

U.S. Issues Guidance for Implementation of Iran/P5+1 Geneva Joint Plan of Action



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The U.S. Departments of the Treasury and State on January 20 issued a joint official statement in response to Iran's agreement with the five permanent members of the United Nations Security Council and Germany (the "P5+1") in November 2013 in Geneva with respect to Iran's nuclear program. This statement, titled *Guidance Relating to the Provision of Certain Temporary Sanctions Relief in Order to Implement the Joint Plan of Action Reached on November 24, 2013, between the P5+1 and the Islamic Republic of Iran*, spells out changes to the sanctions regime maintained by the United States against Iran for the period starting January 20 and ending on July 20, 2014. This is based on the recently issued Joint Plan of Action (JPOA) following the Geneva accord, which calls for certain sanctions relief as well as the unblocking of certain Iranian funds outside the country.

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Of particular significance is the fact that the relief is temporary and reversible and that the impact of this relief on 'U.S. persons' and foreign entities owned or controlled by said persons is very much limited. Also, many limitations on dealings with certain entities that have been labeled as Specially Designated Nationals (SDNs) by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) will be exempted for very defined, narrow purposes. Furthermore, it is critical to note that while the JPOA may be extended, the validity of this sanctions relief, as of now, is certain only until July 20, 2014.

Beyond the release of \$4.2 billion of "Restricted Funds" (defined by OFAC to include existing and future earnings from Iranian petroleum and related products and certain Central Bank of Iran funds), the JPOA rests on six core areas that will see some sanctions relief. Specifically, these are: (1) petrochemical exports; (2) Iran's automotive industry; (3) precious metals; (4) civil aviation; (5) petroleum exports; and (6) humanitarian transactions.

1. Petrochemical Exports.

Third country entities importing Iranian petrochemical products as defined in Executive Order 13622 (July 30, 2012) will no longer be subject to potential U.S. penalties for doing so. Furthermore, banks, shippers, and insurers in third countries who deal with such entities will not be subject to sanctions on the financial institutions (such as those on correspondent or payable-through accounts) or blocking sanctions on other entities, provided that dealings do not involve SDNs, other than Iranian financial institutions designated solely under Executive Order 13599 (February 6, 2012).

2. Automotive Industry.

The United States will suspend secondary sanctions imposed this past summer on Iran's automobile industry, which were imposed in 2013 under the Iran Freedom and Counterproliferation Act of 2012 (IFCA). This is critical as Iran's automotive industry is by some measures its largest after energy. Under the JPOA, sanctions will be waived on entities that "knowingly engage in transactions for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran that are initiated or completed entirely within the JPOA period." As such, this will include supply chain partners in addition to actual exporters.

3. Precious Metals.

The United States will suspend certain secondary sanctions on parties (including banks) dealing in precious metals such as gold with Iran, provided certain conditions are met. There are strict limitations on what funds in particular can be used for Iran's procurement of such metals, with a bar on the use of Restricted Funds for such transactions.

4. Civil Aviation.

OFAC has also issued a *Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry (SLP)* regarding sanctions relief in the country's civilian aviation industry. This new policy enables U.S. persons (and non-U.S. persons owned or controlled by U.S. persons) to obtain specific OFAC licenses to engage in certain transactions related to the service, repair, and sale of spare parts related to Iran Air civilian aircraft. This can take place in Iran or in a third country. Note there are two caveats – while Iran Air is a permitted beneficiary despite being on the SDN list, dealings with other Iranian airlines that are SDNs or blocked parties remain prohibited; and second, all work must be completed before the JPOA expires.

5. Petroleum Exports.

The United States has agreed to temporarily halt efforts to persuade purchasers of Iranian petroleum (namely China, India, Japan, South Korea, Taiwan and Turkey) to reduce their purchases of Iranian oil. The United States had granted waivers to these countries to continue purchasing Iranian petroleum so long as they had taken steps to substantially reduce such purchases.

Notably, there will also be a waiver of sanctions on related transactions, including certain oil payments and shipping/insurance matters. Interestingly, related transactions with certain SDNs, namely the National Iranian Oil Company (NIOC), the National Iranian Tanker Company (NITC) and Iranian financial institutions designated only under E.O. 13599 will not be subject to U.S. sanctions. Naturally, this does not allow U.S. companies to deal with Iranian origin crude oil or related services.

