



IRAN TASK FORCE

BY KENNETH KATZMAN

Easing US Sanctions on Iran

JUNE 2014

Since the seizure of US hostages in Iran following the 1979 revolution, the US government has imposed a succession of economic penalties against the Islamic Republic. The complexity and severity of these sanctions intensified following Iran's resumption of a uranium enrichment program in 2006. However, there are a variety of ways to provide extensive sanctions relief should there be a deal placing long-term restrictions on Iran's nuclear activities.

The November 24, 2013 Joint Plan of Action (JPA) between Iran and the "P5+1" countries (United States, Britain, France, Germany, Russia, and China) pledges Iran comprehensive international sanctions relief if a final settlement is reached on its nuclear program.¹ The JPA does not assert that the United States is the sole source of existing sanctions. However, US sanctions are key to sanctions relief because many US sanctions penalize foreign countries and companies that conduct specified transactions with Iran.

The JPA does contain several ambiguities with respect to sanctions relief. It states that a comprehensive deal would be implemented in reciprocal steps—a reference to US official statements that the promised sanctions relief would not be provided immediately, but rather phased in as Iran fulfills its commitments under any negotiated solution. Furthermore, the JPA promises Iran lifting of "sanctions related to Iran's *nuclear program*"—leaving it to the negotiations to decide which sanctions are "nuclear related" and which might relate only to Iran's support for terrorist organizations, its human rights record, or other issues.

Suspension versus Termination

The preamble of the JPA stipulates that a comprehensive deal would produce a "lifting" of multilateral sanctions—not a "suspension" of those

Atlantic Council Iran Task Force

The Iran Task Force, launched in 2010 and chaired by Ambassador Stuart Eizenstat, performs a comprehensive analysis of Iran's internal political landscape, as well as its role in the region and the world, to answer the question of whether there are elements within the country and region that can build the basis for an improved relationship with the West and how these elements, if they exist, could be utilized by US policymakers.

The Iran Task Force is a project of the Atlantic Council's South Asia Center, and is supported generously by a grant from the Ploughshares Fund.

sanctions. Despite this JPA stipulation, the document implies that the administration does not necessarily have the authority to commit to an outright lifting. A later portion of the document that addresses the commitment not to impose any new sanctions for the JPA period (January 20–July 20, 2014) says that the "U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions."

This phraseology clearly represents a recognition by Iran that US executive branch authority to ease sanctions has limitations. This leaves open the possibility that the administration, as part of a comprehensive nuclear settlement, might commit only to suspend sanctions rather than to outright sanctions lifting or termination. Because either is possible as an outcome of negotiations with Iran, this brief will therefore address authorities and requirements for suspension and nonapplication as well as outright lifting or termination of Iran sanctions. This paper focuses on US sanctions, although with reference in certain circumstances to application of US sanctions to third countries.

¹ Joint Plan of Action, November 24, 2013, http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf.

Termination Authority

The president can terminate some Iran sanctions provisions under existing authority, without specific additional action from the Congress.

US sanctions come into force either by congressional enactment of law or by the issuing of an executive order by the president. Sanctions imposed on Iran by executive order were issued under the authority provided to the president by the International Emergency Economic Powers Act (IEEPA), a law that gives the president broad authority to restrict transactions with countries for which a “state of emergency” has been declared. President Bill Clinton declared a “state of emergency” with respect to Iran in March 1995, and that declaration has been renewed each year since. Examples of executive orders that impose sanctions on Iran include the following:

- Executive Order 13224 of September 2001 orders the freezing of US-based assets of and bans US transactions with companies determined to have supported the commission of acts of terrorism.
- Executive Order 13382 of June 2005² orders the freezing of US-based assets of and bans US transactions with companies determined to have facilitated the proliferation of weapons of mass destruction (WMD).

These two orders above address the functional issues of terrorism and proliferation and are not specific to Iran. For example, Executive Order 13224 was issued immediately after the September 11, 2001 attacks against the United States and was originally intended to cut off US transactions with any companies or financial institutions that might have conducted transactions on behalf of al-Qaeda. In recent years, both orders have been applied to many Iranian entities, including over two dozen Iranian banks and foreign banks that have close financial affiliations with these Iranian banks.

These orders have not been codified by law and could be revoked or amended by administration action alone. Designations under these orders also trigger sanctions on foreign banks that conduct transactions with designated banks, as required by Section 104 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA, P.L. 111-195).

The following two executive orders also have not been entirely codified by law, and those provisions not codified could be revoked or amended by administration action alone.

