

**Business Roundtable**  
**Coalition for Employment through Exports**  
**Coalition of Service Industries**  
**Emergency Committee for American Trade**  
**National Association of Manufacturers**  
**National Council on International Trade Development**  
**National Foreign Trade Council**  
**Organization for International Investment**  
**United States Chamber of Commerce**  
**United States Council for International Business**  
**USA\*ENGAGE**

March 30, 2010

The Honorable Nancy Pelosi  
U.S. House of Representatives  
235 Cannon House Office Building  
Washington, DC 20515-0508

Dear Congresswoman Pelosi:

As representatives of the U.S. business community, we share the concerns about the government of Iran's nuclear program, its sponsorship of terrorism in the Middle East, and its abuse of Iranians' human rights. We support targeted sanctions likely to put economic pressure on the Iranian government, but oppose broad sanctions that would put Americans out of work by prohibiting U.S. exports or requiring U.S. companies to disengage from global projects that have nothing to do with Iran. We are writing to highlight the secondary and tertiary consequences on transactions unrelated to Iran's petroleum industry that will likely occur if the overly broad and wide reaching language included in HR 2194 and S 2799 becomes law without modifications.

The global recession demonstrates that the U.S. economy, U.S. employment, and U.S. competitiveness rise and fall as a function of a global network. Unfortunately, specific provisions in the House and Senate versions of unilateral economic sanctions targeting Iran's energy sector fail to consider that fact and could prohibit U.S. companies from economic relationships with foreign entities **even though such relationships themselves have nothing to do with Iran's energy sector.**

**The attached National Association of Manufacturers (NAM) technical paper estimates a conservative minimum annual loss of \$25 billion in U.S. exports and 210,000 jobs from the bills as drafted.** Since the actual numbers would depend on the number of foreign entities sanctioned and the dollar value of U.S. transactions with them, the estimate is necessarily indirect. That said, the study's sample across sectors of up to \$16 billion in lost sales supports the overall estimate and suggests that the real effect will likely be more significant, as the \$25 billion does not include services, other manufactured goods outside of capital goods, and significant disruption of global energy projects involving U.S. energy companies.

The study underlines the **structural** exposure of U.S. enterprise to the sanctions contained in the legislation – particularly with respect to export finance, energy supply investment inside and outside the United States, global transport, foreign direct investment in the United States, and the global activities of U.S. engineering and construction companies. If implemented as drafted, the bills will not only negatively affect U.S. jobs and employment but also will undermine nation building efforts, impede the ability of U.S. energy companies to develop alternative sources of energy outside of the Middle East, and limit export credit financing for U.S. companies. These secondary repercussions are significant and deserve to be addressed before passage of a final bill.

The geopolitical challenge to U.S. national security posed by the prospect of Iranian acquisition of nuclear weapons is inarguable. Final Congressional action should be coordinated with the Administration's announced intention to secure multilateral sanctions that do in fact target the nuclear issue and relevant actors in Iran. If not revised, the bills' sanctions will create collateral damage to U.S. economic activity and energy policy – domestic and international – that is harmful to our national security. To that end, we urge you to adopt the following changes:

- **Add the three proposed mandatory sanctions to the existing list of sanctions in the Iran Sanctions Act, with a requirement that the President impose two from the expanded list of nine.**
- **Eliminate “foreign subsidiary, parent or affiliate thereof” from the expanded definition of “person” to target sanctions only to those persons that engage in sanctionable activity.**
- **Eliminate “such as an export credit agency” from the expanded definition of “persons.”**
- **Focus the government procurement provision on sanctioned persons, not persons that simply meet the criteria for the imposition of sanctions.**
- **Clarify the preemption of OFAC-licensed humanitarian trade from state divestment legislation.**

Please see the attached legislative language.

Yours truly,

Business Roundtable

Coalition for Employment through Exports

Coalition of Service Industries

Emergency Committee for American Trade

National Association of Manufacturers

National Council on International Trade Development

National Foreign Trade Council

Organization for International Investment

USA\*ENGAGE

United States Council for International Business

United States Chamber of Commerce

**S. 2799HR 2194**

A BILL

To expand the Iran Sanctions Act of 1996, to provide for the divestment of assets in Iran by State and local governments and other entities, to identify locations of concern with respect to transshipment, reexportation, or diversion of certain sensitive items to Iran, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Sense of Congress regarding illicit nuclear activities and violations of human rights in Iran.

TITLE I—SANCTIONS

Sec. 101. Definitions.

Sec. 102. Expansion of sanctions under the Iran Sanctions Act of 1996.

Sec. 103. Economic sanctions relating to Iran.

Sec. 104. Liability of parent companies for violations of sanctions by foreign subsidiaries.

Sec. 105. Prohibition on procurement contracts with persons that export sensitive technology to Iran.

Sec. 106. Increased capacity for efforts to combat unlawful or terrorist financing.

Sec. 107. Reporting requirements.

Sec. 108. Sense of Congress regarding the imposition of sanctions on the Central Bank of Iran.

Sec. 109. Policy of the United States regarding Iran’s Revolutionary Guard Corps and its affiliates.

Sec. 110. Policy of the United States with respect to Iran and Hezbollah.

Sec. 111. Sense of Congress regarding the imposition of multilateral sanctions with respect to Iran.

## TITLE II—DIVESTMENT FROM CERTAIN COMPANIES THAT INVEST IN IRAN

Sec. 201. Definitions.

Sec. 202. Authority of State and local governments to divest from certain companies that invest in Iran.

Sec. 203. Safe harbor for changes of investment policies by asset managers.

Sec. 204. Sense of Congress regarding certain ERISA plan investments.

## TITLE III—PREVENTION OF TRANSSHIPMENT, REEXPORTATION, OR DIVERSION OF SENSITIVE ITEMS TO IRAN

Sec. 301. Definitions.

Sec. 302. Identification of locations of concern with respect to transshipment, reexportation, or diversion of certain items to Iran.

Sec. 303. Destinations of Possible Diversion Concern and Destinations of Diversion Concern.

Sec. 304. Report on expanding diversion concern system to countries other than Iran.

## TITLE IV—EFFECTIVE DATE; SUNSET

Sec. 401. Effective date; sunset.

### **SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The illicit nuclear activities of the Government of Iran and its support for international terrorism represent threats to the security of the United States, its strong ally Israel, and other allies of the United States around the world.

(2) The United States and other responsible countries have a vital interest in working together to prevent the Government of Iran from acquiring a nuclear weapons capability.

(3) The International Atomic Energy Agency has repeatedly called attention to Iran's illicit nuclear activities and, as a result, the United Nations Security Council has adopted a range of sanctions designed to encourage the Government of Iran to cease those activities and comply with its obligations under the Treaty on Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly known as the "Nuclear Non-Proliferation Treaty").

(4) The serious and urgent nature of the threat from Iran demands that the United States works together with its allies to prevent Iran from acquiring a nuclear weapons capability.

