USA*ENGAGE

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To: Members of the Senate Foreign Relations Committee
Members of the Senate Banking Committee
Members of the House Foreign Affairs Committee

USA*ENGAGE applauds Undersecretary of Treasury David Cohen's recognition of the difficulties facing ordinary Iranians as a result of the U.S. financial sanctions regime in his written testimony to the Senate Foreign Relations Committee[1]. We are heartened by Treasury's stated effort to redress this state of affairs. That said, USA*ENGAGE differs with Undersecretary Cohen about the actual effects of the implementation of U.S. sanctions on humanitarian trade.

Despite strong legislative carve outs for licensed humanitarian trade in food, agricultural products, medicine and medical devices, the methodology with which Treasury implements financial sanctions and the way Treasury communicates to foreign financial institutions and third-country central banks have critically impeded the financial transactions necessary for this humanitarian trade.

The Humanitarian Crisis in Iran

The difficulty that ordinary Iranians face in accessing humanitarian goods is growing, as numerous recent press reports attest.[2]

Congressional Intent to Preserve Humanitarian Trade

Congress clearly intended financial sanctions to target the Government of Iran's threat to U.S. national security, while limiting collateral damage to ordinary Iranians. To that end, Congress expressed unequivocal support for licensed humanitarian trade by protecting the relevant financial transactions thereto: Section 1257 (c) of the National Defense Authorization Act of 2013 (NDAA 2013), targeting all financial transactions involving designated Iranian financial institutions, contains an explicit exception for licensed humanitarian trade. The National

[1] See, http://www.foreign.senate.gov/imo/media/doc/Cohen_Testimony.pdf

[2] See e.g., http://in.reuters.com/article/2012/03/20/iran-usa-sanctions-idINDEE82J02M20120320
http://abcnews.go.com/WNT/video/inside-iran-iranians-face-drug-shortage-18561875
http://www.guardian.co.uk/world/2012/aug/10/sanctions-iran-ordinary-people-target;
http://www.guardian.co.uk/world/2012/nov/14/sanctions-stop-medicines-reaching-sick-iranians
http://www.nytimes.com/2013/03/02/opinion/blocking-medicine-to-iran.html?_r=0
http://www.guardian.co.uk/world/2013/mar/18/surgeons-iran-sanctions-drugs

Defense Authorization Act of 2012 (NDAA 2012), as technically corrected by the Iran Threat Reduction and Syria Human Rights Act (ITRSHRA) makes the same distinction. Congressional intent is clear: the Executive Branch must increase pressure on those posing threats to U.S. national security, while not harming the people of Iran. This is a long standing part of U.S. foreign policy, having its origin in the Trade Sanctions Reform Act of 2000 (TSRA).

Unilateral Agricultural and Medical Sanctions

Despite this clear Congressional directive and long-standing policy in favor of TSRA exports, the U.S. Treasury implements Executive Branch unilateral banking sanctions in a manner that blocks the financial transactions necessary for humanitarian trade.

OFAC's Licensing Terms Negate the Authority of Each TSRA License

First, every OFAC-issued specific and general license for the sale and export of humanitarian goods also restricts participants in the export from engaging in *all* dealings (expansively defined) with sanctioned financial institutions. Given the impossibility of moving funds from licensed recipients to licensed exporters without engaging at a second or third-tier level in a foreign exchange transaction or correspondent relationship with a sanctioned entity, this restriction negates the ability to export licensed humanitarian products to Iran.

For examples of OFAC licensed exporter's inability to receive payment through permissible banking channels due to these unilateral blocks on payments for humanitarian goods, Treasury merely needs to review its own files. Treasury can identify companies licensed by OFAC for humanitarian exports, who had been exporting the same humanitarian goods for many years, and who subsequently had to seek a parallel authorization to engage with a sanctioned party in order to effectuate a permissible export or to unblock a payment.

Treasury Meetings with Third-Country Financial Institutions and Third-Country Bank Regulators Discourage All Trade with Iran

Beginning in 2005, the Under Secretary has met informally with numerous third-country financial institutions to request that these entities cease U.S. and third-currency denominated transactions with persons in Iran. We understand from a number of our Members that these discussions request voluntary cooperation, direct these banks to stop *all* financial transactions with Iran and do not make exceptions for licensed or exempt trade with Iran. Treasury has pursued non-U.S. financial institutions for engaging in *any* transaction with Iran with the assertion that their U.S. correspondent bank accounts, or payable through accounts, would be put at risk.

As a result of these actions, and the lack of a clear message from Treasury that U.S. policy permits licensed humanitarian exports to Iran, the people of Iran are being denied access to humanitarian goods.

In sum, Treasury has created, *de facto*, unilateral agricultural and medical financial sanctions, negating Congressional intent and effecting a nearly total banking blockade.

USA*ENGAGE calls on the U.S. Treasury to take direct action to contact relevant foreign financial institutions regarding duly licensed humanitarian trade by U.S. entities and to remove the *de facto* bar set forth above to such trade.

Yours truly,

Richard Sawaya

Richard N. Sawaya
Director, USA*ENGAGE

CC: David Cohen
Dan Fried