



Tactical Issues Surrounding a U.S. Withdrawal from the Iran Nuclear Agreement

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ON JANUARY 12, 2018, as President Donald J. Trump extended the waivers on Iran oil-export sanctions for a third time, he issued a stark warning to the parties involved in the Joint Comprehensive Plan of Action: if the U.S. Congress, America's European allies, Russia, and China did not produce satisfactory remedies to his concerns about flaws in the nuclear deal, he would not extend the waivers again, and the United States would in effect withdraw from the JCPOA.



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WHATEVER ONE THINKS of the notion of withdrawal, the question remains as to what such a move would mean in practical terms. If the president follows through on this threat, presumably on May 12, when waivers from the National Defense Authorization Act (NDAA) of 2012 must be extended again by presidential decision, it will not be as simple as flipping a switch. Trump would be faced with numerous necessary steps without which the withdrawal would not mean much in actuality. This report outlines the options available to the administration should it choose to terminate its cooperation with JCPOA provisions, and the technical, legal, and administrative considerations related to reimplementing of sanctions.

To be sure, any decision about whether to withdraw from the JCPOA has broad strategic implications. Those implications, however, are beyond the scope of this paper, which focuses on procedural issues and tactical options involved in a potential withdrawal, not on the fundamental question of whether withdrawing from the agreement is a wise course for U.S. policy. Indeed, this paper is not meant to endorse such a decision, but instead to point out the lengthy list of tactical issues involved, in addition to the broader strategic consequences that should be weighed before making any decision about leaving the deal.

Ideally, in advance of a final decision on JCPOA withdrawal, the interagency process will work efficiently to ready implementation plans and to consider all related economic, diplomatic, military, and intelligence issues. If that does not happen, then U.S. friends and foes will be unable to understand the meaning and impact of a decision to withdraw from the Iran nuclear deal and to reimpose sanctions on the Islamic Republic.

What Ending the U.S. Waivers Means

WHILE PRESIDENT TRUMP'S threats to let current waivers expire have captured headlines, reapplication of sanctions would involve many actions entailing many options for the administration. Sanctions relief was provided pursuant to the JCPOA by "waiving" some sanctions, "commit[ing] to refrain" from imposing other sanctions, and "revoking" yet other sanctions.¹ The third category in particular, the revocation of certain sanctions, would not be affected by an end to waivers; the second category would be affected only if the U.S. government committed the resources needed to enforce those sanctions; and even the first category would require executive action, given that the waived statutes are not self-executing.

WAIVERS

The four key pieces of legislation for which waivers were issued are the 2012 NDAA, the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA), the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA), and the Iran Sanctions Act (ISA), adopted in 1996 as the Iran and Libya Sanctions Act (ILSA). (All relevant legislation is summarized in Annex 1.)

Since the Obama administration published the initial waivers ahead of the October 18, 2015, adoption of the JCPOA, only to go into effect on so-called Implementation Day (January 16, 2016), none of the subsequent waivers have been made public.² Both their timing and their content are unknown.

Presumably, the Obama administration extended all four waivers before leaving office in January 2017. Of the four key pieces of legislation, three—the TRA, ISA, and IFCA—allow six-month waivers, with waivers under

the NDAA only covering 120 days. The NDAA waiver appears to be the only one up for extension in May 2018. Rather than requiring the president to issue waivers at different times for different pieces of legislation, one option evidently under discussion would be to issue waivers for all four each 120 days. That would allow the president to review the totality of Iran sanction waiver policy every four months. It is worth pointing out that the administration could also cancel existing waivers at any point.

WHAT DOES REIMPOSING SANCTIONS ENTAIL?

The idea of reimposing sanctions on Iran was widely discussed prior to the implementation of the JCPOA. Testifying before Congress in August 2015, Adam Szubin, acting undersecretary of the treasury for terrorism and financial intelligence, said: “For U.S. sanctions, this can be done rapidly in a matter of days, and we have the discretion to impose everything from smaller penalties to the powerful oil and financial restrictions.”³

From a technical perspective, should the president terminate or fail to extend the waivers for the four pieces of legislation, these statutes would immediately go back into effect, meaning the president would, in theory, be *required* to impose certain sanctions.⁴ In some cases, statutes explicitly direct the president to use authorities derived from the International Emergency Economic Powers Act (IEEPA) to carry out such requirements, meaning the imposition of sanctions requires the executive branch to spell out how such authority is being used.⁵ However, a number of issues would need to be resolved before those sanctions would actually become effective again. For example:

- Pursuant to the JCPOA, a number of firms and individuals were removed from sanctions lists under various executive orders and laws. Those designations were revoked, not waived or suspended. The end of the sanctions waivers does not automatically reimpose sanctions on firms and individuals who were de-designated. The process of redesignation will take time and administrative work. Changes in the tagging of “Government of Iran” entities on the Office of Foreign Assets Control (OFAC) list—aka the Executive Order 13599 list—which received relief from secondary sanctions would have to be updated.
- Executive Order 13716, issued on the JCPOA’s Implementation Day, revoked and amended the executive orders that had implemented the four statutes, and in some cases added extra elements.⁶ Simply ending the sanctions waivers would leave in place EO 13716. Even if EO 13716 is itself revoked, restoring the earlier executive orders may require reissuing them, either in their original form or with revisions.
- “Required” penalties associated with some of the relevant statutes demand a number of executive decisions, without which the reimposition of sanctions would have little meaning. The responsibility for deciding who is subject to the announced sanctions rests with the Departments of State, Justice, Commerce, and Treasury. The staff in those departments needs to be given marching orders on how to proceed. For instance, some of the statutes provide for selection of penalties from a menu of options, with some penalties being largely symbolic and some quite substantial; no particular penalty goes into effect until that selection has been made.
- A political decision will be needed on how vigorously to enforce the newly announced sanctions. Consider the record regarding the ISA. The first sanction under that act was not issued until 2011: three presidents refused to implement it as written.⁷ Sanctions enforcement will be most effective if bolstered by both political will and the commitment of personnel and resources.
- Answers would have to be provided for such questions as: What specific licenses—which are not made public—would be rendered invalid by the reimposed sanctions? What kinds of “wind-down licenses” would be issued? In particular, what would happen to the post-JCPOA Iranian deals with Boeing and Airbus? How would foreign subsidiaries of U.S. firms, which were allowed to operate with and in Iran as a result of the JCPOA, be affected?
- In the end, the U.S. government would presumably reissue implementing regulations, such as the Iran Transactions and Sanctions Regulations, that allow for coherence across the overlapping mandates from various laws and executive orders, in order to explain exactly what is prohibited and to provide definitions and grounds for licensing. Indeed,

