

ISSUE BRIEF

Iran Sanctions and the Fate of the JCPOA:

What's at Stake if President Trump Fails to Renew the Sanctions Waivers?

APRIL 2018 DAVID MORTLOCK



Economic Sanctions Initiative

Economic sanctions have become a policy tool-of-choice for the US government. Yet sanctions use, and potential pitfalls, are often misunderstood. The Economic Sanctions Initiative seeks to build better understanding of the role sanctions can and cannot play in advancing policy objectives and of the impact of sanctions on the private sector, which bears many of the costs of implementing economic sanctions.

With a May 12 deadline looming for sanctions waivers, President Donald Trump is faced with an imminent decision whether to continue US implementation of the Joint Comprehensive Plan of Implementation (JCPOA) and remain part of the nuclear deal with Iran and the P5+1 governments (the five permanent members of the United Nations Security Council, plus Germany). The president announced in January that he would not waive sanctions again unless the United States reached an agreement with European allies to “fix the terrible flaws” of the deal.¹ While there is still time for US diplomats to reach some kind of accord with their European counterparts before May 12, the president is reportedly unsatisfied with the results so far.² In the absence of a sufficient agreement with Europe, he clearly appears prepared not to renew the waivers come May 12, and to reimpose sanctions that could impact an array of activity by private companies, largely outside the United States.

Nonetheless, the administration has provided no clear picture of what the US sanctions on Iran will be if the United States reneges on its commitments under the JCPOA. Recent statements from Trump’s Cabinet suggest either a lack of planning or a lack of awareness regarding the

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- 1 White House, “Statement by the President on the Iran Nuclear Deal,” January 12, 2018, <https://www.whitehouse.gov/briefings-statements/statement-president-iran-nuclear-deal/>.
- 2 Barak Ravid, “Scoop: Trump Told Netanyahu U.S. Will Pull out of Iran Deal if Big Changes Not Made,” Axios, March 11, 2018, <https://wwwaxios.com/trump-said-us-will-leave-iran-deal-netanyahu-d9672407-6d18-4978-a08b-3051484b1486.html>.

technicalities of the sanctions, and the state of US measures after May 12. At his April 12 confirmation hearing, Secretary of State nominee Mike Pompeo told senators he was confident “that whatever course the administration takes, we will have a strategy,” though he declined to discuss the strategy for post-deadline US sanctions.³ On April 11, Treasury Secretary Steve Mnuchin told a congressional hearing that, absent a waiver, “primary and secondary sanctions will go back in place.”⁴ However, most US “primary” sanctions have remained in place since implementation of the JCPOA; US persons are still generally prohibited from engaging in business in Iran. Moreover, the May 12 waiver applies only to subset, albeit a significant one, of the so-called “secondary sanctions” that threaten US restrictions on business with third-country companies doing specific business with Iran.

Underlying these vague statements, and the president’s own commitment to “terminate our deal with Iran” absent a new agreement with the European Union (EU), is a complex set of legal provisions that could result in strict prohibitions—and corresponding civil and criminal penalties—on companies around the world. What exactly could happen on May 12? What will the sanctions be thereafter? And, what are the possible steps the administration could take to reimpose US sanctions on Iran? If not at the Cabinet level, sanctions experts in the administration are almost certainly assessing the current state of the legal regime, the impact of the president’s decision on the JCPOA, and the choices the administration will need to make quickly if the president chooses not to renew the waivers.

The complexity of these measures, and the imminent choices for this administration, also make clear the potential folly of reimposing the sanctions and walking away from the US commitments under the JCPOA. If the mechanics of reimposing the sanctions are murky, the impacts on Iran’s nuclear program and the collective approach of the P5+1 are downright opaque. The technical choices described below lay bare the considerable

³ “Secretary of State Nominee Mike Pompeo Confirmation Hearing,” C-SPAN, April 12, 2018, <https://www.c-span.org/video/?443693-1/secretary-state-nominee-mike-pompeo-testifies-confirmation-hearing&vod>.

⁴ Lesley Wroughton and Arshad Mohammed, “Renewed Sanctions Need Not Mean U.S. Exit from Iran Deal: Mnuchin,” Reuters, April 11, 2018, <https://www.reuters.com/article/us-iran-nuclear-mnuchin/renewed-sanctions-need-not-mean-u-s-exit-from-iran-deal-mnuchin-idUSKBN1HJ04F>.

