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Re-Imposed U.S. Anti-Iran Sanctions Leverage American Economic Power

By Hdeel Abdelhady |November 7, 2018 | First Published in Thomson Reuters

The United States on Monday reactivated its most biting sanctions on Iran, prohibiting and penalizing business with Iran's energy, shipping, and financial services sectors, as well as other activities. The move follows the United States' unilateral withdrawal in May from the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran Nuclear Deal.

The re-imposition of sanctions puts the remaining parties to the JCPOA – in addition to Iran, Russia, China, France, the United Kingdom, and Germany, with the EU – in a difficult position. They want to remain faithful to the JCPOA and their foreign policy prerogatives, without the legal and commercial risks of U.S. sanctions. The balancing act is proving difficult to achieve.

The Trump Administration will grant limited oil-related sanctions waivers to eight countries that are understood to have already reduced or will reduce their oil imports from Iran. The waivers will allow the recipient countries – including India, Japan, South Korea, China, and Turkey – to continue importing Iranian crude oil, free from the threat of U.S. secondary sanctions, but only to an extent and for a limited time. Notably, the Trump administration is not inclined to grant a waiver to the European Union, as a whole.

Additionally, the U.S. has threatened sanctions against SWIFT, the Belgium-based global payments messaging service, at the urging of Iran sanctions hawks in Congress and among Washington lobbyists. The purpose of U.S. sanctions against SWIFT is to pressure it to exclude Iranian financial institutions from its platform, thereby blocking Iran from a key international banking access point. Accordingly, SWIFT announced on Monday its suspension of "certain Iranian banks" from its messaging system, "in the interest of the stability and integrity of the wider global financial system".

The fallout from the U.S. withdrawal from the JCPOA, and the inability of allied and other nations to assuredly insulate themselves from the risk of U.S. sanctions, sharply illustrate the exceptional power of U.S. unilateral sanctions. Indeed, no country rivals the United States' ability to control international business, finance, and banking through sanctions.

U.S. dollar dominance, economic power, and global sanctions reach

Owing to the strength of the U.S. dollar, financial system, and business base, U.S. sanctions are uniquely global in reach and harsh in impact. The U.S. dollar is the world's preeminent reserve and transactional currency, and the country's financial system is critical to international business and finance. Through Bretton Woods institutions like the International Monetary Fund (IMF) and World Bank, the United States influences global financial policy. And the U.S. market – companies, financial institutions, capital markets, and consumers included – is too commercially important to avoid.

America's economic and financial heft facilitates the extraterritorial reach of U.S. sanctions and other law. For example, global transactions denominated in U.S. dollars and processed through the U.S. financial system create a jurisdictional nexus between the United States and foreign parties, property, and events.

U.S. dollar and financial system-tied sanctions jurisdiction: European bank cases

Between 2009 and 2015, eight European banks – including HSBC, BNP Paribas, Standard Chartered, and Credit Suisse – were penalized over $14 billion for, among other offenses, violating various U.S. sanctions programs, including against Cuba, Iran, Sudan, Libya, and Myanmar. Many of the transactions that led to such fines involved U.S. dollar payments on behalf of foreign parties and in relation to foreign business. A key jurisdictional hook in the bank cases was territorial – foreign transactions that were cleared through the United States financial system came within the territory of the United States.

For example, according to U.S. authorities (PDF), a BNP Paribas branch in Paris maintained an account for a United Arab Emirates (UAE) company that was part of an energy group ultimately owned by an Iranian citizen and resident. The same Iranian individual beneficially owned the Paris bank account, through which the UAE company received payments from its sales of Turkmen liquefied petroleum gas to Iraq.

Related to those sales, BNP Paribas processed about 114 transactions worth $415 million through U.S. banks. To evade U.S. sanctions, the bank allegedly concealed the Iranian links to the UAE in the payment messages it sent to U.S. banks. The transactions violated U.S. sanctions, because the transactions were received in Iran.

For these and numerous other violations, BNP Paribas paid an unprecedented $8.9 billion penalty, pled guilty to sanctions-related criminal charges, and had certain of its U.S. dollar clearing privileges suspended for one year.

The UK's Standard Chartered Bank and HSBC paid $977 million and $1.9 billion, respectively, for sanctions, anti-money laundering, and related violations. Additionally, Germany's Commerzbank **agreed to pay $1.45 billion in penalties** for U.S. sanctions and anti-money laundering breaches.

U.S. market power-tied sanctions: secondary sanctions

Unlike foreign transactions that come within the territorial jurisdiction of the United States, secondary sanctions target non-U.S. persons who are neither directly subject to U.S. jurisdiction nor involved in sanctionable conduct that touches U.S. territory. Rather, secondary sanctions target non-U.S. persons who, while outside the United States, engage in business and other activities that undermine the objectives of U.S. primary sanctions, such as conducting business with or on behalf of sanctioned parties in North Korea or Iran.

Leveraging U.S. market power, secondary sanctions are effective because U.S. persons are prohibited from engaging in business and certain other activities with foreign persons designated under secondary sanctions programs. Consequently, foreign persons on whom U.S. secondary sanctions are imposed are effectively excluded from the U.S. market. They must, therefore, choose between doing business with the United States and doing business with foreign parties targeted by U.S. primary sanctions. A transactional choice will almost always favor the United States.

International criticism and weak alternatives

In specific cases and generally, U.S. allies and adversaries have pushed back against outsize U.S. economic influence – through dollar, financial system, and market-tied sanctions – over foreign and international commerce, which some critics have labeled "dollar imperialism".

For example, then-French Foreign Minister Laurent Fabius in 2015 described U.S. sanctions against BNP Paribas as unfair and unilateral. The French government's efforts to lobby the Obama Administration on behalf of BNP apparently failed.

More recently, the European Union announced that the remaining parties to the JCPOA would create a mechanism free from the U.S. dollar and financial system to facilitate Iranian imports and exports while protecting their businesses from U.S. sanctions. The mechanism would involve a special purpose vehicle (SPV) to collect and process payments related to "legitimate business" involving Iran. As described, such a model likely would not entirely immunize its users from U.S. sanctions. For example, even if the SPV framework avoids U.S. dollar and financial system-tied jurisdiction, its participants would nevertheless be potentially subject to U.S. secondary sanctions.

Alternatives to U.S. "dollar imperialism" have been proposed over the years, but no serious alternatives to the U.S. dollar and financial system have materialized. The U.S. dollar is not likely to be dethroned anytime soon, and the U.S. market will likely remain, for the foreseeable future, too important to avoid in protest of U.S. sanctions policies and practices.

Nevertheless, limited alternatives to the U.S. dollar and financial system may be on the horizon, and the continued use of U.S. unilateral sanctions against adversaries and allies may accelerate efforts to develop other options. At present, China's Belt and Road Initiative, which would in principle spur cross-border renminbi or other non-dollar transactions, is a noteworthy potential source of cross-border trade and finance untethered to the United States.

In the meantime, officials in Washington may wish to ponder the cautionary words of former Treasury Secretary Jack Lew, who in 2016 warned: "we must be conscious of the risk that overuse of sanctions could undermine our leadership position within the global economy, and the effectiveness of our sanctions themselves."

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