

COMMODITIES BULLETIN



Iran Sanctions: focus on commodities traders

Even commodities traders who have terminated all business with Iran are not immune from the effects of the continuous expansion of EU and US sanctions against that country. Recent weeks have seen not only further restrictions on trade with Iran, but also increasing pressure on banks and other financial institutions to carry out ever more due diligence on traders, counterparties and trades before processing any payments. This will have an impact even on commodities traders whose activities do not have any connection with Iran, but which are highlighted as the result of banks' increased vigilance.

The EU has expanded the list of products which cannot be traded with Iran and imposed new rules on transfers of funds to or from Iranian banks. In parallel, the US has expanded its extra-territorial sanctions to target provisions of goods and services to Iran's energy sector (as well as its shipping

and shipbuilding sectors) and the US regulator has made clear that they are looking closely at trading companies and whether they assist companies to evade sanctions against Iran.

This legislative and enforcement activity is a reminder to commodities traders (and other businesses) to ensure that they have in place robust compliance programmes, first to ensure that they are not inadvertently engaging in prohibited trade with Iran and second, so that they can demonstrate to their bank that payments can be processed without delay.

EU ban on Iranian natural gas

Sanctions published by the EU just before Christmas 2012 have added natural gas (including propane and butane) to the list of cargoes which may not be purchased from Iran. There is also a specific prohibition on swaps involving natural gas from Iran. Both prohibitions have immediate effect.



EU ban on sale and supply of graphite and metals to Iran

The same sanctions add graphite and specific raw or semi-finished metals (including copper, zinc and aluminium) to the list of cargoes which may not be sold or supplied to Iran.

Contracts concluded before 22 December 2012, as well as ancillary contracts necessary for the execution of those contracts, benefit from a limited “grandfathering provision”, which allows execution of those contracts until 15 April 2013.

EU rules on payments and transfers of funds between EU and Iranian banks

New rules on payments to Iranian banks mean that EU banks are prohibited from transferring funds to or from Iranian banks (even if no other Iranian person is involved in the transaction) unless that transfer is authorised. The rules extend to branches and subsidiaries of Iranian banks outside Iran, and also to banks outside of Iran which are owned or controlled by Iranian persons, entities or bodies.

These restrictions increase the burden on banks to carry out detailed due diligence on their own counterparties. This will inevitably slow down some payments, while EU banks satisfy themselves that the paying or receiving bank does not have an Iranian connection.

US focus on trading companies

In the United States, the Office of Foreign Assets Control (OFAC) has taken aim at exchange houses and

trading companies. It says that in some cases, these are being used to circumvent sanctions against Iran by concealing or obscuring the identity of persons and entities so that banks process payments which would be otherwise be blocked. OFAC is encouraging banks to increase their due diligence, which will inevitably result in delay and disruption to some legitimate payments.

While the OFAC publication is primarily aimed at financial institutions and is drafted in the form of an advisory for banks, highlighting evasive practices which they should be looking out for, the subtext is clear: OFAC is aware of evasive practices which are being adopted and will scrutinise carefully any transaction which they consider breaches sanctions against Iran, even if an Iranian connection is not clear on the face of the documents.

Summary

These recent developments reinforce the need for all companies which trade with Iran, or which deal with counterparties which may trade with Iran, to have in place robust compliance programmes to ensure that they do not inadvertently engage in prohibited trade.

Traders who are concerned that their counterparties have any Iranian connection need to proceed with extreme care. Even traders with no Iranian business need to be aware of whether the commodities which they trade are subject to restrictions, so that they can be prepared for increased levels of enquiries from their bank, together with possible delays in processing payments.

For more information, please contact [Daniel Martin](#) (pictured below), Associate, on +44 (0)20 7264 8146 or daniel.martin@hfw.com or your usual contact at HFW.



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Can a charterer order STS transfers between VLCCs? Can an owner withhold approval?

In *Falkonera Shipping Company v Arcadia Energy Pte Ltd (20 December 2012)*, the Commercial Court was asked to decide whether a shipowner had acted reasonably in withholding approval for a transfer of oil from a very large crude carrier (VLCC) to two other VLCCs by means of a ship-to-ship transfer (STS transfer).