- One Iran-specific Executive Order is 13622 of July 30, 2012. It applies Iran Sanctions Act sanctions to firms that the administration determines have purchased crude oil or petroleum products (including petrochemicals) from Iran. This provision has not been codified by law.
- Another Iran-specific Executive Order is 13645 of June 2013. It imposes sanctions on companies determined to have traded in Iran’s currency, the rial, or have supplied goods to Iran’s automotive sector.³ These provisions have not been codified.

Executive Orders Codified by Law—Not Revocable by Executive Branch Alone

When an executive order has been codified into law, the administration cannot on its own authority revoke the order and lift the applicable sanctions. The following orders fall into this category:

US Trade and Investment Ban. Executive Order 12959 of May 1995 banned US trade with and investment in Iran. However, the provisions of that order were subsequently codified in law—Section 103 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA, P.L. 111-195). Yet, as discussed below, Section 401 of CISADA provides authority for the administration to terminate the trade ban by making certain certifications.

Ban on Helping Iran Produce Petrochemicals. Executive Order, 13590 of November 21, 2011, contains a provision applying various sanctions contained in the Iran Sanctions Act to companies that the president determines “sells, leases, or provides to Iran goods, services, technology, or support . . . that could directly and significantly contribute to the maintenance or expansion of Iran’s domestic production of petrochemical products.” The value of such supplies or services must have a fair market value of \$250,000 or more or, during a twelve-month period, an aggregate fair market value of \$1 million or more. This provision was codified (as part of the Iran Sanctions Act) by Section 201 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (P.L. 112-158). That law does not provide the administration leeway to terminate the provision, although it does provide authority to waive it.

Sanctions on the Central Bank. Executive Order 13599 of February 5, 2012 blocks the US-based property of Iran’s Central Bank. Section 217 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (P.L. 112-158) codifies that provision. However, Section 217 provides

² Executive Order 13382 was a follow-up to Executive Order 12938 of November 1994.

³ Executive Order 13645, June 3, 2013, <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/13645.pdf>.

authority for the administration to terminate the provision if it certifies that the Central Bank is not financing: Iran's acquisition of "chemical, biological, or nuclear weapons, or related technologies;" Iran's ability to construct, operate, or maintain nuclear facilities; Iran's acquisition or development of ballistic or cruise missiles or destabilizing types and amounts of advanced conventional weapons; the Revolutionary Guard Corps; or entities sanctioned under Executive Orders 13224 or 13382 (above).

Sanctions on Iran's Dealing in Precious Metals. Executive Order 13622, mentioned above, also applies Iran Sanctions Act sanctions to individuals or firms determined to have helped Iran deal in precious metals, such as gold. This provision has been codified by Section 1245 of the Iran Freedom and Counter-Proliferation Act (IFCA, Subtitle D of the FY2013 National Defense Authorization Act, P.L. 112-239). That law does not provide authority for the administration to terminate the provision, although it does provide waiver authority.

Terminating Application of Sanctions Laws by Executive Action

Not all US sanctions on Iran that have been imposed by law require congressional action to achieve termination. There are a number of significant sanctions against Iran, imposed by law, which could be terminated by presidential action alone, were there an administration decision to do so. This is the case for those laws that contain provisions that spell out specific conditions that, if the president determines are met, would terminate application to Iran.

The primary examples of laws that contain specific termination provisions are the *Iran Sanctions Act* (P.L. 104-172, as amended); several sanctions provisions imposed by the *Comprehensive Iran Sanctions, Accountability, and Divestment Act* (CISADA); and the basket of Iran sanctions that apply to Iran's designation by the Department of State as "state sponsor of terrorism" (the so-called "*terrorism list*" sanctions).

The terrorism list designation, the Iran Sanctions Act, and CISADA trigger a wide range of sanctions on Iran. The terrorism list sanctions mainly apply to US firms, whereas the Iran Sanctions Act and CISADA are prime examples of "secondary sanctions"—sanctions that penalize foreign firms for certain transactions with Iran. Even though the comprehensive nuclear deal is to result in the lifting of only "nuclear-related sanctions" (and not terrorism-related sanctions), the requirements for terminating the terrorism list sanctions are discussed below because the terrorism list designation is interlocked with requirements to

terminate the Iran Sanctions Act and the applicable provisions of CISADA.

