
Régime de sanctions américaines visant le secteur des métaux

L'ordre exécutif signé le 8 mai 2019 par le Président Trump (cf. annexe I) couvre un très large champ¹

Il interdit de facto toute activité liée de près ou de loin aux secteurs du fer, de l'acier, de l'aluminium et du cuivre, y compris les services associés (bancaire, assurantiel, transport, etc.). Le FAQ relatif à cet ordre exécutif (joint en annexe II), mis en ligne concomitamment sur le site de l'OFAC, précise notamment deux points :

i/ **une wind-down period de 90 jours** à compter du 8 mai 2019 pour mettre fin à toute transaction engagée dans ces secteurs ;

ii/ l'executive order concerne également certains matériaux (« certain materials »), incluant les matières premières et produits semi-finis à base de métaux comme l'aluminium et l'acier².

Dans les faits, ces nouvelles sanctions visent des secteurs déjà touchés indirectement par l'administration

Le secteur des mines et métaux dans son ensemble constitue un pan relativement modeste de l'économie iranienne, estimé à 0,6% du PIB selon le Centre des Statistiques d'Iran.

Toutefois, leur poids dans le commerce extérieur de l'Iran n'est pas totalement négligeable. Selon les sources, les exportations de ces quatre sous-secteurs représentaient entre 3% (ITC Trade Map pour l'année 2018) à 8% (ITPO pour l'année 2018-2019) du total des exportations, hydrocarbures inclus (contre 10% pour les Etats-Unis -*Department of Trade*- sur la base des données de *IHS Markit Global Trade Atlas*).

Selon les chiffres de l'*Iran Trade Promotion Organization* (ITPO), **5,4 Mds\$ de fer, d'acier, d'aluminium et de cuivre auraient été exportés en 2018/2019**. Selon la base de données *ITC Trade Map* (développée par la CNUCED, l'OMC et l'UE), ils représentaient **4 Mds\$ en 2017 et 1,9 Mds\$ en 2018** (sur la base de données partielles : les chiffres pour les EAU et Oman n'étant pas disponibles à ce jour). Selon cette même source, en 2017, les cinq principaux marchés export (Thaïlande, EAU, Oman, Taïwan et Turquie) pesaient pour 53% du total. Pour 2018, trois pays concentraient 62% du total des exportations (Thaïlande, Turquie et Italie). L'UE captait 8% du total en 2017, part portée à 17% en 2018, notamment par l'effet mécanique de l'arrêt des approvisionnements de certains clients.

Ces chiffres traduisent clairement une anticipation des opérateurs internationaux, lesquels ont réduit sensiblement leurs approvisionnements avec le retour des sanctions américaines dès 2018. La tendance se serait même accélérée au premier trimestre de 2019 : les exportations iraniennes de fer, d'acier, d'aluminium et de cuivre ayant été ramenées de 643 M\$ à 257 M\$ (source ITC Trade Map, les données de ITPO n'étant pas disponibles).

Ceci peut s'expliquer notamment par le fait que les services associés (banque, transport et assurance) aient été visés par le régime de sanctions américaines dès novembre 2018, laissant nombre d'opérateurs sans solution logistique et/ou de paiement. Par ailleurs, **les trois principaux acteurs iraniens du secteur (Mobarakeh Steel Co., Khouzestan Steel Co. et Esfahan Steel Co.) ont été ajoutés à la SDN list dès mai 2018**. Or ces trois opérateurs, sous la tutelle de l'Iranian Mines & Mining Industries Development & Renovation Organization (IMIDRO), représentent à eux seuls les deux tiers de la production de métaux en Iran.

¹ Seules les transactions officielles conduites par le gouvernement des Etats-Unis ou les Nations Unies (et ses agences) sont exemptes de sanctions (les Etats-Unis ont exportés pour 64 M\$ de métaux en Iran en 2017 et 54 M\$ en 2018).

² [réf. sous-sections 1245 (a)(1)(B) ou (C) de l'Iranian Freedom and Counter-Proliferation Act de 2012]

ANNEXE I

EXECUTIVE ORDER

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IMPOSING SANCTIONS WITH RESPECT TO THE IRON, STEEL, ALUMINUM, AND COPPER SECTORS OF IRAN

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, I, DONALD J. TRUMP, President of the United States of America, find that:

It remains the policy of the United States to deny Iran all paths to both a nuclear weapon and intercontinental ballistic missiles, and to counter the totality of Iran's malign influence in the Middle East. It is also the policy of the United States to deny the Iranian government revenue, including revenue derived from the export of products from Iran's iron, steel, aluminum, and copper sectors, that may be used to provide funding and support for the proliferation of weapons of mass destruction, terrorist groups and networks, campaigns of regional aggression, and military expansion.

In light of these findings and in order to take further steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995, and to supplement the authorities provided in the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Public Law 112-239), I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be operating in the iron, steel, aluminum, or copper sector of Iran, or to be a person that owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran;

(ii) to have knowingly engaged, on or after the date of this order, in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran;

(iii) to have knowingly engaged, on or after the date of this order, in a significant transaction for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran;

(iv) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of any person whose property and interests in property are blocked pursuant to this section; or

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this section.

