

## Chapter 16

### Sanctions

#### A. IMPOSITION AND IMPLEMENTATION OF SANCTIONS

##### 1. Nonproliferation

###### *a. Democratic People's Republic of Korea*

###### *(1) Security Council action*

On April 5, 2009, North Korea launched a Taepo-Dong 2. In response, President Barack H. Obama called North Korea's action "a clear violation of United Nations Security Council Resolution 1718 (2006), which expressly prohibits North Korea from conducting ballistic missile-related activities of any kind." The full text of President Obama's statement is available at [www.whitehouse.gov/the\\_press\\_office/Statement-by-the-President-North-Korea-launch](http://www.whitehouse.gov/the_press_office/Statement-by-the-President-North-Korea-launch). See also the Joint Statement issued with the European Council on April 5, condemning North Korea's action, available at [www.whitehouse.gov/the\\_press\\_office/United-States-European-Council-Joint-Statement-on-the-North-Korean-Launch](http://www.whitehouse.gov/the_press_office/United-States-European-Council-Joint-Statement-on-the-North-Korean-Launch). In remarks to the press, Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, stated: "[I]t is our view that this action merits a clear and strong response from the United Nations Security Council. We will be embarked on additional consultations with partners in the Security Council as well as allies and concerned parties outside of the Security Council towards obtaining that kind of outcome."

On April 13, 2009, the Security Council issued a Presidential Statement on the DPRK, which, among other things, condemned the April 5 launch, reiterated the need for North Korea to comply fully with Resolution 1718, and agreed that the Security Council would adjust the measures set forth in paragraph 8 of Resolution 1718 through the designation of entities and additional goods. U.N. Doc. S/PRST/2009/7. On April 14, 2009, Ambassador Rice transmitted a letter and accompanying list of items, materials, equipment, goods, and technology related to ballistic missile-related programs for the Security Council Committee established pursuant to Resolution 1718 ("1718 Committee") to consider adding to its list of items subject to the prohibitions set forth in paragraph 8 of Resolution 1718. U.N. Docs. S/2009/205 and S/RES/1718 (2006). On April 24, 2009, the 1718 Committee approved the list proposed by the United States. As a

result, transfers of the items, materials, equipment, goods, and technology on the list to and from the DPRK were prohibited.

In May 2009 North Korea announced that it had conducted its second nuclear test. In remarks to the press on June 10, 2009, Ambassador Rice announced that “on behalf of the United States, Russia, China, France, the UK, Japan, and South Korea we tabled a draft resolution . . . which we think provides a very strong, very credible, very appropriate response to the provocative nuclear tests that North Korea launched and its subsequent activities.” Ambassador Rice explained:

. . . [T]his draft would impose a complete embargo on the export of arms from North Korea. These arms exports have been a significant source of revenue over the years for North Korea and we think it important that that source of revenue be entirely curtailed. It substantially broadens the ban on the import of weapons to North Korea and requires that any remaining light weapons or small arms and related material [to] be imported be notified in advance, fully transparently, to the Sanctions Committee.

Secondly, this regime creates an unprecedented, detailed set of expectations and obligations regarding the inspection of suspect cargo believed to be carrying goods prohibited under Resolution 1718 and this draft current resolution. It would make it very clear that states are expected to inspect suspected contraband cargo on their territory, in their land, air, or sea.

. . . [I]t [makes] very clear that states are expected to consent to inspection on the high seas if a flagged vessel of their own is believed to be carrying contraband. It calls on all states to inspect suspect vessels with the consent of the [flag state] and it makes it very clear that states that refuse to [consent to inspection of their flagged vessels] on the high seas are obliged under international law to [direct their flagged vessels to] proceed to an appropriate convenient port for mandatory inspection. It also makes it clear that any contraband that is indeed found must be seized and disposed of by the state that finds that material.

It also has a provision, which I believe is brand new and substantially enhances this regime, that would prohibit the provision of bunkering services to DPRK vessels on the high seas believed to be carrying contraband—bunkering services are things like the

provision of fuel and other necessary materials for the operation of ships.

The third area of additional sanctions is in the financial realm where we have a very broad set of new authorities to prevent the flow of funds internationally that could in any way, shape, or form benefit North Korea's missile, nuclear or proliferation activities.

The fourth area of the new sanctions is a decision by the Council to engage in a process . . . where we will in the 1718 Committee designate additional goods, entities and individuals within a set timeframe and thus add to those whose assets would be frozen.

And, finally, there is a provision for the enhanced monitoring and implementation of this sanctions regime through a strengthened mandate for the 1718 Committee and the augmentation of its efforts by a panel of experts. Taken together, we think this is a very strong, important resolution.

Ambassador Rice's remarks are available in full at <http://usun.state.gov/briefing/statements/2009/125980.htm>.

On June 12, 2009, the UN Security Council adopted the draft as Resolution 1874. U.N. Doc. S/RES/1874. In adopting the new resolution, the Council acted under Chapter VII of the UN Charter and took the measures Ambassador Rice previewed on June 10 under Article 41 of Chapter VII. In a statement to the Security Council after the resolution's adoption, Ambassador Rosemary A. DiCarlo, U.S. Alternate Representative to the United Nations for Special Political Affairs, summarized its provisions and provided U.S. views on the resolution. Ambassador DiCarlo's remarks, excerpted below, are available at <http://usun.state.gov/briefing/statements/2009/125979.htm>.

---

\* \* \* \*

The message of this resolution is clear: North Korea's behavior is unacceptable to the international community, and the international community is determined to respond. North Korea should return without conditions to a process of peaceful dialogue. It should honor its previous commitments to denuclearize the Korean Peninsula. It should shun provocation and proliferation. But for now, its choices have led it to face markedly stronger sanctions from the international community.

This resolution condemns North Korea's nuclear test in the strongest terms. It strengthens and enhances sanctions on North Korea in five critically important areas: by imposing a total embargo on arms exports from North Korea and significantly expanding the ban on arms imports; by creating a wholly new framework for states to cooperate in the inspection of ships and aircraft suspected to be carrying weapons of mass destruction or other banned goods; by calling on states and international financial institutions to disrupt the flow of funds that could support North Korea's missile, nuclear, or proliferation activities; by committing to designate for targeted sanctions

additional goods, entities, and individuals involved in North Korea's illicit behavior; and, finally, by strengthening the mechanisms to monitor and tighten the implementation of this toughened new sanctions regime. These measures are innovative, they are robust, and they are unprecedented.

\* \* \* \*

On July 16, 2009, the UN Security Council's 1718 Sanctions Committee designated five individuals, five entities, and two categories of goods relating to North Korea's nuclear, ballistic missile, and other WMD-related programs of proliferation concern. The Committee's designations made the sanctions in Security Council Resolutions 1718 and 1874 applicable to the individuals, entities, and goods. On the same day, Robert Wood, Acting Spokesman, Department of State Bureau of Public Affairs, issued a statement supporting the Committee's action. Excerpts follow from Mr. Wood's statement, which is available at [www.state.gov/r/pa/prs/ps/2009/july/126147.htm](http://www.state.gov/r/pa/prs/ps/2009/july/126147.htm). The decision document approved by the Committee is available at [www.state.gov/r/pa/prs/ps/2009/july/126148.htm](http://www.state.gov/r/pa/prs/ps/2009/july/126148.htm).

---

The United States is pleased that the UN's 1718 Sanctions Committee today designated a number of individuals, entities and goods related to North Korea's nuclear, ballistic missile, and other WMD-related programs of proliferation concern, thereby making them subject to the sanctions measures adopted by the Security Council in resolutions 1718 and 1874. The entities and individuals will now be subject to an asset freeze, and the individuals will also be subject to a travel ban. Further, this decision expands the list of goods related to the DPRK's missile related programs banned for export or import.

These designations—along with the other measures in resolution 1874—constitute a serious and credible response to the May 25 nuclear test and put in place stronger and more credible sanctions than ever before in regards to North Korea. We look forward to continuing to work with the Committee to designate additional items that could contribute to the DPRK's nuclear, ballistic missile, other WMD-related, and conventional arms programs to prohibit their transfer to or from North Korea and to designate additional individuals and entities engaged in or providing support for these programs.

\* \* \* \*

The United States again reiterates its call on North Korea to fulfill its commitments under the September 19, 2005 Joint Statement of the Six-Party talks, to eliminate its nuclear weapons program, and return to the Treaty on the Non-Proliferation of Nuclear Weapons and to IAEA safeguards.

On July 30, 2009, Ambassador Philip S. Goldberg, U.S. Coordinator for the implementation of Resolution 1874, briefed the 1718 Sanctions Committee on U.S. actions to implement Resolutions 1718 and 1874. Ambassador Goldberg's remarks to the press after the meeting, excerpted

below, are available in full at  
<http://usun.state.gov/briefing/statements/2009/july/126837.htm>.

---

\* \* \* \*

Reporter: What are the measures that you've taken . . . to strengthen the sanctions?

Ambassador Goldberg: . . . In the financial area, we have advised our banks about activities related to North Korean entities—those that are mentioned in the sanctions committee and have been designated, but also activities with other North Korean individuals/entities, and to have a heightened sense of caution in those kinds of dealings. I think other governments have taken similar positions. And part of our task at the moment is in information sharing when we identify such transactions taking place.

The same would be true in the area of the inspections; . . . we need to exchange information.

. . .

\* \* \* \*

## (2) *U.S. sanctions*

### (i) *Sanctions under Executive Order 13382*

During 2009 the United States imposed sanctions on North Korean entities, entities linked to previously designated North Korean entities, and several individuals under Executive Order 13382, "Blocking Property of Weapons of Mass Destruction Proliferators and their Supporters." Issued in 2005, E.O. 13382 cuts off financial and other resources for proliferation networks, effectively denying designated parties access to the U.S. financial and commercial systems. See 70 Fed. Reg. 38,567 (July 1, 2005); see also *Digest 2005* at 1125-31.

Effective June 30, 2009, the Department of State designated a North Korean entity, Namchongang Trading Corporation (a.k.a. NCG, a.k.a. Namchongang Trading, a.k.a. Nam Chon Gang Corporation, a.k.a. Nomchongang Trading Co.). 74 Fed. Reg. 35,226 (July 20, 2009). The Department of State designated two additional DPRK entities, General Bureau of Atomic Energy (a.k.a. gBae, a.k.a. General Department of Atomic Energy) and Korea Tangun Trading Corporation, on August 31, 2009. 74 Fed. Reg. 47,636 (Sept. 16, 2009).

On July 30, 2009, the Treasury Department designated a North Korean entity, the Korea Hyoksin Trading Corporation (a.k.a. Korea Hyoksin Export and Import Corporation) ("Hyoksin"). 74 Fed. Reg. 41,783 (Aug. 18, 2009). Treasury's action implemented the UN Security Council 1718 Committee's July 16 decision, discussed in A.1.a.(1) *supra*, to designate Hyoksin as an entity subject to the asset-freezing measures in paragraph 8 of Resolution 1718. A Treasury Department press release, issued on July 30, explained that Hyoksin was designated "for being owned or controlled by a

North Korean entity, the Korea Ryonbong General Corporation (Ryonbong), which was identified in the Annex to E.O. 13382.” The release also noted that “Ryonbong, which was also sanctioned pursuant to Resolution 1718, specializes in acquisition for North Korean defense industries and support to Pyongyang’s military–related sales.” See *www.treas.gov* [search “tg247”].

