



December 17, 2008

VIA FAX (202-622-0091) and ERULEMAKING PORTAL

Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, NW
Annex-2d Floor
Washington, DC 20220
Attn: Request for Comments (TSRA)

RE: Comments on Effectiveness of Licensing Procedures for Exportation of
Agricultural Commodities, Medicine and Medical Devices to Sudan and Iran,
31 CFR Parts 538 and 560

Dear Sir or Madam:

This letter is submitted on behalf of the National Foreign Trade Council (NFTC), USA*Engage, American Association of Exporters and Importers (AAEI) and National Council on International Trade Development (NCITD) in response to the *Federal Register* notice seeking comments on the effectiveness of the Office of Foreign Assets Control's (OFAC) licensing procedures for the exportation of agricultural commodities, medicine and medical devices to Sudan and Iran pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). 73 Fed. Reg. 67825.

I. Introduction

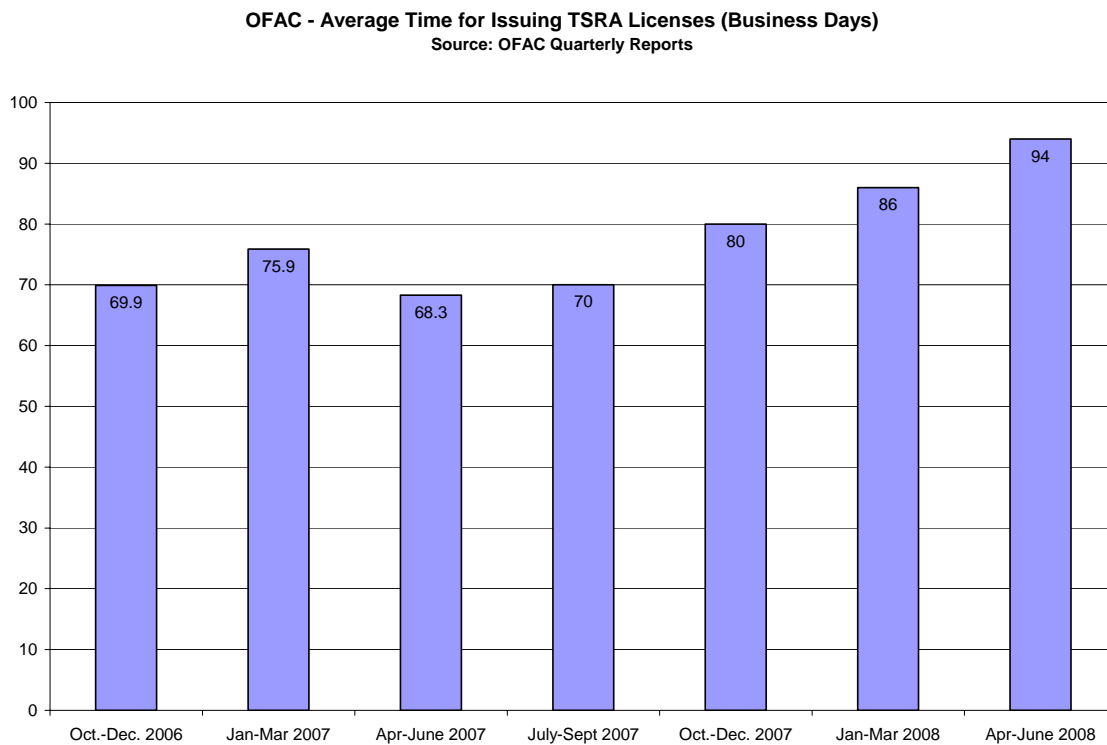
NFTC is a national trade association representing some 300 corporations in support of an open, rules based global trading system. USA*Engage is a coalition of small and large businesses, agriculture groups and trade associations which promotes responsible alternatives to unilateral economic sanctions. AAEI, whose membership is comprised of manufacturers, importers, exporters, retailers and service providers, is a representative of private sector participants engaged in and impacted by developments pertaining to international trade, national security and supply chain security. NCITD is a trade association consisting of large and small U.S. exporter and importers, freight forwarders, customs brokers, banks, attorneys and consulting firms that focuses on export and import regulations and compliance.

NFTC, USA*Engage, AAEI and NCITD each have members that are actively involved in the exportation of humanitarian products to Iran and Sudan pursuant to the "expedited" licensing procedures set forth in the OFAC's TSRA implementing regulations and are therefore well-suited to provide comments on the effectiveness of the current TSRA licensing process and procedures.

