

CLIENT ALERT: THE WEEK OF JUNE 1, 2020, SEES ADDITIONAL STEPS IN THE SANCTIONS TARGETING VENEZUELA AND IRAN

June 8, 2020

Last week saw significant developments in the U.S. sanctions programs targeting Venezuela and Iran. The developments underscore the need for non-U.S. persons and entities which operate in international shipping to exercise utmost diligence in their dealings involving or potentially involving either country.

Venezuela

On June 2, 2020, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) designated four tanker vessels and their owners to the Specially Designated Nationals (SDN) list. The designations were made pursuant to Executive Order (E.O.) 13850. The E.O. authorizes the imposition of sanctions against anyone determined to operate in the oil sector of the Venezuelan economy or to have materially assisted or provided goods or services to or in support of any person/entity added to the SDN list under the E.O., the most notable of which is PdVSA.

In the press release accompanying the designations, OFAC stated that "the exploitation of Venezuela's oil assets for the benefit of the illegitimate regime of President Nicolas Maduro is unacceptable, and those that facilitate such activity risk losing access to the U.S. financial system." The statement further commented that the Maduro regime had "enlisted the help of maritime companies and their vessels to continue the exploitation of Venezuela's natural resources for the regime's profit." As such, the designations were made to further target "Venezuela's oil sector, which continues to provide financial resources to the illegitimate regime of President Maduro."

There is no indication that any of the four vessels and owners engaged in illicit or unlawful activity. They were targeted, according to the press releases, because they continued to lift oil cargoes from Venezuelan ports as recently as February and March 2020.

These designations are the latest move reflecting an escalation of the sanctions targeting Venezuela and in particular the oil trade. Citing unnamed U.S. officials, Reuters also reported this week that the U.S. “is considering imposing sanctions on dozens of additional foreign oil tankers for trading with Venezuela.”¹ Accordingly, as warned earlier this year, any voyages involving the carriage of Venezuelan-origin petroleum or petroleum products may present sanction risks. (See FHM Client Alert 4/22/2020.) It is therefore important for non-U.S. ship owners and operators to exercise the utmost diligence in connection with any such voyages or any trade which might be connected to or possibly benefit the Venezuelan oil sector.

Iran

In January 2020, President Trump issued E.O. 13902 targeting the construction, mining, manufacturing, and textiles sectors of the Iranian economy. Among other things, E.O. 13902 authorizes the imposition of sanctions against non-U.S. persons who are determined to operate in any of the specified sectors or to have knowingly engaged in a significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with any of the specified sectors. OFAC later clarified that E.O. 13902 was subject to a 90-day wind-down period. That period ended on April 9, 2020.

On Friday, June 5, 2020, OFAC issued a number of FAQs regarding the implementation of E.O. 13902. These FAQs provide guidance on the manner in which the specified sectors will be construed and applied by OFAC. The FAQs offer definitions of each of the sectors and examples of goods and services that fall within the scope of the sectors. These examples are illustrative and not exhaustive, but are nevertheless useful in understanding the potentially wide scope of E.O. 13902. Because of their importance, the FAQs are set forth verbatim at the end of this Client Alert.

As with other sanction provisions that refer to a *significant* threshold for the imposition of sanctions, the FAQs confirm that OFAC will apply a case-by-case analysis to assessing whether the *significant* threshold in E.O. 13902 is satisfied. There is no set monetary minimum by which *significant* will be judged. OFAC may consider some or all of a number of factors including: (a) the value and number of goods or value and frequency of services; (b) the nature of the good or services, including their type, complexity, and commercial purpose; (c) the level of awareness of management and whether the provision of goods or services is part of a pattern of conduct; (d) the involvement of SDNs in transactions involving the goods and services defined in the FAQs; (e) the impact of the provision of goods or services on the objectives of E.O. 13902; (f) whether the provision of the goods or services involved deceptive practices; and (g) other relevant factors that the Secretary of the Treasury deems relevant.

