

ECONOMIC SANCTIONS UPDATE

July 5, 2010

Additional United States, United Nations, and European Union Economic Sanctions – Iran

The United States: A Summary of New U.S. Sanctions Law – *the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA)*

Introduction

On July 1, 2010, President Obama signed into law, *the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA)*, formerly known as *the Iran Refined Petroleum Sanctions Act* or IRPSA.

CISADA amends the existing Iran Sanctions Act, strengthens existing U.S. economic sanctions against Iran governed by the Iranian Transactions Regulations (the “ITR”) administered by the US Treasury’s Office of Foreign Assets Control (“OFAC”), and most notably but not surprisingly, CISADA goes beyond the sanctions against Iran required by UN Security Council Resolution 1929 of June 9, 2010.

CISADA contains provisions to ratchet-up the sanctions pressure on Iran by imposing U.S. sanctions on non-U.S. and non-Iranian persons that make certain investments in Iran or that engage in certain trade/transactions with Iran. The sanctions under CISADA with respect to Iran’s petroleum sector are directed toward non-U.S. companies. U.S. companies are already prohibited by existing U.S. sanctions from investing in and trading with Iran under the ITR.

CISADA’s essential proposition to foreign or non-U.S. companies is: “join the United States and U.S. companies in abstaining from Iran’s petroleum sector or else you may become a U.S. sanctions target and suffer all the consequences flowing from such status.”

I. Sanctionable Activity: Investments in Iran’s Petroleum Sector, Enhancing or Maintaining Iran’s Production of Petroleum Products, Providing Refined Petroleum Products to Iran

- A.** CISADA amends the Iran Sanctions Act and directs the US President to impose 3 or more of the 9 specified sanctions if a *person* on or after the enactment of CISADA, has *knowingly*:¹

¹ Under CISADA, *knowingly* means *knew* (actual knowledge) or *should have known* (constructive knowledge).

1. made an investment of \$20 million or more, or any combination of investments of at least \$5 million which in the aggregate equals or exceeds \$20 million in any 12-month period, that directly and significantly contributes to the enhancement of Iran's ability to develop petroleum resources;²
2. sold, leased, or provided to Iran goods, services, technology, information, or provided support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries. Sanctions in this regard would be triggered if any of the foregoing activities individually has a fair market value of \$1 million or more, or during a 12 month period, has an aggregate fair market value of \$5 million or more;
3. sold or provided to Iran *refined petroleum products*³ that have a fair market value of \$1 million or more, or during a 12 month period, have an aggregate fair market value of \$5 million or more; or
4. sold, leased, or provided to Iran goods, services, technology, information, or support that could directly and significantly contribute to Iran's ability to import *refined petroleum products*,⁴ (that have a fair market value of \$1 million or more, or during a 12 month period, have an aggregate fair market value of \$5 million or more) including:
 - a. entering into a contract to insure or reinsure the sale, lease or provision of such goods, services, technology, information or support;
 - b. financing or brokering such sale, lease or provision; or
 - c. providing ships or shipping services to deliver *refined petroleum products* to Iran.

² This provision is an existing provision of the present Iran Sanctions Act.

³ CISADA defines *refined petroleum products* to mean diesel, gasoline, jet fuel (including naphta-type and kerosene type jet fuel), and aviation gasoline.

Exception: CISADA provides that no sanctions are to be imposed on an underwriter, insurer, or reinsurer if the President determines that a person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not underwrite, insure, or reinsure the sale, lease or provision of goods, services, technology, information, or support that could directly and significantly contribute to Iran's ability to import *refined petroleum products*.

CISADA defines *person* to include a natural person, business enterprise, government entity operating as a business enterprise, financial institution, insurer, underwriter, guarantor, any other business organization. This definition also includes a person that owns or controls a sanctioned person (*e.g.*, a parent company), or a person that is under common ownership or control with a sanctioned person (corporate affiliates of a sanctioned person).

II. Sanctions (Penalties)

- A. The 9 sanctions available under ISA, as amended by CISADA, against persons who engage in the CISADA-offending activities described above are:
1. Prohibition within U.S. jurisdiction of foreign exchange transactions in which a sanctioned person (sanctions target) has any interest;
 2. Prohibition within U.S. jurisdiction of payments and other transactions which involves any interest of a sanctioned person (sanctions target);
 3. The blocking of the property (freezing of the assets) within U.S. jurisdiction of a sanctioned person (sanctions target). This would mean complete exclusion from conducting business with the United States or *United States Persons*, and most likely the denial of or difficulty in obtaining visas to enter the United States.
 4. Denial of U.S. Export-Import Bank loans or credit facilities for U.S. exports to the sanctioned person;
 5. Denial of licenses for the U.S. export of military or militarily-useful technology;
 6. Denial of U.S. bank loans exceeding \$10 million in one year;

7. If the sanctioned person is a financial institution, a prohibition on its service as a primary dealer in U.S. Government bonds; and/or a prohibition on its serving as a repository for U.S. government funds;
8. Prohibition on U.S. government procurement from the sanctioned person; and
9. Restriction on imports into the United States from the sanctioned person.

