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When Will the US Sanctions on Iran be Lifted, and by Whom?

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The battle raging between the US President and Congress on the Iranian nuclear deal should not eclipse the story behind the future removal of US sanctions. Beyond the legal questions, there are several heavy political questions that will influence the vitality of the Joint Comprehensive Plan of Action (JCPOA), announced on July 14, 2015; relations between Iran and the US, beyond the bilateral aspects; and domestic US politics, led by the race to the White House.

The US administration announced that no US sanctions will be removed immediately. The only sanctions suspended are the "limited, targeted, and reversible" sanctions that were lifted following the interim Joint Plan of Action reached between Iran and the P5+1 on November 24, 2013. Annex V of the JCPOA makes clear that upon Implementation Day – when the IAEA verifies the implementation by Iran of the nuclear-related measures stipulated in article 15 of that Annex – sanctions are eligible for removal. The list of the US sanctions to be lifted appears in its entirety in Annex II Article 4. The sanctions listed are categorized as related to financial and banking measures, insurance measures, the energy and petrochemical sectors, the shipping, shipbuilding, and port sectors, gold and other precious metals, software and metals, the automotive sector, designations, and other sanctions listings.

Beyond the US legislation related to this issue, the JCPOA lists the following Executive Orders: 13574, 13590, 13622, 13645, and Sections 5-7 and 15 of 13628. Executive orders are issued by the President in implementation of federal statutes, constitutional provisions, or treaties and do not require Congressional consent. Most of the Executive Orders are issued under a statutory authority, but that is not a necessary requirement. If no specific statutory authority has been given, Executive Orders have the same power, as law as long as Congress acquiesces to them. In Executive Order 13574 of May 23, 2011, for example, which cited the Iran Sanctions Act of 1996, the President authorized blocking property and assets in the US of people who were sanctioned by the Iran Sanctions Act, and listed other limitations on financial activities. In Executive Order 13590 of November 21, 2011, the President aimed to cut off the sale, lease, or other provision to Iran of goods and services technology or support in the value of $1 million "that could directly and significantly contribute to the maintenance and enhancement of Iran's ability to develop petroleum resources located in Iran." Other financial limitations were imposed in that Executive Order, though activities to relieve human suffering were exempted.

The sanctions contained in the aforementioned Executive Orders could be removed by the President on Implementation Day without Congressional consent. In some cases the President is required to submit notification to Congress if he decides to terminate certain sanctions. In several cases the President is required to submit certification. For example, Executive Order 13599 deals with blocking Iranian government assets, and if the President wishes to terminate related sanctions, the Iran Threat and Syria Human Rights Act of 2012 (PL-112 -158 sec.217) requires him to certify that Iran's Central Bank is not facilitating the purchase of nuclear weapons, nuclear-related construction and equipment, or operation and maintenance of facilities that could aid Iran's effort to acquire nuclear capability. If the President prevails and his veto of a Congressional vote not to approve the JCPOA stands, then on Implementation Day, his decision to remove the sanctions he himself authorized would be seen as plausible, though Republicans in Congress will certainly protest. However, a similar Presidential decision to remove Executive Order sanctions if Congress succeeds in overriding the presidential veto is likely to spark a furious constitutional and political debate, with ensuing actions and counteractions by President and Congress.

Section B in Annex II of the JCPOA deals with the removal of the US sanctions. Beyond citing the Executive Orders, it lists the process in a very detailed manner. Most of the US sanctions on Iran are to be found in the following legislation:

a. Iran Sanctions Act of 1996 and amendments (ISA)
b. Iran Freedom Support Act (IFSA)
c. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) – amended in 2012
d. National Defense Authorization Act for Fiscal Year 2012 (NDAA 2012)
e. Iran Threat Reduction and Syria Human Rights Act OF 2012 (ITRSHRA)
f. Iran Freedom and Counter-proliferation Act of 2012 (IFCA)

Many sanctions enumerated in this heavy body of legislation deal with Iran’s involvement with terror. Terminating these sanctions will require the President to determine that Iran is no longer a sponsor of acts of international terrorism. Following his recent public statements on the matter, it is clear he will not make this determination. At the same time, the President can waive many of the sanctions for not more than 180 days and renew this when he determines that such a waiver is "vital to the national security" and provides to Congress a justification.

Thus the President has the power to remove Executive Order sanctions related to Iran's nuclear activities after Implementation Day. If the President withstands a Congressional attempt to override his veto, his move could be rejected by Republicans who may try to make Congress pass countermeasures and may witness the repetition of vote-veto-failed overrides. Again, the issue becomes more complicated if the President fails to prevent Congress from overriding his veto but remains determined to use his power and terminate sanctions on Iran. Given that the US is already in a presidential election campaign, Republicans may be attracted to unusual measures in the attempt to block the lifting of nuclear-related sanctions on Iran. If that happens, against their will Israel and its supporters will enter into a bitter battle between a Republican-controlled Congress and a Democratic President who stands to lose a major battle on the Hill.

On the bilateral US-Israel agenda there are issues beyond the Iran deal. As the President has indicated, he does not believe anymore in the prospects of reaching a comprehensive Israeli-Palestinian agreement. Nonetheless, in wishing to leave his personal mark on this issue, he may resort to other options, such as a UN Security Council resolution containing the longstanding views of the US on the key elements of the Israeli-Palestinian conflict. A President in his final months in the White House, suffering a defeat in Congress – in his view, in part because of unprecedented interference by a foreign leader – might abandon his balanced record when it comes to Israel-related issues.

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