(5) The United States and its major European allies, including the United Kingdom, France, and Germany, have advocated that sanctions be strengthened should international diplomatic efforts fail to achieve verifiable suspension of Iran's uranium enrichment

program and an end to its illicit nuclear activities.

(6) There is an increasing interest by States, local governments, educational institutions, and private institutions to seek to disassociate themselves from companies that conduct business activities in the energy sector of Iran, since such business activities may directly or indirectly support the efforts of the Government of Iran to achieve a nuclear weapons capability.

(7) Black market proliferation networks continue to flourish in the Middle East, allowing countries like Iran to gain access to sensitive dual-use technologies.

(8) The Government of Iran continues to engage in serious, systematic, and ongoing violations of human rights and religious freedom, including illegitimate prolonged detention, torture, and executions. Such violations have increased in the aftermath of the presidential election in Iran on June 12, 2009.

**SEC. 3. SENSE OF CONGRESS REGARDING ILLICIT NUCLEAR ACTIVITIES AND VIOLATIONS OF HUMAN RIGHTS IN IRAN.**

It is the sense of Congress that—

(1) international diplomatic efforts to address Iran's illicit nuclear efforts and support for international terrorism are more likely to be effective if the President is empowered with the explicit authority to impose additional sanctions on the Government of Iran;

(2) additional measures should be adopted by the United States to prevent the diversion and transshipment of sensitive dual-use technologies to Iran;

(3) the concerns of the United States regarding Iran are strictly the result of the actions of the Government of Iran;

(4) the people of the United States—

(A) have a long history of friendship and exchange with the people of Iran;

(B) regret that developments in recent decades have created impediments to that friendship;

(C) hold the people of Iran, their culture, and their ancient and rich history in the highest esteem; and

(D) remain deeply concerned about continuing human rights abuses in Iran;

(5) the President should—

(A) continue to press the Government of Iran to respect the internationally recognized

human rights and religious freedoms of its citizens;

(B) identify the officials of the Government of Iran that are responsible for continuing and severe violations of human rights and religious freedom in Iran; and

(C) take appropriate measures to respond to such violations, including by—

(i) prohibiting officials the President identifies as being responsible for such violations from entry into the United States; and

(ii) freezing the assets of those officials; and

(6) additional funding should be provided to the Secretary of State to document, collect, and disseminate information about human rights abuses in Iran, including serious abuses that have taken place since the presidential election in Iran conducted on June 12, 2009.

## **TITLE I—SANCTIONS**

### **SEC. 101. DEFINITIONS.**

In this title:

(1) **AGRICULTURAL COMMODITY.**—The term “agricultural commodity” has the meaning given that term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” has the meaning given that term in section 14(2) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(3) **EXECUTIVE AGENCY.**—The term “executive agency” has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(4) **FAMILY MEMBER.**—The term “family member” means, with respect to an individual, the spouse, children, grandchildren, or parents of the individual.

(5) **INFORMATION AND INFORMATIONAL MATERIALS.**—The term “information and informational materials” includes publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(6) **INVESTMENT.**—The term “investment” has the meaning given that term in section 14(9) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(7) **IRANIAN DIPLOMATS AND REPRESENTATIVES OF OTHER GOVERNMENT AND MILITARY OR QUASI-GOVERNMENTAL INSTITUTIONS OF IRAN.**— The

term “Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran” has the meaning given that term in section 14(11) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(8) MEDICAL DEVICE.—The term “medical device” has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(9) MEDICINE.—The term “medicine” has the meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

## **SEC. 102. EXPANSION OF SANCTIONS UNDER THE IRAN SANCTIONS ACT OF 1996.**

(a) IN GENERAL.—Section 5 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note) is amended by striking subsection (a) and inserting the following:

“(a) SANCTIONS WITH RESPECT TO THE DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN AND EXPORTATION OF REFINED PETROLEUM PRODUCTS TO IRAN.—

“(1) DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN.—

“(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (69) of section 6(a) with respect to a person if the President determines that the person, with actual knowledge, on or after the effective date of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009—

“(i) makes an investment described in subparagraph (B) of \$20,000,000 or more; or

“(ii) makes a combination of investments described in subparagraph (B) in a 12-month period if each such investment is at least \$5,000,000 and such investments equal or exceed \$20,000,000 in the aggregate.

“(B) INVESTMENT DESCRIBED.—An investment described in this subparagraph is an investment that directly and significantly contributes to the enhancement of Iran’s ability to develop petroleum resources.

“(2) PRODUCTION OF REFINED PETROLEUM PRODUCTS.—

“(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (9) of section 6(b) ~~(in addition to any other sanctions imposed under this subsection)~~ with respect to a person if the President determines that the person, with actual knowledge, on or after the effective date of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009,

sells, leases, or provides to Iran any goods, services, technology, information, or support described in subparagraph (B)—

“(i) any of which has a fair market value of \$200,000 or more; or

“(ii) that, during a 12-month period, have an aggregate fair market value of \$1,000,000 or more.

“(B) GOODS, SERVICES, TECHNOLOGY, INFORMATION, OR SUPPORT DESCRIBED.—Goods, services, technology, information, or support described in this subparagraph are goods, services, technology, information, or support that could directly and significantly facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products, including any assistance with respect to construction, modernization, or repair of petroleum refineries.

“(3) EXPORTATION OF REFINED PETROLEUM PRODUCTS TO IRAN.—

“(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose the sanctions described in section 6(b) (in addition to any other sanctions imposed under this subsection) with respect to a person if the President determines that the person, with actual knowledge, on or after the effective date of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009—

“(i) provides Iran with refined petroleum products—

“(I) that have a fair market value of \$200,000 or more; or

“(II) that, during a 12-month period, have an aggregate fair market value of \$1,000,000 or more; or

“(ii) sells, leases, or provides to Iran any goods, services, technology, information, or support described in subparagraph (B)—

“(I) any of which has a fair market value of \$200,000 or more; or

“(II) that, during a 12-month period, have an aggregate fair market value of \$1,000,000 or more.

“(B) GOODS, SERVICES, TECHNOLOGY, INFORMATION, OR SUPPORT DESCRIBED.—Goods, services, technology, information, or support described in this subparagraph are goods, services, technology, or support that could directly and significantly contribute to the enhancement of Iran’s ability to import refined petroleum products, including—

“(i) underwriting or otherwise providing insurance or reinsurance for the sale, lease, or provision of such goods, services, technology, information, or support;

“(ii) financing or brokering such sale, lease, or provision; or

“(iii) providing ships or shipping services to deliver refined petroleum products to Iran.”.