Termination Provisions of the Iran Sanctions Act

The Iran Sanctions Act (ISA). ISA was enacted in 1996 primarily to deter major foreign energy companies from subscribing to oil and gas field development projects in Iran. Since then, it has been amended numerous times, expanding its authorities to prohibitions on supplying to Iran gasoline and shipping services; supplying Iran energy sector equipment and services, including to produce petrochemicals; supplying to Iran WMD-related technology; participating in a joint venture with Iran to mine or produce uranium; and purchasing or issuing Iranian government bonds. The executive branch does have implementing latitude in that ISA assigns to the administration the authority to investigate and determine violations, within a set time frame.

ISA gives the administration the authority to terminate the Act with respect to Iran if the administration certifies to Congress that *all* of the following conditions are met:⁴

- that Iran "has ceased efforts to design, develop, or acquire a nuclear explosive device, chemical or biological weapons, and ballistic missile technology;"
- that Iran has been removed from the list of state sponsors of terrorism; and
- that Iran "poses no significant threat to U.S. national security or allies."

All three criteria must be satisfied in order for the president to make the required certification. To date, the administration has not indicated that Iran is close to satisfying any of these criteria.

When enacted, the Iran Sanctions Act was titled the Iran and Libya Sanctions Act (ILSA), and all sanctions provisions applied to both Iran and Libya. With respect to Libya, terminating the law required a presidential certification that Libya had complied with all provisions of UN Security Council resolutions related to the 1988 bombing of Pan Am flight 103 over Lockerbie, Scotland. After Libya turned over its WMD technology to the United States in 2004, the George W. Bush administration used the criteria in the law to terminate its application with respect to Libya.

⁴ Iran Sanctions Act, P.L. 104-172, as amended, <https://www.govtrack.us/congress/bills/104/hr3107>.

Termination of Sanctions Imposed by CISADA

Aside from expanding the application of the Iran Sanctions Act, CISADA contained several additional Iran sanctions provisions, among which are the following:

- Section 103 of CISADA codified the US ban on trade with and investment in Iran, first imposed by Executive Order 12959 of May 1995. The ban prohibits almost all transactions between US companies and Iran, except for those involving food and medical equipment.
- Section 104 of CISADA bars from the US financial system any foreign bank that “facilitates a significant financial transaction or transactions or provides significant financial services for” any Iranian company or person that has been designated as a proliferation or terrorism supporting entity under Executive Order 13382 or 13224, respectively.

Section 401 of CISADA contains specific requirements for the administration to terminate the above sanctions, were there an administration decision to do so. The termination provisions are similar to—although slightly less extensive than—the requirements for administration termination of the Iran Sanctions Act. To terminate the two provisions above, the administration must certify to Congress *all* of the following:⁵

- That “Iran has ceased providing support for acts of international terrorism” and “no longer satisfies the requirements for designation as a state sponsor of terrorism.” This requirement is similar to that contained in the Iran Sanctions Act, above. However, CISADA does not require that Iran has actually been removed from the terrorism list but merely that it meets the requirements for removal.
- And: that Iran has “ceased the pursuit, acquisition, and development of, and verifiably dismantled its, nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.” This requirement is somewhat more stringent than the equivalent requirement in ISA in requiring verifiable dismantlement of the infrastructure might possess for developing the specified capability.

Unlike ISA, there is no requirement that the president also certify that Iran poses no significant threat to US national security or allies.

Another section of CISADA, section 105, mandates sanctions (ineligibility for a US visa, and blockage of US-based property or assets), on Iranian government persons that are determined by the president to have committed or been complicit in serious human rights abuses against Iranian citizens after the June 12, 2009 presidential election-related uprising in Iran.

This section contains its own specific authority to terminate the section through executive action. Section 105 can be terminated in its entirety by the president if the president certifies to Congress that Iran has:

- unconditionally released all political prisoners detained in the aftermath of the June 2009 uprising;
- “ceased its practices of violence, unlawful detention, torture, and abuse of citizens of Iran while engaging in peaceful political activity;”
- Conducted a transparent investigation into killings, arrests, and abuses of peaceful political activists that occurred after the uprising; and
- that Iran has committed to and is making demonstrable progress toward establishing an independent judiciary and respecting the human rights recognized in the Universal Declaration of Human Rights.

It is not clear that CISADA Section 105 sanctions are included in the negotiations on a comprehensive nuclear agreement. As noted above, the JPA indicates that a comprehensive agreement will result in the lifting of “nuclear-related sanctions” and Section 105 focuses exclusively on human rights issues.

