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**Sanctions against Iran and
Their Effects on the Global
Shipping Industry**

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Summary

Economic sanctions are defined as the exercise of pressure by one state to bring about a change in political behaviour of another state. Traditional economic sanctions are directed at the entire population of the sanctioned country while targeted sanctions are directed at the State's government and/or individuals.

Iran has become a sanction target first in 1979, which was imposed by United States. More sanctions have been imposed by the United Nations, the European Union and various countries such as United Kingdom, Australia, Norway and South Korea. The sanctions mainly aim to target Iran's shipping industry, insurance, banking, oil industry and energy sectors. Broadly, all sanctions target dealings with or involving persons and companies designated under the various regimes such as Islamic Republic of Iran Shipping Lines, as well as provision of services (such as shipping, banking and insurance) which support such trade. Furthermore, certain new restrictive measures against Iran directly affect the shipping industry.

Sanctions against the shipping industry of Iran caused many of the global insurance companies to revise the providing of insurance services to Iranian ships. In response to these restrictions, Iran's shipping lines have found alternative means of trading to neuter the sanctions against the country, such as setting up of new companies outside Iran, establishing P&I clubs and changing the names of the owners and ships which are part of these sanctions.

The main purpose of this thesis is to examine the effects of the recent sanctions against Iran and discuss their influence on international shipping industry with a focus on the insurance/reinsurance business. In order to get a better understanding of the subject, the thesis provides an overview of the UN, the EU, the United States and various national economic sanctions against Iran and their background, development, scope, purpose and enforcement at various levels. Regarding the impact of them on different sectors of shipping industry, the focus is more on international and the United States sanctions imposed on Iran.

The thesis shows how these sanctions affect various shipping contracts. The author describes the subject under four main parts; insurance, charterparties, offshore energy sector and financing and maritime trade. It also discusses how Iran's government and Iranian ships react against these restrictions.

Finally, the author tries to use relevant cases to evaluate the legal implication of sanction clauses in insurance contracts and to determine the effectiveness of such clauses as a tool to shift the sanctions risks. In this regard, the thesis analyses the recent decision of English court of Appeal in the case of *Arash Shipping Enterprises Company Limited v Groupama Transport* where the court discusses the role of sanction clause in shipping contracts.

Preface

First and foremost I offer my sincerest gratitude to my supervisor, Abhinayan Basu Bal, who has supported me throughout my thesis with his patience and knowledge. I attribute the level of my Master`s degree to his encouragement and effort and without him this thesis, too, would not have been completed or written. One simply could not wish for a better or friendlier supervisor.

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Peace

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Abbreviations

BIMCO	Baltic and International Maritime Council
CFSP	Common Foreign and Security Policy
CISADA	Comprehensive Iran Sanctions, Accountability, and Divestment Act, 2010
EU	European Union
IAEA	International Atomic Energy Agency
INTERTANKO	International Association of Independent Tanker Owners
IRGC	Islamic Revolutionary Guard Corps
IRISL	Islamic Republic of Iran Shipping Lines
ISA	Iran Sanctions Act, 1995
LMA	Lloyd's Market Association
LNG	Liquefied natural gas
NITC	National Iranian Tanker Company
OFAC	Office of Foreign Assets Control
RPP	Refined Petroleum Products
SEC	United States Securities and Exchange Commission
SEMA	Special Economic Measures Act, 2010
SDN List	Specially Designated Nationals and Blocked Persons List
SSL	South Shipping Line, Iran
UK	United Kingdom
UN	United Nations
UNSC	United Nation Security Council
UNSCR	United Nation Security Council Resolution
US	United States of America
WMD	Weapons of Mass Destruction

1. Introduction

1.1 Background

Economic sanction is defined as “coercive measures imposed by one country or coalition of countries, against another country, its government or individual entities therein, to bring about a change in behaviour or policies”.¹ Economic sanctions are not always imposed because of economic circumstances. For instance, the United States (US) has imposed economic sanctions against Iran for years, based on the suspicion that the Iranian government sponsors groups who work against US interests.

Iran became a sanction target first time in 1979 when a group of radical students took action in Tehran by seizing the American Embassy and taking hostage the people inside. The United States responded by freezing about \$12 billion in Iranian assets, including bank deposits, gold and other properties.² During the Iran-Iraq war (1980-1988), the US increased sanctions against Iran, including prohibition of selling weapons and all US assistance to Iran. In 1987, the US banned the importation and exportation of any goods or services to/from Iran. New sanctions were passed consecutively in 1995, 1996 (the Iran–Libya Sanctions Act), 2004, 2005, 2006, 2007, 2009 (Iran Refined Petroleum Sanctions Act of 2009) and finally on June 24, 2010, the United States Senate and House of Representatives passed the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), signed by President Obama on July 1, 2010. The CISADA greatly enhanced restrictions on Iran. The Main provisions of CISADA are summarized by the Congressional Research Service as follows:

- The new Act amends the Iran Sanctions Act of 1996 to direct the President to impose two or more current sanctions under such Act if a person has, with actual knowledge, made an investment of \$20 million or more (or any combination of investments of at least \$5 million which in the aggregate equals or exceeds \$20 million in any 12-month period) that directly and significantly contributed to Iran's ability to develop its petroleum resources;

¹Askari, H, *Economic sanctions: examining their philosophy and efficacy*, 2003, U.S.A, p.14

² Alikhani, H, *Sanctioning Iran, anathomy of failed policy*, 2000, p.66

- The new Act also directs the President of the US to impose: (1) sanctions established under this Act (in addition to any current sanctions imposed under the Iran Sanctions Act of 1996) if a person has, with actual knowledge, sold, leased, or provided to Iran any goods, services, technology, information, or support that would allow Iran to maintain or expand its domestic production of refined petroleum resources, including any assistance in refinery construction, modernization, or repair; and (2) sanctions established under this Act if a person has, with actual knowledge, provided Iran with refined petroleum resources or engaged in any activity that could contribute to Iran's ability to import refined petroleum resources, including providing shipping, insurance, or financing services for such activity;
- The Act establishes additional sanctions prohibiting specified foreign exchange, banking and property transactions.³

The European Union (EU) along with the US has imposed sanctions against Iran over the controversies around Iranian nuclear program. The focus of EU sanctions is mainly on cooperation with Iran in foreign trade, financial services, energy sectors and technologies, and insurance. On 26 July 2010, the Council of EU approved Decision 2010/413/CFSP. This Decision confirms the restrictions taken by EU against Iran since 2007, which were set forth in the Regulation No.423/2007. The restrictions contained in the July 2010 Decision mainly focus on the oil and gas, transportation and financial and insurance sector.

Under EU law, most of the measures contained in the July 2010 Decision required further implementation. In order to have uniform implementation as well as a uniform application of these measures in all EU Member States, the EU adopted Regulation No.961/2010 replaces Regulation No.423/2007. Regulation No.961/2010 mainly affects companies in the oil and gas, transportation as well as the financial and insurance sectors. However, companies in other sectors will inevitably also be affected due to the ban on the exportation now of most “dual use” goods⁴ or indirectly by new

³ *CRS Summary* of H.R.2194, The Library of Congress, available online at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR02194;@@@D&summ2=m&> (last visited 19 October 2011)

⁴ Goods and technologies are considered to be dual-use when they can be used for both civil and military purposes.

requirements and restrictions related to financial transactions with or involving Iran.⁵

On 2 December 2011, the scope of Regulation 961/2010 was greatly expanded by Regulation 1245/2011, which added 143 entities and 37 entities to Annex VIII with a particular focus on the 116 entities with a connection to IRISL, some of which are linked to vessels by means of reference to an IMO number. The list includes many companies based outside Iran, such as Germany, Malta, Turkey, Singapore, Hong Kong, China and Dubai.⁶

Iran also has been subjected to four rounds of United Nations Security Council sanctions in relation to its nuclear programme.⁷ In spite of these restrictions, it has continued its uranium enrichment operations and there is growing pressure for sanctions to be tightened further.

The following are the main UN resolutions relating to Iran's nuclear programme:⁸

- United Nations Security Council Resolution 1737 - passed on 23 December 2006. Banned the supply of nuclear-related materials and technology and froze the assets of key individuals and companies related to the program.⁹
- United Nations Security Council Resolution 1747 - passed on 24 March 2007. Imposed an arms embargo and expanded the freeze on Iranian assets.¹⁰
- United Nations Security Council Resolution 1803 - passed on 3 March 2008. Extended the asset freezes and called upon states to monitor the activities of Iranian banks, inspect Iranian ships and

⁵ Eren Lawyer, *European Union Economic Sanctions: Iran*, 2010, p.1

⁶ Council implementing regulation (EU) No 1245/2011, implementing Regulation (EU) No 961/2010 on restrictive measures against Iran, December 2011, available online at: http://www.skuld.com/upload/INSIGHT/Sanctions/Iran/fin_sanc_councilreg_eu1245_0112_111.pdf

⁷ BBC, *UN sanctions against Iran*, 26 July 2010:

<http://www.bbc.co.uk/news/world-middle-east-10768146>

⁸ On 9 June, the Council adopted resolution 1984 and extended the mandate of the panel of experts of the 1737 Committee for one year. The resolution requested that the panel submit a midterm report to the Council by 9 December 2011, with a final report upon termination of its mandate.

⁹ *Report of the Security Council*, 1 August 2006-31 July 2007, p.24

¹⁰ *Report of the Security Council*, 1 August 2006-31 July 2007, p.229

aircraft, and to monitor the movement of individuals involved with the program through their territory.¹¹

- United Nations Security Council Resolution 1929 - passed on 9 June 2010. Banned Iran from participating in any activities related to ballistic missiles, tightened the arms embargo, travel bans on individuals involved with the program, froze the funds and assets of the Iranian Revolutionary Guard and Islamic Republic of Iran Shipping Lines (hereinafter IRISL), and recommended that states inspect Iranian cargo, prohibit the servicing of Iranian vessels involved in prohibited activities, prevent the provision of financial services used for sensitive nuclear activities, closely watch Iranian individuals and entities when dealing with them, prohibit the opening of Iranian banks on their territory and prevent Iranian banks from entering into relationship with their banks if it might contribute to the nuclear program, and prevent financial institutions operating in their territory from opening offices and accounts in Iran.¹²

Furthermore, several nations have imposed sanctions against Iran such as Canada, Australia, South Korea, and Japan. Sanctions commonly ban nuclear, missile and certain military exports to Iran as well as investments in oil, gas and petrochemicals, exports of refined petroleum products, business dealings with the Iranian Republican Guard Corps (IRGC), banking and insurance transactions, including with the Central Bank of Iran and Iran's shipping lines.

The sanctions mainly aim to target Iran's shipping industry, insurance, banking and energy sectors. Broadly, all three regimes target dealings with or involving persons and companies designated under the various regimes such as IRISL, and also provisions of services (such as shipping, banking and insurance) which support such trade. New restrictive measures against Iran directly affect the shipping industry in Iran and International field.

New sanctions against the shipping industry of Iran caused many of the great global insurance companies, including the Lloyd's of London, to revise providing insurance services to Iranian ships. In a recent review, The New York Times pointed the actions of Iran's shipping lines to neuter the sanctions against this country. According to this report, from all the registered ships of Iran's shipping lines which were included in United States' black list, today only 46 ships are still owned distinctively by Iran's shipping lines or their subsets and the rest are now owned or controlled by

¹¹ *Report of the Security Council*, 1 August 2007-31 July 2008, p.239

¹² *Report of the Security Council*, 1 August 2009-31 July 2010, p.192

companies which are not included in US' black list.¹³ The only explanation is that in response to these restrictions, IRISL took actions to confront these sanctions, which establishing new companies outside of Iran and changing the names of the owners and ships are part of these actions.

The IRISL comprises over one hundred ocean-going vessels sailing in the Caspian Sea, Persian Gulf, international waters and various ports of the world with the total capacity of 3.3 million tons deadweight and carrying nearly a third of Iranian exports and imports.¹⁴

1.2 Purpose

The main purpose of this thesis is to examine the practice of the above-mentioned recent sanctions against Iran and discuss the influence on international shipping industry with the focus on insurance/reinsurance sector. The thesis will also discuss how Iran's government and Iranian ships react against these restrictions.

The main questions are:

- 1- How these new economic sanctions against Iran influence Iranian shipping industry in particular and international shipping and maritime trade in general?
- 2- What is the Iranian regime's reaction against sanctions and restrictions?

In order to answer the two questions above, the thesis discusses:

- The various sanctions against Iran;
- The scope of the sanctions and how they are adopted and enforced at various levels, namely through the UN, the EU, the US and other countries;
- The impact of the sanction on the shipping industry in Iran and its trading partners;
- The thesis also examines the various innovative ways, which the Iranian shipping industry has adopted to conduct business despite the sanctions.

¹³ Becker, J, *Web of shell companies veils trade by Iran's ships*, The New York Times, June 7, 2010

¹⁴ Islamic Republic of Iran Shipping Lines Co. website:
<http://enportal.irisl.net/documents/document/0/11589/portal.aspx>

Finally, the thesis analyses the recent decision of English court of Appeal in the case of *Arash Shipping Enterprises Company Limited v Groupama Transport* where the court discusses the role of sanction clause in shipping contracts.

1.3 Method and materials

The content of thesis is descriptive and analytical in nature. The descriptive chapter provides an overview on various international and national sanctions against Iran and their influence on different sectors of shipping industry. Several doctrinal texts and books as well as various governmental reports, research reports, statements, briefing and press releases have been used to write this part. The materials from electronic resources have been selected from well-known and established websites.

Chapter 3 and 4 examines the impact of sanctions on Iranian shipping industry and the Iranian government's reactions to restrictions. The research is based on interviews with national and international law firms, shipping companies and insurance companies in Iran and outside of Iran as well as governmental reports, press release and electronic resources.

The last two chapters of thesis include analysis and conclusion. In the analysis part, the author tries to use relevant cases to evaluate the legal implication of sanction clauses in insurance contracts and to determine the effectiveness of such clauses as a tool to shift the sanctions risks.

1.4 Disposition

Following this introduction, chapter 2 introduces The UN, the EU, the US and various national economic sanctions against Iran and their background, development and purpose. Regarding the impact of them, the focus is more on international and the US sanctions.

Chapter 3 discusses how these sanctions affect various shipping contracts. The author describes the subject under four main parts: insurance, charterparties, offshore energy sector and financing and maritime trade.

Chapter 4 attempts to answer the question how Iranian shipping companies manage to continue doing business under the sanctions. Setting up shell companies, changing vessels' names and flags and establishing national P&I club are the issues, which will be discussed in this chapter. The last part of

this chapter examines the recent legal actions, which IRISL takes over imposed sanction.

Chapter 5 contains an analysis based on the descriptive part of the thesis with focus on the insurance sector.

Chapter 6 contains the conclusion of the subject.

2. Categories of Sanctions

This chapter discusses four categories of sanctions against Iran, namely restrictions imposed by the Security Council of the UN, restrictions imposed by the European Commission, restrictions imposed by US and finally restrictions imposed by other nations. In respect of the latter, a number of countries have introduced legislation to implement international sanctions into domestic law and/or to introduce domestic sanctions package of their own. For instance, steps has been taken by several jurisdictions such as Australia, Canada, Switzerland, Japan and South Korea, to follow the proactive approach taken at the international level to pressurize Iran into complying with its international nuclear obligations.

This chapter introduces various international and national sanctions against Iran and their definitions, developments, scopes and purposes.