(b) DESCRIPTION OF SANCTIONS.—Section 6 of such Act is amended—

~~(1) by striking “The sanctions to be imposed on a sanctioned person under section 5 are as follows:” and inserting the following:~~

~~“(a) IN GENERAL.—The sanctions to be imposed on a sanctioned person under subsections (a)(1) and (b) of section 5 are as follows:”; and~~

~~(2) by adding at the end the following:~~

~~(b) ADDITIONAL SANCTIONS.—The sanctions to be imposed on a sanctioned person under paragraphs (2) and (3) of section 5(a) are as follows:~~

~~(47) FOREIGN EXCHANGE.—The President shall, pursuant to such regulations as the President may prescribe, prohibit any transactions in foreign exchange by the sanctioned person.~~

~~(28) BANKING TRANSACTIONS.—The President shall, pursuant to such regulations as the President may prescribe, prohibit any transfers of credit or payments between, by, through, or to any financial institution, to the extent that such transfers or payments involve any interest of the sanctioned person.~~

~~(39) PROPERTY TRANSACTIONS.—The President shall, pursuant to such regulations as the President may prescribe and subject to the jurisdiction of the United States, prohibit any person from—~~

~~“(A) acquiring, holding, withholding, using, transferring, withdrawing, transporting, importing, or exporting any property with respect to which the sanctioned person has any interest;~~

~~“(B) dealing in or exercising any right, power, or privilege with respect to such property; or~~

~~“(C) conducting any transactions involving such property.”.~~

(c) REPORT RELATING TO PRESIDENTIAL WAIVER.—Section 9(c)(2) of such Act is amended by striking subparagraph (C) and inserting the following:

“(C) an estimate of the significance of the conduct of the person in contributing to the ability of Iran to, as the case may be—

“(i) develop petroleum resources, produce refined petroleum products, or import refined petroleum products; or

“(ii) acquire or develop—

“(I) chemical, biological, or nuclear weapons or related technologies; or

“(II) destabilizing numbers and types of advanced conventional weapons; and”.

(d) CLARIFICATION AND EXPANSION OF DEFINITIONS.—Section 14 of such Act is amended—

(1) in paragraph (13)(B)—

~~(A)(A)~~ by inserting “financial institution, insurer, underwriter, guarantor, and any other business organization, ~~including any foreign subsidiary, parent, or affiliate thereof,~~” after “trust,”; ~~and~~and

~~(B) by inserting “, such as an export credit agency” before the semicolon at the end;~~  
~~(B) by inserting a new paragraph (13)(D) as follows – “A government or a governmental entity not operating as a business enterprise shall not be deemed to be a “person” or an “energy producer” or a “refiner” under this Act or section 7043 of P.L. 111-117.”~~

(2) in paragraph (14), by striking “petroleum and natural gas resources” and inserting “petroleum, refined petroleum products, oil or liquefied natural gas, natural gas resources, oil or liquefied natural gas tankers, and products used to construct or maintain pipelines used to transport oil or liquefied natural gas”;

(3) by redesignating paragraphs (15) and (16) as paragraphs (16) and (17), respectively; and

(4) by inserting after paragraph (14) the following: “(15) REFINED PETROLEUM PRODUCTS.—The term ‘refined petroleum products’ means diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel), and aviation gasoline.”.

(e) CONFORMING AMENDMENT.—Section 4 of such Act is amended—

(1) in subsection (b)(2), by striking “(in addition to that provided in subsection (d))”;

(2) by striking subsection (d); and

(3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

### **SEC. 103. ECONOMIC SANCTIONS RELATING TO IRAN.**

(a) IN GENERAL.—Notwithstanding any other provision of law, and in addition to any other sanction in effect, beginning on the date that is 15 days after the effective date of this Act, the economic sanctions described in subsection (b) shall apply with respect to Iran.

(b) SANCTIONS.—The sanctions described in this subsection are the following:

(1) PROHIBITION ON IMPORTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no article of Iranian origin may be imported directly or indirectly into the United States.

(B) EXCEPTION.—The prohibition in subparagraph (A) does not apply to imports from Iran of information and informational materials.

(2) PROHIBITION ON EXPORTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no article of United States origin may be exported directly or indirectly to Iran.

(B) EXCEPTIONS.—The prohibition in subparagraph (A) does not apply to exports to Iran of—

(i) agricultural commodities, food, medicine, or medical devices;

(ii) articles exported to Iran to provide humanitarian assistance to the people of Iran;

(iii) except as provided in subparagraph (C), information or informational materials;

(iv) goods, services, or technologies necessary to ensure the safe operation of commercial passenger aircraft produced in the United States if the exportation of such goods, services, or technologies is approved by the Secretary of the Treasury, in consultation with the Secretary of Commerce, pursuant to regulations promulgated by the Secretary of the Treasury regarding the exportation of such goods, services, or technologies, if appropriate; or

(v) goods, services, or technologies that—

(I) are provided to the International Atomic Energy Agency and are necessary to support activities of that Agency in Iran;

(II) are necessary to support activities, including the activities of nongovernmental organizations, relating to promoting democracy in Iran; or

(III) the President determines to be necessary to the national interest of the United States.

(C) SPECIAL RULE WITH RESPECT TO INFORMATION AND INFORMATIONAL MATERIALS.—Notwithstanding subparagraph (B)(iii), information and informational materials of United States origin may not be exported directly or indirectly to Iran—

(i) if the exportation of such information or informational materials is otherwise controlled—

(I) under section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404) (as in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)); or

(II) under section 6 of that Act (50 U.S.C. App. 2405), to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(ii) if such information or informational materials are information or informational materials with respect to which acts are prohibited by chapter 37 of title 18, United States Code.

(3) FREEZING ASSETS.—

(A) IN GENERAL.—At such time as the United States has access to the names of persons in Iran, including Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran (including Iran’s Revolutionary Guard Corps and its affiliates), that satisfy the criteria for designation with respect to the imposition of sanctions under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or are otherwise subject to sanctions under any other provision of law, the President shall take such action as may be necessary to freeze, as soon as possible, the funds and other assets belonging to anyone so named and any family members or associates of those so named to whom assets or property of those so named were transferred on or after January 1, 2009. The action described in the preceding sentence includes requiring any United States financial institution that holds funds and assets of a person so named to report promptly to the Office of Foreign Assets Control information regarding such funds and assets.

(B) ASSET REPORTING REQUIREMENT.— Not later than 14 days after a decision is made to freeze the property or assets of any person under this paragraph, the President shall report the name of such person to the appropriate congressional committees.

(4) UNITED STATES GOVERNMENT CONTRACTS.—The head of an executive agency may not procure, or enter into a contract for the procurement of, any goods or services from a sanctioned person ~~that meets the criteria for the imposition of sanctions under section 5 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).~~

(c) WAIVER.—The President may waive the application of the sanctions described in subsection (b) if the President—

(1) determines that such a waiver is in the national interest of the United States; and

(2) submits to the appropriate congressional committees a report describing the reasons for the determination.

**SEC. 104. LIABILITY OF PARENT COMPANIES FOR VIOLATIONS OF SANCTIONS BY FOREIGN SUBSIDIARIES.**

(a) DEFINITIONS.—In this section:

(1) ENTITY.—The term “entity” means a partnership, association, trust, joint venture, corporation, or other organization.

(2) OWN OR CONTROL.—The term “own or control” means, with respect to an entity—

(A) to hold more than 50 percent of the equity interest by vote or value in the entity;

(B) to hold a majority of seats on the board of directors of the entity; or

(C) to otherwise control the actions, policies, or personnel decisions of the entity.