Removal from the Terrorism List

As noted above, one of the termination criteria in ISA is that Iran be removed from the “terrorism list,” thereby linking terrorism-related sanctions to the overall issue of sanctions relief as part of a comprehensive nuclear deal. Designation as a state sponsor of terrorism triggers a wide range of sanctions against Iran, including a ban on US economic aid to Iran; a ban on any US arms exports to Iran; a restriction of any exports to Iran that could have military or WMD applications (“dual use items”); a requirement that the United States vote against any international lending to Iran, such as by the World Bank or International Monetary Fund; a cut in US economic aid to any government that provides arms or financial support to Iran; and a cut in US contributions to international programs that operate in Iran.⁶

⁵ Section 401 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. P.L. 111-95, <https://www.govtrack.us/congress/bills/111/hr2194>.

⁶ These triggers are contained in separate laws, such as the Export Administration Act, the Arms Export Control Act, and provisions contained in a 1996 law called the Anti-Terrorism and Effective Death Penalty.

The president has the authority to remove a country from the terrorism list, subject to congressional approval. If there were an administration decision to remove Iran from the list, the president must certify to Congress that Iran:

- has not provided support for acts of terrorism within the preceding six months; and
- has assured the United States that it will not support acts of terrorism in the future.

The Arms Export Control Act provides for a congressional role in a decision to remove a country from the terrorism list. In cases where there has not been a change of regime in the terrorism list state, the president is required to notify Congress forty-five days in advance of removing that country from the list. If there has been a change of regime in the terrorism list state, the advance notification period does not apply. If it chooses to, Congress can try to block the removal by enacting a joint resolution of opposition to the removal. However, if there were a decision to do so, the president could veto that joint resolution, thereby requiring Congress to achieve a two-thirds majority in both chambers to override the veto and keep Iran on the terrorism list.

According to the Export Administration Act that set up the terrorism list, an administration decision to remove a country from the list is supposed to hinge only on its termination of support for international terrorism. Among relevant examples, North Korea was removed from the terrorism list in 2008 primarily in exchange for cooperation on its nuclear program. In 2006, Libya was removed from the list because it gave up its WMD programs, as discussed above, although it also had earlier cooperated in bringing to trial in the Hague Libyan agents who allegedly were responsible for the Pan Am 103 bombing.

Termination through Expiration or “Sunset”

Some sanctions contain provisions specifying when their provisions might terminate—a so-called “sunset.” Section 13 of the Iran Sanctions Act states that “This Act shall cease to be effective on December 31, 2016.” The original sunset of ISA was to take place by the end of August 2001—five years after the original enactment of the law. Congress has on two occasions extended the sunset of ISA, most recently from its previous sunset date of December 31, 2011.

Were there a decision to do so in connection with a comprehensive nuclear settlement with Iran, the administration might decide to allow the Iran Sanctions Act to sunset. This would reopen Iran’s energy sector to

unimpeded foreign investment and would enable Iran to begin expanding oil and gas production again after many years of stagnation. In allowing the legislation to sunset, the administration would not have to terminate the Act by making the required certifications that are stipulated above. If Congress disagreed with the administration, it could pass legislation to extend the ISA sunset beyond December 31, 2016. In that scenario, the president would have the authority to veto ISA extension legislation, and enacting an extension into law would require the overriding of the veto.

Some US laws contain provisions for automatic termination of sanctions against foreign companies or persons on whom sanctions have been imposed. Section 9(b) of the Iran Sanctions Act states that sanctions imposed on companies determined to have violated the Act will remain in effect:

- “for a period of not less than 2 years from the date on which it was imposed; or”
- “until such time as the President determines and certifies to the Congress that the person whose activities were the basis for imposing the sanction is no longer engaging in such activities and that the President has received reliable assurances that such person will not knowingly engage in such activities in the future, except that such sanction shall remain in effect for a period of at least one year.”

This provision of the Iran Sanctions Act would enable the president to allow sanctions on any companies determined to have violated ISA to lapse, were there a decision to do so. However, doing so would not terminate the Act itself.

Authority to Suspend or Avoid Application of Sanctions

The president has the authority to choose how to apply or not apply sanctions through the power to make designations of sanctionability. This is considered a “suspension” provision, not a “termination” provision because using this authority does not change the underlying sanctions provision itself, whether imposed by executive order or by law. In the case of an executive order, that authority is implicit, by virtue of the authority given the president by the International Emergency Economic Powers Act, under which the Iran-related orders were issued. Those sanctions imposed by law give that authority explicitly in the form of legislative language specifying that sanctions are to be imposed on “entities (or countries) determined by the president to have” violated the stipulated provisions. There is no formal mechanism for Congress to either accept or deny any specific determination or revocation of sanctionability.

