia, the United Kingdom, the United States, and Iran, together with the EU High Representative, have “reached solutions on key parameters of a Joint Comprehensive Plan of Action (JCPOA).” With respect to sanctions, the entirety of the agreed language is as follows:

“The EU will terminate the implementation of all nuclear-related economic and financial sanctions and the US will cease the application of all nuclear-related secondary economic and financial sanctions, simultaneously with the IAEA-verified implementation by Iran of its key nuclear commitments. A new UN Security Council Resolution will endorse the JCPOA, terminate all previous

<sup>1</sup> [http://eeas.europa.eu/statements-eeas/2015/150402\\_03\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150402_03_en.htm).

nuclear-related resolutions and incorporate certain restrictive measures for a mutually agreed period of time.”

Simultaneously with the announcement, the U.S. State Department released a document purporting to be a more detailed summary of the agreement.<sup>2</sup> The discussion of sanctions reads as follows:

“Sanctions

- Iran will receive sanctions relief, if it verifiably abides by its commitments.
- U.S. and E.U. nuclear-related sanctions will be suspended after the IAEA has verified that Iran has taken all of its key nuclear-related steps. If at any time Iran fails to fulfill its commitments, these sanctions will snap back into place.
- The architecture of U.S. nuclear-related sanctions on Iran will be retained for much of the duration of the deal and allow for snap-back of sanctions in the event of significant non-performance.
- All past UN Security Council resolutions on the Iran nuclear issue will be lifted simultaneous with the completion, by Iran, of nuclear-related actions addressing all key concerns (enrichment, Fordow, Arak, PMD, and transparency).
- However, core provisions in the UN Security Council resolutions – those that deal with transfers of sensitive technologies and activities – will be re-established by a new UN Security Council resolution that will endorse the JCPOA and urge its full implementation. It will also create the procurement channel mentioned above, which will serve as a key transparency measure. Important restrictions on conventional arms and ballistic missiles, as well as provisions that allow for related cargo inspections and asset freezes, will also be incorporated by this new resolution.
- A dispute resolution process will be specified, which enables any JCPOA participant, to seek to resolve disagreements about the performance of JCPOA commitments.
- If an issue of significant non-performance cannot be resolved through that process, then all previous UN sanctions could be re-imposed.
- U.S. sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place under the deal.”

The Iranian Foreign Ministry released its own fact sheet, however, and it contains significant differences from the U.S. version, in particular with respect to timing; according to the

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<sup>2</sup> <http://www.state.gov/r/pa/prs/ps/2015/04/240170.htm#.VR3RJ6FoRbs.twitter>

Iranian version, the lifting of sanctions is to be immediate upon entry into force of the JCPOA.<sup>3</sup> A translation of the sanctions section follows:

“Removal of Sanctions

According to the reached solutions, after the implementation of the Comprehensive Plan of Joint Action, all of the UN Security Council resolutions will be revoked, and all of the multilateral economic and financial sanctions of the EU and the unilateral ones of the US including financial, banking, insurance, investment, and all related services, including oil, gas, petrochemicals, and automobile industries will be immediately revoked. In addition, nuclear-related sanctions against real and legal individuals, entities, and public and private institutions, including the Central Bank, other financial and banking institutions, SWIFT, shipping and aviation industries of the Islamic Republic of Iran, oil tanker companies, will be immediately removed. Also, the P5+1 member countries are committed to restraining from imposing new nuclear-related sanctions.”

The differences in approach were reinforced by statements from the Iranian Foreign Minister disputing the U.S. fact sheet and reiterating that sanctions are to be removed immediately upon reaching an agreement, not following any further verification procedures; meanwhile, the U.S. State Department envisaged sanctions relief “within the first year” following an agreement.

The dueling fact sheets, combined with the lack of detail in the agreed joint statement, seem to indicate that there may not yet be a meeting of the minds on the key question of when sanctions relief would take effect. While we will not examine the nuclear-related provisions in detail, it bears noting that substantial points remain to be agreed there as well. The parties remain under a self-imposed deadline of June 30 to reach a final agreement; nothing prevents them from extending that deadline (as previous deadlines have been extended), but we expect them to push to meet the deadline.

If the deal is implemented, what sanctions will likely remain in place?

