

Overview of Recent Changes to U.S. Sanctions on Iran and Cuba

Douglas N. Jacobson, Esq.
Washington, DC

WCL – ITILS
March 30, 2016



January 2016 Iran Sanctions Changes



Practical / Compliance Impact

- January 16, 2016 was “Implementation Day” of the Joint Comprehensive Plan of Action (JCPOA) with Iran.
- On that day, most countries suspended their nuclear sanctions on Iran
- However, US made only four changes to its long-standing Iranian sanctions:
 1. Suspended most of the “secondary” (extraterritorial) sanctions on non-US persons doing business with Iran
 2. Reauthorized non-US subsidiaries of US companies to engage in business with Iran (subject to the restrictions noted below)
 3. Will allow commercial aircraft and parts to be sold/leased to Iran if licensed by OFAC
 4. Authorized Iranian food and carpet imports into US
- There is again an uneven playing field in Iran for US companies, which is the same that existed in 2010, when EU and other countries began withdrawing from Iran due to threat of US secondary sanctions
- A transaction with Iran remains generally prohibited if it involves a US person, an Iranian company, the Iranian government, an Iranian bank or an Iranian party on OFAC sanctions lists
- Any further US changes to Iran embargo unlikely in near future
- See summary of key terms and concepts at end of this presentation

Key Terms and Concepts



- **US person** means US citizens, green card holders (permanent resident aliens), entities formed under US law and any person located within the United States
- **Non-US person** means any individual or entity that is not a US person
- **Primary sanctions** means the long-standing US embargo of Iran administered primarily by the Treasury Department's Office of Foreign Assets Control (**OFAC**) under which US persons remain broadly prohibited from engaging in any transactions involving Iran, its government, Iranian banks or with any person on OFAC's lists of sanctioned parties
- **Secondary sanctions** means US extraterritorial measures administered primarily by the US State Department, under which non-US persons can be penalized if they do not have any ties to or contacts with the US, if they engage in certain activities with Iran or sanctioned parties in Iran
- **US export controls** means restrictions administered primarily by the Commerce Department's Bureau of Industry and Security (**BIS**). BIS has jurisdiction on the export or transfer of goods, software and technology that originates in the US or is produced outside the US with more than a *de minimis* level of US-origin content (10% for Iran). These controls are applicable to US and non-US persons. OFAC is generally the lead agency on most Iran export/reexport matters.

3

January 2016 Iran Sanctions Changes



- Many US secondary sanctions on Iran remain in place, including those related to terrorism, WMD, missiles and human rights concerns
 - These secondary sanctions continue to apply directly to non-US persons even if they have no ties or contact with the United States
 - Secondary sanctions remain on over 200 Iranian and Iran-related parties, including one of Iran's largest banks (Bank Saderat) and several other large entities that non-US companies could encounter in the process of investing in or doing business with Iran

Practical / Compliance Impact

- Non-US entities re-engaging with Iran must avoid dealing with entities or engaging in activities covered by remaining US secondary sanctions
 - Particularly relevant in the construction, electronics, transportation, aerospace and defense sectors in which the Iranian Revolutionary Guard Corps (IRGC) and other specially designated Iranian entities are active

4

Impact on Non-US Subsidiaries	
<ul style="list-style-type: none"> ● Effective January 16, 2016, non-US entities owned or controlled by a US person are authorized to engage in transactions with Iran and Iranian persons, with some exceptions <ul style="list-style-type: none"> ▪ The authorization is found in “General License H” under OFAC’s Iranian Transactions and Sanctions Regulations (ITSR) ▪ Since October 2012, non-US subsidiaries had been generally prohibited from Iranian transactions, and penalties could be imposed on the US owner for any violations ▪ There is no general license for US banks to handle payments related to General License H activities 	<p style="text-align: center; margin: 0;">Practical / Compliance Impact</p> <ul style="list-style-type: none"> ● US persons remain prohibited from supplying goods or services to a third country with knowledge or reason to know the goods or services may be exported or reexported to Iran ● US origin good, software and technology remains prohibited from being exported to Iran, directly or indirectly ● Only US origin goods that are substantially transformed outside of the US or incorporated into a non US product containing less than 10% controlled US content can be sold to Iran

5

Impact on Non-US Subsidiaries	
<ul style="list-style-type: none"> ● Under General License H several restrictions remain on the non-US entity, including: <ul style="list-style-type: none"> ▪ Exports of US origin items and items containing US content, and exports of non-US items for military, weapons or other sensitive end-uses ▪ Transfers of funds through US banks or broker-dealers ▪ Transactions with Iranian persons on various US lists of prohibited parties (i.e., OFAC’s SDN List) ▪ Transactions not approved by the Iranian nuclear procurement channel established by the JCPOA ▪ Transactions with any “military, paramilitary, intelligence, or law enforcement entity” of the Iranian government ▪ Any other transaction involving the US or a US person, or covered by the remaining US secondary sanctions 	<p style="text-align: center; margin: 0;">Practical / Compliance Impact</p> <ul style="list-style-type: none"> ● Sanctions compliance controls are needed for each non-US company allowed to do business with ● EU and other countries maintain export controls on Iran ● General License H shields most of the authorized activity from SEC Iran disclosure

