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The Iran-Libya Sanctions Act (ILSA)

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Summary

In August 2001, the Iran-Libya Sanctions Act (ILSA, P.L. 104-172) was renewed for another five years (P.L. 107-24). No firms have been sanctioned under ILSA, and ILSA has terminated with respect to Libya. In the 109th Congress, H.R. 282 and S. 333 contain provisions that would modify ILSA. This report will be updated to reflect legislative developments. See also CRS Report RL32048, *Iran: U.S. Concerns and Policy Responses*, and CRS Issue Brief IB93109, *Libya*.

Background and Passage of ILSA

ILSA was conceived in the context of a tightening of U.S. sanctions on Iran during the first term of the Clinton Administration. Sanctions were added as a response to Iran's stepped up efforts to acquire nuclear expertise and its reputed support to terrorist organizations, including Hizbollah, Hamas, and Palestine Islamic Jihad (PIJ). In 1995, President Clinton issued two executive orders, including Executive Order 12957 (March 15, 1995), which banned U.S. investment in Iran's energy sector, and Executive Order 12959 (May 6, 1995), which banned U.S. trade with and investment in that country.

The Clinton Administration and many in Congress maintained that the new U.S. sanctions would deprive Iran of the ability to acquire weapons of mass destruction (WMD) and fund terrorist groups by hindering its ability to modernize its key petroleum sector, which generates revenues that account for about 10% of Iran's GDP. Iran's onshore oil fields, as well as its oil industry infrastructure, are old and needed substantial investment, and its large natural gas resources (believed second largest in the world, after Russia) were not developed at all at the time ILSA was first considered.

After U.S. allies refused to adopt sanctions against Iran in the mid-1990s, the Clinton Administration and Congress believed that it might be necessary for the United States to try to deter foreign investment in Iran. The opportunity for such deterrence came in November 1995, when Iran launched its first major effort to open its energy sector to foreign investment. Iran had banned this investment after the February 1979 Islamic revolution on the grounds that foreign firms would gain undue control or influence over Iran's resources. To accommodate that philosophy, while recognizing that its economy

was in jeopardy without foreign help, Iran developed a “buy-back” investment program under which foreign firms recoup their investments from the proceeds of oil and gas discoveries but do not receive equity positions.

As Iran was announcing plans to open its energy sector to foreign investment, some in Congress, with input from the Clinton Administration, developed legislation to sanction such foreign investment. On September 8, 1995, Senator D’Amato introduced the Iran Foreign Oil Sanctions Act of 1995, which would impose sanctions on foreign firms’ export to Iran of energy technology. The bill passed the Senate on December 18, 1995 (voice vote) but, in contrast to the introduced version, imposed sanctions on foreign *investment* in Iran’s energy sector. The focus on deterring investment appeared to take into account Clinton Administration concerns that U.S. monitoring of foreign exports to Iran would be too difficult to implement. On December 20, 1995, the Senate passed still another version with an amendment, sponsored by Senator Kennedy, that applied all provisions to Libya as well as Iran. Observers widely interpreted the amendment as an effort to pressure Libya to yield for trial the two suspects in the December 21, 1988 bombing of Pan Am 103, both allegedly agents of Libyan intelligence. The House passed its version of the bill, H.R. 3107, on June 19, 1996 (415-0). The Senate passed a slightly different version on July 16, 1996 by unanimous consent. The House agreed to the Senate amendment and the President signed the bill into law (P.L. 104-172) on August 5, 1996.

Key ILSA Provisions

ILSA requires the President to impose at least two out of a menu of six sanctions on foreign companies that make an “investment” of more than \$20 million in one year in Iran’s energy sector.¹ The six sanctions available under ILSA (Section 6) are the following: (1) denial of Export-Import Bank loans, credits, or credit guarantees for U.S. exports to the sanctioned firm; (2) denial of licenses for the U.S. export of military or militarily-useful technology to the sanctioned firm; (3) denial of U.S. bank loans exceeding \$10 million in one year to the sanctioned firm; (4) if the sanctioned firm is a financial institution, a prohibition on that firm’s service as a primary dealer in U.S. government bonds; and/or a prohibition on that firm’s service as a repository for U.S. government funds (each counts as one sanction); (5) prohibition on U.S. government procurement from the sanctioned firm; and (6) a restriction on imports from the sanctioned firm, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 and following).