2.1 UN sanctions

2.1.1 Overview

On 9th June 2010, the UN Security Council adopted Resolution 1929/2010 which targets 41 entities and individuals.¹⁵ Annex III lists three entities owned, controlled or acting on behalf of the IRISL.¹⁶

The measures previously adopted by the UN against Iran are still in force, including the restrictions on the sale and supply of goods and technology for use in nuclear activities and the financial sanctions on target entities¹⁷. The new measures, activated whenever there are reasonable grounds to believe that activities are contributing to Iran's nuclear initiative, which from a maritime industry perspective include:

- Prohibition on the provision of financial services, including insurance cover to Iranian entities;

¹⁵ Annexes to the Resolution page 11 to 15

¹⁶ The 3 IRISL entities listed in Annex III are: Irano Hind Shipping Company, IRISL Benelux NV, South Shipping Line Iran(SSL)

¹⁷ United Nations Security Council Resolution 1737 - passed on 23 December 2006.

United Nations Security Council Resolution 1747 - passed on 24 March 2007.

United Nations Security Council Resolution 1803 - passed on 3 March 2008.

- Prohibition on providing bunkers or other services to Iranian owned or chartered vessels;
- Inspection of ships, aircraft and cargo heading to or from Iran and of ships on the high seas if prohibited cargo is suspected to be on board (only with the consent of the flag state and therefore without prejudice to the established UN law of the sea)
- Prohibition on business with the Islamic Revolutionary Guard Corps (IRGC) or designated IRISL related entities; and
- Prohibition on opening any branch or subsidiary of an Iranian bank in a UN Member State (including a reciprocal prohibition on UN Member State banks opening up in Iran).¹⁸

2.1.2 Restrictions

The 1929 Resolution passed on 9 June 2010 which added several firms affiliated with the Revolutionary Guard firms to the list of sanctioned entities.¹⁹ And also banned travel for Iranian persons named in it and in previous resolutions, including those Iranians for whom there was a nonbinding travel ban in previous resolutions.²⁰ In addition, new Resolution gives the authorization to states to inspect any shipments (and to dispose of its cargo) if the shipments are suspected to carry contraband items²¹ and bans states from allowing Iran to invest in uranium mining and related nuclear technologies, or nuclear-capable ballistic missile technology.²²

For the first time, the Council prohibited sales of most categories of heavy arms to Iran and requests restraint in sales of light arms, but does not bar sales of missiles not on the “U.N. Registry of Conventional Arms.”²³ Furthermore, it requires states to insist that their companies refrain from doing business with Iran if there is a reason to believe that such business could further Iran’s Weapons of Mass Destruction (WMD) programs.²⁴ The Council forces states to prohibit Iranian banks to open in their countries, or for their banks to open in Iran, if doing so could contribute to Iran’s WMD activities.²⁵

¹⁸ Text of Resulation: <http://www.un.org/sc/committees/1737/resolutions.shtml>

¹⁹ Resolution Annex II

²⁰ Resolution Annex I

²¹ Paragraph 14, 15, 16, 17,

²² Paragraph 6, 7,

²³ Paragraph 8

²⁴ Paragraph 16

²⁵ Paragraph 23, 24

In addition, the Resolution did not make mandatory some measures that reportedly were considered, including barring any foreign investment in Iranian bond offerings; banning insurance for transport contracts for shipments involving Iran; banning international investment in Iran's energy sector; banning the provision of trade credits to Iran, and banning all financial dealings with Iranian banks.²⁶

2.1.3 Enforcement and Penalties

Instead of putting in place penalties which apply to all member states, it is for each member state to deal with enforcement and penalties through national legislation.

Based on the nature of breach of the UN sanctions regime, results in criminal prosecution, fines and/or the freezing of assets. Various authorized persons and bodies have extensive powers for investigating and enforcing in order to support the UN sanctions against Iran. In the UK, for instance, authorized persons include the police, customs officers and other persons authorized by the Secretary of State.²⁷ When there is a reasonable ground to suspect that a ship's cargo may include military goods or weapons either from Iran, or going to Iran, the powers of these authorized persons include the power to:

- stop and board a vessel, divert it into national waters and detain it there;
- search the vessel, and anyone and anything on it, including its cargo;
- arrest without warrant anyone believed to be guilty of the carriage of prohibited goods;
- seize, detain and/or dispose of prohibited cargos.

The powers of authorized persons in the UK apply to:

- any vessel in UK territory;
- any UK vessel in international waters; and
- any UK vessel in another state's territorial waters, subject to specific authorization by the Secretary of State.²⁸

²⁶ Katzman, K, *Iran sanctions*, Congressional Research Service report for Congress, (2011), p 40-41

²⁷ Woolich, A, Morrison, M, *Sanctions update: Iran*, Holman Fenwick Willan LLP, January 2011

²⁸ The Swedish Club, *Notes on Iran Sanctions*, 9 June 2011, p 2, available online at: <http://www.swedishclub.com/main.php?mcid=1&mid=109&pid=19&newsid=962> (last visited 19 October 2011)

2.2 Sanctions imposed by the EU

2.2.1 Overview

The sanctions package was adopted by the EU Foreign Affairs Council with ramification for energy, insurance, transport and financial sectors and it has been in force since 27 July 2010. This Council Decision follows the passing of UN Security Council Resolution 1929 on 9 June 2010 by the UN Security Council and the signing into law in the US of the CISADA by President Barack Obama on 1 July 2010.

The EU sanctions are considerably broader and more stringent than those imposed by the UN, which were focused on preventing the sale and supply of goods used in nuclear production and missile development to Iran and they are applicable to all EU member states.²⁹

The European Community has followed UN Resolutions; the latest is adoption of UN Resolution 1929/2010 by means of Regulation 532/2010 on 18th June 2010. On 26th July the European Council Decision demonstrated the clear intention to go further than the UN which has two main consequences:

- 1- Implementing Regulation 668/2010 on 26 July introduces restrictions on various persons and entities with immediate effect. This added to the list in an earlier Regulation (Regulation 423/2007) and included 25 companies connected with IRISL.
- 2- The Council Decision prohibits and restricts a wide range of dealings with Iranian entities. This includes prohibitions on insurance and re-insurance and on supply of key equipment and technology to the oil and natural gas industry. Before this part of the Council Decision came into force an Implementing Regulation was required. After undergoing several drafting amendments, the Implementing Regulation was adopted by the EU Foreign Affairs Council on 25 October. The Regulation came into force in all EU member States on 27 October 2010.³⁰

²⁹ Clyde & Co, *EU Sanctions: Iran, An overview of sanctions adopted by the EU Foreign Affairs Council*, (27 July 2010), p 1, available online at: <http://www.clydeco.com/uploads/Files/Publications/2010/Iran%20EU%20sanctions%20update%20July%202010.pdf> (last visited 19 October 2011)

³⁰ Skuld Co, *Iran Sanctions*, available online at: <http://www.skuld.com/Insight/Sanctions/Iran-Sanctions/EU/> (last visited 19 October 2011)

2.2.2 Restrictions

The Regulation seeks to restrict investment in Iran and to restrict trade with a special focus on the Iranian oil and gas industry. The Regulation also sets out restrictions relating to the provision of insurance/reinsurance to Iranian entities; restricts transfers of funds from/to Iranian entities; restricts the provision of financial services and restrictions on transport. Some of the key provisions are commented below:

2.2.2.1 Insurance

Under Regulation (EU) No 961/2010, in general, the provision of insurance and re-insurance to the following is prohibited:

- the Government of Iran;
- entities incorporated in Iran;
- anyone incorporated in Iran;
- individuals and entities acting on behalf of the foregoing or at their direction;
- entities owned and controlled by the foregoing, including through illicit means.³¹

The extension or renewal of insurance or re-insurance agreements concluded prior to entry into force of Regulation (EU) 916/2010 is also prohibited. However, compliance with agreements concluded before that date, is not prohibited. In addition, certain exceptions, with regard to, inter alia, third party insurance may apply.³²

2.2.2.2 Export/Import restriction³³

According to the Council Decision, it is prohibited to sale, transfer or supply to Iran of dual-use goods, technology as well as equipment which might be used for internal repression. Also there are restrictions on trade in key equipment and technology which could contribute to enrichment-related, reprocessing or heavy water-related activities³⁴, or to the development of nuclear weapons systems.³⁵ The prohibition also covers arms and all other related material and goods and technology listed in the Common Military

³¹ Article 26

³² Article 26 -4

³³ Article 2-11

³⁴ Heavy water is the key to one type of reactor in which plutonium can be bred from natural uranium. As such, the production of heavy water has always been monitored, and the material is export controlled.

³⁵ The prohibited items may be found on Annexes I, II, III and IV of the EU Regulation

List.³⁶ Any export to Iran of items indicated above whether or not originating in the EU is subject to prior authorization by the competent authorities of the exporting Member State identified in Annex V of the EU Regulation, who shall not grant authorization if they have reasonable grounds to determine that these items will contribute to enrichment, reprocessing or heavy water-related activities or to the development of nuclear weapon delivery systems, providing technical assistance, brokering services, financing or financial assistance (including grants, loans and export credit insurance) is also prohibited. It is also forbidden to import and transport from Iran of the banned products listed in Annexes I, II and III of the EU Regulation.

2.2.2.3 Transport

All goods from/to a Member State to/from Iran are now required to have additional pre-arrival or pre-departure information.³⁷ Also all Member States are required to inspect all cargo, air and sea to and from Iran if they have reasonable grounds to believe that the cargo contains items, the sale, supply, transfer or export of which is prohibited under these sanctions. Member States may request inspections on the high seas, with the consent of the flag State. Member States are required to co-operate with inspection requests by other Member States. Any prohibited items will be seized and disposed of by the Member States and the costs of this disposal are to be met by the exporter/importer or any other person responsible for the attempted supply, sale or transfer.³⁸

The provision of bunkering or ship supply services or servicing of vessels by nationals of Member States to Iranian-owned or contracted vessels, including chartered vessels is prohibited if that national has reasonable grounds to believe that the vessel carries items prohibited under the sanctions with the exception of services necessary for humanitarian purposes or if the cargo has been inspected and if necessary, seized and disposed of.³⁹

Furthermore, The EU sanctions also include provisions about travel and education bans, asset freezes, air transportation sector, finance and etc.

³⁶ Common Military List of the European Union, adopted by the Council on 15 February 2010, available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:069:0019:0051:EN:PDF>

³⁷ Article 27

³⁸ Article 28

³⁹ Article 28

2.2.3 Scope of sanctions

The EU Regulation applies:

- within the territory of the EU, including its airspace;
- on board any aircraft or any vessel under the jurisdiction of a Member State;
- to any person inside or outside the territory of the EU who is a national of a Member State;
- to any legal person, entity or body which is incorporated or constituted under the law of a Member State;
- to any legal person, entity or body in respect of any business done in whole or in part within the EU.⁴⁰

The Regulation also implements a defense of ignorance or due diligence.⁴¹ Article 31 states that the prohibitions on insurance and reinsurance set out in Article 26 (among other prohibitions) shall not give rise to liability of any kind on the part of natural or legal persons or entities if they did not know, and had no reasonable cause to suspect, that their actions would infringe them.

2.2.4 Implementation and Compliance

The EU Regulation 961/2010 is in force as of October 27, 2010. As EU regulations in general are of direct effect, they must be observed by companies and any other person subject to the jurisdiction of the EU and its Member States.

It is upon the individual EU Member States to decide on the penalties applicable for violation of the EU sanctions regime, and to take all measures necessary to ensure that the measures are implemented.⁴²

⁴⁰ Article 39

⁴¹ Article 31

⁴² Wragg, A – Penny, R, *Iran – EU Sanctions – Market Bulletin*, Lloyd's, 20 January 2011

2.3 National sanctions

Many States are introducing their own domestic laws, in many instances based on UN resolutions:

2.3.1 Norway

On 14 January 2011, the Norway adopted a round of more extensive sanctions against Iranian regime into line with EU Regulation 961/2010 which include stricter restrictions on trade and also prohibits export of key equipment and tools as well as technology and services that are related to the oil and gas industry. They are also restrictions on financial transactions. Moreover, there will be a significantly longer list of individuals, entities and organizations whose assets are frozen. Failure to abide by the regulations can lead to financial penalties or even jail sentences.⁴³

2.3.2 United Kingdom

On 11 December 2010, the UK implemented The Iran Regulations 2010 in line with EU Regulation 961/2010 including provisions to prevent the circumvention of restrictions and more importantly imposes penalties for any breach which include fine or in certain cases imprisonment. Given that the penalties are now imposed in domestic legislation, it is even more important that applicable sanctions are complied with. The Regulations has been in force since 27 October 2010. HM Treasury has now issued a Financial Sanction/Counter Illicit Finance Notice⁴⁴, providing a detailed commentary on and guidance to complying with the EU Regulation. HM Treasury is the competent authority in the UK for issuing licenses, giving notifications and making requests for authorization relating to the transfer of funds subject to reporting requirements. Any existing licenses issued under the new Regulation and remain valid. New licenses will be issued pursuant to the requirements under the new Regulation.⁴⁵

⁴³ Ministry of Foreign Affairs of Norway, *Norway aligns itself with EU sanctions against Iran*, July 2010, available online at <http://www.regjeringen.no/en/dep/ud/Whats-new/news/2010/Norway-aligns-itself-with-EU-sanctions-against-Iran.html?id=611752> (last viewed 19 October 2011)

⁴⁴ HM Treasury website: <http://www.hm-treasury.gov.uk/> (last viewed 19 October 2011)

⁴⁵ Linderman, M, Shepherd, N, Jones, D, Macfarlane, R, Deering, B, Hickey, D, *Trade Sanctions against Iran*, Ince & Co, January 2011

On 21 November 2011, *the UK Financial Restrictions (Iran) Order 2011*⁴⁶ directed UK financial and credit institutions from entering into or continuing financial transactions or business relationships with Iranian credit institutions. It applies with immediate effect to all persons operating in the UK as financial or credit institutions including insurance companies and all branches wherever located.⁴⁷

2.3.3 Canada

In close consultation with like-minded partners, including the US and the EU, and building upon UN Resolution 1929, the Government of Canada is implementing further sanctions against Iran through the Special Economic Measures Act (SEMA).

Sanctions prohibit dealing in the property of designated persons and also ban exporting or otherwise providing to Iran arms and related material not already banned, items used in refining oil and gas and items that could contribute to Iran's proliferation activities. Moreover, making any new investment in the Iranian oil and gas sector is forbidden. Also establishing correspondent banking relationships with Iranian financial institutions, or purchasing any debt from the government of Iran and providing a vessel owned or controlled by, or operating on behalf of the IRISL with services for the vessel's operation or maintenance is prohibited.

In addition, the Special Economic Measures (Iran) Permit Authorization Order (SOR/2010-166), made pursuant to subsection 4(4) of the SEMA authorizes the Minister of Foreign Affairs to issue to any person in Canada or any Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is restricted or prohibited pursuant to the Regulations.⁴⁸

⁴⁶ 2011 No. 2775, *The Financial Restrictions (Iran) Order 2011*, 21 November 2011
http://www.detini.gov.uk/financial_restrictions_iran_order2011.pdf

⁴⁷ HM Treasury, *Cessation of business relationships and transactions with banks incorporated in Iran: The Financial Restrictions (Iran) Order 2011*, p. 5, November 2011
http://www.hm-treasury.gov.uk/d/fin_restrictions_iran_notice2011.pdf

⁴⁸ Foreign Affairs and International Trade Canada, *Canadian economic sanctions against Iran*, available online at:
<http://www.international.gc.ca/sanctions/iran.aspx> (Last visited 20 October 2011)

2.3.4 Australia

On 4 August 2010 the Foreign Minister of Australia published a list of 150 entities, being subject of sanctions under the Iran Regulations. Australian companies must have the Foreign Minister's approval for dealing with any of these listed entities. The sanctioned entities include companies allegedly associated with IRISL, financial companies and entities which are involved in oil and gas operations.⁴⁹

Companies related to IRISL and certain banks (such as Mellat Bank, Melli Bank and Saderat Bank) are also subject to financial sanctions administered by the Reserve Bank under the Banking (Foreign Exchange) Regulations 1959. Any transaction involving the transfer of funds or payments to these entities is prohibited without prior approval from the Reserve Bank.⁵⁰

2.3.5 South Korea

South Korea has introduced sanctions trying to balance its close relationship with the US while trying to minimize damages to its extensive trading links to Iran.

