

中国船东互保协会文件

中船保保字[2012]1号

关于美国对伊朗制裁的升级的通函

各会员公司：

本通函提醒协会会员关注美国政府最新立法进展。该法案很可能对伊朗引入更严厉的贸易禁运措施。

2011年12月31日，奥巴马总统签署了新的制裁伊朗法案。该法案包含在美国2012财政年度国家国防授权法案（“NDAA 2012”）第1245款中。

其中与航运业相关的是，根据NDAA 2012第1245款的要求，美国可以制裁那些协助伊朗中央银行或其他任何指定的伊朗银行进行重大金融交易（特别是关于石油交易）的外国（非美国）金融机构。之前和最近以来，美国的制裁措施，包括2011年11月21日颁布的13590号行政命令，将被制裁的目标集中在从事能直接地和显著地提高伊朗在开发伊朗境内石油资源，和保持或扩大其国内石化产品生产能力的活动的人。而NDAA 2012第1245款带来的关键进展是，制裁将适用于帮助从伊朗出口石油的有关方。这项法案的目的似乎是减少伊朗从石油收入中获取收益。

新的制裁法案进一步加强了现有的制裁措施，其要求总统冻结伊朗金融机构财产，并禁止其所有交易，如果这些财产和财产权益是在美国境内或被美国人拥有或控制（此前，并不是所有伊朗银行的财产都视为被冻结资产）。

在法案通过后的60天起，如果外国金融机构在知情的情况下，与伊朗

中央银行或其它指定的伊朗银行进行或协助其进行重大金融交易，美国将禁止其在美国的金融机构开立或维持与其代理帐户。对此唯一的豁免是涉及进口到伊朗的食品、药品或医疗器械的交易。

法案中没有定义何谓“重大”的金融交易。然而，NDAA 2012 赋予美国政府在下列情况下放弃实施制裁的自由。

- 如果外国的政府拥有或控制的银行（包括中央银行）只有在从 2011 年 12 月 31 日起 180 天之后，从事或协助涉及出售石油或石油产品给伊朗，或从伊朗购买石油或石油产品的金融交易时，才会受到制裁。

- 对涉及从伊朗购买石油或石油产品的交易，只有在总统判断除伊朗以外的其他国家有足够的石油或石油产品供给量，能够使外国金融机构或通过该机构减少从伊朗的购买量时，制裁才会适用于外国金融机构，—— 总统必须定期对该情况做出判断。

- 同样地，如果某国已大幅减少从伊朗购买原油，制裁便不适用于主要处于该国管辖内的任何外国金融机构。

- 如果总统确定免于制裁符合美国的国家安全利益，并向国会提交报告，则总统可给予 120 天的制裁豁免期间。

除了上文所述的实施制裁外，还可处以最高 25 万美元的民事处罚，最高 100 万美元的刑事处罚，和/或可被判处 20 年的监禁。

美国 2011 年对伊朗、朝鲜和叙利亚制裁整合立法草案

美国政府的立法建议很可能对伊朗、叙利亚和朝鲜民主主义人民共和国引入更严厉的贸易禁运措施。

新措施对航运业最直接的影响是拟议中的“180 天规则”。该规则规定如果某船舶在抵达美国前的 180 天的期间内挂靠过伊朗、朝鲜或叙利亚的任一港口，将可能不允许该轮挂靠美国任何港口装卸货物或从事货物贸易或服务。

这项类似于当前美国对古巴的政策立法建议已被众议院通过。如果其被参议院通过并得到总统签署的话，则将立即成为法律。

港口和水道安全法的立法修订案草案要求船舶的“船东、租船人、经营人或船长”“证明”该轮在抵达美国港口前(截止进入美国某一港口的日期以前)的 180 天的期间内，该轮没有进入过伊朗、朝鲜和叙利亚的任一港口”。

除其它适用的刑事和民事处罚外，如果某船舶提交了虚假申报，一经查实，则该轮将被处以包括至少两年期间内禁止其挂靠某一美国港口在内的禁止性处罚。该处罚将适用于提交虚假申报的船舶以及与该轮有关的母公司/关联公司所拥有的其它船舶。

该立法草案还包含以下规定：

联邦当局可以对在过去的 12 个月期间挂靠过伊朗、朝鲜或叙利亚港口的船舶直接加强检查，以确定该轮是否卷入任何被制裁的有关活动。美国当局的船舶跟踪系统中的数据可用于此检查和判定工作。