(3) SUBSIDIARY.—The term “subsidiary” means an entity that is owned or controlled, directly or indirectly, by a United States person.

(4) UNITED STATES PERSON.—The term “United States person” means—

(A) a natural person who is a citizen, resident, or national of the United States; and

(B) an entity that is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own or control the entity.

(b) IN GENERAL.—A United States person shall be subject to a penalty for a violation of the provisions of Executive Order 12959 (50 U.S.C. 1701 note) or Executive Order 13059 (50 U.S.C. 1701 note), or any other prohibition on transactions with respect to Iran imposed under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), if—

(1) the President determines, pursuant to such regulations as the President may prescribe, that the United States person establishes or maintains a subsidiary outside of the United States for the purpose of circumventing such provisions; and

(2) that subsidiary engages in an act that, if committed in the United States or by a United States person, would violate such provisions.

(c) WAIVER.—The President may waive the application of subsection (b) if the President—

(1) determines that such a waiver is in the national interest of the United States; and

(2) submits to the appropriate congressional committees a report describing the reasons for the determination.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Subsection (b) shall take effect on the date of the enactment of this Act and apply with respect to acts described in subsection (b)(2) that are—

(A) commenced on or after the date of the enactment of this Act; or

(B) except as provided in paragraph (2), commenced before such date of enactment, if such acts continue on or after such date of enactment.

(2) EXCEPTION.—Subsection (b) shall not apply with respect to an act described in paragraph (1)(B) by a subsidiary owned or controlled by a United States person if the United States person divests or terminates its business with the subsidiary not later than 90 days after the date of the enactment of this Act.

**SEC. 105. PROHIBITION ON PROCUREMENT CONTRACTS WITH PERSONS THAT EXPORT SENSITIVE TECHNOLOGY TO IRAN.**

(a) IN GENERAL.—Notwithstanding any other provision of law, and pursuant to such regulations as the President may prescribe, the head of an executive agency may not enter into or renew a contract for the procurement of goods or services with a person that exports sensitive technology to Iran.

(b) WAIVER.—The President may waive the application of the prohibition under subsection (a) if the President—

(1) determines that such a waiver is in the national interest of the United States; and

(2) submits to Congress a report describing the reasons for the determination.

(c) SENSITIVE TECHNOLOGY DEFINED.—The term “sensitive technology” means hardware, software, telecommunications equipment, or any other technology that the President determines is to be used specifically—

(1) to restrict the free flow of unbiased information in Iran; or

(2) to disrupt, monitor, or otherwise restrict speech of the people of Iran.

**SEC. 106. INCREASED CAPACITY FOR EFFORTS TO COMBAT UNLAWFUL OR TERRORIST FINANCING.**

(a) FINDING.—Congress finds that the work of the Office of Terrorism and Financial Intelligence of the Department of the Treasury, which includes the Office of Foreign Assets Control and the Financial Crimes Enforcement Network, is critical to ensuring that the international financial system is not used for purposes of supporting terrorism and developing weapons of mass destruction.

(b) AUTHORIZATION OF APPROPRIATIONS FOR OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE.— There are authorized to be appropriated to the Secretary of the Treasury for the Office of Terrorism and Financial Intelligence—

(1) \$64,611,000 for fiscal year 2010; and

(2) such sums as may be necessary for each of the fiscal years 2011 and 2012.

(c) AUTHORIZATION OF APPROPRIATIONS FOR THE FINANCIAL CRIMES ENFORCEMENT NETWORK.—Section 310(d)(1) of title 31, United States Code, is amended by striking “such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005” and inserting “\$104,260,000 for fiscal year 2010 and such sums as may be necessary for each of the fiscal years 2011 and 2012”.

**SEC. 107. REPORTING REQUIREMENTS.**

(a) REPORT ON INVESTMENT AND ACTIVITIES THAT MAY BE SANCTIONABLE UNDER IRAN SANCTIONS ACT OF 1996.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report containing—

(A) a description of—

(i) any foreign investments of \$20,000,000 or more that contribute directly and significantly to the enhancement of Iran’s ability to develop petroleum resources made during the period described in paragraph (2);

(ii) any sale, lease, or provision to Iran during the period described in paragraph (2) of any goods, services, technology, information, or support that would facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products; and

(iii) any refined petroleum products provided to Iran during the period described in paragraph (2) and any other activity that could contribute directly and significantly to the enhancement of Iran's ability to import refined petroleum products during that period;

(B) with respect to each investment or other activity described in subparagraph (A), an identification of—

(i) the date or dates of the investment or activity;

(ii) the steps taken by the United States to respond to the investment or activity;

(iii) the name and United States domiciliary of any person that participated or invested in or facilitated the investment or activity; and

(iv) any Federal Government contracts to which any person referred to in clause (iii) are parties; and

(C) the determination of the President with respect to whether each such investment or activity qualifies as a sanctionable offense under section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(2) PERIOD DESCRIBED.—The period described in this paragraph is the period beginning on January 1, 2009, and ending on the date on which the President submits the report under paragraph (1).

(b) SUBSEQUENT REPORTS.—Not later than 1 year after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to the appropriate congressional committees an updated version of the report required under subsection (a) that contains the information required under that subsection for the 180-day period preceding the submission of the updated report.

(c) FORM OF REPORTS; PUBLICATION.—A report submitted under subsection (a) or (b) shall be submitted in unclassified form, but may contain a classified annex. The unclassified portion of the report shall be published in the Federal Register.

#### **SEC. 108. SENSE OF CONGRESS REGARDING THE IMPOSITION OF SANCTIONS ON THE CENTRAL BANK OF IRAN.**

Congress urges the President, in the strongest terms, to consider immediately using the authority of the President to impose sanctions on the Central Bank of Iran and any other Iranian bank engaged in proliferation activities or support of terrorist groups.

#### **SEC. 109. POLICY OF THE UNITED STATES REGARDING IRAN'S REVOLUTIONARY GUARD CORPS AND ITS AFFILIATES.**

It is the sense of Congress that the United States should—

(1) continue to target Iran's Revolutionary Guard Corps persistently with economic sanctions for its support for terrorism, its role in proliferation, and its oppressive activities against the people of Iran; and

(2) impose sanctions, including travel restrictions, sanctions authorized pursuant to this Act, and the full range of sanctions available to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), on—

(A) any foreign individual or entity that is an agent, alias, front, instrumentality, official, or affiliate of Iran's Revolutionary Guard Corps and is designated for the imposition of sanctions by the President;

(B) any individual or entity who—

(i) has provided material support to Iran's Revolutionary Guard Corps or any of its affiliates designated for the imposition of sanctions by the President; or

(ii) has conducted any financial or commercial transaction with Iran's Revolutionary Guard Corps or any of its affiliates so designated; and

(C) any foreign government found—

(i) to be providing material support to Iran's Revolutionary Guard Corps or any of its affiliates designated for the imposition of sanctions by the President; or

(ii) to have conducted any commercial transaction or financial transaction with Iran's Revolutionary Guard Corps or any of its affiliates so designated.

