

**Annual Update**

# U.S. Economic Sanctions & Export Controls

By Barbara D. Linney, Kelly Loughery and Kevin J. Miller

Since last year's annual update appeared in the September 2009 issue, the United States has continued to ramp up both Congressional and Administration efforts to tighten economic sanctions against Iran. Congressional efforts have focused on the energy sector and the plethora of industries that service and profit from it. New legislation currently before Congress is designed to prevent energy companies, vessel operators and various other businesses from supplying refined petroleum products to Iran or facilitating the country's ability to import or produce petroleum products at home. For many companies, including some major players in the affected industries, the mere threat of these sanctions has already led to decisions to terminate direct sales to Iran. In view of the significant ramifications of the impending legislation for the maritime industry, particularly for companies servicing the energy sector or involved in Iran's offshore development efforts, this year's update will focus primarily on the dynamic regulatory framework controlling trade with Iran. However, no annual update would be complete without a rundown of recent significant changes to other economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and a recap of the year's most interesting enforcement actions, so we will touch upon these developments briefly as well.

## Iran

**Legislative Developments.** If passed into law, the new legislation, currently awaiting conference committee, will significantly strengthen economic sanctions imposed by the Iran Sanctions Act of 1996 (the "Act"). The Act currently empowers the President to impose sanctions on foreign companies engaging in certain economic transactions with Iran which could potentially enable Iran to finance international terrorism or obtain weapons of mass destruction. The pending legislation represents an unprecedented effort to impede

Iran's ability to import or produce refined petroleum.

As currently framed, the bills passed in both the U.S. House of Representatives and Senate would expand the scope of the Act to encompass a wider range of businesses and activities associated with Iran's petroleum industry. For example, both bills require the President to impose sanctions against any person who knowingly engages in the provision of ships, vehicles or other means of transportation to deliver petroleum to Iran. In addition, the current investment threshold of \$40,000,000 would be lowered, mandating the President to impose sanctions on any person making an investment of \$20,000,000 or more (or a combination of investments of at least \$5,000,000 each, which in the aggregate equals or exceeds \$20,000,000 in any 12-month period) that directly and significantly contributes to Iran's ability to develop petroleum resources. Congressional efforts have not stopped at attempts to impede the flow of refined petroleum into Iran, as the Act also seeks to substantially curb Iran's ability to produce such petroleum domestically. Under the proposed legislation, the President must impose sanctions where any person knowingly engages in the sale, lease or provision of any goods, services, technology, information or support that would allow Iran to maintain or expand its domestic production of refined petroleum provided certain parameters are met. Specifically, the imposition of sanctions will be triggered if the value of the goods, services, technology, information or support exceeds \$200,000 in any single transaction or \$500,000 over any 12-month period. For government contractors, the legislation will also impose certain contractual requirements, mandating that each contract entered into for the procurement of goods or services or agreement for the use of federal funds as part of a grant, loan or loan guarantee include a clause requiring the contracting party to certify to the contracting officer or other appropriate agency official that the party does not conduct any of the activities proscribed by the legislation. Assuming the proposed legislation survives Executive scrutiny,



ny, the ramifications for the international maritime industry will be substantial, particularly for those companies serving the energy sector or supporting Iran's offshore petroleum development efforts. However, at the time of submission of this article for publication, discussions are still underway between Congress and the Administration (which favors exemptions for countries co-operating with the United States in its non-proliferation initiatives), and lobbying efforts continue on behalf of interest groups who favor tightening of perceived loopholes in existing sanctions regulations that prohibit U.S. companies from doing business with Iran but do not impose similar restrictions on their foreign subsidiaries.

## OFAC Sanctions

Last year's trend of designating Iranian companies and individuals as supporters of nuclear proliferation has continued since our last update. On February 10, 2010, one individual and four companies affiliated with the Revolutionary Guard were added to OFAC's Specially Designated Nationals (SDN) List. The designations include Revolutionary Guard Corps General Rostam Qasemi, the commander of Khatam al-Anbiya Construction Headquarters, the engineering arm of the Revolutionary Guard that serves to help the Revolutionary Guard generate income and fund its operations. Khatam al-Anbiya is believed to be owned or controlled by the Revolutionary Guard and is involved in the

construction of streets, highways, tunnels, water conveyance projects, agricultural restoration projects, and pipelines. Also designated were the following four companies believed to be owned or controlled by Khatam al-Anbiya, or acting on its behalf, which directly support various mining and engineering projects: Fater Engineering Institute; Imensazen Consultant Engineers Institute (ICEI); Makin Institute; and Rahab Institute. U.S. persons are prohibited from engaging in any transaction or business dealing with any person or entity on the SDN List, and U.S. banks are prohibited from processing U.S. dollar transactions that benefit such persons or entities. The maritime community should be mindful that full due diligence on prospective parties to transactions is required in view of Iranian efforts to avoid the implications of SDN designations of individuals, entities and vessels, including name changes and other evasive techniques.

#### **Preventing Violations In the Face of Ever-Changing Sanctions.**

With all eyes focused on Iran and the increasingly tough stance the Obama administration is taking to that country's developing nuclear capabilities, the maritime community must understand and remain abreast of emerging legislation and other sanctions developments. All too often vessel charterers and operators assume that the burden of compliance lies with others – misguided thinking in an economy when few companies can afford to swallow the costly fines and business disruption consequent to any violation of U.S. economic sanctions. As always, establishment and regular updating of an effective compliance program is the first line of defense against such violations and should be a priority for members of the maritime community in today's dynamic economic, legal and regulatory environment.

#### **Cuba**

On September 3, 2009, OFAC amended the Cuban Assets Control Regulations (CACR) to ease restrictions on family travel and remittances, as well as telecommunications. It also introduced a new general license for travel-related transactions incident to authorized agricultural and medical sales. Then, on March 10, 2010, OFAC relaxed restrictions on

exportation of certain services and software incident to the exchange of personal communications over the Internet (these changes also were applicable to such exportations to Sudan and Iran) and issued a new definition of the means of "payment of cash in advance" applicable to certain shipments of authorized agricultural exports to Cuba delivered during fiscal year 2010 or timely delivered pursuant to contracts entered into in fiscal year 2010. Apart from these relatively minor modifications, however, barriers faced by U.S. companies wishing to do business with Cuba remain unchanged, although Congressional efforts to ease or remove the sanctions continue.

#### **Recent Enforcement Actions**

November 11, 2009 saw publication of OFAC's long awaited final enforcement guidelines, designed to allow greater insight into the manner in which OFAC determines an appropriate enforcement response to apparent violations of U.S. economic sanctions. In December, the announcement of the imposition of substantial penalties against Lloyds TSB Bank, plc and Credit Suisse made clear to an already skittish U.S. banking community the pitfalls of violating the ban on processing U.S. dollar transactions for SDNs and other sanctioned parties.

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and OFAC also continued their focus on the transportation and transportation services industry, imposing significant criminal and civil penalties and denial of export privileges against two companies involved in unauthorized exports of aircraft and aircraft parts to Iran in violation of both OFAC sanctions and the Export Administration Regulations. BIS also issued new guidance for freight forwarders, reminding them of the important role they play in ensuring the security of the global supply chain.

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\* This article reflects developments through March 16, 2010, the date of submission for publication. The views expressed herein are those of the authors, do not necessarily reflect the opinion of the firm or other members of the firm, and should not be construed as legal advice or opinion or a substitute for the advice of counsel. Please contact Barbara Linney ([Linney@BlankRome.com](mailto:Linney@BlankRome.com)) at (202) 772-5935 if you have questions or desire assistance.