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The Iran Deal Mean Game Over for U.S. Business

BY RICHARD W. RAHN

OTHER NATIONS CAN CASH IN, BUT NOT AMERICAN COMPANIES

If you need another reason to oppose the Iran nuclear deal, the Obama administration has provided it in the fine print. Why would the U.S. government go out of its way to put American business at an internationally competitive disadvantage? The United States already has the highest corporate tax rate in the world, and American businesses suffer from far more regulation than most of their foreign competitors.

Now, as bizarre as it may seem, the agreement that the Obama administration just negotiated with the Iranians removes most sanctions for businesses and individuals who may wish to invest in or trade with Iran — as long as they are not Americans. Currently, the United States prohibits almost all trade and other economic activities with Iran by both U.S. and non-U.S. persons and businesses. The United States is able to enforce its will on non-American individuals and enterprises primarily by denying them easy access to the international money transfer system, making it most difficult for them to receive funds and make payments.

Under the new agreement, the United States will cease to enforce the sanctions against Iran by “non-U.S. persons.” A non-U.S. person is an individual or entity who is not a citizen, a permanent resident of the U.S., or an entity not organized under the laws of the United States, or owned and controlled by a U.S. person. As an example, a company owned by U.S. citizens that makes food-processing equipment located in Kansas City would still be prohibited from setting up a factory or sales office in Iran. However, a German or Chinese company making similar products will be allowed to invest in and set up operations in Iran, putting the U.S. company at a real disadvantage.

Bart Fisher, a very skilled and experienced international trade lawyer and economist, brought this destructive provision to my attention after he had carefully read the entire agreement. Economic sanctions against countries rarely work unless all major countries agree to the sanctions. Likewise, if only a handful of countries impose sanctions, it tends to be much more damaging to the countries imposing the sanctions than it is to the targeted nation.

It can be argued that there are many reasons why the proposed nuclear agreement should not be approved, including: The verification process has too many holes, the sunset clauses are too short, and the enforcement process is likely to fail. If the agreement is approved because the votes are not there to override the president’s veto, then, at a minimum, U.S. businesses should be placed on a level playing field with their foreign competitors when it comes to access to the Iranian market.

There are some exceptions to the prohibition of U.S. businesses selling to Iran, including commercial aircraft and parts. As long as the business obtains an Office of Foreign Assets Control (OFAC) license, it may export, sell and lease commercial passenger aircraft. In theory, a U.S. company selling consumer goods, e.g., household appliances, should also be able to apply and obtain a license from OFAC, provided the proposed activities are consistent with existing U.S. laws and regulations, such as the Export Administration Act and the Iran-Iraq Nonproliferation Act. But until the rules are changed by Congress, the household appliance exporter, even with an OFAC license, still could not use a U.S. bank to facilitate the transaction. As a practical matter, U.S. businesses will face much greater, if not impossible, regulations trying to compete for Iranian business against their international competition.

U.S. security is not enhanced by putting U.S. business at a competitive disadvantage for goods and services that the Iranians can easily obtain elsewhere. It is true that the administration by itself, in the agreement, could not create a level playing field for American business, given the existence of the other legal restrictions (as noted above) in dealing with Iran.

The Obama administration and others argue that the agreement needs to be passed by Congress in order to prevent war. Others argue with equal passion and logic that passing it is more likely to lead to war. The fact is for all intents and purposes the sanctions were dead by the time the agreement was announced because the Russians, Chinese and even many Europeans have already been negotiating their trade and investment deals with Iran — leaving the United States as an impotent bystander.

The distasteful reality is the nuclear genie is out of the bottle, and that any country that is willing to pay for the bomb can get it and — agreement or no agreement — the Iranians are going to do what they want. A quick and easy pre-emptive war with Iran (if that was ever possible, which is doubtful) is certainly not possible now. At the same time, the Obama administration has largely thrown away effective financial sanctions. We have lost most of whatever ability we had to control the destiny of others. But we can still control our own destiny somewhat by strengthening our economy and modernizing our military.

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