On August 11, 2009, the Treasury Department designated one North Korean entity, the Korea Kwangson Banking Corp. (a.k.a. KKBC) “for providing financial services” to support Hyoksin and Tanchon Commercial Bank (“Tanchon”). 74 Fed. Reg. 41,782 (Aug. 18, 2009); *www.treas.gov* [search “tg260”]. Tanchon is listed in the Annex to E.O. 13382, and the Security Council’s 1718 Committee designated Tanchon in April 2009. A Treasury Department press release, issued on August 11, explained that

[s]ince 2008, Tanchon has been utilizing KKBC to facilitate funds transfers likely amounting to millions of dollars, including transfers involving Korea Mining Development Trading Corporation (KOMID)–related funds from Burma to China in 2009. KOMID, which has been identified by the President in the Annex to E.O.13382 and designated by the UN pursuant to UNSCR 1718, is North Korea’s premier arms dealer and main exporter of goods and equipment related to ballistic missiles and conventional weapons. Tanchon, the financial arm of KOMID, plays a key role in financing KOMID’s sales of ballistic missiles. Additionally, Hyoksin, which the UN described as being involved in the development of weapons of mass destruction, sought to use KKBC in connection with a purchase of dual–use equipment in 2008.

Due to KKBC’s relationship to Tanchon, Hyoksin, and Ryonbong, today’s action is consistent with UNSCR 1718’s requirement to freeze the funds of and deny financial services to UN–designated entities. It is also consistent with UNSCR 1874’s call to prevent the provision of financial services or any financial assets that could contribute to North Korea’s nuclear, ballistic missile, or other WMD–related programs.

See *www.treas.gov/press/releases/tg260.htm*. Other Treasury Department designations under E.O. 13382 during 2009 included two individuals and two entities on January 16, 2009 (74 Fed. Reg. 6085 (Feb. 4, 2009)), and one Iran–based entity on June 30, 2009 (74 Fed. Reg. 32,222 (July 7, 2009)).

*(ii) Missile and other nonproliferation sanctions*

Effective February 2, 2009, the Department of State's Bureau of International Security and Nonproliferation imposed missile proliferation sanctions on three North Korean entities, Korea Mining and Development Corporation ("KOMID"), Moksong Trading Corporation, and Sino-Ki, as well as their subunits and successors, for engaging in missile technology proliferation activities. The State Department acted pursuant to § 73(a)(1) of the Arms Export Control Act; § 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. § 2410b(b)(1)), as carried out under Executive Order 13222 of August 17, 2001; and Executive Order 12851 of June 11, 1993. 74 Fed. Reg. 5881 (Feb. 2, 2009), as corrected by 74 Fed. Reg. 6943 (Feb. 11, 2009). The sanctions, which are discussed in the Supplementary Information section of the Federal Register notice, include a two-year denial "of all new individual export licenses for the transfer of MTCR [Missile Technology Control Regime] Annex items to the sanctioned entities."

Also effective February 2, 2009, the Department of State's Bureau of International Security and Nonproliferation imposed sanctions on the same three entities, their subunits, and successors, for engaging in proliferation activity. The State Department acted pursuant to Executive Order 12938 of November 14, 1994, as amended, "Proliferation of Weapons of Mass Destruction." 74 Fed. Reg. 5882 (Feb. 2, 2009), as corrected 74 Fed. Reg. 6943 (Feb. 11, 2009). The sanctions, which are discussed in the Supplementary Information section of the Federal Register notice, include a ban on U.S. government procurement from the entities for two years.

***b. Iran***

*(1) Overview*

As discussed in Chapter 18.B.1.f.(1)(ii), in 2009 the United States pursued a two-track approach to preventing Iran from gaining a nuclear weapons capability, which combined greater diplomatic engagement with Iran with the continued application of sanctions. On October 6, 2009, Stuart A. Levey, Under Secretary for Terrorism and Financial Intelligence, U.S. Department of the Treasury, testified before the Senate Committee on Banking, Housing and Urban Affairs at a hearing concerning "Minimizing Potential Threats from Iran: Administration Perspectives on Economic Sanctions and Other Policy Options." In his testimony, excerpted below, Mr. Levey discussed the targeted financial sanctions the United States has imposed against Iran, as well as U.S. preparations to impose additional sanctions should Iran fail to comply with its nonproliferation obligations and respond to U.S. diplomatic

overtures. The full text of Mr. Levey's testimony is available at [www.treas.gov](http://www.treas.gov) [search "tg314"].\*

---

\* \* \* \*

Less than a week ago, the five permanent members of the UN Security Council and Germany—the P5+1—met with Iran in Geneva. As the President said, that meeting was a constructive beginning to our dialogue, but much work remains to be done. He was clear that, “[i]f Iran does not take steps in the near future to live up to its obligations, then the United States will not continue to negotiate indefinitely, and we are prepared to move towards increased pressure.” . . .

Even as the Administration focuses on diplomacy, we have also been working with our colleagues across the U.S. government to develop a strategy for imposing substantial costs on the government of Iran if the President determines that is what is needed to affect Iranian policies.

The plan we are developing is comprehensive. It takes into account that no single sanction is a “silver bullet”—we will need to impose measures simultaneously in many different forms in order to be effective. It also takes into account Iran’s potential vulnerabilities and those activities that have the greatest influence on Iran’s decisionmakers. As we consider various measures, we are particularly mindful of potential unintended consequences on the people of Iran, and the internal dynamic now playing out in that country.

Because financial measures are most effective when imposed as part of a broad-based effort with the support of the largest possible international coalition, we are working closely with our allies as we put together this strategy. We believe that by consulting with them closely and pursuing engagement genuinely we have a better chance to generate the coalition we will need if dialogue does not lead to demonstrated progress.

We should be realistic about the ability of sanctions to achieve our political and security objectives with Iran. If, however, we accurately target the key vulnerabilities and fissures in Iran and then implement our plan with a broad coalition of governments and key private sector actors, we can at least demonstrate to the Iranian government that there are serious costs to any continued refusal to cooperate with the international community. . . .

### **Financial Measures**

Beginning in 2006, we developed and implemented a strategy to target Iran’s illicit conduct. We took formal action against many of the specific banks, government entities, companies, and people involved in Iran’s support for terrorism and its proliferation activities. We did so using two powerful Executive Orders, E.O. 13382 and E.O. 13224, that allow us to designate proliferators of weapons of mass destruction, terrorists, and their supporters, freezing any assets they have under U.S. jurisdiction and preventing U.S. persons, wherever located, from doing business with them. We have designated more than 100 entities and individuals supporting Iran’s nuclear and missile

---

\* Editor’s note: On June 9, 2010, the Security Council adopted Resolution 1929, imposing extensive additional nonproliferation sanctions against Iran. U.N. Doc. S/RES/1929. For additional background, see the White House fact sheet issued on June 9, 2010, available at [www.whitehouse.gov/the-press-office/fact-sheet-new-un-security-council-sanctions-iran](http://www.whitehouse.gov/the-press-office/fact-sheet-new-un-security-council-sanctions-iran); see also the statement of Ambassador Rice to the Security Council, explaining the U.S. vote in support of the resolution, available at <http://usun.state.gov/briefing/statements/2010/142887.htm>. *Digest 2010* will discuss relevant aspects of the new resolution and U.S. views on it.

enterprises, including the key organizations within Iran, scores of their front companies, Iran's major banks that finance their conduct, and Iran's major shipping line, the Islamic Republic of Iran Shipping Lines, that handles illicit shipments for these dangerous enterprises. We have also acted against the Islamic Revolutionary Guard Corps, or the IRGC, and several of its companies for proliferation, as well as the IRGC's Qods Force for its role in supporting terrorist organizations.

As a result of the State Department's intensive diplomatic efforts, the UN Security Council resolutions on Iran contain many of the same designations we have implemented here in the United States. The European Union and Australia have gone beyond implementing the Security Council's list, joining us in other designations, such as that of Iran's Bank Melli. These actions are particularly powerful in that they give us an opportunity to explain publicly our reasons for acting, thereby exposing the illicit conduct of those we have designated.

Importantly, we combined these government actions with unprecedented, high-level outreach to scores of banks, banking associations, and other private sector leaders around the world. We discussed the risks of doing business with Iran and shared information about Iran's illicit and deceptive practices. As a result, the international private sector has amplified the impact of government actions, as banks and companies around the world have come to understand that, if they are dealing with Iran, it is nearly impossible to protect themselves against becoming entangled in that country's illicit conduct.

We have seen firsthand that the financial measures applied by the United States and the international community on Iran since 2006 have had an impact. At this point, most of the world's major banks have cut off or significantly scaled back their business with Iran because of the reputational risks involved. Iran is increasingly dependent on an ever-shrinking number of trade and finance facilitators. Many foreign companies have pulled back from business deals with Iran, including investment in Iran's energy sector. Iranian businessmen face greater inefficiencies, higher operating costs, and increased difficulty finding business partners and banks to provide them with financing.

\* \* \* \*

There is broad acknowledgment that the Iranian government engages in a range of deceptive financial and commercial conduct in order to obscure its development of nuclear and missile programs and facilitate its support for terrorism. International understanding of these practices—underscored by the UN Security Council resolutions on Iran and six warnings issued by the Financial Action Task Force about the risks Iran poses to the financial system—has been brought about in part by our efforts to share information about Iran's deception with governments and the private sector around the world.

These deceptive practices taint all Iranian business because they make it difficult to determine whether any Iranian transaction is licit. Iranian banks request that their names be removed from transactions so that their involvement cannot be detected; the government uses front companies and intermediaries to engage in ostensibly innocent commercial business to obtain prohibited dual-use goods; and Iran's shipping line, the Islamic Republic of Iran Shipping Lines, or IRISL, repeatedly manipulates bills of lading to shield prohibited cargo from scrutiny.

To a greater extent than ever, private companies across industries are now alert to these kinds of risks. Banks worldwide have been repeatedly warned by regulatory and standard-setting bodies to regard Iranian transactions with caution. Traders and shippers know that transactions with innocent-sounding Iranian counterparts can expose them to risk—both reputational and legal. Energy companies have put Iranian investments on indefinite hold, cautious of the political risk of

investing too heavily in Iran. And exporters of sensitive and dual-use technologies know that supplying Iran can lead to severe sanctions and even prosecution. Across the board, then, transactions with Iran are already handled differently than transactions with any other country—except perhaps for North Korea—engendering either heightened suspicion or outright refusal to engage in them.

\* \* \* \*

### **United Coalition Necessary to Exploit Iran’s Economic Vulnerabilities**

This Administration has demonstrated that it is committed to a diplomatic resolution of the international community’s issues with Iran. The world is now united in looking to Iran for a response. If Iran does not live up to its obligations in this process, it alone will bear the responsibility for that outcome.

