

SANCTIONS UPDATE • JUNE 7, 2020

Amidst COVID-19, OFAC Exempts Medicines, PPE, Other Items From Sanctions on Iran's Manufacturing Sector

The United States maintains comprehensive sanctions on Iran and enforces them vigorously. The COVID-19 pandemic, which [according to June 5 data from Johns Hopkins](#) has claimed over 8,100 lives and infected more than 167,000 people in Iran, has triggered concerns that U.S. sanctions impede Iran's access to medicine, medical supplies, and other essentials needed to respond to the novel coronavirus.

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In the two years after the U.S. President [announced](#) he would withdraw the United States from the Iran nuclear deal, the Trump Administration has adopted successive measures to re-impose and expand U.S. sanctions, to exert "maximum pressure" by isolating Iran economically. International support for intensified U.S. sanctions has been scant, and the United States has utilized secondary sanctions to deter foreign parties from engaging in Iran-related transactions.

The remaining JCPOA parties—Germany, France, the United Kingdom, Russia, China, and Iran, plus the European Union—have sought to preserve some of the JCPOA's economic benefits to Iran. The European Union activated an updated sanctions "blocking" statute to [sustain](#) "trade and economic relations between the EU and Iran." The United Kingdom, France, and Germany (the "E3") established INSTEX (Instrument in Support of Trade Exchanges) as founding shareholders to facilitate limited trade with Iran [beyond the reach](#) of U.S. sanctions. Last November, six European countries—Belgium, Denmark, Finland, the Netherlands, Norway and Sweden—[joined](#) INSTEX as shareholders. In March, INSTEX [executed](#) its first transaction—the export of medical supplies from Europe to Iran.

U.S. sanctions countermeasures and workarounds, like the EU blocking statute and INSTEX, powerfully convey policy divergences. But they are, as of now, insufficient to surmount the structural forces that fuel and extend the [global reach of U.S. sanctions](#)—namely, the

centrality of the U.S. dollar, financial system, and economy to global finance and trade. Recognizing the power and global scope of U.S. sanctions, voices have been raised urging the Trump Administration to ease U.S. sanctions on Iran and other nations, to facilitate flows of medicines and supplies.

In a March 12 [letter](#) to UN Secretary General António Guterres, Iran's Foreign Minister wrote that Iran's efforts to treat, contain, and defeat the novel coronavirus had been "stymied" by U.S. sanctions. The Secretary General on March 23 [called](#) on G-20 member countries to "waive" sanctions "to ensure access to food, essential health supplies, and COVID-19 medical support." The appeal was echoed by [former U.S. and European](#) officials, [human rights groups](#), and the [European Union](#).

On March 6, the Treasury Department's Office of Foreign Assets Control (**OFAC**) published *Guidance Related to Humanitarian Assistance with Regard to the Coronavirus Disease 2019 outbreak in Iran (COVID-19)* ([FAQ No. 828](#)). The guidance explained that existing U.S. sanctions allowed for certain sales, exports, and humanitarian donations of medicines, medical supplies, and food to Iran.

In April, OFAC signaled that a more substantive accommodation would be made. In a 10-page [fact sheet](#) on the *Provision of Humanitarian Assistance and Trade to Combat COVID-19* published on April 6, OFAC again stated that humanitarian assistance and sales and exports of medical and other supplies are provided for under existing U.S. sanctions targeting Iran and other nations.¹ More notably, OFAC indicated for the first time that persons in Iran manufacturing certain essential products would be exempted from sanctions promulgated by Executive Order 13902 of January 10, 2020, *Imposing Sanctions With Respect to Additional Sectors of Iran*. On June 5, OFAC [published](#) four new FAQs, expanding on the April fact sheet.

Executive Order 13902 targets Iran's construction, mining, manufacturing, and textiles sectors, and authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional sectors of Iran's economy for sanctions.² Pursuant to the Order, parties owned or controlled by, or who have directly or indirectly acted or purported to act, on behalf of parties sanctioned under EO 13902, are subject to sanctions. In addition, EO 13902 authorizes sanctions against parties who "knowingly" engage in "a significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with" a targeted sector of the Iranian economy, and parties who "have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to EO 13902."³

As EO 13902's core provisions indicate, the Order is broad in scope. OFAC has now clarified that manufacturers in Iran of medicine, PPE, and other general and COVID-related essentials will be exempted from sanctions pursuant to EO 13902. Specifically, OFAC explained in two [FAQs](#) that:

The term manufacturing sector of the Iranian economy means the creation in Iran of goods by manual labor or machinery that are for export from Iran or for sale within Iran. For the purposes of evaluating sanctions pursuant to E.O. 13902, persons in Iran manufacturing medicines, medical devices, or products used for sanitation, hygiene, medical care, medical safety, and manufacturing safety, including soap, hand sanitizer, ventilators, respirators, personal hygiene products, diapers, infant and childcare items, personal protective equipment, and manufacturing safety systems, solely for use in Iran and not for export from Iran, will not be considered to be operating in the manufacturing sector of the Iranian economy. Note that persons conducting or facilitating transactions for the provision, including any sale, of agricultural commodities, food, medicine, or medical devices to Iran will not be subject to sanctions under E.O. 13902.

OFAC "[expects](#) that regulations to be promulgated will define the terms construction sector of the Iranian economy, mining sector of the Iranian economy, manufacturing sector of the Iranian economy" in accordance with the FAQs of June 5.

The FAQs also define terms and concepts needed to understand how OFAC will operationalize EO 13902, including: "goods and services" in relation to targeted sectors of Iran's economy; "knowingly," for the

¹ Venezuela, Cuba, North Korea, and Ukraine/Russia.

² Exec. Order 13902, § 1(a).

³ *Id.*

purpose of liability for prohibited transactions; and, “significant,” as related to covered sales, supplies, or transfers connected to a targeted sector of the Iranian economy.

While not technically an “easing” or a “waiver” of sanctions, OFAC’s June 5 guidance appears to be somewhat responsive to concerns that U.S. sanctions impede Iran’s access to, and ability to manufacture, medicines, PPE, and other essential items. Nevertheless, basic questions about the meaning and manner of implementation of EO 13902 remain open.

In the meantime, even with manufacturers in Iran of PPE, medicines, and other essential items exempted by OFAC’s implementation of EO 13902 sanctions, practical impediments remain, including: (1) the unwillingness of banks to facilitate legitimate transactions related to Iran; (2) the difficulty and cost of navigating OFAC’s 50% Rule; and, (3) the risks and costs of navigating legitimate Iran transactions in a sea of sanctioned parties (SDNs) and U.S. sanctions programs of differing terms and restrictiveness.

Finally, there is the fear factor. It is doubtful that OFAC’s June 5 guidance, even if formalized and expanded in forthcoming regulations, will be sufficient to assuage widely held fears of running afoul of U.S. sanctions.

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