



August 16, 2010

Adam J. Szubin

Director

Re: Request for Comments (Iranian Financial Sanctions Regulations)

Office of Program Policy & Implementation

Office of Foreign Assets Control

Department of the Treasury

1500 Pennsylvania Avenue, NW

Washington, DC 20220

Re: Section 104 of the Comprehensive Iran Sanctions Accountability and Divestment Act ("CISADA") FR Doc. 2010-20238

Dear Mr. Szubin:

Following your direction to comment on implementation of Section 104 of CISADA in writing, this letter addresses a principal concern of our membership, which is comprised of U.S. manufacturers, exporters and some financial institutions.

As you know, CISADA amends the Iran Sanctions Act to expand U.S. sanctions against third country entities; codifies existing sanctions on Iran; creates new tools through which to impose additional sanctions on Iran; and creates additional due diligence obligations for certain U.S. industries (including the U.S. financial sector). Importantly, CISADA also reaffirms it is U.S. foreign policy to promote the export to Iran of agricultural commodities, food, medicine, or medical devices and humanitarian assistance.

We understand that the Office of Foreign Assets Control ("OFAC"), together with the Departments of Homeland Security, State and Justice is drafting regulations to implement Section 104 of CISADA. Pursuant to CISADA, these regulations must prohibit or impose strict conditions on the opening or maintaining of correspondent or payable through accounts in the United States for a foreign financial institution where that financial institution engages in certain activities with sanctioned Iranian parties.

As you are aware, many non-U.S. financial institutions maintain permissible non-U.S. dollar denominated relationships with parties in Iran. In fact, some of our members engage in authorized exports to Iran of agricultural commodities, medicine, medical devices or other humanitarian goods or services. Because the (now codified) Iranian Transactions Regulations ("ITR"), 31 C.F.R. Part 560, prohibit U.S. financial institutions from maintaining correspondent accounts for financial institutions in Iran, and consistent with the ITR's restrictions on payments from Iran, our members who engage in authorized exports to Iran must bank with third country (i.e., non-U.S. and non-Iranian) financial institutions. We are deeply concerned that the U.S. financial sanctions regime will discourage non-U.S. financial institutions from continuing these

authorized relationships with our members. In fact, members have experienced a steady decline in the number of European financial institutions willing to handle licensed exports to Iran. This decline appears due in part to the impression that OFAC licensed exports to Iran are not part of U.S. policy. Therefore,, we respectfully request that the Section 104 regulations:

- (1) expressly acknowledge CISADA's restatement of U.S. policy in favor of exports to Iran of food, medicine, medical products and humanitarian assistance.
- (2) expressly discourage U.S. financial institutions from requiring blanket certifications from their non-U.S. correspondents that they engage in no business with Iran;
- (3) explicitly articulate to U.S. correspondents that legitimate trade in agricultural commodities, medicine, medical products and humanitarian assistance remains authorized so long as it is consistent with Section 560.532 of the ITR.

These recommendations are consistent not only with the ITR, the Trade Sanctions Reform and Enhancement Act, and CISADA but also with Article 10 of the EU Council Decision of July 26, 2010, which, expressly states that the transfer of funds relating to the export of foodstuffs, healthcare, medical equipment or other humanitarian services shall not be subject to delay.¹

The recommendations also are consistent with Acting Assistant Secretary of State Ronald Schlicher's August 13, 2009 letter to William A. Reinsch, Chairman, Subcommittee on Economic Sanctions, Advisory Committee on International Economic Policy.² In response to a letter to Secretary Clinton,³ Mr. Schlicher's letter confirmed that the Trade Sanctions Reform and Export Enhancement Act ("TSRA"):

represents a carefully calibrated and targeted sanctions measures that underscores the U.S. view that our quarrel is not with the Iranian people, but with the policies of the Iranian government that pose a security risk to the international community.

We understand that your Office will be promulgating interim final regulations by the end of September. We make ourselves available to your office should you seek to discuss this matter further.

Yours truly,



Richard N. Sawaya
Director

Enclosure

¹ Article 10(3) states that "Transfers due on transactions regarding foodstuffs, healthcare, medical equipment, or for humanitarian purposes shall be carried out without any prior authorization . . ."