Under these circumstances, the United States would be obliged to turn to strengthened sanctions. We are intensifying work with our allies and other partners to ensure that, if we must go down this path, we will do so with as much international support as possible. For the less united we are in applying pressure, the greater the risk our measures will not have the impact we seek. . . . Over the past three years, the U.N. Security Council has adopted three unanimous Chapter VII resolutions against Iran. Those resolutions now represent the baseline. If Iran chooses to defy the international community yet again, and not live up to its obligations, these resolutions as well as other steps taken to date have laid the groundwork for a concerted and meaningful international response.

\* \* \* \*

### *(2) Security Council*

During 2009 the Security Council Committee established pursuant to Resolution 1737 (“1737 Committee” or “Iran Sanctions Committee”) submitted four reports to the Security Council concerning implementation of Security Council Resolutions 1737, 1747, and 1803. The transcripts of the Committee Chairman’s briefings for the Security Council on those reports are available at [www.un.org/sc/committees/1737/selecdocs.shtml](http://www.un.org/sc/committees/1737/selecdocs.shtml); see also the Committee’s annual report, U.N. Doc. S/2009/688. The resolutions impose sanctions measures to address Iran’s nuclear program and are discussed in *Digest 2006* at 1280–84, *Digest 2007* at 1031–36, and *Digest 2008* at 969–74. In the Security Council’s discussions of the Iran Sanctions Committee’s reports, the United States expressed concern about Iran’s failure to comply with its obligations and called for the Iran Sanctions Committee to redouble its efforts to ensure full and robust implementation of Security Council Resolutions 1737, 1747, and 1803.

During the Council’s March 10 and June 15 meetings, the United States expressed concern about a violation of Resolution 1747 involving the *M/V Monchegorsk*. On February 3, 2009, Cyprus informed the Committee that it had found arms-related material during an inspection of the Cypriot-flagged ship, which Islamic Republic of Iran Shipping Lines (“IRISL”) had

chartered and was traveling from Iran to Syria. Cyprus inspected the ship consistent with paragraph 11 of Resolution 1803, which among other things called upon states, consistent with their national laws and authorities and international law and if they have reasonable grounds to suspect that a ship is carrying items prohibited under Resolutions 1737, 1747, or 1803, to inspect cargoes of ships operated by IRISL in their ports.

At the Security Council's March 10 meeting, Ambassador Rice stated:

We've carefully studied the report of the inspection of the "M/V Monchegorsk," which was transporting arms-related materiel from Iran to Syria. The Iran Sanctions Committee concluded that this transfer violated Security Council Resolution 1747. The United States supports the steps that the Committee has already taken to address this violation, and we hope that the Committee will take appropriate action under its mandate.

See <http://usun.state.gov/briefing/statements/2009/march/127965.htm> for the full text of Ambassador Rice's statement. Addressing the Security Council on June 15, Ambassador Rosemary DiCarlo, U.S. Alternative Representative to the United Nations for Special Political Affairs, stated:

. . . [T]he United States welcomes the Committee's continued efforts to obtain additional information from Iran and Syria about the recent violation of Security Council Resolution 1747 involving the *M/V Monchegorsk*. We remain concerned that the Committee's requests continue to go unanswered. The United States thanks the Republic of Cyprus for its recent letter informing the Committee that it has completed inspecting the ship's cargo and placed it in safe storage. We also appreciate Cyprus' providing the Committee with the additional details of the cargo that the Committee requested. We would pay particular note to the information suggesting that some of the ship's cargo belonged to Iran's Defense Industries Organization—a designated entity under Resolution 1737. We support the Committee's critically important efforts to examine these additional details and take appropriate action.

See <http://usun.state.gov/briefing/statements/2009/125978.htm>.

Ambassador Rice's statement to the Council on December 10, excerpted below, is available at <http://usun.state.gov/briefing/statements/2009/133386.htm>. For discussion of other nonproliferation efforts concerning Iran in 2009, see Chapter 18.B.1.f.(1)(ii)-(iii).

---

\* \* \* \*

. . . [T]he United States condemns the serious and repeated sanctions violations reported to the 1737 Committee. In the last year, there have been three reported incidents. All three involved the transfer of arms or ammunition from Iran to Syria. All three involved the Islamic Republic of Iran Shipping Lines, IRISL. And all three are clear violations of paragraph five of Security Council Resolution 1747.

Iran has now been caught breaking the rules—repeatedly. In today’s report, the Committee expressed its “grave concern” about the “apparent pattern of sanctions violations involving prohibited arms transfers from Iran.” The 1737 Committee has documented in great detail Iran’s habit of violating this Council’s resolutions. Such violations are unacceptable. The illicit smuggling of weapons from Iran to Syria is not just a sanctions violation; it is also an important factor in the destabilization of an already fragile Middle East.

We applaud the responsible actions that states have taken to detect and disrupt sanctions violations. In the two cases during this 90-day period—involving two vessels, the Hansa India and the Francop—the two member states took action in the face of suspicious cargo originating from Iran. In both cases, the member states off-loaded the arms-related materiel to ensure that it would not reach its intended destination or be returned to its origin. The Committee also has already called attention to its July 2009 Implementation Assistance Notice, which urged member states to “exercise extra vigilance with respect to [the Islamic Republic of Iran Shipping Lines’s] role in violations of these resolutions.”

The scope of these violations is alarming. On board the Francop were found 36 containers of arms and related materiel, including 690 122mm rockets, around 12,000 anti-tank and mortar shells, more than 20,000 fragmentation grenades, and more than half a million rounds of ammunition. Tons of bullet casings were found on board the Hansa India.

Mr. President, we commend the Committee for the diligence it has shown in carrying out its mandate. The effectiveness of Security Council sanctions depends on the follow-up of the Council, the Committee, and, ultimately, all member states. We must ensure that these sanctions are rigorously enforced to ensure that destabilizing weapons are not allowed to flow from Iran to other parts of the Middle East and elsewhere.

As the cases we have discussed here today amply demonstrate, all states should give extra scrutiny to all shipping between Iran and Syria, especially if the Islamic Republic of Iran Shipping Lines is involved. States should also report any information about sanctions violations to the 1737 Committee. We look to the Committee to consider options for effective action to prevent new incidents, and we look forward to its ideas on ways that member states can better implement these measures.

My third point, Mr. President, is to note that these recent events—the discovery of the Qom facility, Iran’s announced intention to build new enrichment plants, and Iran’s prohibited arms transfers—underscore the renewed urgency of full and robust implementation of Resolutions 1737, 1747, and 1803. Member states need to redouble their own enforcement efforts, and the 1737 Committee should be more vigilant, engaged, and active. More rigorous implementation of these sanctions will make it harder for Iran to acquire the technology and assistance to support its prohibited proliferation activities. It will make it harder for Iran to smuggle weapons to extremists and nonstate actors. It will make it harder for Iran to abuse the international financial system to fund its proliferation activities. And full implementation will make it harder for Iran to build any more

covert nuclear-related facilities—such as the site near Qom—beyond the gaze of international inspectors.

\* \* \* \*

Mr. President, the United States remains firmly committed to a peaceful resolution to international concerns with Iran’s nuclear program. We also remain willing to engage Iran to work toward a diplomatic solution to the nuclear dilemma it has created for itself—if Iran will only choose such a course. But engagement cannot be a one-way street. Iran must conclusively demonstrate a similar willingness to engage constructively and address the serious issues associated with its nuclear program. The international community stands firm in its conviction that Iran must comply with its international obligations. Should Iran continue to fail to meet its obligations, the international community will have to consider further actions.

\* \* \* \*

### *(3) U.S. controls and sanctions*

#### *(i) Sanctions under Executive Order 13382*

During 2009 the United States imposed sanctions on Iranian entities, entities linked to previously designated Iranian entities, and several individuals under Executive Order 13382, “Blocking Property of Weapons of Mass Destruction Proliferators and their Supporters.” Issued in 2005, E.O. 13382 cuts off financial and other resources for proliferation networks, effectively denying designated parties access to the U.S. financial and commercial systems. *See* 70 Fed. Reg. 38,567 (July 1, 2005); *see also Digest 2005* at 1125–31.

Effective March 3, 2009, the Department of the Treasury designated 11 entities for their ties to Bank Melli, an Iranian bank that the United States designated under E.O. 13382 in 2007. 74 Fed. Reg. 18,281 (Apr. 21, 2009); *see also* 72 Fed. Reg. 62,520 (Nov. 5, 2007). *See also Digest 2007* at 1042, 1045, and 1047–49. Eight of the companies are based in Iran, two in Dubai, and one in the Cayman Islands. As a Treasury Department press release issued on March 3 noted, the U.S. action was consistent with the call in UN Security Council Resolution 1803 “on all Member States to exercise vigilance with respect to activities between financial institutions in their territories and all Iranian banks, particularly Bank Melli.” *See www.treas.gov* [search “tg46”].

Effective April 7, 2009, the Department of the Treasury designated Khorasan Metallurgy Industries, Niru Battery Manufacturing Company, four additional Iranian entities, and one Chinese national. 74 Fed. Reg. 19,635 (Apr. 29, 2009). In announcing the designations, Under Secretary for Terrorism and Financial Intelligence Stuart Levey said, “Today we are acting under our Security Council and other international obligations to prevent these entities from abusing the financial system to pursue centrifuge and

missile technology for Iran.” As the Treasury Department’s press release explained,

. . . [T]he United Nations Security Council designated Khorasan Metallurgy Industries for sanctions in UN Security Council Resolution 1803 (2008) as a subsidiary of Iran’s Ammunition Industries Group, which is owned by [Iran’s Defense Industries Organization (DIO)], and identified Khorasan as involved in the production of centrifuge components. . . . Niru Battery Manufacturing Company was designated for sanctions by the United Nations Security Council in UN Security Council Resolution 1803 (2008) and identified as a manufacturer of power units for the Iranian military, to include missile systems.

On November 5, 2009, the Treasury Department designated First East Export Bank (“FEEB”), a Malaysian subsidiary of the Iranian government-owned Bank Mellat, and Ali Divandari, the Chairman of Bank Mellat, for acting on behalf of Bank Mellat. See *www.treas.gov* [search “tg355”]. The Treasury Department designated Bank Mellat under E.O. 13382 in 2007. 72 Fed. Reg. 65,837 (Nov. 23, 2007); see also *Digest 2007* at 1042, 1045, and 1047–49. As a Treasury press release, issued on November 5, explained:

. . . FEEB is the first overseas subsidiary of an Iranian bank to open for business since the Financial Action Task Force (FATF), the world’s premier standard-setting body for combating money laundering and terrorist financing, called in February 2009 for all jurisdictions to impose countermeasures to protect against the risks posed by Iran to the international financial system. FATF also advised jurisdictions at that time to take these risks into account when considering requests by Iranian financial institutions to open branches and subsidiaries.

Today’s designations are consistent with United Nations Security Council Resolutions on Iran, including UNSCR 1803, which calls on Member States to exercise vigilance over activities between their financial institutions and all banks domiciled in Iran, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation of sensitive nuclear activities, or to the development of nuclear weapon delivery systems.

See [www.treas.gov/press/releases/tg355.htm](http://www.treas.gov/press/releases/tg355.htm) for the full text of the press release.

