McDermott Will & Emery

On the Subject

Energy & Commodities Advisory

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Trade sanctions laws recently enacted by the United States and the European Union impose new and substantial restrictions against doing business with Iran, particularly in the energy sector and involving the oil and gas and nuclear industries.

New Sanctions Against Iran

Following adoption by the United Nations Security Council of a resolution imposing new sanctions on Iran, the United States and the European Union have enacted tough new sanctions laws against Iran, and other countries, including Canada, are doing so as well. The updated sanctions are intended to curb the development of a nuclear weapons program by Iran. While the new sanctions focus primarily on restricting international business with Iran's nuclear and oil and gas industries, they could potentially affect any business operations directly or indirectly involving Iran.

UN Sanctions

On June 9, 2010, the United Nations Security Council approved its fourth round of sanctions against Iran's nuclear program. The sanctions prohibit countries from military trade with Iran's Islamic Revolutionary Guard Corps. They require countries to inspect ships or planes headed to or from Iran if they suspect banned cargo is aboard, although there is no authorization to board ships by force at sea. The sanctions also bar countries from allowing Iran to invest in their nuclear-enrichment plants, uranium mines and other nuclear-related technology, and they prohibit banks from opening branches or accounts in Iran. The sanctions add numerous entities and one individual to the UN blacklist, and they set up a new UN committee to monitor enforcement.

U.S. Sanctions

On July 1, 2010, President Barack Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), extending the reach and breadth of existing U.S. sanctions against Iran. In certain circumstances, the CISADA effectively extends sanctions to non-U.S. companies, and adds to the menu of penalties that can be applied by the president and also restricts his waiver authority. Under the CISADA, the president must impose sanctions on foreign persons who knowingly invest more than $20 million in Iran's energy sector; sell, lease or provide goods, services, technology or support worth at least $1 million for Iran's refined petroleum industry; or sell or provide at least $1 million worth of refined petroleum to Iran. Insuring, reinsuring, financing or brokering such transactions, or providing the ships for delivery, all fall under the new prohibitions. The CISADA broadens the definition of covered "persons" to allow for sanctions to be imposed on corporate affiliates, including parent companies that "know" of a subsidiary's activities, and on other affiliates if they are involved in the activities.

The CISADA also mandates additional investigations into alleged conduct subject to sanction and imposes new sanctions on financial institutions involved in business dealings with specified Iranian entities.

The president will continue to have the authority, as under current law, to issue licenses authorizing sales and exports of agricultural commodities, food, medicine and medical equipment to Iran; currently licensed trade in these items is not restricted by the new law. The U.S. Treasury Department Office of Foreign Assets Control still must issue implementing regulations that will define the exact contours of the new sanctions. Meanwhile, in early August 2010 Congress formed a bipartisan Working Group on Iran Sanctions Implementation that will meet on a regular basis with administration officials, foreign ambassadors and outside experts to oversee and verify enforcement of Iran sanctions.

EU Sanctions

Like the United States, the European Union, in a Council Decision dated July 26, 2010, significantly extended its preexisting sanctions to restrict trade with Iranian companies involved in the oil and gas industry, while maintaining its already strict sanctions on activities involving the Iranian nuclear industry. The EU Member States must now introduce rules into their domestic laws to enforce the sanctions on EU companies that will effectively prohibit extending any financial loan or credit to entities engaged in the Iranian oil and natural gas industry, including exploration, production and refining. This financing and credit restriction will apply even where the connection to the Iranian oil and gas industry is indirect; *i.e*., sales of goods outside the oil and gas sector could still run afoul of the EU sanctions if the Iranian buyer is involved in the Iranian oil and gas industry.

The Council Decision will increase inspection requirements for cargo destined for Iran. It will also restrict the ability of financial institutions and other companies to transfer funds into Iran or to insure or reinsure entities in Iran, even potentially subjecting to criminal liability individuals who knowingly circumvent the prohibition on insurance. Significant penalties can apply for non-compliance.

Canadian Sanctions

The Canadian Government this week proposed Special Economic Measures (Iran) Regulations that would ban trade with Iran in goods and technology related to development of nuclear technology and oil and gas refining. The sanctions would also limit bilateral financial transactions and impose restrictions on designated entities connected to the development of Iran's nuclear program, the department said. Exemptions will be provided for humanitarian purposes, disaster relief or safeguarding human life, and the restrictions on dealings with designated entities do not apply to shipment of bulk agricultural commodities, loan repayments, pension payments and transactions with humanitarian agencies.

Complying with the New Iran Sanctions

Because of their broad reach and concerted, multilateral nature, the new sanctions have the potential to substantially affect any business that directly or indirectly involves Iran. Companies based in or having affiliates in the United States or the European Union should carefully monitor all business activities that might involve Iran, even remotely. Businesses in the oil and gas and energy industries, particularly, must closely scrutinize not only their own activities, but those of counterparties with which they are engaged.

Companies that have legal, authorized business involving Iran, such as licensed trade in food or medical items, may continue that business; but even these operations may be practically affected by the new sanctions that make shippers, financial service providers and others reluctant to be involved in Iran-related transactions. Implementing regulations to be issued by the Office of Foreign Assets Control and by EU Member State authorities should ultimately dispel some of the confusion resulting from the CISADA and the EU Council Decision. All companies with global operations are well advised to understand the details of these trade restrictions, or risk substantial penalties

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