

Developments in U.S. Iran Sanctions

Administration Also Revises Russia Sanctions, Terminates Most Sudan Sanctions

October 16, 2017

International Trade Controls

On October 13, President Trump [announced](#) that he would no longer certify to Congress that the suspension of U.S. sanctions against Iran pursuant to the Joint Comprehensive Plan of Action (“JCPOA”) is “appropriate and proportionate” to the steps that Iran has taken to terminate its illicit nuclear program. The President’s much-anticipated announcement does not mean that the United States is withdrawing from the JCPOA, nor does it automatically result in the re-imposition of any U.S. sanctions against Iran. Rather, the President’s announcement gives the U.S. Congress 60 days to introduce legislation to re-impose U.S. sanctions that could be considered under expedited procedures. Importantly, although President Trump did not call on Congress to re-impose the pre-JCPOA U.S. nuclear-related sanctions, he did threaten to terminate U.S. participation in the JCPOA in the future if Congress and U.S. allies do not take action to address perceived flaws in the agreement.

At the same time, the Trump Administration [expanded sanctions](#) against Iran’s Islamic Revolutionary Guard Corps (“IRGC”), and designated four additional entities for sanctions for their support of Iran’s weapons proliferation activities. Further, Senators Bob Corker and Tom Cotton announced that they would be introducing legislation to address perceived shortcomings in the JCPOA, consistent with President Trump’s request.

The developments of late last week follow several other recent changes in U.S. sanctions involving Russia and Sudan.

On September 29, the Trump Administration, as expected, revised key aspects of the U.S. sectoral sanctions against Russia relating to dealings in debt of certain parties operating in Russia’s [financial services](#) and [energy](#) sectors. The move was required by the Countering America’s Adversaries Through Sanctions Act (“CAATSA”) discussed in our [alert](#) of July 28, 2017.

Finally, on October 12, the Trump Administration [terminated](#) most U.S. sanctions against Sudan, which had been substantially suspended since January 2017 pursuant to an Executive Order that President Obama issued in the waning days of his Administration.

Iran

Failure to Make INARA Certification

The Iran Nuclear Agreement Review Act of 2015 (“INARA”) requires that the President

certify to Congress every 90 days that: (1) “Iran is transparently, verifiably, and fully implementing” the JCPOA; (2) Iran has not committed a material breach with respect to the JCPOA, or if it has committed a material breach, then it has cured that breach; (3) Iran has not taken any action that could significantly advance its nuclear weapons program; and (4) suspension of U.S. sanctions against Iran in connection with the JCPOA is “appropriate and proportionate” to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program and is “vital to the national security interests of the United States.”

In refusing to make this certification to Congress, which was due on October 15, President Trump explained that he does not believe that the suspension of U.S. sanctions against Iran is “appropriate and proportionate” to Iran’s steps to terminate its illicit nuclear program. As spelled out in our [prior alert](#), in January 2016, the United States and the European Union both significantly eased their sanctions against Iran, following verification by the International Atomic Energy Agency (“IAEA”) that Iran had carried out its commitments under the JCPOA. Specifically, the United States revoked or waived—but did not eliminate entirely—most of its *secondary* sanctions, which target non-U.S. companies not owned or controlled by U.S. persons that engage in certain Iran-related activities. By contrast, the *primary* U.S. sanctions that prohibit U.S. persons¹ and their owned or controlled non-U.S. affiliates from engaging in virtually any dealings with Iran (absent U.S. government authorization) remained in place, though the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) did issue a general license broadly authorizing non-U.S. entities owned or controlled by U.S. persons to engage in Iran-related activities, subject to certain limitations.

The President’s refusal last week to certify Iran’s compliance does not mean that the United States is withdrawing from the JCPOA at this time, or that U.S. sanctions against Iran that have been suspended under the JCPOA will necessarily be re-imposed. Rather, as provided in INARA, the failure to certify opens an expedited pathway for Congress to decide whether to reinstate some or all of the suspended statutory sanctions. Specifically, INARA provides that legislation to reinstate U.S. sanctions introduced in the House of Representatives or the Senate by the Majority or Minority Leader of either chamber within 60 days of the non-certification shall be entitled to consideration under expedited procedures that effectively guarantee a floor vote in each chamber.

Of course, Congress could act at any time under its ordinary procedural rules to reinstate the U.S. sanctions that have been suspended pursuant to the JCPOA, regardless of whether or not the President made the INARA certification. Likewise, regardless of whether or not he made the INARA certification, President Trump could take action on his own to re-impose any or all of the U.S. sanctions that have been suspended pursuant to the JCPOA by simply revoking the presidential waivers of such sanctions or imposing sanctions under new Executive Orders. Indeed, President Trump will have to decide by mid-January 2018 whether to continue much of the Iran sanctions relief under the JCPOA,

¹ U.S. persons are: (1) U.S. citizens and U.S. lawful permanent residents (i.e., “green-card” holders) regardless of location or employer; (2) any entity organized under the laws of the United States or of any jurisdiction within the United States (including foreign branches of such an entity) and their employees; and (3) persons within the United States (even if only on a temporary basis).

as the presidential waivers for many of the suspended sanctions expire then. If President Trump elects not to renew those sanctions waivers, then at least some U.S. sanctions that were suspended pursuant to the JCPOA would be reinstated, and the United States would certainly be in breach of the JCPOA.