some may argue for leaving vague how exactly the sanctions will work. In this era of “de-risking” by financial institutions, those firms may avoid business involving Iran if the rules are unclear. Leaving the rules vague may also reduce the risk of sharp confrontation with other governments about the extra-territorial reach of U.S. sanctions. Another possibility, however, is that such a course could trigger a backlash from commercial actors, even possibly led by governments, to devise workarounds or indemnities from U.S. sanctions, such as ways to avoid using the U.S. financial system.⁸ This trend could undercut the effectiveness of sanctions as an instrument of U.S. policy and could harm the centrality of the U.S. dollar in the world financial system, an issue that should be considered in any review of the strategic implications of whether to continue the sanctions waivers.

- Finally, the impact of terminating waivers, or allowing them to lapse, would depend to a great extent on the actions of private firms, which themselves will depend significantly on enforcement mechanisms. In advance of implementation of JCPOA sanctions relief, the P5+1 (Britain, China, France, Russia, United States, plus Germany), as the nations negotiating with Iran were known, conducted extensive outreach with commercial and financial sectors in the United States, Europe, and Asia. Compliance by these entities is what produces the pressure intended to coerce a sanctions target. If terminating waivers is aimed ultimately at reestablishing pressure on Iran to change policy or renegotiate the JCPOA, then success will be more likely if the United States coordinates a plan to persuade foreign firms to cooperate with the sanctions.

Role of the UN, Europe, and Other Countries

WHILE THE SPECIFIC context of the U.S. decision to withdraw from the JCPOA matters, it is fair to say that such a move—especially when coupled with assertive U.S. action to end JCPOA-related waivers—would be welcomed by a handful of countries, especially U.S. Middle East allies, but would trigger widespread condemnation from a much larger group of governments around the world. Many of the latter are so commit-

ted to the nuclear deal that they would urge consultations with Iran before reimposing any sanctions even in the event of clear, convincing evidence of Iranian non-compliance—and those consultations would then be dragged out for years.

UNITED NATIONS

While U.S. law does not require the administration to present evidence of Iranian noncompliance with the JCPOA before reimposing full U.S. sanctions, the Trump administration has the option to present such evidence, which might be valuable in the court of public opinion. Were it to do so, presumably it would invoke the dispute resolution mechanism specified in JCPOA paragraphs 36 and 37. That entire process, from start to finish, is subject to strict deadlines adding up to thirty-five days, “unless the time period was extended by consensus.” This is not a lengthy delay, and going through the process would have considerable merit for showing that the United States respects the mechanisms of the JCPOA. Given the importance that many Europeans tend to attach to the rule of international law as a fundamental principle, observing the legal niceties may have a salutary effect on the European debate.

The JCPOA details how a complaining state retains full rights to press its complaints even if no consensus exists among the parties. In its words, the complainant “could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.” Note the two possibilities: to cease performing JCPOA commitments or to refer the matter to the UN Security Council. Under the terms of the JCPOA, therefore, the U.S. government could announce it was no longer committed to suspending sanctions but that it would not necessarily press for reimposition of UN sanctions, depending on how Iran and the other parties reacted to the U.S. action.

Were the United States to refer this matter to the UN Security Council, UN sanctions would without doubt “snap back.” Under UN Security Council Resolution 2231, the mechanism is almost automatic. A snap-back requires nothing more than a U.S. notification to the Security Council of “an issue that the JCPOA participant State believes constitutes significant non-performance of commitments under the JCPOA.” There is no requirement that any other government agree with the notifying

state. Unless the Security Council adopts a resolution in the subsequent thirty days preventing snap-back—a resolution the United States could veto—the snap-back is automatic. To be sure, both Resolution 2231 and the JCPOA include hortatory language saying the parties should seek to prevent such a snap-back, but that language has no effective force.

The snap-back of UN sanctions might well have more symbolic than practical impact on Iran. Many countries have effectively ignored various UN sanctions, and a snap-back of Iran sanctions over the objections of the Security Council majority would likely encounter the same fate. Even if the UN sanctions were enforced to a considerable degree, they are not nearly as burdensome for Iran as the unilateral U.S. sanctions—in particular, the UN sanctions do not target Iran’s oil exports. The consequences of snap-back for broader U.S. interests regarding the UN—e.g., cooperation on other issues—should be among the many matters considered in any review of the strategic implications of the sanctions waiver.

EUROPE

Were the United States to trigger a snap-back of UN sanctions, the major European states may immediately register their political outrage, disappointment, or disapproval, but they would face a quandary about how to react in practice. On the one hand, some or all of the three European parties to the JCPOA would be reluctant to be seen as cooperating with a Trump-led initiative to impose sanctions on Iran when they do not concur with either the U.S. judgment of Iranian non-compliance or the U.S. decision to restore sanctions. On the other hand, if Washington follows the letter of the JCPOA in its withdrawal from the agreement and places its action within the context of international law, including Security Council resolutions, the Europeans may find themselves handcuffed by their own professed respect for international law, as odious as the U.S. action may seem to them.