⁵ Code of Federal Regulations, “31 CFR, Part 560-Iranian Transactions and Sanctions,” <https://www.ecfr.gov/cgi-bin/text-id/x?SID=8fc1281b520e730e0dd670ddd8c26995&mc=true&node=t31.3.560&rgn=div5>.

⁶ US Department of the Treasury Office of Foreign Assets Control, “General License H, Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person,” January 16, 2016, https://www.treasury.gov/resource-center/sanctions/Programs/iran_glh.pdf.

⁷ US Code, “22 USC § 8725-Liability of Parent Companies for Violations by Foreign Subsidiaries,” <https://www.law.cornell.edu/uscode/text/22/8725>.

⁸ US Congress, “National Defense Authorization Act for Fiscal Year 2013: Public Law 112-239,” https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf.

impact the larger strategic decisions will have on Iran’s nuclear program, US influence among the P5+1, and the ability of the United States to use economic measures to achieve diplomatic success in the future.

State of the Current Regime: What Remains in Place?

Before considering what will change, it’s important to acknowledge what won’t. Even after implementation of the JCPOA, broad US sanctions on Iran remain in place. Those sanctions prohibit most commercial activity between the United States and Iran. The continuing measures also threaten companies doing business with certain actors in Iran with termination of their access to the US market.

The prohibitions on US business with Iran are colloquially referred to as the “primary” sanctions, and are governed primarily by the Iranian Transactions and Sanctions Regulations (ITSR).⁵ The IRSR are administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC), and generally prohibit the export to Iran of goods or services from the United States, or the import of goods or services from Iran to the United States.

US implementation of the JCPOA did not change this fundamental restriction. Pursuant to the JCPOA, however, OFAC did issue a number of general licenses, including General License H to authorize the foreign subsidiaries of US companies to engage in business involving Iran, subject to certain restrictions.⁶ The general prohibition on business in Iran had been extended to foreign entities owned or controlled by a US person in the Iran Threat Reduction and Syria Human Rights Act (TRA), enacted in August 2012.⁷ General License H lifted this prohibition on foreign subsidiaries, subject to the conditions in the license.



From left, Head of Mission of People's Republic of China to the European Union Hailong Wu, former French Foreign Minister Laurent Fabius, former German Foreign Minister Frank-Walter Steinmeier, European Union High Representative for Foreign Affairs and Security Policy Federica Mogherini, Iranian Foreign Minister Javad Zarif, an unidentified Russian official, former British Foreign Secretary Philip Hammond, and former US Secretary of State John Kerry. Photo credit: US Department of State.

A number of “secondary sanctions” also survive the JCPOA. The secondary sanctions, often called “extra-territorial sanctions,” threaten non-US companies with restrictions on their access to the US market if they engage in particular business activities with Iran. Primarily, those consist of the threat of sanctions on persons who engage in certain transactions with an individual or entity that has been designated and added to the List of Specially Designated Nationals and Blocked Persons (SDN List) maintained by OFAC. A number of overlapping statutory provisions that remain in effect threaten such sanctions for transactions involving SDNs. For example, Section 1244 of the Iran Freedom and Counter-Proliferation Act (IFCA) requires the president to block and prohibit all transactions in property, and interest of property, of any person the president determines:

knowingly provides 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...an Iranian person included on the [SDN List].⁸

⁸ US Congress, “National Defense Authorization Act for Fiscal Year 2013: Public Law 112-239,” https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf.

Other statutory provisions similarly threaten sanctions against foreign financial institutions, insurers, and underwriters for providing services to non-Iranian individuals and entities that have been designated in connection with Iran’s support for international terrorism and weapons development.⁹ While these provisions are extremely broad, and conceivably capture any transaction with or for an SDN, the fact that OFAC removed more than four hundred individuals and entities from the SDN List on Implementation Day for the JCPOA removed much of the bite from these particular sanctions.¹⁰ In addition, statutory provisions remain in effect for the president to impose sanctions on non-US persons who supply certain proliferation-related mate-

⁹ US Congress, “National Defense Authorization Act for Fiscal Year 2012: Public Law 112-81,” https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf.