6

Impact on Non-US Subsidiaries



- Under OFAC's General License H a US parent company is authorized to provide certain limited approvals and support to the non-US entity:
 - Can establish or alter its operating policies and procedures, or those of the non-US entity it owns or controls, to the extent necessary to allow the non-US entity to engage in authorized transactions involving Iran
 - Can be involved in the initial determination whether to engage in authorized activities with Iran
 - A US citizen or green card holder who is an employee, officer or director of the parent, investor or non-US entity can be involved in the above

Practical / Compliance Impact

- Absent this authorization in General License H these approvals and support would fall within the scope of prohibited "facilitation" in OFAC's regulations
- Further US person support to the non-US subsidiary remains generally prohibited, including:
 - Involvement in the Iran-related day-to-day operations of the non-US entity
 - Brokering, referring, approving, financing, facilitating, or guaranteeing any Iran-related transaction.

7

Remaining US Sanctions on Iran



- The JCPOA was limited to nuclear sanctions on Iran only. Iran remains subject to a broad range of other US sanctions, including:
 - General trade and financial embargo under OFAC's sanctions regulations (few changes were made to US primary sanctions)
 - Asset freeze covering several categories of Iranian persons
 - Restrictions on non-US companies **owned or controlled by US persons** dealing with Iran (partially lifted – see prior slides)
 - Secondary sanctions – **non-US companies and banks** can be penalized for certain sensitive activities involving Iran or Iranian persons (many were lifted in January 2016)
 - US and non-US persons must comply with US export controls applicable to US-origin goods, software and technology, and non-US items with controlled US-origin content (no change)
 - **Companies listed on a US stock exchange** may be required to disclose certain activities they or their affiliates engage in relating to Iran or Iranian persons (no change)

8

Remaining US Sanctions on Iran



- US banks cannot process **payments** relating to Iran, its government, Iranian banks or sanctioned persons, including payments related to authorized activities by non-US entities owned or controlled by a US person or activities no longer covered by US secondary sanctions
 - For US banks with non-US customers or involved in international trade, more indirect issues may arise as international trade with Iran increases
- Broad prohibitions on assistance, financing, support, approval or other “**facilitation**” by a US person of transactions by other persons (little change)
 - This can apply to bank financing, letters of credit, guarantees or other credit support relating to business with Iran or sanctioned persons
- Restrictions on **federal contracting** for companies with Iran-related activities (no change)
- A growing number of divestment statutes enacted by various **US States** (no change)

9

New US Sanctions List: OFAC's EO 13599 List



- A *pecially designated* person is a person that has been added to a US list of sanctions targets for engaging in conduct that is of particular concern to the US government
- A *blocked* person is subject to US asset freezing sanctions, and US persons are generally prohibited from engaging in transactions with them. These include entities that are part of a sanctioned government or are 50% or more owned by listed persons, as well as Iranian banks, Cuban companies and nationals. Not all are included on the US sanctions lists.
- All persons specially designated under sanctions administered by OFAC are included on the OFAC list of Specially Designated Nationals and Blocked Persons (*SDN list*)
- On January 16, 2016 several hundred Iranian entities and individuals that had been targeted solely under US nuclear sanctions were removed from the SDN list. Most of these entities are blocked because they are Iranian banks or are part of the Iranian government.
- These blocked entities were placed on a newly created Executive Order 13599 List (the *13599 List*). For US persons there is no change in the sanctions on these persons – they are blocked and US persons generally cannot deal with them. On the other hand, non-US persons will not be penalized under US secondary sanctions for dealing with them.
- Don't forget the **BIS Entity List**, which imposes reexport restrictions to various non US parties of goods, technology and software subject to the EAR.

10

Jacobson | Burton | Kelley PLLC
INTERNATIONAL TRADE LAW

Sample US Sanctions List Changes (1)

- Three sample US sanctions listings illustrate the January 2016 changes in the US lists
- Bank Mellat is one of the largest Iranian banks that previously was specially designated and blocked. On January 16, 2016 it was taken off the SDN list and placed on the 13599 list. It remains blocked and US banks and other US persons generally cannot deal with it.

Sanctions List Search

Type:	Entity	List:	Non-SDN
Entity Name:	BANK MELLAT	Program:	IRAN
		Remarks:	all offices worldwide

Identifications:

Type	ID#	Country	Issue Date	Expire Date
Additional Sanctions Information -	Not on the SDN List and Not Subject to Secondary Sanctions; U.S. Persons Must Continue to Block the Property and Interests in Property of this Person Pursuant to Executive Order 13599			
For more information, please see: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf				

11

Jacobson | Burton | Kelley PLLC
INTERNATIONAL TRADE LAW

Sample US Sanctions List Changes (2)

- Bank Saderat, one of the largest banks in Iran, remains specially designated and blocked Iranian bank and remains on the SDN list. US persons cannot deal with it, and non-US persons can be penalized under secondary sanctions for certain dealings with it.