Reconciling these two factors could be difficult. To be sure, it is difficult to imagine European governments doing much, if anything, to enforce reimposed UN sanctions, much less unilateral U.S. sanctions that go beyond the requirements of the UN Security Council resolutions. But the UN snap-back would give Washington a good opening for arguing to European governments that they should do nothing to oppose U.S. efforts to enforce the UN sanctions.

Were the United States to reimpose its unilateral sanctions on Iran without any UN action, important voices in Europe would press for EU action to block the U.S. sanctions. The European Union has in place a Council Regulation “protecting against the effects of the extra-territorial application of legislation adopted by a third country.”⁹ Yet while that sounds like a potent tool to use against any sanctions the United States imposes on Iran, it would be of limited practical impact for several reasons, including the following:

- The regulation is so vague that it fails to make clear whether it applies to any transactions.¹⁰ For instance, the regulation specifies that if noncompliance with U.S. rules would result in “serious damage,” compliance can be authorized.
- Enforcing the regulation would be no easy matter. Firms are unlikely to want to antagonize U.S. authorities by filing a complaint specifying that U.S. extraterritorial sanctions have kept them out of Iran. And demonstrating that those sanctions were the only—or even the decisive—factor would be quite a challenge. Firms have many reasons not to do business with a potential client. Iran presents many risks, be they business risks such as extensive corruption or political risks such as continuing EU sanctions on the Islamic Revolutionary Guard Corps (IRGC) and other entities.
- Enforcement is left to individual member-states. Only half of them have set out potential penalties for violating any EU sanctions measures, and it is unclear if those would apply to this regulation. No country has ever applied a penalty for violating the blocking regulation.
- The regulation would have to be amended to cover any U.S.-reimposed sanctions. As of now, the only laws covered by the regulation are the Helms-Burton Act and the ILSA.¹¹ Extending the regulation requires unanimity among EU members, which is often not easy to achieve. The record to date regarding the blocking regulation is that the United States will go to considerable lengths to ensure that the regulation is never applied.¹² U.S. presidents have, for more than twenty years, waived the offending part of Helms-Burton, and both Presidents Bill Clinton and George W. Bush consistently refused to certify any investment in Iran as meet-

ing the requirements to trigger the ILSA sanctions despite ample press reports to the contrary.

As a practical matter, it is important to note that for European firms, reimposed U.S. unilateral sanctions would constitute one factor, among many others, potentially weighing against investment in Iran.¹³ At a time when European firms have good opportunities in many other markets and when businesses are generally reducing their risks, Iran is not necessarily the El Dorado that European businesses were expecting when the JCPOA was announced. Since the JCPOA came into effect, the level of European business in Iran—especially European investment in Iran—has been rising but by no means spectacularly. In 2017, European trade with Iran returned to the pre-sanctions level of 2010 in real terms, but both exports to Iran and imports from Iran were just 0.7 percent of European totals—not exactly a major market.¹⁴ Reimposed U.S. sanctions would most likely slow European trade with Iran, but the impact on overall EU trade would be trivial.

The blocking regulation as it now stands could arguably serve more as a political statement of anger at U.S. policy than a practical effort to preserve access to Iran for European firms. That said, Europe and the United States have many reasons to contain disputes between them. Each matters more to the other than Iran does to either. To be sure, preserving healthy U.S.-Europe relations will matter more for both than anything having to do with Iran.

RUSSIA, CHINA, AND OTHER PARTIES

While it is difficult to see the Russian or Chinese government doing much, if anything, to enforce UN sanctions or to cooperate with U.S. unilateral sanctions, they are not the most important parties in their countries for making such sanctions effective. What counts much more is the reaction of Russian and Chinese businesses, which are the key players in carrying out trade with and investment in Iran. During the period of full UN/U.S./EU sanctions on Iran, compliance by Russian and Chinese firms—especially financial institutions—was motivated much more by concern about the impact of U.S. enforcement actions than by any steps taken by the authorities in Moscow and Beijing. More generally, firms around the world will consider many factors when deciding whether to invest in Iran. The already-noted high level of corruption, the lack

of transparency, the poorly functioning financial system, the arrest on arbitrary charges of foreign businesspeople (especially dual nationals), and similar domestic problems are likely to weigh as heavily on the minds of investors as the potential impact of U.S. sanctions. Iran is already not a very attractive market or investment opportunity; U.S. sanctions only make it even less attractive. The poor business climate in Iran can work to U.S. advantage, because Washington can claim that the lack of trade and investment is due to U.S. sanctions when in fact those sanctions are only one factor, one that is quite possibly less important than the barriers to business put up by the Iranian government itself.

A particularly thorny issue for all concerned will be Iranian oil exports. Yet here, too, the United States has a variety of options for applying pressure. The NDAA mandates tough measures against state-owned and central banks of countries that continue to import Iranian oil unless the country “significantly reduces” those imports. The Trump administration has continued to make determinations every 180 days that a “sufficient supply” exists in the global petroleum market to permit a significant reduction in the volume of petroleum purchased from Iran.¹⁵

The clock for enforcing this measure is slow: 180 days to determine countries are making significant reductions in Iranian oil imports, and then another 180 days to introduce sanctions. For European countries, forgoing Iranian oil would be no particular commercial loss; little Iranian oil goes to Europe now, and decisions by European countries to import Iranian oil after the reimposition of U.S. sanctions would be a political statement as much as a commercial matter. Commercially more important is the active role European firms play as oil traders, including in Iranian oil.

If sanctions go back into effect, another question is how OFAC will measure a substantial reduction in volume; the NDAA law is not explicit on this matter. The definition adopted would be of particular importance for several Asian large oil importers—namely China, India, Japan, and South Korea—that rely heavily on Iranian oil.

