
Iran Freedom and Counter-Proliferation Act Represents Latest Step to Increase Pressure on Iran

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On January 2, President Obama signed into law a further expansion of US economic sanctions against Iran. The Iran Freedom and Counter-Proliferation Act of 2012 (Act), included as Subtitle D of Title XII of the National Defense Authorization Act for Fiscal Year 2013 (H.R. 4310) (NDAA), continues the trend of making such sanctions extraterritorial by imposing additional restrictions on foreign businesses and banks involved in Iran's energy, ports, shipping and shipbuilding sectors, as well as metals trade with Iran. [See our prior alerts on Iran sanctions.](#)

The Act—added to the NDAA via an amendment introduced by Senators Robert Menendez (D-NJ), Mark Kirk (R-Ill.) and Joseph Lieberman (I-Conn.)—is the latest in a series of steps that Congress has taken to broaden Iran-related sanctions in response to threats presented by Iran's nuclear program.

Expansion of Sanctions

The Act expands the reach of US sanctions against Iran to include several new sectors and activities:

- *Imposition of Sanctions with Respect to the Energy, Shipping and Shipbuilding Sectors of Iran.* The Act designates ports and entities in the energy, shipping and shipbuilding sectors of Iran—including the National Iranian Oil Company (NIOC), the National Iranian Tanker Company (NITC), the Islamic Republic of Iran Shipping Lines (IRISL), and their affiliates—as entities of proliferation concern. The Act directs the President to block the property and interests in property of such persons, as well as persons who knowingly provide significant financial, material, technological or other support to, or goods or services in support of, such persons or other Iranian persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (the SDN list). The Act also, subject to certain exceptions and limited Presidential waiver authority, requires the imposition of sanctions on any persons who knowingly sell, supply, or transfer to or from Iran significant goods or services used in connection with the energy, shipping or shipbuilding sectors of Iran. In addition, the Act prohibits the opening or maintaining in the United States of correspondent or payable-through accounts by foreign financial institutions determined to

have knowingly conducted or facilitated significant financial transactions involving such goods or services.

- *Imposition of Sanctions with Respect to the Sale, Supply, or Transfer of Certain Materials to or from Iran.* The amendment would require (with limited waiver authority) the imposition of sanctions with respect to persons determined to have knowingly sold, supplied or transferred, directly or indirectly, to or from Iran, precious metals; certain other, designated materials (graphite, raw or semi-finished metals, coal and software for integrating industrial processes, if determined to be used by Iran as a medium for barter, swap or other exchange, or for other specified uses); materials to be used in connection with the energy, shipping or shipbuilding sectors of Iran or sectors of the Iranian economy controlled by Iran's Revolutionary Guard Corps; or materials used in connection with the nuclear, military or ballistic missile programs of Iran, or sold, supplied or transferred to an Iranian person on the SDN list. Sanctions would also apply to any person engaged in the resale, retransfer or supply to the aforementioned prohibited end-users and programs, and to foreign financial institutions determined to have knowingly conducted or facilitated significant financial transactions for the sale, supply or transfer to or from Iran of these targeted materials.
- *Imposition of Sanctions with Respect to the Provision of Underwriting Services or Insurance or Reinsurance for Sanctioned Persons.* The amendment would require the imposition of sanctions on persons determined to have knowingly provided underwriting services or insurance or reinsurance for any activity with respect to Iran that has been sanctioned under US laws, for any person with respect to a sanctionable activity under the Act, for any person sanctioned in connection with Iran's proliferation of weapons of mass destruction or its support for international terrorism, or, with certain limitations, for any Iranian person on the SDN list.
- *Imposition of Sanctions with Respect to Foreign Financial Institutions that Facilitate Financial Transactions on Behalf of SDNs.* The Act prohibits, with certain exceptions, the opening or maintaining in the United States of correspondent or payable-through accounts by foreign financial institutions determined to have knowingly facilitated significant financial transactions on behalf of an Iranian person on the SDN list. However, the Act does not apply sanctions to transactions by Iranian financial institutions that have not been sanctioned in connection with Iran's proliferation of weapons of mass destruction, its support for international terrorism, or its abuses of human rights.
- *Imposition of Sanctions with Respect to the Diversion of Goods.* The Act requires the imposition of sanctions on persons engaged in the diversion of goods intended for the people of Iran or the misappropriation of proceeds from the sale or resale of such goods.

In all of these areas, it is important to note that liability for conduct covered by such sanctions extends to both US and non-US persons.

Humanitarian Exceptions and Exceptions for Due Diligence

The Act includes humanitarian exceptions for persons who conduct or facilitate transactions involving the sale of food, medicine, medical devices or humanitarian assistance, including the provision of underwriting services, insurance or reinsurance for such transactions. Some exceptions also apply with respect to persons found to have exercised due diligence in establishing and enforcing procedures to comply with the new sanctions provisions related to underwriting and insurance, and the sale, supply or transfer of certain materials to or from Iran.

Waiver Authority

The Act includes provisions that would allow the President to waive sanctions if he determines the waiver “is vital to the national security interests of the United States” and provides a report to Congress justifying the waiver.

Applicability of Sanctions to Petroleum and Petroleum Products

The Act’s sanctions provisions would apply to the purchase of petroleum or petroleum products from Iran only if the President has made a sufficiency finding under the National Defense Authorization Act of 2012 (NDAA 2012) with regard to the global availability of non-Iranian petroleum and petroleum products. In addition, sanctions would not apply with respect to the exportation of petroleum or petroleum products to countries that have been granted an exception under section 1245 of the NDAA 2012. Finally, the Act amends section 1245 of the NDAA 2012 to allow such exceptions for countries facing “exceptional circumstances” that prevent them from significantly reducing their purchases of Iranian petroleum and petroleum products.

Additional Provisions

In addition to the provisions described above, the Act requires the President to:

- impose sanctions on the Islamic Republic of Iran Broadcasting entity (IRIB) and its president and include them on the SDN list;
- submit a quarterly report to Congress setting out certain determinations with respect to the precious metals and other materials subject to the new sanctions provisions; and
- submit an annual report to Congress (through 2016) that lists the large or otherwise significant vessels that have entered certain Iranian ports (including the owners and operators of the vessels) and the airports at which aircraft owned or operated by sanctioned Iranian air carriers have landed.

Authors



Ronald I. Meltzer

SENIOR COUNSEL

✉ ronald.meltzer@wilmerhale.com

☎ +1 202 663 6389



David J. Ross

PARTNER

Chair, International Trade,
Investment and Market Access
Practice Group

✉ david.ross@wilmerhale.com

☎ +1 202 663 6515