Sanctions List Search

Details:

Type:	Entity	List:	SDN
Entity Name:	BANK SADERAT IRAN	Program:	IRAN; SDGT; IFSR
		Remarks:	all offices worldwide

Identifications:

Type	ID#	Country	Issue Date	Expire Date
Additional Sanctions Information -	Subject to Secondary Sanctions			

Aliases:

Type	Category	Name
a.k.a.	strong	IRAN EXPORT BANK

12

Jacobson | Burton | Kelley PLLC
INTERNATIONAL TRADE LAW

Authorized Transactions With Iran

Practical / Compliance Impact

- Generally remains prohibited to export or re-export to Iran any goods, technology or services from the US or by US persons
- Limited exceptions include:
 - Medicine, medical devices and agricultural products under general or specific license
 - Personal communications and computing equipment and software
 - Informational materials and non-financial personal communications
- Effective January 16, 2016 imports into US of Iranian carpets and foodstuffs again permitted

- We expect expanded US and non-US exports of high-value medicine, medical devices and equipment
 - Non-US banks may be more comfortable with these transactions now that key Iranian banks and the Bandar Abbas container terminal no longer trigger secondary sanctions

13

Jacobson | Burton | Kelley PLLC
INTERNATIONAL TRADE LAW

IRAN SANCTIONS ENFORCEMENT

- Enforcement of Iran sanctions to remain a high priority of OFAC, BIS, ICE and the US Department of Justice
- Adam Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Intelligence: US Government “firmly committed to enforcing [Iran] sanctions as vigorously as possible.
- John Smith, Acting OFAC Director “We believe it is crucial to continue to implement and enforce the [Iran] sanctions that remain.”
- Criminal Penalties:
 - Up to \$1 million
 - Imprisonment for up to 20 years
- Civil Penalties (BIS and OFAC):
 - Maximum penalty per violation - Greater of \$250,000 or twice the transaction value

14

U.S Sanctions Against Cuba



Prohibitions

- All transactions U.S. persons involving property in which Cuba or a Cuban national has or has had (since the embargo imposed) an interest are blocked
 - Prohibits all trade between U.S. and Cuba including exports and import between the United States and Cuba, whether direct or through third countries, unless authorized by BIS.
- Exports outside U.S. of all U.S. origin product (even EAR99) and foreign origin product with 25% or more U.S. content
- Most travel to Cuba by U.S. persons remains prohibited, exception authorized categories.
- “Facilitation” by U.S. persons of transactions by foreign persons that would be prohibited if undertaken by U.S. persons

2015/2016 Update

- Established diplomatic relations with Cuba
- Expansion of travel under general licenses for the 12 existing categories of travel to Cuba authorized by law
- Authorized certain commercial exports for private sector in Cuba
- Revisions to BIS and OFAC regulations
- Removing designation of Cuba as State Sponsor of Terrorism
- U.S. banks permitted to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions
- U.S. credit and debit cards permitted for use by travelers to Cuba
- POTUS visited Cuba in March 2016

15

Cuba Sanctions – Summary of Recent OFAC and BIS Changes



- December 17, 2014 – POTUS announced a set of diplomatic and economic changes that would be implemented in part through changes to the CACR
- January 15, 2015 – OFAC announces changes to authorized travel, insurance services, telecommunications, and other areas
- September 18, 2015 – Additional changes to travel, remittances, and certain licensing exceptions to provide support for the Cuban People
- January 26, 2016 – Removed financing restrictions for authorized exports, major changes to BIS Export Regulations, and travel restrictions
- March 15, 2016 – Major changes to banking and financial services, including u-turn payments through the U.S. financial system, U.S. dollar monetary instruments, and bank accounts for Cuban nationals

16

Cuba Sanctions: The Future?



- Most legal and regulatory restrictions remain, including:
 - Trading with the Enemy Act
 - Cuban Assets Control Regulations (“CACR”)
 - Cuban Democracy Act of 1992 (ag/med)
 - Cuban Liberty and Democratic Solidarity Act of 1996 (Helms Burton)
 - Trade Sanctions Reform and Export Enhancement Act of 2000
- Several bills introduced in U.S. Congress to ease embargo and lift travel restrictions, but any action not likely until the next Administration.
- Export Enforcement Trends – Stated position of “Continued Enforcement” and OFAC has brought several enforcement cases for violations of the Cuban Embargo.

17

Questions and Contact Information



Douglas N. Jacobson, Esq.
 Jacobson Burton Kelley PLLC
 1725 I Street, NW
 Suite 300
 Washington, DC 20006
 Telephone: (202) 431-2407
 Email: djacobson@jacobsonburton.com
 Web: www.jbktradelaw.com
 News: www.tradelawnews.com
 Twitter: [@tradelawnews](https://twitter.com/tradelawnews)

18