

IRAN SANCTIONS: NAVIGATING THROUGH VAGUENESS

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The U.S. Government recently took aggressive steps against shipping companies and others doing business with Iran. Those companies were sanctioned for, among other things, facilitating the development of petroleum resources and refined petroleum products by Iran under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA” or the “Act”). CISADA was enacted on July 1, 2010 to add to and amend the Iran Sanctions Act of 1996 (“ISA”). For much of its first year, CISADA went largely unenforced, but that changed on May 24, 2011, when the U.S. Government unleashed a wide array of sanctions on both foreign and U.S. companies, with a specific emphasis on the shipping business.

CISADA is an attempt by the U.S. government to legislate internationally. The White House, preferring to develop its Iranian sanctions regime through the U.N., did not favor Congress acting in the international arena and thus did not favor CISADA when it was debated in Congress. However, CISADA passed both houses of Congress with veto-proof

majorities, and the President signed the bill on July 1, 2010. At first, it appeared that the White House had little appetite to enforce the Act, with little enforcement activity in 2010 and none directly affecting the shipping business. Those engaged in Iranian trade, perhaps, developed a sense of security during this period. When the U.S. Government took action this May to enforce CISADA, those who had not prepared were taken by surprise. Iran is a big market for the shipping industry – the temptation to ignore the law and remain in that market is significant. Below we will look at CISADA itself and discuss the risks that go with it.

CISADA: BACKGROUND

Subject to certain monetary thresholds, CISADA prohibits any person, wherever located around the world, from making certain investments, selling, leasing, or providing to Iran, goods, services, technology, information, or support which could directly and significantly facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products, or directly and

significantly contribute to the enhancement of Iran’s ability to develop petroleum resources, or to import refined petroleum products. CISADA is based on the theory that by crippling Iran’s petroleum business, its ability to develop nuclear weapons will be hampered.

CISADA defines “refined petroleum products” as “diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel), and aviation gasoline.” CISADA also defines “petroleum resources” as “petroleum, refined petroleum products, oil or liquefied natural gas, natural gas resources, oil or liquefied natural gas resources, oil or liquefied natural gas tankers, and products used to construct or maintain pipelines used to transport oil or liquefied natural gas.”

The thrust of CISADA is to attack refined petroleum products imported into Iran.

The imposition of sanctions is based on the activity at issue (whether with respect to “refined petroleum products” or “petroleum resources”) and the monetary threshold involved.

With respect to refined petroleum products, it is sanctionable

to knowingly sell, lease or provide to Iran goods, services, technology, information or support that could facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products. This restriction applies to any individual transaction with a fair market value of at least \$1 million or a total of \$5 million over twelve months.

Another sanctionable activity is knowingly selling or providing to Iran refined petroleum products, or selling, leasing, or providing to Iran goods, services, technology, information, or support that could enhance Iran’s ability to import refined products, worth at least \$1 million in a single transaction, or \$5 million or more during a twelve-month period.

Banks, brokers, shipping and insurance companies all run the risk of being sanctioned when they participate in activities relating to shipping refined petroleum products to Iran. More specifically, the State Department has indicated that sanctions may be imposed on ship owners (even if the owner lacks full control under a charter agreement) or charterers using a

ship to supply Iran with refined petroleum products. Sanctions may also be imposed as a result of facilitation or brokering of the ship (either by sale or charter), or provision of insurance and/or cargo, to a company for the transportation of refined petroleum products.

With respect to petroleum resources, CISADA prohibits knowingly making an “investment” of \$20 million or more (or a combination of investments within a 12-month period where each is at least \$5 million and the total equals or exceeds \$20 million in the aggregate) that directly and significantly contributes to the enhancement of Iran's ability to develop petroleum resources. “Investment” includes the provision of goods and services – including shipping services – that contribute to Iran's ability to develop petroleum resources. An “investment” means any of the following if pursuant to an agreement (or the exercise of rights under an agreement) with the Government of Iran or a nongovernmental entity in Iran:

- (A) The entry into a contract that includes responsibility for the development of petroleum resources located in Iran or the entry into a contract providing for the general supervision and guarantee of another person's performance of such a contract.
- (B) The purchase of a share of ownership, including an equity interest, in that development.
- (C) The entry into a contract providing for the participation in royalties, earnings,

or profits in that development, without regard to the form of the participation.

