The Joint Comprehensive Plan Of Action (JCPOA) and Its Impact on Strategic Goods Exports

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U.S. Export Controls vs. Sanctions
What's the Difference?

Export Controls

Controls on the international movement of goods, software, and technology ("items") and sometimes services

- Laws apply to the item
- Typically focus on strategic items, but some controls on embargoed countries can apply to ***any*** item
- More than one set of rules may apply to a single transaction (*e.g.*, U.S., EU and Singapore controls)

Sanctions

Restrictions on dealings (not necessarily involving items) with other countries, persons or entities based on security or policy concerns.

- Laws apply to U.S. persons wherever located, ***and sometimes directly to non-U.S persons***
- Not limited to goods, software, or technology
- Covers financial transactions, commercial agreements, or services more broadly

Extraterritoriality of U.S. Export Control Laws

- Global Reach:
  - Apply <u>both inside and outside of the United States</u>.
  - Export Controls **“follow the item”**
- Apply to exports, re-exports, and transfers of:
  - U.S.-origin goods (commodities, software, etc.) and technology
  - Items physically located in the U.S.
  - Certain goods and technology manufactured or developed <u>outside of the U.S.</u>
  - “Deemed Exports”
- ***Transactions can be subject to U.S. export controls even if no U.S. person or U.S. company is involved in the transaction.***

Extraterritoriality of U.S. Sanctions Laws

- Global Reach:
  - Apply <u>both inside and outside of the United States</u>.
  - Economic Sanctions **"follow the person"**
- **Primary sanctions:**
  - Apply to "U.S. persons"
    - For Iran, includes non-U.S. entities owned or controlled by a U.S. person
  - Broad prohibition on activities of U.S. persons
  - Prohibits "facilitation"
- **Jurisdiction can extend to non-U.S. companies/individuals when:**
  - Activities have a U.S. nexus
  - Non-U.S. persons conspire with, aid or abet, or "cause" the violation by a U.S. person
  - Engage in sanctionable activities -> **Secondary Sanctions**
    - Prior to the Iran nuclear deal, secondary sanctions targeted activities of non-U.S. persons in particular sectors of Iran (*e.g.*, petrochemical, automotive, gold and precious metals)

Overview of the Iran Nuclear Deal

- Landmark deal reached between the P5+1 and Iran
  - P5+1 = UK, France, Germany, China, Russia, and the United States

- Iran gets sanctions relief in exchange for halting its nuclear program
- Deal finalized in July 2015, **but was not implemented until 16 January 2016**
- On-going monitoring: Relief is subject to a "**snap-back**" of sanctions if Iran fails to continue to meet its obligations under the deal

UN & EU Sanctions Relief Under the JCPOA

- **Most UN Security Council sanctions resolutions on Iran have been terminated**, including:
  - Asset freezes and travel bans on individuals/entities linked to Iran's nuclear program;
  - Prohibition on financial services used for sensitive nuclear activities;
  - Prohibition on the opening of Iranian banks in UN Member State territory.

- **EU has terminated nuclear-related sanctions relating to Iran,** including:
  - Financial, banking and insurance measures
  - Oil, gas and petrochemical sectors
  - Shipping, shipbuilding and transport sectors
  - Gold, other precious metals, banknotes and coinage
  - Metals and software for industrial processes
  - Asset freeze and visa ban measures applicable to certain listed individuals and entities.

- **However, still in place:**
  - Robust export control regime on commercial/dual-use and military goods, software & technology
  - Targeted asset freezes on blacklisted persons and entities and travel bans
  - Prohibitions on proliferation-related end-uses and equipment that could be used for internal repression

U.S. Sanctions Relief Under the JCPOA – What Has Changed?

- Secondary sanctions relief for non-U.S. persons
- GL H for non-U.S. entities owned or controlled by U.S. persons
  - Allows participation in certain activities with Iran subject to certain limitations
  - Allows for limited activities by U.S. persons that would otherwise constitute prohibited facilitation
- Limited sanctions relief for U.S. persons (including foreign branch offices)
  - New GL for the import of certain Iranian-origin carpets and “foodstuffs,” subject to limitations
  - Favorable licensing policy for export to Iran of commercial aircraft and related parts and services for civil end-use and related GL for negotiation and entry into contingent contracts
- 400 persons were removed from the SDN list
- GL J for non-U.S. entities to fly certain aircraft temporarily to Iran, and related transactions involving the export of spare parts and components

U.S. Sanctions Relief Under the JCPOA – What Has Changed?