The FAQs also confirm that OFAC does not intend to target Iranian manufacturers of medicines, medical devices, or products used for sanitation or hygiene or as personal protective

¹ See Jonathan Saul, Devika Krishna Kuma, & Matt Spetalnick, “Exclusive: U.S. Weighs Blacklisting Dozens More Oil Tankers Over Venezuela,” Reuters.com (June 5, 2020).

equipment for use in Iran. Examples of products fitting these uses are soap, hand sanitizer, ventilators, respirators, personal hygiene products, diapers, infant and childcare items, personal protective equipment, and manufacturing safety systems, solely for use in Iran and not for export from Iran. (See FAQ 830.) FAQ 830 further states that “persons conducting or facilitating transactions for the provision, including any sale, of agricultural commodities, food, medicine, or medical devices to Iran will not be subject to sanctions under E.O. 13902.” This is consistent with the general policy of the U.S. to allow humanitarian aid to continue to be supplied to Iran.

Potential Implications

It is clear that the current Administration continues to subscribe to the view that international shipping should be a focus of U.S. sanctions implementation. As evident from last week’s SDN designations and the potentially broad reach of E.O. 13902 revealed in the FAQs, it remains important for those in the industry to make sanctions compliance a high priority. Any trade that might involve Venezuelan oil or oil interests or any sector of the Iranian economy should be examined closely to ensure sanctions compliance.

We continue to monitor developments in this area and are available to assist clients in understanding and examining how these developments may affect their business opportunities. If you have any questions about the contents of this alert or would like further information regarding U.S. sanctions or the development of internal sanctions protocols, please feel free to contact us.

This Client Alert is only a general summary for informational purposes. It and its content are not intended to be and should not be used or construed as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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NEWLY RELEASED FAQs REGARDING E.O. 13902

830. Will OFAC target Iranian manufacturers of medicines, medical devices, or products used for sanitation or hygiene or as personal protective equipment for use in Iran pursuant to Executive Order (E.O.) 13902 for continuing to manufacture these items?

No. For the purposes of evaluating sanctions pursuant to E.O. 13902, persons in Iran manufacturing medicines, medical devices, or products used for sanitation, hygiene, medical care, medical safety, and manufacturing safety, including soap, hand sanitizer, ventilators, respirators, personal hygiene products, diapers, infant and childcare items, personal protective equipment, and manufacturing safety systems, solely for use in Iran and not for export from Iran, will not be considered to be operating in the manufacturing sector of the Iranian economy. Note that persons conducting or facilitating transactions for the provision, including any sale, of agricultural commodities, food, medicine, or medical devices to Iran will not be subject to sanctions under E.O. 13902.

E.O. 13902 imposes sanctions with respect to any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to operate in the construction, mining, manufacturing, and textiles sectors of the Iranian economy, and any additional sectors of the Iranian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State. Iranian and non-Iranian persons operating in these sectors could be subject to sanctions pursuant to E.O. 13902.

The United States maintains broad exceptions and authorizations that allow for the commercial sale and export of humanitarian goods, including medicine and medical devices, to Iran or the Government of Iran from the United States or by U.S. persons or U.S.-owned or -controlled foreign entities. However, these authorizations and exceptions do not apply to transactions involving persons on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) that have been designated in connection with Iran's support for international terrorism or proliferation of weapons of mass destruction, including designated Iranian financial institutions or the Islamic Revolutionary Guard Corps (IRGC), or in connection with activity that is subject to other sanctions not specific to Iran. For further guidance related to humanitarian trade with Iran and the provision of humanitarian assistance to Iran please see FAQ 828. [06-05-2020]

831. How will OFAC define the sectors of the Iranian economy specified in Executive Order (E.O.) 13902 of January 10, 2020?

E.O. 13902 imposes sanctions with respect to any person determined by the Secretary of the Treasury to operate in the construction, mining, manufacturing, and textiles sectors of the Iranian economy, and any additional sectors of the Iranian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State. Iranian and non-Iranian persons operating in the construction, mining, manufacturing, and textiles sectors of

the Iranian economy, or sectors of the Iranian economy identified in the future could be subject to sanctions.

