

United States, EU, Other Global Powers Reach Comprehensive, Long-Term Nuclear Deal with Iran

Stage Set for Significant Sanctions Relief in Coming Months

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International Trade Controls

On July 14, 2015, the United States, the United Kingdom, France, the Russian Federation, China, Germany, the European Union, and Iran reached agreement on a Joint Comprehensive Plan of Action (“JCPOA”) under which the United States, the EU, and the United Nations would extend broad sanctions relief to Iran in exchange for Iran accepting limitations on its nuclear program. According to the text of the JCPOA, the agreement “will ensure that Iran’s nuclear programme will be exclusively peaceful.”

The JCPOA builds on the Joint Plan of Action to which the parties agreed in November 2013, and on the parameters for a long-term deal announced in April 2015. Specifically, under the JCPOA, Iran has accepted limitations on uranium enrichment, spent fuel reprocessing, and certain related research and development activities, and has committed to various transparency and confidence-building steps intended to enable the International Atomic Energy Agency (“IAEA”) to verify Iran’s implementation of these nuclear-related measures.

In return, the United States, EU, and United Nations will all provide significant, phased sanctions relief upon the IAEA’s verification that Iran has implemented specified nuclear-related measures. Importantly, the primary U.S. sanctions that prohibit U.S. persons and their owned or controlled non-U.S. affiliates from engaging in virtually any dealings with Iran absent U.S. government licensing will remain in place. The United States will, however, dramatically reduce its “secondary” sanctions, which target non-U.S. persons that engage in certain types of business with Iran. The U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) also will license non-U.S. entities that are owned or controlled by U.S. persons to engage in transactions or dealings involving Iran that are “consistent with” the JCPOA.

With regard to the EU sanctions, the EU has agreed to lift the majority, although not all, of its existing sanctions against Iran upon IAEA verification of Iran’s commitments, including the current EU sanctions restrictions focusing on the Iranian oil/gas sector, Iranian financial institutions, and broader trade controls currently implemented under European Council Regulation No. 267/2012.

The sanctions relief will not be implemented for at least 90 days, pending endorsement by the UN Security Council, the undertaking of steps by the EU and United States, and IAEA verification of Iran’s satisfaction of agreed nuclear-related measures. In the United States, implementing action is also subject to a 60-day Congressional review period for the JCPOA.

U.S. Secretary of State John Kerry speculated during his press conference announcing the deal that since sanctions relief was dependent on Iran carrying out certain of its nuclear-related commitments, such relief likely would not come until late 2015 or early 2016. In the interim, OFAC has announced that the temporary sanctions relief pursuant to the Joint Plan of Action will be extended until the conditions required for the JCPOA sanctions relief are met. As OFAC noted in its statement: “This [Joint Plan of Action] sanctions relief is the only Iran-related sanctions relief in effect until further notice.” The EU has likewise extended its earlier temporary sanctions relief under the Joint Plan of Action.

Limitations on the Iranian Nuclear Program

Under the JCPOA, Iran has agreed to restrictions on uranium enrichment activities, spent fuel reprocessing activities (a process by which plutonium could be produced), and certain related research and development activities. For instance:

- For a period of 10 years, Iran will limit its enrichment capacity at the Natanz facility to 5,060 installed IR-1 centrifuges, and any excess centrifuges and enrichment-related infrastructure at Natanz will be stored under IAEA continuous monitoring;
- For a period of 15 years, Iran will carry out its uranium enrichment-related activities exclusively at the Natanz facility, and will convert the Fordow facility into a nuclear, physics, and technology center that will house only 1,044 IR-1 centrifuges;
- All spent fuel from the Arak heavy water research reactor will be shipped out of Iran for the lifetime of the reactor, and there will be no additional heavy water reactors or accumulation of heavy water in Iran for 15 years;
- For 15 years, Iran will not engage in any spent fuel reprocessing or construction of a facility capable of such reprocessing, subject to narrow exceptions; and
- Iran will fully implement by October 15, 2015 the “Roadmap for Clarification of Past and Present Outstanding Issues” agreed with the IAEA, which relates to concerns over the “possible military dimensions” of Iran’s nuclear program.

The JCPOA also includes numerous other nuclear-related measures to which Iran has agreed.

In addition, Iran agreed to permit the IAEA to monitor Iran’s implementation of its obligations throughout their duration and to implement certain transparency measures. The IAEA access is being described by some commentators as “managed access,” not “anytime, anywhere access,” because access to “undeclared” nuclear sites or activities, or activities inconsistent with the JCPOA at locations that have not been declared is subject to a request process set forth in the JCPOA that could delay IAEA access for more than three weeks.