Industries Directly Affected

Automotive	Commercial Aerospace	Energy (Oil & Gas) & Petrochemicals	Financial & Banking
Gold & Other Precious Metals	Graphite & Raw or Semi-Finished Metals (*e.g.*, Aluminum, Steel)	Shipping, Shipbuilding, Ports & Transportation	Insurance, Re-insurance, Underwriting Services
Previously Authorized:	Medicine and Medical Products	Agricultural Commodities	Internet and Personal Communications

Summary of U.S. Sanctions Relief

	Pre-Iran Deal	TODAY
Primary Sanctions: **U.S. Persons** **(*e.g.*, U.S. Companies)**	**<u>No dealings without a license</u>** Very limited and narrow licenses available (*e.g.*, food & medicine, personal communications)	**<u>No dealings without a license</u>** GL and favorable licensing policy for certain activities (*e.g.*, carpets, foodstuffs, civil aviation)
Primary Sanctions: **Non-U.S. Persons Owned/ Controlled by U.S. Persons** **(*e.g.*, non-U.S. subsidiaries of U.S. companies)**		General License H authorizes activities in which **non-U.S.** persons may engage, subject to certain important limitations
Secondary Sanctions: **Non-U.S. Persons** **(*e.g.*, Singaporean Companies)**	**Sanctioned for dealings involving several Iranian industries or parties**	**Authorizes dealings with several additional Iranian industries and previously designated parties, <u>but important limitations remain</u>**

The Iran Deal – What Has NOT Changed in the U.S. regime?

- **U.S. embargo remains in force**
  - No U.S.-origin goods
  - Prohibition on certain goods made outside U.S.:
    - Incorporating >10% controlled U.S. content
    - Based on certain sensitive U.S. technology
- **No U.S. persons can be involved in Iran-related transactions**
  - Employees who are U.S. citizens or green-card holders
- **Certain SEC disclosure requirements**
- **No U.S. dollar transactions**
  - Even if the rest of the transaction is non-U.S.
  - Nearly all U.S. dollar transactions clear the U.S. financial system
- **Terrorism, military and human rights-related primary and secondary sanctions remain in force –** this means that both U.S. and non-U.S. companies can be sanctioned for dealings in Iran involving:
  - Restricted parties (*e.g.*, IRGC)
  - Restricted activities (*e.g.*, missile)

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Executive Branch Actions

- **December 2016 (Obama)**
  - OFAC announces 180-day wind-down period in the event of snap-back
- **February 2017**
  - Iran conducts missile test
  - Trump puts Iran “on notice” and designates 25 entities/individuals as SDNs
- **April 2017**
  - State announces that Iran is compliant under terms of JCPOA (certification)
    - ***But it is still a state sponsor of terrorism and will be subject to a NSC-led review***
- **May 2017**
  - Trump signs waivers to continue sanctions relief
  - Additional designations (including Chinese entities and individuals)
- **July 2017**
  - Administration continues to waive sanctions and makes required certification to Congress
  - Additional designations of 18 entities/individuals
- **Future**
  - Anticipated results of NSC-led review

“We also note Iran’s continued malign activities outside the nuclear issue undermine the positive contributions to regional and international peace and security that the deal was supposed to provide. [We] will continue to use sanctions to target those who lend support to Iran’s destabilizing behavior and above all, the United States will never allow the regime in Iran to acquire a nuclear weapon.”

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Legislative Branch Actions

- Countering Iran's Destabilizing Activities Act of 2017 (S.722)
  - Passed 98-2 on June 15
  - Senate subsequently made a technical tweak to alleviate constitutional concerns
  - Contains amendment related to Russia sanctions
  - Key provisions
    - Mandatory sanctions on persons involved with Iran's ballistic missile program and those that knowingly transact with them;
    - Terrorism-related sanctions on the Islamic Revolutionary Guard Corps and codification of sanctions against individuals who are currently sanctioned related to Iranian support for terrorism;
    - Discretionary sanctions on persons deemed to commit human rights abuses in Iran;
    - Mandatory sanctions on persons involved in specific activities related to the supply, sale, or transfer of prohibited arms and related material to or from Iran.
  - President has authority to temporarily waive sanctions based on national security.
- Sponsors of the legislation -> it does not violate U.S. commitments under the JCPOA.
- Concern that the bill will be seen as contrary to at least the spirit of the JCPOA.

Managing Compliance

1. Conduct thorough **KYC diligence** and **screening** on all parties to each transaction
2. Have a clear understanding of the anticipated **end-uses** of the items provided to ensure no prohibited uses (*e.g.*, nuclear, military, etc.)
3. Understand whether any items (goods, software, or technology) to be sent to Iran are subject to **U.S. export control laws**
4. Ensure **U.S. persons and U.S. dollars are not involved** in any Iran-related transaction, including U.S. national employees or U.S. intermediaries (*e.g.*, U.S. financial institutions), unless otherwise authorized
5. Implement **exit mechanism** in any permissible Iran-related contracts to unwind transactions in the event of sanctions **“snap-back”**
6. Review **existing contracts & policies** to ensure consistency with contemplated activities

Questions?