

BUSINESS UPDATE | SEPTEMBER 27, 2019 | MASSPOINT TOPICS: [SANCTIONS](#) - [IRAN SANCTIONS](#)

United States Imposes Secondary Sanctions Chinese Companies and Executives for Shipping Iranian Crude Oil: Legal Points and Practical Takeaways

Secondary sanctions imposed on Chinese companies engaged in Iranian crude oil transport and affiliated firms and executives. Sanctions do not apply to COSCO Shipping Corporation Ltd., but do apply to two COSCO units and entities owned 50% or more by them. State Department announcement suggests that Iranian refined oil products may be targeted for sanctions.

As part of the Trump Administration's campaign of "maximum pressure" on Iran, the United States on September 25, 2019 [imposed secondary sanctions](#) on two units of Chinese state-owned shipping giant COSCO Shipping Corporation, Ltd. (**COSCO**), four additional Chinese companies, and six Chinese executives. Four of the Chinese companies were sanctioned for transporting Iranian crude oil, two companies were sanctioned for owning or controlling one or more of the four companies and having knowledge of the crude oil transport, and five executives of the six sanctioned companies were sanctioned based on their status as executive officers.

Executive Order 13846, "Reimposing Certain Sanctions With Respect to Iran"

The direct legal authority for the sanctions action is Executive Order 13846 of August 6, 2018, which re-imposed, expanded, and consolidated U.S. sanctions on Iran following the United States' unilateral withdrawal from the JCPOA (the Joint Comprehensive Plan of Action of June 14, 2015). EO 13846 is key to the Trump Administration's efforts to isolate Iran economically by, *inter alia*, deterring non-U.S. persons from facilitating U.S. dollar and precious metal flows to Iran's Government or engaging in or with Iran's energy, automotive, shipping, and other key sectors, and sanctioning them when they do so.

Notable Legal Points, Practical Takeaways

The September 25 sanctions action is notable for its legal mechanics and practical lessons, include the following:

- The imposition of sanctions on the Chinese companies and executives—particularly on units of the high-profile, state-owned COSCO at a critical juncture in the U.S.-China trade war and shortly after both countries took conciliatory steps—reinforces the Trump Administration's stated posture of aggressively enforcing Iran secondary sanctions in furtherance of its policy objectives.
- The imposition of sanctions on owning or controlling companies highlights the scope of sanctions exposure under EO 13846, which imposes enterprise liability in some cases, such as when a company is a parent or affiliate of an entity that "knowingly" engages in the purchase, transport, or marketing of petroleum or petroleum products from Iran and has knowledge of the conduct (in the case of an owning or controlling company) or "knowingly" participated in the activity (in the case of a company under common ownership or control).

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Importantly, having "knowledge" or acting "knowingly" with respect to a sanctionable transaction does not require actual knowledge. An objective standard applies, *i.e.*, that a company or person "should have known."

- The sanctions imposed on the five individual executives highlights a second strand of enterprise liability under EO 13846, which provides in some cases for sanctions on "principal executive officers" (or their functional equivalents) of sanctioned entities. Importantly, there is no requirement that executive officers have actual or constructive knowledge of conduct giving rise to sanctions—the sanctions liability of executive officers is status based.
- The sanctions imposed on the Chinese companies and executives should not have come as a surprise. There have been numerous news reports (some sourced from tankertrackers.com) in recent months that Chinese tankers were transporting Iranian crude—some reportedly openly and others while turning off signaling systems reportedly to move undetected. These and other news reports preceding the September 25 sanctions actions are examples of how following news for legal compliance and risk management purposes is valuable. Shipping, energy, and other companies might have been better positioned to anticipate sanctions on the COSCO units and other entities as news reports had provided information that, subject to vetting, may have been actionable as to oil transport transactions and potential sanctions. Moreover, the very existence of numerous public reports of Iranian crude oil shipments by or on behalf of Chinese entities may have triggered or hastened sanctions action by the Trump Administration.

Sanctions Do Not Apply to COSCO, But Do Apply to Entities Owned 50% or More by the Sanctioned COSCO Units or Other Sanctioned Parties

As stated above, EO 13846, in connection with certain sanctionable activities, provides for the imposition of sanctions on companies that own or control, or are under common ownership or control with, entities that engage in certain sanctioned conduct. Separately, and pursuant to Office of Foreign Assets Control (OFAC) policy—the "50% Rule"—entities that are directly or indirectly owned 50% or more by one or more sanctioned persons have the sanctioned status of their sanctioned owner(s), even if those owned entities are not separately listed on OFAC's sanctions lists.

A State Department [announcement](#) of the September 25 sanctions measures raised a question as to whether entities owned 50% or more by one or more of the six sanctioned Chinese companies have sanctions exposure. According to the State Department, the September 25 sanctions action "targets the specific entities named . . . and does not target their parent companies or any other entities in their corporate groups." This language put into doubt whether OFAC's 50% Rule applies.

OFAC resolved the issue in a sanctions [FAQ](#) dated September 25, making clear that entities owned 50% or more by one or more sanctioned parties—including the two sanctioned COSCO units—are themselves sanctioned by operation of the 50% Rule. OFAC provided further clarification—presumably necessitated by COSCO's size and interconnectedness—that COSCO (the ultimate parent of the sanctioned COSCO units) and its other subsidiaries and affiliates, such as COSCO Shipping Holdings, are not subject to sanctions if not owned 50% or more by sanctioned parties. Therefore, OFAC [explained](#), "U.S. persons are not prohibited from dealing with COSCO, its non-blocked subsidiaries, or non-blocked affiliates to the extent the proposed dealings do not involve any blocked person, or any other activities prohibited pursuant to any OFAC sanctions authorities." Moreover, "non-U.S. persons do not face sanctions risk for engaging in transactions with COSCO, its non-blocked subsidiaries, or non-blocked affiliates."

Iranian Refined Oil Products May be in the Sanctions Crosshairs

The State Department appears to have given notice that Iranian refined oil products may be targeted for sanctions by [stating](#) that “although” the September 25 sanctions action “involved the export of Iranian crude oil, we are similarly concerned with the export of refined oil products from Iran.” This language, superfluous to the State Department’s succinct explanation of the September 25 sanctions measures, seems to serve no purpose other than to foreshadow sanctions or other measures in process or under consideration. Potentially affected industries and companies should take note of the State Department’s language and adjust their due diligence, compliance, and risk management strategies accordingly, including by canvassing their first- and third-party relationships and supply chains to detect and avoid potential direct or indirect legal exposure or commercial disruptions.

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