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E-ALERT | International Trade Controls

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UPDATE ON DEAL WITH IRAN CONCERNING ITS NUCLEAR PROGRAM

Informal Interagency Guidance on Timing, Scope, and Application of Sanctions Relief

As discussed in our November 25, 2013 e-alert, the United States, along with the U.K., France, Russia, China, and Germany (the "P5+1 group") reached an interim agreement this past weekend with Iran to halt the progress of Iran's nuclear program and relax certain sanctions for a six-month period during which the parties will seek to negotiate a comprehensive final agreement concerning Iran's nuclear program. Today, during a governmental interagency briefing, we received informal guidance that provides greater detail on how the agreement will impact sanctions.

Relevant new information from the briefing is outlined below.

I. NO EASING OF THE SANCTIONS UNTIL IRAN HAS TAKEN CERTAIN STEPS TO BEGIN IMPLEMENTING ITS COMMITMENTS

For now, there are no changes to the sanctions against Iran, and there will be none until Iran has taken certain concrete steps to begin implementing the commitments it made to halt the progress of its nuclear program and the P5+1 group has verified that such steps have been taken. This process is expected to take several weeks. Once this process has been completed, the U.S. government will announce the relaxation of sanctions and issue guidance concerning the implementation of such relaxation. In parallel, the EU authorities will be taking coordinated action to implement the anticipated sanctions relief and presumably issue clarifying guidance. At that point, the sanctions relief will take effect and the six-month period will begin to run.

Prior to that announcement, all sanctions will be vigorously enforced, and after the announcement, those sanctions that remain in place will continue to be vigorously enforced.

II. SANCTIONS RELIEF MEASURES ARE ONLY GUARANTEED TO LAST SIX MONTHS

Sanctions relief under the interim agreement is only slated to last six months from the date the relief becomes effective. Although the relief period may be extended by mutual consent of the P5+1 group and Iran, there is no guarantee that any sanctions relief will extend beyond six months, and prohibitions may "snap back" into place immediately when the six-month period expires.

This means that sanctions will be eased only for activities that actually occur and are completed within the six-month period. Sanctions relief is not expected to apply to contracts entered into during the six-month period for performance or delivery after the six-month period expires. Companies should therefore operate on the assumption that they will not be granted a period to wind down contracts and transactions initiated during the six-month period.

III. Sanctions Relief for U.S. Persons and Their Owned or Controlled Non-U.S. Subsidiaries Limited to Safety-Related Licensing for Civil Aircraft

The interim agreement includes virtually no changes to sanctions applicable to U.S. persons and the non-U.S. entities that they own or control. Instead, nearly all of the changes will be focused on the retaliatory U.S. sanctions that affect non-U.S. persons. The only change that will affect U.S. persons and their owned or controlled non-U.S. affiliates is the licensing of safety-related repairs, inspections, and spare parts for Iran Air and for certain Iranian airlines not designated on the List of Specially Designated Nationals and Blocked Persons ("SDN List").

Notably, the range of civil aircraft parts that OFAC may be prepared to license under the interim agreement could be limited only to those parts classified as EAR99 under the Export Administration Regulations ("EAR") administered by the U.S. Commerce Department and exclude parts on the EAR's Commerce Control List ("CCL"). In particular, a provision of the Iran-Iraq Arms Nonproliferation Act of 1992 has historically been construed to require the denial of license applications for exports or reexports to Iran of any goods designated on the CCL. It is unclear whether the Administration will revisit that construction of the statute or seek to take advantage of a waiver provision that may be available under the statute.

IV. Financial Channel to Facilitate Certain Payments to or from Iran

The interim agreement includes a commitment by the P5+1 group to facilitate payments by Iran that are allowed under the agreement. In consultation with the Iranians, the P5+1 group will establish a financial "channel" with certain financial institutions through which currently restricted Iranian funds can be transferred to pay for humanitarian goods (including qualifying medical expenses), provide tuition assistance for Iranians studying in third countries, and pay dues Iran owes to the United Nations.

This new channel will not affect current U.S. sanctions on SDN-Listed financial institutions. Any institution designated on the SDN List will not be allowed to participate in or facilitate any such payments.

In addition, any monies repatriated to Iran under the agreement will come only from funds held by non-U.S. financial institutions, and EU authorities are anticipated to take parallel action to make such funds available. Any Iranian funds currently blocked by U.S. financial institutions will remain blocked under the interim agreement.

V. Purchases of Iranian Oil Will Be Permitted at Current Levels Only for Those Six Economies Currently Importing Iranian Oil

The interim agreement contemplates allowing purchases of Iranian oil to remain at current levels for six months, which in effect is a pause of further reductions of Iranian oil imports.

In today's briefing, it was clarified that only those six economies that were importing oil from Iran at the time of the agreement—China, India, Japan, South Korea, Taiwan, and Turkey—will be permitted to continue importing Iranian oil. Other nations, which have all ceased importation of Iranian oil, will not be permitted to restart such importation, even if they received waivers from the United States in the past to import Iranian oil.

The definition of "current levels" of Iranian oil imports will have to be discussed with each of the six economies permitted to import Iranian oil. The definition may involve the average of import levels across a certain time period.

VI. Suspension of Sanctions Related to Petrochemicals, Gold and Precious Metals, and the Automotive Sector Will Only Affect Retaliatory Measures

The commitment by the United States to suspend certain sanctions relating to petrochemical exports from Iran, dealings by Iran in gold and precious metals, and Iran's automotive sector will involve only the relaxation of retaliatory sanctions on non-U.S. parties. For instance, the United States will suspend for six months the imposition of retaliatory sanctions on non-U.S. parties involved in:

- Purchasing, transporting, or insuring delivery of qualified Iranian petrochemical products (which are defined by the U.S. Department of State at this link);
- Supplying significant goods or services used in connection with Iran's automotive sector, including "auto kits" (or "knock-down kits") exported to Iran for assembly in Iran; and
- The facilitation of sales, supply, or transfer of gold or precious metals to Iran. It is important to note that none of the funds being transferred to Iran for oil sales or otherwise repatriated to Iran will be permitted to be used for the purchase of gold or precious metals.

We are closely following the developments in the negotiations with Iran and will provide additional updates as new information becomes available. In the meantime, we are well-positioned to assist clients in understanding how the changes in the Iran sanctions may affect their operations and business opportunities.

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

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