South Korea listed 126 Iranian entities and individuals for economic sanctions including a major banking operation. The Foreign Ministry declared that it would not curtail oil imports from Iran, but new investment, technical services, financial services and building contracts for Iran's petroleum and gas industries is prohibited.⁵¹

2.3.6 Japan

On 3 September 2010 the Japanese government announced extended sanctions against Iran which go beyond UN sanctions.

⁴⁹ Holman Fenwick Willan law firm, *Iran Sanctions Update Australia*, August 2010, available online at: <http://www.hfw.com/publications/client-briefings/iran-sanctions-update-australia3> (last viewed 19 October 2011)

⁵⁰ Australian Ministers for Foreign Affairs and Trade, *Australia Impose New Broad-Ranging Sanctions against Iran*, 29 July 2010

⁵¹ Sang-Hun, C, *South Korea Aims sanctions at Iran*, the New York Times, September 8, 2010

The additional sanctions include freeze on the assets of entities and individuals linked to nuclear development and tighter supervision of financial transactions. A total of 88 institutions and 24 individuals are targeted as subject to the asset freeze. Moreover, there are additional restrictions on Japanese investments in oil and gas development projects in Iran.

On August 2010, the fresh sanctions, approved by the Japanese Cabinet, added to the U.N. Security Council resolution.⁵²

2.3.7 Russia

Russia has adopted UN but has objected to extra unilateral measures imposed by the US and EU since then.

Russia believes that further sanctions by EU would mean the suppression of the Iranian economy and creation of social problems for the population and the measures undermine international efforts to rein in the Islamic Republic's nuclear programme.⁵³

2.3.8 United States

The latest act of the US on imposing sanction against Iran was on 14 December 2011 which, the House of Representatives approved two detailed and far reaching bills. The aim of these bills is to tighten sanctions against Iran and other countries. *HR 2105, the Iran, North Korea, and Syria Nonproliferation Reform and Modernization Act*⁵⁴, would have a far reaching effect on shipping to the US. Section 11⁵⁵ of the Bill would amend the Ports & Waterway Safety Act by requiring owners, operators, charterers or the master to certify before arrival at US ports that their vessel has not entered a port in Iran, North Korea, or Syria during the preceding 180 days. The proposal is not yet law. In case of approval, this measure would significantly disrupt the global oil trade.

⁵² Tong, X, *Japan Increases Sanctions against Iran*, Xinhua News Agency ,3 September 2010

⁵³ Ria Novosti Agency News, *Russia Can No Longer Support Future Sanctions against Iran*, 15 February 2011

⁵⁴ Text of H.R. 2105: Iran, North Korea, and Syria Nonproliferation Reform and Modernization Act of 2011: <http://www.govtrack.us/congress/billtext.xpd?bill=h112-2105>

⁵⁵ SEC. 11. Prohibition on certain vessels landing in the United States; Enhanced inspection

The second bill is *The Iran Threat Reduction Act of 2011 (HR 1905)*⁵⁶ which aims at stricter implementation of the Iran Sanctions Act, including the measures affecting Iran's refined petroleum sector. Section 301⁵⁷ would target, *inter alia*, insurance for shipment of petroleum, oil or Liquefied natural gas (LNG) if the IRGC or any of its affiliates are significantly and directly involved in its development, extraction, production, transportation, or sale.

Both Bills are not in force yet and need to be signed by the President after approval of the Senate. However it is obvious that the aim is tightening and that new measures will be far reaching and come into force rapidly.

2.3.8.1 SDN List

The US Treasury Office of Foreign Assets Control maintains a list of over 6,000 Specially Designated Nationals and Blocked Persons (the SDN List). Particular reference should be made to the list of vessels on pages 459 to 463 and the entities subject to Iran sanctions on pages 470 to 474.⁵⁸ Moreover, sanctions extend not only to the listed persons or entities but also persons or entities acting on their behalf.

On 17 August 2010, the US treasury designated three more companies with links to IRISL (Marble Shipping Ltd, Bushehr Shipping Co and ISI Maritime Ltd.). Later on 27 October the SDN List was updated by the addition of 5 individuals and 37 companies with addresses in Germany, Iran and Malta which are said to have connections with IRISL.⁵⁹

The SDN List was further updated on 30 November 2010 by the addition of 5 individuals and 8 companies with addresses in the Isle of Man and said to be connected with IRISL. The SDN List was updated on 21 December 2010 as well by the addition of a number of companies involved in shipping and marine insurance, including a Tehran based company providing P&I cover,

⁵⁶ Text of H.R. 1905: Iran Threat Reduction Act of 2011 available online at: <http://www.govtrack.us/congress/billtext.xpd?bill=h112-1905> (last visited at 5 January 2012)

⁵⁷ SEC. 301. Iran's Islamic Revolutionary Guard Corps

⁵⁸ Text of SDN List available online at : <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> (Last visited at 20 October 2011)

⁵⁹ US Department of the Treasury, *Treasury Exposes Continued Efforts by Iran to Avoid Sanctions against Its Shipping Line*, 27 October 2010, available online at: <http://www.iranwatch.org/government/US/Treasury/us-treasury-sdnirisl-102710.htm> (last visited at 20 October 2011)

Moallem Insurance. Again on 13 January 2011 the list was updated with 20 Hong Kong based shipping companies and four based in the Isle of Man.⁶⁰

Another important update was made on 31 March 2011 entries for 21 vessels affiliated with the Islamic Republic of Iran Shipping Lines (IRISL) that have since been renamed by IRISL and its affiliates. OFAC is also identifying three additional vessels as blocked property due to their affiliation with IRISL.⁶¹

The last update was on 19 January 2012 which added 4 individuals and 4 entities to the list.⁶²

2.3.8.2 The Comprehensive Iran Sanctions, Accountability and Divestment Act 2010

The CISADA came into force on 1 July 2010 (formerly known as the Iran Refined Petroleum Sanction Act). The provisions of the Act prohibits US entities and individuals from exporting, re-exporting, selling or supplying goods and technology to Iran, participating in any transactions including transportation, financing or brokering transactions and the servicing of accounts of certain Iranian banks.⁶³

The enabling act passed on 1 July 2010 amends the Iran Sanctions Act of 1996, and prohibits the provision of refined petroleum or support related to the production of refined petroleum to Iran. It includes in its definition of “person” financial institutions, insurers, underwriters, guarantors and any other business organization including foreign subsidiaries, parents or affiliates. The effects of the Act are already being felt. Lloyd’s of London no longer provides cover to owners of ships taking refined petroleum products to Iran. And by 14 July 2010 there had been no reported spot

⁶⁰ US Department of the Treasury, *Addition to OFAC’s SDN list*, 13 January 2011, available online at:

<http://www.iranwatch.org/government/US/Treasury/us-treasury-additionstoofacsdnlist-011311.htm> (last visited at 20 October 2011)

⁶¹ US Department of the Treasury, *Updates to OFAC’s SDN List for Vessels Associated with IRISL*, 31 March 2011, available online at:

<http://www.iranwatch.org/government/us-treasury-ofac-iransanctionsirisl-033111.pdf> (last visited at 20 October 2011)

⁶² Specially Designated Nationals Update, available online at:

<http://www.treasury.gov/resource-center/sanctions/OFAC/Enforcement/Pages/20120119.aspx> (last visited at 21 January 2012)

⁶³ Text of CISADA, available online at:

<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>

fixtures in July involving Iran-bound product tankers.⁶⁴ Iranian air carriers were refused fuel at airports even though it was uncertain as to whether that action would be prohibited under the new sanctions.⁶⁵ Early in 2010, insurers Allianz and Munich Re announced their plans to exit Iran.⁶⁶

CISADA amends the Iran Sanctions Act and directs the US President to impose three or more of the nine specified sanctions if a person on or after the enactment of CISADA, has knowingly⁶⁷:

- made an investment of \$20 million or more or any combination of investments of at least \$5 million which in the aggregate equals or exceeds \$20 million in any 12-month period, that directly and significantly contributes to the enhancement of Iran's ability to develop petroleum resources;
- sold, leased or provided to Iran goods, services, technology, information or provided support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products including any direct and significant assistance with respect to the construction, modernization or repair of petroleum refineries. Sanctions in this regard would be triggered if any of the foregoing activities individually has a fair market value of \$1 million or more or during a 12-month period, has an aggregate fair market value of \$5 million or more;
- sold or provided to Iran refined petroleum products⁶⁸ that have a fair market value of \$1 million or during a 12-month period have an aggregate fair market value of \$5 million or more; or
- sold, leased or provided to Iran goods, services, technology, information or support (that have a fair market value of \$1 million or more, or during a 12-month period have an aggregate fair market value of \$5 million or more) that could directly and significantly contribute to Iran's ability to import refined petroleum products, including:
 - a- entering into a contract to insure or reinsure the sale, lease or provision of such goods, services, technology, information or support;

⁶⁴ Lloyd's List, *MR tankers operators refuse to ship products to Iran*, 13 July 2010, available online at: <http://www.lloydslist.com/ll/sector/tankers/article173518.ece> (last visited at 20 October 2011)

⁶⁵ Hafezi, P, *BP Reported to Half Fuelling of Iranian Planes*, Reuters, 5 July 2010

⁶⁶ Vincent, S, *Analysis: Sanctions turn screw on Iran*, Insurance Day – 28 June 2010

⁶⁷ Under CISADA, knowingly means *knew*(actual knowledge) or *should have known* (constructive knowledge)

⁶⁸ CISADA defines *refined petroleum products* to mean diesel, gasoline, jet fuel (including naphtha-type and kerosene type jet fuel) and aviation gasoline

- b- financing or brokering such sale, lease or provision; or
- c- providing ships or shipping services to deliver refined petroleum products to Iran.

The sanctions available under CISADA against insurers, ship owners and charterers who engage in the CISADA-offending activities described above are:

- Prohibition within U.S. jurisdiction of foreign exchange transactions in which a sanctioned person (sanctions target) has any interest;
- Prohibition within U.S. jurisdiction of payments and other transactions which involves any interest of a sanctioned person (sanctions target);
- The blocking of the property (freezing of the assets) within U.S. jurisdiction of a sanctioned person (sanctions target). This would mean complete exclusion from conducting business with the United States or United States Persons, and most likely the denial of or difficulty in obtaining visas to enter the United States;
- Denial of U.S Export-Import Bank Loans or credit facilities for U.S exports to the sanctioned person;
- Denial of U.S bank loans exceeding \$10 million in one year;
- Prohibition on U.S. government procurement from the sanctioned person; and
- Restriction on imports into the United States from the sanctioned person.

Furthermore, if sanctions are triggered, CISADA requires the imposition of at least 3 of the 7 sanctions described above.⁶⁹

2.3.8.3 Exception

CISADA provides that no sanctions are to be imposed on an underwriter, insurer or re-insurer if the President determines that a person has exercised due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not underwrite, insure or re-insure the sale, lease or provision of goods, services, technology, information or support that could directly and significantly contribute to Iran's ability to import refined petroleum products.⁷⁰

⁶⁹Eren Lawyers, *Additional Economic Sanctions against Iran Impacting Insurers, Shipowners and Charterers*, 24 July 2010, p 2

⁷⁰ SEC. 102. CISADA

2.3.8.4 Scope of CISADA

CISADA expands the scope of the Iran Sanctions Act 1996 and targets Iran's refined petroleum supply through several new provisions, which requires the US President to impose at least three of the seven above-referenced sanctions on who has knowingly been involved in the:

- Sale, lease or provision of goods, services, technology, information or support⁷¹—worth at least \$1,000,000—that *could* directly and significantly facilitate Iran's domestic production of refined petroleum;
- Provision to Iran of refined petroleum worth at least \$1,000,000 or an aggregate value of \$5 million or more during a 12-month period; or
- Provision of goods, services, technology, information or support worth that have an aggregate value of \$5 million or more during a 12-month period that facilitates Iran's importation of refined petroleum.

Goods, services, technology, information or support include:

- Underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease or provisions of such goods, services, technology, information or support;
- Financing or brokering such sale, lease or provision; or
- Providing ships or shipping services to deliver refined petroleum products to Iran.⁷²

⁷¹ Goods, services, technology, information or support includes any of the above that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.

⁷² SEC. 102. Expansion of sanctions under the Iran Act of 1996

3. Impact of sanctions on various shipping contracts

The sanctions imposed by the international entities and various nations have a great impact on companies and private individuals who charter ships and transfer negotiable documents relating to maritime trade in Iran. Firstly, all parties, such as shipowners, charterers, and owners and consignees of cargo, must be consistently identified to a transaction or series of transactions. In such a system where charterers, consignors and freight forwarders are in danger because unauthorized vessels will seek to evade being recognized by concealing ship ownership or the identity of said ship reliable far- reaching vessel-vetting procedures are required.

Charterers are also at risk to order ships to carry refined petroleum products for discharge in Iran or carry out shipments that violate sanctions since such charterparties have been concluded before the relevant sanctions have come into effect. Such an order will or will not be refused depending on the charterparty provisions. Arguments include that the order is illegal because said vessel is only allowed to have stipulated merchandise in lawful trade or the shipment has been complicated due to supervening illegality. However, if parties can agree on an addendum to the charter party such a problem can be circumvented.

Examples of parties agreeing on protective clauses include, the International Association of Independent Tanker Owners (INTERTANKO)⁷³ and The Baltic and International Maritime Council (BIMCO)⁷⁴. Such clauses are perceived to favour shipowners or include sanction clause for time charters. The purpose of BIMCO's clause is to give ship owners access and act on any voyage order put forward by a time charter that risk the ship to be sanctioned.

⁷³ INTERTANKO is the association of the owner of the independent tankers in the world. It started in 1970 to speak out for the independent tankers' owners, non-oil companies and non-state controlled tanker owners, for the safe shipping of oil and chemicals. INTERTANKO has a vision of a professional, efficient and respected industry, that is dedicated to achieving safe transport, cleaner seas and free competition.

⁷⁴ Sanction Clause for Time Charterparties by BIMCO:

https://www.bimco.org/Chartering/BIMCO%20Clauses/Sanctions_Clause.aspx

3.1 Insurance

P&I Clubs are always at risk in relation with sanctioned targets. They might unintentionally insure prohibited cargo or ships carrying sanctioned cargo and its Members (or their brokers) may engage in illegal activity through business contact with unauthorized agencies.⁷⁵ For this reason, sanction compliance clauses are often included into policies, which for example stipulated that if the assured violates sanctions the coverage is suspended and the assured must then cover the insurer for losses sustained. To avoid violating sanctions regulations, clubs have changed their rules that once a Member vessel is exposed to the risk of infringement cover is loss or membership is terminated. For example if a Member's vessel, whether entered with the Club or not, is employed in a carriage, trade or voyage which will expose the Club to the risk of being or becoming subject to any sanction.⁷⁶

P&I Clubs provide sanctions development information in circulars and encourage their Members to pay close attention to such information. Lloyd's of London, the world's largest insurance market, in a move to support the US sanction has restricted insurance on shipments to Iran. Lloyd's Market Association (LMA) has drawn up a sanction clause for its members that can be applied to both marine and non-marine insurance market.⁷⁷

Furthermore, it should be noted that there are restrictions on insurance sector in all three major sanction regimes (UN, EU and US) which require P&I clubs, entities and individuals who are in trade with Iran, to distinguish the scope of each regime.