*(ii) Sanctions under Executive Order 12938*

Effective February 2, 2009, the Department of State's Bureau of International Security and Nonproliferation imposed sanctions on two Iranian entities, Shahid Bakeri Industrial Group ("SBIG") and Shahid Hemmat Industrial Group ("SHIG"), pursuant to Executive Order 12938 of November 14, 1994, as amended, "Proliferation of Weapons of Mass Destruction." 74 Fed. Reg. 5883 (Feb. 2, 2009). The sanctions, which are discussed in the Supplementary Information section of the Federal Register notice, include a ban on U.S. government procurement from the entities for two years.

*(iii) Iranian Transactions Regulations*

Effective July 23, 2009, the Treasury Department's Office of Foreign Assets Control ("OFAC") amended the Iranian Transactions Regulations, 31 C.F.R. part 560, to revise the definition of the term "Iranian accounts" in § 560.320 and make conforming changes elsewhere in the regulations. 74 Fed. Reg. 36,397 (July 23, 2009). The Background section of the notice explained:

Existing § 560.320 of the ITR defines the term *Iranian accounts* to mean accounts of persons located in Iran or of the Government of Iran maintained on the books of either a United States depository institution or a United States registered broker or dealer in securities. OFAC is revising § 560.320 to clarify the definition by substituting the new phrase "persons who are ordinarily resident in Iran, except when such persons are not located in Iran" for the phrase "persons located in Iran." This change will improve OFAC's overall administration of the ITR and facilitate compliance by U.S. financial institutions. As revised, § 560.320 defines *Iranian accounts* to mean accounts of persons who are ordinarily resident in Iran, except when such persons are not located in Iran, or of the Government of Iran maintained on the books of either a United States depository institution or a United States registered broker or dealer in securities.

On November 23, 2009, OFAC issued an interim final rule making technical changes to certain sections of the Iranian Transactions

Regulations relating to the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (“TSRA”), 22 U.S.C. §§ 7201-7211. The preamble to the interim final rule also clarified OFAC’s policy concerning the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Iran pursuant to TSRA. 74 Fed. Reg. 61,030 (Nov. 23, 2009).

*(iv) Dual-use export controls against Iran*

On October 6, 2009, Daniel O. Hill, Acting Under Secretary for Industry and Security, U.S. Department of Commerce, testified before the Senate Committee on Banking, Housing and Urban Affairs at a hearing concerning “Minimizing Potential Threats from Iran: Administration Perspectives on Economic Sanctions and Other Policy Options.” In his written statement, excerpted below, Mr. Hill discussed the Department of Commerce’s role in administering and enforcing U.S. dual-use export control policies toward Iran. The full text of Mr. Hill’s testimony is available at [http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing\\_ID=23f97300-5b76-483b-9225-aa14a2a82e79&Witness\\_ID=d4cea8b9-9656-4846-9ca3-a01f87fb6924](http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=23f97300-5b76-483b-9225-aa14a2a82e79&Witness_ID=d4cea8b9-9656-4846-9ca3-a01f87fb6924).

\* \* \* \*

All exports to Iran are subject to both the Export Administration Regulations (EAR) and the Department of the Treasury’s Iranian transaction regulations. Treasury is the lead agency for administering the embargo, which features not only a prohibition on exports and reexports of items under the Commerce Department’s jurisdiction, but also comprehensive restrictions on financial transactions and investments under the jurisdiction of the Treasury Department.

Commerce, however, is responsible for several aspects of the embargo of Iran. First, Commerce provides critical technical assistance to Treasury on the proper classification of items proposed for export or reexport to Iran under a Treasury license. The Iran Iraq Arms Non-Proliferation Act of 1992 (Note to 50 U.S.C. 1701) generally requires BIS to deny licenses, absent a Presidential waiver, for the export or reexport of items on the Commerce Control List (CCL) to Iran. In considering an application to export an item to Iran, Treasury must know whether the item is on the CCL and thus prohibited for export to Iran without a waiver. Commerce determines whether the item is on the CCL and informs Treasury.

Second, Commerce plays a vital role in enforcing the embargo by investigating transactions that may constitute exports or reexports to Iran in violation of the EAR. An export or re-export of an item subject to the EAR without Treasury authorization will generally constitute a violation of the EAR. . . .

\* \* \* \*

The Commerce Department coordinates closely with the Department of State and other agencies to work with other countries, including states that may be involved in transshipments to Iran, to establish and strengthen those states’ export and transshipment control systems. This

enables those countries to cooperate with us, build their export control system based on our best practices and to cooperate with us on specific transactions as well as take actions against parties in their own territory who are illegally exporting items to countries such as Iran.

Commerce also can bring to bear unique tools to enforce U.S. export controls on Iran. These tools include Temporary Denial Orders (TDO) and the Entity List. A TDO is a legal order that can be issued quickly, for 180 days at a time, to prevent imminent violations of the EAR. . . .

\* \* \* \*

On February 6, 2009, for example, the Department of Commerce Bureau of Industry and Security issued a temporary denial order against three entities: Islamic Republic of Iran Shipping Lines; Tadbir Sanaat Sharif Technology Development Center; and Icarus Marine (Pty) Ltd. 74 Fed. Reg. 6265 (Feb. 6, 2009). Among other things, the order prohibited Islamic Republic of Iran Shipping Lines from “directly or indirectly, participat[ing] in any way in any transaction involving any commodity, software or technology . . . exported or to be exported from the United States that is subject to the Export Administration Regulations (‘EAR’), or in any other activity subject to the EAR.” The order also prohibited the “export or reexport to or on behalf of any [entity subject to the temporary denial order] any item subject to the EAR,” among other restrictions. Excerpts below from the Federal Register publication describe the standard for the Commerce Department to issue a temporary denial order.

---

\* \* \* \*

Pursuant to Section 766.24(b) of the EAR, the Assistant Secretary may issue a TDO upon a showing by BIS that the order is necessary in the public interest to prevent an “imminent violation” of the EAR. 15 CFR 766.24(b)(1). “A violation may be ‘imminent’ either in time or in degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that “the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

\* \* \* \*

*(v) Commerce Department Iran licensing requirements*

Effective January 15, 2009, the Department of Commerce Bureau of Industry and Security issued an interim final rule revising the Export Administration Regulations (“EAR”) to impose a new licensing requirement for reexports of

certain items for Iran. The rule also imposed licensing requirements on individuals and entities designated pursuant to Executive Order 13382. For discussion of designations of individuals and entities pursuant to E.O. 13382 in 2009, see A.1.a.(2)(i) and A.1.b.(3)(i) *supra*. As the Background section of the preamble to the final rule explained,

The EAR imposes license requirements on certain exports and reexports to Iran. These license requirements apply in addition to any requirements for authorization to export or reexport to Iran that are imposed by the Department of the Treasury, Office of Foreign Assets Control (OFAC), which maintains a comprehensive embargo against Iran, as described in the Iranian Transactions Regulations (31 CFR part 560). The EAR license requirements and licensing policy that apply specifically and expressly to Iran are in parts 742 and 746 of the EAR. This rule makes changes to those parts to promote consistency, reduce redundancy and to clarify the role of the Bureau of Industry and Security (BIS) in connection with the enforcement of United States export control policy towards Iran. It establishes a license requirement for reexports of items classified under ten Export Control Classification Numbers (ECCNs) that previously did not require a license for reexport to Iran under the EAR. This rule also adds a new § 744.8 to the EAR that imposes a license requirement on exports and reexports to parties listed by OFAC in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD].

74 Fed. Reg. 2355 (Jan. 15, 2009).

### ***c. Nonproliferation sanctions against Chinese entities***

Effective February 2, 2009, the Department of State's Bureau of International Security and Nonproliferation imposed missile proliferation sanctions on the following Chinese entities: Dalian Sunny Industries, also known as LIMMT Economic and Trade Company Ltd., LIMMT ("Dalian") Metallurgy and Minerals Co., and LIMMT ("Dalian FTZ") Economic and Trade Organization, and its sub-units and successors; and Bellamax and its subunits and successors, for engaging in missile technology proliferation activities. 74 Fed. Reg. 5882 (Feb. 2, 2009). The State Department acted pursuant to § 73(a)(1) of the Arms Export Control Act; § 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. App. § 2410b(b)(1)), as carried out under Executive Order 13222 of August 17, 2001 ("Export

Administration Act of 1979”); and Executive Order 12851 of June 11, 1993. The sanctions, which are discussed in the Supplementary Information section of the Federal Register notice, included a two-year denial “of all new individual export licenses for the transfer of MTCR [Missile Technology Control Regime] Annex items to the sanctioned entities.” The Federal Register notice also stated that “a determination was made pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) that it was essential to the national security of the United States to waive the sanctions described above with respect to the activities of the Chinese government described in section 74(a)(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(a)(8)(B))—that is, activities of the Chinese government relating to the development or production of any missile equipment or technology and activities of the Chinese government affecting the development or production of electronics, space systems or equipment, and military aircraft.” Effective February 2, 2009, the Department also imposed sanctions on the same entities pursuant to Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998 and Executive Order 13382 of June 28, 2005. 74 Fed. Reg. 5883 (Feb. 2, 2009).

#### ***d. A.Q. Khan Network sanctions***

Effective January 7, 2009, the Department of State announced the imposition of U.S. sanctions on 13 individuals, including Abdul Qadeer Khan, and three entities for their involvement in the A.Q. Khan nuclear proliferation network. The United States imposed the sanctions under the Nuclear Proliferation Prevention Act, 22 U.S.C. § 6301; the Export-Import Bank Act of 1945, 12 U.S.C. § 635(b)(4); Executive Order 12938 (1994); and Executive Order 13382 (2005). See 74 Fed. Reg. 3126 (Jan. 16, 2009) for details on the legal framework and consequences of the U.S. action. A media note issued by the Department of State, excerpted below and available at <http://2001-2009.state.gov/r/pa/prs/ps/2009/01/113774.htm>, provided additional background.

---

\* \* \* \*

We believe these sanctions will help prevent future proliferation-related activities by these private entities, provide a warning to other would-be proliferators, and demonstrate our ongoing commitment to using all available tools to address proliferation-related activities.

\* \* \* \*

The network’s actions have irrevocably changed the proliferation landscape and have had lasting implications for international security. Governments around the world, including Pakistan, South Africa, Turkey, the United Kingdom, Germany, the United Arab Emirates, Switzerland, and Malaysia, worked closely with the United States to investigate and shut down the network.

Governments have also joined together to put in place United Nations Security Council Resolution 1540 to criminalize proliferation and have worked cooperatively to establish the Proliferation Security Initiative (PSI) to enhance international tools to interdict and prevent trade in sensitive technologies.

Many of Dr. Khan's associates are either in custody, being prosecuted, or have been convicted of crimes. Dr. Khan publicly acknowledged his involvement in the network in 2004, although he later retracted those statements. While we believe the A.Q. Khan network is no longer operating, countries should remain vigilant to ensure that Khan network associates, or others seeking to pursue similar proliferation activities, will not become a future source for sensitive nuclear information or equipment.