¹⁰ US Department of the Treasury Office of Foreign Assets Control, “Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day,” January 16, 2016, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf. (“Beginning on Implementation Day, non-U.S. persons will no longer be subject to sanctions for conducting transactions with any of the more than 400 individuals and entities set out in Attachment 3 to Annex II of the JCPOA...”)

rial to Iran out of compliance with terms of UN Security Council resolutions.¹¹

Of course, OFAC also maintains numerous blocking authorities pursuant to executive orders (EOs) related to terrorism, proliferation, human-rights abuses, Syria, and Yemen, which allow OFAC not only to designate individuals and entities engaged in the primary activities identified in those EOs, but also any individual or entity providing material support to—or acting for, or on behalf of—a designated person, allowing OFAC to grow the list of Iranian SDNs quite rapidly. The longer that list gets, the more expansive the threat of secondary sanctions under Section 1244 of IFCA becomes against persons knowingly engaging in a significant transaction with a person on that list.

"Perhaps lost in the president's comments is the fact that very little is likely to happen on May 12, even if the president does not renew the waivers."

Expiration of the Waiver: What Happens on May 12?

Perhaps lost in the president's comments is the fact that very little is likely to happen on May 12, even if the president does not renew the waivers. Indeed, there is only one waiver scheduled for renewal on May 12, because the corresponding provision of law provides a 120-day waiver, rather than the 180-day period provided for most others. That provision is Section 1245 of the 2012 National Defense Authorization Act (NDAA).

Section 1245 had a much larger impact on Iran than most other statutory provisions levied by the United States between 2010 and 2016. Section 1245 was os-

tensibly a banking sanction, requiring the president to prohibit the opening of correspondent or payable-through accounts by a foreign financial institution (FFI) the president determined to have knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another designated Iranian financial institution—or to impose strict conditions on the maintenance of such accounts.¹² By itself, this would have been a crippling threat to many foreign governments buying Iranian oil, because Iran required them to pay for oil deliveries through the Central Bank of Iran.

The statute included a key exception, however. It provided that the sanctions would not apply with respect to a foreign financial institution, if the president determined that the country with primary jurisdiction over the institution had significantly reduced its volume of crude oil purchased from Iran in the previous 180 days.¹³ The exception would expire after 180 days, and the president could, once again, make an exception for a particular country if it had significantly reduced its volume of crude oil purchases from Iran in that period.

The focus of the Barack Obama administration's implementation of the law, therefore, became the reduction in oil purchases by those countries that were continuing to purchase Iranian crude at the time. The law gave the administration sufficient flexibility to judge "significant reductions" in crude, but hardly created a scientific formula. Former National Security Council and State Department Iran expert Richard Nephew recently explained:

[T]he period of U.S. evaluation was highly arbitrary and did not fit with normal contract periods or even measurement. Contracts were already in place when the law went into effect in 2012, limiting partner compliance in some cases and making it complicated in others. Taken in combination with the definitional issues around "crude oil" (more specifically, the fact that condensates were not judged to be "crude oil" in 2012) as well as the accepted measurement methodology, and there was often confusion both within the U.S.

¹² US Congress, "National Defense Authorization Act for Fiscal Year 2012."

¹³ US Code, "22 USC Chapter 95: Iran Freedom and Counterproliferation," <http://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter95&edition=prelim>.

government (including with Congress) and with negotiating partners as to what was needed and by when.¹⁴

The Trump administration would face similar challenges in assessing reductions in the purchases of Iranian crude, which are likely to be exacerbated by less-cooperative allies and partners angry at the United States for its withdrawal from the deal.

However, the most immediate challenge would be to determine the timing of when the sanctions applied, and when exceptions could be granted for reductions in the purchase of Iranian oil. That same challenge existed in January 2012, when the Obama administration originally grappled with the implementation of the NDAA. The Trump administration could conceivably follow the same approach. The statute President Obama signed into law on December 31, 2011, stated that the president should begin imposing the sanctions 180 days after its enactment. The State Department, which was delegated authority to grant the exceptions, therefore told Iranian oil purchasers they would have 180 days before sanctions were imposed; countries would need to use that time to reduce their purchases of Iranian crude, or else their banks could face sanctions. Accordingly, the first exceptions were granted in June of 2012, six months after the statute came into effect.¹⁵

The statute does not explicitly envision the timing of the application of the sanctions immediately following an extended waiver period. The administration could either adopt a legal interpretation of the statute or (if the president will agree) issue a time-limited waiver that would give countries 180 days to reduce their purchases of Iranian oil and obtain an exception before their banks face the risk of sanctions. This approach would be the most practical way to maintain the focus on reducing Iranian oil purchases, rather than simply cutting off allies' banks from the US financial system for making payments to Iran. This approach is consistent with the guidance issued by OFAC, promising a 180-day wind-down period in the event of a snapback of

¹⁴ Richard Nephew, *Trump and the End of the Iran Deal: Oil Marketplace Implications* (New York: Columbia University, 2018), <http://energypolicy.columbia.edu/research/commentary/trump-and-end-iran-deal-oil-market-implications>.

