March 6, 2010

U.S. Enriches Companies Defying Its Policy on Iran

By JO BECKER and RON NIXON

The federal government has awarded more than $107 billion in contract payments, grants and other benefits over the past decade to foreign and multinational American companies while they were doing business in Iran, despite Washington’s efforts to discourage investment there, records show.

That includes nearly $15 billion paid to companies that defied American sanctions law by making large investments that helped Iran develop its vast oil and gas reserves.

For years, the United States has been pressing other nations to join its efforts to squeeze the Iranian economy, in hopes of reining in Tehran’s nuclear ambitions. Now, with the nuclear standoff hardening and Iran rebuffing American diplomatic outreach, the Obama administration is trying to win a tough new round of United Nations sanctions.

But a New York Times analysis of federal records, company reports and other documents shows that both the Obama and Bush administrations have sent mixed messages to the corporate world when it comes to doing business in Iran, rewarding companies whose commercial interests conflict with American security goals.

Many of those companies are enmeshed in the most vital elements of Iran’s economy. More than two-thirds of the government money went to companies doing business in Iran’s energy industry — a huge source of revenue for the Iranian government and a stronghold of the increasingly powerful Islamic Revolutionary Guards Corps, a primary focus of the Obama administration’s proposed sanctions because it oversees Iran’s nuclear and missile programs.

Other companies are involved in auto manufacturing and distribution, another important sector of the Iranian economy with links to the Revolutionary Guards. One supplied container ship motors to IRISL, a government-owned shipping line that was subsequently blacklisted by the United States for concealing military cargo.

Beyond $102 billion in United States government contract payments since 2000 — to do everything from building military housing to providing platinum to the United States Mint — the companies and their subsidiaries have reaped a variety of benefits. They include nearly $4.5 billion in loans and loan guarantees from the Export-Import Bank, a federal agency that underwrites the export of American goods and services, and more than $500 million in grants for work that includes cancer research and the turning of agricultural byproducts into fuel.

In addition, oil and gas companies that have done business in Iran have over the years won lucrative drilling leases for close to 14 million acres of offshore and onshore federal land.

In recent months, a number of companies have decided to pull out of Iran, because of a combination of pressure by the United States and other Western governments, “terrorism free” divestment campaigns by shareholders and the difficulty of doing business with Iran’s government. And several oil and gas companies are holding off on new investment, waiting to see what shape new sanctions may assume.

The Obama administration points to that record, saying that it has successfully pressed allied governments and even reached out directly to corporate officials to dissuade investment in Iran, particularly in the energy industry. In addition, an American effort over many years to persuade banks to leave the country has isolated Iran from much of the international financial system, making it more difficult to do deals there.

“We are very aggressive, using a range of tools,” said Denis McDonough, chief of staff to the National Security Council.

The government can, and does, bar American companies from most types of trade with Iran, under a broad embargo that has been in place since the 1990s. But as The Times’s analysis illustrates, multiple administrations have struggled diplomatically, politically and practically to exert American authority over companies outside the embargo’s reach — foreign companies and the foreign subsidiaries of American ones.

Indeed, of the 74 companies The Times identified as doing business with both the United States government and Iran, 49 continue to do business there with no announced plans to leave.

One of the government’s most powerful tools, at least on paper, to influence the behavior of companies beyond the jurisdiction of the embargo is the Iran Sanctions Act, devised to punish foreign companies that invest more than $20 million in a given year to develop Iran’s oil and gas fields. But in the 14 years since the law was passed, the government has never enforced it, in part for fear of angering America's allies.

That has given rise to situations like the one involving the South Korean engineering giant Daelim Industrial, which in 2007 won a $700 million contract to upgrade an Iranian oil refinery.

According to the Congressional Research Service, the deal appeared to violate the Iran Sanctions Act, meaning Daelim could have faced a range of punishments, including denial of federal contracts. That is because the law covers not only direct investments, such as the purchase of shares and deals that yield royalties, but also contracts similar to Daelim's to manage oil and gas development projects.

But in 2009 the United States Army awarded the company a $111 million contract to build housing in a military base in South Korea. Just months later, Daelim, which disputes that its contracts violated the letter of the law, announced a new $600 million deal to help develop the South Pars gas field in Iran.

Now, though, frustration over Iran's intransigence has spawned a growing, if still piecemeal, movement to more effectively use the power of the government purse to turn companies away from investing there.

