In a separate prosecution, three former employees of Mabey & Johnson were found personally liable for their role in making the illegal payments in breach of UN sanctions. A former managing director was sentenced to 21 months imprisonment, disqualified from acting as a company director for five years and was ordered to pay the prosecution costs of £75,000. A former sales director was sentenced to eight months imprisonment, disqualified from acting as a company director for two years and was ordered to pay prosecution costs of £125,000. Another former sales manager was also imprisoned for eight months but this was suspended for two years. The penalties imposed on these individuals are, however, small in comparison to those imposed in the US.

In 2010, the Weir Group PLC was found guilty by a Scottish court of offering similar 'kick-backs' to the Iraqi Government in breach of UN sanctions against Iraq. The Court had some regard to the penalties imposed in the Mabey & Johnson case and levied a fine of £3m against Weir. When sentencing, the Court highlighted the need to deter future offences that would damage the interests of the UN by breaching resolutions agreed by the UK. The Court, however, after arriving at its initial fine of £4.5m, allowed a significant discount to Weir for entering into an early plea of guilty.

In 2010, the UK Financial Services Authority (FSA) fined the Royal Bank of Scotland Group £5.6m under the Money Laundering Regulations 2007. Although not accused of committing a direct breach of sanctions imposed against a state, members of the Group had failed to have in place adequate screening against the sanctions list of customers, and particular payments, resulting in an unacceptable risk that the Group could have facilitated transactions involving sanctions targets. The original fine was £8m, but this was later reduced when the Group agreed to settle early in the FSA's investigation. The level of fine set shows that, under the matrix of UK legislation, high penalties can be imposed for entities that merely expose themselves to the possibility of facilitating the financing of sanction targets.

Conclusion

All of those involved in the international movement of goods could potentially be involved in enabling or facilitating prohibited transactions (or in circumvention practices), where their counterparties engage in prohibited transactions. Organisations with a possible exposure include shipowners, charterers, ship suppliers, shipbrokers, insurers, insurance brokers, operators, technical managers, providers of bunkering or ship supply services (or any other services to ships), parent companies, banks and other providers of financial assistance.

Organisations should therefore ensure that appropriate due diligence is carried out and, if necessary, legal advice is taken, to reduce the risk of falling foul of the sanctions regimes. In considering the potential for sanctions legislation to be triggered, organisations must carefully consider the parties, the cargo and the ports involved as well as the extent to which existing contracts include sufficient protection (including appropriate warranties, indemnities and liberties).

EU Regulation 267/2012 in regard to crude oil, petroleum products and petrochemicals

David R Jones BSc, CChem, MRSC, CSci, FEI.
Director, Oil & Chemical Department, CWA International
+44 20 7242 8444
drj@cwa.uk.com

The restrictive measures against Iran outlined in EU Regulation 267/2012 include, amongst others, the prohibition on the import into the EU of all crude oil and petroleum products under Article 11 and Annex IV, as well as the prohibition on the purchase or transport of such products, if they originate or are being exported from Iran.

The range of products obtained from the refining and secondary/tertiary processing of crude oil is included in Annex IV to the Regulation and specific mention is given to waxes, petcoke and bitumen products. Products not specifically mentioned, but which undoubtedly fall into the general description of 'petroleum oils', include well-known clean petroleum products (CPPs) such as naphtha, gasoline/mogas, kerosene/jet fuel, diesel/gasoil and base lube oils.

The cargo prohibition in Annex IV does not generically refer to LNG and LPG (liquefied petroleum gas) cargoes. Annex V to the Regulation, of which further reference is made below, does however refer to ethylene, propylene and butadiene, elements of which may be found in LPG cargoes. So if such cargoes are being contemplated for loading, it would be prudent to request product analysis details and to ascertain whether the cargo does contain any of the prohibited products identified in Annex V. Having said that, the UK Competent Authority for Customs Classification has advised that cargoes with a six-digit customs tariff bearing the number 271111 (LNG) or 271112 (LPG) are not caught by the Regulation.

Other CPP products derived from refinery processes and sometimes shipped aboard tankers include condensates, raffinates, reformates, alkylates, pygas, vacuum gasoil (VGO), cycle oil and others.

Insofar as dirty petroleum products (DPPs) are concerned, product descriptions include well-known terms such as intermediate fuel oil (IFO), heavy fuel oil (HFO) and high/low sulphur versions of same (HSFO and LSFO). Other descriptions for DPPs can include: low sulphur waxy residual (LSWR), rubber process oil (RPO), carbon black feedstock (CBFS), hydrocracker bottoms (HCB) and others.

It is recommended that expert advice be sought if any doubt exists regarding product description and whether the description falls within Annex IV.

