

## Iran and the Swiss Humanitarian Trade Arrangement

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The case of Iran shows how secondary sanctions of the United States affect companies outside its territory. After the United States withdrew from the Joint Comprehensive Plan of Action in May 2018 and reimposed its sanctions, many European and Swiss banks stopped processing payments for Iranian business, including payments for medicines that were formally permitted. The reason was the risk of being cut off from the American financial system, a risk that the banks considered higher than the potential profit. As a consequence, Iranian patients had difficulty obtaining certain medicines, especially for cancer and rare diseases, although humanitarian exemptions existed on paper.<sup>1</sup>

Switzerland responded by developing the Swiss Humanitarian Trade Arrangement together with the United States. Under this arrangement, Swiss companies could export food, medicines and medical devices to Iran through a payment channel operated by a Swiss bank, provided that they disclosed detailed information about the transactions and their counterparties. The first transaction, a delivery of cancer medicines and drugs for transplant patients, was completed at the beginning of 2020. The arrangement depended on the willingness of the participating companies to accept extensive due diligence and on the cooperation of the US Treasury, which accepted the channel as compliant. Its practical volume remained limited and was affected by later political developments. It nevertheless demonstrated that a neutral state can create legal certainty in an area in which the private sector would otherwise withdraw.<sup>2</sup>

For the Basel groups, the lesson from Iran is that compliance with Swiss and EU law is not always sufficient. A transaction that is lawful in Switzerland may still expose the company or its bank to American sanctions risk. Compliance programmes therefore screen against the lists of the Office of Foreign Assets Control as well as against Swiss and EU lists.

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The groups also maintain internal policies that restrict business with certain countries more strictly than the law requires. These policies are the result of a weighing between legal risk, commercial interest and humanitarian responsibility, in which the access to the American market and the American financial system almost always prevails.<sup>3</sup>

### 1 Notes

1. On the reimposition of US sanctions against Iran in 2018 and their effects on humanitarian trade, see the publications of the US Department of the Treasury (OFAC) and reports by international organisations and non-governmental organisations on the availability of medicines in Iran. To be verified. ↩
2. Federal Department of Economic Affairs, Education and Research and SECO, information on the Swiss Humanitarian Trade Arrangement (SHTA), announced in January 2020, with a first transaction reported at the end of January 2020; US Department of the Treasury, statement on the SHTA of 27 February 2020. Status and later volumes to be verified. ↩
3. On the extraterritorial reach of US secondary sanctions and the role of OFAC's Specially Designated Nationals and Blocked Persons List, see the OFAC website. On the EU Blocking Statute (Council Regulation (EC) No 2271/96), which has no Swiss counterpart, see the literature on conflicts of sanctions laws. To be verified. ↩

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