

U.S. sanctions on Iran: an update



Scott Maberry, Thad McBride and Matthew Riemer consider recent developments in U.S. sanctions on Iran, including the implications of the Iran Freedom and Counter-Proliferation Act of 2012 and the Countering Iran in the Western Hemisphere Act of 2012.

The United States continues to impose pressure on Iran and companies that seek to do business with the country. This is evident in two recent laws the U.S. government has enacted to restrict Iran's access to the world market.

Iran Freedom and Counter-Proliferation Act of 2012 ('IFCPA')

The IFCPA, which was included in the National Defense Authorization Act for Fiscal Year 2013, targets significant sectors of the Iranian economy and dramatically expands the universe of 'persons' to be placed on the List of Specially Designated Nationals and Blocked Persons (the 'SDN List') maintained by the U.S. Treasury Department, Office of Foreign Assets Control ('OFAC').¹

Certain key provisions of the law are summarized below.

Energy, shipping, and shipbuilding

Section 1244 of the IFCPA authorizes U.S. sanctions on entities participating in activities related to the Iranian energy, shipping, and shipbuilding sectors. Specifically, the law authorizes the U.S. President to use five or more of the 12 sanctions available under the Iran Sanctions Act of 1996 ('ISA') against any person that the President determines knowingly sells, supplies, or transfers to or from Iran 'significant goods or services' related to the energy, shipping, and shipbuilding sectors of Iran.

Section 1244 also places particular emphasis on the activity of the National Iranian Oil Company, the National Iranian Tanker Company,



and the Islamic Republic of Iran Shipping Lines. And section 1244 instructs the President to designate as an SDN any person determined to be:

- (i) participating in the Iranian energy, shipping, or shipbuilding sectors;
- (ii) operating an Iranian port; or
- (iii) knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of a person designated under (i) or (ii).

At the same time, the law exempts from sanctions those activities related to:

- (i) the purchase or exportation of

petroleum and petroleum products;

- (ii) sale, supply, or transfer to or from Iran of natural gas (under certain conditions);
- (iii) sales of agricultural commodities, food, medicine, or medical devices or for humanitarian assistance to Iran; and
- (iv) reconstruction assistance or economic development in Afghanistan.

This is a potentially enormous expansion of the activities and entities subject to U.S. sanctions. Notably, Congress did not define the 'energy, shipping, and shipbuilding sectors of Iran' and that ambiguity could mean that previously non-sanctioned activities (e.g., civilian power generation) are now within the scope of U.S. sanctions. On the other hand, Congress was unambiguous in its expansion of the scope of the SDN List, which now encompasses those who engage in significant transactions with

Links and notes

¹ U.S. individuals and companies, as well as all persons in the United States regardless of nationality, are prohibited from conducting virtually all transactions with an SDN.

previously designated SDNs. Thus, those companies that do business with SDNs are now subject to the SDN designation and the attendant range of sanctions.

Precious metals, raw or semi-finished materials, coal, graphite, and certain industrial software

Section 1245 directs the President to impose at least five of the 12 ISA

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sanctions on any person that the President determines knowingly sells, supplies, or transfers, directly or indirectly, to or from Iran, precious metals, graphite, raw or semi-finished metals (e.g., aluminium and steel),

coal, and ‘software for integrating industrial processes’.

While sanctions are available in every case involving precious metals, sanctions could only apply to cases involving the other enumerated materials if the President determines Iran is:

- (i) using the material for barter or other transactional purposes;
- (ii) listing the material as an asset on its national balance sheet; or
- (iii) using the material in connection with the country’s nuclear, military, or ballistic missile programmes.

Sanctions could also apply if the non-precious material is:

- (i) used in the energy, shipping, or shipbuilding sectors of the Iranian economy or in any other economic sector controlled by Iran’s Revolutionary Guard;
- (ii) sold, supplied, or transferred by anyone on the SDN List; or
- (iii) resold, retransferred, or otherwise

supplied to any person or sector described in (i) or (ii) or for the nuclear, military, or ballistic missile programmes of Iran.

Section 1245 does, however, provide an important exemption from sanctions for any person determined to have exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure compliance with the act’s provisions.

Underwriting, insurance, and reinsurance activities

Under section 1246, the President is directed to impose five or more of the 12 ISA sanctions on any person that he determines knowingly provides underwriting services, insurance, or reinsurance for or to:

- (i) any Iran-related activity for which sanctions have been imposed under the U.S. sanctions programme;
- (ii) any person for the benefit of or related to any activity connected with the energy, shipping, or shipbuilding sectors for which sanctions are imposed under section 1244;
- (iii) any person for the sale, supply, or transfer of materials (other than precious metals) for which sanctions are imposed under section 1245;
- (iv) any person designated for sanctions under the International Emergency Economic Powers Act (‘IEEPA’); and
- (v) any Iranian person on the SDN List.