The Iran, North Korea, and Syria Non-Proliferation Act (“INKSNA,” P.L. 106-178, as amended)

INKSNA, which was first enacted in 2000 as the Iran Nonproliferation Act and amended subsequently to add application to Syria and North Korea, gives the Executive branch indirect authority to determine violations. Section 2 of that law requires an administration report to Congress on entities that violate the specific provisions. The administration, therefore, could include or exclude any particular entity from its reports to Congress as a means of avoiding imposing sanctions, were there a decision to do so. Section 3 authorizes application of sanctions on the entities named in the administration report.

The Iran-Iraq Arms Non-Proliferation Act of 1992 (Title XVI of P.L. 102-484)

This law is a proliferation-related sanction that imposes sanctions on any company or country that the president determines has supplied WMD-related technology or “destabilizing numbers and types of” advanced conventional weaponry to Iran (or Iraq). Penalties against violating companies include a ban on US exports to and US government procurement from that company. Penalties against foreign countries determined to have violated the provision include a suspension of US foreign aid to that country, US opposition to multilateral loans to that country, a suspension of any coproduction of arms with that country, and suspension of militarily-useful US exports to that country.

The Iran Sanctions Act

As noted above, the Iran Sanctions Act contains numerous provisions that sanction foreign firms that conduct various, mostly energy-related, transactions with Iran. For all of those provisions, the administration has the authority to determine whether a company has violated the Act and should therefore be subject to the imposition of sanctions.

In the case of the Iran Sanctions Act, Congress has enacted a limitation on this authority to make determinations. A provision of that Act stipulates the requirements for the administration to begin an investigation of sanctionability, and sets a 180-day deadline to make a determination one way or the other. However, these provisions do not stipulate what the outcome of an investigation should be—therefore still leaving in the hands of the administration the authority to decide whether any company should be sanctioned under the Act.

Non-Application of Sanctions through Use of Exemption Provisions

Several sanctions laws contain provisions that give the president the authority to exempt from sanctions foreign countries and companies when the president determines and certifies to Congress that these entities or companies are cooperating with US policy objectives. The president could use this authority to ease some of the sanctions against Iran if there were a decision to do so.

Oil Purchases from Iran

Section 1245 of the National Defense Authorization Act (NDAA) for FY2012 (P.L. 112-81) gives the president the authority to determine whether “the parent country of jurisdiction over [foreign banks] has significantly reduced its volume of crude oil purchases from Iran . . .”⁷ A determination that a country has made such reductions qualifies that country’s banks to be exempt from that law’s provisions barring them from operating in the United States financial sector.

This general authority, in theory, could enable the administration to refrain from imposing new sanctions on any Iranian or other entity, were there a decision to do so, as part of a comprehensive nuclear settlement with Iran. However, it is not clear that the executive branch would be able to make a binding commitment to Iran not to apply sanctions based on the president’s authority to make determinations of sanctionability. Such a pledge could potentially amount to an expression of administration intent not to enforce US law.

Iran Sanctions Act “Special Rule”

Section 4(e)(3) of the Iran Sanctions Act provides the president a “special rule” for avoiding investigating or ending an investigation of potential violations of the provisions of the Act. The special rule is not a waiver, but rather a certification that a company is complying with US objectives in order to avoid sanctions. The president can exercise the special rule by certifying to the “appropriate congressional committees”⁸ that:

- “the person (natural person or corporation) whose activity was the basis for the investigation is no longer engaging in the activity or has taken significant verifiable steps toward stopping the activity; and”

⁷ This exception is spelled out in Section 1245(d)(4)(D) of P.L. 112-81.

⁸ The Act stipulates that term means: the Senate Finance Committee, the Senate Banking, Housing, and Urban Affairs Committee, and the Senate Foreign Relations Committee, and the House Ways and Means Committee, the House Financial Services Committee, and the House Foreign Affairs Committee.

- “the President has received reliable assurances that the person will not knowingly engage in an activity described in section 5(a) [the section of the Act that describes the sanctionable activity] in the future.”

The president has used this authority to avoid penalizing several major foreign energy companies that promised to wind down their oil and gas development projects in Iran and to seek no new business opportunities in Iran.

The Iran, North Korea, and Syria Non-Proliferation Act (INKSNA)

INKSNA provides the president authority to exempt from sanctions foreign firms. That law authorizes the imposition of sanctions on foreign firms that are determined, in a report submitted to Congress, to have transferred to or acquired from Iran (or Syria or North Korea) any goods listed by various nonproliferation regimes, including the Nuclear Suppliers Group, the Missile Technology Control Regime, the Australia Group, the Wassenaar Arrangement, and the Chemical Weapons Convention. Sanctions that can be imposed on violators include a ban on US government procurement from that firm; a prohibition on US arms sales or other defense articles to that firm; and a denial of licenses for dual use exports to that firm.