**SEC. 110. POLICY OF THE UNITED STATES WITH RESPECT TO IRAN AND HEZBOLLAH.**

It is the sense of Congress that the United States should—

(1) continue to counter support received by Hezbollah from the Government of Iran and other foreign governments in response to Hezbollah's terrorist activities and the threat Hezbollah poses to Israel, the democratic sovereignty of Lebanon, and the national security interests of the United States;

(2) impose the full range of sanctions available to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) on Hezbollah, its designated affiliates and supporters, and persons providing Hezbollah with commercial, financial, or other services;

(3) urge the European Union, individual countries in Europe, and other countries to classify Hezbollah as a terrorist organization to facilitate the disruption of Hezbollah's operations; and

- (4) renew international efforts to disarm Hezbollah and disband its militias in Lebanon, as called for by United Nations Security Council Resolutions 1559 (2004) and 1701 (2006).

**SEC. 111. SENSE OF CONGRESS REGARDING THE IMPOSITION OF MULTILATERAL SANCTIONS WITH RESPECT TO IRAN.**

It is the sense of Congress that –

- (1) in general, multilateral sanctions are more effective than unilateral sanctions at achieving desired results from countries such as Iran;
- (2) the President should continue to work with allies of the United States to impose such sanctions as may be necessary to prevent the Government of Iran from acquiring a nuclear weapons capability; and
- (3) the United States should continue to consult with the 5 permanent members of the United Nations Security Council and Germany (commonly referred to as the ‘P5-plus-1’) and other interested countries regarding imposing new sanctions with respect to Iran in the event that diplomatic efforts to prevent Iran from acquiring a nuclear weapons capability fail.

**TITLE II—DIVESTMENT FROM CERTAIN COMPANIES THAT INVEST IN IRAN**

**SEC. 201. DEFINITIONS.**

In this title:

- (1) ENERGY SECTOR.—The term “energy sector” refers to activities to develop petroleum or natural gas resources or nuclear power.
- (2) FINANCIAL INSTITUTION.—The term “financial institution” has the meaning given that term in section 14(5) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).
- (3) IRAN.—The term “Iran” includes any agency or instrumentality of Iran.
- (4) PERSON.—The term “person” means—
  - (A) a natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;
  - (B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3))); and
  - (C) any successor, subunit, parent company, or subsidiary of any entity described in

subparagraph (A) or (B).

(5) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(6) STATE OR LOCAL GOVERNMENT.—The term “State or local government” includes—

(A) any State and any agency or instrumentality thereof;

(B) any local government within a State, and any agency or instrumentality thereof;

(C) any other governmental instrumentality; and

(D) any public institution of higher education within the meaning of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

**SEC. 202. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES THAT INVEST IN IRAN.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States Government should support the decision of any State or local government that for moral, prudential, or reputational reasons divests from, or prohibits the investment of assets of the State or local government in, a person that engages in investment activities in the energy sector of Iran, as long as that country is subject to economic sanctions imposed by the United States.

(b) AUTHORITY TO DIVEST.—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (d) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, any person that the State or local government determines, using credible information available to the public, engages in investment activities in Iran described in subsection (c).

(c) INVESTMENT ACTIVITIES DESCRIBED.—A person engages in investment activities in Iran described in this subsection if the person—

(1) has an investment of \$20,000,000 or more in the energy sector of Iran, including in a person that provides oil or liquified natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquified natural gas, for the energy sector in Iran; or

(2) is a financial institution that extends \$20,000,000 or more in credit to another person, for 45 days or more, if that person will use the credit to invest in the energy sector in Iran.

(d) REQUIREMENTS.—Any measure taken by a State or local government under subsection (b) shall meet the following requirements:

(1) NOTICE.—The State or local government shall provide written notice to each person to which a measure is to be applied.

(2) TIMING.—The measure shall apply to a person not earlier than the date that is 90 days after the date on which written notice is provided to the person under paragraph (1).

(3) OPPORTUNITY FOR HEARING.—The State or local government shall provide an opportunity to comment in writing to each person to which a measure is to be applied. If the person demonstrates to the State or local government that the person does not engage in investment activities in Iran described in subsection (c), the measure shall not apply to the person.

(4) SENSE OF CONGRESS ON AVOIDING ERRONEOUS TARGETING.—It is the sense of Congress that a State or local government should not adopt a measure under subsection (b) with respect to a person unless the State or local government has made every effort to avoid erroneously targeting the person and has verified that the person engages in investment activities in Iran described in subsection (c).

(e) NOTICE TO DEPARTMENT OF JUSTICE.—Not later than 30 days after adopting a measure pursuant to subsection (b), a State or local government shall submit written notice to the Attorney General describing the measure.

(f) NONPREEMPTION.—A measure of a State or local government authorized under subsection (b) is not preempted by any Federal law or regulation except to the extent that activities with Iran are conducted under a license from the Office of Foreign Assets Control, or are expressly exempted under Federal law from the requirement to be conducted under such license.

(g) DEFINITIONS.—In this section:

(1) INVESTMENT.—The “investment” of assets, with respect to a State or local government, includes—

(A) a commitment or contribution of assets;

(B) a loan or other extension of credit; and

(C) the entry into or renewal of a contract for goods or services.

(2) ASSETS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “assets” refers to public monies and includes any pension, retirement, annuity, or endowment fund, or similar instrument, that is controlled by a State or local government.

(B) EXCEPTION.—The term “assets” does not include employee benefit plans covered by title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section applies to measures adopted by a State or local government before, on, or after the date of the enactment of this Act.

(2) NOTICE REQUIREMENTS.—Subsections (d) and (e) apply to measures adopted by a State or local government on or after the date of the enactment of this Act.

### **SEC. 203. SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY ASSET MANAGERS.**

(a) IN GENERAL.—Section 13(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–13(c)(1)) is amended to read as follows:

“(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information available to the public—

“(A) conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007 (50 U.S.C. 1701 note); or

“(B) engage in investment activities in Iran described in section 202(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009.”.

(b) SEC REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue any revisions the Commission determines to be necessary to the regulations requiring disclosure by each registered investment company that divests itself of securities in accordance with section 13(c) of the Investment Company Act of 1940 to include divestments of securities in accordance with paragraph (1)(B) of such section, as added by subsection (a).

### **SEC. 204. SENSE OF CONGRESS REGARDING CERTAIN ERISA PLAN INVESTMENTS.**

It is the sense of Congress that a fiduciary of an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)), may divest plan assets from, or avoid investing plan assets in, any person the fiduciary determines engages in investment activities in Iran described in section 202(c) of this Act, without breaching the responsibilities, obligations, or duties imposed upon the fiduciary by section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104), if—

(1) the fiduciary makes such determination using credible information that is available to the public; and

(2) such divestment or avoidance of investment is conducted in accordance with section 2509.08–1 of title 29, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act).

