

# BUNKERSPOT

INDEPENDENT INTELLIGENCE FOR THE GLOBAL BUNKER INDUSTRY

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## **BRAVE NEW WORLD:** Are bunker suppliers the new banks?

### **Inside:**

- Offshore bunkering
- Environmental Issues
- US Oil Sanctions
- Credit Management
- News & Events



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# Legal minefield

*US trade sanctions against Iran can cause major problems for bunker suppliers*

**W**ill you or your company be the first marine fuel supplier, broker or trader sanctioned by the US Treasury Department's Office of Foreign Assets Control (OFAC) for trading with Iran?

Trends in OFAC sanctions suggest that the OFAC soon may turn its public attention to marine fuel suppliers, brokers and traders, even to those who have no direct US connection. The signs are that OFAC is turning its internal attention to those selling marine fuel which either has some Iran sourcing or which facilitates otherwise unlicensed trade with Iran.

This attention makes sense. The only thing that's surprising about it is that it's taken OFAC so long to realise that a restriction on marine fuel sales, and provision to vessels trading with Iran, will even further constrain Iran's economy.

Exported oil is still Iran's primary source of income. Most Iranian petroleum exports still require marine tanker transport. These require marine fuel to run. Iranian petroleum is either brought by tanker to a refinery and resold there, or transferred in open water to a non-Iranian tanker, which itself requires marine fuel to run. Enabling this are the vessels which transport spare parts, equipment and the range of supplies essential to the operation of the Iranian petroleum industry.

Every bit of this commerce with Iran, from the purchase of refined Iranian petroleum products, to supporting its transshipment or provisioning by selling marine fuel to power the vessels trading with Iran, can be subject to OFAC-administered

**'Whether your company is in the US, sells outside the US, or entirely unrelated to the US, you can be subject to US sanctions if your company is involved with commerce to, from, or with Iran'**

sanctions. If OFAC sanctions can cut off the marine fuel supply, the trade stops.

## On the list

Might you as a marine fuel supplier, broker or trader be the target of OFAC sanctions? First, consider the potential impact of sanctions. OFAC's *Overview of OFAC Regulations Involving Sanctions against Iran* warns that criminal penalties for violations of the Iranian Transactions Regulations may result in a fine of up to \$1,000,000 and a prison sentence of up to 20 years.

If your company is sanctioned, OFAC will add it to its Specially Designated Nationals (SDN) list and once you are on that list, no entity which wants to avoid sanctions will do business with you. It is very difficult to be removed from the list by OFAC. Whether your company is in the United States, sells outside the United States, or is entirely unrelated to the United States, you can be subject to US sanctions if your company is involved with commerce to, from, or with Iran, with substantial civil and

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criminal penalties – and even more seriously – substantial damage to your business if you are added to the SDN list.

Consider too the present situation of Iranian shipping. About two years ago, OFAC and the **European Commission (EC)** added Iran's main shipowner **IRISL** to their SDN lists. But IRISL's managing director Mohammad Hossein Dajmar was quoted in *TradeWinds* (16 May, 2013) as saying IRISL that still has 164 ships operating in international waters. Even with sanctions, IRISL's revenues are still nearly \$1 billion per year. Given sanctions, IRISL, of course, does not go out of its way to identify its vessels as owned by IRISL and so it has re-flagged and re-named many of them.

On 13 March, 2013, OFAC sanctioned a US-connected marine fuel inspection service, **Maritech Commercial Inc.** for providing marine fuel inspection services, to vessels which OFAC had identified to be IRISL-owned. The entities contracting with Maritech, of course, seemed to have no Iranian connections, so Maritech didn't bother to check if the OFAC SDN list mentioned the vessels. If it had checked, it would have found the vessels, but since it hadn't checked, OFAC sanctioned and fined Maritech.

Similarly, in March 2013, OFAC sanctioned Greek owner Dimitris Cambis and his company, **Impire Shipping Ltd** alleging that he had purchased Iran-owned tankers and then used them to transport Iran-sourced petroleum products. Cambis insisted that he had no dealings with Iran, and he and his company had no direct US connections. OFAC, however, placed him and his company on the OFAC SDN list, cutting him and his company off from trade with any US-connected entity.