The vessel *mt "Falkonera"*, a VLCC, was chartered under a modified BPVOY 4 charter form evidenced by a recap dated 18 November 2011. The parties had agreed she would carry crude from Yemen to "1-2 ports far east" but Charterers decided to discharge at Pasir Gudang, Malaysia by STS transfer into two other VLCCs which were being used as floating storage units. The Owners refused to approve the two nominated VLCCs and Charterers had to discharge into smaller vessels, causing delay and significantly increasing their costs. The Charterers claimed Owners were in breach of the charterparty.

Part 2 of the standard BPVOY4 form provided in Clause 8.1 that "Charterers shall have the option of transferring the whole or part of the cargo ... to or from any other vessel including, but not limited to, an ocean-going vessel, barge and/ or lighter ... All transfers of cargo to or from Transfer Vessels shall be carried out in accordance with the recommendations set out in the latest edition of the ICS/OCIMF Ship to Ship Transfer Guide (Petroleum)." The charter also contained by way of an addition to Part 1 a specific "STS lightening clause" which

provided that "if Charterers require a ship-to-ship transfer operation or lightening ... then all tankers and/ or lightening barges to be used in the transshipment/lightening shall be subject to prior approval of Owners ... not to be unreasonably withheld".

The Owners argued primarily that STS transfers between VLCCs were precluded by the terms of the charter. They also argued the ICS/OCIMF Ship to Ship Transfer Guide (Petroleum) did not contain any references or recommendations for STS transfers between VLCCs and therefore implicitly prohibited them.

The Court held that the wording of Clause 8 and the STS lightening clause was wide enough to grant the Charterers an unqualified right to order the vessel to perform an STS transfer to any oceangoing vessel, including a VLCC. Owners had only a limited right of approval, limited to the right to review the details of the nominated vessel to determine whether or not she was suitable for an STS transfer.

The Court rejected Owners' argument that the ICS/OCIMF guide implicitly precluded STS transfers between VLCCs. The Court took the view that the guide provided general guidance on same size ship operations and this included transfers between VLCCs. The Owners were held to have acted unreasonably by withholding approval on this basis.

Alternatively, the Owners argued that they had acted reasonably in withholding consent because of their previous experience of an STS transfer between two vessels of similar size in which difficulties arose with the headlines, sternlines,

moorings, springlines and breastlines. The Court accepted expert evidence that there were special reasons why problems had occurred during the Owners' previous STS transfer. Owners' previous experience appeared to have caused them to develop a blanket policy of withholding consent for STS transfers between vessels of a similar size. In this case, Owners were informed of the proposed mooring arrangements and told that a number of parties including an oil major had previously carried out an STS transfer between VLCCs at the proposed location. Therefore Owners had no reasonable basis for withholding approval for the proposed transfers.

In reaching this conclusion, the Court noted the VLCCs nominated had no kind of peculiarity or defect that rendered them unsuitable for STS transfers. In fact, the Court was again persuaded by expert evidence that subject to timing and proper planning there was no reason why the vessel could not have performed a successful STS transfer with the nominated VLCCs. The Court therefore held Owners had breached the terms of the charterparty.

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This decision, particularly on the interpretation of the ICS/OCIMF guidelines and the extent to which owners can reasonably withhold consent, should assist oil traders chartering VLCCs who wish to opt for STS transfers, subject to the wording of their charterparties. The most recent edition of the ICS/OCIMF guidelines on petroleum is the 4th edition, dating from 2005. It is currently under review.

For more information, please contact [Simeon Newman](#), Associate, on +44 (0)20 7264 8535 or simeon.newman@hfw.com, or your usual contact at HFW.

Commodities Breakfast Seminars

Our Spring series of breakfast seminars, covering current issues affecting commodities trading, will take place on 26 February, 12 and 26 March 2013. Anyone with an interest in the field is welcome to attend. The seminars will be held at HFW's London office.

Those with enquiries about the seminars should contact our events team on +44 (0)20 7264 8503 or events@hfw.com.

Conferences & Events

[HFW MiFID Seminar](#)

HFW Geneva
(31 January 2013)
Robert Finney

[Mining Indaba](#)

Cape Town, South Africa
(4-7 February 2013)

[Alternative Dispute Resolution for Commodity Trading](#)

Beau-Rivage Hotel, Geneva
(26 February 2013)
Jeremy Davies

[HFW Commodities Breakfast Seminars](#)

HFW London
(26 February, 12 and 26 March 2013)

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