### **TITLE III—PREVENTION OF TRANSSHIPMENT, REEXPORTATION, OR DIVERSION OF SENSITIVE ITEMS TO IRAN**

#### **SEC. 301. DEFINITIONS.**

In this title:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Financial Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) **END-USER.**—The term “end-user” means an end-user as that term is used in the Export Administration Regulations.

(3) **EXPORT ADMINISTRATION REGULATIONS.**— The term “Export Administration Regulations” means subchapter C of chapter VII of title 15, Code of Federal Regulations.

(4) **GOVERNMENT.**—The term “government” includes any agency or instrumentality of a government.

(5) **IRAN.**—The term “Iran” includes any agency or instrumentality of Iran.

(6) STATE SPONSOR OF TERRORISM.—The term “state sponsor of terrorism” means any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism pursuant to—

(A) section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) (or any successor thereto);

(B) section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)); or

(C) section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)).

(7) TRANSSHIPMENT, REEXPORTATION, OR DIVERSION.—The term “transshipment, reexportation, or diversion” means the exportation, directly or indirectly, of items that originated in the United States to an end-user whose identity cannot be verified or to an entity in Iran in violation of the laws or regulations of the United States by any means, including by—

(A) shipping such items through 1 or more foreign countries; or

(B) by using false information regarding the country of origin of such items.

**SEC. 302. IDENTIFICATION OF LOCATIONS OF CONCERN WITH RESPECT TO TRANSSHIPMENT, RE-EXPORTATION, OR DIVERSION OF CERTAIN ITEMS TO IRAN.**

Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Director of National Intelligence shall submit to the Secretary of Commerce, the Secretary of State, the Secretary of the Treasury, and the appropriate congressional committees a report that identifies all countries that the Director determines are of concern with respect to transshipment, reexportation, or diversion of items subject to the provisions of the Export Administration Regulations to an entity in Iran.

**SEC. 303. DESTINATIONS OF POSSIBLE DIVERSION CONCERN AND DESTINATIONS OF DIVERSION CONCERN.**

(a) DESTINATIONS OF POSSIBLE DIVERSION CONCERN.—

(1) DESIGNATION.—The Secretary of Commerce shall designate a country as a Destination of Possible Diversion Concern if the Secretary, in consultation with the Secretary of State and the Secretary of the Treasury, determines that such designation is appropriate to carry out activities to strengthen the export control systems of that country based on criteria that include—

(A) the volume of items that originated in the United States that are transported through the country to end-users whose identities cannot be verified;

(B) the inadequacy of the export and reexport controls of the country;

(C) the unwillingness or demonstrated inability of the government of the country to control diversion activities; and

(D) the unwillingness or inability of the government of the country to cooperate with the United States in interdiction efforts.

(2) **STRENGTHENING EXPORT CONTROL SYSTEMS OF DESTINATIONS OF POSSIBLE DIVERSION CONCERN.**—If the Secretary of Commerce designates a country as a Destination of Possible Diversion Concern under paragraph (1), the United States shall initiate government-to-government activities described in paragraph (3) to strengthen the export control systems of the country.

(3) **GOVERNMENT-TO-GOVERNMENT ACTIVITIES DESCRIBED.**—The government-to-government activities described in this paragraph include—

(A) cooperation by agencies and departments of the United States with counterpart agencies and departments in a country designated as a Destination of Possible Diversion Concern under paragraph (1) to—

(i) develop or strengthen export control systems in the country;

(ii) strengthen cooperation and facilitate enforcement of export control systems in the country; and

(iii) promote information and data exchanges among agencies of the country and with the United States; and

(B) efforts by the Office of International Programs of the Department of Commerce to strengthen the export control systems of the country to—

(i) facilitate legitimate trade in high-technology goods; and

(ii) prevent terrorists and state sponsors of terrorism, including Iran, from obtaining nuclear, biological, and chemical weapons, defense technologies, components for improvised explosive devices, and other defense items.

(b) **DESTINATIONS OF DIVERSION CONCERN.**—

(1) **DESIGNATION.**—The Secretary of Commerce shall designate a country as a Destination of Diversion Concern if the Secretary, in consultation with the Secretary of State and the Secretary of the Treasury, determines—

(A) that the government of the country allows substantial transshipment, reexportation,

or diversion of items that originated in the United States to end-users whose identities cannot be verified or to entities in Iran; or

(B) 12 months after the Secretary of Commerce designates the country as a Destination of Possible Diversion Concern under subsection (a)(1), that the country has failed—

(i) to cooperate with the government-to-government activities initiated by the United States under subsection (a)(2); or

(ii) based on the criteria described in subsection (a)(1), to adequately strengthen the export control systems of the country.

(2) LICENSING CONTROLS WITH RESPECT TO DESTINATIONS OF DIVERSION CONCERN.—

(A) REPORT ON SUSPECT ITEMS.—

(i) IN GENERAL.—Not later than 45 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the Director of National Intelligence, the Secretary of State, and the Secretary of the Treasury, shall submit to the appropriate congressional committees a report containing a list of items that, if the items were transshipped, reexported, or diverted to Iran, could contribute to—

(I) Iran obtaining nuclear, biological, or chemical weapons, defense technologies, components for improvised explosive devices, or other defense items; or

(II) support by Iran for acts of international terrorism.

(ii) CONSIDERATIONS FOR LIST.—In developing the list required under clause (i), the Secretary of Commerce shall consider—

(I) the items subject to licensing requirements under section 742.8 of title 15, Code of Federal Regulations (or any corresponding similar regulation or ruling) and other existing licensing requirements; and

(II) the items added to the list of items for which a license is required for exportation to North Korea by the final rule of the Bureau of Export Administration of the Department of Commerce issued on June 19, 2000 (65 Fed. Reg. 38148; relating to export restrictions on North Korea).

(B) LICENSING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Commerce shall require a license to export an item on the list required under subparagraph (A)(i) to a country designated as a Destination of Diversion Concern.

(C) WAIVER.—The President may waive the imposition of the licensing requirement

under subparagraph (B) with respect to a country designated as a Destination of Diversion Concern if the President—

- (i) determines that such a waiver is in the national interest of the United States; and
- (ii) submits to the appropriate congressional committees a report describing the reasons for the determination.

(c) **TERMINATION OF DESIGNATION.**—The designation of a country as a Destination of Possible Diversion Concern or a Destination of Diversion Concern shall terminate on the date on which the Secretary of Commerce determines, based on the criteria described in subparagraphs (A) through (D) of subsection (a)(1), and certifies to Congress and the President that the country has adequately strengthened the export control systems of the country to prevent transshipment, reexportation, and diversion of items through the country to end-users whose identities cannot be verified or to entities in Iran.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

#### **SEC. 304. REPORT ON EXPANDING DIVERSION CONCERN SYSTEM TO COUNTRIES OTHER THAN IRAN.**

Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Secretary of Commerce, the Secretary of State, and the Secretary of the Treasury, shall submit to the appropriate congressional committees a report that—

(1) identifies any country that the Director determines may be transshipping, reexporting, or diverting items subject to the provisions of the Export Administration Regulations to another country if such other country—

(A) is seeking to obtain nuclear, biological, or chemical weapons, defense technologies, components for improvised explosive devices, or other defense items; or

(B) provides support for acts of international terrorism; and

(2) assesses the feasibility and advisability of expanding the system established under section 303 for designating countries as Destinations of Possible Diversion Concern and Destinations of Diversion Concern to include countries identified under paragraph (1).