For these four countries, the U.S. government might approve a return to the pre-JCPOA practice in which payments to Iran were put in blocked accounts in their respective central banks. The funds in those blocked accounts could only be used by Iran to import goods from

the country concerned. Such funds were often referred to as being “frozen” because they were unavailable for Iran to make purchases from European countries from which Iran would prefer to source many goods, rather than from the Asian countries to which it was exporting oil. However, by the time the JCPOA came into effect, Iran and the pertinent Asian countries were becoming quite adept at using those funds. The net effect might be that by using such a mechanism, Washington could say the NDAA sanctions were in place while Tehran simultaneously got nearly all the benefit it wanted from the oil sales. That would avoid a bitter dispute between the United States and the concerned countries, but it would significantly undercut the pressure on Iran from reimposed sanctions.

Iranian Reaction

IRAN’S SUPREME LEADER, Ayatollah Ali Khamenei, who has the final say on all matters related to the nuclear deal, has consistently stated that his country’s adherence to the JCPOA is dependent on sanctions relief. In a letter to Iranian president Hassan Rouhani three months after the JCPOA was approved, Khamenei set the tone: “The continuation of the sanctions regime or imposition of any sanctions at any level and under any pretense ends the JCPOA.”¹⁶ The Supreme Leader has also been outspoken on the Iranian reaction if the United States walks away from the JCPOA: “[I]f the threat from the American presidential candidates to tear up the deal becomes operational then the Islamic Republic will set fire to the JCPOA.”¹⁷ Indeed, Khamenei and other Iranian leaders complain regularly that the United States is already violating its JCPOA commitments to lift sanctions, and yet Iran’s compliance with the deal has been in no way affected as a result.

The Majlis, Iran’s parliament, has passed a law regarding the JCPOA that includes measures to counter the reimposition of sanctions. That law states:

The government is required to carefully monitor any noncompliance by the opposite party with regard to the effective annulment of sanctions or reimposition of annulled sanctions or imposition of any other sanctions, and to take reciprocal action for upholding the rights of the Iranian nation and to stop voluntary cooperation [with the JCPOA] and to arrange for immediate development of the peaceful nuclear

program of the Islamic Republic of Iran such that within a two-year period, the country’s [uranium] enrichment would increase to 190,000 SWU [separative work units].¹⁸

Presumably, Iran would take advantage of the JCPOA’s dispute resolution mechanism to air its complaints about the U.S. action. Whereas Iran would almost certainly announce it is no longer bound by the JCPOA, some in Iran would argue for Tehran to nevertheless continue observing some or all its JCPOA commitments, as a way to present itself—especially to Europe—as the responsible actor while blaming the Trump administration for its recklessness. Others in Iran would argue that the U.S. action requires a vigorous response, in line with Khamenei’s frequent injunctions to, when slapped, slap back harder.

Were Iran to abandon its JCPOA commitments, it would have many options for reinvigorating its nuclear program, as explained in Annex 3. The most likely first step would be to announce that it had ceased application of the Additional Protocol, which Iran has not ratified, although what this would mean in practice is not clear. Alternatively, or in conjunction, Iran could refuse to permit extra verification mechanisms spelled out in the JCPOA, such as real-time monitoring as opposed to periodic inspections. Next would be an increase in the number of operating centrifuges, thereby boosting the volume of enriched uranium produced. An additional step would be increased enrichment from the current limit of 3.67 percent of the fissile isotope U-235 to a level such as 19.75 percent, just below the 20 percent threshold the International Atomic Energy Agency (IAEA) defines as “high enriched.” Although a 90 percent level is needed to create an atomic bomb, most of the separation work has been done when the 19.75 percent level is reached. A further step Iran could take would be to reactivate, for nuclear purposes, the centrifuge facility buried deep below a mountain at Fordow. Under the JCPOA, this enrichment plant, which is well protected from possible air attack, now uses only nonnuclear material. Yet another potential source of concern would be resumed Iranian work to return to operation the original design of the heavy-water research reactor at Arak, which produces as a by-product plutonium, an alternative nuclear explosive to high-enriched uranium.

Alongside these steps, Iran could decide to respond to the reimposition of sanctions asymmetrically—that

is, by taking actions outside the nuclear realm to hurt U.S. interests. As in the past, Iran could directly or through proxies strike U.S. interests or allies. Iran has a long history of sponsoring terrorist attacks to influence U.S. policy, such as through the 1983 Beirut Marine barracks bombing, the 1996 attack on U.S. forces residing at Khobar Towers, or the 2015 plot to assassinate the Saudi ambassador by blowing up a Washington, D.C., restaurant. Iran has provided advanced explosive devices to insurgents in Iraq for use against U.S. forces, and Tehran is reportedly cooperating with Taliban insurgents battling U.S. forces in Afghanistan. Iran has threatened shipping in the Persian Gulf and has provided Yemeni Houthi rebels with advanced missiles to use against shipping in the Red Sea as well as targets in Saudi Arabia, including the Riyadh airport. In light of this track record, the United States would be prudent to prepare for a variety of potential Iranian asymmetric attacks in the months after the reimposition of sanctions.

Conclusions

IF ONE CONCLUSION emerges from this analysis, it is that any decision to withdraw from the JCPOA is just the first in a long list of actions the administration will need to take to give meaning and content to the fundamental decision. Just in terms of the reimposition of sanctions, which is only a single piece of JCPOA withdrawal, the list includes the following:

- The Treasury Department, the most affected agency, will have to take the lead on such decisions as (1) how to replace the executive orders that were revoked; (2) which entities with revoked designations can be redesignated, and under what authority; (3) what to do about a range of transition questions as the new rules replace the old ones (e.g., what to do about contracts already being executed, and how far to go in applying restrictions on foreign subsidiaries of U.S. companies); (4) how much guidance to provide private businesses on the new rules; and (5) what can be done to monitor compliance and penalize noncompliance.
- The State Department will need to take the lead on, among other things: (1) forestalling retaliatory steps such as an EU blocking order; (2) whether to go through the JCPOA dispute resolution mechanism;

(3) whether to seek reimposition of UN sanctions; (4) securing as much foreign cooperation as possible with reimposed sanctions, especially in the event of a snap-back of UN sanctions; and (5) building maximum international consensus around the idea that Iran's nuclear activities must remain limited as much as possible even if the JCPOA is no longer in force.