6. Humanitarian Transactions.

The P5+1 will be taking steps to ease Iran's purchase and importation of humanitarian goods, such as food, medicine, and medical devices. Despite being generally licensed (subject to certain conditions) or licensable under certain circumstances, such transactions have become logistically difficult in part due to the ripple effect of other sanctions. This may include creating certain banking channels with third country financial institutions (FFIs). Notably, the presently authorized payment systems will continue to be compliant under the new system.

Beyond the payment channels to be created, the P5+1 will be creating mechanisms for the payment of tuition for Iranians studying outside the country, utilizing \$400 million of blocked Iranian funds.

As can be noted above, the sanctions relief on certain areas contains broad coverage for ancillary transactions, which, depending on the sector, will no longer be subject to any, some, or all of the financial, blocking and so-called “menu-based” sanctions (which allow the U.S. President to select from various types of sanctions to impose against a given entity).

As the joint Treasury & State Department statement clearly spells out, only the aviation and humanitarian issues will directly impact U.S. persons and foreign persons owned or controlled by U.S. persons. It is absolutely critical to note that the overwhelming bulk of the United States’ comprehensive sanctions regime against Iran remains firmly in place and entities must take great care to ensure compliance with the very thorough and nuanced sanctions programs impacting dealings between U.S. persons (and foreign entities owned or controlled by them) and Iran.

Notably, certain significant, limiting aspects of the sanctions relief detailed in the JPOA feature very prominently. Specifically:

- 1. The now permissible (or at least non-sanctionable) transactions must be consummated within the six month JPOA period.**
Unless the JPOA period is extended, it is difficult to foresee how, for example, a plan to sell aircraft parts to Iran, the plan can be authorized by OFAC with time also remaining for the parties to successfully negotiate and execute the transactions in the limited six-month window.
- 2. The ambiguity of the JPOA’s ultimate term makes it unclear whether third country banks, shippers, insurers and counterparties deal with Iran given the narrow time window and uncertainty.**
Given that many banks have invested substantial time and money into their compliance programs, willingness to deal with Iran will remain an issue. It remains to be seen, for example, whether they will suddenly start accepting payments from SDN Iranian banks (designated under E.O. 13599) given the lack of clarity on the JPOA and its longevity.

3. **Dealings with Iranian Port Operator Tidewater Middle East Co. remain subject to U.S. sanctions.**

Although certain ancillary transactions will not be subject to sanctions, the sanctions relief afforded Iran does not exempt or permit dealings with Iranian port operator Tidewater Middle East Co. (Tidewater). This entity was designated in June 2011 under Executive Order 13382 (June 28, 2005), in part due to its ownership by Mehr-e-Eqtesad-e Iranian Investment Company, Mehr Bank and the Islamic Revolutionary Guards Corps (IRGC, known in Iran as *Sepah e Pasdaran Iran Islami* or *Sepah*), all of which are designated entities.

Tidewater operates seven ports in Iran, most prominently Shahid Rajaei Container Terminal in Bandar Abbas, but also the Bandar Imam Khomeini grain terminal, as well as Bandar Anzali Port, one terminal at Khorramshahr Port, Amirabad Port Complex, and the Assaluyeh and Aprin Ports. Notably third country dealings with Tidewater remain subject to sanctions under the IFCA.

With respect to the release of Restricted Funds, as stated above, \$4.2 billion of such funds will be released during the six-month JPOA period. This will be completed over eight intervals, commencing with \$550 million being released on February 1, and ending on July 20, 2014 with a final \$550 million installment.

What is clear is that the guidelines and upcoming policy will surely bring about questions, both for U.S. and third country entities. It will be interesting to see how much business does take place under the JPOA and whether or not it will serve as a prelude to Iran's reintegration into the world economy.

The sanctions relief provided under the JPOA could serve as a prelude or indicator of what may subsequently come about if the P5+1 and Iran reach a permanent accord in the coming months. However, although the relief does widen the scope of permitted activities for U.S. entities, the highly conditioned and caveated nature clearly indicates that the U.S. remains committed to maintaining and enforcing the robust sanctions regime in place against Iran. This is particularly noteworthy as there generally exists increasingly substantial confusion and speculation as to the sanctions relief afforded Iran and the trajectory of sanctions in the near and long-term future, all of which can create compliance challenges. Accordingly, the Guidance offered by the U.S. Departments of Treasury and State serves to only further highlight the narrow focus of the relief and more importantly, the imperative need for comprehensive and thorough compliance.