Section 5 of INKSNA gives the president the authority not to apply INKSNA sanctions on any firm if the president determines and certifies to Congress any one of the following:

- that the firm that made the violating transfers did not “knowingly” make the transfers described;
- that the goods, services, or technology transferred did not “materially” contribute to the efforts of Iran, North Korea, or Syria, as the case may be, to develop nuclear, biological, or chemical weapons, or ballistic or cruise missile systems, or weapons listed on the Wassenaar Arrangements Munitions List;
- that the transfer of goods to or from Iran was part of an authorized operation; and
- that the parent government of the firm that made the transfer has “imposed meaningful penalties on that person on account of the transfer of the goods, services or technology which caused that person to be identified” in the required report of violations.

Suspension of Sanctions through Use of Waiver Authority

Most US sanctions laws, including the ones discussed in the above sections of this brief, provide the administration with the ability to waive the application

of sanctions. This authority is generally provided to comport with the constitutional separation of powers and the recognition of the primacy of the executive branch in exercising US foreign policy.

The president has exercised waiver authority provided in several laws, including the Iran Sanctions Act, the Iran Threat Reduction Act, IFCA, and Section 1245 of the FY2012 National Defense Authorization Act to implement the sanctions easing commitment required by the Joint Plan of Action.

In cases where the administration does not have authority to terminate sanctions, or in which Congress does not repeal a sanctions law permanently, the administration would need to exercise its waiver authority in order to implement a commitment to Iran to ease sanctions.

The following sections discuss the waiver authority available for those sanctions that are to be lifted in the event of a comprehensive nuclear deal with Iran.

Crude Oil Exports

A comprehensive nuclear settlement with Iran, if one is reached, will undoubtedly require a US lifting of sanctions on the worldwide purchases of Iranian crude oil. Implementing such an agreement will require an indefinite suspension of the sanctions contained in Section 1245 of the FY2012 NDAA. This waiver authority was already exercised to implement the JPA, but would need to be extended repeatedly in the event of a comprehensive nuclear deal, unless Congress were to repeal the provision outright. The waiver provision (Section (d)(5) of that law) gives the president the authority to waive penalties for 120 days—and additional 120-day periods (with no stipulated limit)—if the president certifies to Congress that “such a waiver is in the national security interest of the United States.” The provision requires an administration report to Congress justifying the waiver and certifying that the country receiving the waivers faced exceptional circumstances that prevented it from significantly reducing oil purchases from Iran.

Accessing Iran’s Hard Currency Abroad

The same law—Section 1245 of the FY2012 NDAA—requires that any funds due to the Central Bank of Iran or any sanctioned Iranian bank be “credited to an account located in the country with primary jurisdiction over the foreign financial institution” that has made the transaction with the Iranian bank. This provision, which became effective February 6, 2013, was intended to “lock up” hard currency payments for Iranian oil in banks abroad, unable to be accessed by the Central Bank of Iran directly. The same waiver provision discussed

above that would avoid penalizing Iran's oil customers would apply to this provision.

Banking Sanctions and US Trade Ban Imposed by CISADA

The penalties on foreign banks that conduct transactions with sanctioned Iranian banks (Section 104 of CISADA) can be waived thirty days after the Secretary of the Treasury: "(1) determines that such a waiver is necessary to the national interest of the United States; and (2) submits to the appropriate congressional committees a report describing the reasons for the determination." The waiver extends indefinitely.

US Trade Ban Provisions of CISADA. As noted above, Section 103 of CISADA codified the US ban on trade with Iran. That same section provides the president with a series of "exceptions" which are similar in effect to indefinite waiver authority. Section 103(b)(2)(B)(vi) states that the president can allow the exportation of US goods, services, or technology to Iran "if the President determines the exportation of such goods, services, or technologies to be in the national interest of the United States." Similarly, Section 103(d)(2) gives the president authority to permit imports from Iran if the president "prescribes a regulation providing for such an exception on or after the date of enactment of this Act;" and certifies that such regulations is in the "national interest of the United States."

Iran Sanctions Act Provisions

Section 9 of the Iran Sanctions Act provides significant authority to the president to waive sanctions of its provisions, which were described above. Section 9(b) stipulates that sanctions imposed on any foreign companies under the Act remain in effect for two years, meaning that the president can allow sanctions already imposed to lapse. Section 9(c) gives the president authority to waive penalties on any firm determined to have violated the energy related provisions of the Act by certifying to Congress that the waiver is "*essential* to the national security interests of the United States." Waivers for violating the WMD related provisions of the Act can be exercised if the president certifies that doing so is "*vital* to the national security interests of the United States." Any of these waivers remain in effect for one year, but can be renewed for additional one year periods, without limit.

