

# United States Reimposes Remaining Sanctions Against Iran

November 6, 2018

International Trade Controls

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The Trump Administration yesterday completed the reimposition of sanctions against Iran that previously were suspended as part of the 2015 multilateral nuclear agreement, known as the Joint Comprehensive Plan of Action (“JCPOA”). Widely anticipated for the last six months, the November 5 action will have significant ramifications for non-U.S. companies, as well as U.S. companies whose non-U.S. subsidiaries had been doing business in Iran pursuant to a general license issued by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”).

As explained in our prior [alert](#), the Administration [announced](#) on May 8, 2018 that the United States would withdraw from the JCPOA and, in two installments, would reimpose secondary sanctions and revoke certain primary sanctions authorizations. The first set of secondary sanctions returned to force on August 7, 2018, and targeted transactions in Iranian sovereign debt, Iranian rials, significant goods and services for Iran’s automotive sector, and sales of certain metals and minerals to Iran (among other provisions). Certain OFAC primary sanctions authorizations allowing U.S. persons to engage in limited dealings relating to Iran (such as in connection with commercial passenger aircraft) also were revoked.

The latest action marks the reimposition of the remaining sanctions and includes commercially significant measures, such as secondary sanctions targeting transactions by non-U.S. companies in Iranian petroleum, petroleum products, and petrochemical products; dealings with Iran’s energy, shipping, and shipbuilding sectors, and port operators; and transactions with Iran’s central bank and a wide range of other designated Iranian banks. Further, effective November 5, the OFAC authorization allowing non-U.S. entities owned or controlled by U.S. persons to wind down their Iran-related activities, which some companies had commenced under the previously revoked General License H, expired. Accordingly, it is now prohibited for such non-U.S. entities to engage in most Iran-related business without specific authorization from OFAC, just as it is for U.S. persons.

Also on November 5, OFAC restored or added approximately [700 parties](#) to the List of Specially Designated Nationals and Blocked Persons (“SDN List”). The property and interests in property of such SDNs (and entities 50% or more owned by one or more such parties) must be blocked if they are or come into the United States or the possession or control of U.S. persons. Further, non-U.S. persons now face exposure to secondary sanctions, including property-blocking sanctions, for undertaking significant transactions with most of these SDNs.

Finally, alongside the full reimposition of sanctions, the Administration announced the first round of exceptions to some secondary sanctions measures for eight countries that have significantly reduced (and in some cases, eliminated) their purchases of Iranian crude oil. These countries

include China, India, and South Korea—previously three of the [largest](#) importers of Iranian crude oil. As a result of the exceptions, banks subject to the primary jurisdiction of these eight countries and those undertaking certain other Iran-related transactions involving these eight countries can engage, without exposure to secondary sanctions, in certain activities that otherwise could trigger the imposition of such sanctions. These exceptions must be renewed every 180 days or else they will lapse. This action will have the greatest impact on non-U.S. companies, which are the target of the various secondary sanctions that have been reimposed.

As detailed in our prior [alert](#), the updated EU Blocking Statute entered into force on August 7 to apply to key extra-territorial U.S. sanctions on Iran that are now fully reimposed. As a result, European companies, including the European subsidiaries of U.S. companies, are now navigating potentially conflicting legal obligations in relation to certain dealings involving Iran.

## Key Sanctions Reimposed

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### Secondary Sanctions

The Trump Administration announced in May—and then detailed more specifically in an [Executive Order](#) issued on August 6, 2018—that many of the most significant secondary sanctions measures eased under the JCPOA would “snap back” into effect on November 5, following a 180-day wind-down period. Those sanctions have now returned to force. In general, these include secondary sanctions targeting:

- Petroleum, petroleum product, and petrochemical product transactions, including the purchase of these products from Iran (including, but not limited to, transactions with the National Iranian Oil Company, Naftiran Intertrade Co. (NICO) Limited, and National Iranian Tanker Company);
- Iran’s energy sector;
- Iran’s port operators, shipping sector, and shipbuilding sector, including the Islamic Republic of Iran Shipping Lines, South Shipping Line Iran, and their affiliates;
- Significant transactions by foreign financial institutions with the Central Bank of Iran or Iranian financial institutions designated in connection with Iran’s weapons of mass destruction or terrorism activities or human rights abuses;
- The provision of specialized financial messaging services to, or enabling or facilitating direct or indirect access to such services for, the Central Bank of Iran or financial institutions whose property is blocked in connection with Iran’s weapons proliferation, support for terrorism, or human rights abuses; and
- Sanctions on the provision of underwriting services, insurance, or reinsurance for many Iran-related activities.

