

INDUSTRIALS | September 22, 2016

Industrial Conversations Series on Navigating Iran Sanctions: How Industrials Can Do Business With Iran

Challenges Ahead for Western Aircraft Manufacturers

Welcome to Shearman and Sterling's Industrials Conversations Series. Today we're going to be discussing navigating Iran sanctions and how industrials can do business with Iran. I'm [Lisa Jacobs](#) and I'm joined by my colleague [Philip Urofsky](#).

So both Boeing and Airbus have reached deals with Iran. How can they actually deliver airplanes into Iran? What is that going to entail at this point?

Well they had different roads to this point, going forward there's some convergence on their roads. Airbus, as we understand it, was able to go in and negotiate these agreements, even before the Joint Plan went into effect. Almost immediately after Implementation Day, they were able to announce a very large contract, something along the lines up to \$25 billion in aircraft—if all the aircraft are actually purchased and delivered. And so, they were able to negotiate that and sign it, and announce it very quickly.

Boeing, on the other hand, as a US company, was not able to talk to the Iranians. They weren't even able to negotiate anything with the Iranians, even after Implementation Day, until in February, about a month later, when the Treasury department issued a general license—I think General License I—which explicitly authorized a negotiation of a contingent contract—still contingent—but they could negotiate the terms of the contract. That's what Boeing announced and signed in June—a contingent contract. It's contingent because, what the licensing regime under OFAC (the Treasury Department's Office of Foreign Assets Controls) says is that they will have to issue specific licenses on a transaction-by-transaction basis; aircraft-by-aircraft basis.

So, Boeing can negotiate an agreement to sell. But now they have to go back to OFAC and get the specific license to sell each of these planes. There is a reason for that, namely that in the implementation, or the plan, is a provision for snapback of sanctions. If the determination is that Iran is not honoring the conditions for the sale of the airplanes, or generally for the lifting of the sanctions, they can be put back in place right away, and that would prevent any additional sales of these airplanes.

One of those conditions is that these airplanes can only be sold to airlines that are not designated under other sanctions provisions, such as Mahan Air, which is designated under the global terrorism sanctions. So sanctions against Mahan Air, one of the state owned airlines, was not lifted, and if you find out for instance that we sell to Iran Air, which is permitted, and they are transferring the plane to Mahan Air, that would be a violation and no longer would licenses be issued. There are also allegations that the commercial airlines are being used to ferry goods and soldiers to Syria. If confirmed on one of these new planes then the rest of these planes would be affected and that's why it's contingent, and that's why there are individual sanctions.

So both companies now have these massive contracts to sell, but there's still one more step they have to do; two more steps they have to do. First they have to figure out how they're going to finance these transactions. The second thing is, all these airplanes have—both the Airbus and the Boeing—have more than 10% US content, so they need permission from the Commerce Department, under the Export Controls Act, to export, or in Airbus' case, re-export, American technology and goods to Iran, and that has not been forthcoming yet.

It may, because generally the Administration is behind and supportive of these sales, but Congress has a different view. The House in fact passed amendments to a recent bill that prohibited the Treasury Department from spending, and presumably the rest of Administration, from spending any money, any funds, authorizing these transactions.

The senate hasn't passed that yet. The President may veto, if it was viewed as torpedoing the deal. So it hasn't gotten that far, but there are still a number of steps to go forward.

Financing is an even more difficult issue because although the government has said they are fully supportive of this, US banks and European banks are very wary of getting involved with Iran in big dollar transactions or in big currency transactions of any sort. Boeing in fact has even recently announced that they might consider accepting euros, just because they don't know if they'll ever be able to get a US bank to accept a dollars transaction.

Some of these deals are so big, that presumably they would want Ex-Im Bank, and Ex-Im Bank has said that it won't—so far anyhow. Actually Ex-Im Bank can't do anything right now, because I believe they're still missing several significant board members. But even then, whether Ex-Im Bank would actually sign on to support a sale to Iran: not clear.

Whether European suppliers would, and you know, you can finesse it that way—who knows. European banks have been very reluctant even for a euro deal. Airbus has as recently as a month ago complained that they still can't get financing because the US has prosecuted European banks for violations of sanctions in the past and so they are sort of gun shy on this. And then there is just the overall risk, even if you tried to do a leasing arrangement, once that plane is in Iran, what are the realistic chances of repossessing it if the financing falls through—and so there is an enormous financial risk.

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