Waiver/Expiration Provisions. The President may waive ILSA sanctions if the parent country of the violating firm agrees to impose economic sanctions on Iran (Section 4(c)). This waiver provision did not apply to Libya. In addition, the President may waive sanctions on the grounds that doing so is important to the U.S. national interest (Section 9(c)). This waiver applied to both Iran and Libya. ILSA terminates for Iran if Iran ceases its efforts to acquire WMD and is removed from the U.S. list of state sponsors of

¹ For Libya, the threshold was \$40 million, and sanctionable activity included exportation to Libya of technology that could be used to develop its energy sector, to develop weapons of mass destruction (WMD), to enhance its conventional military, or to maintain its aviation capabilities (Section 5(b)(1)). These exports had been banned under Pan Am 103-related Security Council Resolutions 748 (March 31, 1992) and 883 (November 11, 1993).

terrorism. For Libya, ILSA terminates if the President determines that Libya has fulfilled the requirements of all U.N. resolutions relating to the attack on Pan Am 103. (President Bush made that certification on April 23, 2004, terminating ILSA with respect to Libya.)

Renewal and Modifications in 2001

ILSA was to sunset on August 5, 2001 (5 years after enactment). In the runup to ILSA's expiration, Congress debated renewal of the law in the context of a somewhat improved climate in U.S. relations with both Iran and Libya. During 1999 and 2000, the Clinton Administration had eased sanctions somewhat in response to the somewhat more moderate foreign policy stances of Iran's President Mohammad Khatemi. In 1999, Libya had yielded for trial of the Libyan suspects in Pan Am 103. However, proponents of renewal maintained that not only had ILSA accomplished some of its key objectives but that both Iran and Libya would view ILSA's expiration as a concession, reducing their incentive to adopt policies the United States favors. Legislation to renew ILSA (H.R. 1954) was passed in the 107th Congress and signed on August 3, 2001 (P.L. 107-24). The law lowered the sanctionable investment threshold in Libya to \$20 million in one year — the same as for Iran — and changed the definition of investment to treat any additions to pre-existing investment as a new investment. It required an Administration report on ILSA's effectiveness within 24 - 30 months of enactment; that report was submitted to Congress in January 2004 and did not recommend ILSA be repealed.

Implementation and Effectiveness of ILSA

Traditionally skeptical of economic sanctions as a policy tool, the European Union states took particular exception to ILSA as an extraterritorial application of U.S. law. Some EU states criticized ILSA as a "double standard" in U.S. foreign policy, in which the United States worked against the Arab League boycott of Israel while at the same time promoted a worldwide boycott of Iran. The EU countries threatened formal counteraction in the World Trade Organization (WTO). In April 1997, the United States and the EU formally agreed to try to avoid a trade confrontation over ILSA and the "Helms-Burton" Cuba sanctions law (P.L. 104-114). The agreement contributed to a decision by the Clinton Administration to waive ILSA sanctions on the first project determined to be in violation — a \$2 billion² contract, signed in September 1997, for Total SA of France and its minority partners, Gazprom of Russia and Petronas of Malaysia to develop phases 2 and 3 of the 25-phase South Pars gas field. The Administration announced the waiver on May 18, 1998, citing national interest grounds (Section 9(c) of ILSA), after the EU pledged to increase cooperation with the United States on non-proliferation and counterterrorism. The announcement indicated that EU firms would likely receive waivers for future projects that were similar.

