

Guidance issued by the US State Department, February 2011

CISADA SHIPPING AND MARITIME INSURANCE CONSIDERATIONS

On July 1, 2010, President Obama signed into law the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), which expands significantly the energy-related activities that are sanctionable under the Iran Sanctions Act of 1996 (ISA). We urge companies, including those in the shipping and insurance sectors, to minimize their exposure to the Iranian energy sector and to exercise as much due diligence as possible in doing business, directly or indirectly, with Iranian entities. The information in this document will be updated periodically to reflect changes in legislation or industry practice.

Nature of Insurance/Ownership/Liability:

Any party that, among other activities, knowingly sells, leases, or provides goods, services, technology, information, or support that could “directly and significantly” contribute to the enhancement of Iran’s ability to import refined petroleum or facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products could be subject to sanctions under ISA. Sanctions may apply to goods or services provided they have a fair market value of at least \$1 million or aggregate of at least \$5 million in twelve months. Whether goods or services could have a direct and significant contribution to Iran’s ability to import refined petroleum will be evaluated on a case-by-case basis.

Potentially sanctionable activities, as explicitly described in ISA, include: underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease, or provision of such goods, services, technology, information, or support; financing or brokering such sale, lease, or provision; or providing ships or shipping services to deliver refined petroleum products to Iran. Other potentially sanctionable activities could include, for example, maritime transport (ship owners and charters) and related ship services (operators and technical managers), ship brokering (sale, charter, and container), ship suppliers (for sale of ships both used and new), and financial services related to maritime transportation services (including insurance and reinsurance). Cargo insurance and reinsurance, protection and indemnity (P&I) insurance and reinsurance, hull insurance and reinsurance, contract frustration insurance and reinsurance, and any other insurance or reinsurance associated with the shipment of refined petroleum products to Iran may also be sanctionable.

The ISA defines “knowingly” to mean that a person has actual knowledge, or should have known in the circumstances, meaning companies can be subjected to sanctions if they knew or *should have known* that they were providing qualifying goods or services to Iran. As insurance providers and ship owners/managers/operators may not be familiar with all goods and services that could be assisting Iran’s petroleum sector, insurance providers and ship owners should undertake due diligence and know their customers in order to reduce the risk that they will engage in potentially sanctionable activities.

ISA Exception for Underwriters and Insurance Providers Exercising Due Diligence:

The ISA contains an exception whereby the Secretary of State may not impose sanctions, with respect to activities that contribute to the enhancement of Iran’s ability to import refined petroleum products, on a company that provides underwriting services or insurance or reinsurance if the Secretary determines that the person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not underwrite or enter into a contract to provide insurance or reinsurance for the sale, lease, or provision of goods, services, technology, information, or support that could directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products. Companies are strongly encouraged to diligently and strictly implement such official policies, procedures, and controls to avoid any activity that could be subject to sanctions under ISA. Policies, procedures, and controls should be appropriate based on the type of activities in which a company engages.

Methods to Assist in Preventing Sanctionable Activity:

Companies should consider employing measures that can assist in preventing sanctionable activity. Such measures could include the following:

Coverage Exclusions:

We encourage companies to write insurance policies with coverage exclusions for losses associated with the delivery of refined petroleum products or related goods to Iran. If coverage exclusions are not commercially feasible, insurers could establish strict underwriting policies and procedures that scrutinize the business activity of prospective insured persons and decline risks that present a probability of insuring deliveries of refined petroleum products or related goods to Iran. In the

case of P&I Clubs, membership could be revoked if members seek special coverage to insure risks barred by an Iranian refined petroleum coverage exclusion.

Policies and Procedures:

Insurers should exercise due diligence in the marketing and underwriting of coverages for international trade transactions that intentionally or unintentionally assume risks associated with the delivery of refined petroleum products or related products to Iran. The policies and procedures may include affirmative, rigorously applied company rules against engaging in such activity, instruction of employees regarding prohibited and sanctionable activity with Iran, active monitoring, inspection, and diligence on customers' activities, and other appropriate measures.

Policies, procedures, and controls should take into account various comprehensive sanctions measures, including other provisions of ISA and CISADA, which are in process of refinement and evolution. The Department of State emphasizes that any decision on sanctionable activity will ultimately be made by the Secretary of State or her designee and will depend on the facts of a particular case.

Involvement of U.S. Persons:

In addition to the provisions of the ISA and CISADA, additional restrictions apply to U.S. persons and transactions subject to U.S. jurisdiction. United States persons are prohibited from almost all business with Iran, under the Iranian Transactions Regulations (ITR). United States persons and others conducting transactions subject to U.S. jurisdiction should consult the ITR, administered by the Department of Treasury's Office of Foreign Assets Control, before providing, directly or indirectly, goods, technology, or services to Iran.

Effective Date of CISADA and Pre-Existing Contracts:

The CISADA makes sanctionable a person who "sells, leases, or provides to Iran" refined petroleum products and/or qualifying goods or services above certain monetary thresholds "on or after the date of enactment," July 1, 2010. A "sale", "lease", or "provision" of goods or services is considered to have commenced at the time the contract for the "sale", "lease", or "provision" became legally binding.

Examples of Potentially Sanctionable Activity under CISADA

Below are examples of activity the Secretary of State may consider to be sanctionable under CISADA. The examples are illustrative, but not exhaustive.

Product and Chemical Tankers

- Use of a ship, controlled by ownership or charter agreement, to provide shipping services to supply Iran with gasoline, diesel, jet fuel, or aviation gasoline.
- Charter of a ship to another company that is using the ship to supply Iran with gasoline, diesel, jet fuel, or aviation gasoline. The ship owner may still have engaged in sanctionable activity even if it does not have full control of the ship under the charter agreement.
- Facilitation (e.g., by brokering) of the provision of a ship, either by sale or charter, to a company for the transportation of refined petroleum products to Iran. Brokers are considered to be facilitating or “providing” the goods or services that they have sourced for clients. In the case of a ship sale or provision of insurance, the broker is considered to have provided the entire value of the goods or services.
- Provision of insurance to a company for the transportation of refined petroleum products to Iran, if the insurance premiums are above threshold amounts. Insurance can include cargo insurance, P&I insurance, hull insurance, and contract frustration insurance.
- Facilitation (e.g., by brokering) of the provision of insurance for the transportation of refined petroleum products to Iran.

Bulk Cargo

- Use of a ship, controlled by ownership or charter agreement, to provide shipping services for the purpose of supplying goods to be used to maintain or expand Iran's refineries, such as refinery equipment.
- Facilitation (e.g., by brokering) of the provision of cargo or insurance to a company for the purpose of supplying goods or to facilitate the transportation of goods to maintain or expand Iran's refineries.
- Provision of insurance to a company for the transportation of goods to maintain or expand Iran's refineries.