对于为进出伊朗、朝鲜、叙利亚的涉及到为核、生物或化学武器，或与弹道、巡航导弹发展计划有关的货物运输，提供航运服务的任何人实施新的制裁。这包括提供船舶、保险和再保险。唯一可以作为抗辩的是，其表明该船舶、保险、再保险或其它运输服务的提供事实上没有涉及到被禁止的活动。

该草案将对船东/经营人/船舶有直接影响。尽管由将来颁布的法案导致的船舶扣留或绕航引起的责任将使保赔险受到影响，但在最终的立法法案中是否包含有关保险人的明确的条款规定，尚有待观察。对于会员由于从事被制裁活动而招致责任后果的情况，协会保险条款中已有相应的限制条款。

国际保赔协会集团正向美国政府寻求紧急澄清一些问题。这些问题包括之前 180 天交易(航运)历史的追溯性影响、禁令的扩展对同一或相关联的公司(拥有、管理或控制)的其它船舶的侵害、对于新购买的船舶的以往的贸易历史的确定、船东在执行上文中的新措施时，对按照原有的合同义务前

往伊朗、叙利亚或朝鲜和美国的港口的适用性方面的克尽职责水平的要求等。

协会将继续关注有关法案草案的进展并随时向会员发出通函。

针对保险人的法案草案 —— 法案 HR 1905 和 S1048

法案 HR 1905 的草案中包含了针对保险人涉入，有伊朗共和国卫队或其附属公司明显和直接的参与的研发、提取、生产、运输、或销售的汽油、石油或液化天然气的立法建议。该草案似乎是基于 CISADA 法案中涉及到精炼石油产品（RPP）有关条文，并且包括了克尽职责辩护条款。虽然“明显和直接地”条款提供了某种保护，可是伊朗共和国卫队拥有相当大的商业利益，他们的参与可能不是即刻明显的，特别是对保险人而言。

此外，为去伊朗的精炼石油产品运输提供保险或再保险的公司需要向国会提交报告。这表明 CISADA 法案的执行是关注的焦点，而保险人可能会被作为潜在的目标之一。

协会经理机构将密切关注有关信息。如会员需要此方面资料，请同经理机构联系索取。

附件：关于美国对伊朗制裁的升级的通函（英文版）

特此通函。



关键词：中船保、伊朗、制裁、通函

抄送：大连分部、上海分部、中国保赔服务（香港）有限公司

中国船东互保协会

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To the Members

8th February, 2012

Dear Sirs,

UPDATE ON U.S. SANCTIONS IN RESPECT OF IRAN

Members are alerted to the latest legislative developments from the U.S. which involve an escalation of measures in support of trade embargoes on Iran.

On 31 December 2011, President Obama signed into law new sanctions against Iran set out in **section 1245 of the National Defence Authorisation Act for Fiscal Year 2012 (“NDAA 2012”)**.

Of relevance to the shipping industry is the requirement, under Section 1245 of NDAA 2012, for the President to sanction foreign (non-U.S.) financial institutions which facilitate significant financial transactions with the Central Bank of Iran or any other designated Iranian bank, particularly with respect to oil transactions. Previous, and relatively recent, U.S. measures, including Executive Order 13590 of 21 November 2011, targeted persons engaging in activities that directly and significantly contribute to Iran’s ability to (i) develop petroleum resources located in Iran, and (ii) maintain or expand its domestic production of petrochemical products. A key development brought about by Section 1245 of NDAA 2012 is that sanctions can apply to parties facilitating the export of oil FROM Iran. The aim of this legislation appears to be to curtail Iran’s earnings from oil revenues.

In a strengthening of existing measures, the new sanctions under the Act require the President to block the property of, and prohibit all transactions in property of Iranian financial institutions, if such property and interests in property are within the US or the possession or control of a US person. (Not all Iranian banks had hitherto been targeted for asset freeze).

With effect from 60 days after enactment, the President is required to prohibit a foreign financial institution from opening or maintaining correspondent accounts with U.S. financial institutions if the foreign bank knowingly conducts or facilitates significant financial transactions with the Central Bank of Iran or other designated Iranian bank. The only exemptions are for transactions involving food, medicine or medical devices to Iran.

There is no definition of what constitutes a “significant” financial transaction. However, NDAA 2012 confers latitude upon the U.S. administration to waive imposition of sanctions:

- Foreign government-owned or -controlled banks (including central banks) would

only be subject to sanction if they engage in a financial transaction involving the sale or purchase of petroleum or petroleum products to or from Iran that is conducted or facilitated 180 days after 31st December 2011;

- With respect to transactions involving the purchase of petroleum or petroleum products from Iran, sanctions would only be applied against a foreign financial institution if the President determines that there is sufficient supply of petroleum or petroleum products from countries other than Iran to permit a reduction in volumes purchased from Iran by or through foreign financial institutions - a determination the President must make on a periodic basis;
- Similarly sanctions would not be imposed if the country having primary jurisdiction over the foreign financial institution has significantly reduced its volume of crude oil purchases from Iran;
- The President can waive imposition of sanctions for 120-day periods based on a determination that waiver is vital to national security, subject to reporting requirements to Congress.