Under CISADA, in the event that a person is found to be subject to sanctions on any of the above grounds, three of nine potential sanctions must be imposed. These potential sanctions run the gamut, from the mild to severe, and, if imposed, would prohibit: (1) export assistance from the Export-Import Bank of the U.S.; (2) licenses for export of U.S. military, “due use,” or nuclear-related goods or technology; (3) private U.S. Bank loans exceeding \$10,000,000 in any twelve-month period; (4) designation as a primary dealer in U.S. Government debt instruments or service as a repository of U.S. Government funds if the sanctioned person is a U.S. financial institution; (5) procurement contracts with the U.S. Government; (6) foreign exchange transactions subject to U.S. jurisdiction; (7) financial transactions subject to U.S. jurisdiction; (8) transactions with respect to property subject to U.S. jurisdiction; and (9) imports to the U.S. from the sanctioned person.

The imposition of sanctions with respect to financial transactions subject to U.S. jurisdiction (sanction number 7) is the most problematic for the shipping industry. It provides the U.S. government with a systematic way to carry out economic sanctions against Iran by shutting an international shipping business out of the U.S. financial system. In other words, it would no longer be able to do business in

U.S. Dollars. With the Dollar being the currency of shipping, this is a severe sanction.

CISADA: RECENT DEVELOPMENTS

In May 2011, the U.S. Government's focus on Iran sanctions – and its nexus with the shipping industry – greatly increased. On May 23, 2011, President Obama further expanded the reach of the U.S./Iran sanctions regime by signing Executive Order 13574 (the “Order”), entitled “Authorizing the Implementation of Certain Sanctions as Set Forth in the Iran Sanctions Act of 1996, as Amended.” By way of the Order, President Obama delegated to the Secretary of the Treasury the authority to take certain actions to implement sanctions imposed by the President or the Secretary of State against any party for engaging in activities related to, or investment in, Iran's refined petroleum and energy sectors pursuant to ISA and CISADA. This delegation of enforcement authority to the Secretary of the Treasury implements certain ISA sanctions, specifically those regulating the conduct of the private sector, including the shipping industry.

On May 24, 2011, the U.S. Department of State (“State”) announced sanctions against Petrochemical Commercial Company International (Jersey/Iran), Royal Oyster Group (UAE), Speedy Ship (UAE/Iran), Tanker Pacific (Singapore), Ofer Brothers Group (Israel), Associated Shipbroking (Monaco) and Petróleos de Venezuela

(PDVSA) (Venezuela).

The sanctions levied against Associated were severe and demonstrate to the shipping industry the devastating potential of CISADA. Associated was sanctioned for its role in a September 2010 transaction that provided a tanker to the Islamic Republic of Iran Shipping Lines (“IRISL”). IRISL is an entity that has been designated by both the United States and the European Union for its role in supporting Iran's nuclear proliferation activities. State said that it had determined that Associated knowingly acted on behalf of an IRISL front company and reacted by prohibiting Associated from engaging in U.S. foreign exchange transactions, U.S. banking transactions and all U.S. property transactions. In addition, showing the coordination between different agencies of the U.S. Government with respect to the imposition of Iran sanctions, the Office of Foreign Assets Control (“OFAC”) simultaneously added Associated to the Specially Designated Nationals List (the “SDN List”). This means that no U.S. person or entity can enter into any transactions with Associated.

In announcing the sanctions against Associated and the six other entities, State called particular attention to the shipping industry, urging companies “including those in the shipping and insurance sectors, to minimize their exposure to the Iranian energy sector and to exercise as much due diligence as possible in doing business, directly or indirectly, with

Iranian entities.”