The Bush Administration has largely adopted the same policy on ILSA as did the Clinton Administration, attempting to work cooperatively with the EU to curb Iran's nuclear program and limit its support for terrorism. According to the Bush Administration's mandated January 2004 assessment, ILSA has not stopped energy sector

² Dollar figures for energy investment contracts with Iran represent public estimates of the amounts investing firms are expected to spend during the life of the project, which might in some cases be several decades.

investment in Iran. However, some believe ILSA did slow Iran's energy development, at least until foreign companies began to perceive that ILSA sanctions would not likely be imposed for investing in Iran. Iran's sustainable oil production has not increased significantly since the early 1990s, despite the new investment,³ although foreign investment has slowed or halted deterioration in oil production. On the other hand, Iran's gas sector, non-existent prior to the late 1990s, is becoming an increasingly important factor in Iran's energy future as a result of foreign investment.

Since the South Pars case, many projects — all involving Iran, not Libya — have been formally placed under review for ILSA sanctions by the State Department. Recent State Department reports on ILSA, required every six months, state that U.S. diplomats raise with both companies and countries the United States' ILSA and policy concerns about potential petroleum-sector investments in Iran. However, no sanctions determinations have been announced since the South Pars case.⁴ Recent energy sector investment in Iran includes the following:⁵

- A February 1999 contract to France's Totalfina Elf and Italy's ENI to develop the Doroud oil field. Estimated value: \$1 billion.
- An April 1999 contract for Totalfina Elf, Canada's Bow Valley, and ENI to develop the Balal oil field. Estimated value: \$300 million.
- A November 1999 contract for Royal Dutch/Shell (U.K. and the Netherlands) to develop the Soroush and Nowruz oil fields. Estimated value: \$800 million.
- A July 2000 award to ENI to develop phases 4 and 5 of South Pars. Estimated value: \$1.9 billion.
- An April 2000 exploration contract for Norway's Norsk Hydro to develop the Anaran oil field. Estimated value: unknown.
- A March 2001 award contract for Sweden's GVA Consultants to lead exploration for oil in Iran's portion of the Caspian Sea. Estimated value: \$226 million
- A June 2001 contract for ENI to develop Iran's Darkhovin oil field. Estimated value: \$1 billion. Work has not begun.

³ Testimony of Deputy Assistant Secretary of State Anna Borg before the House International Relations Committee, Subcommittee on the Middle East and Central Asia. June 17, 2003.

⁴ The Clinton Administration reviewed several projects involving Libya, but U.S. officials said that foreign investment in Libya was more difficult to assess because Libya has consistently hosted foreign energy firms; projects there mostly represent continuations of investments made prior to ILSA's enactment.

⁵ Work has begun on all of these agreements, unless specified.

- In May 2002, Canada's Sheer Energy took a 49% stake in a project to develop the Masjid-e-Soleyman oil field. Estimated value: \$80 million.
- A September 2002 award to South Korea's LG Engineering Group, in partnership with two Iranian firms, to develop phases 9 and 10 of South Pars. Estimated value: \$1.6 billion.
- An October 2002 contract for Norway's Statoil to develop phases 6, 7, and 8 of South Pars. Estimated value: \$2.6 billion.
- In February 2004, after several years of negotiations, Iran reached agreement with a Japanese consortium led by Inpex Corp. to develop the large Azadegan field. Estimated value: \$2 billion.
- That same month, Iran signed an agreement with Total and Petronas to produce eight million tons of liquefied natural gas (LNG) per year. Estimated value: \$2 billion. Expected to start LNG exports by 2009.
- During 2004-January 2005, Iran reached several related agreements with energy companies in China and India under which (1) Iran would supply both China (Zhuhai Zhenrong) and India (ONGC and Petronet) with LNG over 25-30 year periods; (2) India's ONGC and China's Sinopec would receive stakes in the development of Iran's Yadavaran oil field, which might be able to produce 300,000 barrels per day; and (3) the state-owned Indian Oil Company would develop part of South Pars gas field and build an LNG plant. If implemented for the full duration of the agreements, these deals could total over \$100 billion. (Agreements to import Iranian LNG would not appear to constitute an "investment" in Iran's energy sector, as defined by ILSA.) A major part of these deals is discussion of constructing a gas pipeline, as discussed below.

