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April 2, 2003

Chief of Records
ATTN: Request for Comments
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Annex—2d Floor
Washington, D.C. 20220

RE: Comments Concerning Economic Sanctions Enforcement Guidelines

Dear Sir or Madam:

The National Council on International Trade Development (NCITD)[1] is pleased to respond to the request published in the *Federal Register* for public comments on the Office of Foreign Assets Control's ("OFAC") proposed Economic Sanctions Enforcement Guidelines ("proposed Guidelines"). 68 Fed. Reg. 4422, 4426 (Jan. 29, 2003).

Introduction

Before addressing the substantive issues regarding the proposed Guidelines, the NCITD commends OFAC for taking the initiative to issue Guidelines that are applicable to enforcement actions brought by OFAC. Such Guidelines are long overdue. Importers, exporters, banks and other sectors governed by the sanctions regimes implemented and enforced by OFAC have long been concerned over the lack of transparency in OFAC enforcement proceeding and the lack of a formal voluntary disclosure policy. The publication of these Guidelines will greatly assist companies in understanding the penalties that may be imposed on them for violating the sanctions regimes administered and enforced by OFAC. In addition, it will help to ensure that parties subject to enforcement actions will be treated fairly and equally and in accordance with OFAC's written guidelines.

[1] The NCITD is a non-profit membership organization, supported by a diverse membership of large, mid-size and small firms. Membership includes exporters and importers, freight forwarders and brokers, ocean and air carriers, banks, attorneys, trade groups, and consulting firms.

Suggested Changes to the Proposed Guidelines Prior to Final Publication

While NCITD is pleased with many aspects of the proposed Guidelines, we believe that OFAC should modify the proposed Guidelines as follows before they are published in final form:

1. The Proposed Penalties for Import and Export Violations Should Conform to the Maximum Penalties Imposed by Statute and Regulation.

Section III.A. of the proposed Guidelines sets forth a "proposed penalty" for various violations. For import and export cases, the proposed Guidelines stated that for import purposes the "dollar value used in proposing a penalty generally will be the transaction value for imports of the goods, technology, or services into the United States . . . ." 68 Fed. Reg. at 4426. For exports, the proposed Guidelines states that the "dollar value used in proposing a civil penalty generally will be the U.S. domestic value of the goods, technology, or services." *Id.*

However, this provision fails to take into account that the various sanctions regulations administered by OFAC set forth a maximum civil penalty that may be significantly less than the dollar value of the transaction. For example, the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-06, governs the amount of civil penalties imposed by several sanctions programs. The maximum civil penalty that can be imposed by IEEPA for violations of the sanctions on Iran, Libya, Sudan, the Balkans and Burma is $11,000. The maximum civil penalty that can be imposed for violations of the Cuban Sanctions Regulations, which is governed by a different statutory regime, is $55,000.

Given the high value of many import and export transactions, it is easy to envision scenarios where the transaction value exceeds the maximum civil penalty set forth in the regulations. To ensure that the amount of the proposed penalty is consistent with the applicable statutory and regulatory regime, NCITD suggests that Section III.A.2. of the Guidelines be revised to indicate that the proposed penalty generally will be the "lesser of either the statutory maximum or the dollar value of the transaction value of the transaction involved." Such language would make the discussion of penalties on import and export cases consistent with the discussion of penalties associated with prohibited deadlines in blocked property or fund transfers in Section III.A.1.

2. OFAC Should Include Certain Procedural Matters In the Voluntary Disclosure Discussion.

NCITD is pleased that OFAC is formalizing a voluntary disclosure policy. However, we believe that the proposed Guidelines should be clarified to address several important procedural issues.

First, the proposed Guidelines do not advise parties to whom the voluntary disclosure should be sent or what form the voluntary disclosure should take. *See* 68 Fed. Reg. at

4427. In order to ensure that the Guidelines provide as much guidance as possible, we suggest that the Guidelines be modified to contain the following language: "A voluntary disclosure should be in the form of a detailed letter, with any supporting documentation, to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220." These instructions are similar to those that appear in the Frequently Asked Questions section of OFAC's Web site.

Second, to ensure that parties submitting a voluntary disclosure are certain that their voluntary disclosure has been received by OFAC and that the disclosure is valid, we recommend that OFAC be required to send a notification letter to the disclosing party (or their representative) with 30 days after receipt. The notification letter should advise the disclosing party that the voluntary disclosure has been received and is valid. The letter should also set forth the reduced penalty treatment and should provide instructions regarding the settlement process. The U.S. Customs Service utilizes a similar notification process in handling prior disclosures submitted pursuant to 19 C.F.R. § 162.74.

Conclusion

Thank you for the opportunity to submit these comments, and we hope that they will be considered in formulating OFAC's final Economic Sanctions Enforcement Guidelines.

Sincerely,

H. E. Riley Jr

Herb Riley
Export Committee Chair