

# SANCTIONS – WHAT QUESTIONS DO I NEED TO CONSIDER?



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**This article is intended to be a useful guide for the issues that must be considered for every ship operator who is concerned by international trade sanctions. Whilst not exhaustive, this article should give you an overview of the types of operations that could become problematic. Clearly, certain legislation will affect some operators more than others; especially those from the US. However, there are no operators who can afford to ignore the international sanctions.**

## 1. WHO ARE THE RECEIVERS/CHARTERERS?

- **“Know your client”:** It is important to consider the identity of your contractual partners. Do they appear on the US SDN List (see the link below) or are they sanctioned under the law of the UK, UN or EU (see the link below) or your ship’s Flag State.
  - If you have any concerns, it is essential that you **seek advice from your preferred lawyer.**
  - **It is important to note that the lists change regularly and it is essential that you repeatedly check!**

## 2.1. WHERE IS THE VOYAGE TO?

- **Iran:** CISADA prohibits exports from the US or by US persons (wherever located) to Iran.
- **Elsewhere:**
  - There are sanctions imposed on other states, including Syria, North Korea, Cuba, etc.; therefore, it is important to consider where you are trading and if your actions are likely to fall foul of any international sanctions.
  - The contract of carriage should also be considered as it may be that you are the carrier for an intermediate leg on a through bill of lading with a cargo of, say, Refined Petroleum Product that is destined for Iran. As such, the entire voyage is potentially in breach of CISADA and if you have knowledge (actual or you ‘should have known’) that the cargo is part of the sanctioned voyage, then you too may face sanctions.

## 2.2 WHERE IS THE VOYAGE FROM?

- **Iran:** CISADA imposes a ban on US imports from Iran.
  - **US Persons Test:**
    - US citizens and permanent residents wherever they reside
    - A person physically in the US or a company with a US branch
    - Any US organisations and their foreign offices.
  - **If this applies, seek advice from your preferred US attorney as it is likely you may be in breach of CISADA.**
- **Elsewhere:** If the cargo originated from Iran and is destined to the US, the above could still apply even if there is an intermediate port. As such, it is important to carry out due diligence to ensure you are not in breach of any sanctions.

## 3. WHAT IS THE CARGO?

- **Refined Petroleum Products (RPP):** This includes diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel) and aviation gasoline.
  - a. Is the fair market value over \$1m in one shipment or \$5m over a number of shipments over 12 months?
  - b. Have you knowingly provided this cargo (whether as an owner or charterer)? This includes actual knowledge or imputed knowledge where you should have known.
  - c. **If answer to either of the above is “yes”, seek advice from your preferred US attorney as it is likely you may be in breach of CISADA**
- **Nuclear/military – Dual-use cargo**
  - a. Are you:
    - i. a person physically in the EU
    - ii. a ship under the jurisdiction of the EU
    - iii. a person who is a national of member state, wherever they are physically located
    - iv. a person, entity or body incorporated in the EU, or
    - v. a person, entity or body who does any business in the EU?
  - b. Is the cargo goods, software, technology or information that may have a military application as listed in Annexes I, II, III and IV of EU Regulation 961/2010 (see link below).
  - c. If you suspect that the cargo may fall within one of the categories in Annexes I, II, III or IV, you must seek prior approval from the relevant competent authority in a member state. **If you are in any doubt, you should seek advice from your preferred lawyer.**