\* \* \* \*

#### ***e. Weapons of Mass Destruction Proliferators Sanctions Regulations***

On April 13, 2009, OFAC issued its "Weapons of Mass Destruction Proliferators Sanctions Regulations," 31 C.F.R. part 544, to carry out Executive Order 13382 (discussed in A.1.a.(2)(i) and A.1.b.(3)(i) *supra*). 74 Fed. Reg. 16,771 (Apr. 13, 2009).

#### ***f. Export controls***

##### ***(1) Entity List***

In his testimony before the Senate Committee on Banking, Housing and Urban Affairs, discussed in A.1.b.(3)(iv) *supra*, Daniel O. Hill, Acting Under Secretary of Commerce for Industry and Security, cited the Commerce Department's Entity List as a valuable nonproliferation tool. Mr. Hill explained that the Entity List

is a regulatory tool that can be used to prohibit the export, or reexport, of any item subject to the EAR, including items not on the CCL, to any listed entity. In 2008, for example, the Bureau of Industry and Security added 75 foreign parties to the Entity List because of their involvement in a global procurement network that sought to illegally acquire U.S.-origin electronic components and devices capable of being used to construct Improvised Explosive Devices (IEDs). These commodities had been used in IEDs and other explosive devices against Coalition Forces in Iraq and Afghanistan. This network acquired U.S. origin commodities and illegally exported them to Iran. As a consequence of the addition of these entities to the Entity List, no U.S. or

foreign party may export or reexport items subject to the EAR to them without a license. Exporting or reexporting any items to any of these entities without the required license would constitute a violation of the EAR.

The full text of Mr. Hill's written testimony is available at [http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing\\_ID=23f97300-5b76-483b-9225-aa14a2a82e79&Witness\\_ID=d4cea8b9-9656-4846-9ca3-a01f87fb6924](http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=23f97300-5b76-483b-9225-aa14a2a82e79&Witness_ID=d4cea8b9-9656-4846-9ca3-a01f87fb6924).

During 2009 the Department of Commerce, Bureau of Industry and Security ("BIS"), amended the EAR to add 13 entities located in Germany, Hong Kong, and Ireland to the Entity List. 74 Fed. Reg. 35,797 (July 21, 2009). As explained in the Federal Register, "[t]he persons that are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. . . . A BIS license is required for the export or reexport of any item subject to the EAR to any of the persons [added to the Entity List], including any transaction in which any of the listed persons will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items. The listing of these persons also prohibits the use of License Exceptions . . . for exports and reexports of items subject to the EAR involving such persons."

## *(2) Australia Group*

On July 6, 2009, the Department of Commerce, Bureau of Industry and Security, issued a final rule revising the EAR to implement changes the Australia Group ("AG") adopted in December 2008 to its "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software" and "Control List of Dual-Use Biological Equipment and Related Technology and Software." As the preamble to the new rule explained:

The AG is a multilateral forum, consisting of 40 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

74 Fed. Reg. 31,850 (July 6, 2009). Excerpts below from the Summary section of the Federal Register publication provide details on the amendments.

---

... This final rule amends the EAR to reflect changes to the AG “Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software” affecting valves and toxic gas monitoring systems. Consistent with these changes, this rule expands the EAR controls on valves to include those having contact surfaces lined with certain ceramic materials. In addition, this rule clarifies the types of dedicated detecting components that are subject to the EAR controls on toxic gas monitoring systems and expands these controls to include dedicated software for such systems.

This rule also amends the EAR to reflect changes to the AG “Control List of Dual-Use Biological Equipment and Related Technology and Software” affecting cross (tangential) flow filtration equipment. Consistent with these changes, the rule clarifies the EAR controls on such equipment to specifically identify equipment using disposable or single-use filtration components. In addition, this rule amends the EAR to reflect changes to the AG “Guidelines for Transfers of Sensitive Chemical or Biological Items.” Consistent with these changes, the rule amends the AG-related software entries in the EAR to include references to several definitions that were recently added to the AG “Guidelines.”

Finally, this rule amends the list of countries that currently are States Parties to the CWC by adding “Bahamas,” “Dominican Republic,” “Iraq,” and “Lebanon,” which recently became States Parties. As a result of this change, the CW (Chemical Weapons) license requirements and policies in the EAR that apply to these countries now conform with those applicable to other CWC States Parties. However, because of the special EAR controls that apply to Iraq, items controlled under the EAR for CW reasons continue to require a license for export or reexport to Iraq, or for transfer within Iraq.

\* \* \* \*

## **2. Terrorism**

### ***a. Security Council 1267 (al-Qaeda/Taliban) sanctions***

During 2009 the United States continued its efforts to strengthen the Security Council’s sanctions regime against al-Qaeda, Usama bin Laden, the Taliban, and their associates. These sanctions, which the Security Council established in Resolutions 1267, 1333, and 1390 and are referred to collectively as the “1267 sanctions,” are an asset freeze and a related ban on the provision of funds, assets or resources to benefit al-Qaeda, Usama bin Laden, the Taliban, and their associates; a travel ban; and an arms embargo. In addition to the sanctions on the Taliban itself pursuant to Resolution 1267, the Security Council’s 1267 Sanctions Committee maintains a Consolidated List of individuals and entities it designates as

being subject to the sanctions. For additional background, see *Digest 2002* at 885–88.

On November 13, 2009, Ambassador Alejandro D. Wolff, U.S. Deputy Permanent Representative to the United Nations, addressed a Security Council meeting at which the Chairmen of the 1267 Committee, the Counter–Terrorism Committee, and the 1540 Committee briefed the Council. Excerpts follow from his remarks concerning the 1267 sanctions regime and how to strengthen it. The full text of the U.S. statement is available at <http://usun.state.gov/briefing/statements/2009/131935.htm>.

---

\* \* \* \*

Countering threats posed by al-Qaeda and the Taliban remains one of the most important challenges facing this Council. Without the efforts of Member States to work collectively, the world would be much more vulnerable to terrorist attacks. What can we do to ensure the 1267 regime remains a vital and effective multilateral tool to respond to this threat?

First, we can reaffirm the international community’s commitment to full implementation of the 1267 measures. The 1267 regime can only function well if states actively participate in the regime, such as by proposing new names for listing.

Second, we should continue our efforts to ensure that the Consolidated List is as accurate and up-to-date as possible, ensuring that our procedures for imposing sanctions are fair and clear. Resolution 1735 and 1822 introduced new measures to help the Committee confirm the accuracy of the list. [Editor’s Note: See *Digest 2005* at 1003–6 and *Digest 2008* at 87–88 for background on the two resolutions.] The Committee’s work to implement what is perhaps the most significant measure in 1822—the review of every name on the Consolidated List by June 2010—will continue in the coming months. The United States is committed to ensuring that this review is meaningful and is working with Member States to finish this review on time.

And, third, we should continue our efforts to ensure that the sanctions are applied in a fair and transparent manner. Resolution 1822 and its predecessors introduced significant enhancements to ensure fairness. The Council will negotiate, in the coming weeks, a new resolution to renew the mandate of the 1267 Monitoring Team and will take the opportunity to enhance the regime and improve our ability to counter the al-Qaeda and Taliban threats. The United States believes this resolution should take additional steps to ensure that the process for listing and delisting individuals is as fair and transparent as possible. We believe there is room to improve the way in which the 1267 Committee decides to list individuals and how it considers requests from those seeking to be removed from the list.

\* \* \* \*

On December 17, 2009, the UN Security Council adopted Resolution 1904, “Threats to international peace and security caused by terrorist acts,” strengthening the 1267 sanctions regime and renewing the mandate of the 1267 Monitoring Team. U.N. Doc. S/RES/1904. The United States took the lead on the resolution, which eight other Security Council members cosponsored. Consistent with the objectives Ambassador Wolff outlined on

November 13, the new resolution prescribed measures to promote states' implementation of the 1267 sanctions and to ensure that the 1267 Committee's procedures for placing and removing individuals and entities to and from its Consolidated List are fair and clear. In Resolution 1904, the Security Council decided that states must continue to implement the 1267 sanctions against persons and entities on the Consolidated List. The Council also confirmed for the first time that the 1267 financial sanctions prohibit payment of ransom to any individual or entity on the Consolidated List.

The resolution also established new procedures for removing individuals and entities from the Consolidated List. Most notably, paragraph 20 of the resolution established an Office of the Ombudsperson, initially for 18 months, to assist the 1267 Committee in its consideration of de-listing requests. Paragraph 20 directed the Secretary-General to appoint an Ombudsperson with expertise in areas such as law, human rights, counterterrorism, and sanctions, and Annex 2 to the resolution set forth the Ombudsperson's mandate. Among other things, the resolution mandated the Ombudsperson to receive de-listing requests, gather information about those requests, produce a comprehensive report on each request for the 1267 Committee, communicate the Committee's decision on each request to the petitioner, and report biannually to the Security Council.

The resolution also included new provisions to make the Committee's listing process fairer and more transparent and to enhance the accuracy of the Consolidated List. For example, paragraph 8 of the resolution encouraged states to name a national point of contact for entries on the Consolidated List. In paragraph 11 the Council decided that the statements of cases that states are required to provide when they propose names for the Committee to add to the Consolidated List would be publicly releasable, apart from any sections that a member state advises the 1267 Committee are confidential. The resolution also directed the Committee to complete its review of all names on the Consolidated List, as required by paragraph 25 of Resolution 1822, by June 30, 2010, and then to review annually all names on the list that had not been reviewed in three years or more.

***b. U.S. targeted sanctions implementing Resolution 1267 and other Security Council resolutions on terrorism***

The United States implements its counterterrorism obligations under UN Security Council Resolution 1267 (1999), subsequent UN Security Council resolutions concerning al-Qaeda/Taliban sanctions, and Resolution 1373 (2001) through Executive Order 13224 of September 24, 2001. U.N. Docs. S/RES/1373 and S/RES/1267. See A.2.a. *supra*.

Executive Order 13224 imposes economic sanctions on persons who have been designated in the annex to the executive order; persons designated by the Secretary of State for having committed or for posing a

significant risk of committing acts of terrorism; and persons designated by the Secretary of the Treasury for working for or on behalf of, providing support to, or having other links to, persons designated under the executive order. For additional background, see 66 Fed. Reg. 49,079 (Sept. 25, 2001); see also *Digest 2001* at 881–93 or *Digest 2007* at 155–58.

### *(1) Department of State*

In 2009 the Secretary of State or the Deputy Secretary of State designated two entities and two individuals pursuant to E.O. 13224, as follows: (1) one entity on June 24, 2009 (74 Fed. Reg. 31,788 (July 2, 2009) (Kata'ib Hizballah, a.k.a. KH)); (2) one entity on July 31, 2009 (74 Fed. Reg. 41,482 (Aug. 17, 2009) (Revolutionary Struggle, a.k.a. Epanastatikos Aghonas)); (3) one entity on December 14, 2009 (75 Fed. Reg. 2920 (Jan. 19, 2010) (al-Qa'ida in the Arabian Peninsula ("AQAP") and its associated aliases)); and (4) two individuals on December 14, 2009 (75 Fed. Reg. 2920 (Jan. 19, 2010) (Nasir al-Wahishi); 75 Fed. Reg. 2921 (Jan. 19, 2010) (Said Ali al-Shihri)).

