

Trump Administration Expands Sanctions Targeting Iran's Industrial Metals Sector

June 3, 2019

Key Points

- President Trump issued a new Executive Order (EO) on May 8, 2019—exactly one year after the Trump administration withdrew from the Iran nuclear deal—that widened the scope of existing sanctions targeting the Iranian industrial metals sector. The executive order imposes secondary sanctions relating to the Iranian iron, steel, aluminum and copper sectors, and authorizes restrictions on correspondent banking and payable-through accounts on non-U.S. financial institutions involved in certain transactions involving these metals.
- Preexisting sanctions regarding Iranian metals were more limited in scope, and were restricted to limited sectors; for example, some sanctions were only applicable when metals were used in connection with the Iran's development of nuclear weapons or ballistic missiles. The new sanctions do not have similar limitations, and expand the bases for secondary sanctions applicable to non-U.S. persons.
- Companies and individuals have until August 6, 2019, to wind-down preexisting contracts involving Iranian iron, steel, aluminum and copper. New transactions are sanctionable as of May 8, 2019.

Background

On May 8, 2019, the one-year anniversary of the United States' withdrawal from the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran nuclear deal, President Donald Trump issued Executive Order 13871 (EO 13871), authorizing sanctions on Iran's iron, steel, aluminum and copper sectors.¹ The EO states that its aim is to deny the Iranian government revenue from metals, and to counter nuclear development. According to the White House and the State Department, Iran's industrial metals sector is its second largest industry sector after petroleum, signaling the United States' intent to target a key economic driver.²

U.S. sanctions targeting Iran's metal sector have been in place since January 2013, under sections 1245-1246 of the Iran Freedom and Counter-Proliferation Act (IFCA). The IFCA imposes sanctions on persons who knowingly engage in the sale, supply or transfer, directly or indirectly, to or from Iran of certain materials, including precious

Contact Information

If you have any questions concerning this alert, please contact:

Mahmoud Baki Fadlallah
Partner
mfadlallah@akingump.com
Dubai
+971 4.317.3030

Nnedinma C. Ifudu Nweke
Partner
nifudu@akingump.com
Washington, D.C.
+1 202.887.4013

Tristan Denour
Associate
tdenour@akingump.com
Dubai
+971 4.317.3025

Andrew R. Schlossberg
Associate
aschlossberg@akingump.com
Washington, D.C.
+1 202.887.4314

metals (e.g., silver and gold),³ as well as graphite, raw and semi-finished metals such as aluminum and steel, copper infiltrated tungsten metal and copper-beryllium metal.⁴

The sanctions under the IFCA on engaging in dealings to or from Iran concerning graphite, raw and semi-finished metals apply only if the metals are (i) used in connection with the energy, shipping or shipbuilding sectors of Iran; (ii) used in a sector deemed by the President to be controlled by Iran's Revolutionary Guard Corps (IRGC); (iii) sold to Specially Designated Nationals or Blocked Persons (SDNs); (iv) used in connection with Iran's nuclear, military or ballistic missiles;⁵ (v) used by Iran as a medium for barter, swap or any other exchange or transaction; or (vi) listed by Iran as assets of the Government of Iran for purposes of the national balance sheet of Iran.

The IFCA also contains an exception for persons exercising due diligence. The President is not permitted to impose the sanctions described in the IFCA if "the President determines that the person has exercised due diligence in establishing and enforcing official policies, procedures, and controls" to ensure they do not sell or transfer metals to restricted persons or sectors (i.e., the energy, shipping or shipbuilding sectors, IRGC-controlled sectors, SDNs or persons using them in connection with Iran's military sector). The President can waive this exception, but must renew the waiver every 180 days.