Importantly, President Trump did not call on Congress to reinstate the U.S. sanctions that were suspended pursuant to the JCPOA, and early indications are that Congress does not intend to reinstate such sanctions. Rather, President Trump called on Congress and U.S. allies to address certain perceived flaws in the JCPOA, and he threatened to withdraw the United States from the agreement altogether if they fail to do so.

Corker-Cotton Legislation

Consistent with President Trump's request, Senators Bob Corker and Tom Cotton announced on October 13 that they would be introducing legislation to address perceived flaws in the JCPOA.

The text of the Corker-Cotton legislation is not yet publicly available, but a [fact sheet](#) issued by Senators Corker and Cotton indicates that the legislation would seek to automatically re-impose U.S. sanctions (presumably meaning those U.S. sanctions that were suspended pursuant to the JCPOA) if Iran gains the capability to produce a nuclear weapon within a one-year "breakout" period at any time in the future. Specifically, as described to date, the Corker-Cotton legislation would:

- Reinstates U.S. sanctions notwithstanding the JCPOA's sunset provisions, should Iran utilize the flexibility the JCPOA affords to it to ramp up its nuclear program when those provisions kick in. As described in our [July 2015 alert](#), the sunset provisions provide that most JCPOA restrictions on Iran's activities pertaining to uranium enrichment, heavy water accumulation, and spent fuel reprocessing terminate after 10-15 years;
- Seek to enhance the inspection authorities of the IAEA, which works to verify Iran's compliance with the terms of the JCPOA; and
- Seek to further limit Iran's advanced centrifuge program.

Since the JCPOA is a multilateral agreement, the United States does not have the ability to change it without the consent of all of the other signatories, including Iran, China, and Russia. Early indications are that U.S. allies who also are signatories to the JCPOA (France, the United Kingdom, and Germany) are willing to work with the United States to address Iran's ballistic missile and terrorism activities, but there does not appear to be any appetite for seeking to amend the JCPOA.

IRGC and Other Sanctions Designations

Also on October 13, OFAC expanded the sanctions against the IRGC. Specifically, the IRGC—which the United States already had designated on its List of Specially Designated Nationals and Blocked Persons ("SDN List") for weapons proliferation and human rights-related reasons—now is also designated for its support of terrorism-related activities.

The terrorism-related designation of the IRGC was required to be made by October 31 pursuant to CAATSA Section 105 and, as a legal matter, is largely symbolic. Prior to this

designation, the property and interests in property of the IRGC (and its officials, agents, and affiliates) that were in, or came into, the United States or the possession or control of a U.S. person were required to be blocked, and it already was prohibited for U.S. persons and their owned or controlled non-U.S. affiliates to engage in virtually any dealings with the IRGC or any entities 50 percent or more owned by the IRGC.

Further, non-U.S. persons already were exposed to U.S. secondary sanctions if they: (1) knowingly and materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the IRGC or any of its officials, agents, or affiliates whose property is blocked; (2) knowingly engaged in a significant transaction with the IRGC or any of its officials, agents, or affiliates whose property is blocked; or (3) knowingly facilitated a significant transaction or provided significant financial services for the IRGC or any of its agents or affiliates whose property is blocked.

The designation of the IRGC for its support of terrorism-related activities does not alter these restrictions. However, as explained in [guidance](#) issued by OFAC on October 13, the designation of the IRGC for its support of terrorism means that the so-called "Berman exemptions" under the International Emergency Economic Powers Act relating to personal communications, humanitarian donations, information or informational materials, and travel are no longer available with respect to U.S.-person dealings with the IRGC.

Additionally, OFAC designated for sanctions three Iranian entities (Shahid Alamolhoda Industries, Rastafann Ertebal Engineering Company, and Fanamoj) and one Chinese entity (Wuhan Sanjiang Import and Export Co. LTD) for supporting Iran's weapons proliferation activities. As a result of these designations, the property and interests in property of the designated entities that are in, or that come into, the United States or the possession or control of a U.S. person must be blocked, and U.S. persons are precluded from virtually any dealings with the designated entities or entities 50 percent or more owned by them (or other SDNs). Further, non-U.S. persons could be exposed to U.S. secondary sanctions if they knowingly provide significant financial, material, technological, or other support to, or goods or services in support of, any activity or transaction on behalf of or for the benefit of the designated entities.