¹⁵ Timothy Gardner and Arshad Mohammed, "U.S. Grants Iran Sanctions Exceptions to China," *Reuters*, June 28, 2012, <http://www.reuters.com/article/us-usa-iran-sanctions-china/u-s-grants-iran-sanctions-exceptions-to-china-idUSBRE85R16L20120628>.

the sanctions eased under the JCPOA.¹⁶ As discussed further below, it could also be the most effective way to produce an agreement with Europe that staves off the collapse of the deal and maintains US implementation of its commitments.

Not the End of the Story: Where are the Rest of the Sanctions?

The president's decisions regarding how to deal with US sanctions against Iran do not end on May 12. If the United States is truly abandoning the JCPOA, which other sanctions that were eased to implement it will be reinstated? The NDAA 2012 measure discussed above is only one of myriad sanctions waived or suspended to implement the JCPOA, and the president will need to decide whether to allow the other waivers to expire later this summer, or whether to reimpose sanctions that were eased—and can be unilaterally reinstated—by OFAC.

Will the President Refuse to Renew the Rest of the Waivers in July?

Sixty days following May 12, numerous other statutory sanctions waivers first issued by the Obama administration, and subsequently renewed by President Trump, will expire. Just as with the NDAA 2012 Section 1245 measure, the other statutory sanctions will present the administration with difficult questions regarding the timeline for implementation, to what degree the administration will actually impose sanctions on uncooperative foreign entities, and whether the measures will find credibility and respect from allies and their companies.

Absent a waiver from the president, the following secondary sanctions would come back into effect in July:

- **The Iran Sanctions Act (ISA) Section 5(a)—(i)** the development of petroleum resources of Iran; (ii) the production of refined petroleum products in Iran; (iii) the exportation of refined petroleum products to Iran; (iv) joint ventures with Iran relating to the development of petroleum resources outside of Iran; (v) support for the development of petroleum resources and

¹⁶ US Department of the Treasury Office of Foreign Assets Control, "Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day."



US President Donald J. Trump announces his administration's Iran strategy in October, 2017. Photo credit: White House.

refined petroleum products in Iran; (vi) the development and purchase of petrochemical products from Iran; (vii) the transportation of crude oil from Iran; or (viii) the ownership, operation, or control of a vessel used in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel, in cases where the transactions are for activities that are not otherwise sanctionable or prohibited.

● **TRA Section 212(a)**—the provision of underwriting services or insurance or reinsurance for the National Iranian Oil Company, the National Iranian Tanker Company, or a successor entity to either company, in cases where the transactions are not otherwise sanctionable or prohibited;

● **TRA Section 213(a)**—the purchase, subscription to, or facilitation of the issuance of sovereign debt of the government of Iran or debt or equity of an entity owned or controlled by the government of Iran, in cases where the

transactions are not otherwise sanctionable or prohibited.

● **IFCA Section 1244(c)(1)**—transactions on behalf of, or for the benefit of: (i) a person determined to be part of the energy, shipping, or shipbuilding sectors of Iran, or (ii) a person determined to operate a port in Iran.

● **IFCA Section 1244(d)(2)**—the sale, supply, or transfer to or from Iran of goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran.

● **IFCA Section 1244(h)(2)**—transactions by FFIs to conduct or facilitate transactions for the sale, supply, or transfer to or from Iran of natural gas.

● **IFCA Section 1245(a)(1)(A)**—the sale, supply, or transfer to or from Iran of precious metals.

● **IFCA Section 1245(a)(1)**—the sale, supply, or transfer to or from Iran of graphite, raw or semi-

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finished metals determined to be used for one of a number of specified purposes.