OFAC expects that regulations to be promulgated will define the terms *construction sector of the Iranian economy*, *mining sector of the Iranian economy*, *manufacturing sector of the Iranian economy*, and *textiles sector of the Iranian economy* consistent with the following:

Construction sector of the Iranian economy: The term *construction sector of the Iranian economy* means the production, procurement, devising, framing, or arranging in Iran of parts or materials to fabricate, shape, or form buildings or structures, including the on-site development, assembly, or construction of residential, commercial, or institutional buildings in Iran. The term applies to engaging in new work, additions, alterations, maintenance, and repairs of residential, commercial, or institutional buildings. Persons such as for-sale builders, design-build firms, and project construction management firms in Iran may be considered as operating in this sector.

Mining sector of the Iranian economy: The term *mining sector of the Iranian economy* means any act, process, or industry of extracting, at the surface or underground, ores, coal, precious stones, or any other minerals or geological materials from the Earth in Iran.

Manufacturing sector of the Iranian economy: The term *manufacturing sector of the Iranian economy* means the creation in Iran of goods by manual labor or machinery that are for export from Iran or for sale within Iran. For the purposes of evaluating sanctions pursuant to E.O. 13902, persons in Iran manufacturing medicines, medical devices, or products used for sanitation, hygiene, medical care, medical safety, and manufacturing safety, including soap, hand sanitizer, ventilators, respirators, personal hygiene products, diapers, infant and childcare items, personal protective equipment, and manufacturing safety systems, solely for use in Iran and not for export from Iran, will not be considered to be operating in the manufacturing sector of the Iranian economy. Note that persons conducting or facilitating transactions for the provision, including any sale, of agricultural commodities, food, medicine, or medical devices to Iran will not be subject to sanctions under E.O. 13902.

Textiles sector of the Iranian economy: The term *textiles sector of the Iranian economy* means the fiber synthesis, dyeing, weaving, knitting, or felting in Iran of textiles, including apparel, carpets, cloths, fabric, or related goods, that are for export from Iran.

Persons who knowingly engage in a significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with the above-named sectors of the Iranian economy risk exposure to blocking sanctions pursuant to E.O. 13902. In addition, persons that have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, persons designated pursuant to E.O. 13902 could themselves be designated. Furthermore, foreign financial institutions that have knowingly conducted or facilitated any significant financial transaction for such designated persons risk exposure to U.S. correspondent account or payable-through account sanctions. [06-05-2020]

832. What are significant goods or services used in connection with a sector of the Iranian economy specified in Executive Order (E.O.) 13902?

Persons who have knowingly engaged in a significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with the construction, mining, manufacturing, and textiles sectors of the Iranian economy as described in FAQ 831 risk exposure to blocking sanctions pursuant to E.O. 13902. Further, foreign financial institutions that have knowingly conducted or facilitated any significant financial transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with those sectors of the Iranian economy risk exposure to U.S. correspondent account or payable-through account sanctions.

OFAC expects that regulations to be promulgated will define goods and services used in connection with the construction, mining, manufacturing, and textiles sectors of the Iranian economy as follows (See FAQ 833 for an interpretation of the term “significant.”):

Goods or services used in connection with the construction sector of the Iranian economy:

The term *goods used in connection with the construction sector of the Iranian economy* means equipment or materials that enable the services described below or the activities described in FAQ 831 with respect to the construction sector of the Iranian economy, including: building supplies, concrete, scaffolding, lifts, hoists, cranes, conveyors, and mechanized equipment for material handling. Goods that ensure the protection of life and prevention of injuries to persons operating in the construction sector of the Iranian economy are excluded from this definition, including personal protective equipment, safety devices, and alarm systems.

The term *services used in connection with the construction sector of the Iranian economy* include: blasting, demolition, dredging, electrical work, excavating, masonry, plumbing, rigging, welding, for-sale building, design-build consultations, and construction management. Services that ensure the protection of life and prevention of injuries to persons operating in the construction sector of the Iranian economy are excluded from this definition, including cleaning, safety inspections, and services necessary for use of protective goods described above.

