

The US tightens sanctions against Iran and those dealing with Iran

Whilst some products are specifically named in Annex V, many ambiguities and omissions exist. For example, specific mention is made of the olefins, ethylene and propylene, whilst no reference is made of the industrially important butenes. Further, whilst butadiene is specifically mentioned, Crude C4, from which butadiene is derived, and shipped in commercially significant volumes, is not.

The major components or precursors for the manufacture of polyvinyl chloride polymer (PVC) (which is a widely used plastic, used in construction, electrical cable insulation and many other applications in which it replaces rubber) are ethylene dichloride (EDC) and vinyl chloride monomer (VCM), neither of which are specifically mentioned in Annex V. However, we consider that these compounds are still prohibited and fall foul of Annex V - they fall under "other halogenated derivatives of hydrocarbons" for EDC (HS code 2903 89 90) and "unsaturated chlorinated derivatives of acyclic hydrocarbons – other" for VCM (HS code 2903 29 00).

A major volume co-product of the manufacture of EDC/VCM is caustic soda, and Iran is a major source of this product. Whilst EDC and VAM are prohibited, caustic soda (sodium hydroxide) is not listed in Appendix V and can be traded. Further, whereas Annex V specifically mentions certain alcohols (methanol, propan-1-ol, propan-2-ol, (n and iso-propanol) and butan-1-ol (n-butanol)), the commercially important alcohols ethanol and secondary and tertiary butanol are not listed.

The products listed in Annex V vary in their form; some are liquefied gasses that require carriage at either (or both) high pressures or very cold temperatures in specialised gas carriers, some are volatile flammable liquids requiring chemical carrier transport, and others are solids that are typically shipped in freight containers. Many are pre-cursor products used in the manufacture of plastics and indeed polyethylene itself (HS code 3901) is included.

What falls within Annex V is far from clear, as is the EU's intention behind listing some products but not others. This category is more complex than the petroleum products group under Annex IV, simply because of the greater number of petrochemicals commercially shipped by ocean carriers and the widespread use of trivial and trade names. For example, 'Cellosolve' is a well-known trade name for a range of compounds falling under the description 'Mono Butyl Ethers of Ethylene Glycol'; arguably this compound would fall foul of Annex V even though it is not specifically named within the Regulation.

It is again recommended that expert advice be sought if any doubt exists regarding product description and whether the description falls within Annex IV or V.



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In its continued effort to place pressure on Iran, the US recently announced new sanctions directed at Iran's petroleum and petrochemical industries. These new sanctions were announced via an Executive Order signed by President Barack Obama on 31 July 2012, authorising 'Additional Sanctions with Respect to Iran' (hereinafter EO). The sanctions are aimed at foreign financial institutions and foreign persons, and thus, have potential ramifications for those engaged in transactions having a connection to Iran's petroleum and petrochemical industries.

Sanctions authorised against 'foreign financial institutions'

Section 1 of the EO authorises the Secretary of the Treasury, in consultation with the Secretary of State, to impose financial sanctions on 'foreign financial institutions'. Such institutions are defined to include a variety of banking institutions, but notably 'insurance companies' are not included within the entities described. It appears that this aspect of the EO is aimed primarily at foreign banks that engage in the sanctionable conduct described in Section 1.

'Foreign financial institutions' can be sanctioned if they are found to have 'knowingly conducted or facilitated any significant financial transaction' with the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and/or any entities owned or controlled by, or operating for or on behalf of NIOC or NICO. Additionally, such institutions can be sanctioned if they knowingly conduct or facilitate significant financial transactions for the purchase or acquisition of petroleum, or petroleum or petrochemical products, from Iran through any channel (not just through NIOC or NICO).

According to the Office of Foreign Assets Control (the agency responsible for implementing sanctions within the Treasury Department), this provision is aimed at deterring Iran or any other country or institution from establishing workaround payment mechanisms for the purchase of Iranian oil to circumvent the oil sanctions authorised under the National Defense Authorisation Act (NDDA). A 'foreign financial institution' found to have engaged in any of the sanctionable activities can effectively be excluded from the US financial system, by having its correspondent or payable-through accounts prohibited or restricted by the Treasury Department. Notably, (similar to the NDDA), sanctions can be imposed under Section 1 only if the President determines that there is a sufficient supply of petroleum and petroleum products in the world market (apart from Iran) to permit a significant reduction in the volume of products purchased from Iran. In this way, the EO seeks to balance the desire to reduce Iran's petroleum revenues with the desire to maintain price stability in the global market.



