International Trade Alert

United States Passes New Iran Sanctions Legislation

January 3, 2013

On January 3, 2013, President Obama signed in to law the Iran Freedom and Counter-Proliferation Act of 2012 as part of the National Defense Authorization Act (NDAA) for Fiscal Year 2013, H.R. 4310, 112th Cong. (2012) §§ 1241 – 1255 (IFCPA), which imposes new sanctions against Iran. As described in more detail below, the IFCPA:

- blocks transactions with the energy, shipping and shipbuilding sectors of Iran and any party that operates a port in Iran
- blocks transactions with parties that provide support to these sectors or provides support or goods or services for the benefit of an Iranian Specially Designated National (SDN)
- authorizes sanctions against persons providing goods or services to or from Iran in connection with the energy, shipping and shipbuilding sectors, and persons providing underwriting services, insurance or reinsurance for sanctioned persons and activities
- expands restrictions on the sale, supply and transfer of materials to or from Iran
- sanctions foreign financial institutions that facilitate financial transactions on behalf of SDNs
- modifies the basis for presidential waiver of U.S. sanctions on foreign financial institutions located in countries that import Iranian petroleum products
- sanctions entities that engage in diversion of goods intended for the people of Iran
- adds the Islamic Republic of Iran Broadcasting (IRIB) to the OFAC SDN List for human rights abuses
- requires the President to issue reports to Congress on the use of certain seaports and airports in connection with Iran
- increases the statute of limitations for civil legal proceedings initiated by victims of terrorist acts associated with Iran from four to 10 years.

Provided below is a summary of these and other key features and impacts of the new sanctions, which are effective January 3, 2013, except as otherwise noted below.

Key Features

Blocks parties involved with energy, shipping and shipbuilding sectors of Iran, port operators and anyone involved with Iranian SDNs

- The IFCPA blocks and prohibits, with limited exceptions, all transactions in property in the United States by any person the President determines (i) is part of the energy, shipping and shipbuilding sectors of Iran, (ii) operates a port in Iran, (iii) knowingly provides significant support, goods or services to persons in those sectors or (iv) knowingly provides significant support, goods or services to an Iranian person on OFAC's SDN List. This provision takes effect 180 days after enactment.

- The IFCPA also directs the President to issue five or more of the sanctions provided for in Section 6(a) of the Iran Sanction Act of 1996 (ISA) (Public Law 104-172), as amended, against any entity that sells, supplies or transfers significant goods or services used in the energy, shipbuilding or shipping sectors in Iran. This provision takes effect 180 days after enactment.

- The IFCPA makes exceptions for:

  - petroleum purchases from Iran pursuant to the "Significant Reduction" exception in section 1245 of the National Defense Authorization Act for 2012 ("2012 NDAA") (Public Law 112-81) (i.e., governments that have significantly reduced their purchases of crude oil from Iran)

  - certain financial transactions involving institutions in those countries

  - natural gas purchases from Iran so long as the purchasing country holds the payment to Iran in an account to be drawn on for permissible trade

  - purchases of food, agricultural commodities, medicine, medical devices and humanitarian assistance

  - reconstruction assistance or economic development for Afghanistan, if the President deems such an exception in the interest of national security.

Sanctions the sale, supply or transfer of certain materials to or from Iran

- The IFCPA directs the President to issue five or more of the sanctions provided for in Section 6(a) of the ISA, as amended, against any entity that knowingly sells, supplies or transfers precious metals or certain other materials relevant to Iran's economy, including materials connected to the energy, shipping, shipbuilding, nuclear, military or ballistic missile programs of Iran, or to be controlled by Iran's Revolutionary Guard Corps. The IFCPA contemplates exceptions for persons exercising due diligence to avoid such transactions. This provision takes effect 180 days after enactment.

- The IFCPA prohibits correspondent accounts in the United States for financial institutions that facilitate a sale, supply or transfer to Iran, or for facilitating transactions involving precious metal, graphite, raw or semifinished metals, metallurgical coal and software for integrating industrial processes in connection with Iran's energy, shipping and shipbuilding sectors or to Iranian SDNs as described above. This provision takes effect 180 days after enactment.

