

E-ALERT | International Trade Controls

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EU AND US SANCTIONS UPDATE

EU AND US ANNOUNCE ADDITIONAL SANCTIONS AGAINST IRAN; EU DESIGNATES FURTHER ENTITIES IN SYRIA; ADDITIONAL CHANGES TO BURMESE AND BELARUS SANCTIONS REGIMES EXPECTED

On January 23, 2012, the Council of the European Union (“EU Council”) agreed on a series of additional restrictive measures against Iran. [Council Decision 2012/35/CFSP](#) (i) establishes a phased oil embargo against Iran; (ii) adds new designated parties, including the Central Bank of Iran and Bank Tejarat; and (iii) introduces several export prohibitions and financing restrictions targeting Iran and Iranian parties. Importantly, under EU law, Decisions bind Member States; private parties are bound only once Decisions are implemented by the European institutions through Regulations. The European Commission has thus far only implemented the provisions of Decision 2012/35/CFSP which relate to designated parties (these provisions are now set out in [Regulation 54/2012](#) and [Regulation 56/2012](#)). The other provisions of the Decision will be implemented via Regulation shortly.

The United States also imposed further sanctions against Bank Tejarat and its subsidiary.

In addition, the EU is tightening sanctions against certain Syrian and Belarusian parties, while indicating that an easing of sanctions against Burma is likely. More specifically:

- **Syria** - [Council Implementing Regulation 55/2012](#) and [Council Implementing Decision 2012/37/CFSP](#) designate additional Syrian parties as subject to restrictions.
- **Belarus** - [Council Decision 2012/36/CFSP](#) paves the way for future designations of Belarusian parties responsible for human rights violations.
- **Burma** - The EU Council has announced a political commitment to relax the sanctions against Burma by suspending visa travel bans on certain high-level Burmese government officials. A further review of the existing sanctions against Burma is set for April 2012.

DEVELOPMENTS IN IRAN SANCTIONS

New EU Sanctions

The EU’s actions against Iran reflect the deepening tensions over Iran’s potential nuclear weapons program.

Oil Embargo

[Decision 2012/35/CFSP](#) establishes a ban on the import, purchase, and transport of Iranian crude oil, petroleum, and petrochemical products. The ban extends to the provision of related financing, financial assistance, insurance, and reinsurance.

The Decision prohibits the conclusion of new stand-alone contracts to import Iranian crude oil, petroleum, and petrochemical products. Contracts that were concluded before January 23, 2012, are

covered by a grandfathering clause and may be performed until July 1, 2012. Additionally, ancillary contracts necessary for the execution of past contracts also may be concluded and performed until July 1, 2012.

The ban also excepts execution of obligations provided for in contracts concluded before January 23, 2012, where (i) the supply of Iranian crude oil and petroleum products is for the reimbursement of outstanding amounts with respect to contracts concluded before January 23, 2012, and (ii) where those contracts specifically provide for such reimbursement. This exception reportedly is intended to accommodate Italy's request that Eni SpA, Italy's largest oil company, be able to receive crude owed to it.

Restrictions on the Iranian Petrochemical Sector

In addition to the new oil embargo, [Decision 2012/35/CFSP](#) prohibits the sale, supply, or transfer of (i) key equipment and technology, and (ii) related technical assistance, financing, and financial assistance to Iran's petrochemical sector. This prohibition applies in addition to the ban on key equipment and technology for the Iranian oil and gas sector adopted in October 2010 (see [Regulation 961/2010](#) as described by our [e-alert](#) of October 28, 2010). The European Commission is currently preparing a list of the equipment and technology subject to the ban.

The above prohibition is subject to a grandfathering clause which allows the execution of (i) obligations relating to the delivery of goods provided for in contracts concluded before January 23, 2012, and (ii) other obligations arising from contracts concluded before January 23, 2012, and relating to investments made in Iran before the same date by enterprises established in Member States.

Decision 2012/35/CFSP also prohibits the following investments:

- the granting of any financial loan or credit to enterprises in Iran that are engaged in the Iranian petrochemical industry or to Iranian or Iranian-owned enterprises engaged in that industry outside Iran;
- the acquisition or extension of ownership in enterprises in Iran that are engaged in the Iranian petrochemical industry, or of Iranian or Iranian-owned enterprises engaged in that industry outside Iran, including the acquisition in full of such enterprises and the acquisition of shares and securities of a participating nature; and
- the creation of any joint venture with enterprises in Iran that are engaged in the Iranian petrochemical industry and with subsidiaries or affiliates under their control.

Importantly, the investment prohibitions do not prevent (i) the execution of an obligation arising from contracts or agreements concluded before January 23, 2012, or (ii) the extension of ownership, if such extension is an obligation under an agreement concluded before January 23, 2012.

Restrictions on the Iranian Financial Sector

[Decision 2012/35/CFSP](#) also designates the Iranian Central Bank, Bank Tejarat, and 10 other entities. These parties are subject to the asset freeze and the prohibition on the making available of funds and economic resources. The Decision introduces various exceptions for transfers involving the Central Bank of Iran or Bank Tejarat, including for transfers permitted under certain of the exceptions described above.

In addition to the prohibitions outlined above, Decision 2012/35/CFSP bars the direct or indirect sale, purchase, transport, or brokering of gold, precious metals, and diamonds to or from the Government of Iran, its public bodies, corporations, and agencies, as well as to and from persons and entities acting on their behalf or at their direction, or entities owned or controlled by them.