Effects of the Executive Order

Under the new EO 13871 sanctions, the Secretary of the Treasury, in consultation with the Secretary of State, has authority to designate the following persons on the U.S. Department of the Treasury, Office of Foreign Assets Control's (OFAC) SDN List:

- Persons determined to be operating in the iron, steel, aluminum or copper sector of Iran, or a person that owns or controls an entity in the iron, steel, aluminum or copper sectors of Iran.
- Persons who knowingly engaged in a significant transaction for the sale, supply or transfer to Iran of significant goods used in connection with the iron, steel, aluminum or copper sectors of Iran.
- Persons who knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper or copper products from Iran.
- Persons who materially assisted, sponsored or provided support for, or goods or services in support of, persons blocked under these sanctions.
- Entities owned or controlled by, or acting for, persons blocked under these sanctions.

Non-U.S. financial institutions are also targeted by the EO, and these institutions may lose correspondent banking or payable-through account rights in the United States for knowingly conducting or facilitating any significant financial transaction:

- For the sale, supply or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum or copper sector of Iran.
- For the purchase, acquisition, sale, transport or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper or copper products from Iran.

- For or on behalf of any person blocked due to involvement in Iran’s iron, steel, aluminum or copper sector.

OFAC anticipates adopting the interpretation of “significant” set out the Iranian Financial Sanctions Regulations, 31 CFR Part 561.⁶ This generally consists of a multifactor, nonexhaustive, totality of the circumstances assessment, including the size, number and frequency of the transaction at issue, the nature of the transaction, the impact of the transaction on the objectives of various Iran sanctions laws, whether the transaction involves deceptive practices and other relevant factors determined by the Secretary of the Treasury.⁷ A 90-day wind-down period applies to existing business in this sector, meaning that companies with existing contracts involving these metals have until August 6, 2019, to conclude their transactions, but new business is subject to sanctions.⁸

Difference from Existing Sanctions on Iranian Metals

EO 13871 expands existing sanctions on Iranian metals beyond those imposed through the IFCA.⁹ EO 13871 explicitly adds Iran’s copper and iron sectors as potential sanctions targets, which were not previously included in the metals targeted. The new EO is also not restricted to particular circumstances as the sanctions under the IFCA were (i.e., sales to the IRGC, or in connection with Iran’s nuclear or military capabilities), and it applies broadly to any person operating in the iron, steel, aluminum and copper sectors. Additionally, the new EO does not contain the due diligence exception present in the IFCA restrictions. Unlike the IFCA, no credit is given for conducting diligence or imposing controls to avoid targeted trade involving relevant Iranian metals.

Practical Effects

This EO is the latest in a series of actions by the U.S. government in its “maximum economic pressure” campaign against Iran. Businesses currently operating in Iran’s iron, steel, aluminum and copper sectors have 90 days to wind down their activities without risk of secondary sanctions, and new business in this space can immediately be subject to blocking sanctions. Non-U.S. financial institutions in this space are subject to the same 90-day wind-down period. Companies that choose to continue to engage in the iron, steel, aluminum and copper sectors of Iran face risk of secondary sanctions and could face SDN listing.

In addition, the U.S. government is authorized to impose sanctions on non-U.S. persons who materially assist, sponsor or provide financial, material or technological support for, or goods or services in support of, blocked persons even if such material support is provided unknowingly. This is a departure from the sanctions provisions under the IFCA, and greatly widens the scope and risk of sanctions for non-U.S. persons doing business that intersects Iran’s metals sector.

1 <https://www.federalregister.gov/documents/2019/05/10/2019-09877/imposing-sanctions-with-respect-to-the-iron-steel-aluminum-and-copper-sectors-of-iran>.

2 <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-regarding-imposing-sanctions-respect-iron-steel-aluminum-copper-sectors-iran/>; <https://www.state.gov/first-anniversary-of-president-trumps-new-iran-strategy/>.

3 https://www.treasury.gov/resource-center/faqs/sanctions/pages/faq_iran.aspx#298.

4 https://www.treasury.gov/resource-center/faqs/sanctions/pages/faq_iran.aspx#299.

5 22 U.S.C. §8804.

6 OFAC FAQ 671, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#671.

7 31 C.F.R. § 561.404.

8 OFAC FAQ No. 668, https://www.treasury.gov/resource-center/faqs/sanctions/pages/faq_iran.aspx#668.

9 22 U.S.C. § 8804.

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