⁷⁵ Insurance Insider, *P&I Clubs Nervous Over Fresh Iran Sanctions*, 23 February 2010

⁷⁶ for example, Steamship Mutual P&I Club Rules, available online at:

<http://www.simsl.com/Rules-and-Cover/rules-class-i---protection-and-indemnity-31-35.html> (last viewed 20 October 2011)

⁷⁷ Lloyd's Sanction Limitation and Exclusion Clause text:

"No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America."

3.1.1 UN sanctions' restrictions on marine insurance

According to last round of the United Nations Security Council's sanction (1929) the provision of insurance or reinsurance to the Government of Iran, an Iranian person, entity or body and or any natural person or legal person acting on behalf of or at direction of an Iranian person is prohibited.⁷⁸ This means that insurance or reinsurance provided by a foreign insurer if the underlying insured is an Iranian company is prohibited even if the insurer is not from or related to Iran. The prohibition extends to any participation in activities intended to knowingly or intentionally circumvent this prohibition.

Regarding to complexity of international trade and corresponding marine insurance, it is the policy of many international shipping insurers to refuse to insure any vessel that is scheduled to stop at or load or unload at Iran (without even determining the type of cargo to be carried or restricted to be carried). For example, annual insurance contracts for Hull risk may lead to a ship accidentally violating geographic or trade limitations unless the policy is aptly restricted. Also cargo insurance contracts can often be traded en route and when combined with an extensive geographic scope, sanction breach may occur – known or non-deliberate. Moreover, because the restrictions do not apply to all goods and services, Individual country legislation differs as will the emphasis or listing of prohibited items. In addition, listings of banned items of may be unclear and/or have wide application. Moreover, insurers and reinsurance contracts may be particularly susceptible to an unknown sanction breach and it is expected this segment of industry will move to enforce exclusion or restriction clauses to marine reinsurance contracts.

Insured parties with trade and finance connections to Iran will come under more scrutiny as sanctions' legislation enacts and, there is the probability for more coverage restrictions.⁷⁹

⁷⁸ Resolution 1929, Paragraph 21

⁷⁹Vero Marine Insurance News, *UN Trade Sanctions – Iran*, July 2010,

3.1.2 EU sanctions restrictions on marine insurance

The Article 12 of the Council Decision stipulates various prohibitions concerning insurance and reinsurance services to Iranian persons or entities:

" 1. The provision of insurance and re-insurance to the Government of Iran, or to entities incorporated in Iran or subject to Iran's jurisdiction, or to any individuals or entities acting on their behalf or at their direction, or to entities owned or controlled by them, including through illicit means, shall be prohibited.

2. Paragraph 1 shall not apply to the provision of health and travel insurances to individuals.

3. It shall be prohibited to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibition referred to in paragraph 1."

Furthermore, three types of insurance and reinsurance contracts affected by this sanction exist:

- (a) Contracts in existence before 26 July 2010;
- (b) Contracts pre-dating 26 July 2010 but whose period extends beyond that date;
- (c) New contracts from 26 July 2010 onwards.

(a) Contracts in existence before 26 July 2010

In exceptional cases EU law allows for retroactive effect, and as such is lacking in the Council's Decision such conditions are currently absent. Thus, as contractual duties are carried out and payments made to pretenders under which such contracts would comply with EU sanctions. Article 21 of the Council Decision, however, requires explicit regulations for the transfer of funds to and from Iran as well as requires notifications or authorisations from the "competent authority of the Member State concerned"⁸⁰

"(a) transfer below €40,000 can be made without prior authorization but amounts above €10,000 must be notified;

*(b) transfers above €40,000 must have prior authorization."*⁸¹

⁸⁰ Article 12

⁸¹ Wragg, A – Penny, R, *Iran – EU Sanctions – Market Bulletin*, Lloyd's, 20 January 2011, p 2

(b) Contracts pre-dating 26 July 2010 but whose duration extends beyond that date

The effect of the Decision on contracts continuing beyond 26 July 2010 is more difficult to determine. In the event loss occurs after July 26, 2010 and the pertinent national body authorises payment of the resulting claim the matter is easily resolved. However, if the permission were not granted, then the contract can be perceived to be thwarted and the sponsor would not be obligated to contest the denial through legal channels.⁸²

(c) New contracts from 26 July 2010 onwards

Contracts written after 26 July 2010 would seem to be banned, however impending national legislation there is no unlawful sanction connected to the development of these contracts during conception. Applying from 26 July 2010 until further notice the Council's prohibition on insurance and reinsurance contract is undoubtedly forthcoming. A Council Decision becomes part of the "*acquis communautaire*" and is in effect as from the date of its implementation.⁸³

⁸²Ruttely, P – Leandro, S, *EU Sanctions against Iran: the Impact on the Insurance Industry*, Clyde & Co, (2010)

⁸³ Ruttely, P – Leandro, S, *EU Sanctions against Iran: the Impact on the Insurance Industry*, Clyde & Co, (2010)

3.1.3 US sanctions restrictions on marine insurance

Any entity that, among other activities, knowingly sells, leases, or provides goods, services, technology, information, or support that could “*directly and significantly*” contribute Iran’s ability improvement to import refined petroleum or aid the maintenance or development of Iran’s national production of refined petroleum goods, including any direct and significant assistance with respect to the building, modernization, or repair of petroleum refineries, may incur sanctions under CISADA.⁸⁴ Sanctions may also be applied to goods or services provided that have a fair market value of at least \$1 million or cumulative of at least \$5 million over twelve consecutive. Whether goods or services could have a direct and significant contribution to Iran’s ability to import refined petroleum will be evaluated on a case-by-case basis.⁸⁵

CISADA overtly describes possible sanctionable activities, which include sponsoring or agreeing to a contract to supply insurance or reinsurance for the sale, lease, or provision of such goods, services, technology, information, or support, financing or brokering the sale of petroleum related products, as well as the lease or provision of materials required for such processes; or providing ships or shipping services to transport refined petroleum products to Iran.⁸⁶

Other likely sanctionable activities include, for example, maritime transport (shipowners and charterers) and related ship services (operators and technical managers), ship brokering (sale, charter, and container), ship suppliers (for sale of ships both used and new), and financial services related to maritime transportation services (including insurance and reinsurance). Cargo insurance and reinsurance, protection and indemnity (P&I) insurance and reinsurance, hull insurance and reinsurance, contract frustration insurance and reinsurance, and any other insurance or reinsurance associated with the shipment of refined petroleum products to Iran may also be sanctionable.

The CISADA classifies “knowingly” to mean that a person has actual knowledge, or should have known in the situation.⁸⁷ Thus, companies can

⁸⁴ SEC. 102.

⁸⁵ SEC. 102

⁸⁶ SEC. 102

⁸⁷ The CISADA Guidance was released on February 3, 2011 as a plain document to interested parties. The CISADA Guidance is expected to be published in the Federal Register, the official gazette of the United States Government.

be subjected to sanctions if they knew or should have known that they were providing aforementioned goods or services to Iran.⁸⁸ As insurance providers and ship owners/managers/operators may or may not be familiar with all goods and services that may assist Iran's petroleum sector, insurance providers and ship owners should undertake due diligence and know their customers in order to reduce the risk that they will engage in potentially sanctionable activities.

Furthermore, the CISADA stipulates an exception whereby the Secretary of State, with respect to activities that contribute to the enhancement of Iran's ability to import refined petroleum products, may not impose sanctions on a company that makes available sponsorship services or insurance or reinsurance if the Secretary determines that the person has carried out due diligence in ascertaining and implementing official policies, procedures, and controls to ensure that the person does not underwrite or enter into a contract to provide insurance or reinsurance for the sale, lease, or provision of goods, services, technology, information, or support that could directly and radically impact the improvement of Iran's ability to attain refined petroleum products.⁸⁹ Moreover, companies are encouraged to meticulously implement the necessary official policies, procedures, and controls to circumvent any activity that may be subject to sanctions under CISADA. Based on the type of activities in which a company engages policies, procedures, and controls should therefore be suitable.⁹⁰

⁸⁸ SEC. 101. DEFINITIONS.

⁸⁹ SEC. 102

⁹⁰Eren Lawyers, *The United States Issues Iran Sanctions Guidance for the International Shipping and Maritime Insurance Industry*, 5 February 2011

3.2 Charterparties

In light of the number of various sanction regimes as it relates to ship charters, to comply with applicable or anticipated prohibitions, insurers may consider excluding insurance for any vessel that:

- is on lease to or from an Iranian sanctions target;
- is owned, controlled, managed, operated by, or otherwise connected with an Iranian sanctions target or with individuals or entities in Iran; or
- flies the Iranian flag or which is registered in Iran.⁹¹

Likewise, shipowners and others should be diligent to ensure that they do not violate the relevant or predictable prohibitions by chartering a vessel to or from an Iranian sanctions target or by chartering a vessel, that is an Iranian sanction target.

With respect to existing charters where the charterer might order the ship to freight refined petroleum products for discharge in Iran, or conduct another shipment that would violate sanctions' provisions, the position is more complicated and whether or not that order can be legally refused will rely upon the charter's provisions.⁹² The parties may deliberately agree to an Addendum to existing charters to include a trading restriction to Iran or a protective clause such as described in the aforementioned INTERTANKO clause.⁹³

According to all three major sanction regimes, a shipowner or operator cannot be directed to carry out a prohibited shipment or transport unlawful goods. Transported products will be unlawful if it contravenes laws at the port of loading, the port of discharge, the Flag of the ship or the governing law of the charter.

Below is lists of goods that can be transported to Iran are probable to comprise illegal products:

- 1) For most (if not all) ship owners or operators, UNSC Resolution 1929 of 2010 prohibited goods

⁹¹Eren, H, Pinter, S, *Additional Economic Sanctions against Iran Impacting Insurers, Shipowners and Charterers*, Eren Lawyers, 24 July 2010, p 6

⁹² Miller, T, , *Sanctions on Iran – Potential Impact on Members*, UK Defence Club, July 2010, p 1,2

⁹³Thomas, M, Waller, C, Church, M, *The Comprehensive Iran Sanctions, Accountability and Divestment Act 2010: Impact on Charterparty Obligations*, ReedSmith, 2 July 2010

- 2) For EU ship owners, ships or operators, Regulation No. 961/2010 Annex I, II, III and IV listed goods irrespective of whether they are also prohibited by UNSC Resolution 1929 of 2010
- 3) For EU ship owners, ships or operators, Regulation No. 961/2010 Annex VI listed goods if shipped from a EU port or place
- 4) For EU ship owners, ships or operators, Regulation No. 961/2010 Annex VII listed goods if shipped from any port or place.

The goods listed below are either dubious to amount to illicit merchandise or the stance is unclear:

- 1) RPP⁹⁴ or RPP Facilitating Goods even though prohibited by CISADA unless, in the case of EU ship owners, ships or operators, they are also Regulation No. 961/2010 Annex VI listed goods shipped from an EU port or place
- 2) Arguably, Regulation No. 961/2010 Annex VII listed goods shipped from port or places outside the EU.

In the event that the goods are unlawful merchandise, the order may be denied. However, the difficulty is identifying whether the goods are on the prohibited lists or not, especially in the case of goods that may various purposes is not easily ascertained.⁹⁵ In this case, the lists need to be consulted and many times an expert evaluation, which is a lengthy process, will have to be executed.

In order to shun the countless restrictions, the safest option is to avoid trading with, to or from Iran. Still, a ship owner should ensure his ship is not being chartered to a prohibited Iranian person or entity by first carefully checking both of the online lists maintained by Office of Foreign Assets Control (OFAC)⁹⁶ and the UK Treasury⁹⁷.

A shipowner should also exercise the same degree of diligence in respect of persons or entities named in bills of lading that a charterer or a sub-charterer requests to have issued, especially if the cargo in question is (or might arguably be) prohibited or sanctioned cargo if not directly destined for Iran but is instead destined for a country in close proximity to Iran. If a ship owner decides not to disqualify Iran as a trading place, then said shipowner

⁹⁴ Refined Petroleum Products

⁹⁵ Dual-use goods

⁹⁶ Text of SDN List:

<http://www.ustreas.gov/offices/enforcement/ofac/sdn>

⁹⁷ Consolidated list of financial sanctions targets in the UK, Last Updated:24/05/2011:
<http://www.hm-treasury.gov.uk/d/irannuclear.htm>

should then exercise the same degree of diligence to expose the identity of the proposed charterer.⁹⁸

3.2.1 Impact on future charters

There are protective clauses available for *future* charters, such as the clause circulated by INTERTANKO in response to the draft legislation:

*"Any trade in which the vessel is employed under this Charterparty which could expose the vessel, its Owners, Managers, crew or insurers to a risk of sanctions imposed by a supranational governmental organization or the United States, {insert other countries} shall be deemed unlawful and Owners shall be entitled, at their absolute discretion, to refuse to carry out that trade. In the event that such risk arises in relation to a voyage the vessel is performing, the Owners shall be entitled to refuse further performance and the Charterers shall be obliged to provide alternative voyage orders."*⁹⁹

The INTERTANKO clause is owner friendly and has a comprehensive scope. All that is required is that the trade "could" expose the "vessel, its owners, managers, crew or insurers" to a "risk" of sanctions. The possibility however that the parties could disagree as whether the subject "trade" could lead to such a risk is left open. Owners may seek to modify the clause in their reasonable judgment to provide that it be for owners to decide whether such risk exists. Charterers may desire to limit the extent of the clause to trade, which "does" expose Owners to such risks. The parties may also be able to classify Iran as one of the excluded countries in the trading restrictions clause of the charter. In addition, BIMCO, working together with the International Group of P&I Clubs, has drafted a Sanctions Clause for Time Charter Parties.¹⁰⁰

The development of the Sanctions Clause has been prompted by the imposition of a fourth round of UN sanctions against Iran and by amended legislation expanding existing US sanctions against Iran that came into force on 1 July 2010 (CISADA). Particular concern here is that involvement by

⁹⁸ OFAC frequently asked questions and answers:

<http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx>

⁹⁹ Report of INTERTANKO's Documentary Committee for FONASBA Annual Meeting – 2010:

www.intertanko.com/upload/17124/FONSABA%20Report%202010.doc

¹⁰⁰ BIMCO sanction clause for time charterparties, available online at:

https://www.bimco.org/en/Chartering/BIMCO%20Clauses/Sanctions_Clause.aspx

foreign entities in the importation of refined petroleum products (diesel, gasoline, jet fuel and aviation gasoline) into Iran¹⁰¹, or any assistance in the development of Iran's domestic refining capability, may result in sanctions imposed not only on foreign shipowners¹⁰² (including parent companies), but also on the crew and those who provide services, information and insurance to the vessel such as managers, the ship's insurers and their re-insurers.

The penalties for breaking the US sanctions are severe and may result in foreign businesses that break the sanctions finding their dollar transactions blocked by the US banking system.¹⁰³ Many P&I Clubs have already implemented Rule changes whereby cover will be terminated if a member engages in trades likely to expose the Club to sanctions. The objective of the new sanction clauses is to provide owners with a means to assess and act on any voyage order issued by a time charterer, which might expose the vessel to the risk of sanctions.

