

The United States, United Kingdom and Canada Impose New Sanctions on Iran

November 29, 2011

On November 20 and 21, 2011, the United States, United Kingdom and Canada announced coordinated sanctions on the Islamic Republic of Iran in response to the recently released International Atomic Energy Agency (IAEA) report detailing Iran's continued development of its nuclear weapons program. The new sanctions measures largely focus on further isolating Iran's financial and petroleum sectors in an effort to pressure the Iranian government to comply with its international obligations. The European Union is expected to adopt similar measures shortly.

United States

The United States announced a series of actions that expand its existing sanctions on Iran.

1. Executive Order 13590

On November 20, 2011, President Obama signed Executive Order (E.O.) 13590, expanding energy-related sanctions on Iran. ^[1] This E.O. authorizes the Secretary of State to impose selected sanctions on persons who knowingly sell, lease or provide goods, services, technology or support to Iran that could directly and significantly:

- Contribute to the enhancement of Iran's ability to develop its petroleum resources, provided that a single transaction has a fair market value of \$1 million or more, or a series of transactions from the same entity total \$5 million or more over a 12-month period; or
- Facilitate the maintenance or expansion of Iran's domestic production of petrochemical products, provided that a single

Practice Areas

International Trade

Trade Policy and Trade Negotiations

transaction has a fair market value of \$250,000 or more, or a series of transactions from the same entity total \$1 million or more over a 12-month period.

The term "to develop" petroleum resources means to "explore for, or to extract, refine, or transport by pipeline, petroleum resources," which includes petroleum, oil, natural gas, liquefied natural gas and refined petroleum products. Petrochemical products include, but are not limited to, any aromatic, olefin and synthesis gas, as well as their derivatives. The State Department has indicated its intent to start a global diplomatic campaign to persuade buyers of Iranian petrochemical products to find other sources, but the Department has not suggested it will sanction those who continue such purchases. Rather, the Department's guidance states that "[t]he Executive Order would not cover the purchase of petroleum resources or petrochemical products from Iran, or the shipping of those products from Iran, absent other sanctionable conduct." [2]

The E.O. provides the Secretary of State with broad authority to impose sanctions, which could include prohibitions on: (1) foreign exchange transactions; (2) banking transactions; (3) property transactions within the United States; (4) U.S. Export-Import Bank financing; (5) U.S. export licenses; (6) imports into the United States; (7) loans of more than \$10 million from U.S. financial institutions; (8) U.S. government procurement contracts; and (9) for financial institutions, designation as a primary dealer or repository of U.S. government funds.

2. Designation of Iran as a Jurisdiction of "Primary Money Laundering Concern"

On November 21, 2011, the Secretary of the Treasury identified Iran as a jurisdiction of "primary money laundering concern" under Section 311 of the USA PATRIOT Act. Treasury also found that the "entire Iranian financial sector; including Iran's Central Bank, private Iranian banks and branches and subsidiaries of Iranian banks operating outside of Iran" pose "illicit finance risks for the global financial system." The designation of Iran as a jurisdiction of "primary money laundering concern" under Section 311 authorizes the Treasury Secretary to require domestic financial institutions and financial agencies to undertake certain "special measures" against the specified jurisdiction. [3]

Simultaneous with the designation, the Financial Crimes Enforcement Network (FinCEN) filed a Notice of Proposed Rule Making (NPRM). The proposed rule requires "covered financial institutions" to "terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, an Iranian banking institution" [4] "Covered financial institutions" include, but are not limited to, insured banks, commercial banks, agencies or branches of foreign banks in the United States, federally insured credit unions, brokers or dealers registered or required to be registered with the Securities and Exchange Commission (SEC), futures commission merchants or introducing brokers registered or required to be registered with the Commodity Futures Trading Commission (CFTC) and mutual funds.

Additionally, the proposed rule requires covered financial institutions to heighten their compliance screening, which must include two steps. First, the covered institution must notify correspondent account holders, whom they know or have reason to know provide services to Iranian banking institutions, that they can no longer provide Iranian banking institutions with access to these accounts. Second, the covered financial institution

must take reasonable steps to identify any indirect use of correspondent accounts by Iranian banking institutions, to the extent that such information can be determined from transactional records. Furthermore, a covered financial institution should adopt a risk-based approach to determining any additional due diligence measures necessary to protect against improper use of correspondent accounts.

3. Non-Proliferation Designations

Finally, the Office of Foreign Assets Control (OFAC) announced new designations on November 21 targeting Iran's network of nuclear equipment and technology procurement agents. In addition to the Nuclear Reactors Fuel Company, Noor Afzar Gostar Company, Fulmen Group and Yasa Part, OFAC designated entities linked to the Atomic Energy Organization of Iran (AEOI), the main organization responsible for nuclear research and development activities within Iran. ^[5] The designations block all assets of these entities within the jurisdiction of the United States and prohibit all U.S. persons from engaging in transactions with designated persons.

United Kingdom

Also on November 21, 2011, the United Kingdom promulgated the Financial Restrictions (Iran) Order 2011 (U.K. Order), which prohibits all persons operating in the United Kingdom financial sector from entering into or continuing to participate in any transaction or business relationship with the Central Bank of Iran and all credit institutions incorporated in Iran, including branches and subsidiaries thereof.^[6] The U.K. Order will remain in effect for a period of one year.

