



STEAMSHIP MUTUAL

To the Members

January 2012

Dear Sirs,

UPDATE ON U.S. SANCTIONS IN RESPECT OF IRAN

Members are alerted to the latest legislative developments from the U.S. which involve an escalation of measures in support of trade embargoes on Iran.

On 31 December 2011, President Obama signed into law new sanctions against Iran set out in **section 1245 of the National Defence Authorisation Act for Fiscal Year 2012 ("NDAA 2012")**.

Of relevance to the shipping industry is the requirement, under Section 1245 of NDAA 2012, for the President to sanction foreign (non-U.S.) financial institutions which facilitate significant financial transactions with the Central Bank of Iran or any other designated Iranian bank, particularly with respect to oil transactions. Previous, and relatively recent, U.S. measures, including Executive Order 13590 of 21 November 2011, targeted persons engaging in activities that directly and significantly contribute to Iran's ability to (i) develop petroleum resources located in Iran, and (ii) maintain or expand its domestic production of petrochemical products. A key development brought about by Section 1245 of NDAA 2012 is that sanctions can apply to parties facilitating the export of oil FROM Iran. The aim of this legislation appears to be to curtail Iran's earnings from oil revenues.

In a strengthening of existing measures, the new sanctions under the Act require the President to block the property of, and prohibit all transactions in property of Iranian financial institutions, if such property and interests in property are within the US or the possession or control of a US person. (Not all Iranian banks had hitherto been targeted for asset freeze).

With effect from 60 days after enactment, the President is required to prohibit a foreign financial institution from opening or maintaining correspondent accounts with U.S. financial institutions if the foreign bank knowingly conducts or facilitates significant financial transactions with the Central Bank of Iran or other designated Iranian bank. The only exemptions are for transactions involving food, medicine or medical devices to Iran.

There is no definition of what constitutes a "significant" financial transaction. However, NDAA 2012 confers latitude upon the U.S. administration to waive imposition of sanctions:

- Foreign government-owned or -controlled banks (including central banks) would only be subject to sanction if they engage in a financial transaction involving the sale or purchase of petroleum or petroleum products **to or from** Iran that is conducted or facilitated 180 days after 31st December 2011;

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THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LIMITED

Registered Office: Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda

Authorised and Regulated by the Bermuda Monetary Authority and the United Kingdom Financial Services Authority
(FSA registration number 202762)

MANAGERS: STEAMSHIP MUTUAL MANAGEMENT (BERMUDA) LIMITED

WASHINGTON MALL I, PO BOX HM 447, HAMILTON HM BX, BERMUDA

Tel: (441) 295 4502 Fax: (441) 292 8787 Website: www.sims1.com

- With respect to transactions involving the purchase of petroleum or petroleum products **from** Iran, sanctions would only be applied against a foreign financial institution if the President determines that there is sufficient supply of petroleum or petroleum products from countries other than Iran to permit a reduction in volumes purchased from Iran by or through foreign financial institutions - a determination the President must make on a periodic basis;
- Similarly sanctions would not be imposed if the country having primary jurisdiction over the foreign financial institution has significantly reduced its volume of crude oil purchases from Iran;
- The President can waive imposition of sanctions for 120-day periods based on a determination that waiver is vital to national security, subject to reporting requirements to Congress.

In addition to the imposition of the sanctions described above, civil penalties of up to US\$250,000, and criminal penalties of US\$1 million, and/or imprisonment of up to 20 years, could also be imposed.

Proposed U.S. Legislation - Iran, North Korea and Syria Sanctions Consolidation Act of 2011

U.S. Government legislative proposals look likely to introduce tougher measures in support of trade embargoes on Iran, Syria and the Democratic People's Republic of Korea (DPRK).

The measure most directly impacting the shipping industry is **a proposed new "180 day rule,"** which provides that vessels may not knowingly land at any port in the United States to load or unload cargo or engage in the trade of goods or services if the vessel previously entered a port in Iran, North Korea, or Syria during the 180-day period preceding the arrival of the vessel in the United States. This proposal, which is similar to current U.S. policy for Cuba, has passed the House of Representatives and could become law imminently if passed by the Senate and signed by the President.

The proposed legislative amendment to the Ports and Waterways Safety Act (33 USC 1221 et seq.) would require either "the owner, charterer, operator, or master" of a vessel to "certify" prior to arrival in a U.S. port, "that the vessel did not enter a port in Iran, North Korea, or Syria during the 180-day period ending on the date of arrival of the vessel" in a U.S. port.

In addition to other applicable criminal and civil penalties, ships found to have submitted false declarations could be subject to prohibitions including a prohibition from landing at a port in the U.S. for a period of at least 2 years. This could apply to any vessel for which a false declaration was made and to other vessels owned by a parent/associated company.

The draft legislation also contains provisions which

- Direct federal authorities to carry out enhanced inspections on vessels that have landed in Iranian, North Korean or Syrian ports during the preceding 12-months to determine whether the vessel was involved in any sanctioned proliferation-related activity. Data from the U.S. Authorities' vessel tracking systems may be used to establish such activity.
- Provide for new sanctions on any person providing shipping services for the transportation of goods to or from Iran, North Korea, or Syria for purposes relating to nuclear, biological, or chemical weapons, or ballistic or cruise missile development programs. This includes provision of vessels, insurance and reinsurance. The only defence would appear to be to demonstrate that the vessel, insurance, reinsurance or other shipping service was not in fact provided in respect of a prohibited activity.

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The direct impact of the current proposals will be on the shipowner / operator/ vessel. It remains to be seen whether the final legislation will contain explicit provisions regarding insurers, although to the extent that any enacted legislation results in vessel detention or deviation, the availability of P and I cover could be affected for liabilities arising in consequence thereof. In the event that a Member incurs liabilities as a result of engaging in sanctionable activity, the Club Rules already provide for restrictions on cover.

The International Group Secretariat has sought urgent clarification from the U.S. Administration on a number of issues including the possible retrospective impact on a vessel's 180 day prior trading history; the extension of prohibitions for infringements to other vessels in the same or associated ownership, management or control; the levels of due diligence required in relation to ascertaining the prior trading history of newly acquired vessels; and the application of the new measures in the context of shipowners'/operators' existing contractual obligations to proceed to ports in Iran, Syria or North Korea and the U.S.

The Group will press for clarification on these issues and will continue to monitor developments with regard to the progress of the proposed legislation. Further information is also available on the Sanctions section of the Club website.

Proposals targeting insurers – Bill HR 1905 and S 1048

There are also legislative proposals (in Bill HR 1905) which target insurers involved in shipment of petroleum, oil or LNG if the Republican Guard or any of its affiliates are significantly and directly involved in its development, extraction, production, transportation, or sale. The proposals appear to be based on CISADA provisions in relation to refined petroleum products (RPP) and include a due diligence defence. While the "significantly and directly" provision gives some protection, the Republican Guard has considerable commercial interests and their involvement may not be immediately obvious, particularly to an insurer.

In addition reports to Congress would be required on entities that provide insurance or reinsurance for shipments of refined petroleum products to Iran. This indicates that there will be more focus on enforcement of CISADA, with insurers as one of the potential targets.

The text of NDAA 2012 can be downloaded from the dedicated Sanctions area of the Club's website www.simsl.com. The Managers will continue to keep Members abreast of developments in relation to sanctions through the issuance of Club circulars, Risk Alerts, and through updates to the Sanctions area of the website.

Yours faithfully,

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