Focus on

International Trade

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Canada Expands Its Economic Sanctions Against Iran

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On November 21, 2011, in response to the International Atomic Energy Agency's recent assessment of Iran's nuclear program and in conjunction with similar measures taken by the U.S. and U.K., Canada expanded its sanctions against Iran under the *Special Economic Measures Act ("SEMA")* by amending the existing *Special Economic Measures (Iran) Regulations*.

This alert provides an overview of the new measures. These additional sanctions should be carefully reviewed and incorporated into the export compliance and screening procedures of Canadian companies doing business not just in and around Iran, but also in international trade more generally. Particular care must be taken by financial services businesses for whom the expectation of due diligence is high. Parties contemplating any form of business transaction or undertaking which even indirectly involves Iran would be well advised to seek legal advice prior to proceeding.

Contemporaneously, the U.S. and U.K. have also established similar sanctions having a particular focus on the financial services industry.

Overview of New Sanctions

The *Regulations Amending the Special Economic Measures (Iran) Regulations* strengthen and expand the suite of sanctions already imposed by Canada by, principally:

1. Revising the list of designated (i.e., sanctioned) entities and individuals in Schedule 1 to the *Special Economic Measures (Iran) Regulations* by removing

some names but adding the names of over 60 new entities and individuals;

2. <u>Establishing a blanket prohibition against financial transactions with Iran, subject only to certain exceptions</u>;

3. Expanding the list of goods and technical data prohibited for export to Iran to include all goods used in the <u>petrochemical, oil and gas industry</u> in Iran and related technical data, with an exception for goods to be supplied under contracts entered into prior to November 22, 2011; and

4. Amending the list of goods and technical data prohibited for export to Iran to include additional goods and data that could be used by Iran for nuclear proliferation.

Existing Sanctions

Canada has imposed economic sanctions against Iran since 2006, beginning with the implementation of United Nations Security Council Resolutions under the *United Nations Act* and, more recently, in July 2010, with the implementation of more comprehensive unilateral measures under the *Special Economic Measures (Iran) Regulations.*

At a summary level and subject to certain exceptions, these earlier sanctions already prohibited, *inter alia*, the following activities:

- dealing in goods or property with, or making financial or related services available to, a designated individual or entity;
- exporting or otherwise providing to Iran certain goods, including: arms and related materials, items that could contribute to Iran's nuclear proliferation, and items used in refining oil and gas;
- providing technical data related to these goods;
- making any new investment in the Iranian oil and gas sector, or providing or acquiring financial services for this purpose;
- providing or acquiring financial services to allow an Iranian financial institution (or a branch, subsidiary or office) to be established in Canada, or vice versa; and
- establishing correspondent banking relationships with Iranian financial institutions, or purchasing any debt from the Government of Iran.

Compliance Measures

Trade controls and economic sanctions have an impact not only on international business activities, but also on transactional due diligence and contractual representations and warranties. Ensuring compliance with these and other trade controls requires the implementation of awareness training, screening, and other due diligence procedures.

On this point, it is important to note that trade controls imposed under the *SEMA*, including the Iran sanctions, contain anti-circumvention provisions that forbid persons in Canada or Canadians outside Canada from indirectly engaging in prohibited activities by "causing, assisting or promoting" such activities. To this extent the sanctions may have extraterritorial reach.

Guidance from the Export Controls Division of the Department of Foreign Affairs recommends that Canadian companies consider the following questions in performing their due diligence with respect to international transactions. While this screening tool was developed to foster compliance in the export of controlled goods, it is also a good reference for evaluating foreign clients against the prohibitions imposed by Canadian economic sanctions regimes.

- How well do you know the foreign customer? Is it difficult to obtain information about that company or entity?

- Is the customer reluctant to provide an end-use assurance document or is information not forthcoming in comparison to past experiences with other customers?
- Is the customer or the end-user tied to the military or the defence industry, or to any military or governmental research body?
- If you have done business with the customer before, is this a usual request for him/her to make?
- Does the customer seem familiar with the product type and its performance characteristics or is there an obvious lack of technical knowledge? Does the product fit the customer's business profile?
- Does the customer reject the customary installation, training, or maintenance services provided?
- Is unusual packaging and labelling required?
- Is the shipping route unusual?
- Is the customer ordering an excessive amount of spare parts or other items that are related to the product, but not related to the stated end-use?
- Is the customer offering unusually profitable payment terms, such as a much higher price than normal? Is the customer offering to pay in cash?
- Is the customer proposing unusual means of payment, such as routing payment through seemingly unrelated financial institutions?

Canadian exporters are also reminded that Canada imposes trade controls on Canadian activities involving a number of other countries: Belarus, Burma (Myanmar), Cote d'Ivoire, Democratic Republic of the Congo, Egypt, Eritrea, Guinea, Iraq, Lebanon, Liberia, Libya, North Korea, Syria, Pakistan, Sierra Leone, Somalia, Sudan, Syria, Tunisia, and Zimbabwe. Furthermore, controls imposed by the U.S. and E.U. may apply to exports by Canadian firms.

In recent years, Canadian trade controls and sanctions have changed frequently and often without warning as the Canadian government has adapted its foreign policy to world events. Our International Trade Group can assist you in updating your compliance regimes to take account of these various measures. We can also provide advice and assistance in determining whether you are eligible for statutory exemptions to the sanctions or whether you can obtain a permit for otherwise restricted or prohibited activities or transactions.

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