Sanctions authorised against any person for transactions with NIOC or NICO

Section 5 of the EO authorises the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions on any person (defined to include an individual or entity) who materially assists, sponsors or provides financial, material, or technological support for, or goods or services in support of, NIOC, NICO, or the Central Bank of Iran, and/or the purchase or acquisition (regardless of the channel) of US bank notes or precious metals by the government of Iran.

This aspect of the EO is not limited to US persons, and as such, renders sanctionable the conduct of foreign persons who engage in the specified activity. The Secretary of the Treasury, in turn, is authorised to block the property within the US of any person found to have engaged in the sanctionable conduct. This would include the ability to block the transfer of US dollar transactions through the US correspondent banking system. Consequently, by way of example, a foreign entity that 'materially' provides goods or services to NIOC or NICO may find its US dollar transfers blocked by OFAC, even if that transfer is not a direct dealing with NIOC or NICO.

Sanctions authorised against any person for petroleum-related transactions

Perhaps the most material aspect of these new sanctions for foreign persons is contained in Section 2. Section 2 conveys primary sanction authority on the Department of State and authorises it, in consultation with the Department of Treasury and other agencies, to impose sanctions on any person (not just US persons) who knowingly engages in a 'significant transaction for the purchase or acquisition' from Iran of petroleum or petroleum or petrochemical products.

Sanctions are also authorised against the successor of a person who engaged in such activities; those who own or control a person who engaged in the specified activity, and had knowledge that person engaged in those activities; and those who are owned or controlled by, or under common ownership or control with, such a person, and knowingly participated in the sanctionable activities. In this way, the EO seeks to target not only the person who engaged in the sanctionable conduct but also its subsidiaries and affiliates if they knew about or participated in the sanctionable activity.

Notably, as with the Section 1 sanctions, before sanctions can be imposed under Section 2, there must be a determination by the President that there is sufficient world market supply such that a significant reduction in the volume of purchased Iranian products is permissible.

There are several aspects of this sanction program that warrant careful consideration by foreign persons who engage in transactions involving Iranian petroleum and petrochemical products.

First, 'significant transaction' is not defined, and it is unclear exactly what will constitute a 'significant' transaction. The Treasury Department has indicated that a number of factors are considered in determining 'significance,' including size, number, and frequency; type, complexity, and commercial purpose; and the ultimate economic benefit conferred on the sanctions target. However, as explained, the State Department (not Treasury) will be primarily responsible for enforcing the Section 2 sanctions. While likely, it is not known definitively if the State Department will apply the same factors in assessing whether a transaction is significant.

Second, it is not entirely clear what type of transactions fall within the scope of the sanctionable activities. A plain reading of the EO suggests that it is aimed at preventing or limiting only the underlying sales transactions but not necessarily transactions incidental to the sale such as transportation or insurance. Nonetheless, given the EO's purpose, the State Department could attempt a broad construction of the provision such that it encompasses services such as transportation or insurance which, although incidental, are necessary to effect the underlying sale. One could argue that such a construction would be inappropriate, particularly as other Iranian sanctions programme have expressly referred to insurance and shipping services, making the absence of such references indicative of an intent not to include same within this programme. However, efforts to obtain clarification from the State Department have not yet provided any further guidance, and it remains to be seen how far this programme will reach. It would not be surprising if a broad construction is given to this provision, given the aggressive stance of the US directed at Iran.

Individuals or entities determined to have engaged in sanctionable conduct will be subject to the same sanctions that may be imposed under the ISA. These include prohibiting transfers of payments through US financial institutions to, from or on behalf of sanctioned persons, and the blocking of any such transfers. As such, a person found to have engaged in sanctionable conduct can find its ability to effect transactions in US dollars prohibited and/or its US dollar transactions stopped and held in the US.