² Assistant Secretary Schlicher's August 13 Letter is enclosed.

³ See enclosure, July 27, 2009 Letter to Secretary Hillary Rodham Clinton from Chairman Theodore W. Kassinger, Advisory Committee on International Economic Policy.



United States Department of State

Washington, D.C. 20520

August 13, 2009

Dear Mr. Reinsch:

Thank you for your letter expressing the Advisory Committee on International Economic Policy's (ACIEP) concerns and recommendations regarding the implementation of the Trade Sanctions Reform and Export Enhancement Act (TSRA). As you know, the TSRA represents a carefully calibrated and targeted sanctions measure that underscores the U.S. view that our quarrel is not with the Iranian people, but with those policies of the Iranian government that pose a security risk to the international community.

I assure you that we will consider the issues highlighted in your letter and would welcome any further information you can provide on the matter, especially specific cases of companies having trouble finding third-party financial services for TSRA transactions licensed by Treasury's Office of Foreign Assets Control. I invite you to communicate this information to myself or my colleague, Deputy Assistant Secretary for Energy, Sanctions and Commodities Douglas Hengel. This information will help the Department of State follow up on the issue.

Thank you for your work as chairman of ACIEP's Subcommittee on Economic Sanctions. We deeply value your input and the committee's insight and recommendations on issues such as these.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'R. Schlicher'.

Ronald Schlicher
Acting Assistant Secretary of State
Bureau of Near Eastern Affairs

William A. Reinsch,
Chairman,
Subcommittee on Economic Sanctions,
Advisory Committee on International Economic Policy.

ADVISORY COMMITTEE ON INTERNATIONAL ECONOMIC POLICY

July 27, 2009

The Honorable Hillary Rodham Clinton
Secretary of State
2201 C Street N.W.
Washington, DC 20520

Dear Madam Secretary:

The Advisory Committee on International Economic Policy applauds the Administration's strategy to engage the Islamic Republic of Iran. However, the Administration's policy, in order to be successful, must be consistently and coherently applied. Unfortunately, at the moment there are uncoordinated activities resulting in inconsistent and confusing application of U.S. laws. We write to encourage you to take steps to clarify our policy in one important respect.

The Trade Sanctions Reform and Export Enhancement Act (TSRA), passed in 2000, made it standing U.S. policy to permit humanitarian, agricultural and medical commerce between the U.S. and Iran, subject to stringent licensing by the Office of Foreign Assets Control (OFAC) in the Treasury Department. At this critical moment in relations between the U.S. and Iran, we recommend the Administration clearly reaffirm the TSRA policy of permitting licensed humanitarian based commerce. Reaffirmation is badly needed because of perceptions that have taken root in the international banking community regarding licensed U.S. transactions with Iran.

OFAC provides specific one year licenses for the sale of medical and agricultural products to Iranian persons and entities by U.S. persons and entities. These transactions necessarily involve services by third party financial institutions, usually through letters of credit. As part of the U.S. sanctions regime, U.S. banks have been prohibited, however, from engaging in such activities. Other international financial institutions have been willing to provide the requisite services. In the past year, however, many international financial institutions have declined to continue this practice because they have decided that, notwithstanding the legality of TSRA licensed transactions within long-established U.S. policy, they will incur the risk of being "punished" by multiple U.S. authorities. This has placed severe cash flow strains on OFAC-licensed U.S. exporters. U.S. law firms, as well, are finding it no longer possible to receive payment from Iranian clients, even though TSRA specifically allows U.S. entities to provide legal services for Iranians regarding U.S. laws.

We recommend the Administration clearly support and encourage all OFAC-licensed trade permitted under TSRA and publicly indicate that it does not discourage the provision of necessary facilitating services by third party financial institutions. OFAC-licensed humanitarian trade between the U.S. and Iran is a small, but significant means of constructive engagement that provides an important connection to the people of Iran. At this juncture in the Administration's strategic effort *vis-à-vis* Iran, we believe it would be useful to clearly support and encourage such trade, including, specifically, ensuring that necessary third party financial services in support of OFAC-licensed transactions are not obstructed.

Yours truly,



Theodore W. Kassinger
Chairman
Advisory Committee on International
Economic Policy



William A. Reinsch
Chairman
Subcommittee on Economic Sanctions