



## 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 and destination
- 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. and EU 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 both inside and outside of the United States.
  - 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 outside of the U.S.
  - “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 both inside and outside of the United States.
  - 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 EU/E3+3 (aka P5+1) and Iran
  - European Union, 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

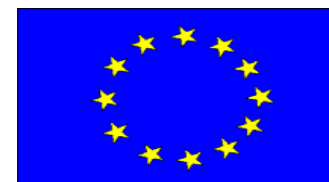
■ **Most UN Security Council sanctions resolutions on Iran have been terminated, including:**

- 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
- 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

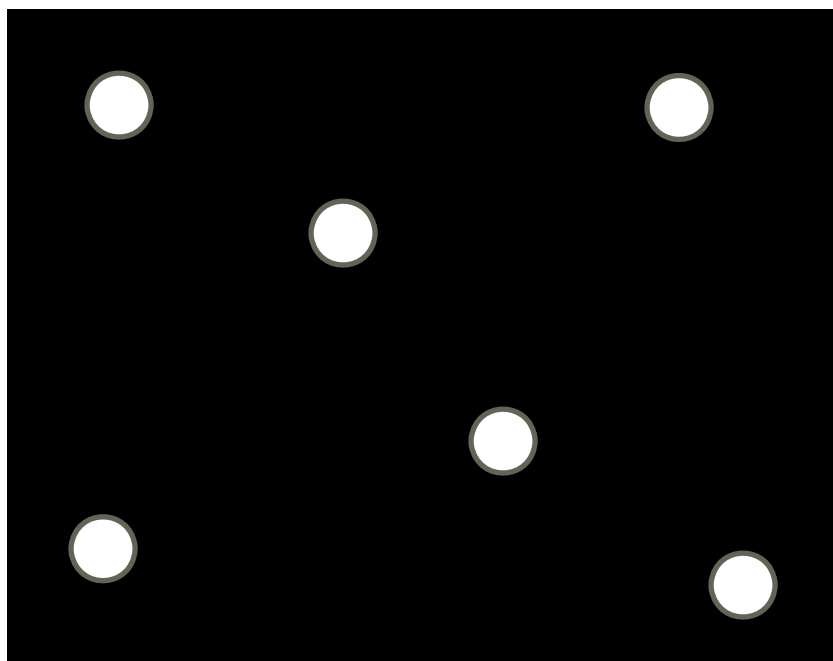
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- Secondary sanctions relief for non-U.S. persons
- GL H for non-U.S. entities owned or controlled by U.S. persons
  - Allows participation in certain activities with Iran subject to certain limitations
  - Allows for limited activities by U.S. persons 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.

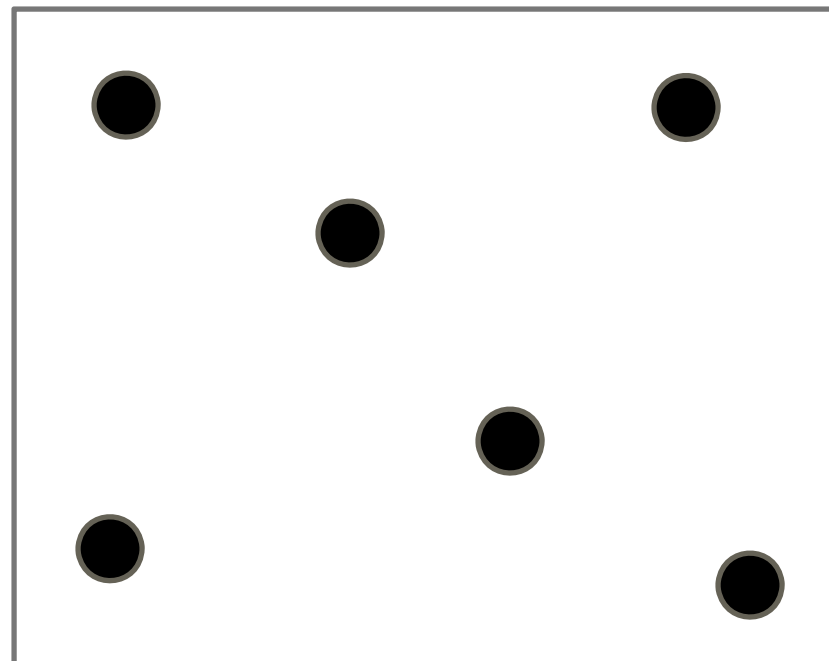


## Iran Sanctions *for Non-U.S. Persons* on One Slide

Before



After



## The Iran Deal – What Has Changed in the U.S. Regime?

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

## The Iran Deal – What Has Changed in the U.S. Regime?

### Industries Directly Affected

Automotive	Commercial Aerospace	Energy (Oil & Gas) & Petrochemicals	Financial, Banking & Insurance
Gold, Other Precious Metals, Banknotes & Coinage	Graphite & Raw or Semi-Finished Metals (e.g., Aluminum, Steel)	Shipping, Shipbuilding, Ports & Transportation	Software & Metals
<b>Previously Authorized:</b>	Medicine and Medical Products	Agricultural Commodities	Internet and Personal Communications

## 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. but:
  - Incorporating >10% controlled U.S. content; or
  - 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 (even dual-nationals)

### ■ 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)

## Executive Branch Overview



### ■ Recent Actions

- **December 2016 (Obama):**
  - OFAC announces 180-day wind-down period in the event of snap-back
- **January 2017 (Obama):**
  - OFAC clarifies U.S. person compliance professionals can give compliance advice
- **February 2017 (Trump):**
  - Iran conducts missile test
  - Trump puts Iran “on notice”
  - 25 new SDN designations
- **April 2017 (Trump/Tillerson):**
  - State announces that Iran is compliant under terms of JCPOA but that it is still a state sponsor of terror and will be subject to a review

### ■ Future

- Potential for future designations?
- Renewal of waivers under JCPOA in May?

## Legislative Branch Overview

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- **Iran sanctions bills introduced in the Senate have been delayed until after the Iranian presidential election**
- **Countering Iran's Destabilizing Activities Act of 2017 (S.722)**
  - Senator Cooker's bill establishes new sanctions targeting Iran's testing of ballistic missiles and its backing for terrorism (areas targeted for sanctions in the bill are outside the terms of the JCPOA)
  - Seeks to block the property of any entity involved in the sale of arms to or from Iran
- **Iran Ballistic Missiles and International Sanctions Enforcement Act (H.R.1698)**
  - Adds the transfer of ballistic missile technology and destabilizing types of conventional weapons to existing U.S. nonproliferation sanctions on Iran
  - Mandates that the Executive Branch apply sanctions to:
    - Iranian Government agencies involved in ballistic missile development,
    - Any foreign entity, inside or outside Iran, that supplies material for those efforts or which finances or otherwise facilitates Iran's ballistic development
    - Anyone providing to or receiving from Iran conventional weapons or related materials in violation of UN Security Council Resolution 2231

## 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

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