The sanctions against Associated highlight the guidelines issues by State on May 23, 2011, for the provision of goods and services, including insurance, to entities that ship refined petroleum products to Iran under CISADA. The State Department provided illustrative examples of activities that may be considered sanctionable under CISADA, including:

- Use of a ship, controlled by ownership or charter agreement, to provide shipping services to supply Iran with gasoline, diesel, jet fuel, or aviation gasoline;
- Charter of a ship to another company that is using the ship to supply Iran with gasoline, diesel, jet fuel, or aviation gasoline. The ship owner may still have engaged in sanctionable activity even if it does not have full control of the ship under the charter agreement;
- Facilitation (e.g. brokering) of the provision of the ship, either by sale or charter, to a company for the transportation of refined petroleum products to Iran. Brokers are considered to be facilitating or “providing” the goods or services that they have sourced for clients. In the case of a ship sale or provision of insurance, the broker is considered to have provided the entire value of the goods and services;
- Provision of insurance to a company for the transportation of refined petroleum products to Iran, if the insurance premiums are above

threshold amounts. Insurance can include cargo insurance, P&I insurance, hull insurance, and contract frustration insurance;

- Facilitation (e.g., by brokering) of the provision of insurance for the transportation of refined petroleum products to Iran;
- Use of a ship, controlled by ownership or charter agreement, to provide shipping services for the purpose of supplying goods to be used to maintain or expand Iran’s refineries, such as refinery equipment;
- Facilitation (e.g. by brokering) of the provision of cargo or insurance to a company for the purpose of supplying goods or to facilitate the transportation of goods to maintain or expand Iran’s refineries;
- Provision of insurance to a company for the transportation of goods to maintain or expand Iran’s refineries

On the State level, on June 20, 2011, the Manhattan District Attorney’s Office announced a 317-count indictment (the “Indictment”) against eleven corporations and five individuals for their roles in an alleged conspiracy involving IRISL, the same entity for which Associated was sanctioned in May 2011. The Indictment charges that between September 10, 2008 and January 10, 2011, the defendants engaged in a conspiracy to avoid the consequences of their identification on the SDN List by continuing their access to U.S. financial institutions to conduct business

in U.S. Dollars. The Indictment includes allegations that the defendants sent or received illegal payments through Manhattan banks using alias names and corporate alter egos in Singapore, the United Arab Emirates, and the United Kingdom. The District Attorney’s Office has stated that the result of this conspiracy was the falsification of the records of banks located in Manhattan involving over \$60 million in illegal payments. In a coordinated action, on June 20, 2011, OFAC announced that it added several of IRISL’s co-defendants to the SDN List, including: Sinose Maritime Pte. Ltd., Leading Maritime Pte. Ltd., Great Ocean Shipping Services LLC, Pacific Shipping Company, Fairway Shipping Limited, Alireza Ghezel Ayagh, and Moghaddami Fard.

Later, the U.S. Government further expanded its efforts to sanction individuals or entities doing business with Iran’s Islamic Revolutionary Guard Corps (“Revolutionary Guard”) by adding Tidewater Middle East Co. (“Tidewater”) to the SDN List. Tidewater is an operator of numerous Iranian ports, including the Shahid Rajaei Container Terminal at Bandar Abbas, Bandar Imam Khomeini Grain terminal, Bandar Anzali, a terminal at Khorramshahr Port, Assaluyeh Port, Aprin Port and Amir Abad Port Complex, which serve as a crucial part of Iran’s infrastructure, but it is allegedly part-owned by the Revolutionary Guard and accordingly, shipments routed in and out of the

ports provide it with revenue.

The addition of Tidewater to the SDN List creates a treacherous situation for shipping companies calling in Iran and the effects of the inclusion of Tidewater on the SDN List will be felt throughout the shipping industry. As with all persons or entities listed on the SDN List, U.S. persons are prohibited from entering into any transaction with Tidewater. Any non-U.S. persons engaging in business with Tidewater run the risk of being sanctioned and losing the right to do business in U.S. dollars. Practically, if so sanctioned, it will be nearly impossible for shipping companies to use the Tidewater ports and impossible for shipping companies to remit or receive U.S. Dollars from Tidewater.

CISADA: WHAT’S NEXT?

The Iran sanctions landscape continues to develop. In May 2011, in conjunction with the U.S. Government’s increasing interest in enforcing CISADA, legislation was introduced in both the House of Representatives and the Senate to further expand and strengthen the existing Iran sanctions regime.

H.R. 1905, titled the Iran Threat Reduction Act of 2011 (“ITRA”) was introduced in the House of Representatives on May 13, 2011. If passed and signed into law, H.R. 1905 will repeal ISA and replace it with ITRA, a more comprehensive statute which will not expire until Iran ceases efforts to develop nuclear weapons, ceases

acts of violence against the people of Iran, and no longer poses a threat to the United States. With ITRA, legislators propose to increase the number of available sanctions to eleven, to include the denial of visas to an alien maintaining one of various types of relationships with a sanctioned entity, and extending the application of available sanctions to principal officers of any sanctioned entity. With the addition of these sanctions, ITRA creates personal liability for those skirting the U.S. Government's prohibitions on doing business with Iran.