Goods or services used in connection with the mining sector of the Iranian economy:

The term *goods used in connection with the mining sector of the Iranian economy* means equipment or materials that enable the services described below or the activities described in FAQ 831 with respect to the mining sector of the Iranian economy, including: boring equipment, conveyor belts, directional digging technology, haul trucks, hydraulic excavators, explosives, and power shovels. Goods that ensure the protection of life and prevention of injuries to persons operating in mines in Iran are excluded from this definition, including personal protective equipment, safety devices, ventilation systems, and alarm systems.

The term *services used in connection with the mining sector of the Iranian economy* includes: auguring, boring, backfilling, combusting, crushing, exploration, grinding, grading, irrigating, impounding, magnetic separation, mineral processing, geophysical surveying, mapping services, operating mines or quarries, site preparation, and related construction activities. Services that ensure the protection of life and prevention of injuries to persons operating in the mining sector of the Iranian economy are excluded from this definition, including rescue and accident response services, cleaning, safety inspections, and services necessary for use of protective goods described above.

Goods or services used in connection with the manufacturing sector of the Iranian economy:

The term *goods used in connection with the manufacturing sector of the Iranian economy* means equipment or materials, including raw materials, tooling machinery, and components of finished products, that enable the services described below. Goods that ensure the protection of life and prevention of injuries to persons operating in the manufacturing sector of the Iranian economy are excluded from this definition, including personal protective equipment, safety devices, and alarm systems.

The term *services used in connection with the manufacturing sector of the Iranian economy* includes: new installment, additions, alteration, maintenance, and repair of manufacturing equipment; procurement or supply of raw materials for the manufacturing sector of the Iranian economy; and distribution services to persons operating in the manufacturing sector of the Iranian economy. Services that ensure the protection of life and prevention of injuries to persons operating in the manufacturing sector of the Iranian economy are excluded from this definition, including cleaning services, safety inspections, and services necessary for use of protective goods described above.

Goods or services used in connection with the textiles sector of the Iranian economy:

The term *goods used in connection with the textiles sector of the Iranian economy* means equipment, machines, materials, and items used in the textiles sector of the Iranian economy or that enable the services described below or the activities described in FAQ 831 with respect to the textiles sector of the Iranian economy, including: looms, industrial sewing machines, industrial washers and dryers, and industrial embroidery machinery. Goods that ensure the

protection of life and prevention of injuries to persons operating in the textiles sector of the Iranian economy are excluded from this definition, including personal protective equipment, safety devices, and alarm systems.

The term *services used in connection with the textiles sector of the Iranian economy* includes: procurement or supply of raw materials for textiles production, and design of textiles products. Services that ensure the protection of life and prevention of injuries to persons operating in the textiles sector of the Iranian economy are excluded from this definition, including cleaning services, safety inspections, and services necessary for use of protective goods described above. [06-05-2020]

833. How will the terms “knowingly” and “significant” be interpreted for purposes of Executive Order (E.O.) 13902?

As a general matter, the Department of the Treasury intends to rely, where applicable, on definitions of terms previously included in Treasury regulations.

For purposes of E.O. 13902, OFAC will rely on the definition of "**knowingly**" included in the Iranian Financial Sanctions Regulations at 31 C.F.R. § 561.314 ("The term knowingly, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.").

In determining whether goods or services used in connection with a sector of the Iranian economy identified pursuant to E.O. 13902 are "**significant**," the Department of the Treasury may consider the totality of the facts and circumstances. As a general matter, the Department of the Treasury may consider some or all of the following broad factors: (a) the value and number of goods or value and frequency of services; (b) the nature of the good or services, including their type, complexity, and commercial purpose; (c) the level of awareness of management and whether the provision of goods or services is part of a pattern of conduct; (d) the involvement of designated persons in transactions involving goods and services defined in FAQ 832; (e) the impact of the provision of goods or services on the objectives of E.O. 13902; (f) whether the provision of the goods or services involved deceptive practices; and (g) other relevant factors that the Secretary of the Treasury deems relevant. [06-05-2020]