Nineteen states — including New York, California and Florida — have rules that bar or discourage their pension funds from investing in companies that do certain types of business in Iran. Congress is considering legislation that would have the federal government follow suit, by mandating that companies that invest in Iran's energy industry be denied federal contracts. The provision is modeled on an existing law dealing with war-torn Sudan.

Obama administration officials, while indicating that they were open to the idea, called it only one variable in a complex equation. Right now, the president's priority is on breaking down Chinese resistance to the new United Nations sanctions, which apply across borders and are aimed squarely at entities that support Iran's nuclear program.

But Representative Ron Klein, a Florida Democrat who wrote the contracting provision moving through Congress with the help of a lobbying group called United Against Nuclear Iran, said it offered a way forward with or without international agreement.

"We need to send a strong message to corporations that we're not going to continue to allow them to economically enable the Iranian government to continue to do what they have been doing," Mr. Klein said.

An Unused Tool

Sending a strong message was Congress's intention when it passed the Iran Sanctions Act in 1996.

The law gives the president a menu of possible punishments he can choose to levy against offending companies. Not only do they risk losing federal contracts, but they can also be prevented from receiving Export-Import Bank loans, obtaining American bank loans over $10 million in a given year, exporting their goods to the United States, purchasing licensed American military technology and, in the case of financial firms, serving as a primary dealer in United States government bonds or as a repository for government funds.

Congress is now considering expanding its purview to a broader array of energy-related activities, including selling gasoline to Iran, which despite its vast oil and gas reserves has antiquated refineries that leave it heavily dependent on imports.

From the beginning, though, the law proved difficult to enforce.

European allies howled that it constituted an improper attempt to apply American law in other countries. Exercising an option to waive the law in the name of national security, the Clinton administration in 1998 declined to penalize the first violator — a consortium led by the French oil company TotalFina, now known as Total.

The administration also indicated that it would waive future penalties against European companies, winning in return tougher European export controls on technology that Iran could convert to military use.

Stuart E. Eizenstat, who as the deputy Treasury secretary handled those negotiations, said the law let Iran "exploit divisions between the U.S. and our European allies."

Waiving it, though, was followed by additional investments in Iran — and more government largesse for the companies making them.

In 1999, for instance, Royal Dutch Shell signed an $800 million deal to develop two Iranian oil fields. Since then, Shell has won federal contract payments and grants totaling more than $11 billion, mostly for providing fuel to the American military, as well as $200 million in Export-Import loan guarantee and drilling rights to federal lands, records show.

Shell has a second Iranian development deal pending, but officials say they are awaiting the results of a feasibility study. In the meantime, the company continues to receive payments from Iran for its 1999 investment and sells gasoline and lubricants there.

Records show Shell is one of seven companies that challenged the Iran Sanctions Act and received federal benefits.

John R. Bolton, who dealt with Iran as an under secretary of state and United Nations ambassador in the Bush administration, said failing to enforce the law by punishing such companies both sent “a signal to the Iranians that we’re not serious” and undercut Washington’s credibility when it did threaten action.

Mr. Bolton recalled what happened in 2004 when he suggested to the Japanese ambassador that Japan’s state-controlled oil exploration company, Inpex, might be penalized for a $2 billion investment in the Azadegan field in Iran. “The Japanese ambassador said, ‘Well, that’s interesting. How come you’ve never sanctioned a European Union company?’ ” Mr. Bolton recounted.

Inpex was never penalized, though several years later it decided to reduce its stake in the Iranian project. And to Mr. Bolton’s chagrin, the Bush administration did not act on reports about other such investments, neither waiving the law nor penalizing violators.

Recently, after 50 lawmakers from both parties complained to President Obama about the lack of enforcement and sent him a list of companies that apparently violated the law, the State Department announced a preliminary investigation. Officials said that they were looking at 27 deals, and that while some appeared to have been “carefully constructed” to get around the letter of the law, they had identified a number of problematic cases and were focusing on companies still active in Iran.

Competing Interests

Among the companies on the list Congress sent to the State Department is the Brazilian state-controlled energy conglomerate Petrobras, which last year received a $2 billion Export-Import Bank loan to develop an oil reserve off the coast of Rio de Janeiro. The loan offers a case study in the competing interests officials must confront when it comes to the Iran Sanctions Act.

Despite repeated American entreaties, Petrobras had previously invested $100 million to explore Iran’s offshore oil prospects in the Persian Gulf.