- The intelligence community will need to provide information that can be used for redesignating entities and individuals originally covered by sanctions. Sanctions will be more effective if they are designed based on intelligence about Iran's current strategic vulnerabilities. The intelligence community will also need to monitor closely indications of Iranian countermeasures, whether reinvigoration of the nuclear program or plots against U.S. forces and interests, both directly by Iranian assets and by Iranian proxies.
- The U.S. military and State Department diplomatic security will need to prepare for asymmetric Iranian reactions such as attacks on U.S. forces and interests or those of U.S. partners.

Ideally, the new sanctions would be crafted after considering the objectives, Iran's vulnerabilities, and how Iran might retaliate. The sanctions are more likely to be effective if goals are set out clearly: To pressure Iran into new concessions? To punish Iran for its brazenly aggressive behavior? The sanctions are also more likely to succeed if based on serious study of changes in Iran's vulnerabilities since the first sanctions were imposed. Careful study is also needed of the added impact of any restored sanctions—that is, the impact over and above that from the many nonnuclear sanctions authorities that were not suspended with implementation of the JCPOA.

Some will read in this lengthy list of issues a stark warning against withdrawing from the JCPOA. Others will read it as a call for urgent action—to make any JCPOA withdrawal as effective as possible, as swiftly as possible. The goal of this paper, as already set forth, is to highlight the fact that a decision to end U.S. participation in the Iran nuclear deal would require many further decisions about how exactly to effect that outcome. Whatever President Trump decides to do about the JCPOA, it would simply be another step in the complex and uncertain U.S. effort to prevent Iran from acquiring a military nuclear capability.

ANNEX 1

U.S. Sanctions Laws

The following passages summarize primary provisions of the relevant statutes.

IRAN SANCTIONS ACT (ISA). This measure allows for a range of sanctions from a menu, on activities such as certain investments that support development of Iran’s petroleum industry—including domestic refining capabilities—or provide refined petroleum products to Iran.^{19, 20} These penalties range from minor prohibitions on U.S. Export-Import Bank guarantees to restrictions on access to the U.S. financial system, requiring the president to choose five of twelve options (as amended in the TRA) and allowing significant executive discretion on the severity of penalties.²¹

Notably, the 2010 amendment to the ISA, the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), introduced secondary or correspondent-style sanctions on foreign financial institutions engaging in significant transactions with those Iranian entities subject to U.S. sanctions under WMD and counterterrorism programs, as well as those affiliated with the IRGC.²² These sanctions were later expanded under the National Defense Authorization Act (NDAA) for Fiscal Year 2012 to cover any Iranian governmental entity, Iranian financial institutions including the Central Bank of Iran, as well as any other Iranian on the Treasury Department’s Specially Designated National (SDN) list.²³ This meant that doing business with Iranian governmental entities, or those sanctioned under other programs such as for human rights abuses, also carried the risk of cutoff from the U.S. financial system.²⁴

As part of the relief extended to Iran under the JCPOA, Iranian governmental entities and financial institutions were exempted from secondary sanctions, although secondary sanctions still apply to Iranian and Iran-related SDNs.²⁵

NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) OF 2012. In addition to the extension of CISADA-style secondary sanctions on Iranian entities just discussed, the NDAA introduced oil sanctions on Iran. These sanctions required countries to significantly reduce the amount of oil they imported from Iran in order to qualify for a waiver for their state-owned and central banks from U.S. secondary/financial sanctions, and to conduct financial transactions associated with such imports. The significant-reduction clause in the NDAA allowed for an incremental drawdown in foreign purchases of Iranian oil, along with a regular review of the price impact of the removal of Iranian oil from the global market, in order to avoid a price spike. As such, the statute gives the administration 180 days to certify such a “significant reduction” (of which 90 days are allowed for the administration to determine the presence of adequate global oil supply so that such a reduction would not have a disproportionate impact on global prices) and, likewise, a 180-day grace period from enforcement of the financial sanctions.²⁶

IRAN THREAT REDUCTION AND SYRIA HUMAN RIGHTS ACT (ITRASHRA /TRA). This legislation introduced the so-called bilateral trade restriction on Iranian oil revenues, which required countries continuing to import Iranian oil under significant reduction waivers to hold Iranian revenue from such sales in escrow accounts to be used only for bilateral trade.²⁷ The TRA also notably extended restrictions under the U.S. primary embargo on the import and export of goods and services with Iran to cover the foreign

subsidiaries of U.S. companies. The statute allows for an 180-day wind-down period for the U.S. parent companies to divest or terminate business with subsidiaries engaged in Iran-related business that would otherwise be prohibited for U.S. persons.²⁸

IRAN FREEDOM AND COUNTERPROLIFERATION ACT (IFCA). The IFCA contains provisions that call for the imposition of sanctions from the ISA menu on those who deal in Iran's energy, shipping, or shipbuilding sectors, to include the National Iranian Oil Company, the National Iranian Tanker Company, and the Islamic Republic of Iran Shipping Lines.²⁹ Because these sectors are dominated by state-owned actors and Iranian governmental entities subject to secondary sanctions risk pursuant to the NDAA of 2012, this expansion of sanctions authorities in 2013 had minimal impact on an already considerably restricted environment. Nonetheless, the IFCA renders as subject to sanctions the selling, supply, or transfer of goods to Iran's energy sector, as well as the provision of related financing or insurance services.