Facilitation by foreign financial institutions

Under sections 1244 and 1247, foreign financial institutions may be denied access to U.S. correspondent accounts if the President determines the institution knowingly conducts or facilitates a significant financial transaction:

- (i) for the sale, supply, or transfer to or from Iran of significant goods or services related to the energy, shipping, or shipbuilding sectors of Iran; or
- (ii) on behalf of any Iranian person on the SDN List.

Foreign financial institutions are



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exempt from sanctions if the transaction in question relates to:

- (i) trade between an oil-importing country and Iran;
- (ii) the sale, supply, or transfer to or from Iran of natural gas if the end-use of the natural gas is not a sanctionable activity and the funds owed to Iran as a result of the transaction are held in an account located in the country with primary jurisdiction over the foreign financial institution; and
- (iii) sales of agricultural commodities, food, medicine, or medical devices to Iran or for humanitarian assistance to the people of Iran.

In addition, under section 1245(c), a foreign financial institution will face the imposition of correspondent

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account sanctions if it knowingly conducts or facilitates a significant financial transaction for the sale, supply, or transfer to or from Iran of materials sanctionable under section 1245. The due diligence exemption (described above) also applies to foreign financial institutions, but no other exemptions are available (*e.g.*, the humanitarian assistance exemption would not apply).

Countering Iran in the Western Hemisphere Act of 2012 ('CIWHA')

Also recently enacted is the CIWHA, H.R. 3783 (112th Congress 2012), which President Obama signed into law on 28 December 2012. The law passed both houses of the U.S. Congress with very broad bipartisan support. In the policy statement to the CIWHA, Congress emphasizes that U.S. policy is to use a comprehensive government-wide strategy to counter Iran's 'growing hostile presence and activity in the Western Hemisphere'.

The CIWHA lists several specific concerns about Iran's presence in the Americas and the Caribbean, including

diplomatic initiatives, economic activity, and allegations that Iran is supporting Hezbollah activities in the border areas of Brazil, Argentina, and Paraguay.

As a consequence of the new law, the Obama Administration now must deliver to Congress an assessment and strategy for dealing with the Western Hemisphere threat by 26 June 2013.

Key components of the CIWHA are summarized below:

Threat findings

Congress noted several findings related to the Iran threat, including the following:

- Iran has opened five new embassies in the Western Hemisphere since 2005, and maintains 17 Iranian cultural centres in the region.
- Iran stations members of its Qods Force (a unit of the Iranian Islamic Revolutionary Guard) in its embassies, charities, and religious and cultural institutions abroad.
- Qods Force members have been implicated in terrorist activities in the region, including the plot to assassinate the Saudi Arabian Ambassador in the United States.
- Iran is a state sponsor of Hezbollah and may be involved in Hezbollah activities in the tri-border area of Argentina, Brazil, and Paraguay; Iran may also be involved in narcotics trafficking in the hemisphere.
- Bolivia, Cuba, Ecuador, Nicaragua, and Venezuela have expressed their intent to assist Iran in evading sanctions by signing a statement supporting Iran's nuclear activities.

Direction to the State Department

CIWHA directs the U.S. Department of State to conduct an assessment of these threats, and within 180 days to submit a report on the results of that assessment. At that time, the State Department must also deliver a 'strategy to address Iran's growing hostile presence and activity in the Western Hemisphere'.

The strategy must include the following elements:

- Address efforts by foreign persons, entities, and governments in the Western Hemisphere to assist Iran in evading sanctions;

- Protect U.S. interests, including embassies, consulates, businesses, energy pipelines, and cultural organizations;
- Identify and designate persons involved in proliferation and terrorist activities; and
- Ensure that energy supplies are free from disruption.

A State Department spokesman has noted that the department is 'fully aware' that Iran's presence in the Western Hemisphere 'could have implications for our security and that of our neighbors'. The spokesman added that the department is 'in the process of reviewing the law and its requirements' and 'will develop an implementation plan that is consistent with the law and our foreign policy objectives in the region'.

Conclusion

While the U.S. government is keeping pressure on Iran, the United States is trying to make it easier to conduct business in and with the country where that business is permitted, *e.g.*, with respect to providing humanitarian assistance to Iran. As an example, on 6 February 2013, OFAC published its Guidance on Humanitarian Assistance and Related Exports to the Iranian People. OFAC also recently published a frequently asked questions document relating to the Iran Threat Reduction and Syria Human Rights Act of 2012 ('ITRA').

These guidance documents do not change the fact that the United States maintains comprehensive sanctions against Iran, including an increasing number of sanctions that impact non-U.S. companies. While the U.S. government tightens the noose on the government of Iran and Iranian industry, it is still doing its best to encourage projects and transactions that benefit the Iranian people directly.

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