### *(2) Office of Foreign Assets Control*

#### *(i) 2009 designations*

OFAC designated 14 individuals and three entities pursuant to Executive Order 13224 during 2009. The designated individuals and entities are associated with or provide support for Hizballah, al-Qaeda, the Kurdistan Workers Party ("PKK"), Lashkar-e-Tayyiba ("LT"), the Liberation Tigers of Tamil Eelam ("LTTE"), or the Eastern Turkistan Islamic Party ("ETIP"), organizations the United States has designated as terrorist organizations. 74 Fed. Reg. 4299 (Jan. 23, 2009); 74 Fed. Reg. 4504 (Jan. 26, 2009); 74 Fed. Reg. 6946 (Feb. 11, 2009); 74 Fed. Reg. 7741 (Feb. 19, 2009); 74 Fed. Reg. 19,123 (Apr. 27, 2009); 74 Fed. Reg. 26,475 (June 2, 2009); 74 Fed. Reg. 35,907 (July 21, 2009); 74 Fed. Reg. 54,625 (Oct. 22, 2009).

During 2009 the Security Council's 1267 Committee added five of these individuals, Abdul Haq, Bekkay Harrach, Ameen Al-Peshawari, Mohammed Yahya Mujahid, and Arif Qasmani, to its Consolidated List. See [www.un.org/sc/committees/1267/index.shtml](http://www.un.org/sc/committees/1267/index.shtml).

#### *(ii) Global Terrorism Sanctions Regulations*

On November 23, 2009, OFAC issued a final rule amending the Global Terrorism Sanctions Regulations by including a definition of "financial, material, or technological support." 74 Fed. Reg. 61,036 (Nov. 23, 2009). Excerpts from the preamble to the final rule explain the regulatory change.

---

\* \* \* \*

. . . [P]aragraph (a)(4)(i) of section 594.201 of the [Global Terrorism Sanctions Regulations] GTSR implements section 1(d)(i) of E.O. 13224 by blocking the U.S. property and interests in property of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General:

To assist in, sponsor, or provide *financial, material, or technological support* for, or financial or other services to or in support of:

(A) Acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States, or

(B) Any person whose property or interests in property are blocked pursuant to paragraph (a) of this section. \* \* \*

GTSR, section 594.201(a)(4)(i) (emphasis added).

Acting under authority delegated by the Secretary of the Treasury, OFAC today is amending the GTSR to add a new definition of the term “financial, material, or technological support,” as used in section 594.201(a)(4)(i) of the GTSR. New section 594.317, in subpart C of the GTSR, defines the term “financial, material, or technological support” to mean any property, tangible or intangible, and includes a list of specific examples.

The definition of the term “financial, material, or technological support” in new section 594.317 may include concepts that overlap with existing provisions in the GTSR, such as interpretive section 594.406 on the “provision of services.” However, in light of the threat posed by acts of terrorism to the national security, foreign policy, and economy of the United States, OFAC has determined that the benefit of greater specificity in the new definition outweighs any concerns with regard to redundancy.

Please note that, in promulgating this regulation, OFAC does not imply any limitation on the scope of paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(ii) of section 594.201. Furthermore, the designation criteria in these paragraphs as well as in paragraph (a)(4)(i) of section 594.201 will be applied in a manner consistent with pertinent Federal law, including, where applicable, the First Amendment to the United States Constitution.

### ***c. Countries not cooperating fully with antiterrorism efforts***

On May 8, 2009, James B. Steinberg, Deputy Secretary of State, acting on delegated authority, determined and certified to Congress pursuant to § 40A of the Arms Export Control Act, 22 U.S.C. § 2781, and Executive Order 11958, as amended, that Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela were not cooperating fully with U.S. counterterrorism efforts. 74 Fed. Reg. 23,226 (May 18, 2009). Information concerning the U.S. sanctions that correspond to these designations is available at *Cumulative Digest 1991-99* at 508 or *Digest 2003* at 167.

### 3. Armed Conflict: Restoration of Peace and Security

#### a. Eritrea

On December 23, 2009, the Security Council adopted Resolution 1907, which established a new targeted sanctions regime relating to Eritrea. U.N. Doc. S/RES/1907. The Council acted under Chapter VII of the UN Charter, and determined that Eritrea's border dispute with Djibouti and its actions to destabilize Somalia represented a threat to international peace and security. Among other things, the resolution imposed an arms embargo covering imports to and exports from Eritrea. It also imposed a travel ban on individuals and an arms embargo and asset freeze on individuals and entities designated by the Security Council sanctions committee established by Resolution 751 of 1992, including members of Eritrea's military and political leadership that meet the criteria for designation. Paragraph 15 of the resolution set forth the bases for the committee to designate individuals and entities for sanctions, including violations of the arms embargo and the provision of financing or other support for terrorism in the region. Other grounds for designation included impeding implementation of Resolution 1862 (2009) (U.N. Doc. S/RES/1862), which demanded that Eritrea withdraw its troops and take steps to resolve its border dispute with Djibouti. In a statement to the press after the Council adopted the new resolution, excerpted below, Ambassador Rice provided U.S. views on the Council's action. Ambassador Rice's remarks are available at <http://usun.state.gov/briefing/statements/2009/133975.htm>.

---

\* \* \* \*

... This was an African initiative. It was the consequence of a decision taken by the African Union. It was consistent with a prior resolution [1862] passed by this Council, that demanded prompt action by Eritrea with respect to Djibouti. Nearly a year later, that action has not been forthcoming. The Council acted today, not hastily, not aggressively, but with the aim quite sincerely of encouraging Eritrea to do as this Council and so many of its members have repeatedly called upon it to do, which is not to continue actions which destabilize Somalia, to halt assistance to those violent elements in Somalia that are working to overthrow the government and attacking AMISOM peacekeepers and to resolve peacefully and in accordance with Resolution 1862, the border skirmish and dispute with Djibouti.

From the United States' point of view, let me say that we have for many, many months sought a constructive dialogue with the government of Eritrea. We have sought to encourage quietly the government of Eritrea to take the steps that it claims it intends to take, but it will not take, and has not taken. And we still hope frankly that they will. We do not see this as the door closing on Eritrea, but on the contrary, we view this as another opportunity for Eritrea to play a more responsible and constructive role in the region. We did not come to this decision with any joy—or with anything other than a desire to support the stability of peace in the region.

\* \* \* \*

Question: . . . What does it mean that the political and military leadership of Eritrea will be subject to sanctions?

**Ambassador Rice:** Well obviously that will be something for the committee to decide. There has been a lot of work done by Somalia Monitoring Group and that sanctions committee . . . has shared with the Council its recommendations as to who ought to be considered for designation under the Somalia regime, and now we will look in addition at who ought to be considered based on the criteria in the resolution we just passed.

### ***b. Democratic Republic of the Congo***

On March 4, 2009, the United States designated five leaders of the Democratic Forces for the Liberation of Rwanda (“FDLR”) pursuant to Executive Order 13413 of October 27, 2006, “Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo.” 71 Fed. Reg. 64,105 (Oct. 31, 2006); *see also Digest 2006* at 996–98. As a Treasury Department press release issued on the date of the designations explained, the order

targets, among others, political or military leaders of foreign armed groups operating in the Democratic Republic of the Congo (DRC).

The five individuals are political and military leaders of the Forces Démocratiques de Libération du Rwanda (FDLR). The FDLR is an armed group operating in the DRC made up of ex-Rwandese Armed Forces, Interahamwe, and other Hutu extremists, including those responsible for the Rwandan genocide of 1994. The FDLR has been blamed as the root cause of instability in the eastern DRC, and its activities pose a grave threat to the entire Great Lakes region.

*See* [www.treas.gov](http://www.treas.gov) [search “tg49”].

In designating the five individuals, the United States acted to implement Security Council Resolution 1857 (2008) concerning the DRC. U.N. Doc. S/RES/1857. The resolution renewed the travel ban and asset freeze on individuals and, as appropriate, entities designated by the Security Council’s DRC Sanctions Committee, which the Security Council adopted initially in Resolution 1596 (2005) (U.N. Doc. S/RES/1596) and modified in subsequent resolutions. Among other things the resolution also renewed the arms embargo, which the Security Council imposed initially in Resolution 1493 (2003) (U.N. Doc. S/RES/1493) and modified in subsequent resolutions. The Security Council’s DRC Sanctions Committee designated four of the individuals on March 3, 2009, and had designated the fifth previously. In connection with the U.S. designations, the Department of State issued a statement encouraging “all UN Member States to continue to

identify and bring to the attention of the DRC Sanctions Committee individuals and entities who meet the designation criteria in paragraph 4 of UN Security Council resolution 1857 (2008).” U.N. Doc. S/RES/1857.

On November 30, 2009, the Security Council adopted Resolution 1896, which renewed the arms embargo, asset freeze, and travel ban through November 30, 2010. U.N. Doc. S/RES/1896. Among other things, the resolution also expanded the DRC Sanctions Committee’s mandate to require it to issue guidelines for its procedures for listing individuals and entities subject to sanctions. The resolution also requested the Secretary-General to renew the Group of Experts established pursuant to Resolution 1533 (2004) (U.N. Doc. S/RES/1533) and included provisions emphasizing the need to prevent illegal exploitation of minerals from the DRC. For example, the resolution tasked the Group of Experts to provide the Committee with recommendations for guidelines on the due diligence that importers, consumers, and industrial processors could perform with respect to mineral-related products from the DRC.

After the Council adopted Resolution 1896, Ambassador Rice discussed its significance with the press. Ambassador Rice’s remarks, excerpted below, are available at <http://usun.state.gov/briefing/statements/2009/132756.htm>.

---

\* \* \* \*

. . . The new resolution puts important and needed emphasis on the need to prevent the continued illegal exploitation of Congo’s minerals, including its gold, which is funding the rebels and the fighting in Congo. This is an important step, and one on an issue that we are greatly concerned about. . . .

\* \* \* \*

. . . [V]iolations of the DRC regime seem to be evident based on the report of the group of experts. . . . [T]he resolution that was just passed I think takes some important steps in the direction of restraining the illicit trade in gold and other minerals from the DRC. It is a more complicated task than, for example, the Kimberly Process with diamonds, where diamonds are obviously very readily identifiable by their source of origin, but the urgency and importance of it is no less great and we will continue . . . from the context of the panel of experts and in our review of MONUC and our policy toward the region to look for opportunities to constrain that trade.

\* \* \* \*

### ***c. Darfur***

On December 15, 2009, Ambassador Rice stressed the importance of sanctions as a tool for promoting peace and security in Darfur and expressed support for the Security Council Sudan Sanctions Committee’s Panel of Experts. The Secretary-General appointed the panel initially

pursuant to Resolution 1591 (2005) to assist the Sudan Sanctions Committee in monitoring the sanctions regime, and subsequent resolutions continued the panel's mandate. U.N. Doc. S/RES/1591. Ambassador Rice's statement, set forth below, is also available at <http://usun.state.gov/briefing/statements/2009/133608.htm>.

---

In light of the dire situation in Sudan, the United Nations Security Council must use all the tools at its disposal in pursuit of our common goal of ending the suffering in Darfur.

\* \* \* \*

... The use of targeted sanctions can give peace mediators a tool to marginalize spoilers. UN sanctions can and should be an important element of the international community's efforts to support peace and security.

