



September 28, 2012

President Barack Obama
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

We write to thank you for your support of humanitarian issues and human rights issues in Iran. Within this context, we draw your attention to a legal contradiction in U.S. sanctions on Iran regarding permissible humanitarian transactions.

Permissible humanitarian transactions, including for life saving medicines, are faltering because the necessary financial transactions they rely upon are not working. The reason for this humanitarian failure is that sanctions promulgated under Executive Orders are devoid of a humanitarian exemption and implicate the entire civilian banking infrastructure of Iran necessary for permissible humanitarian exchanges. These Executive sanctions are included within each specific and general license for humanitarian exchanges, thus prohibiting an element necessary to give the license effect.

Starting with Congressional mandate in the Trade Sanctions Reform Act (TSRA), the provision for allowable humanitarian has been a long established and reaffirmed part of U.S. foreign policy towards Iran. Three successive Acts of Congress, which you signed, reaffirm our humanitarian policy towards the people of Iran.

In contrast to Congress protecting permissible humanitarian exchanges, Executive Orders have created a *de facto* prohibition to the humanitarian exemption. These Orders, instead, cause the necessary financial transaction side of a humanitarian export to fail, as no financial transaction can clear free of the *prima facie* legal risk inherent in every permissible humanitarian transaction. What is ostensibly permitted by license under one rubric is in fact ruled out by express prohibition under another. Senate Banking Committee Chairman Tim Johnson spoke to this contradiction on the Senate floor when he stated the Administration should make clear that “no U.S sanctions will be imposed against third-country banks that facilitate OFAC-licensed or exempted humanitarian trade.”

We ask you to continue your leadership in this area by both correcting this legal anomaly and providing a clear statement that it is neither the policy of the President, nor the U.S., to in any manner prohibit permissible humanitarian transactions. As the EU has done, a general license from the U.S. Treasury's Office of Foreign Assets Control (see enclosed) will redress the present contradiction.

Yours truly,



Richard N. Sawaya
Director, USA* Engage



William A. Reinsch
Co-Chair, USA*Engage
President, National Foreign Trade Council

Enclosure

cc

The Honorable Timothy Geithner

The Honorable Hillary Clinton

Thomas Donilon

David Cohen

Peter Harrell

The Honorable Tim Johnson

OFFICE OF FOREIGN ASSETS CONTROL

General License D: Authorization for Payments related to Generally Licensed, Specifically Licensed or otherwise Exempt Activities

(a) To the extent the following transactions are not already permissible under an exemption, general or specific license, and subject to the conditions and restrictions below, effective [on signing date], U.S. and third-country financial institutions are authorized to participate in the transfer of funds related to:

- (1) generally or specifically licensed exports of agricultural commodities, medicine, and/or medical devices authorized pursuant to Section 560.530 of the Iranian Transactions Regulations (“ITR”), 31 C.F.R. Part 560;
- (2) funds transfers related to earthquake relief efforts to or for the benefit of persons in Iran authorized pursuant to OFAC General License C;
- (3) exempt transactions addressed by Section 560.210 of the ITR, which includes humanitarian donations;
- (4) generally licensed personal remittances between the United States and Iran authorized by Section 560.516 of the ITR;
- (5) generally licensed telecommunications and mail transactions authorized pursuant to Section 560.508 of the ITR;
- (6) generally licensed transactions related to patents, trademarks, and copyrights authorized by Section 560.509 of the ITR;
- (7) generally licensed payments for overflights of Iranian airspace authorized by Section 560.522 of the ITR;
- (8) the provision of legal services generally licensed by Section 560.525 of the ITR;
- (9) transactions necessary and ordinarily incident to publishing generally license by Section 560.538 of the ITR; and
- (10) official activities of certain international organizations generally licensed by Section 560.539;

(b) U.S. financial institutions remain subject to the terms of Sections 560.516 and 560.532 of the ITR.

(c) Consistent with OFAC’s Record Retention Requirements, U.S. Persons will maintain appropriate records of licensed or exempt transactions involving persons in Iran or the Government of Iran.

(d) U.S. financial institutions and third-country financial institutions will not be subject to civil or criminal penalties under the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, for processing a transaction involving an Iranian financial institution sanctioned by OFAC where that transaction is consistent with OFAC licensing, or EU Council Decisions including but not limited to Articles 7 and 21 of EU Council Regulations No. 961/2010 (October 25, 2010) or relevant Member State implementing laws and regulations.

(e) *Example.* A third-country financial institution may process a payment originating from a financial institution in Iran identified on OFAC’s SDN List as [IRAN], [SDGT], OR [NPWMD] so long as the payment relates to a transfer of funds identified in

paragraph (a)(1-10) above. The third-country financial institution may also remit the payment to a U.S. financial institution for the benefit of a U.S. party acting under one of the authorities identified in paragraph (a)(1-10), above.

Example. A third-country financial institution may process a payment originating from a financial institution identified on OFAC's SDN List as [IRAN] where the third-country financial institution knows or has reason to believe that the funds will flow to the third-country financial institution only after going through a foreign currency exchange conducted by an Iranian bank identified as [SDGT] and/or [NPWMD] so long as the payment relates to a transfer of funds identified in paragraph (a)(1-10) above. The third-country financial institution may also remit the payment to a U.S. financial institution for the benefit of a U.S. party acting under one of the authorities identified in paragraph (a)(1-10), above.

Example. OFAC will not impose sanctions or civil or criminal penalties on a third-country financial institution that processes a payment for the sale to Iran of humanitarian goods so long as the transaction meets the requirements of the relevant Member State's laws and regulations implementing EU Council Regulations No. 961/2010 (October 25, 2010) (or its progeny).