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ECONOMIC AND TRADE SANCTIONS DEVELOPMENTS IN RESPONSE TO COVID-19

To Our Clients and Friends:

Despite pressure from U.S. and non-U.S. officials to ease sanctions on Iran in response to COVID-19, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") to date has not made substantial changes to the longstanding legal authorizations for humanitarian trade. Nonetheless, OFAC has in recent weeks published unprecedented guidance for those who may find themselves facing challenges to comply with OFAC's reporting requirements in light of the pandemic, acknowledging that some businesses may be forced to reallocate sanctions compliance resources to other functions. While this is far from the substantial changes called for by some, it nonetheless indicates OFAC's willingness to respond to the crisis with some measure of understanding for the new realities faced by many businesses affected by the pandemic.

Analysis of Recent Economic and Trade Sanctions Developments in Response to COVID-19

The COVID-19 crisis has intensified longstanding controversy over the role of economic and trade sanctions in the context of international humanitarian efforts. OFAC has in recent weeks taken unprecedented actions in this area—including offering a unique position concerning the possible reallocation of compliance resources away from sanctions matters. We provide below a summary of recent actions and public statements by senior U.S. and non-U.S. officials related to sanctions in the context of the response to COVID-19 and our reflections on what to expect in the short term.

Both before and after the United States' participation in the Iran Nuclear Deal, the scope of activities related to Iran undertaken by non-U.S. persons that could result in U.S. secondary sanctions was and remains broad. As a result, many foreign financial institutions, manufacturers, and others have simply decided to restrict business related to Iran, regardless of whether the business would otherwise be authorized under the U.S. Iran sanctions. This widespread over-compliance with OFAC's rules both within and outside of the United States has placed a significant practical restraint on humanitarian trade with Iran.

In response to the COVID-19 pandemic, the [United Nations High Commissioner for Human Rights](#) and the [High Representative of the European Union for Foreign Affairs](#) intensified calls on the United States to ease sanctions on Iran in response to that country's particularly severe outbreak of the novel coronavirus.

OFAC initially responded with the addition of a new [Frequently Asked Question](#) directing attention to existing authorizations and exemptions for humanitarian trade with Iran. The FAQ described the general

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scope of the existing authorizations for trade in agricultural commodities, medicine, and medical devices with Iran, subject to limitations related to restricted parties and payment mechanisms.

Political pressure continued to mount, as current and former senior U.S. officials and diplomats, including former Secretary of State Madeleine Albright and Vice President Joe Biden, issued public statements urging OFAC to expand existing authorizations. Proposals for action included expanding the list of items eligible for the general authorization for trade in medicine and medical devices with Iran; issuing “comfort letters” to non-U.S. banks asked to facilitate humanitarian trade; adding staffing and resources to OFAC to accelerate the licensing process for medical items subject to a licensing requirement; offering updates on the operationalization of the Swiss Humanitarian Trade Arrangement; and expressing support for humanitarian trade facilitated by Europe’s INSTEX arrangement.

In apparent response to these public requests, OFAC has taken several steps that, while novel in certain respects, fall short of the changes that others have called for.

First, on April 16, OFAC issued a “Fact Sheet” summarizing the existing authorizations and exemptions for humanitarian trade and other assistance provided in response to COVID-19 with respect to all of the comprehensively sanctioned jurisdictions, namely Iran, Venezuela, North Korea, Syria, Cuba, and the Crimea region of Ukraine. Although no new authorizations were included in this document, the Fact Sheet is a helpful resource for industry, as it is the most complete collection published by OFAC to date of the various legal provisions applicable to humanitarian trade.

On the other hand, the length and detail of the Fact Sheet itself demonstrate the significant complexity and compliance resources needed to effectively use the existing authorizations for humanitarian trade. Particularly with respect to Iran, the number of restricted parties, including Iranian financial institutions and medical facilities that may be connected to restricted entities such as the Islamic Revolutionary Guard Corp-Qods Force, can make sales or donations of medical supplies to Iran complicated and risky. In addition, U.S. banks are not permitted to maintain direct correspondent relationships with banks in Iran, requiring all payments even for authorized trade to be routed through third-country banks in order to reach the United States.

Further, the Fact Sheet does not cover licensing requirements that apply to some exports of medical supplies from the United States to comprehensively sanctioned jurisdictions administered by the U.S. Department of Commerce.

Second, on April 20, OFAC issued an unusual public statement in which it appeared to provide limited leniency for persons subject to reporting requirements or who have received requests for information under an administrative subpoena with respect to challenges arising from the COVID-19 emergency. OFAC acknowledged that the pandemic crisis has caused “technical and resource challenges” for organizations. OFAC stated:

Accordingly, if a business facing technical and resource challenges caused by the COVID-19 pandemic chooses, as part of its risk-based approach to sanctions compliance, to account for such challenges by temporarily reallocating sanctions compliance resources consistent with that approach, OFAC will evaluate this as a factor in determining the appropriate administrative

response to an apparent violation that occurs during this period. OFAC will address these issues on a case-by-case basis.

OFAC has not previously made any similar statement appearing to accommodate the choice by a regulated organization to reassign resources away from sanctions compliance.

We note that this public statement by OFAC does not authorize any apparent violation of the existing sanctions rules. It merely refers to OFAC's assessment of an organization's risk-based compliance procedures in the context of an administrative enforcement action. Therefore, rather than indicate any departure by OFAC from the existing requirements with respect to sanctions compliance, this rather unprecedented statement may indicate the unusual amount of pressure that OFAC finds itself under to justify its maintenance of the status quo.

In the short term, we expect that OFAC will continue to resist calls to dramatically change the scope of existing authorizations for humanitarian trade. Press releases by the U.S. Department of State and the U.S. Department of the Treasury have offered public justification for OFAC's position. OFAC has also indicated in recent calls and panel discussions that it does not anticipate issuing new general licenses. That said, we will continue to monitor this ongoing controversy as the unusual present circumstances may yet lead to unpredictable results.



Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 pandemic. For additional information, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Coronavirus (COVID-19) Response Team or its International Trade Practice Group, or the authors:

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