Overview of U.S., EU, and UN Sanctions Relief

The U.S., EU, and UN sanctions relief that will be extended to Iran as it implements its nuclear-related commitments is wide-ranging and significant. The primary beneficiaries of the relief will be non-U.S. companies, and to a lesser extent non-U.S. companies that are owned or controlled by U.S. persons, such as non-U.S. subsidiaries of U.S. parent companies. U.S. persons will still be subject to comprehensive restrictions on their dealings with or involving Iran. This section provides an overview of the specific sanctions measures that will be eased, while

the following section addresses the process and timing for implementation of such sanctions relief.

United States

Under the JCPOA, the United States will, simultaneous with the IAEA's verification that Iran has implemented certain nuclear-related measures specified in the agreement, cease the application of (and eventually seek legislative action to terminate or effectively terminate) all nuclear-related secondary sanctions. (These secondary sanctions target primarily non-U.S. persons that are not owned or controlled by U.S. persons and that engage in certain Iran-related activities. Currently, such persons are at risk of themselves being sanctioned and losing some or all of their access to U.S. markets if they engage in the sanctionable conduct described below.) The sanctions relief does not extend to secondary sanctions related to Iran's support for terrorism, human rights abuses, or ballistic missile activities, and, subject to the notable exceptions highlighted below, does not impact the primary U.S. sanctions that prohibit U.S. persons and their owned or controlled non-U.S. affiliates from engaging in virtually any dealings with Iran.

Specifically, the United States will cease the application of the following secondary sanctions:

- **Financial and Banking:** These sanctions target persons who conduct or facilitate transactions with certain Iranian individuals and entities that are currently identified on, but that will be removed from, the U.S. List of Specially Designated Nationals and Blocked Persons ("SDN List"). This includes the Central Bank of Iran, specific Iranian financial institutions, the National Iranian Oil Company ("NIOC"), Naftiran Intertrade Company ("NICO"), and the National Iranian Tanker Company ("NITC"). This category also covers (i) trade limitations on Iranian revenues held outside of Iran (for example, revenues from the sale of oil); (ii) sanctions on the provision of financial messaging services to the Central Bank of Iran and certain other Iranian financial institutions; (iii) the provision of U.S. bank notes to the Government of Iran; and (iv) the purchase of, subscription to, or facilitation of the issuance of Iranian sovereign debt. It also includes sanctions relating to the Iranian rial, such as sanctions for knowingly conducting a significant transaction related to the purchase or sale of Iranian rials.
- **Insurance:** Sanctions on the provision of underwriting services, insurance, or re-insurance will be eased, provided that such underwriting services, insurance, or re-insurance are in connection with activities that are "consistent with" the JCPOA.
- **Energy and Petrochemicals:** These sanctions target (i) investment in, including participation in joint ventures, and the provision of goods, services, information, technology, and technical expertise and support for, Iran's oil, gas, and petrochemical sectors; (ii) the purchase, acquisition, sale, transportation, or marketing of petroleum, petrochemical products, and natural gas from Iran; (iii) the export, sale, or provision of refined petroleum products and petrochemical products to Iran; and (iv) transactions with Iran's energy sector (including with NIOC, NICO, and NITC). Additionally, the United States will end its efforts to reduce Iran's crude oil sales, including through the imposition of limitations on the quantities of Iranian crude oil sold and the nations that can purchase such oil.
- **Shipping, Shipbuilding, and Ports:** These are sanctions on transactions with Iran's shipping and shipbuilding sectors and port operators, including the Islamic Republic of

Iran Shipping Lines (“IRISL”), South Shipping Line, NITC, and the Bandar Abbas port operator(s).

- **Gold and Other Precious Metals:** These sanctions target Iran’s trade in gold and certain other precious metals.
- **Software and Certain Metals:** Sanctions on trade with Iran in software for integrating industrial processes, and in coal, graphite, and raw or semi-finished metals, such as aluminum and steel, will be eased provided that such trade is conducted in connection with activities that are “consistent with” the JCPOA.
- **Automotive Sector:** These are sanctions on the sale, supply, or transfer to Iran of goods and services used in connection with its automotive sector.

The United States will terminate all or portions of a series of executive orders imposing secondary sanctions against non-U.S. persons that engage in these Iran-related activities.¹

Additionally, the United States will remove from its SDN List, Foreign Sanctions Evaders List, and Non-SDN Iran Sanctions Act List a significant number of individuals and entities. This is significant because the United States, subject to limited exceptions, imposes secondary sanctions on non-U.S. persons that materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of, any activity or transaction on behalf of or for the benefit of an Iranian person on the SDN List. The United States also will ease sanctions under the Iran, North Korea and Syria Nonproliferation Act on the acquisition of nuclear-related commodities and services for those nuclear activities contemplated in the JCPOA.