As sanctions are often brought into force within a short period of time, the sanction clauses are supposed to cover the application of sanctions after the vessel has begun an employment under the charter. Whether the sanctions existed at the time, the order of employment was issued or whether they were subsequently applied, the owners will have the right not to comply with such orders or to refuse to proceed. The owners must advise the charterers promptly of their refusal to proceed with the voyage and the charterers must provide alternative voyage orders. Failure by the charterers to issue alternative voyage orders will result in the owners having the right to discharge any cargo on board at a safe port at charterers' cost. In all circumstances, the vessel will remain on hire and the charterers will be obliged to indemnify the owners against any claims brought by the cargo owners or holders of bills of lading or sub-charterers as a consequence of the change of orders or the owners' discharge of the cargo.¹⁰⁴

¹⁰¹ CISADA, SEC 102 (16)

¹⁰² CISADA, SEC 102 (B)

¹⁰³ CISADA, SEC 107

¹⁰⁴ Steamship Mutual, *New BIMCO Sanctions Clause for Time Charter Parties*, July 2010, available online at:

<http://www.simsi.com/Liabilities-and-Claims/BIMCOSanctionsClause0710.htm> (last visited at 20 October 2011)

3.3 The offshore energy sector

One of the foremost important goals of sanction regimes is to constrain Iran's capability to mature its oil and gas industry and specifically its ability to produce refined petroleum products. While the UN sanctions lack a particular impact on the offshore energy sector, a number of the proscriptions that are included in the US sanctions and EU sanctions legislation do have a specific impact on the offshore energy sector.

Based on a fictional scenario where, Caspian Oil Pte Ltd, a Singaporean company, owns a number of assets, including a drill ship and a small tanker. Caspian Oil is the wholly owned subsidiary of a US company, and its director is a US national. Caspian Oil has been cooperating with the German company, Exploration and Drilling Services GmbH, which owns a fleet of geophysical survey ships (with all of the equipment on board), as well as comprehensive equipment and material onshore in Iran (including computers and software to analyse the data that they have collected, spare drilling equipment, plus reserves of drilling mud, hydrocarbon crackers, etc).

Caspian Oil Pte Ltd has been exploring and developing Iranian oil reserves in the Caspian Sea operating for several years in Iran. It has also pursued obtaining a licence from the Iranian government. When the US and EU sanctions came into effect this company had already begun collaborating together with Exploration and Drilling Service to collect copious data about potential fields, had drilled some exploratory wells and under contract to an Iranian state-owned company had also just started full-scale drilling.¹⁰⁵

Caspian Oil's American director, as well as its US parent company, will be subject to the entirety of US sanctions. In addition, to the extent that it does business with Iran's petroleum sector CISADA will directly apply to Caspian Oil. The sanctions have direct effect (in that persons that have committed the violations will be penalize), and also indirect effect (in that they apply to any person who owns or controls that person, and also to any person who is owned or controlled by that person). The sanctions also apply where the person has definite awareness, or should have known, about the pertinent conduct, situation or consequence.¹⁰⁶

¹⁰⁵ Martin, D, *Iran Sanctions – Impact on the Offshore Energy Sector*, Sanctions Special Edition, December 2010, p 9

¹⁰⁶ According to SEC. 102.

EU Regulation No. 961/2010 (the Regulation)¹⁰⁷ will apply to the German company, Exploration and Drilling Services GmbH. The Regulation includes stipulated vindications where the persons involved whom were unaware, and had no equitable grounds to suspect, that their actions would contravene the restrictions in the Regulation.¹⁰⁸

CISADA includes a proscription on making an investment (or a series of investments) that directly and notably contributes to the development of Iran's capability to advance use of petroleum resources.¹⁰⁹ Investment is defined to include entry into a contract that includes liability for the development of Iran's petroleum resources;¹¹⁰ thus, continued execution of drilling contract would be in violation of CISADA.

As a result, Caspian Oil without delay notified the relevant authorities and provided them with complete details of their drilling programme. Caspian Oil agreed to cease drilling operations and, the authorities agreed not to pursue action with respect to the drilling programme. US authorities have made clear to encourage those companies, which may be engaged in conduct that is potentially subject to the sanctions to engage in a dialogue with the US authorities, so that the company can stop the sanctionable activity, to avoid the proceeding of further action, in the form of investigation and possible prosecution.¹¹¹

After terminating the drilling contract, Caspian Oil was asked by the Iranian contractor whether it would sell the tanker, or alternatively the cargo of crude oil on board, to compensate for the early termination of the drilling contract. Caspian Oil, however, is prohibited to sell the tanker, as CISADA forbids the sale of goods that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products and goods, specifically ships.¹¹²

However, CISADA only bans the retailing to Iran of refined petroleum goods (defined as diesel, gasoline, jet fuel including naphtha-type and kerosene-type jet fuel, and aviation gasoline), so Caspian Oil would be able to sell the freight of crude oil to an Iranian person or entity. Before agreeing to sell the cargo, Caspian Oil would need to make sure that the Iranian contractor is not on any of the restricted persons' lists. Nevertheless, this

¹⁰⁷ Article 11

¹⁰⁸ Article 32

¹⁰⁹ SEC. 102

¹¹⁰ SEC. 102.

¹¹¹ Martin, D, *Iran Sanctions – Impact on the Offshore Energy Sector*, Sanctions Special Edition, December 2010, p 10

¹¹² SEC. 102.

company may also incur complications in convincing a US bank to process the sale if the transaction currency is US dollars.

Subsequent to Caspian Oil's decision to postpone drilling operations in Iran, Exploration and Drilling Services began to consider withdrawing its own operations from Iran. In this case, they are deliberate whether to sell the geophysical survey ship, as well as the equipment and materials that are onshore in Iran, to an Iranian company. Rather than having to remove geophysical data, computers and software, they are also considering simply handing over this equipment to another Iranian company.

Finally, Exploration and Drilling Services is also considering providing consultancy services to a third Iranian company that is now likely to manage development of the wells, in return for an annual fee of €50,000.¹¹³

All these propositions will probably violate the EU Regulation No. 961/2010. Firstly, the Regulation prohibits the sale of key equipment or technology directly or indirectly to any Iranian person, entity or body or for use in Iran.¹¹⁴ Outlined in Annex VI to the Regulation is the key equipment or technology as it relates to the oil and gas industry in Iran (specifically in relation to exploration, production, refining and liquefaction). It includes physical equipment (such as the geophysical survey ship and any sampling and testing equipment), as well as materials (such as drilling mud).

Secondly, the Regulation also bans supplying and transferring equipment, which includes ambiguously defined software and technology. Simply leaving equipment behind may classify as either supplying or transferring.¹¹⁵

Thirdly, the Regulation bans providing technical assistance.¹¹⁶ Unlike the aforementioned proscriptions, an authorisation can be attained to provide technical assistance that would otherwise be banned. It is doubtful, however that Exploration and Drilling Services will collect compensation for provided technical assistance, as is stipulated in the Regulation that permit authorisation of transfers from an Iranian entity that have a value of €40,000 or more will not apply where the transfer of funds would aid in the execution illegal activities.¹¹⁷

¹¹³ Martin, D, *Iran Sanctions – Impact on the Offshore Energy Sector*, Sanctions Special Edition, December 2010, p 10

¹¹⁴ Article 8

¹¹⁵ Annex I

¹¹⁶ Article 5

¹¹⁷ Article 21(b)

3.4 Financing of maritime trade

Provided that most contracts require for business to be conducted in US Dollars, there exist the ongoing risk that international trade and financial dealing will breach US sanctions and experience significant penalties. Generally, however, business conducted in US dollar passing through the US banking system under the US legislation may be at risk of being frozen if they can be traced to Specially Designated Nationals. There are already a number of banks that have paid the price of past non-cooperation with US sanctions. One bank recently settled a claim for over US \$200 million because of breaches that took place in relation to non-US banks outside the US but where funds passed through the US and were related to illegal transactions. Other banks have also recently been subjected to pay considerable fines because of US sanctions violations that are related to various countries including Iran. These violations include those committed several years in the past back.¹¹⁸

To protect themselves some financial institutions have begun taking pre-emptive steps. For example, one bank is known to have produced a sanctions clause for ship finance transactions. Kuwait's central bank is also reportedly declining offers from Iranian banks to open branches in Kuwait after they failed to meet the compulsory conditions.¹¹⁹ Swiss banks are reported to have frozen the accounts of 40 Iranian companies thus far.¹²⁰ Banks that have yet to put into practice pertinent procedures are likely to do so as part of due diligence measures.¹²¹

These banking sanctions are grave and crippling and the outcome is particularly apparent when considering Iran's transit. Banking sanctions caused a percentage of Iran's transit to disappear whereby creating an advantageous situation for Turkey, Pakistan, and Georgia, which are the major rivals. Jordan, Syria, Kuwait and Saudi Arabia, whom are also Iran's other rivals to trade with destinations like Iraq.

¹¹⁸Linderman, M, Shour, R, Chisholm, A, *Trade Sanctions against Iran – an Overview*, Ince&Co, September 2010, p 6

¹¹⁹Toumi, H, *Kuwait's central bank rejects bids from four Iranian and one Iraqi banks to open branches*, August 16, 2010

¹²⁰Farrar-Wellman, A, *Switzerland-Iran Foreign Relations*, 18 July 2010

¹²¹Linderman, M, Shour, R, Chisholm, A, *Trade Sanctions against Iran – an Overview*, Ince&Co, September 2010, p 3

4. How are Iranian shipping companies doing business under sanctions?

Since the UN Security Council Resolution on the sanctions against Iran, and after EU and US sanctions against Iran, the country's ability to transport goods has greatly diminished. Many of international companies shun contact with Iranian transportation companies, fearing the sanctions' penalties.

Mohammad Ronaghi, deputy of the Iranian company "Sea Pars", provider of services to shipowners and maritime insurance companies, states: *"The ships holding Iran's flag are facing problems in many countries around the world, because they are not covered by any insurance and this is because of recent sanctions. Many ports avoid interaction with ships that are not covered by insurance."*¹²²

On the other side, Hossein Dajmar, administrative manager of the IRISL says: *"The sanctions do not have great impacts on us. Many ports around the world are cooperating with us. We are negotiating with some insurance companies so our ships can be insured again."*¹²³

The United Nations Security Council has called for from all member countries to ban their insurance companies from insuring or continuing to insure ships allegedly transporting ship components or equipment essential for forbidden armaments. The Security Council in its resolution also desires that the members of the UN to detail Iran's activities to find substitutes for neutering these sanctions.¹²⁴

Due to the new UN, EU and US sanctions, the IRISL has been incapable of operating at full capacity. Furthermore, the sanctions have distressed IRISL's ability to sustain appropriate insurance coverage for IRISL ships such as security and indemnity (P&I) insurance. P&I Clubs around the globe are declining IRISL ships insurance coverage. In 2009, the UK set the example by cutting all business engagements with IRISL under its counterterrorism authorities. Consequently, all UK based P&I Clubs ceased to provide services and insurance coverage to IRISL ships. Soon after other European P&I Clubs copied the UK's decision. A P&I Club based in

¹²² Boroun, M, *Impact of Sanctions on Shipping Industry*, August 21, 2010
<http://www.mboroon.blogfa.com/post-37.aspx>

¹²³ *Ibid*

¹²⁴ Resolution 1929, Paragraph 17

Bermuda provided insurance to IRISL until January 2010 when a new law was enforced in Bermuda that is similar to the law that was enforced in the UK. As a result of the new law the Bermuda based P&I Club stopped providing services to IRISL.¹²⁵

The UN and the EU have united with the US efforts to separate IRISL. According to UNSCR 1803 and UNSCR 1929, all affiliate states of the UN are at liberty to check cargo that is carried by Iran Air or by IRISL. Member states are also able to inspect ships in national or international waters if there exist is the possibility that the cargo is prohibited from export to Iran.¹²⁶ The EU sanctions include forbidding Iran Air Cargo from access to EU-airports, freezing all EU-based assets of IRISL and its affiliates and prohibiting insurance and re-insurance of Iranian companies.¹²⁷

In response to the new international actions and in order to circumvent regulations, IRISL is employing several drills, such as switching flags, changing a vessel's registered name or owner, setting up shell companies, sailing under flags of convenience, counterfeiting shipping documents.

Previously identified as Aria Shipping Lines Company, the Islamic Republic of Iran Shipping Lines Company changed its name after the revolution in January 1979. The company was founded in 1967 and is based in Tehran, Iran. It has operations in Asia, Middle East, Europe, South America, Australia, New Zealand, and Africa. The maritime fleet of IRISL is comprised over one hundred ocean-going vessels with the total capacity of 3.3 million tons deadweight, which are manned on land and at sea by 7,000 workers whom participate in the transportation of 22 million tons of cargo annually.¹²⁸

Of the 123 ships of Iran's shipping lines that are named on the United States' black list, today only 46 ships are still owned by Iran's shipping lines or their subsets and the other 73 ships are now owned or operated by businesses which are not named on the United States' black list (4 ships were sunk). These companies can be founded in countries far away from Iran, in places like Malta, Hong Kong, Cyprus, Germany and the Isle of Man. The companies are run by IRISL officials, set up at their behest or wholly owned by IRISL. Most of the companies' ships are now operated

¹²⁵ OFAC, Press Center, *Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL*, available online at: www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx (last visited 20 October 2011).

¹²⁶ Article 14

¹²⁷ Katzman, Congress Research Service, *CRS Report for Congress: Iran Sanctions*, (2010), page 46

¹²⁸ Islamic Republic of Iran Shipping Lines website: <http://www.irisl.net/documents/document/0/11589/portal.aspx>

and directed by three newfound Iranian companies that can be found not at the addresses provided to IHS Fairplay,¹²⁹ but at IRISL facilities in Tehran.¹³⁰

The Islamic Republic of Iran's shipping industry is accused of contributing to the transportation of arms and freight related to Iran's nuclear program, and according to the United Nations Security Council resolution, the governments can inspect any Iranian ships in the event that they suspect the ship's cargo of violating sanctions. The restrictions applied to Iran's shipping lines allow all countries to avoid providing fuel or other services to Iranian ships.¹³¹

Despite all the restrictions, IRISL has found new ways to circumvent the prohibitions. Changing the names of the ships, using other countries' flags, changing the ownership of ships, etc. are alternative ways IRISL uses to continue the trade in the international level.