(b) The prohibitions in this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

Sec. 2. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section upon determining that the foreign financial institution has, on or after the date of this order, knowingly conducted or facilitated any significant financial transaction:

(i) for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran;

(ii) for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran; or

(iii) for or on behalf of any person whose property and

interests in property are blocked pursuant to this order.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury in accordance with this section to meet any of the criteria set forth in subsection (a) (i) through (a) (iii) of this section, the Secretary of the Treasury may prohibit the opening, and prohibit or impose strict conditions on maintaining, in the United States of a correspondent account or payable-through account by such foreign financial institution.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

Sec. 3. I hereby determine that the making of donations of the types of articles specified in section 203(b) (2) of IEEPA (50 U.S.C. 1702(b) (2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by this section.

Sec. 4. The prohibitions in section 1 of this order include:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (a) of that section; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 5. The unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in subsection 1(a) of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is therefore hereby suspended. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 6. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 7. Nothing in this order shall apply to transactions for the conduct of the official business of the Federal Government or the United Nations (including its specialized agencies, programmes, funds, and related organizations) by employees, grantees, or contractors thereof.

Sec. 8. For the purposes of this order:

(a) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term "foreign financial institution" means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes, but is not limited to, depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Secretary of the Treasury;

(c) the term "Government of Iran" includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(d) the term "Iran" means the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(e) the term "knowingly," with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result;

(f) the term "person" means an individual or entity; and

(g) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 9. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including adopting rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to implement this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All agencies shall take all appropriate measures within their authority to implement this order.

Sec. 11. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 12. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

DONALD J. TRUMP

THE WHITE HOUSE,
May 8, 2019.

ANNEXE II

FAQ RELATIVE À L'EXECUTIVE ORDER

Frequently Asked Questions Regarding Executive Order (E.O.) “Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran” of May 8, 2019

666. What does the Executive Order Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran of May 8, 2019 do?

The [Executive Order](#) of May 8, 2019 authorizes sanctions with respect to the iron, steel, aluminum, and copper sectors of Iran.

Section 1 of the E.O. of May 8, 2019 authorizes blocking sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be operating in the iron, steel, aluminum, or copper sector of Iran, or to be a person that owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran;

(ii) to have knowingly engaged, on or after the effective date of the order, in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran;

(iii) to have knowingly engaged, on or after the effective date of the order, in a significant transaction for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran;

(iv) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of any person whose property and interests in property are blocked pursuant to section 1; or

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to section 1.

Section 2 of the E.O. of May 8, 2019 authorizes correspondent and payable-through account sanctions on foreign financial institutions (FFIs) determined to have knowingly conducted or facilitated any significant financial transaction:

(i) for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran;

(ii) for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran; or

(iii) for or on behalf of any person whose property and interests in property are blocked pursuant to the order.

Sections 3-13 of the E.O. of May 8, 2019 contain exceptions, definitions, and other implementing provisions related to the sanctions. [05-08-2019]

667. When does Executive Order Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran become effective?

The [E.O. of May 8, 2019](#) became effective upon signing. [05-08-2019]

668. Is there a wind-down period?

Yes. Persons engaged in transactions that could be sanctioned under the [Executive Order](#) Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran of May 8, 2019 will have a 90-day period to wind down those transactions without exposure to sanctions under the E.O. of May 8, 2019. Those persons should take the necessary steps to wind down transactions by the end of the 90-day wind-down period to avoid exposure to sanctions. Entering into new business that would be sanctionable under the E.O. of May 8, 2019 (the effective date of the E.O.) will not be considered wind-down activity and could be sanctioned even during the wind-down period. [05-08-2019]

669. Does the Executive Order Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran expand upon existing sanctions relating to trade with Iran in certain raw and semi-finished metals, such as aluminum and steel?

Yes. The [E.O. of May 8, 2019](#) expands upon existing sanctions under section 1245 of IFCA on the sale, supply, or transfer, directly or indirectly, to or from Iran of certain materials, including raw and semi-finished metals such as aluminum and steel, as described in subsections 1245(a)(l)(B) or (C) of IFCA.

In addition, the E.O. of May 8, 2019 explicitly targets the iron and copper sectors of Iran. [05-08-2019]

670. Are there exceptions to the sanctions imposed under E.O. of May 8, 2019?

Yes. The sanctions authorized under the [E.O. of May 8, 2019](#) do not apply to transactions for the conduct of the official business of the United States Government or the United Nations (including its specialized agencies, programmes, funds, and related organizations) by employees, grantees, or contractors thereof. [05-08-2019]

671. What is the definition of significant?

The Department of the Treasury anticipates adopting the interpretation of “significant” set out in 31 C.F.R § 561.404. See existing OFAC Iran [FAQ 289](#). [05-08-2019]