The United States supports the Panel and will continue to safeguard its independence. While we recognize that the Sanctions Committee must operate on the basis of consensus and that there are times when Governments may not fully agree with its findings, we must preserve the valuable role that expert groups have played for a decade in helping the Council monitor and implement its decisions.

\* \* \* \*

On May 28, 2009, OFAC issued its Darfur regulations to implement Executive Order 13400 of April 26, 2006. 74 FR 25,430 (May 28, 2009). For background on Executive Order 13400, see 71 Fed. Reg. 25,483 (May 1, 2006); *see also Digest 2006* at 975-78.

#### ***d. Stabilization efforts in Iraq***

On July 2, 2009, the Secretary of the Treasury, in consultation with the Secretaries of State and Defense, designated one individual, Abu Mahdi al-Muhandis, and one entity, Kata'ib Hizballah, pursuant to Executive Order 13438, which targets certain persons who threaten stabilization efforts in Iraq. 74 Fed. Reg. 34,639 (July 16, 2009). As a Treasury Department press release issued on July 2 explained,

Al-Muhandis and Kata'ib Hizballah have committed, directed, supported, or posed a significant risk of committing acts of violence against Coalition and Iraqi Security Forces and as a result are designated today under Executive Order (E.O.) 13438, which targets insurgent and militia groups and their supporters.

\* \* \* \*

Abu Mahdi al-Muhandis is an advisor to Qasem Soleimani, the commander of Iran's Qods Force, the arm of the Islamic Revolutionary Guard Corps (IRGC) responsible for providing material support to Lebanon-based Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command. Further, the IRGC-Qods Force provides lethal support to Kata'ib Hizballah and other Iraqi Shia militia groups who target and kill Coalition and Iraqi Security Forces. The IRGC-Qods Force was named a Specially Designated Global Terrorist by the Treasury Department on October 25, 2007.

See *www.treas.gov* [search "tg195"]. On June 24, 2009, the Deputy Secretary of State also designated Kata'ib Hizballah as a foreign terrorist organization under § 219 of the Immigration and Nationality Act (see Chapter 3.B.1.c.(2)(i)) and as a Specially Designated Global Terrorist under § 1(b) of Executive Order 13224 (see A.2.b.(1) *supra*). 74 Fed. Reg. 31,788 (July 2, 2009).

On December 22, 2009, the Treasury Department designated Jaysh Rijal al-Tariq al-Naqshabandi ("JRTN"), an Iraq-based insurgent group. A December 22 Treasury press release explained that Treasury was designating JRTN because it had "conducted attacks against Coalition Forces in Iraq since April 2009, including the August RKG-3 (armor-penetrating grenade) attack against a Coalition Forces convoy in Hawijah, Iraq." See *www.treas.gov* [search "tg500"].

## 4. Restoration of Democracy

### *a. Burma*

#### *(1) Designations pursuant to E.O. 13448 or 13464*

Effective January 15, 2009, OFAC designated two individuals and 23 entities pursuant to Executive Order 13448 of October 18, 2007, "Blocking Property and Prohibiting Certain Transactions Related to Burma," or Executive Order 13464 of April 30, 2008, "Blocking Property and Prohibiting Certain Transactions Related to Burma." 74 Fed. Reg. 4299 (Jan. 23, 2009). For background on Executive Order 13448, see 72 Fed. Reg. 60,223 (Oct. 23, 2007); see also *Digest 2007* at 808; for Executive Order 13464, see 73 Fed. Reg. 24,491 (May 2, 2008); see also *Digest 2008* at 791-93.

## (2) JADE Act

Also on January 15, 2009, OFAC identified the two individuals and 20 of the 23 entities designated under Executive Orders 13448 or 13464 as subject to the blocking provisions of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 ("JADE Act"), Pub. L. No. 110-286, 122 Stat. 2632. 74 Fed. Reg. 4299 (Jan. 23, 2009). As the Federal Register publication explained, "Section 5(b)(1) of the JADE Act blocks, with certain exceptions, all property and interests in property that are in, or hereafter come within, the United States, or within the possession or control of a United States person, of those persons described in Section 5(a)(1)." *Id.* at 4301. See *Digest 2008* at 793-95 for additional discussion of the JADE Act's financial sanctions.

## (3) Export Administration Regulations

Effective January 8, 2009, the Department of Commerce, Bureau of Industry and Security ("BIS"), issued a final rule amending the Export Administration Regulations ("EAR") at 15 C.F.R. part 744.22, consistent with Executive Order 13464 of April 30, 2008. 74 Fed. Reg. 770 (Jan. 8, 2009). As the Background section of the preamble to the final rule explained:

In this final rule, BIS further amends the EAR to expand the existing licensing requirements in section 744.22 of the EAR to include persons whose property and interests in property are blocked pursuant to Executive Order 13464 of April 30, 2008 . . . . As set forth in section 744.22 of the EAR, exports, reexports or transfers of items subject to the EAR, except agricultural commodities, medicine, or medical devices classified as EAR99,\* to any person whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464, require a license under the EAR.

To avoid duplication, it is unnecessary to obtain a license from both OFAC and BIS for exports under part 744.22. For discussion of Executive Order

---

\* Editor's note: "If [an] item falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL [Commerce Control List], it is designated as EAR99. EAR99 items generally consist of low-technology or consumer goods and do not require a license in many situations. If [a] proposed export of an EAR99 item is to an embargoed country, to an end-user of concern or in support of a prohibited end-use, [the exporter] may be required to obtain a license." See [www.export.gov/regulation/eg\\_main\\_018229.asp](http://www.export.gov/regulation/eg_main_018229.asp).

13464, see 73 Fed. Reg. 24,491 (May 2, 2008); *see also Digest 2008* at 791-93. For background on Executive Orders 13310 (2003) and 13348 (2007), see 68 Fed. Reg. 44,853 (July 30, 2003); *Digest 2003* at 923-28; 72 Fed. Reg. 60,248 (Oct. 24, 2007); and *Digest 2007* at 808-11.

#### (4) *Customs and Border Protection regulations*

Effective January 16, 2009, the U.S. Departments of Homeland Security, Customs and Border Protection (“CBP”), and the Treasury jointly issued an interim final rule amending CBP’s regulations at 19 C.F.R. parts 12 and 163 to implement the JADE Act and Presidential Proclamation No. 08-8294 of September 26, 2008. The proclamation included a new Additional U.S. Note 4 to Chapter 71 of the Harmonized Tariff Schedule of the United States. As the preamble to the interim final rule explained: “These amendments are made to implement certain provisions of the JADE Act and the Presidential Proclamation by prohibiting the importation of “Burmese covered articles” (jadeite, rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from Burma), and by setting forth conditions for the importation of ‘non-Burmese covered articles’ (jadeite, rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from a country other than Burma).” 74 Fed. Reg. 2844 (Jan. 26, 2009).\*\*

#### (5) *New U.S. policy approach*

On September 28, 2009, the United States announced a new policy designed to improve political and humanitarian conditions in Burma. Under the new policy, which Kurt M. Campbell, Assistant Secretary, Bureau of East Asian and Pacific Affairs, outlined on September 28, the United States would pursue new diplomatic engagement with Burma while retaining existing sanctions against Burma and pressing Burma to comply with its nonproliferation obligations under Security Council Resolutions 1874 (2009) and 1718 (2006). Mr. Campbell’s statement, excerpted below, is available at [www.state.gov/p/eap/rls/rm/2009/09/129698.htm](http://www.state.gov/p/eap/rls/rm/2009/09/129698.htm). Resolution 1874 is discussed in A.1.a.(1) *supra*.

---

\* \* \* \*

For the first time in memory, the Burmese leadership has shown an interest in engaging with the United States, and we intend to explore that interest. In addition, concerns have emerged in recent days about Burma and North Korea’s relationship that require greater focus and dialogue.

---

\*\* Editor’s note: The final rule was issued on March 23, 2010, effective April 22, 2010. 75 Fed. Reg. 13,676 (Mar. 23, 2010).

What are the strategic goals and interests of this approach? We have reaffirmed our fundamental goals in Burma. We support a unified, peaceful, prosperous, and democratic Burma that respects the human rights of its citizens. . . .

We will also press Burma to comply with its international obligations, including on nonproliferation, ending any prohibited military or proliferation-related cooperation with North Korea, and full compliance with United Nations 1874 and 1718.

If Burma makes meaningful progress towards these goals, it will be possible to improve the relationship with the United States in a step-by-step process. We recognize that this will likely be a long and difficult process, and we are prepared to sustain our efforts on this front.

Burma's continued estrangement from the international community harms the country and has direct negative consequences beyond Burma's borders. Burma's engagement with the outside world has the potential to encourage new thinking, reform, and participation in the work of the international community.

In terms of engagement, we intend to begin a direct dialogue with Burmese authorities to lay out a path towards better relations. The dialogue will include specific discussion of democracy and human rights inside Burma, cooperation on international security issues such as nonproliferation and compliance with 1874 and 1718, and areas that could be of mutual benefit such as counternarcotics and recovery of World War II era remains.

In terms of sanctions, we will maintain existing sanctions until we see concrete progress towards reform. Lifting sanctions now would send the wrong signal. We will tell the Burmese that we will discuss easing sanctions only if they take actions on our core concerns. We will reserve the option to apply additional targeted sanctions, if warranted, by events inside Burma.

\* \* \* \*

## ***b. Madagascar***

On March 20, 2009, Acting Department of State Spokesman Robert Wood issued a statement announcing that the United States was taking steps to suspend non-humanitarian assistance to Madagascar. As noted in the press statement, excerpted below, the United States acted after President Marc Ravalomanana was forced to resign in an undemocratic transfer of power. The full text of the statement is available at [www.state.gov/r/pa/prs/ps/2009/03/120714.htm](http://www.state.gov/r/pa/prs/ps/2009/03/120714.htm).

---

\* \* \* \*

The United States condemns the process through which Marc Ravalomanana was forced to resign as President of the Republic of Madagascar and Andry Rajoelina subsequently was installed as the de facto head of state as undemocratic and contrary to the rule of law.

This series of events is tantamount to a coup d'etat and the United States will not maintain our current assistance partnership with Madagascar.

In view of these developments, the United States is moving to suspend all non-humanitarian assistance to Madagascar.

The United States has enjoyed a long-standing relationship with the people of Madagascar, and we call on them to immediately undertake a democratic, consensual process to restore constitutional governance, culminating in free, fair and peaceful elections.

***c. Honduras***

***(1) Suspension of development and military assistance***

On July 2, 2009, in response to the June 28 coup d'etat that resulted in the removal of Jose Manuel Zelaya, the democratically elected president of Honduras, the United States suspended various forms of assistance to the Government of Honduras. On September 3, 2009, the Department of State announced the termination of various forms of assistance to the Honduran government. The Department's September 3 statement, excerpted below, is available at [www.state.gov/r/pa/prs/ps/2009/sept/128608.htm](http://www.state.gov/r/pa/prs/ps/2009/sept/128608.htm). For additional discussion of the U.S. response to the coup in Honduras, see Chapters 6.I.2., 7.C.1.b., and 10.B.3.

