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The Trump Sanctions Policy at Three Months: April 18 Iran Announcement and Other Actions

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Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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April 19, 2017 – Despite the campaign rhetoric, the Trump administration has thus far maintained the status quo with regard to U.S. sanctions on Iran, Russia, Syria, and North Korea. The statements made by U.S. Secretary of State Rex Tillerson on April 18, 2017, regarding Iran’s compliance with its obligations under the Iranian nuclear deal is the latest evidence of a cautious approach to U.S. sanctions policy. However, Tillerson’s references to an ongoing review of whether to continue suspending U.S. sanctions on Iran and a host of other foreign policy challenges raise questions about whether changes in sanctions are on the horizon.

Iran: Maintaining the JCPOA While Considering Other Options

Throughout the 2016 U.S. campaign, U.S. relations with Iran and, in particular, the value of the 2015 nuclear deal with Iran were common points of debate. Given candidate Trump’s criticisms of the Iranian nuclear deal—formally known as the Joint Comprehensive Plan of Action (“JCPOA”)—there have been questions as to whether President Trump would keep the agreement in place. President Trump took an initial step to continue U.S. participation in this agreement, but he also indicated that the agreement is under review.

Congressional Certification of Iran’s JCPOA Compliance

The Iran Nuclear Agreement Review Act of 2015 not only provided for a congressional vote on the JCPOA but also requires that the U.S. President issue certifications every 90 days regarding Iran’s compliance with its obligations under the agreement. On April 18, 2017, Secretary Tillerson published a letter to U.S. House Speaker Paul Ryan stating that Iran had indeed complied with these obligations. Secretary Tillerson also noted that Iran continued to be a state sponsor of terror, however, and he advised that the National Security Council (“NSC”) was leading an interagency review of the JCPOA to determine “whether suspension of sanctions related to Iran pursuant to the JCPOA is vital to the national security interests of the United States.” There was no indication as to when this review would be completed or the form in which the results would be presented.

Pending Renewal of U.S. Sanctions Waivers

Secretary Tillerson's comments on the ongoing NSC review are significant because of their potential impact on the separate question of whether President Trump will renew statutory waivers that are required under the JCPOA. By way of background, the terms of the JCPOA require that the U.S. government relax nuclear-related sanctions that applied to non-U.S. persons (collectively, the so-called "secondary sanctions"). Some of these secondary sanctions were implemented through executive orders, which then-President Barack Obama was able to lift by revoking the orders. Other sanctions, however, are statutorily required and could not be eliminated without action by the U.S. Congress. To lift these measures, the Obama administration relied upon waiver provisions in each of these statutes that allowed the President to stop implementing these sanctions based on a determination of national security interest.

These waivers are not permanent. Rather, they must be renewed periodically by the President within the timeframes specified in each statute. The Obama administration did not publicly publish any renewals of these waivers after the JCPOA was implemented on January 16, 2016, but reportedly the most recent waivers were issued in mid-January 2017 before President Obama left office. The waiver of sanctions provisions included in one of the relevant statutes, the National Defense Authorization Act of 2012 ("NDAA"), will expire 120 days after this waiver (i.e., in mid-May 2017). Waivers for other sanctions will expire in mid-July 2017. Without renewing these waivers, certain U.S. secondary sanctions automatically go back into effect.

Because the statutory waivers are issued based on a determination of national security interests, the framing of the NSC review ("whether suspension of sanctions related to Iran pursuant to the JCPOA is vital to the national security interests of the United States") suggests that the Trump administration is considering whether to allow the waivers to expire. There is speculation that the Trump administration is considering how the timing of any decisions to waive—or not waive—these sanctions on Iran will impact the Iranian election scheduled for May 19, 2017. If President Trump does not renew the statutory waivers and allows the relevant secondary sanctions to go back into effect, this would be inconsistent with U.S. commitments in the JCPOA. One potential outcome of any U.S. noncompliance is that Iran might decide to restart its nuclear program in violation of the JCPOA and thus trigger the broader sanctions "snapback" by all parties to the agreement. Alternatively, Iran might continue to comply with the JCPOA to secure continued relief from EU sanctions, and U.S. sanctions would be implemented unilaterally.