Although the JCPOA generally does not call for easing the primary U.S. sanctions that prohibit U.S. persons and their owned or controlled non-U.S. affiliates from engaging in virtually any unlicensed dealings relating to Iran, it does commit the United States to license three categories of activity:

- **Licensing for Non-U.S. Entities Owned or Controlled by U.S. Persons:** Most significantly, the United States has committed to issue licenses to authorize non-U.S. entities owned or controlled by U.S. persons to engage in activities with Iran, provided that such activities are “consistent with” the JCPOA. Although it is not immediately clear what would qualify as activities “consistent with” the JCPOA, this may mean that OFAC would be prepared to license the activities of non-U.S. entities owned or controlled by a U.S. person if such activities are not prohibited under the EU sanctions or under the U.S. sanctions as to non-U.S. entities that are not owned or controlled by a U.S. person. If this is the case, it likely would have two significant ramifications. First, it would, to a limited degree, mitigate the disparity created between U.S. and non-U.S. companies as a result of the dramatic easing of the EU sanctions and secondary U.S. sanctions by permitting non-U.S. subsidiaries of U.S. companies to do business with Iran under the terms of licensing. However, it is not clear that the proposed licenses will necessarily authorize U.S. persons—including the U.S. parent of the non-U.S. subsidiary—to facilitate the licensed trade by the non-U.S. subsidiary. Second, it likely would result in a

¹ Executive Orders 13574, 13590, 13622, and 13645 will be terminated in their entirety. Sections 5-7 and 15 of Executive Order 13628 also will be terminated.

significant increase in the volume of license applications submitted to OFAC, unless OFAC elects to issue a general license or licenses to authorize at least some activities by non-U.S. entities owned or controlled by U.S. persons.

- **Licensing for Commercial Aircraft:** The United States also has committed to license the export, reexport, sale, lease, and transfer to Iran of commercial passenger aircraft for exclusively civil aviation end-use, and spare parts and components for such aircraft, as well as the provision of associated services, such as warranty, maintenance, and repair services and safety-related inspections, provided that such services are used exclusively for commercial passenger aviation.
- **Licensing for Imports of Certain Iranian-Origin Goods into the United States:** Likewise, the United States has committed to licensing the import into the United States of Iranian-origin carpets and foodstuffs, including pistachios and caviar.

More generally, under the JCPOA, the “U.S. Administration” (acknowledging the “respective roles” of the President and Congress in this area) will refrain from re-introducing or re-imposing the foregoing sanctions measures, and from imposing new nuclear-related sanctions against Iran, which Iran would treat as grounds to cease performing its nuclear-related commitments. The United States also agrees to take “appropriate steps” if a law at the state or local level is preventing implementation of the sanctions relief, including actively encouraging state and local officials to take account of the easing of the U.S. sanctions and refrain from taking actions inconsistent with this change in policy. However, the United States retains the right to re-impose or re-introduce the foregoing sanctions or impose new nuclear-related sanctions if it believes that Iran is not meeting its commitments under the JCPOA and if it has followed the dispute resolution process set forth in the JCPOA (and described in greater detail below).

European Union

The JCPOA commits the EU to terminate all provisions of Council Regulation (EU) No 267/2012 (hereinafter, the “Regulation”) and Council Decision 2010/413/CFSP (hereinafter, the “Council Decision”). Those measures represent the bulk of the existing EU sanctions concerning Iran, including prohibitions and licensing/notification requirements associated with:

- Transfers of funds between EU and Iranian parties (which currently require EU Member State licensing or notification, above certain monetary thresholds);
- The establishment and maintenance of banking relationships with Iranian banks;
- The provision of insurance and re-insurance to Iranian parties;
- The supply of specialized financial services to designated Iranian parties;
- The provision by EU governmental entities of financial support in respect of trade with Iran (which is restricted under various provisions of the above-referenced Council Decision);
- Dealings relating to Iranian public or public-guaranteed bonds;
- Dealings relating to Iranian-origin oil, gas, and petrochemical products, the provision to Iranian parties of key oil/gas equipment and associated services, and investments in the Iranian energy sector;
- Dealings relating to the Iranian shipping, shipbuilding, and transport sectors;

- Transactions relating to certain nuclear activities and associated services (including exports of restricted nuclear items and services, and investment-related restrictions concerning Iran’s nuclear sector);
- Export controls associated with key naval equipment; metals; precious metals, diamonds, banknotes, and coinage; and software for integrating industrial processes;
- Asset freezing measures currently in place with regard to parties designated under the Regulation; and
- Sanctions associated with the provision of arms and related services to Iran.