- **IFCA Section 1245(c)**—transactions by FFIs that are within the scope of the waivers under section 1245(a)(1) of IFCA, as described above.
- **IFCA Section 1246(a)(1)(A)**—the provision of underwriting services or insurance or reinsurance in connection with activities involving Iran that are within the scope of the JCPOA.
- **IFCA Section 1246(a)(1)(B)(i)**—the provision of underwriting services or insurance or reinsurance with respect to, or for the benefit of, any activity in the energy, shipping, or shipbuilding sectors of Iran for which sanctions are imposed under IFCA;
- **IFCA Section 1246(a)(1)(B)(ii)**—the provision of underwriting services or insurance or reinsurance for transactions that are within the scope of the waivers under section 1245(a)(1)(B) and (C) of IFCA.
- **IFCA Section 1246(a)(1)(C)**—the provision of underwriting services or insurance or reinsurance with respect to or for any blocked government of Iran individuals and entities;
- **IFCA Section 1246(a)**—the provision by US persons of underwriting services or insurance or reinsurance in connection with commercial passenger aviation activities, provided that OFAC has issued any required licenses.¹⁷

If these broad and complex secondary sanctions come back into effect, companies around the world would be forced to engage in a sophisticated assessment of their business activities involving Iran that might trigger the provisions. They would also be forced to weigh the risks that the United States would make good on these threats and impose sanctions, even in the face of opposition to the US approach from the companies'

¹⁷ US Department of the Treasury and Department of State, "Guidance Relating to the Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day," January 16, 2017, pp. 34-37, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/implement_guide_jcpoa.pdf.

own governments. The reimposition of these sanctions has the potential to cause significant disruption in the energy, shipping, and insurance markets, and beyond.

Will the President Take Affirmative Steps to Reimpose Sanctions?

While the president can simply refuse to take action—and to watch the United States renege on its commitments to waive the sanctions measures discussed above—he must decide whether to take affirmative action to reimpose other sanctions lifted by the United States on Implementation Day. In 2016, OFAC took a number of affirmative steps to ease sanctions on Iran. Two of these, in particular, had a dramatic impact on foreign companies' ability to do business with Iran, without fear of penalties or the threat of sanctions. Unlike the statutory provisions subject to waivers, these measures will require affirmative steps from OFAC before they go back into effect.

"In 2012, legislation extended the restrictions on US persons doing business involving Iran to foreign entities owned or controlled by US persons."

General License H

In 2012, legislation extended the restrictions on US persons doing business involving Iran to foreign entities owned or controlled by US persons. On Implementation Day, OFAC issued General License H to authorize those foreign subsidiaries to engage in business involving Iran, subject to certain conditions. Numerous companies around the world have taken advantage of the license. If the administration rescinded the license, however, foreign subsidiaries of US companies would be generally prohibited from exporting any goods or services to Iran—and their US parents potentially subject to civil and criminal penalties for such violations.

Removals from the SDN List

Also on Implementation Day, OFAC removed the names of more than four hundred individuals and entities from the SDN List. This move had a relatively small impact on the ability of US persons to do business with the Iranian names removed from the list, because the ITSR still generally prohibit them from doing business with Iran. However, the removal of the names lifted the threat of sanctions against foreign companies for engaging in transactions with these individuals and entities, including major economic players in Iran, such as the National Iranian Oil Company, the Islamic Republic of Iran Shipping Lines, and Iran Air.

As described above, Section 1244 of IFCA provides for blocking sanctions for any person determined to 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—an Iranian person on the SDN List. A number of other statutory provisions threaten sanctions against persons engaged in transactions with SDNs.¹⁸ The removal of these names from the SDN List also removed the threat of sanctions on non-US companies for dealing with them.¹⁹ The replacement of the names on the list would revive the threat of sanctions for dealings with them, further disrupting business with Iran.

In addition to restoring these two major elements of the pre-JCPOA sanctions regime, the president could choose to reinstate numerous other provisions, including the threat of sanctions against dealing in Iranian rials, the threat of sanctions for the export of goods or services to the automotive sector of Iran, and the re-

¹⁸ Ibid.

¹⁹ The administration's hands are arguably tied by Section 1244 of IFCA, which requires the president to block any person he determines to be part of the energy, shipping, or shipbuilding sectors of Iran or operating a port in Iran, and then impose sanctions on any person knowingly engaging in a significant transaction with them. IFCA 1244(c) Both administrations have waived this requirement in IFCA and other statutes, indicating a belief that a statutory waiver is necessary to remove these names from the SDN List. See JCPOA Guidance, pp. 36–37. However, the administration may conclude that the statute provides sufficient flexibility to make such determinations about persons in Iran at its discretion.

scission of the statement of licensing policy for the sale of US-origin aircraft and aircraft parts to Iran.²⁰