Other Non-Nuclear Sanctions Actions

Outside of the JCPOA context, the Trump administration has taken some additional actions against Iran to increase pressure without disrupting the JCPOA. In response to Iran's ballistic missile testing program, then-National Security Adviser Michael Flynn announced that the administration was putting Iran "on notice." On February 3, 2017, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") designated Iranian individuals and entities involved in Iran's ballistic missile program. More recently, on April 13, 2017, OFAC designated one individual and one entity associated with Iran's prison system under an executive order targeting Iranian human rights abuses. Both of these sanctions designations were made under non-nuclear sanctions programs that are outside of the JCPOA's scope.

Russia: Navigating Domestic and International Politics

President Trump's calls for improving the United States' relationship with Russia were subject to a great deal of scrutiny during his campaign. This has only been exacerbated by allegations that Russia attempted to influence the U.S. election and had contact with members of the Trump campaign. These concerns have created an atmosphere of intense political pressure with regard to Russia policy. For instance, when OFAC issued a new general license authorizing certain transactions with the Russian Federal Security Service ("FSB")—a technical

correction necessary for companies to export IT equipment to Russia—industry watched closely to see if this action might be a significant step toward relaxing U.S. sanctions on Russia. This ultimately turned out not to be the case. Also, several bills that would impose new sanctions on Russia or limit President Trump’s ability to relax existing Russia sanctions were introduced in Congress with bipartisan support. Congress also has signaled that if Trump tries to loosen sanctions on Russia, it would consider stepping in legislatively.

Perhaps in response to the realities of this political environment, the expectations regarding relaxation of these sanctions have been tempered in recent weeks. On March 31, 2017, Secretary Tillerson advised that sanctions on Russia would not be removed until Russia returns the Crimea region to Ukraine. Following the U.S. strike in Syria on April 7, 2017, and a muted reception for Secretary Tillerson during his April 12 meetings in Moscow, there are no indications of imminent plans to eliminate these sanctions. Furthermore, with the FBI (and other) pending investigations of possible Russian interference in the presidential election, the Trump administration appears to be wary of taking actions that might be viewed as concessions to Russia on sanctions matters.

More recent discussions of sanctions on Russia have focused on whether new sanctions measures are warranted. In advance of the Group of 7 (“G7”) meetings in Lucca, Italy on April 10-11, 2017, UK Foreign Secretary Boris Johnson pushed for additional sanctions targeting Russia in relation to its support of Syrian President Bashar al-Assad. There was ultimately no agreement by the G7 on such sanctions, but it is too soon to assess whether a push for new sanctions will continue.

Syria & North Korea: Looking for Ways to Expand Already Comprehensive Sanctions

After the April 7 strike on a Syrian airbase allegedly used in carrying out a chemical weapons attack, the Trump administration is reportedly considering additional sanctions on Syria. The U.S. government has maintained a comprehensive embargo on dealings with Syria since August 2011. Therefore, the impact of any new sanctions would likely be limited.

Meanwhile, North Korea has recently conducted a number of missile tests and may be preparing a sixth nuclear test. U.S. sanctions on North Korea were tightened in March 2016 following a new UN resolution, and the country is now subject to an essentially comprehensive embargo. OFAC designated parties on March 31, 2017, that allegedly work as agents in foreign countries providing financial support of WMD procurement services for North Korea.

The Trump administration is reportedly considering additional sanctions on North Korea that could include secondary sanctions against third parties that support the North Korean nuclear program. Because such secondary sanctions would likely focus on Chinese companies, it is unclear whether the Trump administration would be willing to take such an approach given recent efforts to secure greater cooperation from China on North Korea. While the Trump administration was not shy about hitting Chinese company ZTE with a \$1.19 billion penalty on March 7, 2017, for its alleged diversion of export controlled communications products to Iran and North Korea, it is unclear how far the President is willing to go against China. The recent Congressional actions suggesting that Chinese telecom giant Huawei should also be subject to a sanctions investigation add further complexity to this issue.

Conclusion

In the coming weeks and months, the Trump administration will need to make a decision regarding the Iran waivers. It likely also will face continued turmoil in Syria and defiance in North Korea. In addition, the Iranian presidential election occurring in May 2017 could result in a new president of Iran with different views on the JCPOA or cooperation with the United States more generally. President Trump’s first three months suggest a more cautious approach to sanctions policy than many expected, but U.S. and non-U.S. companies should be

prepared for change as the Trump administration continues to develop its foreign policy strategy.