4.1 Setting up shell companies

On January 24, 2009, a rusting freighter flying a Hong Kong flag docked in the Durban port in South African. The stop, which was not on the ship's customary course, however was one hour long and just long enough time required to pick up its concealed cargo: a Bladerunner 51 speedboat that could be armed with torpedoes and used as a fast-attack craft in the Persian Gulf. The name displayed on the side of the ship as it left Durban and made for the Iranian port of Bandar Abbas was the Diplomat, and its registration confirmed that a company called Starry Shine Ltd owned it. Both the name and origin were of recent vintage. Six months earlier, the Diplomat had been the Iran Mufateh, part of a fleet owned by IRISL.¹³²

Within months of the Durban episode, the US government sent out the alert that IRISL had renamed the vessel and set up Starry Shine to dodge American export controls meant to prevent Iran from attaining military equipment such as the Bladerunner 51. By that time, however, the vessel had already a new name: the Amplify. Last spotted by an electronic tracking

¹²⁹ IHS Fairpaly website:

<http://www.ihs.com/products/maritime-information/index.aspx>

¹³⁰ Bahrami, M, *Tehran's Merchant Fleet Sails Close to Wind*, Mianeh news, 18 March 2011

¹³¹ Article 18

¹³² The Washington Post, *U.S. fears Iran could use powerboat as a weapon*, 5 April 2010 available online at:

<http://www.washingtonpost.com/wp-dyn/content/article/2010/04/04/AR2010040402889.html>

system this April in Karachi, Pakistan, the Amplify was under new management and had a new owner.¹³³

The Mufateh-Diplomat-Amplify is part of a great disappearing act, in which IRISL, under pressure from the sanctions, has been obscuring the genuine ownership of its ships in a web of shell companies across Europe and Asia.¹³⁴

The corporations formed as confederates of Iran's nuclear and ballistic missile programs after the US sanctioned IRISL in 2008 and all of their ships often have English names, such as System Wise and Great Method.¹³⁵ However, close study exhibits how Iran has used a successive of methods to stay one step ahead of their pursuers, such as changing not just ships' flags and names but their owners, operators and managers, too. 73 of the 123 ships listed at the time have changed hands. Some are now registered with companies based in locations far from Iran, in places like Malta, Cyprus, Hong Kong, Germany, and even Isles of Man. Thus, the Iranian government has been able to evade sanctions with an extensive plan of renaming ships and retailing them to shell companies. Most of the shell companies that IRISL has sold off most of its fleet are either owned by or run by IRISL officials. The US has informed the public that many of the ships are being used to avoid American bans on exporting military technology to Iran, but the enigmatic organization of shell companies complicates keeping the blacklist up to date. "We are dealing with people who are as smart as we are, and of course they can read our list," said Stuart A. Levey, the under secretary of the Treasury who oversees the sanctions effort and the blacklist of IRISL and its fleet.¹³⁶

It has become clear that IRISL officials either run, establish at their behest or wholly owned the companies which are also owned by the IRISL. Most of the companies' ships are now operated and managed by three recently established Iranian companies whose addresses are found at IRISL facilities in Tehran instead of where was reported to IHS Fairplay. For instance, the Amplify's registered owner is a Hong Kong corporation named Smart Day Holdings Limited, which lists its directors as different companies in Samoa and in the Isle of Man.¹³⁷ Shallon, the Isle of Man Company, is part of a organization established with the help of Nigel Howard Malpass, a British

¹³³ Becker, J, *Web of Shell Companies Veils Trade by Iran's Ships*, The New York Times, 7 June 2010

¹³⁴ Ibid.

¹³⁵ list of sanctioned iranian ships in SDN List:

<http://www.treasury.gov/ofac/downloads/t11sdn.pdf> (last viewed 20 October 2011)

¹³⁶ Quinn, R, *Iran Skirts Sanctions With Ships Shell Game*, Newser, 8 Jun 2010

¹³⁷ the list of IRISL vessels:

http://www2.budget.gouv.fr/directions_services/dgtpe/sanctions/iran/liste_irisl.xls

shipping consultant who also serves on the boards of Smart Day and companies connected to 43 other ships previously registered to IRISL.¹³⁸ Mr. Levey, recognized that his department has experienced difficulty in their efforts to keep track of the IRISL's evasion tactics. Since the sanctions were enacted the Treasury Department has accounted for some of the ship-name changes. However, since this time it has not been able to name new shell companies controlled by IRISL or other ships that have been inaugurated.¹³⁹

4.2 Changing Flags and Names of vessels

In the fall of 2008 by the time the US placed IRISL's fleet on its sanctions list, the company had already begun to set up its corporate smoke screen. Initially, the company replaced the ships' Iranian flags, primarily with those of Germany, Hong Kong and Malta. However, as time progressed almost the ships got new English names, such as the Bluebell and the Angel. When the sanctions were finally institutionalized, three new Iranian companies - Hafiz Darya Shipping Lines, Sapid Shipping and Soroush Sarzamin Asatir - were founded.¹⁴⁰

In January 2009, it was announced that Hafiz Darya had taken over IRISL's container ship business. According to the IRISL officials, Hafiz Darya was an independent entity, and that the move had been part of a larger government privatization effort.¹⁴¹ Therefore, Hafiz Darya took IRISL's spot as the world's 23rd largest container shipper, while IRISL disappeared from the top 100. Later, Sapid took over the operation of 39 blacklisted bulk carrier and general cargo ships. Together, Hafiz Darya, Sapid, and Soroush operate or manage 46 of the blacklisted ships that have been transferred to new registered owners. The owners of two ships, the Acena and the Lancelin, for instance, are two companies in Cyprus, where records show that IRISL is the sole shareholder.¹⁴²

¹³⁸Iranwatch, *Smooth Sailing for Iran's Blacklisted Fleet*, 9 April 2010, available online at: <http://www.iranwatch.org/enforcementnotebook/irislreport.htm> (last visited on 20 October 2011)

¹³⁹ Becker, J, *Web of Shell Companies Veils Trade by Iran's Ships*, The New York Times, 7 June 2010

¹⁴⁰List of Maltese Registered Companies Linked to Irisl: <http://www.maltastar.com/pages/r1/ms10dart.asp?a=9708> (last visited on 20 October 2011)

¹⁴¹ The New York Times, *Companies Linked to Irisl Published*, June 7, 2010

¹⁴²U.S Department of State, *U.S. Treasury Department Targets Iran's Nuclear and Missile Programs*, Bureau of International Security and Nonproliferation, 17 June 2010

In addition, Mohammad Javad Farshbaf, Director General of Central Insurance of Iran said: *“Nevertheless, modifying the names of the ships, using other countries’ flags, changing the ownership of ships etc. is not unlawful and determining the actual ownership of the vessels can be done by searching the internet where also one can also find the new name of the ship, to where it is destined and the contents of its cargo.”*¹⁴³

4.3 Establishing P&I Club

In October 2009, the U.K. cut off all business relations with IRISL and banned IRISL access to insurance coverage as well as other services from UK-based P&I clubs, including the Lloyd’s of London. In light of the recent UK action when IRISL requested insurance coverage from other European providers and P&I clubs they were also declined. Briefly, IRISL was able to obtain insurance coverage from a Bermuda-based P&I club until the Bermuda government passed legislation in January 2010 which mirrored the U.K. action, therefore forcing IRISL out of the Bermuda insurance market.

“Since the cancellation of P&I insurance coverage on the company's vessels by European and British insurers with the intention of grounding the company's fleet nationally and internationally failed, the European Union, in an unjust move, put on its sanctions list some of the companies that had commercial cooperation with the IRISL,” says Mohammad Hossein Dajmar, IRISL's managing director.¹⁴⁴

Subsequently, Iran began executing a plan to establish a consortium of insurance companies to support the shipping industry in an effort to reduce the detrimental effects of the new international sanctions. In early 2010, Tehran-based Moallem Insurance Company was designated for providing marine insurance to IRISL vessels.¹⁴⁵

In 2010 when European banks demanded early repayment of loans of five IRISL cargoships which were seized in Singapore, Hong Kong and Malta. They were released after several months when the line repaid the

¹⁴³ B.B.C persian, *setting up national P&I clubs in order to support IRISL*, B.B.C, 27 July 2010, available online at:

http://www.bbc.co.uk/persian/iran/2010/07/100727_107_iran89_sanctions_ships_insurance.shtml (last visited 20 February 2012)

¹⁴⁴ Pomeroy, R, *Iran shipping line fighting EU sanctions in court*, Reuters, Jun 12, 2011

¹⁴⁵ Marinelog, *IRISL P&I insurer sanctioned*, September 23, 2011, available online at: http://www.marinelog.com/index.php?option=com_content&view=article&id=310&catid=1 (last visited 20 October 2011)

loans.¹⁴⁶ Because of the tightened financial sanctions on Iran, the bank believed that the vessels were uninsured therefore called the loans in early. The banks claimed that because it was unlikely that these ships had creditable insurance, the loan status was changed to an overdue debt.¹⁴⁷ According, however, to the IRISL's managing director, insurance does not suffice to be a problem as Iranian insurers and the Central Bank have already stepped in. "*The establishment of an Iranian P&I club through a consortium made up of all Iranian insurers through a \$1 billion guarantee fund provided by the Central Bank of Iran is one of the measures to overcome that problem*" Dajmar said. "*Consequently, the company's fleet does not have any problem in that respect.*" He added.¹⁴⁸

In the end of 2010 the government in Tehran invested one billion US dollars in a domestic consortium called Moallem Insurance, whose cover and credit was accepted by several trading partners in Germany, Japan, Britain, China and Cyprus.¹⁴⁹ Moallem Insurance, however, is only a partial solution. IRISL continues to incur the risk that banks in Europe will sequester vessels in substitute for loan payment on the grounds that Moallem Insurance is not recognized as a valid insurance.

"European banks are in poor economic shape and are tempted to do the same, recouping loans by confiscating ships. If that happens, we will definitely have problems with making cash repayments to release the vessels," the IRISL official said.¹⁵⁰ Mohammad Hossein Dajmar told the last shareholder meeting that 41 vessels still on order were subject to similar loans. This means they too are at risk of being seized.¹⁵¹

¹⁴⁶Pomeroy, R, *Iran cargo ship seized in Hong Kong released*, Reuters, Feb 26, 2011

¹⁴⁷Mostafavi, R, *Iran Says Ships Seized in Singapore Freed*, Reuters, Jan 5, 2011

¹⁴⁸ Fars News Agency, *Iran Shipping Line Sues EU over Irrational Sanctions*, 13, June 2011, available online at:

<http://english.farsnews.com/newstext.php?nn=9003230363> (last visited 20 October 2011)

¹⁴⁹Bahrani, M, *Tehran's Merchant Fleet Sails Close to Wind*, Mianeh news, 18 March 2011

¹⁵⁰Ibid.

¹⁵¹Ibid.

4.4 Legal action against UN, US and EU over imposed sanctions initiated by IRISL

At the European Union's highest court Iran's state shipping line will challenge the latest round of sanctions, asserting that there is no evidence indicating that it has been involved in arms trafficking as EU and US.¹⁵²

Under the magnanimous sanction pressures by the UN, US, EU and other countries because of its controversial nuclear program, which the West considers as progressing towards developing atomic weaponry, the Iranian government continues to repudiate allegations that its nuclear program is for civilian and peaceful purpose.

IRISL's managing director, Mohammad Hossein Dajmar, denied allegations by UN, EU and US authorities that IRISL may be implicated in illegal arms shipments; " *So far, despite various rounds of sanctions by the United States, Europe and some of their allies, there has been as yet no proof or document submitted to indicate any illegal activity. This goes to indicate the sheer political nature of the recent sanctions.*" He added: "The IRISL has taken some actions in the UK, the European and US courts in coordination with the International Legal Affairs Department of Iran's Presidential Office. The company's launch of a lawsuit with Britain's Royal Courts of Justice against the Steamship Mutual P&I Club may be referred to as a case in point whose verdict was fortunately issued in favor of the Islamic Republic of Iran,"¹⁵³

Regarding to court's decision the Steamship Mutual P&I Club is obliged to fulfill its insurance obligations and pay compensation to IRISL.¹⁵⁴

He continued: "As the country's and the region's biggest marine carrier, IRISL is involved in the transportation of legal cargoes in compliance with

¹⁵² People's Daily Online, *Iran's Shipping Lines to Take Legal Actions against U.S., EU over Sanctions*, June 12, 2011, available online at:

<http://english.peopledaily.com.cn/90001/90777/90854/7407193.html#liuyan> (last visited 20 October 2011)

¹⁵³ Hellenic Shipping News, *Iran Shipping Line to Sue EU over Irrational Sanctions*, 28 June 2011, available online at:

http://www.hellenicshippingnews.com/index.php?option=com_content&view=article&id=32430:iran-shipping-line-to-sue-eu-over-irrational-sanctions&catid=3:international-shipping-news&Itemid=63 (last visited at 20 October 2011)

¹⁵⁴ Islamic Republic of Iran Shipping Lines v. Steamship Mutual Underwriting Association (Bermuda) Limited [2010] EWHC 2661

*the provisions of relevant international conventions. The IRISL's fleet has the potential to ship in more than two-thirds of the shipments required by the country in the event of further restriction of the terms of the imposed sanctions."*¹⁵⁵

¹⁵⁵ PressTv, *Iran Shipping Co. To Take US, EU to Court*, 11 June 2011, available online at: <http://www.presstv.ir/detail/184216.html> (last visited 20 October 2011)

5. Analysis

5.1 Recent sanctions against Iran targeting maritime industry

A series of UN, EU, US and international sanctions imposed over the past years have been slowly making difficulty for Iran to conduct trade by targeting the country's access to international banking, insurers and transportation companies. Like Maersk¹⁵⁶, some firms willingly severed ties with Iranian businesses, which have been targets of restrictions.

"The impact is real," said National Security Council spokesman Tommy Vietor, recalling the \$60 billion total of cancelled or halted projects in Iran's energy sector alone. With sanctions broader and deeper than ever, Iran finds it difficult to *"do business with any reputable bank internationally, to conduct transactions in euros or dollars, to acquire insurance for shipping, [or] to gain new capital investment or technology infusions,"* Vietor said.¹⁵⁷

CISADA primarily focuses on Iran's shipping transport, including the vessels and facilities that carry Iranian crude. Tidewater Middle East Co., one of blacklisted company, manages seven main port facilities in Iran, including the massive port at Bandar Abbas, near the Strait of Hormuz. Publishing the blacklist prompted many large shipping companies to reconsider their business relations such as Maersk, which was the biggest to sever its connections with Tidewater.¹⁵⁸

Shipping restrictions also play a major role in UN sanctions enforcement. Such restrictions are intended to ban IRISL to evade sanctions by changing ship names and companies. Also, there are provisions providing for high seas inspection of ships which are suspected of sanctions busting and prohibiting the bunkering of such vessels.¹⁵⁹ Annexed to the text containing the fourth round of sanctions (Resolution 1929) imposed on Iran were measures directed against 41 new named entities and individuals, including

¹⁵⁶ The shipping and oil group formally known as A.P. Moeller-Maersk (the world's largest container firm)

¹⁵⁷ J. Reske, H, *Shipping Firms Pull Out of 3 Iran Ports After Sanctions*, Newsmax, 11 Jul 2011

¹⁵⁸ Erdbrink, T, Warrick, J, *In Iran, sanctions aim at shipping lifeline*, The Washington Post, 11 July 2010

¹⁵⁹ Resolution 1929 (2010) , Paragraph 14

IRISL, one scientist and enterprises linked to the IRGC and the defense industry, and banks. Irano Hind Shipping Company, IRISL Benelux NV, and South Shipping Line Iran (SSL) are listed in the annex as entities operated by IRISL.¹⁶⁰

In conjunction with the US, UN and in an effort to intensify sanctions on the Islamic Republic of Iran EU also has targeted more Iranian shipping companies. These EU restrictions have targeted over 30 IRISL holding companies based in various countries such as Germany, Malta, Hong Kong and the Isle of Man in the UK of which all the businesses were listed at the same address in each location. Safiran Payam Darya Shipping Line is one of the shipping companies under EU sanction, which seems to have taken over IRISL's bulk services and routes and uses ships which previously owned by IRISL.¹⁶¹ Published in October of 2010, Article 26 of Council Regulation (EU) No 961/2010 stipulates the prohibition on any indemnity to or by Iran, Iran's government, or Iranian organizations and administrations, businesses and even public institutes.¹⁶²

¹⁶⁰Marine Log, *New Iran Sanctions Target Shipping and Cargoes*, June 10, 2010, available online at:

<http://www.marinelog.com/DOCS/NEWSMMIX/2010jun00101.html> (last visited on 20 October 2011)

¹⁶¹Amiri, M, Quinn, A, *Iran Shipping Companies Face More Sanctions Heat*, Reuters, May 24, 2011

¹⁶² Article 26

1. It shall be prohibited:

(a) to provide insurance or re-insurance to:

- (i) Iran or its Government, and its public bodies, corporations and agencies;
- (ii) an Iranian person, entity or body other than a natural person; or
- (iii) a natural person or a legal person, entity or body when acting on behalf or at the direction of a legal person, entity or body referred to in (i) or (ii).

(b) to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibition in point (a).