But the Export-Import Bank loan could help create American jobs, since Petrobras would use the money to buy goods and services from American companies. Perhaps more important, it could help develop a source of oil outside the Middle East.

After The Times inquired about the loan, bank officials said that they asked for and received a letter of assurance from Petrobras that it had finished its work in Iran. A senior White House official, in a Nov. 13 e-mail message, said that while it was the administration’s policy to warn companies against such investments, “Brazil is an important U.S. trading partner and our discussions with them are ongoing.”

But if the administration hoped that the loan would bring Brazil in line with its objectives in Iran, it would soon prove mistaken.

On Nov. 23, Iran’s president, Mahmoud Ahmadinejad, visited Brazil, and the two countries agreed to share technical expertise on energy projects. Iranian officials said they might offer Petrobras additional incentives for further investment.

The visit infuriated American officials, who felt it undercut efforts to press Iran on its nuclear program while lending international legitimacy to the Iranian president. Brazil’s relationship with Iran has also complicated American maneuvering at the United Nations, where Brazil holds a rotating seat on the Security Council. Just last week, Brazil’s president, Luiz Inácio Lula da Silva, restated his opposition to the administration’s sanctions proposal, warning, “It is not prudent to push Iran against a wall.”

Carter Lawson, the Export-Import Bank’s deputy general counsel, acknowledged that Mr. Ahmadinejad’s visit was “problematic for us, and it raised our antenna.” He said that since December the bank had been operating under a new budget rule requiring borrowers to certify that they had no continuing operations in Iran’s energy industry, and was carefully monitoring Petrobras’s activities.

In the meantime, Petrobras’s Tehran office remains open. And Diogo Almeida, the acting economic attaché at the Brazilian Embassy in Iran, said that while Petrobras was currently assessing how much it could invest in Iran, given the huge discovery off Rio de Janeiro, company officials were in active discussions with the Iranian government and were interested in pursuing new business.

Opportunities for Profit

For all the American rules and focus, there is still plenty of room for companies to profit in crucial areas of Iran’s economy without fear of reprisal or loss of United States government business.

Auto companies doing business in Iran, for instance, received $7.3 billion in federal contracts over the past 10 years. Among them was Mazda, whose cars in Iran are assembled by a company called the Bahman Group. A 45 percent share in Bahman is held by the Sepah Cooperative Foundation, a large investment fund linked to the Revolutionary Guards, according to Iranian news accounts and a 2009 RAND Corporation report prepared for the Defense

Department.

A Mazda spokesman declined to comment, saying the company was unaware of the links.

Even companies based in the United States, including some of the biggest federal contractors, can invest in Iran through foreign subsidiaries run independently by non-Americans.

Honeywell, the aviation and aerospace company, has received nearly $13 billion in federal contracts since 2005. That year it acquired Universal Oil Products, whose British subsidiary is working on a project to expand gasoline production at the Arak refinery in Iran. Universal recently received a $25 million federal grant for a clean-energy project in Hawaii.

In a statement, Honeywell said it had told the State Department in January that while it was fulfilling its Arak contract, it would not undertake new projects in Iran.

Ingersoll Rand, another American company with foreign subsidiaries, says it is evaluating its “minor” business in Iran in light of the political climate. But for now, according to a spokesman, Paul Dickard, it continues to sell air-compression systems with a “wide variety of applications,” including in the oil and gas industries and in nuclear power plants.

Senator Byron L. Dorgan, a North Dakota Democrat, tried to close the foreign subsidiary loophole after a furor erupted in 2004 over Halliburton, former Vice President Dick Cheney’s old company, which had used a Cayman Islands subsidiary to sell oil-field services to Iran. But he said he was unable to overcome business opposition.

William A. Reinsch, president of the National Foreign Trade Council, lobbied against Mr. Dorgan’s bill and has opposed other unilateral sanctions. He argues that their futility can be seen in the intransigence of the Iranian government and the way American oil companies have simply been replaced by foreign competitors. Moreover, many foreign companies with business interests in Iran are also large American employers; deny them federal contracts and other benefits, Mr. Reinsch said, “and it’s those workers who will pay the price.”

But Hans Sandberg, senior vice president of Atlas Copco, which is based in Sweden, offered a different perspective. Atlas Copco’s sales of mining and construction equipment to Iran are dwarfed by its American business, including military contracts. If forced to choose, he said: “It would be no problem. We wouldn’t trade with Iran.”

Eric Owles contributed reporting.