



Five Things to Watch Out for with Iran Deal Decertification

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The President's decision to "decertify" the Iran nuclear deal (also known as the Joint Comprehensive Plan of Action or JCPOA), arguing that the arrangement isn't in the best interests of the United States, threatens to undo the agreement, restoring U.S. sanctions against Iran and those who do business with it. But, this is neither automatic nor certain.

The world has been bracing for this decision since Trump won the election in November. He has repeatedly derided the Iran accord as a stupid, loser deal, one of the worst he has ever seen.

With this in mind, here are five things to watch out for now.

1. What will congress do?

Decertification would not withdraw the United States from the JCPOA. Sanctions relief to which the United States committed itself in July 2015 and begun implementing in January 2016 would remain in place. Businesses and individuals operating with and in Iran in conformity with the rest of U.S. law could continue to do so.

Sanctions relief in the United States is controlled by two things. First, an affirmative decision on the part of the U.S. Executive Branch to not take discretionary actions against Iran for its nuclear program and, second, waivers and exceptions to U.S. statutory sanctions passed by the Congress. Those waivers and exceptions are authorized by separate legal acts that proceed on their own timetable. The next deadlines for the waiver of U.S. sanctions are January 12th (with respect to oil purchases) and 13th (with respect to practically everything else). Until Mr. Trump refuses to permit the continued relief of these sanctions, which is executed by waivers signed by the Secretary of State, or rescinds the relief given, these waivers are in place. Moreover, provided that foreign companies are operating lawfully in all other respects, U.S. protections against ex post facto prosecution for ongoing use of sanctions relief also should provide some measure of comfort for business that is ongoing.

So what exactly is Trump expected to do?

Under the Iran Nuclear Agreement Review Act of 2015 (INARA), the president is required to certify every 90 days that, broadly, Iran is not cheating on the nuclear terms of the agreement and that continued sanctions relief is in the U.S. national security interest. Mr. Trump is expected to certify the former, but not the latter.

Under the terms of INARA, the U.S. Congress would then have to consider what to do. Majority and minority leaders in the U.S. Senate and U.S. House of Representatives could:



1. Decide to re-impose or “snap-back” those statutory sanctions suspended or waived pursuant to the JCPOA;
2. Decide to take other legislative action; or,
3. Do nothing.

If they choose to pursue snap-back, then the terms of INARA lay out the process, legislative content and timetable, which INARA streamlines to avoid the filibuster in the Senate and to minimize the time for debate and Committee processes that would normally be involved. They would have 60 days to pursue this course of action. There is some dispute among observers as to how far the snap-back would go, with some reading INARA to require snap-back of all sanctions presently suspended or waived and others reading INARA as permitting only a subset of sanctions to be re-imposed.

If they choose to take other legislative action, then they would have more than 60 days to do so, but would not have the benefit of a shortened process and timetable, nor would they be bound with respect to the content of the legislation.

The question now is what Congress will do. Several previous opponents of the JCPOA have already spoken out in favor of not taking steps that would undermine it, including Senators Corker, McCain, Graham, and Schumer, as well as House Foreign Affairs Committee Chairman Royce and Ranking Minority Member Engel. This augurs well for Congress not snapping back sanctions. Mr. Trump is widely expected to say that he does not believe Congress should act now, instead preserving space for future Administration negotiations.

That said, there are many other members of Congress who oppose the JCPOA and believe that it should be scuttled quickly. They may propose legislation that does not qualify for the expedited procedures discussed earlier, but which could be forced into legislative calendars by political necessity. Such legislation could have the effect of increasing sanctions on Iran or eliminating the ability of the president to continue waiving sanctions much longer. Congress may also consider legislation that changes the requirement of the president to certify the JCPOA in this manner in the future, perhaps replacing it with a set of defined redlines for re-imposition of sanctions automatically. There are reports that Mr. Trump would strongly prefer this approach in part because he has found it personally upsetting to have to certify the deal on the regular schedule thus far.

2. How will U.S. partners react?

U.S. partners in Europe have already been outspoken in the opposition to steps that would undermine the JCPOA. They have, however, expressed interest and willingness to participate in a process to consider how to transition from the JCPOA to a new arrangement that would address either additional issues (like terrorism or ballistic missiles) or extend the original terms of the JCPOA. This interest is contingent on the United States remaining in the JCPOA and not



threatening to re-impose sanctions against Iran unless warranted by Iranian material noncompliance with the JCPOA.

Here, it is likely that European partners will take a reserved course in public in terms of any criticism of the Trump Administration's policy, at least at first. There will likely be statements issued by the United Kingdom, France and Germany (the U.S. European negotiating partners with Iran) that take varying degrees of objection to the Trump decision. But, in the interim, these governments will focus on influencing Congressional deliberations on next steps, with an eye towards preventing snap-back and other provocative U.S. moves. Other partners may react similarly, though Israel and the Gulf Arab states can be expected to praise the U.S. decision.