Notably, the JCPOA does not commit the EU to terminating asset freezing measures established under a separate legal regime, set out in Council Regulation No. 359/2011 (83 individuals and one entity are currently designated under those sanctions).

The EU will also end asset freezes and visa restrictions on the list of designated persons identified in Attachment 1 to Annex II of the JCPOA.

The EU has committed in the JCPOA not to introduce new nuclear-related sanctions measures against Iran, or to reintroduce sanctions that it has terminated pursuant to the JCPOA except as contemplated in dispute resolution procedures set forth in the agreement (as summarized below).

United Nations

Under the JCPOA, the United States, France, Germany, the United Kingdom, China, and the Russian Federation will submit a draft resolution to the UN Security Council that will provide for the termination of all provisions of previous UN Security Council resolutions imposing sanctions against Iran related to the nuclear issue.² The termination of such provisions will be effective simultaneously with the IAEA’s verification that Iran has implemented certain nuclear-related measures. However, it appears that “specific restrictions, including restrictions regarding the transfer of proliferation sensitive goods” will remain in force. Also, President Obama has stated that the UN sanctions prohibiting the transfer to Iran of conventional weapons will terminate after five years, and the UN sanctions pertaining to the supply of ballistic missile equipment and technology will terminate after eight years.

Although the JCPOA provides that the UN Security Council will not impose any new nuclear-related sanctions against Iran, it establishes a process by which the provisions of previous UN Security Council resolutions related to the Iran nuclear issue would “snap back” into place, as described in the next section, if Iran is not meeting its commitments under the JCPOA and such failure constitutes “significant non-performance.”

Dispute Resolution Mechanism and “Snap Back” of UN Sanctions

The JCPOA establishes a mechanism by which the parties can seek to resolve disputes regarding implementation of the agreement. Specifically, if Iran believes that the United States, the EU, or any of the other parties is not meeting their commitments under the JCPOA, or if the

² Those UN Security Council Resolutions are 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), and 2224 (2015).

United States, the EU, or the other parties believe the same about Iran, the complaining party can refer the issue to a Joint Commission, which would have 15 days to resolve the issue (absent an extension by consensus). After the Joint Commission's review, any party could refer the issue to one or both of: (1) the Ministers of Foreign Affairs of the parties (presumably of the United States, France, Germany, the United Kingdom, China, the Russian Federation, and Iran, who would then have an additional 15 days to resolve the issue (absent an extension by consensus); and (2) an Advisory Board of three members (one each appointed by the parties in dispute and a third independent member), which would provide a non-binding opinion on the issue within 15 days. If the issue still is not resolved after this process, the Joint Commission would have no more than five days to consider the opinion of the Advisory Board. Matters before the Joint Commission are to be decided by consensus; issues related to access by the IAEA require only an affirmative vote of five JCPOA participants.

If after this process is complete, the complaining party still believes the issue is not resolved and also believes that it constitutes "significant non-performance," then the complaining party could treat the issue as grounds to cease performing its own commitments under the JCPOA, and/or could notify the UN Security Council of the issue. Where a complaint about Iran's significant non-performance of the JCPOA is referred to the Security Council, that body would have 30 days to approve a resolution to continue the UN sanctions relief described in the preceding section. If the Security Council fails to agree on such a continuation of sanctions relief, then the provisions of the previous Security Council resolutions would automatically "snap back" into place. The need for a Security Council resolution to continue the sanctions relief effectively gives each permanent member of the Security Council the ability to veto such continued sanctions relief since resolutions of the Security Council require a unanimous vote by its permanent members (i.e., the United States, France, the United Kingdom, China, and the Russian Federation). If sanctions relief is not continued, existing contracts that are consistent with the JCPOA and current UN Security Council resolutions would be grandfathered, meaning that the sanctions that are reimposed would not apply to those contracts.

Implementation of the JCPOA

The sanctions relief described above will not be provided immediately. Indeed, there are a number of significant steps that need to be taken before many aspects of the JCPOA can be implemented.