In addition to the imposition of the sanctions described above, civil penalties of up to US\$250,000, and criminal penalties of US\$1 million, and/or imprisonment of up to 20 years, could also be imposed.

Proposed U.S. Legislation - Iran, North Korea and Syria Sanctions Consolidation Act of 2011

U.S. Government legislative proposals look likely to introduce tougher measures in support of trade embargoes on Iran, Syria and the Democratic People's Republic of Korea (DPRK).

The measure most directly impacting the shipping industry is a **proposed new "180 day rule,"** which provides that vessels may not knowingly land at any port in the United States to load or unload cargo or engage in the trade of goods or services if the vessel previously entered a port in Iran, North Korea, or Syria during the 180- day period preceding the arrival of the vessel in the United States. This proposal, which is similar to current U.S. policy for Cuba, has passed the House of Representatives and could become law imminently if passed by the Senate and signed by the President.

The proposed legislative amendment to the Ports and Waterways Safety Act (33 USC 1221 et seq.) would require either "the owner, charterer, operator, or master" of a vessel to "certify" prior to arrival in a U.S. port, "that the vessel did not enter a port in Iran, North Korea, or Syria during the 180-day period ending on the date of arrival of the vessel" in a U.S. port.

In addition to other applicable criminal and civil penalties, ships found to have submitted false declarations could be subject to prohibitions including a prohibition from landing at a port in the U.S. for a period of at least 2 years. This could apply to any vessel for which a false declaration was made and to other vessels owned by a parent/associated company.

The draft legislation also contains provisions which

- Direct federal authorities to carry out enhanced inspections on vessels that have landed in Iranian, North Korean or Syrian ports during the preceding 12-months to determine whether the vessel was involved in any sanctioned proliferation-related activity. Data from the U.S. Authorities' vessel tracking systems may be used to establish such activity.
- Provide for new sanctions on any person providing shipping services for the transportation of goods to or from Iran, North Korea, or Syria for purposes relating to nuclear, biological, or chemical weapons, or ballistic or cruise missile development programs. This includes provision of vessels, insurance and reinsurance. The only defence would appear to be to demonstrate that the vessel, insurance, reinsurance or other shipping service was not in fact provided in respect of a prohibited activity.

The direct impact of the current proposals will be on the shipowner / operator/ vessel. It remains to be seen whether the final legislation will contain explicit provisions regarding insurers, although to the extent that any enacted legislation results in vessel detention or deviation, the availability of P and I cover could be affected for liabilities arising in consequence thereof. In the event that a Member incurs liabilities as a result of engaging in sanctionable activity, the Club Rules already provide for restrictions on cover.

The International Group Secretariat has sought urgent clarification from the U.S. Administration on a number of issues including the possible retrospective impact on a vessel's 180 day prior trading history; the extension of prohibitions for infringements to other vessels in the same or associated ownership, management or control; the levels of due diligence required in relation to ascertaining the prior trading history of newly acquired vessels; and the application of the new measures in the context of shipowners'/operators' existing contractual obligations to proceed to ports in Iran, Syria or North Korea and the U.S.

The Group will press for clarification on these issues and will continue to monitor developments with regard to the progress of the proposed legislation.

Proposals targeting insurers – Bill HR 1905 and S 1048

There are also legislative proposals (in Bill HR 1905) which target insurers involved

in shipment of petroleum, oil or LNG if the Republican Guard or any of its affiliates are significantly and directly involved in its development, extraction, production, transportation, or sale. The proposals appear to be based on CISADA provisions in relation to refined petroleum products (RPP) and include a due diligence defence. While the "significantly and directly" provision gives some protection, the Republican Guard has considerable commercial interests and their involvement may not be immediately obvious, particularly to an insurer.

In addition reports to Congress would be required on entities that provide insurance or reinsurance for shipments of refined petroleum products to Iran. This indicates that there will be more focus on enforcement of CISADA, with insurers as one of the potential targets.

The Managers will continue to monitor the update of relevant information. If Members need further information, please contact the Managers directly.

Yours faithfully,
China Shipowners Mutual Assurance Association

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