

INTERNATIONAL TRADE

CANADA RELAXES IRAN SANCTIONS - MAKING IT EASIER TO DO BUSINESS WITH IRAN

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On February 5, 2016, Canada significantly reduced its unilateral economic sanctions against Iran by introducing amendments (Amendments) to the Special Economic Measures (Iran) Regulations (Iran Regulations). The relaxation follows the International Atomic Energy Agency's announcement in January that Iran has taken all measures laid out in the Joint Comprehensive Plan of Action (JCPOA) to ensure that Iran's nuclear programme is entirely peaceful in nature.

Canada's announcement follows Bombardier's loss to Airbus, which recently signed two agreements with Iran covering new aircraft orders and a comprehensive civil aviation co-operation package. But, with the liberalization of the Iran sanctions, Canadian companies, including those in the oil and gas services, automotive, agri-food, construction, mining, aerospace, food and consumer products, financial services and technology sectors should be reviewing the emerging opportunities in Iran.

The relaxation of Canadian sanctions presents Canadian companies with many opportunities to do business in Iran across a broad range of sectors. At the same time, it is important to be cognizant and mitigate the risk associated with the economic sanctions and export controls that remain in place.

Background on Canadian Economic Sanctions Against Iran

Canada has imposed two types of regimes against Iran in response to Iran's nuclear and WMD programs. The first are unilateral sanctions imposed only by Canada under the Special Economic Measures Act referred to as the Iran Regulations, which have now been substantially lifted. The second are multilateral sanctions imposed by all U.N. member countries including Canada to implement the U.N. Security Council Resolutions placing embargoes and restrictions on Iran's proliferation-sensitive nuclear and ballistic missile programs.

Amendments to the Iran Regulations

Relaxation of General Prohibition against Dealings with Designated Persons

Section 3 of the Iran Regulations previously prohibited Canadian companies and individuals from engaging in a wide range of dealings with a list of 530 "designated" entities and 83 "designated" individuals associated with Iran's proliferation of sensitive nuclear activities or the development of chemical, biological or nuclear weapons.

The amendments significantly reduce these restrictions. The term "designated" has been eliminated, and the amendments now impose

prohibitions against only 161 listed persons and 41 listed entities that continue to have associations with the Islamic Revolutionary Guard Corps.

The Amendments continue to prohibit Canadians and persons in Canada from (a) dealing in any property, wherever situated, that is owned, held or controlled by a listed person or by a person acting on their behalf; (b) entering into or facilitating any transaction related to such a dealing; or (c) providing any financial or related service in respect of such a dealing. They also continue to prohibit Canadians from making any goods, wherever situated, available to a listed person or to a person acting on their behalf; or providing any financial or related service to such persons.

Relaxation of General Trade Embargo

The general trade ban in Section 4 of the Iran Regulations has been replaced with a much more targeted ban. Section 4(1) of the Iran Regulations previously prohibited any person in Canada or any Canadian outside of Canada from exporting, selling, supplying or shipping goods, wherever situated, to Iran, to a person in Iran, or to a person for the purposes of a business carried on in or operated from Iran. Section 4(3) also contained a comprehensive ban on the provision of "technical data" to Iran or any person in Iran required for the refining of oil or the liquefaction of natural gas, the production of petrochemicals, the building, maintenance or refitting of ships, the transportation or storage of crude oil or petroleum/petroleum products, drilling and mineral surveying and exploration or the processing, storing or handling of liquefied natural gas.

These prohibitions have been repealed. Canadians or persons in Canada are now prohibited from exporting, selling, supplying or shipping any of the goods listed in Schedule 2, wherever situated, to Iran, to a person in Iran, or to a person for the purposes of a business carried on in or operated from Iran. Canadians continue to be prohibited from transferring, providing or disclosing to Iran or any person in Iran any technical data related to the goods listed in Schedule 2 of the Amendments.

Schedule 2 includes items that are generally used in nuclear, biological and chemical weapons programs, including certain specialty metals, autoclaves, aerosol generators, compressors and vacuum pumps, electrical power supply units and transformers, fibrous or filamentary materials, frequency changers (inverters) and specially designed software for them, mass spectrometers, gamma-ray spectrometers, explosive release devices, and production equipment.

Additional Relaxations

Sections 4.1 to 8 of the Iran Regulations contained additional prohibitions and restrictions all of which have been repealed. Section 4.1(1) prohibited Canadians from importing, purchasing, acquiring, shipping or transshipping any goods that are exported, supplied or

shipped from Iran, whether the goods originated in Iran or elsewhere. Section 4.1(2) prohibited Canadians from providing or acquiring marketing, financial or other services from or for the benefit of any person in Iran in respect of the import, purchase, acquisition or shipment of natural gas, crude oil, or any petroleum or petrochemical products, from Iran. Section 6 contained a sweeping ban prohibiting Canadians from “making an investment in an entity in Iran”. Section 7 contained a broad prohibition against providing vessels owned or controlled by the Islamic Republic of Iran Shipping Lines with insurance and other operation and maintenance services; and a broad prohibition against providing any flagging or classification services to Iranian oil tanker or cargo vessels.

The Amendments replace all of these restrictions with a general prohibition against Canadians or persons in Canada doing anything that causes, facilitates or assists in any act or thing prohibited by the ban on dealings with listed persons or the revised trade embargo.

Export Controls Remain

Notwithstanding the relaxation of the sanctions regime, Canada will continue to enforce its controls under the *Export and Import Permits Act* on exports and transfers to Iran of goods, technical assistance and technologies which are considered sensitive from a national and international security perspective. Companies are reminded that all items on Canada’s Export Control List (which includes goods, technology and technical assistance) require a permit from the Export Controls Division at Global Affairs Canada.

