

UPDATE ON CISADA



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The Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) expands existing US sanctions against Iran and amends the Iran Sanctions Act (ISA). CISADA/ISA applies to all persons (including foreign businesses) doing business with Iran's petroleum sector. Such persons are now subject to three or more sanctions, the most severe of which bars access to the US financial system and may also result in restrained property.

How vigorously the US government will enforce CISADA/ISA remains uncertain. During a recent press conference, the US Department of State identified that Naftiran Intertrade Company (NICO), a Swiss-based subsidiary of the National Iranian Oil Company, as the first business to be sanctioned under the new law. During the same press conference, the State Department also highlighted that four European oil companies had taken advantage of CISADA's "special rule" to shield themselves from sanctions by assuring the US government that they had ceased doing business with Iran. The message from the State Department was clear: while it intends to enforce CISADA against non-compliant foreign companies, it strongly encourages companies to voluntarily cease operations with Iran to avoid being sanctioned. Though numerous questions remain unanswered, the State Department press conference sheds some light on a law with potential serious consequences for shipowners.

ENFORCEMENT BY THE US STATE DEPARTMENT

Following liaison with the US State Department, we understand that the Department of State, and not the US Treasury's Office of Foreign Assets Control, will implement and enforce CISADA. The State Department has not yet decided whether it will issue implementing regulations to clarify the scope of CISADA. It therefore seems likely that no regulations will be issued in the foreseeable

future and there is a distinct possibility that no implementing regulations will ever be issued. Guidance from the State Department may instead come in the form of published enforcement actions.

TWO-STEP PROCESS TO DETERMINE ENFORCEMENT

Enforcement will entail a two-step process:

- 1 the "threshold question" of whether credible evidence of sanctionable activity exists, and if so,
- 2 an investigation to determine whether a violation occurred and sanctions should be implemented.

Though the State Department intends to contact a targeted person to advise them of the investigation before sanctions are imposed, it would not confirm this would always be the case.

CALCULATING RISK

In the absence of regulations, shipowners must calculate their risk under the plain language of CISADA/ISA. This will include, among others, determining whether a proposed shipment **could directly and significantly** facilitate Iran's domestic production of refined petroleum products or directly and significantly contribute to the enhancement of Iran's ability to import such products. The State Department has informally advised that its enforcement will focus on truly "direct and significant" contributions to Iran's ability to produce or import refined petroleum, and that shipowners should conduct an honest assessment of the parties involved in a proposed trade to determine whether they have any reason to believe a shipment could violate CISADA.

Shipowners should also be aware that CISADA/ISA authorises sanctions against anyone who "provides" Iran with refined petroleum products or services relating to the import of such products, including shipping. These prohibitions have a monetary threshold of \$1m (or \$5m during any 12-month period). While no firm position has been adopted, the State Department has advised that the value of the cargo (as opposed to the freight/hire earned on the transport) may determine whether CISADA's monetary threshold has been met. The same test will apply to the transport of goods that facilitate the maintenance or expansion of Iran's domestic refining capacity.

CONCLUSION

The US government has not yet provided firm guidance to the shipping industry as to what conduct it views as violating CISADA, and the guidance provided thus far suggests that the government intends to construe CISADA's provisions broadly. Further, while to date CISADA has been wielded more as a deterrent than as an instrument to punish sanctionable conduct, this may change should deterrence fail, resulting in aggressive enforcement. Accordingly, despite the lack of enforcement actions to date, we recommend that shipowners take a conservative view of CISADA/ISA when assessing their potential risks.