III. Waiver of Sanctions

- A. CISADA preserves the President's existing power to waive the imposition of the above-mentioned sanctions against foreign persons. Sanctions can be waived in cases where doing so is *necessary to US the national interest*. Prior to CISADA, waiver could occur in cases that met a lower standard, *i.e.*, where waiver was merely *important to the national interest*.
- B. The President may, on a case-by-case basis, also waive, initially, for a period of not more than 12 months, the application of the above sanctions with respect to a person if the government with primary jurisdiction over the person in question is (i) "closely cooperating" with the United States in multilateral efforts to prevent Iran from acquiring or developing chemical, biological, or nuclear weapons or related technologies; or acquiring or developing destabilizing numbers and types of advanced conventional weapons; (ii) such a waiver is "vital to the national security interests of the United States," and (iii) the President certifies the same to the US Congress.

IV. CISADA Investigations

- A. CISADA requires the President to investigate activities that could trigger the imposition of sanctions, *e.g.*, (1) investments in Iran's petroleum sector, (2) activity that could significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, and (3) with respect to Iran's importation refined petroleum products.

The requirement to investigate investments in Iran's petroleum sector is effective upon CISADA's enactment.

- B. However, CISADA appears to indicate that the requirement for the President to conduct (mandatory) investigations with respect to (i) activity that could significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, and (ii) Iran's importation of refined petroleum products applies 1 year after the date of CISADA's enactment with respect to activities commenced 1 year after CISADA is enacted.

- C. Although CISADA's requirement for the President to initiate investigations is not required, as described above, CISADA appears to expressly permit (or it does not preclude) the President to initiate investigations of sanctionable activity and persons, and to impose sanctions with respect to a foreign person anytime after CISADA's enactment (permissive investigations).

V. Additional Sanctionable Activity: Transfer of Certain Technology to Iran, US Government Contracts

- A. CISADA directs the President to impose sanctions against a (foreign) person that transfers nuclear technology to Iran, and subject to certain exceptions and waiver authority, to prohibit or restrict certain exports to the country of the government that has primary jurisdiction of the person that has transferred nuclear technology to Iran.
- B. CISADA also bars the award of US government contracts to (foreign) entities that export "sensitive technology" to Iran, including telecommunications equipment that the President determines is to be used to (1) restrict the free flow of unbiased information in Iran; or (2) to disrupt, monitor, or otherwise restrict the speech of the people of Iran.
- C. CISADA requires prospective contractors with the U.S. Government to certify that they do not engage in any activity for which sanctions may be imposed under ISA, as amended by CISADA. This provision will be effective 90 days after the enactment of CISADA. False certifications will result in exclusion from federal contracts for 3 years.

VI. Strengthening of Previously Existing U.S. Sanctions Against Iran under the ITR

In addition to the above, CISADA modifies and codifies several aspects of existing U.S. economic sanctions against Iran and applies the following additional economic sanctions 90 days after the enactment of CISADA:

1. prohibits imports into the United States from Iran (exempts informational materials and accompanied baggage). This provision eliminates certain previously existing exceptions;
2. prohibits exports from the United States or by a US Person to Iran (exempts informational materials, humanitarian assistance, agricultural commodities, food, medicine, and goods or services for commercial aircraft, the International Atomic Energy Agency (IAEA), Internet communication, and for democracy promotion). These sanctions transform previously-existing prohibitions into statutory law; and

3. freezes assets of certain designated Iranian individuals and entities and requires the submission of related reports to the U.S. Treasury Department by U.S. financial institutions.

VII. Additional Provisions, Requirements, and Prohibitions of the New Legislation

Targets: Foreign Financial Institutions Dealing with Iran

A. CISADA requires sanctions against *foreign financial institutions* that, among other things:

1. facilitate Iran's efforts to acquire or develop weapons of mass destruction or delivery systems for the same;
2. provide support for an organization designated by the United States as a foreign terrorist organization;
3. facilitate the activities of persons subject to financial sanctions under several UN Security Council Resolutions with respect to Iran; and
4. facilitate transactions involving Iranian sanctions targets, other sanctioned persons, or Iran's nuclear proliferation activities and its support for terrorism.

If a foreign financial institution engages in any of the activities described above, US banks and other domestic financial institutions will be required to prohibit the opening or maintaining of a correspondent account or a payable-through account by such foreign financial institution.