### **TITLE IV—EFFECTIVE DATE; SUNSET**

#### **SEC. 401. EFFECTIVE DATE; SUNSET.**

(a) EFFECTIVE DATE.—Except as provided in sections 104, 202, and 303(b)(2), the provisions of, and amendments made by, this Act shall take effect on the date that is 120 days after the date of the enactment of this Act.

(b) SUNSET.—The provisions of this Act shall terminate on the date that is 30 days after the date on which the President certifies to Congress that—

(1) the Government of Iran has ceased providing support for acts of international terrorism and no longer satisfies the requirements for designation as a state sponsor of terrorism under—

(A) section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) (or any successor thereto);

(B) section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)); or

(C) section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)); and

(2) Iran has ceased the pursuit, acquisition, and development of nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.



## **NAM Staff Technical Paper: Iran Sanctions Legislation Impact**

Recognizing the legitimate and serious threats Iran poses, NAM staff believes the Iran Sanctions legislation **currently being considered in Congress** will have adverse effects on U.S. exports and American jobs. The consequences result from the breadth of the prohibitions on doing business with foreign companies. Rather than being focused on transactions that have a direct relationship to Iran's petroleum production or consumption, the prohibitions would needlessly affect U.S. exports and overseas business that are unrelated to the main objective.

We believe that enacting the current legislation would have the following consequences:

- 1. Decreasing exports, jobs, export credit financing and business opportunities abroad and impeding trade facilitation at a time when the United States needs strong export growth to spur U.S. economic expansion and create jobs in America.**

- a. Impact on Exports and Jobs**

As drafted, the legislation could prohibit U.S. companies from trading with foreign entities that have ties to the Iran petroleum sector, even though the U.S. transaction with the foreign entity has no relationship to any Iranian transaction. The impact on U.S. industry will depend on how broadly the legislation is interpreted, but as we understand the language of the legislation, virtually any transaction with foreign entities doing business related to the Iranian petroleum sector could be prohibited. *Based on this understanding and the analysis below, we estimate a minimum annual loss of \$25 billion in U.S. exports of manufactured goods and 210,000 jobs.*

The size of the negative impact on U.S. exports would depend on the number of foreign entities deemed contributing to the Iranian petroleum sector, and how much those foreign entities are importing from the United States or buying from U.S. affiliates overseas. Thus, a precise estimate would require knowledge of: (1) the specific foreign companies that are trading with Iran in a manner contributing to their petroleum sector; and (2) the value of U.S. sales to those companies. That information is unavailable, so it is necessary to make an estimate based on the best available information.

Our methodology was two-fold: (1) utilizing aggregate U.S. and global trade data; and (2) seeking impact estimates from individual U.S. companies likely to be affected. The information received from our small sample of U.S. industry was the basis of our approach to the aggregate analysis on the manufacturing sector.

## Aggregate Trade Data

In examining trade data to ascertain the impact on U.S. companies, we worked with data related to the top 25 exporters to Iran<sup>1</sup>. In 2008, these countries exported \$38 billion of manufactured goods to Iran. Trade data do not identify the purchasers of imports, so it is impossible to know exactly how much of these exports supported Iran's petroleum industry. However, the largest categories of exports accounting for over 50% of all exports to Iran were machinery, electrical machinery, iron and steel products, and instruments--all of which could possibly benefit the petroleum industry. As Europe is the principal economy exporting manufactured goods to Iran, we looked particularly closely at European data. Looking at European exports of machinery to Iran, it is evident that a considerable amount of the exports could be related to petroleum production or distribution, as major categories include turbines, pumps and compressors, pipe taps and valves, steel pipes and tubes, and parts for oilfield machinery. Thus, it would seem that a considerable portion of those exports to Iran could well be related to Iran's petroleum industry.

The next question is which foreign entities exported the products supporting Iran's petroleum industry. Here again, we have no specific knowledge. However, we know that European industry is highly concentrated, just like the U.S. industry. We lacked specific figures for the European Union. However, we have data for the United Kingdom (UK), and make the assumption that the UK's concentration ratios are reflective of those of Europe as a whole. The UK data show that, on average, the five largest producers account for roughly one-third of the production of each individual industry, and the 15 largest producers account for half of the total production.

Additionally supporting the conclusion that the UK's concentration rates are similar to Europe as a whole is the fact that the top 50 European companies accounted for \$11 trillion in revenue in 2009. While sales figures cannot be compared directly to GDP data because they include double-counting (sales of one company to another and also global sales), nevertheless the figure is very impressive when compared to the European Union's GDP of about \$15 trillion. This figure reinforces the view that these companies are likely to account for a very large portion of U.S. exports to Europe, and the situation is likely similar in Japan, Korea, and other industrial economies.

It is reasonable to assume that the foreign companies exporting heavy machinery, oil pipe, turbines, and the like are among the largest manufacturers. *Those same manufacturers are also major customers for U.S. exports of manufactured goods.* In 2008 U.S. companies exported \$500 billion of manufactured goods to the 25 countries in our analysis. The United States is heavily an exporter of capital goods, and indeed \$250 billion of our exports to those countries were capital goods.

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<sup>1</sup> China, Germany, South Korea, Italy, Russia, France, Japan, Turkey, India, Kazakhstan, United Kingdom, Spain, Belgium, Sweden, Switzerland, Ukraine, Taiwan, Netherlands, Austria, Thailand, Singapore, Malaysia, Indonesia, Finland, and Brazil.

By their nature, capital goods exports are purchased by production entities overseas that use those capital goods in their production processes. Using the UK's concentration ratios, and assuming that the purchase of capital goods is proportional to the proportion of foreign production, we estimate that one-half of U.S. capital goods exports to the top 25 countries were sold to the largest producing entities. As one-third of U.S. exports typically go to U.S. overseas facilities, we estimate about \$80 billion of the \$250 billion capital goods exports were shipped to U.S. affiliates. The remaining \$170 billion were sold to foreign entities. Given the concentration ratios, one-half of that amount (\$85 billion) was shipped to a relatively small number of the largest producing companies in each economy.

Given that these large firms in Europe, Japan, Korea, and elsewhere tend to be conglomerates producing in many industries and having many affiliates, and given the likelihood that petroleum-sector-related items are likely to be shipped by some part of these large firms, there is a reasonable probability that huge swaths of foreign customers for U.S. capital goods (as well as for other goods and services) could be affected. We estimate a 25 percent probability for the largest companies, putting \$21 billion of U.S. exports at risk (.25\* \$85 billion) and a five percent probability for the rest of the industrial customers for U.S. capital goods in the 25 economies, or \$4 billion (.05 \* \$85 billion) annually.