H.R. 1905 further seeks to expand the reach of the Iran sanctions regime by broadening the definition of "goods, services, technology, information or support" such that it automatically applies to those aiding Iran's production and exportation of refined petroleum. With respect to individuals or entities aiding the production of refined petroleum products, the definition is expanded to include the provision of any infrastructure associated with petroleum refineries. Such infrastructure includes the construction of port facilities, railways, and roads, if built to support the delivery of refined petroleum products. Sanctions may be levied against any individual or entity found to be financing or brokering a sale, lease or provision of anything that falls within the definition of "goods, services, technology, information or support" under ITRA.

ITRA also prohibits aiding the exportation of petroleum, oil or

liquefied natural gas produced by Iran's Islamic Revolutionary Guard Corps or its affiliates. ITRA, if passed, will make it a specific sanctionable activity to refine or otherwise process petroleum, oil or liquefied natural gas, provide ships or shipping services, or finance, broker, underwrite, or provide insurance or reinsurance if the Revolutionary Guard or any of its affiliates was directly and significantly involved in the development, extraction, production, transportation, or sale of such petroleum, oil, or liquefied natural gas. If enacted, the sanctions regime under ITRA will be triggered by these actions, subject only to certain monetary thresholds.

On May 23, 2011, the Senate introduced its own resolution, S. 1048, titled the Iran, North Korea, and Syria Sanctions Consolidation Act of 2011 ("Sanctions Consolidation Act"). Broader than ITRA, the Sanctions Consolidation Act focuses not only on expanding the sanctions regime imposed under the ISA and CISADA, but also proposes amendments to the Iran, North Korea and Syria Nonproliferation Act of 2000 ("Nonproliferation Act")². Unlike ITRA, the Sanctions Consolidation Act does not propose to repeal ISA and replace it in its entirety, but rather broadens and strengthens existing legislation by bolstering the current regime.

The Sanctions Consolidation Act seeks to subject any entity to sanctions if it participates in a joint venture with respect to the

development of petroleum resources outside of Iran in which Iran is a substantial partner or investor, or through which Iran could receive technical knowledge or equipment that could contribute to the enhancement of Iran's ability to develop petroleum resources within Iran.

Like ITRA, the Sanctions Consolidation Act proposes to amend the meaning of "goods, services, technology, information or support." Notably, however, and unlike ITRA, the Sanctions Consolidation Act limits the expansion of the definition of "goods, services, technology, information or support" to the production, not the exportation, of refined petroleum products.

Subtitle B of the Sanctions Consolidation Act focuses on the application of sanctions against affiliates of the Revolutionary Guard by authorizing sanctions against any agent, affiliate, or representative of the Revolutionary Guard, with no monetary threshold as required by CISADA and the ITRA. Subtitle B also proposes additional sanctions against persons deemed to be affiliated with the Revolutionary Guard, or conducting commercial or financial transactions with Iran or the Revolutionary Guard. These sanctions include: (1) a

prohibition from entering into contracts with any department or agency of the U.S., and (2) a ban on imports from that person or entity, both for a period of not less than 2 years. Other penalties set forth against persons deemed to be affiliated with the Revolutionary Guard include the denial of U.S. visas and sanctions for aiding in the exportation of petroleum, oil or liquefied natural gas produced by the Revolutionary Guard.

Like ITRA, the Sanctions Consolidation Act would not terminate until Iran ceases efforts to develop nuclear weapons, ceases acts of violence against the people of Iran, and no longer poses a threat to the United States.

CONCLUSION

U.S. sanctions regulations with respect to Iran have serious consequences for both U.S. and non-U.S. businesses. As recent events have made clear, the U.S. Government, at least for now, is waging an across-the-board attack on entities in the shipping business that do business Iran. This area is constantly evolving, and consultation with qualified counsel is recommended. Ultimately, you must weigh the commercial benefits of any transaction or activity related, directly or indirectly, to Iran, against the potential legal ramifications, which can be significant.



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² For the purposes of this article, we focused on the proposed expansion of the ISA and CISADA.