United States Attempts UN Sanctions Snapback on Iran

October 1, 2020

Summary

After the United Nations Security Council ("UNSC") declined to extend a conventional arms embargo on Iran, the United States sought to unilaterally trigger a UN sanctions "snapback" provision and issued a new Executive Order to restrict arms trade with Iran by non-U.S. persons. Neither the snapback of UN sanctions, if effective, nor the new EO should substantially change financial institutions' compliance obligations.

- **It is unclear whether the UN sanctions have been reimposed.** The United States attempted to trigger a provision of United Nations Security Council Resolution 2231 ("UNSCR 2231") to reintroduce all UN sanctions lifted as part of the Joint Comprehensive Plan of Action ("JCPOA" or "Iran nuclear deal"). These measures include a reimposition of the arms embargo and prohibitions on the transfer of technology that would contribute to Iran's ability to pursue nuclear enrichment activity or develop ballistic missiles. The United Nations Security Council included this mechanism in USCR 2231 to give the international community the ability to punish Iran's non-compliance with the nuclear deal. The European Union (including permanent Security Council members France and the United Kingdom), Russia, and China have issued statements disputing the United States' legal standing to invoke the snapback provisions.[1] To date, the two sides are at an impasse.

- **The new Executive Order will allow the Trump administration to impose sanctions on any person that transfers arms to and from Iran.[2]** The administration seeks to use U.S. sanctions to achieve unilaterally what would have been the result of the extension of the UN conventional arms embargo.

- **The possible sanctions snapback and the new EO are unlikely to materially change the risks facing many financial institutions.** Financial institutions will likely not face substantially new compliance obligations arising from this week's developments, given the already comprehensive nature of U.S. sanctions on Iran and the fact that most financial institutions would be unwilling to engage in arms transactions with Iran. Financial institutions banking defense companies, particularly in Russia and China, may want to take additional compliance steps to ensure their clients are not conducting transactions in the Iranian arms sector.

The Uncertainty around Snapback

While UNSCR 2231 provides a mechanism for a JCPOA participant to automatically reimpose UN sanctions on Iran, it is unclear whether the U.S. exit from the deal removes the administration's standing to invoke it. The United States took the first step to initiate that mechanism on August 20, 2020, when it notified the President of the United Nations Security Council of Iran's "significant non-performance of its JCPOA commitments."[3] That notification started a 30-day timeline that led to, in the U.S. view, the reimposition on September 19 of all the UN sanctions that had been waived as part of the JCPOA, including the arms embargo on Iran that was set to expire in October.

The remaining participants in the JCPOA—Russia, China, the United Kingdom, France, Germany, and the European Union—have rejected that interpretation.[4] They have argued that since the United States withdrew from participation in the JCPOA in May 2018, it is no longer a participating state under the auspices of UNSCR 2231 and therefore cannot initiate the snapback mechanism.

Ultimately, the rejection by the other UNSC members of the U.S. position matters more than which legal interpretation is correct. The non-recognition of the attempted snapback by the other Security Council members means that most member-states will regard the U.S. interpretation as non-binding and therefore conclude that UN sanctions have not been reimposed.

Additional U.S. Sanctions Authorities

Anticipating that UN member states might not recognize the snapback, the Trump administration released a new Executive Order to target non-U.S. persons that engage in conventional arms trade with Iran. The EO grants the President broad authority to sanction any person – U.S. or foreign – involved in arms sales with Iran. In effect, the administration is trying to use domestic legal authorities to compel non-U.S. persons to act as if a UN-backed arms embargo were in place. The Secretary of State can impose sanctions on any person who engages in any activity that contributes to the supply, sale, or transfer, directly or indirectly, to or from Iran, or for the use in or benefit of Iran, of arms or related materiel, including spare parts. The EO also prohibits providing technical training, financial resources, and any other material contribution to arms proliferation to or from Iran.

The sanctions would also extend to anyone who materially assists anyone sanctioned under the EO, or anyone owned or controlled or acting behalf of any such sanctioned person. Notably, the United States designated Venezuelan President Nicolás Maduro under the new EO, underlining the administration's willingness to target the Iran-Venezuela bilateral relationship.[5] This move also highlights the designation risk for non-Iranian entities engaged in activity that links back to Iranian actors; recent sanctioned individuals and companies have been located in China and the United Arab Emirates.[6] The administration has also used other sanctions authorities to target Iranian-linked activity in the region, including designations of Hezbollah-linked companies and officials in Lebanon.[7]

In addition, the United States also imposed sanctions on entities involved in Iran's nuclear enrichment program and ballistic missile programs. These designations include three Deputy Directors of the Atomic Energy Organization of Iran (AEOI), as well as companies that supplied dual-use goods for the construction of ballistic missiles. Those designations were made under Executive Order 13382.[8]

Implications for the Private Sector

Neither the snapback of United Nations sanctions nor the new EO should substantially change financial institutions' compliance obligations**.**

- **The reimposition of U.S. sanctions on Iran, including the expansion of secondary sanctions authorities in recent years, have led most financial institutions and business to exit business in Iran and with Iranian companies.** The snapback of UN sanctions on Iran, combined with the new EO, would be most likely to create exposure for companies operating in the Iranian arms trade. Since the UN arms embargo on Iran is in effect until October 2020, any companies currently doing this trade are likely already acting in violation of UN sanctions. After the arms embargo expires, companies doing business in this sector could be subject to U.S. sanctions.