If U.S. deliberations drift toward a decision to re-impose suspended sanctions or impose new ones, then reactions are likely to be more negative, potentially severely so. German and France will oppose a U.S. decision to snap-back sanctions against Iran, as might the United Kingdom. It is possible that this opposition could lead the EU to consider three direct policy responses:

1. Use of the EU blocking statute, which became [EU law in 1996](#) and prohibits EU companies from complying with U.S. legislation at variance with EU sanctions law;
2. Suing the United States at the World Trade Organization for an unfair practice undermining EU trade with Iran; and,
3. Retaliatory measures against U.S. companies, though this would be both complicated legally to execute and politically sensitive even in a Europe that is largely outraged by Trump's move against the JCPOA.

Other partners will react differently based on their own interests. Russia and China will oppose U.S. sanctions re-imposition, and may take steps to undermine the effectiveness of U.S. action. China, could, for example, refuse to reduce oil purchases. Japan and South Korea may cooperate with U.S. sanctions, largely out of concern for the broader alliance in the context of North Korea's threatening behavior. Israel and the Gulf Arab states may applaud such a decision, but may also express concerns about what Iran may do in response (particularly if it reacts by restarting its nuclear program).

3. How will Iran react?

Much will depend on how Iran reacts to two things, decertification and to any follow-on U.S. actions.

The Iranians thus far have been handling the situation carefully, mindful that there is risk to overreacting and opportunity in demonstrating in the court of global opinion that Iran is the more reasonable party. With respect to risk, Iranian contacts have noted that though there is a strong desire to retaliate by restarting the nuclear program, they have thus far been able to persuade hardliners not to do so by emphasizing this would embolden the Trump Administration and



potentially justify its more aggressive stance. With respect to opportunity, they have also noted that they see an option now to split the coalition that previously imposed sanctions and other pressures on Iran.

For this reason, Iran is likely not to respond beyond condemning a decertification decision. The Iranians will appeal to Europe and beyond for support in their position and will highlight the multiple reports of the Director General of the International Atomic Energy Agency (IAEA) that demonstrate Iranian nuclear compliance. They will also seek to shore up business interest in Iran and to reassure those that may be getting skittish that they can and should continue to do business with Iran.

The Iranians are unlikely to agree to sweeping new concessions in negotiations with the United States, but they may be prepared to participate in new talks in furtherance of their broader “reasonable” strategy. However, there is a profound difference between talks on a concrete agenda and proposal, and more open-ended consultations, the latter of which typifies the talks held by international partners and Iran from 2006-2013. These talks went nowhere, but were used by Iran to emphasize that it is willing to negotiate, even if it refuses to compromise.

Of course, if the U.S. internal process moves in the direction of either new or re-imposed sanctions, the Iranian response may change. The Iranians could continue to take a passive approach, mindful of the international audience or, if domestic pressures build, to restart the suspended elements of the nuclear program either in full or in part.

4. How will businesses react?

International business will likely respond to all of these developments with a degree of confusion, concern and caution. Decertification will be an introduction of further instability into an already perplexing situation, especially insofar as the expected Trump announcement will not include evidence of ongoing Iranian malfeasance.

Some businesses will withdraw from or refuse to become engaged with Iran out of fear of long-term sanctions vulnerability, particularly those businesses which depend on long-term investment to turn a profit. Others with little to no U.S. exposure will likely continue to invest in Iran, aware of the opportunity available especially if other companies withdraw. Still others will scale back their business activity to levels that are either easily abandoned or of short duration, so that – in the event of future snap-back – they can rapidly respond and lessen the chances of U.S. retaliation.

Overall, it is important to note that the business climate in Iran is mediocre, brought down by the combination of domestic regulatory and security issues, relatively low oil prices, instability/insecurity, and residual sanctions. It would not take much additional pressure to make it even harder for companies and banks to consider long term investments in Iran.

5. What happens with oil and energy deals?



Initially (and assuming that decertification is the extent of U.S. action in the near term), there may be little to no impact on energy markets. Iranian oil sales will probably continue at or around current levels, with oil prices and contract terms the more significant determinant of export levels and revenue. Because sanctions are not yet in place and because U.S. oil reduction sanctions operate on a 180-day implementation basis, oil companies will have some time to respond if sanctions are eventually re-imposed.

New investment may be an early casualty, however. Oil and gas investments are largely long-term in scope and require sizeable commitments of funds. Major oil and gas companies with significant U.S. exposure are most likely going to either wait to commit to business in Iran or hedge their bets by making any investment modest and of short duration (such as with some exploration contracts). Those without U.S. exposure or confident of their ability to resist U.S. sanctions pressure if it is ever reinstated in full, however, may decide to stay in Iran to test both the extent of U.S. action and to profit from the abandoned field.

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