U.S. Congressional Review

Pursuant to the Iran Nuclear Review Agreement Act of 2015, which became law in May, the President has until July 19 to transmit to appropriate congressional committees and leadership the JCPOA and various related materials. Upon receiving these materials, Congress will have 60 calendar days to review the agreement and pass a joint resolution of disapproval. Although such a resolution would not, as a technical legal matter, prevent the implementation of the JCPOA, it likely would prove a substantial political obstacle to its implementation. President Obama has stated that he will veto any legislation that would prevent the successful implementation of the JCPOA.

Timing of Implementation of Nuclear-Related Measures and Sanctions Relief

The JCPOA itself provides for a detailed sequencing of actions that must occur before the agreement can be implemented and the sanctions measures described above can be eased.

First, the JCPOA provides that promptly after the negotiations have been concluded, the United States and the other global powers that are parties to the JCPOA will submit to the UN Security Council the draft resolution described above that would endorse the JCPOA and provide for the eventual termination of existing Security Council resolutions relating to Iran's nuclear program.

Second, the JCPOA will go into effect 90 days after the Security Council adopts the resolution described above (or earlier, if agreed to by the parties to the JCPOA). This is referred to in the agreement as "Adoption Day." Beginning on Adoption Day, Iran will take certain nuclear-related steps, and the United States will issue waivers and take other measures needed to provide the sanctions relief described above. Those measures for sanctions relief will only take effect on "Implementation Day," defined as the date on which the IAEA verifies that Iran has implemented certain required nuclear-related measures. At the same time, the EU and the 28 EU Member States will adopt legislation effectuating the termination of most of the provisions of the EU Regulation, simultaneous with the IAEA's verification of Iran's commitments as described above.

Third, on Implementation Day, the United States will officially provide the sanctions relief described above, the EU will terminate most of the sanctions in the Regulation, with corresponding provisions in the Council Decision suspended (the suspension rather than termination of the Council Decision provisions is intended to facilitate a timely "snap back" of applicable sanctions if required). The following EU sanctions restrictions would, however, remain in effect following Implementation Day:

- Provisions of the Regulation, Council Decision, and associated Member State legislation focusing on certain ballistic missile and proliferation-sensitive exports, services, and investments (the exact scope of which are not clearly described in the JCPOA and will require further clarification by the European Council in its anticipated implementing measures);
- Restrictions and notification requirements concerning certain shipping and transportation-related activities with regard to shipments carrying restricted products (as set forth in Articles 36 and 37 of the Regulation and Articles 15 and 18 of the Council Decision);
- EU conventional arms-related restrictions; and
- Asset-freezing measures relating to certain parties currently designated for asset freezing under the Regulation (those parties are set forth in Attachment 2 to Annex II to the JCPOA).

The existing UN Security Council resolutions relating to the Iran nuclear program also will be terminated on Implementation Day. However, the U.S., EU, and UN sanctions relief could all be reimposed in the event of Iran's significant non-performance of its nuclear-related commitments, pursuant to the dispute resolution process described above.

Fourth, the JCPOA provides that on "Transition Day" (i.e., the earlier of the date that is eight years after Adoption Day or the date on which the IAEA Director General submits a report stating that the IAEA has reached the "Broader Conclusion" that all nuclear material in Iran remains in peaceful activities), Iran will seek ratification of the IAEA's Additional Protocol. The Additional Protocol is an agreement that would grant the IAEA enhanced inspection authority with the objective of improving the IAEA's ability to detect any clandestine or undeclared nuclear facilities in Iran.

Additionally, on Transition Day, the United States will (a) seek legislative action, as appropriate, to terminate, or to modify to allow for termination of, the sanctions measures that it will have ceased applying pursuant to the JCPOA (including restrictions on the supply of nuclear-related commodities and services for nuclear activities contemplated in the JCPOA), and (b) remove certain additional specified Iranian individuals and entities from its SDN List and/or Foreign Sanctions Evaders List. Likewise, the EU will terminate the balance of the sanctions measures that will remain in effect following Implementation Day, with certain measures remaining in “suspended” status pursuant to the Council Decision.

Fifth, and finally, 10 years after Adoption Day, when the UN Security Council Resolution endorsing the JCPOA terminates, the EU will formally terminate all remaining elements of the Council Decision and Regulation.

Next Steps

The JCPOA announced yesterday represents a major development in Iran’s relationship with the United States, the EU, and the broader international community. Although there is much to be done on all sides to ensure the JCPOA is implemented effectively, it appears likely that there will be a significant easing of U.S., EU, and UN sanctions against Iran in the months ahead.

We will continue to monitor closely developments related to the implementation of the JCPOA and associated sanctions relief, and are well-positioned to assist clients in understanding how these developments may affect their business operations and opportunities.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade Controls practice group:

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