Finally, the Decision also prohibits the delivery of Iranian-denominated banknotes and coins to or for the benefit of the Central Bank of Iran.

New US Sanctions

On January 23, pursuant to Executive Order (E.O.) 13382 (Blocking Property of WMD Proliferators and Their Supporters), the US Treasury Department's Office of Foreign Assets Control ("OFAC") added Bank Tejarat, Iran's third largest bank, to the List of Specially Designated Nationals and Blocked Persons (the "SDN List"). The designation of Bank Tejarat resulted from its provision of financial services to several Iranian banks and firms (Bank Mellat, the Export Development Bank of Iran, the Islamic Republic of Iran Shipping Lines, and the Ministry of Defense for Armed Forces Logistics) previously designated by the US government for their involvement in Iran's weapons of mass destruction ("WMD") proliferation activities. Trade Capital Bank, a Minsk, Belarus-based bank owned by Bank Tejarat, also was designated on January 23 pursuant to E.O. 13382 for providing financial services to the Export Development Bank of Iran and for being owned or controlled by Bank Tejarat.

While US persons already were prohibited by the Iranian Transactions Regulations from dealing with Iranian financial institutions, the designation of Bank Tejarat and Trade Capital Bank means that property and interests in property of these entities that are or come into the United States or the possession of a US person must be blocked and cannot be dealt in. The designation under the WMD Proliferation sanctions also means that, even when OFAC has granted a specific license authorizing humanitarian sales of medical or agricultural products to Iran under the Trade Sanctions Reform and Export Enhancement Act of 2000 ("TSRA"), that TSRA license will not authorize any dealings with these two banks (or other banks designated under the WMD Proliferation sanctions). Accordingly, neither Bank Tejarat nor Trade Capital Bank may be involved in any way, directly or indirectly, in payments, credit, or other financing for TSRA-licensed sales of medicines, medical products, and agricultural products in Iran.

Including these latest designations, the United States has designated 23 Iranian-linked financial institutions under E.O. 13382 and E.O. 13224 based on their involvement in Iran's illicit WMD activities. According to the Treasury Department, the purpose of the designations of Bank Tejarat and Trade Capital Bank is to "deepen Iran's financial isolation, mak[ing] its access to hard currency even more tenuous, and further impair[ing] Iran's ability to finance its illicit nuclear program." Bank Tejarat was viewed by the US government as "one of Iran's few remaining access points to the international financial system." Thus, it is not clear what channels remain for sellers of humanitarian products under Iran TSRA licenses to receive payment for the sales, if all banks with access to the international financial system are off-limits and cannot be involved, directly or indirectly, in transmitting such payments from buyers.

Further, pursuant to the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") and the more recently enacted National Defense Authorization Act ("NDAA") (described in our e-alerts of [August 17, 2010](#) and [January 4, 2012](#), respectively), the designations of Bank Tejarat and Trade Capital Bank could lead to sanctions for foreign financial institutions conducting business with Bank Tejarat and Trade Capital Bank. Under CISADA § 104, a foreign financial institution may be restricted or even prohibited from opening or maintaining correspondent or payable-through accounts in a US financial institution if the foreign financial institution knowingly facilitates a significant transaction or provides significant financial services to an Iranian-affiliated financial institution designated by the United States, such as Bank Tejarat or Trade Capital Bank. Beginning on February 29, 2012, Section 1245(d)(1)(A) of the NDAA also requires the President to prohibit or impose restrictions on the ability of a foreign financial institution to maintain a correspondent or payable-through account in the United States if the foreign financial institution has "knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of sanctions pursuant to the International Emergency Economic Powers Act." Bank Tejarat and Trade Capital Bank are now such designated banks.

The possibility of sanctions under the CISADA and the NDAA may make non-US banks even more wary of processing any transactions involving Iran. This may make it extremely difficult for non-US companies engaged in transactions involving Iran, even transactions that are not sanctionable under the CISADA or the NDAA, to find banks willing to be involved in such transactions.

DEVELOPMENTS IN EU SANCTIONS AGAINST SYRIA

The new EU sanctions against Syria continue the trend of increasingly tighter sanctions against that country by designating an additional 30 parties. These parties are subject to an asset freeze and prohibition on the making available of funds and economic resources.

The EU Council also [announced](#) that it will consider lifting the sanctions with respect to certain individuals who have “disassociated themselves” from the Syrian regime.

DEVELOPMENTS IN EU SANCTIONS AGAINST BELARUS AND BURMA

[Decision 2012/36/CFSP](#) expanded the criteria that the EU Council uses to designate parties in Belarus to include those who violate human rights. Although the EU Council has not designated any new parties at this time, we anticipate additional parties being designated under the expanded criteria.

Finally, responding to the Burmese government’s recent round of reforms, including the high-profile release of over 600 prisoners in early January 2012, the EU Council [announced](#) a political decision to suspend visa travel bans imposed against the President, the Vice-Presidents, cabinet members, and the Speakers of the two Houses of Parliament. The EU Council also has established working groups to consider whether further steps should be taken to relax sanctions against Burma. A further review of Burmese sanctions is scheduled for April 2012. Provided the Burmese government continues on its current path of reform, and in light of encouraging comments from the EU Council, it is possible that more sanctions will be suspended or lifted during — or possibly even before — the April review.

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Our EU and US offices are deeply involved in advising clients concerning the application of the EU and US sanctions and would be pleased to help clients navigate the new sanctions.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our international trade practice:

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