- **The November 2020 U.S. Presidential election will be the next significant event that impacts the future of the JCPOA.** Either scenario—President Trump's re-election, or the election of former Vice President Joe Biden—will likely lead to significant developments in U.S. policy toward Iran, as well as the diplomatic approach pursued by the remaining members of the JCPOA. Former Vice President Biden has said he would re-enter the deal provided that Iran returned to compliance, while also promising to negotiate an extension of the nuclear deal's original constraints and addressing Tehran's destabilizing activities in the region.[9] The Trump administration has likewise signaled its willingness to negotiate a new deal that covers Iran's nuclear enrichment activities, its ballistic missile program, support for terrorism, and the wrongful detention of U.S. citizens.[10] Whether either administration successfully pursues such negotiations will likely have a major impact on the future of the web of sanctions imposed on Iran.

---

[1] European Union External Action Service, "Iran/US: Statement by High Representative Josep Borrell, Coordinator of the Joint Commission of the Joint Comprehensive Plan of Action," press release, (September 20, 2020), available at https://eeas.europa.eu/headquarters/headquarters-homepage/85428/iranus-statement-high-representative-josep-borrell-coordinator-joint-commission-joint_en.

[2] "Executive Order: Blocking Property of Certain Persons with Respect to the Conventional Arms Activities of Iran," (September 21, 2020), available at https://home.treasury.gov/system/files/126/20200921_eo_iran-con-arms.pdf.

[3] United States Department of State, "The Return of UN Sanctions on the Islamic Republic of Iran," press release, (September 19, 2020), available at https://www.state.gov/the-return-of-un-sanctions-on-the-islamic-republic-of-iran/.

[4] See, inter alia, the statement of EU High Representative Josep Borrell: "In light of recent discussions in the UN Security Council in New York concerning the issue of the attempted reinstatement of previously lifted UN sanctions, the participants reaffirmed that the United States unilaterally announced its cessation of participation in the JCPOA on 8 May 2018 and that it had not participated in any JCPOA-related activities subsequently. Participants reconfirmed that it therefore could not be considered as a participant State. In this regard, participants also reaffirmed their various statements and communications made previously at the UN Security Council including that of the High Representative of 20 August as the Coordinator of the JCPOA to the effect that the US cannot initiate the process of reinstating UN sanctions under UNSC resolution 2231." European Union External Action Service, "Chair's Statement following the 1 September meeting of the Joint Commission of the Joint Comprehensive Plan of Action," press release, (September 1, 2020), available at https://eeas.europa.eu/headquarters/headquarters-homepage/84643/chairs-statement-following-1-september-meeting-joint-commission-joint-comprehensive-plan_en.

[5] The United States has recently designated or pursued legal action against Iranian vessels carrying Iranian refined products destined for Venezuela. See, inter alia, Joshua Goodman, "Officials: U.S. seizes Iranian gas heading for Venezuela," AP, reprinted in *The Washington Post* (August 13, 2020), available at https://www.washingtonpost.com/national/officials-us-seizes-iranian-oil-heading-for-venezuela/2020/08/13/f74cce5c-ddc1-11ea-b4f1-25b762cdbbf4_story.html.

[6] United States Department of the Treasury, "Treasury Sanctions Companies for Enabling the Shipment and Sale of Iranian Petrochemicals," (September 3, 2020), available at https://home.treasury.gov/news/press-releases/sm1114; United States Department of the Treasury, "Treasury Designates Key Actors in Mahan Air Illicit Procurement Operations," (August 19, 2020), available at https://home.treasury.gov/news/press-releases/sm1098.

[7] United States Department of the Treasury, "Treasury Targets Hizballah Executive Council Companies and Official," (September 17, 2020), available at https://home.treasury.gov/news/press-releases/sm1126.

[8] United States Department of the Treasury, "Treasury Sanctions Key Actors in Iran's Nuclear and Ballistic Missile Programs," (September 21, 2020), available at https://home.treasury.gov/news/press-releases/sm1130.

[9] Council on Foreign Relations, "The Presidential Candidates on the Iran Nuclear Deal," (July 30, 2019), available at https://www.cfr.org/article/presidential-candidates-iran-nuclear-deal.

[10] United States Department of State, "Prepared Testimony of Special Representative Elliott Abrams for the Senate Foreign Relations Committee Hearing on Middle East," (September 24, 2020), available at https://www.state.gov/prepared-testimony-of-special-representative-elliott-abrams-for-the-senate-foreign-relations-committee-hearing-on-middle-east/.