### Exception to Secondary Sanctions for Humanitarian Exports

Notably, the reimposed secondary sanctions targeting Iran generally do not apply to the export to Iran by non-U.S. persons of agricultural commodities, food, medicine, and medical devices, unless such exports involve SDNs designated in connection with Iran’s support for international

terrorism or proliferation of weapons of mass destruction, or involve activity that is subject to other U.S. sanctions.<sup>1</sup>

### Expiration of General License H

A key part of the U.S. sanctions relief extended to Iran under the JCPOA, General License H authorized U.S.-owned or -controlled foreign entities to engage in a broad range of business activities involving Iran.<sup>2</sup> After May 8, in connection with the U.S. withdrawal from the JCPOA, General License H was replaced with a temporary wind-down authorization that permitted U.S.-owned or -controlled foreign entities to wind down their activities pursuant to General License H. As of November 5, that temporary authorization has expired. Going forward, foreign entities that are owned or controlled by U.S. persons—like U.S. persons themselves—will be prohibited from engaging in most Iran-related activities without specific authorization from OFAC.

### SDN Designations

On November 5, OFAC restored or added about [700 entities, individuals, aircraft, and vessels](#) to the SDN List. Many of these parties were previously removed from the SDN List as part of JCPOA sanctions relief, but about 300 have been designated on the SDN List for the first time.

These designations play a key role in reimposing U.S. sanctions, because the designated parties include important participants in Iran’s banking, shipping, energy, and aviation sectors. It is prohibited for U.S. persons and their non-U.S. subsidiaries to engage in virtually any transactions with these SDNs. Further, the property and interests in property of these persons must be blocked when they are in or come into the United States or the possession or control of a U.S. person, and non-U.S. entities owned or controlled by U.S. persons “are required to apply restrictions akin to blocking on any property or interests in property of [most such SDNs] to ensure that such property and interests in property are not transferred, paid, exported, withdrawn, or otherwise dealt in.”<sup>3</sup>

Subject to certain exceptions, non-U.S. persons would be exposed to U.S. secondary sanctions for dealing with these SDNs as well. In [accompanying guidance](#), OFAC explained that it has transferred back to the SDN List those parties that previously were included on the “Executive Order 13599 List” (which was created as part of the JCPOA to denote parties whose property was blocked solely because they were “Iranian Financial Institutions” or part of the “Government of Iran” under applicable regulations), and eliminated the Executive Order 13599 List altogether. OFAC has [explained](#) that going forward, transactions with such re-designated parties (other than Iranian financial institutions designated solely with an [IRAN] tag) could subject non-U.S. persons to secondary sanctions unless an exception applies.

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<sup>1</sup> See OFAC FAQ Nos. 630, 637, and 641.

<sup>2</sup> A non-U.S. entity is considered to be “owned or controlled” by a U.S. person if the U.S. person holds a 50 percent or greater equity interest by vote or value in the entity; holds a majority of seats on the board of directors of the entity; or otherwise controls the actions, policies, or personnel decisions of the entity.

<sup>3</sup> OFAC FAQ No. 644.

## Amendments to the ITSR

In connection with eliminating the “Executive Order 13599 List,” OFAC has amended the Iranian Transactions and Sanctions Regulations (“ITSR”), 31 C.F.R. Part 560, to remove references to the Executive Order 13599 List and to implement certain blocking authorities set out in Executive Order 13846, issued on August 6, 2018. The ITSR amendment also expands an existing general license which allows U.S. persons to sell real estate in Iran and transfer the proceeds to the United States to cover personal property as well, subject to certain conditions.<sup>4</sup> In its announcement of the expansion of this general license, OFAC noted that it routinely receives and approves specific license applications related to such sales of personal property in Iran, so the expansion of the general license appears to be a calibrated step to reduce the number of specific license applications that OFAC receives.

## Country Exceptions for Significantly Reducing Imports of Iranian Oil

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Alongside the full reimposition of secondary sanctions targeting Iran, the Administration also announced exceptions from certain secondary sanctions for eight countries that have significantly reduced their purchases of Iranian oil. These exceptions, which have been the subject of intense ongoing negotiations by these countries with the U.S. government, were granted to China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey.

The exceptions were issued pursuant to Section 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (“FY12 NDAA”), which permits the President to issue an exception every 180 days for a country determined to have “significantly reduced its volume of crude oil purchases from Iran.” The FY12 NDAA defines “significant reduction” to mean, “with respect to purchases from Iran of petroleum and petroleum products,” “a reduction in such purchases in terms of price or volume toward a complete cessation of such purchases.” The grant of a “significant reduction exception” removes the risk of certain secondary sanctions under the FY12 NDAA, certain other statutes, and Executive Order 13846 for foreign financial institutions subject to the primary jurisdiction of a country that has received such an exception and for certain other transactions involving such countries. Some of the activities that such foreign financial institutions and other companies may engage in without exposure to secondary sanctions include:

- Bilateral trade in non-sanctioned goods and services between the country receiving the exception and Iran, even if such trade involves dealings with the Central Bank of Iran or designated Iranian financial institutions, other than those designated in connection with Iran’s weapons proliferation or support for terrorism;
- The purchase, acquisition, sale, transport, or marketing of Iranian petroleum and petroleum products to the country receiving the exception (but not other countries); and
- The sale, supply, or transfer, to or from Iran, of natural gas between the country receiving the exception and Iran (but not other countries) that is not otherwise subject to U.S. sanctions.

