E-ALERT | International Trade Controls

November 25, 2013

NEW IRAN DEAL ON NUCLEAR PROGRAM SETS GROUNDWORK FOR FURTHER NEGOTIATIONS

Agreement Provides Limited Sanctions Relief, But Most Sanctions Remain in Place

On November 24, 2013, the United States, along with the U.K., France, Russia, China, and Germany (the "P5+1 group"), reached an initial agreement with Iran to halt the progress of Iran's nuclear program during a six-month negotiation period. The agreement, which is merely a first step in longer-term negotiations, provides very limited and reversible relief from certain sanctions Iran has faced in the past few years in exchange for assurances from Iran that it will take specified steps to halt the progress of its nuclear program and allow increased transparency and monitoring by the International Atomic Energy Agency ("IAEA"). Although elements of the U.S. and EU sanctions programs will be eased slightly as a result of the deal, key aspects of the U.S. and EU Iran sanctions programs -- notably, the sweeping sanctions on Iran's energy, shipping, and financial sectors -- will remain intact for now.

This initial deal expires in six months. During that time, negotiators will work towards a long-term, comprehensive solution that addresses the international community's concerns about Iran's capacity to develop nuclear weapons.

The aim of the initial six-month deal is to prevent Iran from continuing to develop its nuclear program while negotiations on a comprehensive deal are ongoing. According to a White House fact sheet, the initial deal includes significant limits on Iran's nuclear program and begins to address the United States' most urgent concerns regarding Iran's enrichment capabilities, such as its existing stockpiles of enriched uranium, the number and capabilities of its centrifuges, and its ability to produce weapons-grade plutonium using the Arak heavy water reactor. In return, as part of this initial step, the P5+1 group will provide "limited, temporary, targeted, and reversible" relief to Iran. If Iran fails to meet the commitments outlined in the initial deal, the P5+1 group will revoke the limited relief and impose additional sanctions on Iran.

The main elements of the initial agreement are outlined below.

I. KEY ELEMENTS OF THE INITIAL AGREEMENT

A. Iranian Commitments

1. Iranian commitment to halt the progress of its nuclear program

As part of the initial deal, Iran has agreed to:

- Halt the enrichment of uranium above 5% and dismantle technical connections among its centrifuges required to enrich uranium above 5%;

- Neutralize its stockpile of near-20% enriched uranium, by diluting such uranium to below 5% or converting it to a form not suitable for further enrichment;
- Halt progress on the development of its enrichment capacity (*e.g.*, by not installing additional centrifuges or using next-generation centrifuges to enrich uranium; leaving inoperable roughly half of installed centrifuges at the Natanz nuclear facility and three-quarters of the installed centrifuges at the Fordow nuclear facility; limiting its centrifuge production to those needed to replace damaged machines; and not constructing additional enrichment facilities);
- Halt progress on the growth of its 3.5% low-enriched uranium stockpile; and
- Halt advances of its activities at the Arak heavy water reactor and its development of plutonium.

2. Increased Transparency and Monitoring

Iran has also agreed to unprecedented transparency and monitoring of its nuclear program. In particular, Iran has committed to:

- Providing IAEA inspectors with daily access to the Natanz and Fordow nuclear facilities;
- Providing the IAEA with access to centrifuge assembly facilities, centrifuge rotor component production and storage facilities, and uranium mines and mills;
- Providing design information for the Arak heavy water reactor;
- Providing "more frequent" inspector access to the Arak heavy water reactor; and
- Providing certain key data and information called for in the Additional Protocol to Iran's IAEA Safeguards Agreement and Modified Code 3.1.

Although the IAEA will play the leading role in the verification mechanism, the P5+1 group and Iran have agreed to the creation of a Joint Commission to work with the IAEA to monitor implementation of the deal and to address any issues that may arise.

B. Limited, Temporary, Reversible Sanctions Relief

In exchange for Iran's cooperation during the six-month period of continued negotiations, the P5+1 group agreed to provide limited, temporary, targeted, and reversible relief while maintaining most of the current sanctions against Iran, including the sanctions against the country's energy, shipping, shipbuilding, finance, and banking sectors, and against Iranian parties on the List of Specially Designated Nationals and Blocked Persons ("SDN List") maintained by the U.S. Treasury Department's Office of Foreign Assets Control. If Iran fails to meet its commitments, the relief will be revoked. Specifically the P5+1 group has committed to:

- Suspend certain sanctions relating to petrochemical exports from Iran, dealings by Iran in gold and precious metals, and Iran's automotive sector;
- License safety-related repairs and inspections inside Iran for certain Iranian airlines;
- Allow purchases of Iranian oil to remain at current levels (which have been reduced 60% over the past two years) and permit $4.2 billion from sales of Iranian oil to be transferred to Iran as it fulfills its commitments;
- Allow $400 million in governmental tuition assistance to be transferred from restricted Iranian funds directly to recognized educational institutions in third countries to defray the tuition costs of Iranian students;

- Facilitate humanitarian transactions that are already permitted under U.S. law (*e.g.*, those related to Iran's purchase of food, agricultural commodities, medicine, or medical devices), and facilitate transfers for medical expenses incurred abroad; and
- Refrain from imposing new nuclear-related sanctions against Iran for six months.

