

United States Senate

WASHINGTON, DC 20510

January 19, 2012

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Geithner:

On December 1, 2011, the U.S. Senate passed the "Menendez-Kirk" amendment to impose crippling sanctions on the Central Bank of Iran by a vote of 100-0.

Since the amendment was signed into law by President Obama on December 31, 2011, the new law has produced significant results, including a 25% decline in the value of the Iranian Rial, indications that Japan, Korea, and India are contemplating reductions of their Iranian oil purchases, and that China is negotiating for significant price reductions. We are also anticipating a vote by the European Union later this month approving an Iranian oil embargo and sanctions against the Central Bank of Iran. We recognize the multilateral diplomacy initiative that the Administration has undertaken to convey the effect of the law on foreign nations and financial institutions and particularly, to encourage the production of non-Iranian crude oil alternatives critical to our ability to isolate Iran.

We understand that the Administration is drafting rules to guide the implementation of the law and we hereby seek to convey the legislative intent underlying certain terms and phrases in the amendment and to ensure that the positive developments that have occurred as a result of the amendment are buttressed by the administrative rules.

Knowingly Conducted or Facilitated Any Significant Financial Transaction:

Menendez-Kirk targets foreign financial institutions that "knowingly conduct" a "significant" transaction with the Central Bank of Iran. These phrases were also used in the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA). In its rule implementing CISADA, the Administration defined significant transactions broadly to be determined at the Treasury Secretary's discretion based on a range of criteria, including: (a) Size, Number, and Frequency; (b) Nature; (c) Level of Awareness; Pattern of Conduct; (d) Nexus; (e) Impact; (f) Deceptive Practices; and (g) Other Relevant Factors. Rather than setting an actual dollar amount as a floor, the broader definition allows the Administration to consider even small amounts to be "significant" depending on the situation.

With regard to "knowingly," CISADA defines this to mean constructive knowledge – a higher standard than actual knowledge. Under this standard, the Administration must consider whether an institution should have known it was making prohibited transactions, not just whether it actually knew at the time.

For both "significant financial transaction" and "knowingly conducted," we expect CISADA to serve as the baseline standard for the rule implementing Menendez-Kirk.

Strict Conditions:

Under Menendez-Kirk, if a foreign financial institution violates the law, the President shall "prohibit or impose strict conditions" on that institution's correspondent and payable-through accounts in the United States. In its rule implementing CISADA, the Administration defined strict conditions to include: (1) Prohibiting any provision of trade finance through the correspondent account or payable-through account of the foreign financial institution; (2) Restricting the transactions that may be processed through the correspondent account or payable through account of the foreign financial institution to certain types of transactions, such as personal remittances; (3) Placing monetary limits on the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution; or (4) Requiring pre-approval from the U.S. financial institution for all transactions processed through the correspondent account or payable through account of the foreign financial institution. We expect CISADA to serve as the baseline standard for the "strict conditions" imposed under Menendez-Kirk.

Significantly Reduced its Volume of Crude Oil Purchases from Iran:

One of the most important definitions to be determined by this rule will be the standard by which a foreign country may qualify for an "exception" to the imposition of sanctions with regard to oil transactions. Under the statute, the President may extend this "exception" if a foreign government with jurisdiction over financial institutions conducting petroleum transactions with the Central Bank of Iran has "significantly reduced its volume of crude oil purchases from Iran." This exception must be renewed every six months with the foreign country required to demonstrate it has met the same standard over the preceding six-month period.

There are two important points to note here. First, the Administration could be flexible in its interpretation of "crude oil purchases" to place the emphasis on the word "purchases" rather than the phrase "crude oil." This would allow a significant reduction of "crude oil purchases" to apply to the bottom line amount of money a country sends to the Islamic Republic of Iran for the purchase of oil. Such reductions could be achieved by a reduction in crude imports (barrels per day) and/or price discounts provided by the Iranians. In the end, a successful sanctions policy will be judged by its impact on the Iranian "bottom line" – driving its net oil revenues down regardless of its actual supply of oil to the market. We support this approach rather than limiting the interpretation to reductions in the quantity crude imports alone.

Second, the Administration might be tempted to leave the phrase "significantly reduced" as a broad term subject to the discretion of the Treasury Secretary on a case-by-case basis (similar to "significant financial transaction" discussed above). This could allow for a range of criteria to be assessed, including whether the reduction was "significant" to a given country given that country's current economic situation or energy-source diversity. It is our position, however, that circumstances, if extreme, that limit a country or a financial institution's ability to comply with

the significant reductions called for by the amendment should not be considered in this context, but rather addressed through the amendment's national security interest waiver provision. To ascribe more variable terminology to the definition of "significantly reduced" would diminish the ability of countries' to understand and comply with the amendment. An unevenly applied interpretation would also call into question the seriousness of the sanctions policy and send mixed signals to both Iran and our allies.

The Foundation for Defense of Democracies (FDD), in consultation with leading energy analysts, has recommended that the Treasury Department define "significant" as a minimum of 18% in purchase reduction (total price paid; achieved through price discounts and/or import reductions) on an annualized basis. This would match the expected reduction in Iranian oil revenue due to the decline in its domestic production capacity. Senators Menendez and Kirk concur with FDD's recommendation.

National Security Waiver:


Another critical piece of the rule is the national security waiver. Under Menendez-Kirk, "The President may waive the imposition of sanctions under paragraph (1) for a period of not more than 120 days" if the President "determines that such a waiver is in the national security interest of the United States" and submits a report to the Congress with a justification and concrete cooperation received or expected to receive as a result the waiver.

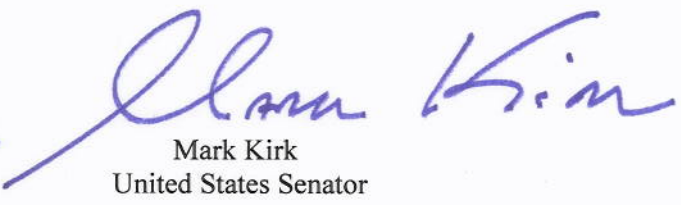
We interpret this language to mean that a national security interest waiver should be required for each foreign financial institution found in violation of the law, including a description of the receipt or expectation of benefit/cooperation in return for waiving sanctions on an individual institution.

It was not our intent that the term "waive the imposition of sanctions under paragraph (1)" as meaning only one waiver is needed to waive the imposition of all sanctions. In other words, with one report to Congress, the President could decide that no institution will be subject to sanctions for 120 days, regardless of how many institutions are in violation.

We would welcome an opportunity to discuss these points with you prior to the publication of the final rule for the Menendez-Kirk amendment.

Sincerely,


Robert Menendez
United States Senator


Mark Kirk
United States Senator