Article 13 and Annex V also provide for the complete prohibition of the import into the EU of petrochemical products, as well as the prohibition on the purchase or transport of such products, if they originate or are being exported from Iran.

Whilst some products are specifically named in Annex V, many ambiguities and omissions exist. For example, specific mention is made of the olefins, ethylene and propylene, whilst no reference is made of the industrially important butenes. Further, whilst butadiene is specifically mentioned, Crude C4, from which butadiene is derived, and shipped in commercially significant volumes, is not.

The major components or precursors for the manufacture of polyvinyl chloride polymer (PVC) (which is a widely used plastic, used in construction, electrical cable insulation and many other applications in which it replaces rubber) are ethylene dichloride (EDC) and vinyl chloride monomer (VCM), neither of which are specifically mentioned in Annex V. However, we consider that these compounds are still prohibited and fall foul of Annex V - they fall under *"other halogenated derivatives of hydrocarbons"* for EDC (HS code 2903 89 90) and *"unsaturated chlorinated derivatives of acyclic hydrocarbons – other"* for VCM (HS code 2903 29 00).

A major volume co-product of the manufacture of EDC/VCM is caustic soda, and Iran is a major source of this product. Whilst EDC and VAM are prohibited, caustic soda (sodium hydroxide) is not listed in Appendix V and can be traded. Further, whereas Annex V specifically mentions certain alcohols (methanol, propan-1-ol, propan-2-ol, (n and iso-propanol) and butan-1-ol (n-butanol)), the commercially important alcohols ethanol and secondary and tertiary butanol are not listed.

The products listed in Annex V vary in their form; some are liquefied gasses that require carriage at either (or both) high pressures or very cold temperatures in specialised gas carriers, some are volatile flammable liquids requiring chemical carrier transport, and others are solids that are typically shipped in freight containers. Many are pre-cursor products used in the manufacture of plastics and indeed polyethylene itself (HS code 3901) is included.

What falls within Annex V is far from clear, as is the EU's intention behind listing some products but not others. This category is more complex than the petroleum products group under Annex IV, simply because of the greater number of petrochemicals commercially shipped by ocean carriers and the widespread use of trivial and trade names. For example, 'Cellosolve' is a well-known trade name for a range of compounds falling under the description 'Mono Butyl Ethers of Ethylene Glycol'; arguably this compound would fall foul of Annex V even though it is not specifically named within the Regulation.

It is again recommended that expert advice be sought if any doubt exists regarding product description and whether the description falls within Annex IV or V.

The US tightens sanctions against Iran and those dealing with Iran

Gina M. Venezia, Freehill Hogan & Mahar LLP

+1 212 425 1900
venezia@freehill.com

In its continued effort to place pressure on Iran, the US recently announced new sanctions directed at Iran's petroleum and petrochemical industries. These new sanctions were announced via an Executive Order signed by President Barack Obama on 31 July 2012, authorising 'Additional Sanctions with Respect to Iran' (hereinafter EO). The sanctions are aimed at foreign financial institutions and foreign persons, and thus, have potential ramifications for those engaged in transactions having a connection to Iran's petroleum and petrochemical industries.

Sanctions authorised against 'foreign financial institutions'

Section 1 of the EO authorises the Secretary of the Treasury, in consultation with the Secretary of State, to impose financial sanctions on 'foreign financial institutions'. Such institutions are defined to include a variety type of banking institutions, but notably 'insurance companies' are not included within the entities described. It appears that this aspect of the EO is aimed primarily at foreign banks that engage in the sanctionable conduct described in Section 1.

'Foreign financial institutions' can be sanctioned if they are found to have 'knowingly conducted or facilitated any significant financial transaction' with the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and/or any entities owned or controlled by, or operating for or on behalf of NIOC or NICO. Additionally, such institutions can be sanctioned if they knowingly conduct or facilitate significant financial transactions for the purchase or acquisition of petroleum, or petroleum or petrochemical products, from Iran through any channel (not just through NIOC or NICO).

According to the Office of Foreign Assets Control (the agency responsible for implementing sanctions within the Treasury Department), this provision is aimed at deterring Iran or any other country or institution from establishing workaround payment mechanisms for the purchase of Iranian oil to circumvent the oil sanctions authorised under the National Defense Authorisation Act (NDDA). A 'foreign financial institution' found to have engaged in any of the sanctionable activities can effectively be excluded from the US financial system, by having its correspondent or payable-through accounts prohibited or restricted by the Treasury Department. Notably, (similar to the NDDA), sanctions can be imposed under Section 1 only if the President determines that there is a sufficient supply of petroleum and petroleum products in the world market (apart from Iran) to permit a significant reduction in the volume of products purchased from Iran. In this way, the EO seeks to balance the desire to reduce Iran's petroleum revenues with the desire to maintain price stability in the global market.