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E-ALERT | Foreign Trade Controls

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THE EUROPEAN UNION IS POISED TO IMPOSE HEIGHTENED SANCTIONS AGAINST IRAN; OFAC ADDS TO THE SDN LIST ADDITIONAL ENTITIES CONTROLLED BY THE GOVERNMENT OF IRAN OR INVOLVED IN ITS WEAPONS PROGRAM; AND THE U.S. CONGRESS IS EXPECTED TO PASS SOON AMENDMENTS TO THE IRAN SANCTIONS ACT

This e-alert reports on recent developments by the European Union and the United States aimed at tightening sanctions against Iran.

THE EUROPEAN UNION COUNCIL DECLARATION

On June 17, 2010, the European Council issued a Declaration setting forth broad policy directions for enhanced EU sanctions against Iran.

The policy directions in the Council Declaration appear to go further towards the U.S. sanctions framework than any Iran sanctions the European Union has adopted in the past. At the same time, the operative language simply "invites" the Foreign Affairs Council to adopt at its next session, which is scheduled for July 26, measures to implement the recent United Nations Security Council resolution on Iran as well as "accompanying measures" that "should focus on" certain policy areas. As a result, the scope of the EU sanctions will not be clear until the negotiations during the coming month among the various government experts have concluded and a final agreement by the foreign ministers has been reached.

The policy directions call upon the European Union to:

- curb investments in and the supply of technical assistance, technology, equipment, and services to Iran related to key sectors of the oil and gas industry, in particular refining, liquefaction and liquefied natural gas technology;
- target aspects of Iran's financial sector, including a freeze on additional Iranian banks and restrictions on banking and insurance;
- restrict operations in the Iranian transport sector, including activities in the European Union of the Islamic Republic of Iran Shipping Line ("IRISL") (and its affiliated entities) and Iranian air cargo companies;
- curb trade in additional categories of dual-use goods and impose further restrictions on trade insurance; and
- impose a ban on new visas for, and freeze assets of, certain individuals, with particular emphasis on members of the Iranian Revolutionary Guard Corps ("IRGC").

The precise meaning of the Declaration's reference to refining, liquefaction and liquefied natural gas technology is not entirely clear, but it could foreshadow consideration of EU measures, comparable to those pending in the U.S. Congress, that discourage and perhaps prohibit trade with Iran in refined petroleum products and services, as well as measures that discourage or prohibit trade in goods and services that support Iran's domestic refining capacity.

A significant amount of uncertainty remains about the actual impact of any EU sanctions and the significance of the European Union's action for the timeline and contours of the U.S. sanctions. While the European Union's apparent willingness to target Iran's energy sector might provide support for those in Congress and the Administration who are urging restraint in imposing sanctions against EU companies for their prior investments in or assistance to Iran's energy sector, there is pressure for Congress to act soon, before the EU sanctions are fleshed out. Thus, the Iranian sanctions ultimately adopted by the European Union may not have much effect on the new sanctions under consideration by Congress. It is, however, quite notable that the European Union and the United States are increasingly aligned on the need for additional sanctions against Iran that go beyond the recent United Nations resolution.

OFAC Adds to the SDN List Additional Entities Controlled by the Government of Iran or Associated with Iran's Weapons Program

On June 17, the Treasury Department's Office of Foreign Assets Control ("OFAC") announced amendments to Appendix A to the Iranian Transactions Regulations ("ITR") to identify 22 additional entities that are considered to fall within the ITR's definition of the "Government of Iran" in 31 C.F.R. § 560.304 because they are owned or controlled by the Iranian government. These new listings include not only entities incorporated under the laws of Iran, but also entities organized elsewhere, including in the United Kingdom, Germany and Singapore. U.S. persons are prohibited by the ITR from engaging in any trade or other dealings with these listed entities, regardless of their location.

OFAC's amendments to the ITR state that entities listed in Appendix A to Part 560 "also may be subject to other sanctions programs administered by OFAC, in which case that person's name would also appear in the list at Appendix A to 31 CFR chapter V [the List of Specially Designated Nationals and Blocked Persons ("SDN List")]." Yet, in a separate action, OFAC added these 22 entities to the SDN List, but identified them only with an "[IRAN]" designation. Because these entities are not shown as being subject to another sanctions program, it appears that their property and property interests are not subject to blocking because the ITR do not require such blocking.

Also on June 17, OFAC amended the SDN List to identify, for asset-blocking, a significant a number of entities with ties to Iran's weapons programs, including (i) an Iranian bank (Post Bank of Iran) that has provided services for another blocked Iranian bank; (ii) various entities associated with the IRGC; and (iii) five front companies for IRISL and a number of IRISL vessels.

Amendments to the Iran Sanctions Act

As reported in our e-alerts dated February 2 and June 9, 2010, the Congressional conferees are seeking to reconcile bills passed by the U.S. Senate and House of Representatives to amend the Iran Sanctions Act ("ISA"). The proposed amendments would, among other things, impose sanctions on persons who supply refined petroleum products to Iran or provide goods, services, technology, information or support that could contribute to the maintenance or expansion of Iran's domestic refining capacity. There is pressure on the Conference Committee to complete its work during the week of June 21 so that Congress can pass the ISA amendments prior to the Fourth of July recess.

It is our understanding that many key provisions reported in our prior e-alerts remain substantially unchanged, but subject to ongoing negotiations. There also are reportedly efforts by the Treasury Department to include a new financial sanction that would not be linked to investments in Iran's energy sector but would target non-U.S. banks that process certain Iranian transactions.

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This memorandum is intended to provide only general guidance and not to advise as to the lawfulness of any particular activity. Covington & Burling LLP has extensive experience in the trade controls area. We would be happy to assist our clients as they seek to track and navigate the intricacies of the developments described above.

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