Thus we believe reasonable assumptions lead to the conclusion that a broadly-worded sanctions bill could put \$25 billion of U.S. exports at risk. Given that each billion dollars of exports is related to 8,400 jobs, the loss of \$25 billion of U.S. capital goods exports would result in the loss of 210,000 jobs across many industry sectors.

The actual impact likely would be considerably higher because the above estimates are related only to capital goods and unfinished products. U.S. exports of chemicals and other products would be affected as well. Beyond that, the services trade, businesses with foreign affiliates, and the impact on overseas production for local consumption are not reflected in the above estimates.

### Individual Company Data

While virtually all companies we polled believe they will be impacted, only a handful thought they had sufficient information to provide an estimate. Those companies, in the electronics, heavy manufacturing, information technology, chemical, capital goods, and aerospace industries were able to estimate, based on their interpretations of the legislation, the value of potential lost business and the impact on their workforces. From the small sample, companies across different business sectors estimated that they would lose from between \$50 million to \$16 billion if the final bill mirrored either piece of legislation as passed.

The responses from the individual companies support the conclusions drawn from the aggregate trade data. With individual companies standing to lose \$16 billion in business opportunities, it is easy to extrapolate out across all industry to see how it is highly probable that U.S. companies would lose \$25 billion in exports and reduce employment by 210,000 employees. While the aggregate data only represents capital goods, the sample of individual company results highlights the breadth of the impact across not only manufacturing, but also services.

## **b. Impact on Export Credit Financing**

Another factor to consider when evaluating the impact of the sanctions legislation on legitimate business is how export credit financing will be affected. The legislation expands the definition of a U.S. person to include export credit agencies (ECAs) and, as a result, U.S. companies could find export credit financing options from foreign ECAs off the table. The EX-IM Bank was created for the purposes of financing and insuring foreign purchases of United States goods for customers unable or unwilling to accept credit risk. The mission of the Bank is to create and sustain U.S. jobs by financing sales of U.S. exports to international buyers. In addition to support from the EX-IM Bank, companies often seek co-financing arrangements from local ECAs to cover the portion of the project not financed by EX-IM. Under the legislation, if ECAs partner with third companies involved in Iran's petroleum sector, EX-IM would be prohibited from co-financing with that ECA on projects unrelated to Iran. This would adversely affect U.S. companies' ability to finance new manufacturing projects and business operations.

This will hurt U.S. companies' ability to compete due to the fact that other ECAs can fully finance projects up to the maximum levels authorized whereas EX-IM can not. Without financing from foreign ECAs, U.S. companies will be subject to higher interest and insurance rates, at greater risk for default from their financiers, and exposed to greater liability.

Given the tight credit market, the inability to rely on ECAs for financing will have a reverberating negative impact on the ability of U.S. companies to complete existing projects or initiate new ones critical to maintaining growth in exports. Financing for major projects is critical to U.S. competitiveness and, without ECAs, U.S. companies will have to rely on commercial financing when their competitors do not. American companies will lose many business opportunities as a result.

## **c. Impact on Trade Facilitation**

An additional issue to consider is the impact on ocean container vessels. The legislation also expands the definition of U.S. persons to include carrier lines. The top six carriers (representing 36.7% of the global market) with operations at U.S. ports also operate in Iran. If sanctions are applied to the major carrier lines, U.S. exporters will suddenly find their options for shipping goods severely limited. Based on global market shares, the top six carriers collectively move \$173 billion in U.S. exports and \$423 billion in imports. Companies using those carriers to move goods to and from the United States could have to find new carriers and arrange new shipping contracts—activities that will disrupt supply chains and decrease U.S. competitiveness.

It is also unknown what relationship the other carriers operating in the United States have with Iran and if they have capacity to cover an additional 40% in containerized trade. In short, this could be very disruptive to global supply chains and likely result in an increase in shipping rates. The volume of trade affected could send shock waves throughout supply chains around the world. The impact on the world economy cannot be understated if the United States is unable to efficiently and effectively move goods in and out of the country.

## **2. Harming important foreign policy objectives**

### **a. Preventing nation building in strategic locations such as Iraq**

After three decades of decline, sanctions, and war, Iraq's oil industry now appears poised to recover its place among the world's leading producers. Currently Iraq produces about 2.4 million barrels a day and ranks below the top dozen producers. Over the next two to three years, Iraq is looking to substantially expand its capabilities. As safety has improved in Iraq, U.S. companies would like to bid on contracts to help rebuild the country and to begin restoring and expanding oil production in Iraq. However, the pending sanctions legislation could prevent U.S. Engineering/Procurement/Construction (EPC) companies from bidding on contracts.

The facts in Iraq are not transparent, but a reasonable EPC has to assume that the contracts could involve the Ministry of Oil in Iraq. U.S. companies have reason to believe that oil is used by the Ministry of Energy to produce electricity. Iraq and Iran, as neighbors, have economic ties and, while we are not certain, it is likely that Iraq sells electricity to Iran that could support the Iranian petroleum industry. As a result of the economic ties, EPCs could be barred from partnering with Iraq to expand its oil production.

Not only is this economically damaging for U.S. companies, but it will also substantially hinder American foreign policy objectives in the region. It is projected that should American companies win the contracts in Iraq and begin to rebuild oil production facilities, production could double in six months and, with follow-on work, it could double again in the subsequent six months. Such expansion in Iraq would result in Iraq becoming the #2 oil producing country in the region, displacing Iran (currently #2). If this occurs, a major American foreign policy objective could be achieved. However, the sanctions legislation could prevent U.S. companies from being involved, and thus thwarts efforts for Iraq to become the #2 producer in the region. After all we have invested in Iraq, it would be unfortunate to prohibit U.S. companies from being eligible to compete for reconstruction projects.

### **b. Harming opportunities to develop strategic partnerships with other countries and regions to reduce Western dependence on oil from Russia and Iran**

Azerbaijan has become a strategic partner for the West. Azerbaijan is developing its oil resources and thus has created alternate sources for oil for the West. Azerbaijan has partnered with Turkey to create pipelines that avoid Iran and Russia. If the legislation is implemented, U.S. companies could be barred from partnering with Azerbaijan on existing pipelines and new ones under consideration due to Azerbaijan's relationships with Iran. This result could have negative implications for our larger foreign policy objectives in the region.

In the Gulf of Mexico and other locations, U.S. energy companies' partnerships with a number of international companies could be subject to sanctions under the pending legislation. U.S. companies are often involved in the Gulf of Mexico and in other locations as part of a larger conglomerate. Some European companies participating in the conglomerate have ties to Iran's petroleum sector. U.S. companies would thus have to divest their interest. As a result, foreign oil companies will take a larger share of these partnerships.

The legislation will undermine the U.S. objective to unlock new domestic energy resources and build up U.S. energy security. If U.S. companies have to divest from the partnerships, the United States would be allowing other countries to play a larger role in the Gulf of Mexico. These projects cover potentially billions of dollars in investment and could have an impact on existing production, major capital projects, and exploration drilling. However, the sanctions legislation would jeopardize any participation by U.S. companies.

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