Terrorism List Sanctions

As noted above, Iran's designation as a terrorism state sponsor triggers numerous sanctions under various laws. Virtually all of these laws provide the president with waiver authority, which could be used to suspend the sanctions indefinitely as part of a comprehensive nuclear deal, were there a decision to do so.

Proliferation-Related Sanctions

The president has authority in the Iran-Iraq Arms Non-Proliferation Act to waive sanctions if the president certifies that a waiver is "essential to the national interest of the United States." INKNSA contains language similar to that of a waiver, although imposing sanctions under the Act is *authorized, not required*. This law requires the president to provide Congress with a "written justification describing in detail the facts and circumstances" explaining any decision not to impose sanctions on entities reported to have violated the law's provisions.

Conclusion

In light of the debate over a nuclear agreement with Iran, the easiest way for the administration to implement sanctions easings negotiated in a final nuclear deal is to exercise its waiver authority. Iran's main demand is that sanctions no longer apply after a nuclear deal is reached—it is less concerned with the process by which the sanctions are no longer applied. Waiver authority is available for those sanctions that Iran is demanding be eased as part of a nuclear deal, particularly those that have restricted its ability to export oil, to repatriate hard currency held abroad, and to rejoin the international banking system. The expiration of the Iran Sanctions Act at the end of 2016 would also satisfy many of Iran's demands for sanctions easing. Iran is not demanding, as a condition of a final agreement, that any of the US sanctions laws actually be repealed or amended legislatively. Iran might make such demands over the longer term in order to provide its trading partners with greater certainty.

Table 1. US Authorities to Ease Sanctions

Termination Authorities		
Provision	Authority	Examples
Executive orders <i>not</i> codified by law	Administration has authority to revoke or amend	Executive Order 13645 sanctioning goods for Iran's auto sector
Executive orders codified by law	Law codifying the order must be terminated or altered before an order can be terminated or amended	Executive Order 13590 sanctioning goods to expand Iran's petrochemical sector.
Laws that provide termination authority to the executive branch	Administration can terminate by certifying that termination provisions have been met	Iran Sanctions Act; several provisions imposed by CISADA; sanctions imposed through Iran's "terrorism list" designation
Laws that contain a "sunset" date	Termination is automatic upon sunset. President could veto legislation to extend or eliminate sunset provision	Iran Sanctions Act set to sunset on December 31, 2016
All other laws (providing no administration termination authority or sunset)	No administration authority to terminate the sanction outright	FY2012 NDAA, Iran Threat Reduction Act, IFCA, INKSNA, Iran-Iraq Arms Non-Proliferation Act
Non-Application of Sanctions Provisions		
Laws requiring a determination of violations	Administration has authority to determine potential violations	Any executive order; Iran, North Korea, and Syria Non-Proliferation Act
Laws providing exemptions provisions	Administration has authority to certify qualifications for exemption	Iran oil export sanctions under FY2012 NDAA; "special rule" of Iran Sanctions Act; INKSNA
Waiver Authority		
Virtually any sanction imposed by law	President can waive for time periods specified by each law by making required certification of waiver necessity	Iran Sanctions Act; FY2012 NDAA; Iran Threat Reduction Act; IFCA; CISADA banking sanctions, etc.

Atlantic Council Board of Directors

CHAIRMAN

*Jon M. Huntsman, Jr.

PRESIDENT AND CEO

*Frederick Kempe

VICE CHAIRS

*Robert J. Abernethy

*Richard Edelman

*C. Boyden Gray

*Richard L. Lawson

*Virginia A. Mulberger

*W. DeVier Pierson

*John Studzinski

TREASURER

*Brian C. McK. Henderson

SECRETARY

*Walter B. Slocombe

DIRECTORS

Stephane Abrial

Odeh Aburdene

Peter Ackerman

Timothy D. Adams

John Allen

*Michael Ansari

Richard L. Armitage

*Adrienne Arsht

David D. Aufhauser

Elizabeth F. Bagley

Sheila Bair

*Rafic Bizri

*Thomas L. Blair

Julia Chang Bloch

Francis Bouchard

Myron Brilliant

*R. Nicholas Burns

*Richard R. Burt

Michael Calvey

Ashton B. Carter

James E. Cartwright

Ahmed Charai

Wesley K. Clark

John Craddock

David W. Craig

Tom Cragen

*Ralph D. Crosby, Jr.