- The IFCPA makes exceptions for nondesignated Iranian financial institutions that are not connected to Iran's weapons of mass destruction program, its support for terrorism or its abuses of human rights. It also allows the President to issue a sanctions waiver for interests vital to the U.S. national security.

Sanctions parties providing underwriting services, insurance or reinsurance for sanctioned activities or persons

- The IFCPA requires the President to impose five or more sanctions contained in the ISA on any insurance or reinsurance provider or underwriter that the President deems knowingly provided underwriting service, insurance or reinsurance for activities for which sanctions have been imposed under current U.S. law (i) to any person in the energy, shipping or shipbuilding sector in Iran, (ii) for transactions involving the materials discussed above or (iii) to any SDNs associated with Iran. This provision takes effect 180 days after enactment.

- The IFCPA allows waivers for transactions involving humanitarian goods and a due diligence exception for underwriters, insurers and reinsurers. It also allows the President to issue a waiver for interests vital to the U.S. national security.

Sanctions foreign financial institutions that facilitate financial transactions for SDNs

- The IFCPA restricts correspondent accounts or payable-through accounts in the United States by foreign financial institutions that the President determines have knowingly facilitated a significant financial transaction on behalf of any Iranian SDN. This provision takes effect 180 days after enactment.

- The IFCPA provides exceptions for humanitarian transactions, certain financial institutions, petroleum sales permitted under the NDAA's Significant Reduction exception and certain natural gas sales. It also allows the President to issue a waiver for interests vital to the U.S. national security.

Amends authority to waive sanctions against foreign financial institutions located in countries that import Iranian petroleum products

- The IFCPA includes provisions amending Section 1245 of the 2012 NDAA, which allows the President to waive sanctions against foreign financial institutions if their countries of primary jurisdiction continued imports of Iranian petroleum products in the interest of national security. Specifically, the revised law provides that the President must certify that a country faced "exceptional circumstances" that prevented it from significantly reducing its volume of such purchases from Iran to justify the sanctions waiver, in addition to the requirement that the waiver be in the interest of national security.

Sanctions parties engaging in the diversion of goods intended for the people of Iran

- The IFCPA directs the President to impose sanctions on individuals determined to have engaged in corruption or other activities related to the diversion of goods intended for the people of Iran or the misappropriation of proceeds from the sale or resale of such goods.

- The names of these individuals will be published on the web sites of the Treasury and State departments.

Adds the Islamic Republic of Iran Broadcasting (IRIB) to the SDN List

- The IFCPA adds the IRIB and its president, Ezzatollah Zargami, to the SDN List due to human rights violations and sanctions them under the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA) (Public Law 111-195).

Adds requirement for the President to report on use of certain sea and airports in connection with Iran

- The IFCPA directs the President to submit to Congress reports listing (i) vessels that have entered seaports in Iran controlled by the Tidewater Middle East Company and the owners and operators of those vessels and (ii) all airports at which aircraft owned or controlled by an Iranian air carrier on which sanctions have been imposed have landed.

Modifies Statute of Limitations

- The IFCPA increases the statute of limitations for U.S. civil legal proceedings initiated by victims of terrorist acts associated with Iran from four years to 10 years.

Imposes Penalties for Violations

- The IFCPA provides for imposition of penalties for violations of its new measures under established penalty provisions of the ISA and the International Emergency Economic Powers Act (IEEPA) (50 USC 1705).

Impact of the IFCPA

- The IFCPA includes new sanctions against Iran that further expand the established U.S. sanctions framework by targeting additional industries (e.g., shipbuilding and precious metals) and tightening established measures targeting other areas of Iran's economy. The law also increases pressure on previously targeted sectors of Iran's economy by expanding existing U.S. sanctions coverage. At the same time, the new measures limit established presidential waiver authority concerning potential sanctions against foreign financial institutions located in countries that continue to import Iranian petroleum products. Companies with business interests in affected sectors should evaluate the potential impact of these measures on their global activities, assess their established compliance safeguards and implement any necessary enhancements in their global compliance programs to assure conformity with the new sanctions.

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