



NCITD

National Council on International Trade Development

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January 10, 2007

Licensing Division
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, NW
Annex-2d Floor
Washington, DC 20220

RE: NCITD Comments on Effectiveness of Licensing Procedures for
Exportation of Agricultural Commodities, Medicine and Medical
Devices to Sudan and Iran

Dear Sir or Madam:

The National Council on International Trade Development (NCITD) is pleased to respond to the request by the Office of Foreign Assets Control (OFAC) for comments on the effectiveness of licensing procedures for the export of agricultural commodities, medical devices and pharmaceuticals to Sudan and Iran.¹

I. NCITD Background

NCITD, founded in 1967, is a non-profit trade association of large and small U.S. exporters and importers who are advocates of policies that are consistent with national security, foreign policy, and a flexible export transaction process that promotes export trade. Our membership includes large, mid-size, and small firms, exporters and importers, freight forwarders and brokers, banks, attorneys, trade groups, and consulting firms.

Several of our members are involved in the exportation of products to Iran and Sudan pursuant to the “expedited” licensing procedures set forth in the Trade Sanctions Reform and Export Enforcement Act of 2000 (TSRA) and OFAC’s implementing regulations. Our members understand the need to comply with the regulations governing the export of licensable products to Iran and Sudan and we therefore provide these comments on the effectiveness of the current TSRA licensing procedures.

¹ 71 Fed. Reg. 71,500 (Dec. 11, 2006)

II. Comments on Effectiveness of TSRA Licensing Procedures

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

NCITD members have experienced a dramatic increase in the amount of time that elapses from the date they file a TSRA license application to the date that OFAC approves the license. Specifically, our members report that in 2006 the average amount of time that elapses from the filing date to approval date typically takes between 50 calendar days to more than 100 calendar days in most cases. Our members report that it is not uncommon to wait more than 100 calendar days for OFAC to issue a TSRA license. We are aware of many instances where it took OFAC more than 200 calendar days to obtain a TSRA license. Incredibly, several members report that they are still waiting to for OFAC to issue TSRA licenses that they applied for submitted in middle of 2006.

Our members also have indicated that it appears to take less time for OFAC to issue TSRA licenses for the export of agricultural products than it takes to issue TSRA licenses to export medical devices and pharmaceutical products.

As a general rule, NCITD members submitting TSRA licenses state that there has been no significant time difference between the time that it takes to receive the renewal of a previous license and a new TSRA license. In fact, rather than there being a streamlined process for renewal license applications, 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 members 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 2005.

Our members also report that the significant delays in receiving TSRA licenses are causing them to lose sales to foreign competitors. Our members' customers are simply unable to risk waiting an indeterminable amount of time for OFAC to issue a TSRA license for it to purchase items from a U.S. company. Instead, they will take their business to foreign competitors whom they believe to be more predictable, and reliable.

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

In addition to the significant delays experienced by our members in obtaining TSRA licenses from OFAC our members have also experienced problems in the procedures used by OFAC to process and issue TSRA licenses. For example, our members note that there is a lack of clear guidance as to the format in which

applicants should submit applications. In addition, while there is a dedicated e-mail address to send the PDF versions of TSRA license applications and supporting documents, OFAC licensing officers have suggested in the past that this address should not be used and that applications should instead be submitted on a CD-ROM.

Our members also have obtained inconsistent information with respect to the requirements for the identification of end-users in license applications. On the one hand, our members have received information that applicants are no longer required to furnish lists of all end-users in connection with license applications. On the other hand, there has been no clear written statement on this policy and several members have had their licenses returned without action for failing to provide specific end-user information, such as the names of hospitals. Furthermore, it is unclear whether this policy applies to both medical device and agricultural product applications.

Our members also have expressed concern that the Illustrative List of EAR99 Medical Devices ("Illustrative List") maintained by the Bureau of Industry and Security (BIS) has fallen into disuse. As a result, license applications associated with basic medical products, such as hospital beds or surgical masks, must await formal BIS classification. Not only does this lengthen unnecessarily the TSRA licensing process it also results in additional work for BIS. In this regard, OFAC has informally advised applicants that that it will no longer approve licenses or renewals of licenses previously issued without an accompanying BIS commodity classification or BIS export license identifying each of the products in the transaction as being classified as EAR99. In the past, reliance on the Illustrative List or reliance on a previously issued OFAC license would have sufficed for both new license applications and renewals. OFAC's imposition of a requirement for a BIS classification is a departure from all prior guidance from BIS and OFAC as well as from statements in the preamble to the *Federal Register* notice containing the TSRA implementing regulations. See 66 Fed. Reg. 36685-86 (July 12, 2001). Additionally, BIS' website containing the Illustrative List and the Iran licensing guidelines on OFAC's website have not been updated to reflect the current position on this issue. In fact, it still expressly states that items falling on the Illustrative List may be submitted to OFAC for TSRA licensing "without an accompanying commodity classification" from BIS.

Additionally, NCITD suggests that TSRA licenses should be sent on a consistent basis via e-mail to applicants, rather than in hard copy only. There is often a great delay in U.S. Government mail from the Treasury Department reaching recipients. Furthermore, NCITD suggests that OFAC devise a method or procedure to ensure that an electronic copy of the license is mailed to the applicant.

Finally, we should note that NCITD and its members are very concerned that OFAC has not issued the required quarterly reports to Congress as required by TSRA. It is our understanding that the last report issued was for the period July 2005 through September 2005.

III. Conclusion

The members of NCITD 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 and we hope that you find these comments helpful. We look forward to seeing a significant improvement in the TSRA licensing process in the very near future.

Respectfully submitted,



Michael J. Ford
Chairman, National Council on International
Trade Development