ANNEX 2

JCPOA and UNSCR 2231 on Snap-Back

THE JCPOA specifies that a complaint from any of the parties will be referred to a multi-stage review process, potentially involving the Joint Commission, made up of all the parties, the ministers of foreign affairs, and an advisory board. The procedure is explained in the following passages:

PARAGRAPH 36 specifies: "The Joint Commission would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration, any participant could refer the issue to Ministers of Foreign Affairs, if it believed the compliance issue had not been resolved. Ministers would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration—in parallel with (or in lieu of) review at the Ministerial level—either the complaining participant or the participant whose performance is in question could request that the issue be considered by an Advisory Board, which would consist of three members (one each appointed by the participants in the dispute and a third independent member). The Advisory Board should provide a non-binding opinion on the compliance issue within 15 days. If, after this 30-day process, the issue is not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than 5 days in order to resolve the issue."

PARAGRAPH 37 exhorts parties to pay attention to the findings of the advisory board, but this is not binding: "Upon receipt of the notification from the complaining participant, as described above, including a description of the good-faith efforts the participant made to exhaust the dispute resolution process specified in this JCPOA, the UN Security Council, in accordance with its procedures, shall vote on a resolution to continue the sanctions lifting. If the resolution described above has not been adopted within 30 days of the notification, then the provisions of the old UN Security Council resolutions would be re-imposed, unless the UN Security Council decides otherwise."

The following are the relevant paragraphs in UNSCR 2231:

“11. DECIDES, acting under Article 41 of the Charter of the United Nations, that, within 30 days of receiving a notification by a JCPOA participant State of an issue that the JCPOA participant State believes constitutes significant non-performance of commitments under the JCPOA, it shall vote on a draft resolution to continue in effect the terminations in paragraph 7 (a) of this resolution...”

“12. DECIDES, acting under Article 41 of the Charter of the United Nations, that, if the Security Council does not adopt a resolution under paragraph 11 to continue in effect the terminations in paragraph 7 (a), then effective midnight Greenwich Mean Time after the thirtieth day after the notification to the Security Council described in paragraph 11, all of the provisions of resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010) that have been terminated pursuant to paragraph 7 (a) shall apply in the same manner as they applied before the adoption of this resolution, and the measures contained in paragraphs 7, 8 and 16 to 20 of this resolution shall be terminated, unless the Security Council decides otherwise;...”

“13. UNDERSCORES that, in the event of a notification to the Security Council described in paragraph 11, Iran and the other JCPOA participants should strive to resolve the issue giving rise to the notification, expresses its intention to prevent the reapplication of the provisions if the issue giving rise to the notification is resolved.”

ANNEX 3

What Iran Might Do to Reinvigorate Its Nuclear Program

The first paragraph of the preface to the JCPOA says that the deal “will ensure that Iran’s nuclear program will be exclusively peaceful...” It goes on: “Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.” That said, if free from JCPOA restrictions, Iran would face no legal barriers to resuming a variety of disturbing activities, although it would face many practical problems doing so.³⁰

Under the JCPOA, Iran reduced its number of operational centrifuges to 5,060 of the IR-1 type and agreed to limit the level of enrichment to 3.67 percent for fifteen years. Excess centrifuges would be stored at Natanz, near Isfahan, under continuous IAEA monitoring. The Fordow enrichment plant, buried deep inside a mountain near Qom, no longer does nuclear-related work. (Two-thirds of Iran’s IR-2m type centrifuges were removed; the rest are being used for nonnuclear purposes). If Iran were to walk away from the JCPOA, it would face no legal barriers to bringing online the extra centrifuges at Natanz or those at Fordow. Nor would there be any legal barrier—in treaties, Security Council resolutions, or customary international law—against Iran enriching uranium to 90%.³¹

Under the JCPOA, Iran is allowed to do R&D for more-advanced centrifuge designs but not make them operational. The IR-1 centrifuge is judged by experts to be unsuitable for enriching uranium to 90 percent, as Pakistan discovered with its identical P-1 type. The IR-2m centrifuge is theoretically better, but Iran has never managed to make it work

as efficiently as the Pakistani P-2, on which it is based. Were Iran to walk away from the JCPOA, it could make operational any new centrifuges it has been working on, such as the IR-8 centrifuges reported by the IAEA.

Following the JCPOA, Iran's heavy-water research reactor was modified to support peaceful nuclear research and not produce weapons-grade plutonium in normal operation. Presumably, reversing this would take some time, despite the claim to the contrary by Ali Akbar Salehi, the director of Iran's Atomic Energy Organization.³² No legal restriction, however, would prevent Iran from taking this step. The concern about the heavy-water research reactor is that it would provide a ready route to producing plutonium, the other fissile material from which a bomb can be made.

Iran also committed not to engage in a range of activities "which could contribute to the development of a nuclear explosive device." While those commitments would lapse if Iran walked away from the JCPOA, Iran would arguably still be bound by its Nuclear Nonproliferation Treaty obligation not to do work on nuclear weapons.³³ However, the capability of the IAEA to monitor such a commitment is limited.

Iran has agreed to allow IAEA real-time monitoring of its nuclear facilities, compared to the periodic inspections mandated in its Safeguards Agreement with the agency. Iran has made clear that this real-time monitoring ends when the JCPOA ends, a development that could significantly reduce the warning time with respect to illicit Iranian activities.