As the foregoing discussion makes clear, it is too early to provide a definitive description of any sanctions relief. However, the general outlines of the agreement can be discerned:

- Nuclear-related U.S. secondary sanctions (sanctions programs aimed at transactions by non-U.S. persons conducted outside U.S. jurisdiction) will be lifted. Note that which secondary sanctions are “nuclear-related” is not entirely clear, but we would anticipate that secondary sanctions against major economic sectors such as energy, shipping, automobiles, and banking would be lifted. However, many U.S. secondary sanctions cite both Iran’s support of terrorism and its proliferation-related activities as a justification, and it is possible, for example, that secondary sanctions against financial transactions with Iranian banks designated under terrorism-related programs could continue. In any event, secondary sanctions against transactions related to Iran’s support of U.S.-designated terrorist organizations, transactions related to potential

<sup>3</sup> <http://iranmatters.belfercenter.org/blog/translation-iranian-factsheet-nuclear-negotiations>.

human rights abuses, and transactions in which Iran's interest is concealed from counterparties or regulators would likely remain in place

- Direct U.S. sanctions will remain in place. Transactions within U.S. jurisdiction, including U.S. dollar transactions, involving an Iranian interest will remain prohibited, as they were long before nuclear-related sanctions were imposed.
- EU and UN sanctions will likely be cut back significantly, focusing narrowly on military and terrorism-related activities. We would expect general restrictions on financial transactions and the Iranian energy, petrochemical, and other sectors to be lifted.
- It is possible that U.S., EU, and UN sanctions relief will move on different timetables.

In short, the Iranian sanctions regime is likely to revert to the *status quo ante* circa 2009. That is an oversimplification, as some subsequent developments are likely to remain in place and a new nonproliferation regime will be developed. More importantly, the more aggressive U.S. enforcement environment, particularly with regard to U.S. dollar transactions involving Iran by non-U.S. persons, will also remain in place. However, in broad strokes, we would expect most non-U.S. persons to be largely free to conduct transactions with Iran outside U.S. jurisdiction that have no link to military activities or terrorism, while U.S. persons will remain unable to trade with Iran for the medium term (with possible narrow exceptions in areas such as agriculture).

#### How would sanctions relief be implemented?

As noted, there appears to be substantive disagreement over the timing of any sanctions relief (i.e., immediately upon conclusion of an agreement or following verification of implementation of certain of the nuclear commitments) and whether sanctions would be suspended or terminated. We also believe it is worth focusing on the mechanics of implementation, particularly in the United States.

Implementation of sanctions relief should be relatively simple in both the United Nations and the European Union. In the United Nations, sanctions would be altered by a Security Council resolution; in the European Union, a decision of the European Council would be needed. Both would require implementation in national law (as the original imposition of sanctions was implemented through national law), but as a practical matter we think it is unlikely that any significant obstacles would arise.

The story in the United States is somewhat more complex. The United States fact sheet states that sanctions would be suspended but the legal architecture left in place, so that sanctions could be re-imposed instantly should the agreement be violated. With respect to sanctions imposed by Executive Order, this is largely symbolic (though consistent with how the United States has implemented rollbacks of sanctions in countries such as Libya), as even if the sanctions were lifted completely they could be reimposed as quickly as the White House could draft the relevant orders. With respect to sanctions imposed by statute, however, which includes most of the secondary sanctions, the picture is more complicated.

There is little difficulty in suspending U.S. secondary sanctions. Secondary sanctions are not self-executing, and as a practical matter the President has discretion in deciding whether to impose them. The relevant statutes also typically contain provisions explicitly permitting the President to waive the imposition of sanctions in the interest of national security. However, the President does not have the unilateral authority to remove secondary sanctions on a permanent basis; doing so requires an act of Congress. Moreover, because the authority to impose secondary sanctions will remain in place, there could remain at least a theoretical risk that a subsequent U.S. administration could impose secondary sanctions for targeted activities, even those conducted at a time when the Obama Administration had announced that sanctions were suspended. We do not mean to exaggerate that risk – as a matter of international law, an agreement concluded by the President is binding, and that would at least give a future administration pause before violating it (much less seeking to impose sanctions retroactively on those who relied on the announced policy prior to any change) – but it underscores the fact that if the Obama Administration acts without the cooperation of Congress, there will be some question as to whether the change in policy is truly permanent and binding on future administrations. Whatever one thinks of the wisdom of the infamous letter from Republican senators to the Iranian leadership attempting to assert that no agreement is valid without congressional approval, it remains the case that congressional opposition would be a significant complicating factor.

### Conclusion

From a sanctions perspective, at a high level it appears the the basic outlines of the proposed deal have been agreed: From the perspective of most commercial actors, most U.S. secondary sanctions will terminate, transactions within U.S. jurisdiction will remain prohibited, and EU and UN sanctions will fall away.

However, while the proposed JCPOA now has some momentum, this high-level story conceals significant complexity. It is unclear whether a deal will be finalized – many significant issues remain to be resolved – or if so what the timing of sanctions relief will be. Even if a deal is reached, it is unclear which U.S. secondary sanctions will survive, and it is unclear to what extent any agreement will be insulated from domestic political challenge. Finally, in recent years there has been notable convergence between the U.S. and EU approaches to Iranian sanctions; it appears now that those paths are set to diverge, and the political and economic consequences remain to be seen. In short, the JCPOA is less the end of the story than the beginning of a new chapter, with plot twists yet to be revealed.

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