Nelson Cunningham

Ivo H. Daalder

Gregory R. Dahlberg

*Paula J. Dobriansky

Christopher J. Dodd

Conrado Dornier

Patrick J. Durkin

Thomas J. Edelman

Thomas J. Egan, Jr.

*Stuart E. Eizenstat

Thomas R. Eldridge

Julie Finley

Lawrence P. Fisher, II

Alan H. Fleischmann

Michèle Flournoy

*Ronald M. Freeman

*Robert S. Gelbard

*Sherri W. Goodman

*Stephen J. Hadley

Mikael Hagström

Ian Hague

John D. Harris II

Frank Haun

Rita E. Hauser

Michael V. Hayden

Annette Heuser

Marten H.A. van Heuven

Jonas Hjelm

Karl Hopkins

Robert Hormats

*Mary L. Howell

Robert E. Hunter

Wolfgang Ischinger

Reuben Jeffery, III

Robert Jeffrey

*James L. Jones, Jr.

George A. Joulwan

Stephen R. Kappes

Maria Pica Karp

Francis J. Kelly, Jr.

Zalmay M. Khalilzad

Robert M. Kimmitt

Henry A. Kissinger

Peter Kovarcik

Franklin D. Kramer

Philip Lader

Henrik Liljegen

*Jan M. Lodol

*George Lund

Jane Holl Lute

*John D. Macomber

Izzat Majeed

Wendy W. Makins

Mian M. Mansha

William E. Mayer

Eric D.K. Melby

Franklin C. Miller

James N. Miller

*Judith A. Miller

*Alexander V. Mirtchev

Obie L. Moore

*George E. Moose

Georgette Mosbacher

Bruce Mosler

Thomas R. Nides

Franco Nuschese

Sean O'Keefe

Hilda Ochoa-Brillembourg

Ahmet Oren

Ana Palacio

Thomas R. Pickering

*Andrew Prozes

Arnold L. Punaro

Kirk A. Radke

Joseph W. Ralston

Teresa M. Ressel

Jeffrey A. Rosen

Charles O. Rossotti

Stanley O. Roth

Robert Rowland

Harry Sachinis

William O. Schmieder

John P. Schmitz

Anne-Marie Slaughter

Alan J. Spence

John M. Spratt, Jr.

James Stavridis

Richard J.A. Steele

James B. Steinberg

*Paula Stern

Robert J. Stevens

John S. Tanner

Peter J. Tanous

*Ellen O. Tauscher

Karen Tramontano

Clyde C. Tuggle

Paul Twomey

Melanne Verveer

Enzo Viscusi

Charles F. Wald

Jay Walker

Michael F. Walsh

Mark R. Warner

J. Robinson West

John C. Whitehead

David A. Wilson

Maciej Witucki

Mary C. Yates

Dov S. Zakheim

HONORARY DIRECTORS

David C. Acheson

Madeleine K. Albright

James A. Baker, III

Harold Brown

Frank C. Carlucci, III

Robert M. Gates

Michael G. Mullen

Leon E. Panetta

William J. Perry

Colin L. Powell

Condoleezza Rice

Edward L. Rowny

George P. Shultz

John W. Warner

William H. Webster

LIFETIME DIRECTORS

Carol C. Adelman

Lucy Wilson Benson

Daniel J. Callahan, III

Brian Dailey

Kenneth W. Dam

Lacey Neuhaus Dorn

Stanley Ebner

Chas W. Freeman

Carlton W. Fulford, Jr.

Edmund P. Giambastiani, Jr.

John A. Gordon

Barbara Hackman

Franklin

Robert L. Hutchings

Roger Kirk

Geraldine S. Kunstadter

James P. McCarthy

Jack N. Merritt

Philip A. Odeen

William Y. Smith

Marjorie Scardino

William H. Taft, IV

Ronald P. Verdicchio

Carl E. Vuono

Togo D. West, Jr.

R. James Woolsey

**Members of the Executive Committee*

^ International Advisory Board Members

List as of May 21, 2014

The Atlantic Council is a nonpartisan organization that promotes constructive US leadership and engagement in international affairs based on the central role of the Atlantic community in meeting today's global challenges.

© 2014 The Atlantic Council of the United States. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Atlantic Council, except in the case of brief quotations in news articles, critical articles, or reviews. Please direct inquiries to:

1030 15th Street, NW, 12th Floor, Washington, DC 20005
(202) 778-4952, AtlanticCouncil.org