## Product 'laundering'

Consider how Iran now markets its petroleum products, attempting to circumvent international sanctions. The 'laundering' of Iranian product is now so well known that failing to inquire about the real source of product could be claimed as a defence to sanctions. On 30 March 2013, *The Economist* said:

'Iran is in the printing business now ... documents are faked to make Iranian oil look as if it came from Iraq. Iraq exports a lot of oil through Iran by lorry. Iranians who handle Iraqi documents can easily copy and reuse them.'

'One way of keeping sales going is to dress up Iranian oil as Iraqi. Another trick is to move Iranian oil onto foreign tankers on

the open sea. Once crews have switched off their ships' tracking beacons, this is all but undetectable. The oil is sold at a discount. Fujairah is a big market for Iranian oil. ... European firms still trade with Iran, using Swiss subsidiaries which broker deals with the Iranians and collect the crude using tankers under the flag of a third country.'

## Economic lifeblood

Petroleum is Iran's economic lifeblood. Deception is necessary for survival, and that, plus a profit motive for those considering buying Iranian-sourced product, enables the Iranian petroleum industry and those who supply it, to continue to operate. Certainly the nearer one is geographically to Iran, the less certain one can be that the petroleum products offered for sale are not Iranian-origin products.

On 21 December, 2012, the European Union (EU) issued its *Council Regulation (EU) No. 1263/2012*, providing that EU sanctions would not apply to 'the purchase of bunker oil produced and supplied by a third country other than Iran, intended for the propulsion of the engines of vessels...' Under these regulations, the EU deemed acceptable the stemming of vessels with a blend of Iran-origin crude oil, as long as the ship's engines used the oil, and that it was acceptable to purchase or transport the Iranian-composite product as long as there was a blend and production of the Iranian product with that of, and in, some third country.

OFAC has issued a sanctions exemption relating to goods containing Iranian-origin raw materials if 'those raw materials... have been... substantially transformed in a third country by a person other than a United States person.' OFAC has not specifically applied this interpretation to bunker oil that includes a blend of Iranian crude produced in a third country or indicated whether production of bunker oil from Iranian crude would constitute 'substantial transform[ation].'

Consequently, it is unclear whether anyone buying bunkers containing some Iran-origin product, even if the bunkers were refined in a third country, would be subject to OFAC sanctions.

Lastly, consider that the Iranian government, or some arm of it, controls most of Iran's economy. The United States *Code of Federal Regulations (CFR)* Chapter 31, Section § 560.529 on bunkering and emergency repairs, says:

(a) Except as provided in paragraph (b) of this section, goods or services provided in the United States to a non-Iranian

carrier transporting passengers or goods to or from Iran are permissible if they are:

- (1) Bunkers or bunkering services;
- (2) Supplied or performed in the course of emergency repairs; or
- (3) Supplied or performed under circumstances which could not be anticipated prior to the carrier's departure for the United States.

## Risk matrix

Bunker brokers, suppliers and traders must exercise the highest degree of care to avoid being subject to OFAC sanctions. In 2009, OFAC published its Risk Matrix – factors it would consider to lessen sanctions, if it found that an entity had violated OFAC provisions:

- Management has fully assessed the institution's level of risk based on its customer base and product lines. This understanding of risk and strong commitment to OFAC compliance is satisfactorily communicated throughout the organisation
- The board of directors, or board committee, has approved an OFAC compliance programme that includes policies, procedures, controls, and information systems that are adequate, and consistent with the institution's OFAC risk profile
- Staffing levels appear adequate to properly execute the OFAC compliance programme
- Authority and accountability for OFAC compliance are clearly defined and enforced, including the designation of a qualified OFAC officer
- Training is appropriate and effective based on the institution's risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance
- The institution employs strong quality control methods.

These are standards which OFAC considers to be essential to avoiding sanctions violations and which, if present, OFAC will consider to be reason to lessen any sanctions imposed for what a company insists is an inadvertent sanctions violation.

(b) This section does not authorise the provision of goods or services in connection with the transport of any goods to or from the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211.

### Unwitting violations

Under these regulations, a marine fuel broker, trader or supplier could be held liable if it bunkered a vessel which was transporting goods to an Iranian government-owned company (which many Iranian companies ultimately are), even if the marine fuel broker, trader or supplier could not have known of the violation.