Recommendations

If the president fails to renew the waiver for Section 1245 of the NDAA 2012 on May 12, he will face a number of consequential decisions regarding how to reimpose sanctions on Iran. His choices could create legal peril for both US and international companies if the sanctions are reimposed in an abrupt or careless manner, not to mention the impact on Iran's nuclear program and US relationships with the direct partners in the deal—Europe, Russia, and China—and important partners outside of it—primarily Japan, Turkey, and South Korea. There is still room for a positive and sensible agreement between the United States and Europe ahead of the May 12 deadline.²¹ If the president nonetheless chooses to renege on US commitments under the JCPOA, the administration should implement that choice carefully, to avoid disrupting global markets and to maintain the credibility of US economic sanctions. The administration should consider the following steps:

- The administration should impose a reasonable timeline on the effective date for new sanctions. If the president refuses to renew the waiver for NDAA 2012, countries should be given at least 180 days to reduce their purchases of Iranian oil before sanctions are threatened against their banks for dealing with the Central Bank of Iran—the same period provided when the measure first became law. The immediate threat of sanctions against banks dealing with the Central Bank of Iran is unlikely to provide any incentive for reducing Iranian oil sales, and a shorter period of time would exacerbate the challenges of implementation. Indeed, the president could effectively extend the timeline for reaching an agreement

²⁰ US Department of the Treasury, "Executive Order 13645," June 3, 2013, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13645.pdf>; US Department of the Treasury Office of Foreign Assets Control, "Statement of Licensing Policy for Activities Related to the Export or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services," January 16, 2016, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/lic_pol_statement_aircraft_jcpoa.pdf.

²¹ David Mortlock, *Efforts to Preserve the Iran Deal Made Harder by the President's Moving Goal Posts* (Washington, DC: Atlantic Council, 2018), <http://www.atlanticcouncil.org/blogs/energysource/efforts-to-preserve-the-iran-deal-made-harder-by-the-president-s-moving-goal-posts>.



From left, European Union High Representative for Foreign Affairs and Security Policy Federica Mogherini and Iranian Foreign Minister Javad Zarif. Photo credit: US Department of State.

with Europe by failing to waive Section 1245 of the NDAA 2012, acknowledging that sanctions could be imposed on foreign banks after 180 days, and then increasing the pressure for an agreement with Europe before the bulk of the sanctions waivers expire two months later—although, of course, there are limits to negotiation by threat, and limited leverage.

■ If the president refuses to renew the waivers across the board, and pulls out of the deal entirely, he should issue a new executive order that provides a clear roadmap for foreign companies that describes sanctionable behavior in the energy, shipping, and insurance sectors, and outlines the potential sanctions the administration could impose. The existing statutes were developed over several years, interspersed with executive orders and written and informal guidance. While driven, at the time, by diplomatic and political developments with Iran and US allies, the authorities now provide a patchwork of overlapping and cross-referencing provisions. Foreign companies and governments are more likely to respect, and be deterred by, US sanctions if they can understand

them. Moreover, a clear set of rules allows the administration to deter certain behavior with precision, and respond to developments carefully, rather than simply impose a gray cloud of caution.

■ Even if the president does not renew the waivers, he should maintain General License H and wait to reinstate the names removed from the SDN List in January 2016. If the United States walks away from the deal and develops a new strategy with respect to Iran, it will need to maintain both carrots and sticks. General License H and the SDN List provide at least some incentive for continued constructive engagement with Iran. Moreover, this would allow the administration to claim some credit from Europe for moderation, with respect to companies that have developed business that touches on Iran. The president can at least claim to Europe that he was willing to allow the waivers to lapse, but didn't proactively reimpose sanctions that, arguably, would have the most significant impact on European companies. The administration could use this concession to build greater support for the other sanctions, in-

cluding reductions in the purchase of Iranian oil, and whatever broader policy the president proposes.

- Finally, and most importantly, any effort to reimpose sanctions must be only one part of a coherent and comprehensive strategy with respect to Iran. In his speeches over the past year, the president has suggested that reimposing these sanctions would be a panacea for ending Iran's support for international terrorism, assistance for President Bashar al-Assad in Syria, and meddling in Yemen. This assumes, however, that sanctions will lead to Iran's capitulation on each of these issues, and glosses over the fact that the effectiveness of these sanctions relies largely on the cooperation of US allies and their companies. It also ignores the fact that sanctions tied to those activities remain fully in place, despite the JCPOA. The president's speeches also haven't explained how the reimposition of sanctions would keep Iran in compliance with its own nuclear obligations under the

JCPOA. As has been said many times by experts in this field, sanctions are a tool. Whatever steps the president takes, or refuses to take, in May, he should explain how he intends the deployment of this tool to successfully achieve those goals.

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