B. CISADA also requires the US Treasury Department to:

1. prohibit any person owned or controlled by a US domestic financial institution from knowingly engaging in a transaction with or benefitting Iran's Revolutionary Guards Corps;
2. require U.S. domestic financial institutions maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to: (1) conduct audits to detect and guard against, among other things, transactions by foreign financial institutions that may engage in transactions to facilitate Iran's efforts to acquire or develop weapons of mass destruction or

delivery systems for the same; (2) submit relevant reports to the Department of the Treasury, (3) certify that the foreign financial institution is not knowingly, among other things, engaging in transactions facilitating Iran's efforts to acquire or develop weapons of mass destruction or delivery systems for the same, and (4) establish related due diligence policies, procedures and controls to guard against sanctionable transactions and activities.

The US Treasury will promulgate regulations with respect to the foregoing sanctions.

Blocking of Assets, Denial of Visas

Requires the imposition of sanctions (*e.g.*, visa denial, blocking of assets) against certain individuals who are responsible for or complicit in human rights abuses committed against the citizens of Iran or their family members.

Divestment from Companies that Invest in Iran

CISADA:

Authorizes, with notice and an opportunity for a hearing, a U.S. state or local government to divest from or prohibit investment in a person (company) that invests \$20 million or more in Iran's energy sector, or, if a financial institution, extends credit of \$20 million or more to energy projects in Iran. Prohibits preemption in this area by US federal law.

Expresses the sense of Congress that fiduciaries of certain employee benefit plans may divest plan assets from, or avoid investing plan assets in, any person who engages in prohibited investment activities in Iran without breaching relevant responsibilities if: (1) the fiduciary makes such determination using credible, publicly available information; and (2) such divestment or avoidance of investment is conducted in the interest of the plan's participants and beneficiaries.

Amends existing law to shield any registered investment company and its directors, officers, employees, or advisors from civil, criminal, or administrative action based upon its divesting from, or avoiding investment in entities that make specified investments in Iran. Directs the Securities and Exchange Commission (SEC) to promulgate rules requiring registered investment companies to disclose such divestment decisions.

Destinations of Diversion Concern

CISADA:

Requires the Director of National Intelligence to submit, not later than 180 days after the enactment of CISDA and subsequently thereafter, a report to the President, the Secretaries of Commerce, State, Treasury, and to Congress identifying countries that are allowing the diversion of sensitive U.S. goods, services, or technology to Iran.

Directs the President to designate a country as a Destination of Diversion Concern if the President determines that the government of the country allows substantial diversion of sensitive U.S.-origin goods, services, or technologies through the country to Iran, Iranian end-users, or Iranian intermediaries.

Requires export licenses for the exportation from the United States to the Destination or Country of Diversion Concern of all items that fall within the category of items that have been diverted to Iran from the country in question. The imposition of the licensing requirement may be delayed for a 12-month period by the President under certain circumstances.

Implementation of UN Security Council Resolutions

CISADA provides the President with authority, in addition to his inherent authority under the U.S. Constitution, to implement UN Security Council Resolutions with respect to sanctions against Iran.

Appropriations

CISADA appropriate \$315 million for fiscal year 2011 for use in the administration and enforcement of sanctions.

Reports to Congress

CISADA requires certain reports to be submitted to the U.S. Congress regarding investments in Iran's energy sector, on the activities of foreign export credit agencies with respect to certain activities involving Iran, and on the activities of the U.S. Export-Import Bank with respect to activities involving Iran and foreign export credit agencies.

Expressions of US Congressional Policy and Aspirations

CISADA:

Urges the President, in the strongest terms, to consider immediately imposing sanctions on the Central Bank of Iran and any other Iranian financial institution engaged in proliferation activities or support of terrorist groups.

Expresses the sense of Congress that the United States should continue to target, with existing U.S. economic sanctions, Iran's Revolutionary Guard Corps, its supporters and affiliates, and any foreign governments that provide material support for the Corps.

Expresses the sense of Congress that the United States should continue to: (1) counter support for Hezbollah from Iran and other foreign governments; (2) target with sanctions Hezbollah, its affiliates and supporters; (3) urge the European Union (EU) and other countries to classify Hezbollah as a terrorist organization in order to facilitate the disruption of Hezbollah's operations; and (4) renew international efforts to disarm Hezbollah.

Expresses the sense of Congress that: (1) multilateral sanctions are generally more effective than unilateral sanctions against countries like Iran; and (2) the President should work with the 5 permanent members of the UN Security Council and Germany (the "P5 plus 1") and other interested parties to impose new multilateral sanctions if diplomatic efforts to end Iran's nuclear activities fail.