2. Points (i) and (ii) of paragraph 1(a) shall not apply to the provision of compulsory or third party insurance to Iranian persons, entities or bodies based in the Union.

3. Point (iii) of paragraph 1(a) shall not apply to the provision of insurance, including health and travel insurance, to individuals acting in their private capacity, except for persons listed in Annexes VII and VIII, and re-insurance relating thereto.

Point (iii) of paragraph 1(a) shall not prevent the provision of insurance or re-insurance to the owner of a vessel, aircraft or vehicle chartered by a person, entity or body referred to in point (i) or (ii) of paragraph 1(a) and which is not listed in Annexes VII or VIII.

For the purpose of point (iii) of paragraph 1(a), a person, entity or body shall not be considered to act at the direction of a person, entity or body referred to in points (i) and (ii) of paragraph 1(a) where that direction is for the purposes of docking, loading, unloading or safe transit of a vessel or aircraft temporarily in Iranian waters or airspace.

4. This Article prohibits the extension or renewal of insurance and re-insurance agreements concluded before the entry into force of this Regulation, but, without prejudice to Article 16(3), it does not prohibit compliance with agreements concluded before that date.

Taking into account the severe punishments planned for violators, many companies have ceased conducting business with Iran to elude the risk of being sanctioned. For instance many of the companies, in order to decrease the risk for working with Iran, have put an end to all relationships even if business opportunities are lost.¹⁶³

¹⁶³Dombey, D, *US takes aim at Iranian shipping*, The Financial Times, January 6, 2011

5.2 Insurance restrictions, Analysis and reporting

The fear of sanction has had greater impacts than the sanction itself. The more Iranian negotiators try to make the sanctions seem ineffective and powerless, foreign tradesman and companies on the operational level as well as insurance companies who have only heard the name “sanctions” and are not informed about the details, constantly fear to deal with Iranian parties. Moreover, the multi level control of governments over goods exported to Iran or imported from Iran and asking the tradesmen to acquire licenses for exportation and importation before dealings practically has stopped many of transactions. The need for acquiring these licenses has made the transaction more difficult and has increased the price of it. Therefore many of insurance companies, shipowners, charteres, brokers, foreign tradesmen and owners of industries and businesses prefer to avoid dealing with Iranians or as it has become customary, ask the Iranian party to find a middleman in other places such as city of Dubai so the dealing can be done with the tradesman in Dubai instead of the Iranian party.

In general, Insurance companies are concerned with major problems with trading with Iran such as loosing their businesses and complexity of sanction restrictions;

- **Losing business**

CISADA directly affects insurance companies owners of transportation ships which need to apply for insurance for doing business with Iran. After the ratification of US sanction laws, UN, EU and Britain also applied similar sanctions against Iran.

Informing insurance companies that are nervous and worried about these sanctions have been ineffective until now and they are not fully conscious of their actual meanings. Their first concern is that they might lose their job regarding to sanctions’ penalties. For example in October 2009, when British insurance companies were forbidden from cooperating with IRISL, they instead choose to focus on Russia and the Far East nations in order to find suitable customers or they continued business with Iran covertly. This business was carried out through Iranian P&I Club name as Moallem insurance company, which had insured the IRISL. Currently insurance companies are nervous about how they could be damaged by being connected to this cooperation. P&I Collective companies including Steamship Mutual Club, American Club, London Club and Skuld have stated that they are unwilling to provide insurance to some ships and other

companies have also expressed that they will not cooperate with shipping lines related to Iran because of the risk.¹⁶⁴

- **New rules are complex**

There are several problems arising due to the differences between the sanctions legislation of various jurisdictions. There are several similarities between the EU and US sanction regimes. Where they differ, however, is that the US regime bans the sale to Iran of RPP, or any “goods, services, information or support” which could improve Iran’s ability to import RPP.¹⁶⁵ Contrastingly the EU regime, does not forbid the import or export of RPP itself, but only important equipment and technology for the refining, exploration and production of natural gas.¹⁶⁶ Such inconsistencies create situations where an entity can be in violation of the US sanctions legislation, but does not violate the EU legislation.

The sequence of such a situation is highly vague. Case by case basis for companies from countries that cooperate with the US in its efforts against Iran CISADA permits waivers to be granted. For the waiver to be granted, however the activity must be imperative to US national security interests. It is not a blanket exemption and therefore only after the business in question has been found to violate a provision the waiver can be granted. It is also necessary to consider Council Regulation EC 2271/96 (the “Blocking Regulation”). Amongst other provisions, this fundamentally bans persons or entities subject to EU jurisdiction from adhering to the ISA. Although the CISADA amends the ISA there is ambiguity as to whether the Blocking Regulation pertains to the amended ISA and the European Commission has yet to confirm this. Before such clarification, the risk exists that steps to evade breaching provisions of CISADA could expose entities subject to EU jurisdiction to infringement on the Blocking Regulation.¹⁶⁷

In case of violating the sanction restrictions, all signs show that the US as the main force and Britain as the supporting force and executer of EU sanctions will pursue any violation of these sanctions seriously. The market is still waiting for the interpretations and definitions of these acts and waits to define the domain of violation of sanctions and to recognize the boundaries of these restrictions.

¹⁶⁴ OMNI Ltd. P&I Report 2010:

http://omniltd.ca/PDFS/OMNI_PandI_Report_2010.pdf

¹⁶⁵ CISADA, SEC. 102. 2

¹⁶⁶ Council Regulation (EU) No 961/2010, Article 8

¹⁶⁷ The Swedish Club, *Notes on Iran Sanctions*, 9 June 2011, p 10, available online at: http://www.swedishclub.com/upload/Loss_Prev_Docs/Notes_on_Iran_sanctions.pdf (last visited 20 October 2011)

Neil Smith head of underwriting for the Lloyd's Market Association says: *“When the act was introduced, we sent a council to the US to determine its boundaries, so we can recognize the danger zone. Lloyds specially is careful regarding the domain of US sanctions and won’t violate the sanctions, because the United States is a big market and we have many insurance funds there. For our own records we also work in relation to the sanctions so it won’t affect our record.”* According to Smith, US and Britain are about to intensify insurance in the domain of energy. He states: *“From on point of view, the insurance company can evaluate to see if they can handle the risk. But now is neither the time nor the place. Especially from the Lloyd’s Perspective, because our agents should not step into domains that are considered as violation on sanctions. The threat of loosing the working license as a threat that nothing’s worth it.”*¹⁶⁸ Therefore, the problem lies in the nature of the complex laws of sanctions that companies don’t want to step into the domain of threat. For example, an insurance company might be worried that the destination of an insured ship is Iran. But as long as the laws of EU have considered exceptions for aerial or maritime transportation temporarily in the aerial or maritime boundaries of Iran, the insurance companies cannot conclude insurance policies.

- **Insurance of Iranian entities and the sanctions clauses**

With the introduction of the last round of sanctions, companies and individuals need to exercise increased vigilance in trading with Iranian entities. Iran, one of the largest oil reserves in the world is not completely independent in petroleum refining technology. In general, sanctions aim to constrict Iran’s financial sector by stalling Iranian banks and restrictions on insurers, and the oil and gas industry, by prohibiting new investment or technical assistance for refineries and liquid natural gas facilities. Furthermore, the EU sanctions ban the export to Iran of key equipment and technology for refining and for the exploration and production of natural gas¹⁶⁹ in a bid to prevent Iran from increasing its own domestic ability to produce refined products such as diesel, gas oil and petrol. The US sanctions go further and ban the export to Iran of refined petroleum products, or any goods, services, technology, information or support that could develop the country's ability to import refined petroleum products.¹⁷⁰

¹⁶⁸ Denton, S, *Iranian Sanctions*, Insurance Insight, 03 December 2010

¹⁶⁹ Council Regulation (EU) No 961/2010, Article 8

¹⁷⁰ CISADA, SEC. 102. 2

These provisions have the potential of bringing companies who trade with Iran into violation of the law, including financial services companies, telecommunications companies, shipping companies, insurance and reinsurance companies. Therefore, there is a widespread concern among insurers and reinsurers about compliance with international sanctions imposed on Iran and Iranian entities. Various clauses have been developed to deal with this issue. The compliance clauses may include a right for either or both parties to withhold performance if a vessel chartered in connection with a transaction is blacklisted, its owner or charterer is a "specially designated national" (SDN) or if performing the contract could otherwise lead to one of the parties breaching sanctions.

The recent English Court of Appeal decision in *Arash Shipping Enterprises Company Ltd v Groupama Transport [2011]*¹⁷¹ will be a relevant case in this issue. The case concerned the hull and machinery insurance of the fleet of National Iranian Tanker Company. The assured was a Cypriot company and Arash Shipping (a company controlled by an Iranian entity) was a representative of co-insureds under a composite marine insurance covering hull and machinery risks. Groupama and a number of other underwriters subscribed to the 12 month policy which inceptioned in early May 2010 and contained an Iran Sanctions Clause allowing insurers to cancel their participation in circumstances where:

"... where the Assured has exposed or may, in the opinion of the Insurer, expose the Insurer to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever against Iran by the State of the Ship(s) flag, or by the United Kingdom and/or the United States of America and/or the European Union and/or the United Nations".

The policy also contained a review clause, which stated that:

*"after ten months of the policy period, subject to the claims record of the insured, insurers would extend the period of insurance for 12 months on an unaltered basis."*¹⁷²

The policy, led by Groupama Transport, inceptioned prior to the coming into force of Council Regulation (EU) No 961/2010 on 27 October 2010, imposing economic sanctions on Iran. The Regulation is directly applicable in all EU Member States, but requires Member States to lay down penalties

¹⁷¹ English Court of Appeal - *Arash Shipping Enterprises Company Limited v Groupama Transport. [2011] All ER (D) 255 (May)*

¹⁷² Cadman, J, Murphy, K, *Insurance: Iran Sanctions/Policy Renewals*, Mondaq Ltd, 6 June 2011

for breach. In the UK, criminal penalties have been prescribed, including imprisonment of up to two years and/or a fine.¹⁷³

Groupama Transport and Arash agreed that the insurance contract could run its course until expiry. However, the policy contained a review clause providing that, if after ten months of the policy period, the credit balance of the insurance was 50 per cent or better, underwriters would extend the period of the insurance for a further 12 months on an unaltered basis. It was common ground between the parties that this criterion had been met, and that Arash was contractually entitled to a 12-month extension to the policy period. It was also agreed that the renewal would be automatic. The key issue in dispute was whether this automatic extension was prohibited by article 26 of EU 961/2010, which prohibits:

“the extension or renewal of insurance and reinsurance agreements concluded before entry into force of this Regulation”, but, without prejudice to Article 16(3) of EU 961/2010, it does not prohibit compliance with agreements concluded before that date. Article 16(3) states that *“no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of certain Iranian bodies”*, which definition caught Arash Shipping.

Groupama Transport wished to comply with the review clause insofar as it could without breaching the Regulation. Arash Shipping Co. consulted the Asset Freezing Unit of HM Treasury, the body responsible in the UK for the enforcement of the Regulation, which informed Arash Co. that it considered that extension of the policy in accordance with the review clause would be prohibited. Then, Arash Co. applied to the Commercial Court to decide the issue. Arash Co. contended that article 26(4) should be interpreted to allow extensions that are in compliance with agreements concluded before the Regulation came into force, such as that contemplated by the review clause. Arash Co. also requested a finding that the notices of cancellation served by various insurers were invalid.

The Court held that renewal (even if automatic) was prohibited by article 26 of the Regulation, and further held that Groupama Transport’s notice of cancellation was valid.¹⁷⁴

¹⁷³ The Iran (European Community Financial Sanctions) (Amendment) Regulations 2010, available online at:

http://www.hm-treasury.gov.uk/d/si2613_the_iran_european_community_financial_sanctions_amendment_regulations_271010.pdf (last viewed 21 October 2011)

Arash Co. appealed to the Court of Appeal and the Court has rejected the assured's appeal. Two of the arguments raised by the Arash Co. had been as follows:

- The appellant argued that: *“The wording of the Sanctions Clause required the assured to expose the insurer to the specified risk and this, in turn, required an act or omission by the assured.”*¹⁷⁵

This argument was rejected by the Court of Appeal. Explaining that sanctions are imposed not necessarily because of what the specific entity has done but because of who it is. The first paragraph of the cancellation clause required that the insured had exposed or might expose the insurer to the specified risk. That did not require any act or omission on the part of the insured giving rise to that risk. That would be an unduly narrow reading of the clause. Furthermore, the most obvious acts on the part of the assured that might lead to the relevant risk were the subject of the second paragraph of the cancellation clause. The appellant's reading of the clause would deprive the first paragraph of any, or almost any, practical effect. Moreover, the notice of cancellation was not served in bad faith and/or unreasonably. The appellant's interpretation of Article 26(4) was not so obviously correct that the respondent could not reasonably have formed its opinion that it would be exposed to the relevant risk. The policy conferred the right of cancellation on the insurer if it was of the specified opinion. Once the insurer was genuinely and reasonably of the requisite opinion, it had a contractual right to serve notice of cancellation, and the assured could not deprive the insurer of that right by commencing proceedings and seeking to obtain the opinion of the court.

- The appellant also argued that *“this was a case of automatic extension and that amounted to an agreement concluded before the Regulation came into force.”*

The Court of Appeal found this argument invalid and held that this was not a case of automatic extension. In any event, both HM Treasury and the European Commission had rejected the appellant's interpretation in relation to automatic extensions.¹⁷⁶ They had formed the view that the Regulation did not provide a carve-out for automatic renewals. There was therefore no scope to argue that insurers had acted unreasonably. Finally, the Court of

¹⁷⁴ English Court of Appeal - Arash Shipping Enterprises Company Limited v Groupama Transport. [2011] All ER (D) 255 (May)

¹⁷⁵ *Ibid.* p. 11, paragraph 1

¹⁷⁶ Brook, N, Roderick, M, *Sanction Exclusion Clauses – A Court of Appeal Judgment*, Clyde & Co, May 2011

Appeal held that it was unnecessary to decide whether the insurers had been entitled to serve the notice of cancellation.¹⁷⁷

The decision by the Court of Appeal reflects the courts' strict interpretation of the provision of Regulation 961/2010. The object of the Regulation is the imposition of economic sanctions on Iran and Iranian persons and entities “with a view to supporting the resolution of all outstanding concerns regarding Iran's development of sensitive technologies in support of its nuclear and missile programmes, through negotiation”.¹⁷⁸ The recitals to the Regulation refer to this Council Decision. The Article 26 of the Regulation is the key article in this case as follows:

“1. It shall be prohibited:

(a) to provide insurance or re-insurance to:

(i) Iran or its Government, and its public bodies, corporations and agencies;

(ii) an Iranian person, entity or body other than a natural person; or

(iii) a natural person or a legal person, entity or body when acting on behalf or at the direction of a legal person, entity or body referred to in (i) or (ii).

(b) to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibition in point (a).

2. Points (i) and (ii) of paragraph 1(a) shall not apply to the provision of compulsory or third party insurance to Iranian persons, entities or bodies based in the Union.

3. Point (iii) of paragraph 1(a) shall not apply to the provision of insurance, including health and travel insurance, to individuals acting in their private capacity, except for persons listed in Annexes VII and VIII, and re-insurance relating thereto.

Point (iii) of paragraph 1(a) shall not prevent the provision of insurance or reinsurance to the owner of a vessel, aircraft or vehicle chartered by a person, entity or body referred to in point (i) or (ii) of paragraph 1(a) and which is not listed in Annexes VII or VIII.

For the purpose of point (iii) of paragraph 1(a), a person, entity or body shall not be considered to act at the direction of a person, entity or body referred to in points (i) and (ii) of paragraph 1(a) where that direction is for the purposes of docking, loading, unloading or safe transit of a vessel or aircraft temporarily [sic] in Iranian waters or airspace.