Also, applications for permits to export any goods or technologies covered under any of the following items on the *Export Control List* to Iran will generally be denied. This is because these are considered the most sensitive items from a national and international security perspective, and include nuclear goods and technologies, and goods and technologies that could assist the development of Iran’s ballistic missiles program:

- Group 1 (Dual-Use List)
 - Test, inspection, and production equipment for special materials and related equipment Intrusion equipment, systems and components
 - Telecommunications intercept, surveillance and jamming equipment, systems and components Optical sensors, high-speed instrumentation cameras, image intensifier cameras, focal plane array imaging cameras, lasers
- All items in Group 2 (Munitions List); Group 3 (Nuclear Non-Proliferation List), Group 4 (Nuclear-Related Dual-Use List)
- Group 5 (Miscellaneous Goods and Technology)
 - Blinding laser weapons
 - Nuclear fusion reactors
 - Antipersonnel mines
- Group 6 (Missile Technology Control Regime List) – all items with prescribed exceptions for certain parts and components intended

for civil aircraft

- Group 7 (Chemical and Biological Weapons Non-Proliferation List)
 - Chemical Weapons Convention Materials P3 and P4 containment facilities Human toxins

A Word of Caution for Canadian Affiliates of U.S. Persons

Despite the publicity surrounding the implementation of the JCPOA, the United States embargo on Iran is largely unchanged. Any proposed transactions with Iran involving Canadian entities that are U.S. owned or controlled must be evaluated with caution and with appropriate due diligence and awareness that strict compliance procedures will be required to avoid violations by U.S. persons.

United States sanctions regulations generally prohibit foreign entities owned or controlled by U.S. persons from engaging in any transaction that would be prohibited if engaged in by a U.S. person or in the United States. This will continue to carry substantial risk for corporate groups that include “U.S. persons”, which includes not only U.S. citizens, but also permanent resident aliens, U.S. entities and their foreign branches, and even foreign persons while in the United States.

The U.S. regulations further prohibit transactions or conspiracies to evade or avoid any of the regulatory prohibitions. For example, U.S. persons are barred from approving, financing, facilitating, or guaranteeing any transaction by a foreign person that would be prohibited if performed in the United States or by a U.S. person. Among other things, prohibited facilitation or approval of a foreign person’s transaction occurs when a U.S. person, in order to permit or facilitate a transaction that would be prohibited if performed by a U.S. person or from the United States, alters its operating policies or procedures or those of a foreign affiliate or when it refers Iranian purchase orders, bids and similar business opportunities to a foreign person.

Under the JCPOA, the United States agreed to lift nuclear-related sanctions, generally limited to so-called “secondary sanctions” that are directed toward non-U.S. persons for specified conduct involving Iran that occurs entirely outside the United States and does not involve any U.S. person. The lifted secondary sanctions include those affecting Iran’s trade in precious metals and in some materials and software, and on Iran’s ports operators and on its energy, petrochemical, automotive, shipping and shipbuilding sectors, as well as on related trade in financial, insurance and other associated services.

Primary sanctions relief is limited to three narrow categories. The United States took steps to allow exports and reexports to Iran for its commercial passenger aviation sector, as well as imports of Iranian-origin carpets and foodstuffs, including pistachios and caviar. And non-U.S. entities owned or controlled by a U.S. person were granted limited ability to engage in some transactions involving Iran that are consistent with the JCPOA and with U.S. laws and regulations. With the exception of these three categories, U.S. persons will continue

to be broadly prohibited from engaging in transactions or dealings involving Iran or the Government of Iran.

The measures taken to grant limited authorization for U.S. owned or controlled foreign entities to engage in some transactions with Iran are outlined in General License H, issued by the Treasury Department's Office of Foreign Assets Control (OFAC). General License H permits a U.S. person to alter operating policies and procedures to accommodate permitted transactions and to make its automated, globally integrated communication and support systems available to foreign entities involved in permitted transactions, provided that the systems operate passively and without human intervention and are not used for any transfer of funds involving the U.S. financial system. Notably, the direct or indirect export, reexport, sale or supply of any goods, technology or services from the United States or by any U.S. person, wherever located, in connection with these transactions remains prohibited, effectively barring the supply of U.S. origin goods, technology or services directly to Iran or to third countries for incorporation into other items destined for Iran. General License H also expressly confirms that the prohibitions on facilitation by U.S. persons remain in effect except for the narrow exceptions under the license. This means that U.S. persons may not be involved in the ongoing Iran-related operations or decision making of a U.S. owned or controlled foreign entity.

The license also enumerates several categories of transactions that are not authorized for non-U.S. persons, such as funds transfers involving the U.S. financial system, transactions involving designated entities or persons or any Iranian military, paramilitary, intelligence or law enforcement entity, any sanctionable activity related to terrorism, Syria, Yemen, human rights abuse or weapons of mass destruction or their means of delivery, any activity involving unapproved nuclear procurement channels.

Nor have all other secondary sanctions been lifted. For example, non-U.S. persons remain subject to sanctions for transactions or support involving persons or entities on OFAC's List of Specially Designated Nationals and Blocked Persons. General License H also confirms that non-U.S. persons remain subject to the prohibition on the direct or indirect reexport to Iran from a third country of goods, technology or services of U.S. origin that are subject to export control license requirements if the non-U.S. person knows or has reason to know that the reexportation is intended specifically for Iran or the Government of Iran and the goods or technology constitute ten percent or more of the end product's total value. For this reason, these items continue to require a Canadian export permit, even though items containing U.S. content as provided in Item 5400 of Canada's Export Control List are not on the Denial List.

The International Trade Group at Dickinson Wright is monitoring the situation on both sides of the Canada-U.S. border and will provide regular updates as matters develop in this area.

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