Russia

On September 29, OFAC made the following revisions to key aspects of the U.S. sectoral sanctions targeting Russia, as required by Section 223 of CAATSA and explained in our [July 2017 alert](#):

- **Directive 1.** OFAC Directive 1 currently prohibits U.S. persons from dealing in new debt of longer than 30 days maturity or new equity of sectorally sanctioned Russian banks (and entities 50 percent or more owned by one or more such banks). Effective November 28, U.S. persons will be prohibited from dealing in new debt of longer than 14 days maturity or new equity of such sectorally sanctioned Russian banks and entities 50 percent or more owned by one or more such banks.
- **Directive 2.** OFAC Directive 2 currently prohibits U.S. persons from dealing in new debt of longer than 90 days maturity of certain sectorally sanctioned Russian energy

companies (and entities 50 percent or more owned by one or more such energy companies). Effective November 28, U.S. persons will be prohibited from dealing in new debt of longer than 60 days maturity of such sectorally sanctioned Russian energy companies and entities 50 percent or more owned by one or more such energy companies.

Notably, Section 223 of CAATSA also requires OFAC, by October 31, to expand the existing sectoral sanctions prohibitions (in OFAC Directive 4) relating to deepwater, Arctic offshore, or shale exploration or production projects that have the potential to produce oil in or offshore Russia and involve certain Russian energy companies to reach such new projects *anywhere in the world* if certain conditions are met. OFAC has not yet issued this revision, which will take effect 90 days after its issuance.

Sudan

Finally, on October 12, OFAC announced that it was terminating most U.S. sanctions against Sudan. As described in our [prior alert](#), the Obama Administration suspended most U.S. sanctions against Sudan in January 2017 in response to “positive actions” that the Government of Sudan had taken in the areas of counterterrorism and security cooperation, a reduction in offensive military activity, cooperation on addressing regional conflicts, and efforts to improve access for humanitarian assistance.

Specifically, as has been the case since the U.S. sanctions were suspended in January, U.S. persons are not prohibited from engaging in trade and other business dealings with Sudan, and the property and interests in property of the Government of Sudan (and any entity owned or controlled by the Government of Sudan) that come into the United States or the possession or control of a U.S. person are not required to be blocked, subject to the following key exceptions:

- **Agricultural Commodities, Medicine, and Medical Devices.** Notwithstanding the termination of most U.S. sanctions against Sudan, the Trade Sanctions Reform and Export Enhancement Act of 2000 (“TSRA”) still requires authorization from OFAC to export and reexport to Sudan agricultural commodities, medicine, and medical devices as a result of Sudan’s inclusion in the State Sponsor of Terrorism List. To address this statutory requirement, OFAC has issued a general license authorizing the export and reexport of agricultural commodities, medicine, and medical devices to Sudan (or to a person in a third country purchasing specifically for resale to Sudan), provided that: (1) the exports and reexports are shipped within the 12-month period beginning on the date of the signing of the export or reexport contract; (2) the items are not exported or reexported to persons whose property and interests in property are blocked; and (3) the export and reexport complies with U.S. export control laws and regulations.
- **Commodities, Software, and Technology Identified on the Commerce Control List.** The termination by OFAC of most U.S. sanctions against Sudan does not impact U.S. export controls relating to Sudan that are administered by the U.S. Commerce Department. Specifically, a Commerce Department authorization continues to be required for any person (whether or not a U.S. person) to export, reexport, or transfer to or within Sudan any items that are subject to the U.S. Export

Administration Regulations (“EAR”)² and that are identified on the EAR’s Commerce Control List (i.e., are classified other than EAR99). In many cases, applications for authorization to export or reexport such items to Sudan are subject to a policy of denial. However, in January 2017, the U.S. Commerce Department [announced](#) that it would apply a general policy of approval of applications to export or reexport to Sudan items intended to ensure the safety of civil aviation and for railroad construction and repair.

- **South Sudan and Darfur.** The termination of most U.S. sanctions against Sudan does not impact the separate U.S. sanctions programs relating to South Sudan and Darfur. Individuals and entities that have been added to the SDN List pursuant to the U.S. sanctions relating to South Sudan and Darfur remain on the SDN List. U.S. persons are prohibited from engaging in virtually any dealings with such individuals and entities, and their property and interests in property that are in, or that come into, the United States or the possession or control of a U.S. person still must be blocked.

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We will continue to monitor closely developments with respect to U.S. sanctions and are well-positioned to assist clients in understanding how such developments may affect their business operations.

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² In this context, items subject to the EAR are: (1) items in the United States or moving in transit through the United States; (2) U.S.-origin items; (3) non-U.S.-origin items that incorporate more than 10 percent U.S.-origin content (by value) controlled for Sudan; (4) certain foreign-made direct products of U.S.-origin technology or software; and (5) certain commodities produced by any non-U.S. plant or major component of a non-U.S. plant that is the direct product of certain U.S.-origin technology or software. Defense items controlled by the International Traffic in Arms Regulations (“ITAR”) also cannot be exported or reexported to Sudan without State Department authorization, which in most cases would be denied.