- **Energy:** Under EU Regulation 961/2010, it is prohibited to sell, supply, transfer or export certain equipment or technology used in the oil and gas industry:
  - a. Are you:
    - i. a person physically in the EU
    - ii. a ship under the jurisdiction of the EU
    - iii. a person who is a national of member state, wherever they are physically located
    - iv. a person, entity or body incorporated in the EU, or
    - v. a person, entity or body who does any business in the EU?
  - b. Is the cargo key equipment or technology that is listed in Annex VI of EU Regulation 961/2010 (see link below)?
  - c. Is the cargo going directly or indirectly to any Iranian person, entity or body or for use in Iran?
  - d. Will it be used in the refining, production or exploration of crude oil and natural gas or in the liquefaction of natural gas?
  - e. **If answer to any of the above is “yes”, or if you are in any doubt, you should seek advice from your preferred lawyer.**
- **Other cargo:**
  - a. Could the cargo be used to “directly and significantly” facilitate the maintenance or expansion of Iran’s petroleum industry?
  - b. Does the cargo directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products?
  - c. Has the cargo been properly declared, or could it be regarded that you have knowingly provided this cargo (whether as an owner or charterer)? This includes actual knowledge or imputed knowledge where you should have known.
  - d. These questions are highly subjective and difficult to answer. It is therefore essential that you carry out proper due diligence, and if you have any concerns, **seek advice from your preferred US attorney.**
- **Claims:** Should you face a claim in Iran, whether for fixed and floating object damage, pollution, etc., it is likely to be very difficult to obtain independent advice as to the cause and nature of the incident/damage. It is also likely that the claim will be subject to Iranian law, even if there is a law and jurisdiction clause in the contract of carriage to the contrary, which presents a large degree of uncertainty.
- **Security:** It will be very difficult, if at all possible, for the club to post security, even if it is acceptable to the local claimant and it is for a covered risk. It is also likely to be very difficult for a bank to be able to provide a bank guarantee or a bond/escrow account.
- **Misdeclaration of cargo:** There are significant concerns that misdeclared cargo, especially in containers, may cause a problem. The advice from the US State Department appears to be that due diligence should be carried out to ensure that the cargo is not in breach of CISADA or any other sanctions; however, it has been suggested that this even includes inspecting the contents of every container! It is advisable therefore that you investigate as fully as possible the contents of any containers, and if you have any concerns, seek advice from your preferred lawyers.
- **Insurance:** The current Standard Club’s rule 17.2(5) provides that:
  - “A member shall cease to be insured by the club in respect of any ship entered by him if the ship is employed by the member in a carriage, trade or on a voyage which will thereby in any way howsoever expose the club to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any state or international organisation, unless the managers shall otherwise determine.”
  - If you are in breach of international sanctions that may lead to the club being in breach of those sanctions, then your cover will cease. A similar approach has been adopted across the International Group and by many hull and machinery insurers. Consequently, as well as a lack of cover, this also presents a potential danger of foreclosure on mortgaged ships for breach of warranty in the loan agreement.

#### 4. WHAT ELSE MUST I CONSIDER?

- **Payments to Iranian entities:** Most EU and US banks are reluctant to send funds to Iranian entities/Iranian banks, even if they are not on the US SDN list or the UK, UN or EU designated person’s lists. As such, whether it is paying port charges or paying an Iranian charterer, there are still significant difficulties. Therefore, you should seek specific advice from your preferred lawyers.
- **Quantum:** EU Regulation 961/2010 prevents any payments over €40,000 to an Iranian person or entity, regardless of where they are located, without the prior authorisation of the relevant competent authority in a member state. It also requires that any payment between €40,000 and €10,000 must be notified to the relevant competent authority in a member state. For copies of these forms, please see the link below.

**UK Treasury: UK/UN/EU sanctioned persons**  
<http://hm-treasury.gov.uk/financialsanctions>

**US Treasury: OFAC list**  
[www.ustreas.gov/offices/enforcement/ofac/sdn/](http://www.ustreas.gov/offices/enforcement/ofac/sdn/)

**Prior approval for payments to Iranian entities:**  
[www.hm-treasury.gov.uk/fin\\_sanctions\\_iran.htm#Prior\\_notificationauthorisation\\_forms](http://www.hm-treasury.gov.uk/fin_sanctions_iran.htm#Prior_notificationauthorisation_forms)

**EU Regulation 961/2010 including Annex I-VI:**  
[www.hm-treasury.gov.uk/d/council\\_regulation\\_eu\\_961\\_251010.pdf](http://www.hm-treasury.gov.uk/d/council_regulation_eu_961_251010.pdf)

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