Where a relevant person has received prior authorization from HM Treasury for a transaction covered under the U.K. Order, and the transfer of funds has not yet occurred, the person will need to re-apply for a license to continue with the transaction, unless one of the General Licenses discussed below applies. ^[7] Similarly, any prior authorization received for a series of payments to an Iranian banking institution will no longer be valid for future transfers under that license, and relevant persons will need to re-apply for a new license, unless a General License applies.

Recognizing the broad prohibitions contained in the U.K. Order, HM Treasury has issued the following six General Licenses:

- General License 1 authorizes transactions involving humanitarian activities, medicine and foodstuffs where the related transactions are under €40,000.^[8]
- General License 2 authorizes personal remittances involving designated entities where the sum transferred or received is below €40,000 and the transaction is not a business transaction.^[9]
- General License 3 authorizes the provision of insurance or reinsurance to a designated person provided the provision is not otherwise restricted under European Union and United Kingdom regulations.^[10]
- General License 4 authorizes the continued holding of frozen accounts, crediting of funds to frozen accounts and other activities previously licensed under the asset freezing regime.^[11]
- General License 5 authorizes specified persons who held accounts of Iranian banks prior to the effective date of the U.K. Order to continue their business relationship, but only to the extent necessary

to continue to hold the account.^[12]

- General License 6 authorized persons to complete transactions involving payment to or from designated persons which were in progress at the time the U.K. Order came into force. Such transactions, however, must have been completed by midnight on November 28, 2011, the date of expiration of this license.^[13]

Canada

On November 21, 2011, the Government of Canada also adopted new sanctions targeting Iran's financial services and petrochemical sectors and significantly expanding current Canadian sanctions. The amended Special Economic Measures (Iran) Regulations impose a broad prohibition on the provision or acquisition of any financial services to or for the benefit of, or on the direction or order of, Iran or any person in Iran.^[14] The new sanctions also prohibit the provision of goods used in the petrochemical, oil and gas industry in Iran, and any items that could contribute to proliferation activities. Canada also added a significant number of persons (individuals and entities) to its list of designated persons.

This article was co-authored by John B. Reynolds, III and Cari N. Stinebower.

[1] See *Executive Order 13590*, available at http://www.ofr.gov/%28S%2824zqm5ht0chehtat3pgkny0h%29%29/OFRUpload/OFRData/2011-30463_PI.pdf. See also U.S. Department of the Treasury, *Fact Sheet: New Sanctions on Iran*, (Nov. 21, 2011), available at <http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>.

[2] U.S. Department of State, *Energy-Related Sanctions Under Executive Order (E.O.) 13590: Fact Sheet* (Nov. 25, 2011), available at <http://www.state.gov/e/eeb/rls/fs/2011/177760.htm>.

[3] See U.S. Department of the Treasury, *Fact Sheet: Overview of Section 311 of the USA PATRIOT Act* (Feb. 10, 2011), available at <http://www.treasury.gov/press-center/press-releases/Pages/tg1056.aspx>.

[4] See Notice of Proposed Rule Making, *Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations - Imposition of Special Measure against the Islamic Republic of Iran as a Jurisdiction of Primary Money Laundering Concern, Including the Central Bank of Iran within the Definition of Iranian Banking Institution*, available at <http://www.treasury.gov/press-center/press-releases/Documents/Iran311RulemakingProposalSpecialMeasure.pdf>.

[5] See Office of Foreign Assets Control, *Non-Proliferation Designations* (Nov. 21, 2011), available at <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20111121.aspx>.

[6] See HM Treasury, *The Financial Restrictions (Iran) Order 2011* (Nov. 21, 2011), available at http://www.hm-treasury.gov.uk/d/fin_restrictions_iran_order2011.pdf.

[7] See HM Treasury, *Cessation of Business Relationships with Banks Incorporated in Iran: The Financial Restrictions (Iran) Order 2011* (Nov. 2011), available at http://www.hm-treasury.gov.uk/d/fin_restrictions_iran_notice2011.pdf.

[8] See General License 1, *available at* http://www.hm-treasury.gov.uk/d/ct_actll_general_licence_1.pdf.

[9] See General License 2, *available at* http://www.hm-treasury.gov.uk/d/ct_actll_general_licence_2.pdf.

[10] See General License 3, *available at* http://www.hm-treasury.gov.uk/d/ct_actll_general_licence_3.pdf.

[11] See General License 4, *available at* http://www.hm-treasury.gov.uk/d/ct_actll_general_licence_4.pdf.

[12] See General License 5, *available at* http://www.hm-treasury.gov.uk/d/ct_actll_general_licence_5.pdf.

[13] See General License 6, *available at* http://www.hm-treasury.gov.uk/d/ct_actll_general_licence_6.pdf.

[14] See Foreign Affairs and International Trade Canada, *Regulations Amending the Special Economic Measures (Iran) Regulations*, *available at* http://www.international.gc.ca/sanctions/iran_regs_2011.aspx?lang=eng&view=d.