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BLOG

Practical Implications of the New Iran Sanctions Targeting the Metals Sector

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On January 10, 2020, the President issued a new Executive Order and identified as Specially Designated Nationals eight senior Iranian officials; 17 Iranian metals producers and mining companies; a network of three China- and Seychelles-based entities; and a vessel involved in the purchase, sale, and transfer of Iranian metals products, as well as in the provision of critical metals production components to Iranian metal producers.

Simultaneously with the release of the Executive Order and the designations, the Secretaries of State and Treasury conducted a press briefing that shed additional light on the sanctions conveying the United State Government's intent to (i) pursue secondary sanctions, ((ii) work with the Swiss Government to develop a secure channel for humanitarian payments into and out of Iran, and (iii) provide authorizations for certain activity related to the investigation of the Ukrainian aircraft that was shot down on January 7, 2020 in Tehran.

Secondary Sanctions

According to the Secretary of State, the intent of the additional sanctions is to further deny the Government of Iran revenue streams. The Secretary of the Treasury confirmed that, together with Secretary Pompeo, secondary sanctions for persons continuing to engage in business with Iran would be reviewed for the imposition of secondary sanctions. Secretary Mnuchin confirmed that such secondary sanctions could include participants in the Instrument in Support of Trade Exchanges (INSTEX) – a barter mechanism developed by the Governments of France, the United Kingdom, and Germany to assist in the flow of trade with Iran. In November of 2019, six additional members joined INSTEX: Belgium, Denmark, Finland, the Netherlands, Norway, and Sweden. According to Secretary Mnuchin, no transactions have yet been processed through that system.

Humanitarian Trade; Support for the Ukrainian Air Investigation

Secretary Mnuchin also confirmed that the United States remains committed to humanitarian transactions involving Iran. The authorizations under the Trade Sanctions and Export Enhancement Act of 2000 (TSRA) remain in place although, as a practical matter, exports under that program report difficulties in arranging for financial transactions for qualifying shipments into Iran. To that end, Secretary Mnuchin referenced the USG's continued conversations with the Government of Switzerland to secure a channel for humanitarian related payments. Optimistic estimates from the Government of Switzerland indicated that such a mechanism could be running in the first Quarter of 2020.

Finally, Secretary Mnuchin confirmed that, consistent with past practice, the Treasury would be issuing waivers for U.S. parties seeking to participate in the investigations relating to the downed Ukrainian Aircraft. Treasury has issued such authorizations in the form of general licenses where U.S. relief was appropriate for natural disasters like earthquakes in Iran. Also relevant, the Secretary confirmed that such waivers would include non-U.S. persons, suggesting that secondary sanctions would not be imposed relating to the accident.

The Metals Designations

Given the focus on sanctioning Iranian businesses in the steel and iron sectors, non-Iranian businesses (including U.S. and European) will continue to be expected to institute supply chain transparency to mitigate against the risk of dealing with sanctioned Iranian sectors. While the press release highlights these two sectors, the new Executive Order also targeted other sectors of the Iranian economy such as construction, the minerals extraction industry, manufacturing, and textile. In addition, not only steel and iron sectors have been targeted but also an Iranian aluminum producer was sanctioned.

Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT)

Foreign Financial institutions are specifically targeted by the new Executive Order. OFAC may prohibit opening and maintaining correspondent accounts or a payable-through accounts by foreign financial institutions when it determines they are conducting or facilitating a transaction for selling, supplying, transferring goods or services in connection with specified sectors of the Iranian economy or are acting on behalf of any person whose property or interests in property are blocked pursuant to the Executive Order.

With tensions escalating between the United States and Iran, the practice of conducting enhanced due diligence particularly for Middle East-related transactions should be implemented if not reinforced. Companies will need to ensure that the end-user or person owning or controlling the counterparty is not an SDN or entity potentially facilitating sanctions evasions. Companies will also need to ensure that they are not transacting with any entities that could be serving as facilitators for money laundering or terrorism networks.

It should be expected that monetary transactions with Iran will be facing stronger scrutiny from regulators not just from the United States but from other jurisdictions who are committed to combatting illicit financing and terrorist financing, as seen recently in the *Countering-Hizballah International Partnership (CHIP)* initiative from the U.S. Treasury and over 30 other countries.
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