This section describes a ‘general license,’ only allowing the provision of bunkers / bunkering services ‘in the United States to a non-Iranian carrier transporting passengers or goods to or from Iran...’ Bunkering outside the United States does not enjoy this permission and it is still a sanctionable OFAC violation to provide bunkers or bunkering services outside the United States (e.g. Europe) to any vessel transporting passengers or goods to or from Iran.

While a significant amount of Iranian-sourced product remains in the international petroleum market, and while Iran continues to evade OFAC sanctions, OFAC is increasingly likely to turn its attention to marine fuel brokers, suppliers, and traders. It is therefore essential to have an active OFAC sanctions compliance programme.

Violating OFAC sanctions regulations is a strict liability offence with only a few mitigating factors. ‘Honest’ violations will still draw OFAC sanctions. This stands in contrast to the UK’s enforcement mechanism which effectively permits total absolution if there are adequate risk management policies and procedures in place. Even though OFAC takes the strict liability approach, it is essential that entities operating in the international sphere have good risk management practices in place so that any assessed penalty for an OFAC violation is mitigated. Marine fuel brokers, suppliers, and traders thus must adopt internal policies and procedures adequate for their respective business.

At the most basic level, customers (and known related third parties) should be screened via OFAC’s SDN list before any business is transacted. Certainly there

**‘OFAC is increasingly likely to turn its attention to marine fuel brokers, suppliers, and traders’**

should be no involvement with IRISL-related entities, or with entities which have transacted business with within a sanctioned country in the recent past.

Sales terms and conditions should be edited to be clear that the company cannot, and does not, guarantee anything with respect to potential sanctions, and that the customer is responsible for determining whether the purchased product originated in Iran.

When OFAC turns its attention to marine fuel brokers, suppliers and traders, if there are any questions about whether to make a sale, how to design a compliance programme, or whether a sale has inadvertently violated OFAC sanctions, it is best to consult a qualified attorney to help determine what, and how much, a company should do to protect itself and respond most cost-effectively.

## Recommendations

While no sales terms and conditions guarantees exemption from OFAC or other sanctions, we have drafted and recommend the following to our clients:

- Buyer warrants that the nominated Vessel and, if the above Vessel is a bunker barge or lighter, the Vessel(s) which will ultimately consume the Products delivered under this Agreement, is / are not: (i) designated in any sanctions list issued by the United Nations, United States, and/or European Union; and/or (ii) owned or controlled by any person or entity registered in or operating from Iran or Syria or designated in any sanctions list issued by the United Nations, United States, and/or European Union.
- Buyer further warrants that the Vessel is not destined for Iran, and that any cargo and/or goods aboard the Vessel are not destined for the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to 31 C.F.R. § 560.211 of the US Code of Federal Regulations. Buyer agrees to indemnify and hold

Seller harmless for any sanctions and/or financial penalties assessed against Seller resulting from a violation of this Clause.

- In respect of any Products to be supplied by Seller, Seller affirms that the Products do not contain any crude oil or petroleum products that Seller knows, or has reasonable cause to suspect, to have originated in or been exported from Iran or other sanctioned countries. SELLER PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE ULTIMATE ORIGIN OF THE PRODUCTS BEING PROVIDED TO BUYER.
- Seller and all its offices and dedicated agencies abide by international trade sanctions regulations, including those of the United Nations, United States, and European Union. Seller reaffirms that it will abide by all international trade sanctions to the best of its ability, and that in accordance with any applicable sanctions legislation, Products supplied by Seller will not under any circumstances have an Iranian Certificate of Origin.
- Seller warrants that, to the best of its knowledge, the Products to be supplied to the Vessel are not (i) sourced by any country or countries that are on any sanctions lists issued by the United Nations, United States, and/or European Union; and (ii) owned or controlled by any person or entity registered in or operating from Iran or designated in any sanctions issued by the United Nations, United States, and/or European Union.
- To the best of Seller’s knowledge, without prejudice, Seller understands from its usual Suppliers and/or ex-wharf sellers that their source of oil which Seller has requested to load out from their nominated terminals are not of Iranian Origin nor that they have been exported from Iran.
- Seller has an internal company policy where it does not knowingly or deliberately deal with Iranian origin product, and Seller has informed its suppliers accordingly. Seller exercises all necessary due diligence to ensure that the any Products it supplies will not directly or indirectly originate from Iran, and Seller also does not deal with Iranian counterparties or their counterparties under any circumstances.