As part of the JCPOA, Iran agreed to provisionally apply the Additional Protocol. In Iran's interpretation, this pledge marks the only reason Iran must notify the IAEA when construction starts on new nuclear-related facilities; Iran claims otherwise it only needs to notify the agency six months before nuclear material is introduced. The IAEA does not agree with this interpretation.³⁴

In reaction UNSCR 2231's call for Iran not to develop missiles "designed" to carry nuclear weapons and its provision to the JCPOA the force of international law, Iran has insisted it will not do so. Ending this commitment would have little practical effect because Iran has interpreted that commitment to apply only to missiles designed to carry nuclear weapons, not missiles capable of carrying a nuclear weapon.

Indeed, observers still fear that some nuclear-related installations may never have been discovered by the United States or admitted to by Iran. Additionally, the possibility remains that North Korea, which has produced both high-enriched uranium and plutonium, as well as the missiles to deliver nuclear weapons, could assist Iran to quickly acquire a deterrent arsenal.

Notes

1. U.S. Department of the Treasury, "Guidance Relating to the Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day," Jan. 16, 2016, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/implementation_guide_jcpoa.pdf.
2. "Waiver Determinations and Findings," <https://www.state.gov/documents/organization/248501.pdf>.
3. <https://www.c-span.org/video/?327473-1/hearing-iran-nuclear-agreement&start=12406>.
4. Some of the sanctions are "mandatory" in law, but the idea of mandatory statutory sanctions is untested and of questionable constitutionality, according to legal experts. See Anthony Rapa, "What if President Trump Refuses to Renew Iran Sanctions Waivers?" *Steptoe International Compliance Blog*, Jan. 26, 2018, <https://www.steptoeinternationalcomplianceblog.com/2018/01/what-if-president-trump-refuses-to-renew-sanctions-waivers/>.
5. Executive Order 13645, e.g., draws on the IEEPA to implement IFCA provisions. "Executive Order 13645 of June 3, 2013," Fed. Reg. 78, no. 108, June 5, 2013, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13645.pdf>.
6. "Executive Order 13716 of January 16, 2016," Fed. Reg. 81, no. 13, Jan. 21, 2016, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_eo.pdf.
7. The 2011 sanctions targeted Belorusneft for its investment in the Naftiran Intertrade Company. The sanctions, selected from the ISA menu, included a prohibition on loans from the Export-Import Bank of the United States, U.S. government export licenses, U.S. private bank loans in excess of \$10 million, and contracting with the U.S. government. The Belarusian company had reportedly not previously sought any of those actions from which it was banned. In other words, the sanctions had little if any practical impact. See Josh Rogin, "State Department Sanctions Belarus Firm for Doing Business with Iran; GOP Not Satisfied," *Foreign Policy*, Mar. 29, 2011, <http://foreignpolicy.com/2011/03/29/state-department-sanctions-belarus-firm-for-doing-business-with-iran-gop-not-satisfied/>.
8. For an example of plans being developed, see Patrick Wintour, "EU May Offer Credit to Firms Trading with Iran if Trump Pulls out of Nuclear Deal," *Guardian*, Mar. 23, 2018, https://www.theguardian.com/world/2018/mar/23/eu-may-offer-credit-to-firms-trading-with-iran-if-trump-pulls-out-of-nuclear-deal?CMP=share_btn_tw.
9. "Council Regulation No. 2271/96 of 22 November 1996 Protecting against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based thereon or Resulting Therefrom," *Official Journal L 309*, 29/11/1996 P. 0001-0006, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996R2271>. This is to implement "Council Joint Action 96/668/CFSP of 22 November 1996," at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996E0668>.
10. A good explanation of the general point appears in David Mortlock and Richard Nephew, "Decertification of the JCPOA and the Risk of European Union 'Blocking Regulations,'" Center on Global Energy Policy (Columbia/SIPA, Oct. 31, 2017), <http://energypolicy.columbia.edu/research/commentary/decertification-jcpoa-and-risk-european-union-blocking-regulations>.
11. The EU regulation specifies that it only applies to laws in Act 3 of the Annex of Council Regulation (EC) No 2271/96 of 22 November 1996. The annex lists ILSA (1996), the Cuban Liberty and Democratic Solidarity Act of 1996 (as Helms-Burton is known formally), and the Cuban Democracy Act of 1992, but as the annex notes, requirements for the 1992 legislation are consolidated in the 1996 Cuban Liberty and Democracy Solidarity Act. The regulations have not been updated to reflect the changes in ILSA and its successors since 1996.
12. For example, when in 2007 an Austrian bank targeted for acquisition by a U.S. firm closed accounts of Cuban nationals, the U.S. government quickly issued a license for the bank to maintain the accounts. Relatedly, see Keith Huffman and Anthony Rapa, "EU Raises Specter of Blocking Regulation as Trump Administration Ponders JCPOA," *Steptoe International Compliance Blog*, Oct. 2, 2017, <https://www.steptoeinternationalcomplianceblog.com/2017/10/eu-raises-specter-of-blocking-regulation-as-trump-administration-ponders-jcpoa/>.
13. Here, the EU might file a complaint with the World Trade Organization alleging that the U.S. action was inconsistent with U.S. obligations under the WTO agreement and the earlier General Agreement on Tariffs and Trade, as the EU did in 1996 regarding Helms-Burton. The WTO complaint process is cumbersome and drawn out. If the EU prevailed, it would have the right under the WTO agreement to impose countervailing duties on U.S. trade to the extent needed to compensate for damage from the U.S. action. Establishing the impact of the U.S. action, however, would be no easy matter, and the amount determined could end up being quite small.
14. According to the European Commission's Directorate-General for Trade, European exports to Iran in 2017—extrapolating from data for the first half of the year—were EUR 12.7 billion compared to total exports (based on full-year data) of EUR 1,879.5 billion; imports were EUR 12.4 billion compared to total imports of EUR 1,853.9 billion. European exports to Iran were EUR 11.3 billion in 2011, about the same in real terms as the 2017 level. Those exports bottomed out at EUR 5.4