The United Nations

On June 9, 2010, the UN Security Council adopted resolution 1929 (UNSCR 1929) requiring States to impose additional economic sanctions against Iran. The new sanctions under UNSCR 1929 will be imposed through prohibitions applicable to trade and other transactions with or involving Iran, designated Iranian entities, and certain Iranian individuals.

UNSCR 1929 builds upon previous UN Security Council Resolutions regarding sanctions against Iran as a result of Iran's nuclear program. States are now at various stages in the process of implementing UNSCR 1929 through changes in their national laws and regulations. The United States and the United Kingdom have taken some steps in this regard. The European Union has announced that it will implement the sanctions and restrictions of UNSCR 1929.

UNSCR 1929 requires the imposition of new sanctions against Iran, but more importantly, it appears to authorize states to take measures beyond those required in UNSCR 1929. The United States and the EU

are expected to implement the sanctions called for under UNSCR 1929 as well as additional sanctions that are consistent with UNSCR 1929. See, The Eren Law Firm's *EconomicSanctionsUpdate* of June 30, 2010 for a summary of sanctions required under UNSCR 1929.

The European Union

The European Union on June 17, 2010 announced that new EU restrictive measures with respect to Iran would be imposed and that such sanctions would go beyond those required in UNSCR 1929. The EU has announced that new restrictive measures/sanctions will entail restrictions on "trade, especially dual use goods and further restrictions on trade insurance; the financial sector, including freezing of additional Iranian banks and restrictions on banking and insurance; the Iranian transport sector, in particular the Islamic Republic of Iran Shipping Line (IRISL) and its subsidiaries and air cargo; key sectors of the gas and oil industry with prohibition of new investment, technical assistance and transfers of technologies, equipment and services related to these areas, in particular related to refining, liquefaction and LNG technology; and new visa bans and asset freezes especially on the Islamic Revolutionary Guard Corps."

EU regulations implementing UNSCR 1929 are expected to be issued in several weeks.

Implementation and Compliance

Developments in Iran and the accelerated pace of its nuclear program, the risk and consequences of being designated as a sanctions target, and the opprobrium attached by the international community to commercial dealings with Iran that contribute to its nuclear activities have already caused some non-U.S. companies to reduce the risk of the imposition of sanctions by ceasing or preparing to cease activity with or involving Iran of the type sought to be deterred by CISADA.

The Eren Law Firm will continue to very closely monitor CISADA's interpretation and implementation by the designated agencies of the U.S. government and the implementation of UNSCR 1929 by the European Union and other States. With respect to CISADA, lawyers of The Eren Law Firm will continue to interface with the policy-making as well as the enforcement offices of the U.S. government to address questions and issues with respect to CISADA, and advise clients on CISADA compliance, and/or imposition of sanctions risk reduction strategies.

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EREN

Economic Sanctions Lawyers

The Eren Law Firm is an economic sanctions boutique. Its other core areas of concentration and practice include corporate transactions, and international dispute resolution, anti-money laundering, and international trade regulation. The Firm's clients from around the world include banks and financial institutions; insurance, reinsurance and other financial services companies; natural resource extraction companies, industrial companies, marine and air transportation companies; sovereign governments; foreign state enterprises; and individuals.

Mr. Pinter and Mr. Eren of the Firm served at the U.S. Treasury's Office of Foreign Assets Control (OFAC), the US government agency that administers and enforces US economic sanctions, for a combined 25 years prior to entering private law practice, respectively 8 and 10 years ago. While at OFAC, Mr. Eren and Mr. Pinter played a major role in analyses and deliberations with respect to numerous issues related to sanctions against Iran and other countries, provided interpretations of sanctions prohibitions and reached determinations with respect to exceptions to sanctions prohibitions. While at OFAC, Mr. Eren and Mr. Pinter also participated in deliberations related to issues and matters arising from sanctions-triggering investment in Iran by Total (France), Gazprom (Russia), and Petronas (Malaysia) under the Iran Sanctions Act of 1996, and contributed support to negotiations between the United States and the European Union with respect to the impact of ISA as well as the impact of the Helms-Burton Act on matters involving the US embargo of Cuba.

Trade, banking, and other financial transactions involving the former Yugoslavia and Iran constituted the major portion of Mr. Eren's portfolio at OFAC. Mr. Pinter was OFAC's Chief of Licensing for 17.5 years and was a prime arbiter of all major OFAC decisions. Prior to entering private law practice, Mr. Comras of the Firm, a former diplomat of the United States, served at the US State Department, where he was in charge of numerous economic sanctions programs and issues, most notably in the context of the past multilateral sanctions against the former Yugoslavia and those against Iraq, and sanctions issues arising under the Iran Sanctions Act. Mr. Comras has also served at the United Nations and is currently a member of the UN Panel of Experts dealing with sanctions against North Korea.

For more information about the Firm, and its lawyers, please visit: www.erenlaw.com.

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