In total, the deal is expected to provide approximately $7 billion in sanctions relief to Iran. However, this is just a sliver of the revenue Iran could be generating if sanctions were further eased. Moreover, the vast majority of Iran's approximately $100 billion in foreign exchange holdings will remain inaccessible or restricted by sanctions.

II. Potential Impact on Existing Sanctions

It appears that the reported easing of sanctions will be very limited and targeted, though it is not yet clear how the easing will be implemented. Clients are therefore well-advised to refrain from undertaking any dealings with Iran until the bounds of the sanctions easing are further defined by the U.S. and EU authorities.

A. Impact on U.S. Sanctions

The White House has not yet indicated how it plans to ease the sanctions. As described in previous e-alerts, in addition to the U.S. sanctions (codified in in the Iranian Transactions and Sanctions Regulations) that prohibit U.S. persons and their owned or controlled non-U.S. affiliates from engaging in virtually all unlicensed dealings involving Iran, the U.S. government has constructed a complex scheme of retaliatory sanctions that directly target Iran's petrochemical and automotive sectors, as well as its dealings in gold and precious metals. Potentially relevant existing retaliatory sanctions measures include:

- **Executive Order 13622 (July 30, 2012).** As described in our e-alert of August 14, 2012, E.O. 13622 authorizes retaliatory sanctions against any person, including any financial institution, that knowingly engages in a significant transaction for the purchase of petrochemical products from Iran.
- **Iran Freedom and Counter Proliferation Act of 2012 ("IFCPA").** As described in our e-alert of January 4, 2013, the IFCPA requires the President to impose retaliatory sanctions on persons who knowingly sell, supply, or transfer, directly or indirectly, to or from Iran any precious metal. The IFCPA also authorizes retaliatory sanctions against foreign financial institutions that knowingly conduct or facilitate a significant financial transaction for the sale, supply, or transfer of precious metals. The President has the authority to waive the imposition of such sanctions for a period of 180 days if the President determines that such a waiver is vital to the national security of the United States and he submits a report to Congress providing justification for the waiver.
- **Executive Order 13645 (June 3, 2013).** As described in our e-alert of June 13, 2013, E.O. 13645 imposes sanctions on persons, including foreign financial institutions, that knowingly engage in any significant transaction related to the supply to Iran of significant goods or services used in connection with Iran's automotive sector.

The scope and timing of a relaxation of these various measures remain unclear. For example, it is not certain that the commitment to "suspend certain sanctions" in these sectors necessarily means the sanctions will be eliminated entirely; nor is it clear how quickly the U.S. government will act to ease sanctions, or when the relaxed rules will take effect.

The U.S. government will continue to strictly enforce the remaining sanctions against Iran during the six-month negotiating period, including importantly those sanctions that affect Iran's sale of crude oil (though, as noted, purchases of such oil will be permitted at current levels), those affecting foreign financial institutions' dealings with the Central Bank of Iran and parties (including Iranian banks) that have been designated as a result of their involvement in Iran's terrorism or weapons proliferation activities, and those affecting the Iranian energy, shipping, and shipbuilding sectors.

B. Impact on EU Sanctions

The EU is currently considering how the P5+1 group discussions will impact the current EU sanctions regime against Iran; it is possible that some easing of sanctions will occur as early as next month. Initial indications suggest, however, that the bulk of the broad EU sanctions against Iran that are currently in place (as implemented under European Council Regulation No. 267/2012), including the broad EU restrictions associated with dealings in Iran's energy, shipping, and financial sectors, will also remain in effect. All UN Security Council sanctions remain in effect.

III. NEXT STEPS

During the initial six-month phase, the P5+1 group aims to negotiate a comprehensive, longer term deal to address Iran's nuclear program. Nothing will be agreed to with respect to that comprehensive solution until everything is agreed. If the parties cannot conclude a comprehensive deal, the White House has stated that it is prepared to increase the sanctions on Iran.

IV. CONGRESSIONAL REACTION

The initial reactions from Congress are mixed. While House Minority Leader Nancy Pelosi has expressed support for the deal, some Democrats and Republicans have criticized the deal and voiced concerns that the White House has made a miscalculation by assuming diplomacy will persuade Iran to cease its nuclear weapons development program. A group of Senators (including Majority Leader Harry Reid and other Democrats) continue to push forward with plans to pass a new round of sanctions, which could undercut the terms of the six-month deal. Senate Foreign Relations Committee Chairman Bob Menendez has suggested that the Senate could still move ahead with a vote on tightening sanctions on Iran, while allowing the Obama administration six months to reach a final deal before imposing the new sanctions. It is possible that the Senate will take up new sanctions against Iran immediately following the chamber's Thanksgiving recess.

We are closely following the developments in the negotiations with Iran and will provide additional updates as new information becomes available. In the meantime, we are well-positioned to assist clients in understanding how the changes in the Iran sanctions may affect their operations and business opportunities.

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