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International Trade & Regulatory ADVISORY ■

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President Trump's JCPOA Announcement Is More Complicated Than It Looks

On October 13, 2017, President Trump announced a new national security strategy regarding Iran that may eventually affect current economic sanctions restrictions involving Iran.

The President in his comments noted that he declined to certify Iran's compliance with the nuclear-related agreement implemented in January 2016, known as the Joint Comprehensive Plan of Action (JCPOA).

This "certification" was due by October 15, 2017, as part of a repeating 90-day reporting requirement under the Iran Nuclear Agreement Review Act of 2015 (INARA) that requires the President to determine and certify to Congress whether Iran is, among several other things, "transparently, verifiably, and fully implementing the agreement."

While most press reporting refers to this as "decertification," it is in fact a presidential decision to *not* affirmatively certify Iran's conduct.

Major takeaways from Friday's actions by the President include:

- This executive action is *pursuant to U.S. statutory requirements* and is separate and apart from the four corners of the JCPOA.
- The *U.S. embargo against Iran is unaffected* and remains in place just as it did on the date of JCPOA implementation, and largely as it did before JCPOA implementation.
- *All elements of the JCPOA currently remain in effect*.
- *So-called "secondary sanctions"* that had been waived or lifted as part of the JCPOA *have not been impacted*. Secondary sanctions involve U.S. targeting of third-country persons, companies, and entities for certain types of activities related to Iran.

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What this means for clients who may have international business or financial activities that are impacted by U.S. economic sanctions against Iran:

- **Does the U.S. financial system remain off limits for all unauthorized transactions involving Iran?** Yes. This is part of the "primary sanctions" against Iran and remains unchanged by Friday's actions.
- **Does the Office of Foreign Assets Control's (OFAC) "General License H" regarding foreign subsidiaries of U.S. parent companies remain in effect?** Yes. The President's action has not impacted the General License.
- **Does the OFAC commercial aviation "statement of licensing policy" remain in effect?** Yes. The licensing policy has not been impacted by the President's actions.
- **What happens next?** There are several possibilities. At this juncture, it appears that the next steps may involve deference to congressional action. Congress may attempt to direct the President to reinstate secondary sanctions waived as part of the U.S. commitment under the JCPOA, or it may withhold any action, leaving the JCPOA in place. Notably, the other parties to the JCPOA—Germany, France, the United Kingdom, China, and Russia—have all reiterated their commitment to the agreement.

INARA provides the Congress with an expedited legislative process under very specific circumstances to reimpose waived sanctions against Iran. The statute allows "qualifying legislation" to be considered under this fast-track process if it is introduced during a 60-day window. Significantly, however, Congress is *not required to act or introduce such legislation* by virtue of the President's decision to not certify Iranian compliance with the deal. Many members of Congress have expressed some reticence to either withdraw from or modify the agreement; thus, there is the distinct possibility that the JCPOA will remain in place and that the related sanctions that were waived or lifted under the agreement will not be reimposed.

On the other hand, because U.S. participation in the JCPOA was as a "sole executive agreement," the President does not need congressional action to withdraw from the JCPOA. In fact, President Trump's comments note that if Congress does not act to "improve" the agreement, then he would consider ending U.S. involvement in the JCPOA altogether.

Given this highly fluid context, it is likely that Congress will act under a normal legislative process—with committee hearings, markups, and debate outside of the INARA fast-track process—to consider entirely new legislation. New legislation could impose new secondary sanctions against Iran if certain standards or actions of transparency are not demonstrated by the country's nuclear-related activities.

Given the current uncertainty regarding the JCPOA, companies and financial institutions should carefully consider and deliberately navigate the risks attendant with the JCPOA and the increasingly complicated Iran-related sanctions regime.

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