Softening Sanctions Against Iran: A Canadian Perspective

January 27, 2016

On January 26, 2016 Foreign Affairs Minister Stéphane Dion confirmed that Canada intends to normalize relations with Iran, and to begin lifting its Iranian economic sanctions. This comes just 10 days after "Implementation Day" arrived for the Iran Joint Comprehensive Plan of Action (JCPOA).

On January 16, 2016 the final pre-condition of the JCPOA was met by the International Atomic Energy Agency (IAEA) delivery of a report verifying that Iran had fulfilled its initial commitments under the JCPOA. That deal involved nuclear non-proliferation commitments by Iran in exchange for a lessening of sanctions against Iran by the European Union (EU) and the P5+1 (United States, United Kingdom, Russia, Germany, France and China). It is expected that the removal of sanctions, in particular by the EU and US, will significantly open up Iranian business opportunities.

Since implementation day, Canadians have been watching the new Liberal government closely to see what steps they will take to ensure that Canadian business does not miss these new economic opportunities. Yesterday was confirmation that Canadian business will shortly be permitted to re-engage in trade with Iran. There are, however, a number of hurdles which will need to be overcome.

At present, Canada has imposed economic sanctions against Iran under both the *United Nations Act* (UN Act) and the *Special Economic Measures Act* (SEMA).

With the UN Security Council terminating resolutions that had imposed nuclear related sanctions on Iran, we expect that Canada will quickly amend Canadian sanctions imposed under the UN Act to be consistent with the JCPOA. This does not mean, however, that all Canadian economic sanctions imposed against Iran will be lifted.

Economic sanctions imposed under SEMA are much more intrusive on Canadian-Iran trade than those imposed under the UN Act. In effect, Canada's economic sanctions imposed under SEMA prohibit anyone in Canada, and any Canadians outside of Canada, from entering into, or facilitating, directly or indirectly, the exporting, selling, supplying or shipping of goods to Iran. These prohibitions extend to the provision of almost all services, including insurance or banking. While there are some exceptions, the current Canadian SEMA economic sanctions imposed prohibits almost all

commercial activity between Canada and Iran. While there is an obligation on Canada as a member of the UN to rescind or amend the regulations that it has imposed under the UN Act, there is no obligation on Canada to amend or revoke the comprehensive sanctions which it has imposed on Iran under the SEMA.

A second challenge for Canada is that on September 7, 2012, Canada designated Iran as a state supporter of terrorism. Pursuant to the *Justice for Victims of Terrorism Act*, and related amendments to the *State Immunity Act*, Canada has revoked Iran's state immunity in relation to any actions brought against Iran in connection with its support of terrorism. Since that time, diplomatic relations between Canada and Iran have been suspended.

It is within this context that the current Canadian Government must determine the extent to which it will lift some or all of the existing economic sanctions, and how they can repair diplomatic relations between Canada and Iran.

The range of options available to Canada is highlighted by the different approaches recently adopted by the US and EU.

The EU has lifted the majority of its previous trade restrictions with Iran. In particular, the following activities are now permitted by the EU:

1. Almost all financial, banking and insurance services between EU persons and non-listed Iranian persons, entities or bodies including many Iranian financial and credit institutions;
2. The sale, supply, transfer or export of naval equipment and technology for shipbuilding, maintenance or refit is now permitted. This includes the provision of vessels designed or used for the transport or storage of oil and petrochemical products and the provision of flagging and classification services to Iranian oil tankers and cargo vessels;
3. The import, purchase and transport of crude oil and petroleum products, gas and other petrochemical products from Iran is now permitted. Moreover, equipment, technology and technical assistance may be provided by persons in the EU to the oil, gas and petrochemical industries within Iran;
4. Investments in Iranian oil, gas and petrochemical industries, including financial loans, or credit to either acquire or enter into joint ventures with Iranian persons engaged in the oil, gas and petrochemical sectors is now permitted; and
5. The sale, supply, purchase, export or transfer of precious metals, bank notes and coinage to and from, or for the Government of Iran, its public bodies, corporations or agencies, or its central bank is permitted.

The EU sanctions relief set out above is extensive. In many sectors, it re-opens commerce between the EU and Iran. At a high level, the only remaining EU measures relate to proliferation and non-proliferation related sanctions, an arm's embargo, sanctions applicable to other military-related or dual use technologies and restrictions against certain entity-specific and individual-specific sanctions.

While the EU sanctions relief has been quite extensive, the US has maintained most of its trade sanctions that prohibit US persons from engaging in almost all commercial transactions with Iran. The most significant change by the US is the lifting of "secondary" or "extra-territorial" sanctions which targeted non-US persons engaged in

activity outside of the US. This is by far the most significant change in the US sanctions. The lifting of these secondary sanctions is expected to significantly open up non-US firms' ability to do business with Iran, as well as restoring Iran's access to the international financial system and expand Iran's ability to sell its oil, gas and petrochemical products on the international market.

While the US is lifting the secondary sanctions, the economic restrictions applicable to US persons remain largely the same as pre-implementation day sanctions. The following changes are worth noting:

1. The Department of the Treasury's Office of Foreign Assets Control (OFAC) has announced a favourable licensing policy for certain activities related to civil aviation. In particular, exports and re-exports from the US to Iran of commercial aircraft, as well as aircraft related items and services used exclusively for commercial aviation purposes, will be authorized by OFAC on a case-by-case basis. We expect this will result in increased business between US civil aviation companies and Iran; and
2. Importation into the US of certain Iranian products, including Iranian carpets and food (in particular pistachios and caviar) is now permitted.

So which path will Canada follow? If no significant changes are made to the existing Canadian sanctions, Canadian business will be at a competitive disadvantage to their US and EU competitors. If Canada follows the US path, then only certain Canadian industries will be able to resume trade with Iran, with all other sectors remaining at a competitive disadvantage to EU competitors. Moreover, the resumption of trade will remain affected by the complete absence of diplomatic relations between Iran and Canada.

Economic sanctions work when like-minded countries jointly and collectively impose similar sanctions. With the changes in the EU and the US foreign policy regarding Iran, the impact of Canadian sanctions on Iran's economy is dramatically reduced. Without rapid changes made to Canada's existing sanctions against Iran, Canadian business will find itself to be at a competitive disadvantage to its competitors in the EU and US who are freer to engage. While the Government's stated intention to resume diplomatic relations and lift economic sanctions is encouraging, what is needed is quick decisive action. The continuation of comprehensive sanctions, coupled with the suspension of Canada-Iran diplomatic relations, will only hurt Canadian business.

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