- billion in 2013. Imports from Iran were EUR 14.5 billion in 2010 and bottomed out at EUR .8 billion in 2013.
15. “Presidential Determination Pursuant to Section 1245(d) (4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012,” Fed. Reg., Nov. 15, 2017, <https://www.federalregister.gov/documents/2017/12/15/2017-27181/presidential-determination-pursuant-to-section-1245d4b-and-c-of-the-national-defense-authorization>.
 16. Office of the Supreme Leader, “Letter to the President” (in Persian), Oct. 21, 2015, <http://www.leader.ir/fa/content/13788/>.
 17. Reuters, “Iran’s Khamenei Threatens to ‘Set Fire’ to Nuclear Deal if West Violates,” June 14, 2016, <https://www.reuters.com/article/us-iran-nuclear-khamenei/irans-khamenei-threatens-to-set-fire-to-nuclear-deal-if-west-violates-idUSKCN0Z02MA>.
 18. “Law on Proportionate and Reciprocal Action by the Government in Implementation of the JCPOA” (in Persian), Islamic Parliament Research Center of the Islamic Republic of Iran, Nov. 14, 2015, <http://rc.majlis.ir/fa/law/show/939345>.
 19. “Iran Sanctions Act of 1996, as Amended,” Sec. 3: Declaration of Policy, Dec. 15, 2016, p. 1., <https://washin.st/2qvdEPL>.
 20. Ibid., Sec. 14: “Definitions,” p. 21, Dec. 15, 2016, <https://legcounsel.house.gov/Comps/Iran%20Sanctions%20Act%20of%201996.pdf>.
 21. Ibid., Sec. 6: “Description of Sanctions,” p. 13, Dec. 15, 2016, <https://washin.st/2qvdEPL>.
 22. U.S. Department of the Treasury, Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Sec. 104: “Mandatory Sanctions with Respect to Financial Institutions That Engage in Certain Transactions,” July 1, 2010, p. 22, <https://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>.
 23. U.S. Department of the Treasury, National Defense Authorization Act for Fiscal Year 2012, Sec. 1245: (B) “Designation of Financial Sector of Iran as of Primary Money Laundering Concern,” Dec. 31, 2011, p. 351, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf.
 24. Ibid., Sec. 1245: (D) “Imposition of Sanctions with Respect to the Central Bank of Iran and Other Iranian Financial Institutions, Dec. 31, 2011, p. 351, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf.
 25. U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions under the JCPOA on Implementation Day,” updated Dec. 15, 2016, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf.
 26. U.S. Department of the Treasury, National Defense Authorization Act for Fiscal Year 2012, Sec. 1245: (4) “Applicability of Sanctions with Respect to Petroleum Transactions,” Dec. 31, 2011, p. 352, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf.
 27. U.S. Congress, Threat Reduction and Syria Human Rights Accountability Act (H.R. 1905), Sec. 504: “Expansion of Sanctions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012,” Jan. 3, 2012, p. 48, https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf.
 28. Ibid., Sec. 218: “Liability of Parent Companies for Violations of Sanctions by Foreign Subsidiaries,” Jan. 3, 2012, p. 21, https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf.
 29. U.S. Congress, Iran Freedom and Counterproliferation, par. 8803: “Imposition of Sanctions with respect to the Energy, Shipping, and Shipbuilding Sectors of Iran,” 2012, <http://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter95&edition=prelim>.
 30. Ali Akbar Salehi, director of the Atomic Energy Organization of Iran (AEOI), said in July 2017, “As the director of the [AEOI] and knowing what I know about the technical dimensions of the issue, I do not want the JCPOA to be revoked.” See Mohammad Homaeefar, “Iran Able to Return to Pre-JCPOA Nuclear Capability with Greater Speed: Salehi,” *Tehran Times*, July 30, 2017, <http://www.tehrantimes.com/news/415501/Iran-able-to-return-to-pre-JCPOA-nuclear-capability-with-greater>.
 31. Iran has informed the IAEA that it intends to develop nuclear naval propulsion. The United States, Britain, and Russia use 90 percent–enriched uranium for their submarines. Iran could thus claim that enrichment to 90 percent is for this nonweapon purpose.
 32. The general judgment of Western experts is, in the words of Gary Samore, “Although the Arab reactor [was not] dismantled, it would require at least a few years to convert the reactor back to its original specifications and the effort would be easily detected.” See “The Iran Nuclear Deal: A Definitive Guide,” Belfer Center for Science and International Affairs, Aug. 3, 2015, <https://www.belfercenter.org/publication/iran-nuclear-deal-definitive-guide>. By contrast, on August 28, 2017, Salehi said on Iranian television, “Cement has been poured into the Arak nuclear facility but not in the heart of the reactor; the famous photos of the Arak heavy water facility are also Photoshop.” See (in Persian), *Tasnim News*, <https://washin.st/2ECWNyT> (in Arabic).
 33. Under Article II of the Nuclear Nonproliferation Treaty, non-nuclear-weapons states pledge not to acquire or exercise control over nuclear weapons or other nuclear explosive devices and not to seek or receive assistance in

the manufacture of such devices. Under Article III of the treaty, non-nuclear-weapons states pledge to accept IAEA safeguards to verify that their nuclear activities serve only peaceful purposes. See “Treaty on the Non-Proliferation of Nuclear Weapons,” U.S. delegation to the 2010 Nuclear Nonproliferation Treaty Review Conference, <https://www.state.gov/documents/organization/141503.pdf>.

34. In dispute is whether the revised Safeguards Agreement to which Iran agreed when in 2003 it applied the Additional Protocol is still binding after Iran in 2006 ended its application of the Additional Protocol. Code 3.1 of that modified Safeguards Agreement requires Iran to provide notification before beginning construction of new nuclear facilities.

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