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<sup>4</sup> See 83 Fed. Reg. 55,269, 55,271 (Nov. 5, 2018) (to be codified at 31 C.F.R. § 560.543).

In each of these cases, any funds received by Iran from the transaction must be placed in an account in the country receiving the significant reduction exception. These funds can be used by Iran only for bilateral trade in non-sanctioned goods or services, or for certain humanitarian purposes. Importantly, OFAC also has clarified that the provision and receipt of services (e.g., shipping and port services) used to import petroleum from Iran under a significant reduction exception, and related financial transactions, also would not be sanctionable, provided that Iranian entities that are involved in such transactions are not designated in connection with Iran's weapons proliferation or support for terrorism.<sup>5</sup>

Of course, nothing in these significant reduction exceptions allows U.S. persons, or non-U.S. entities owned or controlled by U.S. persons, to undertake any activities with or involving Iran that are not authorized by OFAC.

As Secretary of State Mike Pompeo noted in public remarks on November 2, two of the jurisdictions granted significant reduction exceptions “will completely end imports [of Iranian oil] as part of their agreements,” and “[t]he other six will import at greatly reduced levels.” Secretary Pompeo also noted that in assessing these countries' requests for a significant reduction exception—and presumably any renewals or future requests—the Administration would consider condensate as part of a nation's total crude oil purchases.<sup>6</sup>

## Concluding Wind-Down Activities

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The reimposition of sanctions announced on May 8, 2018 was accompanied by two wind-down periods: one lasting 90 days (ending on August 6), and one lasting 180 days (ending on November 4). Both periods have now expired. As part of the wind-down, non-U.S. persons (and certain non-U.S. entities owned or controlled by U.S. persons) were allowed to proceed with certain Iran-related activities without exposure to U.S. sanctions. OFAC has provided additional guidance concerning these activities, including particularly in relation to collecting payment for goods or services fully delivered to Iran prior to the expiration of the applicable wind-down period:

- Non-U.S., non-Iranian persons may receive payments after the expiration of the applicable wind-down period for goods or services that were fully delivered to an Iranian counterparty before the wind-down period expired, provided that such goods or services were delivered pursuant to a pre-May 8, 2018 written contract or agreement; were consistent with U.S. sanctions at the time of delivery; and that the payments are “consistent with U.S. sanctions” (e.g., the payments may not involve U.S. persons or the U.S. financial system). This is also true for repayment of loans or credits not fully repaid by the applicable wind-down period's expiration. Non-U.S., non-Iranian persons can seek guidance from OFAC or the State Department, as appropriate, prior to the receipt of payment, if they would like to confirm that a particular payment would meet the

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<sup>5</sup> See OFAC FAQ No. 642.

<sup>6</sup> Condensates are hydrocarbons recovered from lease separators or field facilities at gas wells. Some press reports have indicated that condensates were not considered in calculations of Iranian crude oil purchases that were made as part of prior significant reduction evaluations during the Obama Administration.

foregoing criteria. Notably, OFAC also advises that non-U.S., non-Iranian persons “seeking to receive payment for activities undertaken during the wind-down period that involves a person added to the SDN List should seek guidance from OFAC or the State Department, as appropriate.”<sup>7</sup>

- U.S. persons and U.S.-owned or -controlled foreign entities, by contrast, were generally authorized to receive payments only during the applicable wind-down period. As OFAC explained in new guidance, “[a]ny payment following the end of the relevant wind-down period for activities undertaken pursuant to a wind-down authorization, including from an Iranian counterparty, would require specific authorization from OFAC.”<sup>8</sup> Similarly, U.S. persons and U.S.-owned or -controlled foreign entities also would require specific authorization from OFAC to receive payments from any SDN for activities undertaken during the wind-down period. OFAC will evaluate requests for such specific authorizations on a case-by-case basis.<sup>9</sup>
- Non-U.S. persons may face sanctions exposure for payment of Iran-related insurance or reinsurance claims made on or after November 5, 2018, even if the claim arises from an incident before November 5, if the claim involved a payment to most Iran-related SDNs or the underlying activity involved such parties or was otherwise sanctionable at the time it occurred. U.S. persons have been and continue to be prohibited from participating in such payments under the U.S. primary sanctions, and non-U.S. entities owned or controlled by U.S. persons are likewise prohibited from participating in such payments after November 4, without specific authorization from OFAC.<sup>10</sup>

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Covington has deep experience advising clients on the legal, policy, and practical dimensions of U.S. trade controls, including the Iran sanctions and the scope of the amended EU Blocking Statute. We will continue to monitor developments in this area, and are well-positioned to assist clients in understanding how these recent announcements may affect their business operations.

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<sup>7</sup> See OFAC FAQ Nos. 631, 632, 634, 636.

<sup>8</sup> OFAC FAQ No. 635.

<sup>9</sup> See OFAC FAQ No. 636.

<sup>10</sup> See OFAC FAQ No. 643.

## International Trade Controls

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