Energy Routes Transiting Iran. ILSA's provisions and its definition of "investment" do not specifically mention the development of energy transit routes through Iran as sanctionable activity. However, the Clinton Administration position was that the construction of such routes might constitute activity sanctionable under ILSA, because these routes would "directly and significantly contribut[e] to the enhancement of Iran's ability to develop petroleum resources."⁶ The Clinton Administration adopted that position to promote a Caspian energy route from Azerbaijan (Baku) to Turkey (Ceyhan) that would bypass Iran and Russia, and thereby deny Iran and Russia leverage over Western energy supplies. The Bush Administration has not announced any alteration of this stance. (The Baku-Ceyhan has been developed and is expected to be operational by mid 2005.)

At the same time, the United States has responded to the needs of a key regional ally, Turkey, for energy supplies. A few weeks after ILSA was enacted, Turkey and Iran reached final agreement on a plan to construct a natural gas pipeline from Iran to Turkey, with each country constructing the pipeline on its side of their common border. Turkey

⁶ This definition of sanctionable activity is contained in Section 5(a) of ILSA.

later announced that, at least initially, it would import gas from Turkmenistan through this new pipeline. In July 1997, the State Department said that the project did not qualify for ILSA sanctions because Turkey would be importing gas from Turkmenistan, not Iran, and the project would therefore not benefit Iran's energy sector directly. However, direct Iranian gas exports to Turkey reportedly began in 2001, in apparent contravention of Turkey's pledges to the United States that it would not buy Iranian gas directly, but the Bush Administration has not indicated it would impose ILSA sanctions on the project.

Another test of Administration policy could be looming. As noted above, the 2004-2005 deals between Iran and Indian firms might include construction of a gas pipeline from Iran to India, through Pakistan, with a possible extension to China. Political differences, particularly between India and Pakistan, could slow or derail the pipeline proposal, but some commentators believe it both addresses regional energy needs and promotes political cooperation between India and Pakistan.⁷ During her visit to Asia in March 2005, Secretary of State Rice "expressed U.S. concern" about the pipeline deal, although neither she nor any other U.S. official has said it would be reviewed for ILSA sanctions. Indian officials have rebutted the U.S. opposition and have also continued to cooperate with Iran on regional rail and road links.

Proposed ILSA Modifications: H.R. 282 and S. 333

There are some legislative proposals in the 109th Congress to close some perceived ILSA loopholes. The proposed legislation, H.R. 282 (Ros-Lehtinen) and a companion, S. 333 (Santorum) are similar to bills introduced in the 108th Congress (H.R. 3347 and H.R. 5193, introduced by Rep. Ros-Lehtinen). H.R. 282 was marked up by the Middle East/Central Asia Subcommittee of the House International Relations Committee on April 13, 2005. Both it and S. 333 have major provisions to express support for a policy of promoting democracy in Iran; the most significant ILSA-modification provisions of the bills are as follows:

- requiring an administration report to Congress on countries cooperating (or not) with U.S. efforts to forge a multilateral Iran sanctions regime;
- making exports to Iran of WMD-related technology or destabilizing advanced conventional weaponry sanctionable activity under ILSA;
- requiring the President to certify that Iran is no longer a threat to U.S. national security or allies in order to terminate ILSA, and both bills would repeal the sunset provision of ILSA;
- the marked-up version of H.R. 282 calls on U.S. government and private sector fund managers to divest their funds of entities that invest in Iran's energy sector and would cut assistance to countries whose companies conducted sanctionable investment in Iran.

⁷ Perkovich, George and Revati Prasad. A Pipeline to Peace. Op-Ed, in *New York Times*, April 18, 2005.