



**CLIENT ALERT: 90-DAY WIND DOWN
PERIOD ENDS ON SANCTIONS AGAINST IRAN
METALS SECTOR**

August 7, 2019

Introduction

As discussed in our May 8, 2019, Client Alert, President Trump issued Executive Order (“E.O.”) 13871 on May 8, 2019, imposing broad new sanctions against Iran’s metals industries. With the issuance of E.O. 13871, U.S. sanctions targeted virtually the entire metals sector in Iran and those engaged in transactions in support of the sector. The E.O. however contained a 90-day wind-down period. That period ended yesterday on August 6, 2019. E.O. 13871 thus is in full effect. In conjunction with the expiration of the wind-down period yesterday, the Department of Treasury’s Office of Foreign Assets Control (“OFAC”) issued frequently asked questions (“FAQs”) which provide greater clarity on the potential scope of E.O. 13871.

E.O. 13871

E.O. 13871 authorized the imposition of sanctions against any person (including non U.S. persons) if they are determined:

- (i) to be operating in the iron, steel, aluminum, or copper sector of Iran, or to be a person that owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran;
- (ii) to have knowingly engaged, on or after the date of this order, in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran;
- (iii) to have knowingly engaged, on or after the date of this order, in a significant transaction for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran;
- (iv) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of any person whose property and interests in property are blocked pursuant to this section; or

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this section.

These provisions expanded upon the secondary sanctions (i.e., those applicable to non-U.S. persons) that existed under § 1245 of the Iran Freedom and Counter-Proliferation Act of 2012 (“IFCA”). IFCA authorized sanctions in relation to, for example, the sale, supply, or transfer, directly or indirectly, to or from Iran of certain materials, including raw and semi-finished metals such as aluminum and steel, as described in subsections 1245(a)(l)(B) or (C) of IFCA. E.O. 13871 was broader because it, among other things, targeted the iron and copper sectors of Iran.

Despite the E.O.’s breadth, the U.S. authorities confirmed when E.O. 13871 was issued in May that persons engaged in transactions that could be sanctioned under E.O. 13871 would have a 90-day period to wind down those transactions without exposure to sanctions under the E.O. OFAC advised persons to take necessary steps to wind down transactions by the end of the 90-day wind-down period to avoid exposure to sanctions, and that entering into new business that would be sanctionable under the E.O. on or after May 8, 2019, would not be considered wind-down activity and could be sanctioned even during the wind-down period.

August 6, 2019, marked the final day of the wind-down period. As a result, if any pre-May 8th transactions involving any of the activities described in the E.O. were not concluded as of yesterday, they are now subject to potential sanctions.

The FAQs Issued by OFAC

When E.O. 13871 was issued in May, it was anticipated that OFAC would adopt the multi-factor definition of “significant” utilized in other sanction provisions. Yesterday, with the expiration of the wind-down period, OFAC published FAQ 683 confirming that view and providing the following guidance on what makes a transaction “significant” for purposes of E.O. 13871:

... the Department of the Treasury may consider the totality of the facts and circumstances..., including: (a) the size, number, and frequency of the transactions; (b) the nature of the transactions, or the goods or services for sale, supply, or transfer, including their type, complexity, and commercial purpose; (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the person that engaged in the transactions and the prohibited activities in sections 1(a)(ii) and 1(a)(iii) of E.O. 13871; (e) the impact of the transactions on the objectives of E.O. 13871; (f) whether the transactions attempt to obscure or conceal the actual parties or true nature of the transactions, or evade sanctions; and (g) other relevant factors that the Secretary of the Treasury deems relevant.

This guidance thus leaves considerable discretion to OFAC and confirms that “significance” will depend on an analysis of several factors and on a case-by-case basis.

OFAC also provided the following guidance on the targeted sectors and products that fall within the scope of E.O. 13871. The FAQs state as follows:

The term *iron sector of Iran* means the mining, refining, processing, or manufacturing of iron or iron products in Iran

The term *steel sector of Iran* means the iron-ore smelting, ferrous-scrap melting, refining, processing, or manufacturing of steel or steel products in Iran.

The term *aluminum sector of Iran* means the mining, refining, processing, or manufacturing of aluminum or aluminum products in Iran.

The term *copper sector of Iran* means the mining, refining, processing, or manufacturing of copper or copper products in Iran.

The terms *iron, iron products, steel, and steel products* mean any raw, semi-fabricated, fabricated, or finished form of iron, iron alloy, alloy steel, non-alloy steel, ferroalloys, pig iron, and spiegeleisen of all grades, sizes, and thicknesses, whether or not clad, plated, or coated, including in the following forms: ***iron ores and concentrates***, including roasted iron pyrites; pigs and blocks; ferrous products obtained by direct reduction of iron ore and other spongy ferrous products, in lumps or pellets; granules and powders; ingots, blooms billets, slabs, and beam blanks; flat-rolled products (plates, sheets, strips, and foils) either cut-to-length or in coils; bars and rods; structural profiles (beams, channels, angles, and other shapes); sheet piling; railway or tramway track construction materials; tubes, pipes, and hollow profiles; tube or pipe fittings; reservoirs, tanks, vats, and similar containers; wire, stranded wire, ropes, cables, and plaited band; castings, stampings, and forgings; and ferrous waste and scrap, including slag. [emphasis added].

The terms *aluminum and aluminum products* mean any raw, semi-fabricated, fabricated, or finished form of aluminum or aluminum alloy of all grades, sizes, and thicknesses, including in the following forms: ores and concentrates (e.g., bauxite and alumina); unwrought aluminum including ingots, slabs, and billets; powders and flakes; wrought aluminum including bars, rods, profiles, plates, sheets, strip, foil, tubes, and pipes; tube or pipe fittings; reservoirs, tanks, vats, and similar containers; wire, stranded wire, ropes, cables, and plaited band; castings, stampings, and forgings; waste and scrap, including slag, and any aluminum and aluminum products produced from the melting or recycling of aluminum scrap.

The terms *copper and copper products* mean any raw, semi-fabricated, fabricated, or finished form of copper or copper alloy of all grades, sizes, and thicknesses, including in the following forms: ores and concentrates; copper mattes; cement copper (precipitated copper); refined, unrefined, wrought, or unwrought copper; billets; cathodes; bars, rods, profiles, plates, sheets, strips, foil, tubes, and pipes; tube and pipe fittings; powders and flakes; reservoirs, tanks, vats, and similar containers; wire, stranded wire, ropes, cables, and plaited band; castings, stampings, and forgings; and waste and scrap, including slag.

The issuance of these definitions reveals the potentially wide scope of E.O. 13781. The guidance also clarifies that OFAC will consider “iron ore” to fall within the scope of E.O. 13781. Previously it was unclear how OFAC would treat iron ore. Additionally, while coking coal is not specifically identified, caution should be exercised for any transactions involving coking coal particularly if the receiver is

engaged in the steel sector. Coking coal is a “vital ingredient in the steel making process.” See www.worldcoal.org/coal/uses-coal/how-steel-produced. As such, OFAC could consider the transport of coking coal to Iran as a significant transaction for the transfer to Iran of “significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran.”

Summary

E.O. 13781 is now in full effect. Therefore, vessel owners risk being sanctioned by having their property blocked should they “transfer” to Iran significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran. A risk of sanctions also exists if an owner engages in a “significant” transaction for the “transport” of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products *from Iran* which would include such goods of Iranian origin even if not loaded in Iran. These risks now exist even if the underlying sales transaction for the cargo pre-dated May 8.

Disclaimer: This Client Alert provides only a general summary of the August 5, 2019 Executive Order on Venezuela and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the Advisory. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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