4. This Article prohibits the extension or renewal of insurance and re-insurance agreements concluded before the entry into force of this

¹⁷⁷ Page 10, Paragraph 26

¹⁷⁸ Recital (5) to the Decision of the Council of the European Union of 26 July 2010

Regulation, but, without prejudice to Article 16(3), it does not prohibit compliance with agreements concluded before that date.”

It is paragraph 4, which is most directly relevant. Furthermore, Article 16(3) to which it refers is as follows:

“No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes VII and VIII.”

The Appellant is not listed in either of those Annexes mentioned in the Article.

Article 37 requires Member States to lay down rules on penalties applicable to infringements of the Regulation. Article 41 provides that it is binding and directly applicable in all Member States and for its entry into force on the day of its publication in the Official Journal of the EU.

In this jurisdiction, the competent authority for the implementation and enforcement of the Regulation is the Foreign & Commonwealth Office. Infringement of the Regulation gives rise to criminal penalties. However, the matters relating to this appeal are now within the authority of Her Majesty's Treasury's Asset Freezing Unit. 16. On 27 October 2010, HM Treasury published guidance on the effect of the Regulation¹⁷⁹. Paragraphs 55 and 56 were as follows:

“55. Article 26 bans the provision of new insurance or reinsurance to:
(i) Iran and its Government, and its public bodies, corporations and agencies;
(ii) an Iranian person, entity or body other than a natural person; or
(iii) a person acting on behalf or at the direction of a person referred to under (i) and (ii)”

It also bans the extension or renewal of insurance and reinsurance agreements concluded before 27 October 2010.

“56. Compliance with agreements made prior to 27 October 2010 is not prohibited. This means existing contracts of insurance and reinsurance may run their course. However, they may not be extended or renewed. Activity pursuant to existing contracts, including the payment of claims, may

¹⁷⁹ HM-Treasury, Financial Sanctions / Counter Illicit Finance Notice, guidance on Council Regulation (EU) No 961/2010, available online at: http://www.hm-treasury.gov.uk/d/public_notice_reg961_271010.pdf (last viewed 22 October 2011)

continue, subject to compliance with any other relevant provision of the Regulation.”

Given the above information, compliance with insurance agreements made prior to 27 October 2010 is not prohibited. This means existing contracts of insurance and reinsurance may run their course. However, as is clearly stated in Article 26(4), insurance agreements already agreed may not be extended or renewed. Therefore, in this case it is crystal clear that automatic renewal would not be permitted under Article 26(4) of Council Regulation (EU) 961/2010.

In addition, the intention is clear from the use of the words “*it is agreed*” and “*will*” in the text of Article 26, which do not permit any discretion in the renewal process but provide for mandatory automatic renewal/extension. As such, it is obvious that this renewal/extension provision will not be prohibited from taking effect as the provision is contained in an insurance contract/policy which pre dates the Regulation.

Furthermore, the court of final decision on the issue is the European Court of Justice, and so the decision of the English courts would not be binding on all of the insurers subscribing to the policy. However, Article 26(4) has not exempted an extension, which can be said to amount to no more than the compliance by underwriters with an agreement they have made before the operative date. In addition, the word “*agreements*” as last used in Article 26(4) can be interpreted as a contract of insurance. Insofar as underwriters may be contractually obliged to extend the existing policy, that is compliance with an agreement which is not itself a contract of insurance or an “insurance agreement” but rather a contract to provide a contract of insurance or “insurance agreement”.

Given the above issues, in cases where Iranian ports are not specifically excluded from the trading limits, Owners can also protect themselves by incorporating specific wording into the charter (and, where appropriate, the sub-charter) to provide a mechanism to deal with a situation when orders are given by charterers that would breach sanctions. BIMCO and INTERTANKO have both published a standard form of wording. The INTERTANKO clause has a broad scope and is generally drafted in favor of Owners, as all that is required for a trade to be deemed unlawful is that it “*could*” expose the “*vessel, its Owners, Managers, crew or insurers*” to a “*risk*” of sanctions. There is, however, the possibility that parties could disagree as to whether the “trade” in question could lead to such a risk. Owners may wish to expressly amend the clause to provide that it is for Owners to decide, in their reasonable judgment, whether such risks exist.

Charterers, on the other hand, may wish to restrict the scope of the clause to trade, which “does”, in fact, expose Owners to risk.

The explanatory notes provided by BIMCO state that:

*“The objective of the new Clause is to provide owners with a means to assess and act on any voyage order issued by a time charterer which might expose the vessel to the risk of sanctions. The test is one of “reasonable judgment” by the owners in determining whether the risk of the imposition of sanctions is tangible.”*¹⁸⁰

The purpose of INTERTANKO Sanction Clause is to give shipowners or charterers the right to refuse orders to carry cargoes, which might expose the owners or insurers to sanctions. Therefore, the inclusion of such clauses is vital and similarly worded clauses should be used in any type of business that may result in orders or instructions to deal with Iranian interests.¹⁸¹

In the aforementioned case, the Court of Appeal had to consider the operation of a clause allowing an insurer to cancel participation. The case made it clear that the clause worked in the sense that the insurers were entitled to cancel the cover. However, it only did so after a positive step (cancellation) by the insurer and arguably (though rejected by the Court) a positive step (one entailing exposure to sanctions) by the insured. On the other hand, the sanctions clause developed in the London market by the International Underwriting Association and Lloyd's Market Association operates as an exclusion:

*“ No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.”*¹⁸²

¹⁸⁰ BIMCO Sanctions Clause for Time Charter Parties text:
https://www.bimco.org/en/Chartering/BIMCO%20Clauses/Sanctions_Clause.aspx (last visited on 20 October 2011)

¹⁸¹ The Swedish Club, *Notes on Iran Sanctions*, 9 June 2011, p 9, available online at:
http://www.swedishclub.com/upload/Loss_Prev_Docs/Notes_on_Iran_sanctions.pdf (last visited 20 October 2011)

¹⁸² A Joint Committee of the IUA and LMA, *Sanction Limitation and Exclusion Clause*, 29 July 2010

This is perhaps a simpler and more elegant approach, but it remains untested. There are also other clauses in the market, which adopt a mixture of elements of these two.

To sum up, there are numbers of concerns regarding to this Court of Appeal's decision. First, it should be noted that not all sanctions clauses operate in the same way, with granting the right to the insurer to cancel. Some sanction clauses in use just suspend performance, an approach less likely to provide certainty for the parties, a consideration the Court of Appeal noted as important.

Second, Groupama in this case is considered as representative of all insurers subscribing to this policy. The Court of Appeal made it clear that it was for each insurer to serve its own notice of cancellation. The validity of such notice may depend on their individual opinion as to whether they were exposed to the relevant risk, taking into account their own exposure to sanctions legislation as affected by operating considerations, location and so on.

Third, the Court of Appeal was not convinced by Arash's arguments in favor of a narrow interpretation of the sanction clause in contract, which would have restricted insurers' ability to exercise their discretion in electing to cancel the extension. From a practical perspective insurers and reinsurers should consider their position in advance of the contractual extension date and do so strictly in accordance with cancellation provisions arising through any sanctions clause in the contract. Whether insurers are entitled to terminate insurance contracts on the grounds of any sanctions legislation will largely depend on the proper interpretation of the relevant contractual terms that apply in each individual case.

Finally, Insurers are likely to welcome the Court of Appeal's decision that they acted reasonably in cancelling the policy. However, it should be considered that the courts' decision in essence concerned the reasonableness of the insurers' decision and did not reach a binding conclusion on whether an automatic extension pursuant to policy provisions is an extension or renewal prohibited by Article 26(4) of Council Regulation (EU) 961/2010 or is allowed as it involves compliance with an agreement concluded before the Regulation came into force.

Clearly, the use of a sanctions clause is likely to provide considerable comfort in efforts to comply with international sanctions. That is particularly the case for an insurer and reinsurer not directly covered by the legislation in place. However, for those directly impacted by the legislation, writing such a clause into the contract is certainly not the end of the matter.

An insured might have good reasons to seek to challenge the effectiveness of a clause. Even with a sanctions clause in place, the insurer needs to monitor coverage and consider claims. It has to take advantage of the exclusion or the right to cancel offered by the clause, or be in breach. There is still a need for due diligence. Also, article 32(2) of the EU Regulation offers a defense, but that defense can only be relied upon if the party “*did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions*”. To rely on this defense, an insurer may well have to demonstrate that it carried out appropriate due diligence.¹⁸³

¹⁸³ Woodhouse, A, *Sanction Clause – the Complete Answer?*, Insurance and Reinsurance, the Angle newsletter, issue number 39, summer 2011, p 2

6. Conclusion

While the last round of UN sanctions includes provisions to prevent Iran's use of the international financial system, and in particular the use of its banks to fund possible nuclear proliferation, the EU sanctions ban the export to Iran of key equipment and technology for refining petroleum products and for the exploration and production of natural gas in a bid to prevent Iran from increasing its own domestic ability to produce refined products such as diesel, gas oil and petrol. The US sanctions go further and ban the export to Iran of refined petroleum products, or any goods, services, technology, information or support that could develop the country's ability to import refined petroleum products. Furthermore, several nations impose sanctions against Iran along with UN, EU and US.

Broadly, all three major regimes target Iran's shipping industry, insurance, banking and energy sectors. New restrictive measures against Iran directly affect the shipowners, charterers, insurers, brokers and shipping industry in general.

Despite all the abovementioned restrictions, in response to the new international actions and in order to circumvent regulations, IRISL is employing several drills, such as switching flags, changing a vessel's registered name or owner, setting up shell companies, sailing under flags of convenience, counterfeiting shipping documents. These are some of the alternative ways that IRISL uses in order to skirt sanctions to continue trading in the international level.

Beside, faced with this matrix of often overlapping and not always consistent regimes, shipping companies have to take a global view and to appreciate that the question as to whether a particular trade or voyage could leave the company exposed is not always easily answered and needs to start with an analysis as to which legislation applies. Is the company to be considered a US person? Is the business being done in part within the EU? Are there EU nationals involved in the business even if the company is based outside the EU? Has the UN resolution been implemented into national law where the company is based? These are some of concerns in trading with Iran.

Once that exercise has been completed, the two key questions for shipping companies are usually (1) whether the cargo is prohibited or restricted by any applicable sanctions legislation, and (2) whether the Iranian entities involved are designated under the applicable legislation.

The analysis can have surprising results. For example, it may be possible for an EU shipowner to be in compliance with all the EU legislation but not CISADA if it was carrying refined petroleum products into Iran.

One of the responses to the complexities of the sanctions legislation in shipping industry sector is to simply stop trading with or through the targeted country. But there is some evidence that the void created by companies withdrawing from dealings with particular countries has been 'back-filled' by companies not subject to the EU or U.S. sanctions regimes. By transporting goods in and out of a sanctioned regime, companies are able to increase profits as others leave the market. This is obviously of concern to the EU and the U.S. authorities, and impacts upon the overall effectiveness of the sanctions programmes.

The more efficient response to sanctions complexity in shipping sector is to add a sanctions clause to charterparties and other shipping contracts. A number of clauses to deal with this increased sanctions regime have been generated by bodies such as BIMCO and INTERTANKO. The objective of such clauses is *inter alia* to enable ship owners to assess and refuse an order issued by a charterer who could expose the owners and the vessel to the risk of sanctions. The limits of a sanctions clause in an insurance policy have recently been considered by the English Court of Appeal in dismissing an appeal brought by the owner of the National Iranian Tanker Company (NITC), Arash Shipping Enterprises Company Limited on behalf of its co-assureds, against the lead underwriter on the policy Groupama Transport. The claim related to Groupama's and other insurers' decision to cancel a composite insurance policy, containing a 12-month automatic extension clause, covering the NITC fleet. The decision was based on a perceived risk of breach of EU Regulation No. 961/2010 imposed against Iran, prohibiting renewals and extensions, and relied upon the exercise of rights under the sanctions clause. In this case, the insurers' reliance on the sanctions clause was found to be lawful, the question of whether they would have otherwise been in breach of the EU sanctions being irrelevant once it had been established that they had exercised their rights under the clause properly and reasonably. The case highlights the fact that parties should consider inserting appropriate wording into their agreements which expressly provides that neither party is required to take or refrain from taking any action that may reasonably place it at risk of breach of specified sanctions regimes in order to excuse their non-performance and which better still, gives to each party a discretion itself to assess the risk of breach.

To sum up, the inclusion of such clauses is vital and similarly worded clauses should be used in any type of business that may result in orders or instructions to deal with Iranian interests. In addition, the current sanctions rules are very complex and in the case of Iranian sanctions include broad restrictions on trade and financial and other dealings with entities

within Iran. And with more sanctions being introduced in relation to areas of concern, the sanctions landscape will become even more complex which makes it necessary for insurers to protect their positions in relation to existing and current dealings with susceptible assureds. This will mean ever more detailed compliance programmes, revised trading patterns and contractual clauses to attempt to shift the risks.

In general, despite such an increasing demand for the application of sanctions, sufficient insight into the effects and effectiveness of these instruments is still lacking. Moreover, there is no denying the fact that sanctions imposed against Iran have adversely affected the whole population, depriving it in principle of all those goods for which there is a domestic need, but which are not produced locally in sufficient quantity and must therefore be imported. So the social and economic human rights are violated seriously. Also, the costs associated with the use of sanctions must also be gauged, so that the utility of sanctions (that is whether sanctions achieved their goals at reasonable price) can be determined. In this case, despite their ineffectiveness, the price tag sanctions carried was not insignificant; sanctions harmed U.S. and other European countries' interests in the energy, economic and political realms. Furthermore, sanctions against Iran tend to decrease world energy supply, thereby maintaining a higher price for oil than would otherwise be the case.

For these reasons, it is worth briefly considering three alternative approaches instead of sanctions. One theoretical alternative is a more aggressive strategy coupling sanctions with military measures. In practice, such an approach would have been problematic for many reasons. First, Iran has one of the largest and most powerful armies in the region. Therefore a new war against Iran seems unlikely to achieve any of the goals. Such actions also have surely incurred greater costs, whether measured in terms of lost lives, international condemnation and etc.

Another possible alternative to consider is the option of doing nothing. Being under sanctions since 1979, Iran still continues trading in international field which shows the inefficiency of imposed restrictions. Also there is an ongoing debate on whether imposed sanctions against Iran are fair and rightful or not, as Iran (as a signatory to the Nuclear Non-Proliferation Treaty and a member of the International Atomic Energy Agency) maintains that it has the right to develop and acquire nuclear technology for peaceful purposes. What all this demonstrates is that sanctions can be blunt instrument.

As mentioned above, it is crystal clear that use of force against Iran will cause turbulence and turmoil in the Middle East and the world, which would

be to the detriment of all parties. Therefore, it seems that dialogue and cooperation is the only correct and effective solution to resolve the Iran nuclear issue and that sanctions will not fundamentally address the problem. Therefore, a final alternative is a strategy of conditional engagement. The US, UN, EU and Iran can embark on a gradual process of reconciliation, perhaps guided by a objective, impartial observer demarcating the issues of concern to both sides and charting a course toward better relations.

Further to this, Sanctions have not been very successful in many ways and the negative consequences for innocent citizens are considerable. Therefore sanctions should be seen as a last resort, or anyhow as a means which one should not use easily. The use of sanctions weapon often seems to be an easy way out, but it is never a solution. Sanctions often produce unintended and undesirable consequences and there are many other ways to solve problems, without causing the type of damage that sanctions in many cases lead to. In conclusion, the peaceful solution is not merely the better option, it is the only option.

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