II. Comments on Effectiveness of TSRA Licensing Procedures

A. Average Amount of Time Elapsed From Filing Date of License Application to Approval Date

During the past two years, there has been a significant increase in the amount of time that elapses from the date that a TSRA license application is submitted to OFAC until the date that the license is issued to the applicant. As noted by the following chart, which is based on data obtained from OFAC's quarterly reports, the average TSRA license processing time increased from 70 business days in late 2006 to 94 business days during April to June 2008.



By contrast, during the July – September 2005 quarter, OFAC's average license processing time was 25.2 business days. During the January – March 2006 quarter the average license processing time was 34 business days.¹

An average processing time of 94 business days means that it is currently taking nearly five months for OFAC to issue a TSRA license after the application has been submitted.

¹ OFAC's staff should be commended for issuing the quarterly reports in a more timely manner than it did in the past. This information is extremely useful to exporters and we encourage OFAC to post the quarterly reports on its Web site as soon as possible after the end of the calendar quarter.

While the average license processing time is 94 business days, it is not uncommon for licenses to take far longer to be issued. Several medical device companies have reported that it typically takes OFAC anywhere from six to nine months for OFAC to issue a specific license once the application is submitted. We have also received reports of licenses submitted to OFAC in late 2007 that are still pending.

In addition, there appears to be no significant time difference between the time that it takes to receive the renewal of a previously issued license and a new TSRA license. While we realize that a new license application must be submitted when a previously issued license expires, the renewal licensing process is substantially similar to the process for new license applications, in terms of processing times and information required to be furnished. In fact, several companies report having to wait more than six months to obtain the renewal of a license that had been issued in a relatively short period in previous years. We encourage OFAC to implement a streamlined system for renewals of expired TSRA licenses.

The delays in and unpredictability of TSRA license processing times has caused U.S. companies to lose sales to foreign competitors who are not bound by these constraints. Foreign customers are generally unable and unwilling to waiting an indeterminable amount of time for the U.S. supplier to obtain an export license from OFAC.

Therefore, we encourage OFAC to examine the current license processing time and to implement the necessary changes to issue licenses in accordance with the "expedited" license processing times contemplated by TSRA and the implementing regulations.

B. The Extent to Which the Licensing Procedures Have Been Effectively Implemented

In addition to the significant delays experienced in obtaining TSRA licenses from OFAC, U.S. exporters have also experienced problems in obtaining information from OFAC on the status of pending TSRA licenses. While OFAC has done a much better job during the past two years in providing written guidance to applicants on the documentation and information required to be submitted in license applications, it is still very difficult for applicants to obtain specific information on the status of their license applications. This is particularly true when the license is pending at the "reviewing agencies".

OFAC's TSRA license processing system would be vastly improved for all parties involved if an electronic license application system were to be established. OFAC should be commended for recently establishing electronic license application systems for several types of Cuba-related licenses. A similar system for TSRA license applications would be a significant improvement to the current system. Establishing a consistent and standardized format for TSRA licenses would be far superior than the current narrative style license application, which varies from applicant to applicant.

Another significant issue for U.S. exporters relates to the treatment of samples products. Suppliers of agricultural products, medicines and medical devices are often

required to submit product samples in order to qualify for competitive international procurement tenders. These samples are provided free of charge, in small quantities and are not used for any other commercial purpose.

Under the current system, it appears that a specific license is required in order to provide sample products to a prospective customer in Iran or Sudan. As a result, U.S. suppliers are unable to compete in international tenders that require shipment of samples prior to the awarding of a contract.

U.S. manufacturers and exporters of agricultural and medical products request that OFAC provide suppliers with guidance on how they can submit samples to their customers without an export license. Alternatively, OFAC should issue a general license authorizing manufacturers and exporters to ship small quantities of sample products to prospective customers in Sudan and Iran without an export license. Such a general license would not undermine U.S. policy of restricting trade with these countries. Rather, it would enable U.S. companies to further the policy established by TSRA of providing humanitarian aid to countries subject to U.S. sanctions.

III. Conclusion

We welcome the opportunity to submit these comments regarding the effectiveness of licensing procedures for the export of agricultural commodities, pharmaceuticals and medical devices to Sudan and Iran. U.S. manufacturers and exporters of humanitarian products hope to see a decrease in TSRA license processing times and improvements in the TSRA licensing process in early 2009.

Respectfully submitted,



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