---

\* \* \* \*

The Department of State announces the termination of a broad range of assistance to the government of Honduras as a result of the coup d'etat that took place on June 28. The Secretary already had suspended assistance shortly after the coup.

The Secretary of State has made the decision, consistent with U.S. legislation, recognizing the need for strong measures in light of the continued resistance to the adoption of the San Jose Accord by the de facto regime and continuing failure to restore democratic, constitutional rule to Honduras.

The Department of State recognizes the complicated nature of the actions which led to [the] June 28 coup d'etat in which Honduras' democratically elected leader, President Zelaya, was removed from office. These events involve complex factual and legal questions and the participation of both the legislative and judicial branches of government as well as the military.

Restoration of the terminated assistance will be predicated upon a return to democratic, constitutional governance in Honduras.

The Department of State further announces that we have identified individual members and supporters of the de facto regime whose visas are in the process of being revoked.

\* \* \* \*

On September 3, Philip J. Crowley, Assistant Secretary of State, Bureau of Public Affairs, briefed the press on the U.S. termination of assistance. Excerpts follow from Mr. Crowley's responses to questions from the press about whether the Secretary of State, in terminating assistance, had to make a legal determination respecting whether the events of June 28 in Honduras represented a military coup or decree. Section 7008 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009,

Div. H, Pub. L. No. 111-8, 123 Stat. 842, provides in part that “[n]one of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act [bilateral economic assistance, international security assistance, multilateral assistance, and export and investment assistance] shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup or decree.” As Mr. Crowley noted, “[t]he Secretary did not have to make that determination to take the action that she [took].” The full text of Mr. Crowley’s briefing is available at [www.state.gov/r/pa/prs/dpb/2009/sept/128656.htm](http://www.state.gov/r/pa/prs/dpb/2009/sept/128656.htm) and [www.state.gov/r/pa/prs/dpb/2009/sept/128655.htm](http://www.state.gov/r/pa/prs/dpb/2009/sept/128655.htm).

\* \* \* \*

**QUESTION:** . . . [W]hy not . . . make the determination that this is a coup, a legal determination?  
**MR. CROWLEY:** Well—

**QUESTION:** A military coup.

**MR. CROWLEY:** . . . [T]he Secretary, in terminating the aid, did not have to reach that conclusion.

**QUESTION:** But why didn’t she reach that conclusion? . . .

**MR. CROWLEY:** Well, let’s focus on what we are trying to do here. We are trying to see democratic, constitutional rule restored in Honduras. That is our purpose. We are acting based on the democratic principles that we embrace and that the OAS embraces. What the Secretary has tried to do throughout this process is we take steps that we believe . . . send the right message, apply the right pressures, trying to yield the proper outcome. That is why we have taken the various actions that we’ve taken since June 28th.

. . . We suspended the aid, and now we’ve terminated the aid. The OAS has suspended Honduras from the organization. We’re now applying additional pressure. We believe that . . . there’s a sense that the de facto regime was thinking, if we can just get to an election, that this would absolve them of all their sins. And we’re saying, clearly, that is not the case, that . . . there will have to be definitive steps taken. We’ll have to see the restoration of a democratically elected government through a fair, free, and transparent process in the future.

\* \* \* \*

**QUESTION:** But why isn’t it a military coup?

**MR. CROWLEY:** . . . The Secretary did not have to make that determination to take the action that she has taken.

\* \* \* \*

**MR. CROWLEY:** It is within the powers of the Secretary of State to stop the aid, as she did today. . . .

\* \* \* \*

## *(2) Visa-related suspensions or restrictions*

On July 28, 2009, in response to the coup in Honduras, the Department of State announced that it was revoking the diplomatic visas of four individuals involved in the crisis and that it was reviewing the diplomatic visas of other regime members and their family members' derivative visas. In response to a question as to why the revocations did not take place sooner, the Department explained:

The decision to revoke visas is not one taken lightly or without due diligence. We arrived at this decision after careful consideration. We have said repeatedly since the crisis began that we do not acknowledge the de facto regime in Honduras as the legitimate government there.

See [www.state.gov/r/pa/prs/ps/2009/july/126672.htm](http://www.state.gov/r/pa/prs/ps/2009/july/126672.htm). As reflected in the Department's announcement of September 3, 2009, quoted above, additional members and supporters of the de facto regime were identified subsequently for visa revocation.

On August 25, 2009, the Department of State announced the suspension of non-emergency, non-immigrant visa services at the U.S. Embassy in Honduras. The State Department's press release explained:

The OAS Foreign Ministers mission is in Honduras seeking support for the San Jose Accord, which would restore the democratic and constitutional order and resolve the political crisis in Honduras. In support of this mission and as a consequence of the de facto regime's reluctance to sign the San Jose Accord, the U.S. Department of State is conducting a full review of our visa policy in Honduras. As part of that review, we are suspending non-emergency, non-immigrant visa services in the consular section of our embassy in Honduras, effective August 26. We firmly believe a negotiated solution is the appropriate way forward and the San Jose Accord is the best solution.

See [www.state.gov/r/pa/prs/ps/2009/aug/128349.htm](http://www.state.gov/r/pa/prs/ps/2009/aug/128349.htm).

## ***d. Guinea***

On October 23, 2009, the Secretary of State imposed travel restrictions to the United States on certain members of the military junta and the Government of Guinea, as well as certain of its other supporters. The State

Department issued a press statement, set forth below, describing the new restrictions. The statement is also available at [www.state.gov/r/pa/prs/ps/2009/oct/131047.htm](http://www.state.gov/r/pa/prs/ps/2009/oct/131047.htm).

---

On October 23, 2009, the United States imposed restrictions on travel to the United States by certain members of the military junta and the government, as well as other individuals who support policies or actions that undermine the restoration of democracy and the rule of law in Guinea.

The citizens of Guinea deserve the right to choose their own leaders after decades of authoritarian rule. The military junta in power has shown itself disrespectful of human rights and incapable of shepherding Guinea through a peaceful transition to democracy.

#### ***e. Niger***

On December 23, 2009, Department of State Spokesman Ian Kelly announced that the United States was suspending non-humanitarian assistance to the Government of Niger and that the Secretary of State had imposed travel restrictions on “certain members of the Government of Niger, as well as other individuals who support policies or actions that undermine Niger’s return to constitutional rule.” As Mr. Kelly explained, the U.S. actions followed President Tandja’s refusal to relinquish his position. See [www.state.gov/r/pa/prs/ps/2009/dec/134045.htm](http://www.state.gov/r/pa/prs/ps/2009/dec/134045.htm).\*

### **5. Mass Atrocities**

On June 15, 2009, Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, addressed the International Peace Institute Vienna Seminar on the UN Security Council and the Responsibility to Protect. Among other things, Ambassador Rice stressed the importance of sanctions in responding to mass atrocities and her hope to work with other members of the Security Council to strengthen sanctions as a tool. Ambassador Rice stated:

. . . [W]e must put the bite back in sanctions. We have increasingly sophisticated tools to compel states and leaders to abide by international laws and norms. Through the UN, we can freeze individuals’ assets, ban international travel, restrict the flow of luxury goods and arms, and do much more to limit abusers’ abilities to threaten others. But the Security Council often finds it difficult to overcome member states’ reluctance to wield

---

\* Editor’s note: In February 2010, Tandja was deposed by military action.

and fully implement sanctions on behalf of the victims of mass atrocities. I hope to be able to work with my Security Council colleagues to make better, smarter use of sanctions—not only to maintain global order or to halt proliferation but also to save innocent lives at immediate risk. Sanctions can be an effective, if not always a flexible, targeted instrument, and we must seek to strengthen them.

The full text of Ambassador Rice's speech is available at <http://usun.state.gov/briefing/statements/2009/125977.htm>.

## 6. Narcotrafficking Sanctions

In 2009 President Obama identified seven foreign persons (three entities on April 15, 2009, and three individuals and one entity on May 28, 2009) under the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"), 21 U.S.C. §§ 1901–1908, 8 U.S.C. § 1182, and directed the imposition of sanctions against them, as the Kingpin Act requires. See White House Fact Sheet of April 15, 2009, available at [www.whitehouse.gov/the\\_press\\_office/Fact-Sheet-Overview-of-the-Foreign-Narcotics-Kingpin-Designation-Act](http://www.whitehouse.gov/the_press_office/Fact-Sheet-Overview-of-the-Foreign-Narcotics-Kingpin-Designation-Act); Daily Comp. Pres. Docs., 2009 DCPD No. 00413, p. 1; Statement by Press Secretary Robert Gibbs of May 29, 2009, available at [www.whitehouse.gov/the\\_press\\_office/Statement-by-Press-Secretary-Robert-Gibbs-on-the-designation-of-significant-foreign-narcotics-traffickers](http://www.whitehouse.gov/the_press_office/Statement-by-Press-Secretary-Robert-Gibbs-on-the-designation-of-significant-foreign-narcotics-traffickers).

OFAC also designated 62 individuals and 47 entities under the Kingpin Act during 2009. 74 Fed. Reg. 3671 (Jan. 21, 2009) (three individuals); 74 Fed. Reg. 7544 (Feb. 17, 2009) (14 individuals, 26 entities); 74 Fed. Reg. 36,825 (July 24, 2009) (four individuals); 74 Fed. Reg. 43,226 (Aug. 26, 2009) (one individual, four entities); 74 Fed. Reg. 47,041 (Sept. 14, 2009) (six individuals, two entities); 74 Fed. Reg. 54,119 (Oct. 21, 2009) (three individuals); 74 Fed. Reg. 55,624 (Oct. 28, 2009) (six individuals, one entity); 74 Fed. Reg. 65,593 (Dec. 10, 2009) (22 individuals, ten entities); 74 Fed. Reg. 67,964 (Dec. 21, 2009) (three individuals, four entities).

OFAC also designated 56 individuals and 62 entities pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Foreign Narcotics Traffickers." 74 Fed. Reg. 5970 (Feb. 3, 2009) (two entities); 74 Fed. Reg. 26,473 (June 2, 2009) (14 individuals, 14 entities); 74 Fed. Reg. 29,272 (June 19, 2009) (nine individuals, 15 entities); 74 Fed. Reg. 34,396 (July 15, 2009) (19 individuals, six entities); 74 Fed. Reg. 59,344 (Nov. 17, 2009) (14 individuals, 25 entities). OFAC also changed its identifying information for 14 previously designated individuals and one previously designated entity.

74 Fed. Reg. 5970 (Feb. 3, 2009); 74 Fed. Reg. 29,272 (June 19, 2009). For background on Executive Order 12978, see 60 Fed. Reg. 54,582 (Oct. 24, 1995); *see also Cumulative Digest 1991–99* at 547–50.

Chapter 3.B.2. discusses other U.S. initiatives in 2009 to counter narcotics trafficking.

## 7. Trafficking in Persons

### *a. Suspension of entry*

On January 16, 2009, President George W. Bush issued Proclamation 8342 “To Suspend Entry As Immigrants And Nonimmigrants of Foreign Government Officials Responsible for Failing to Combat Trafficking In Persons.” 74 Fed. Reg. 4093 (Jan. 22, 2009). Section 212(f) of the INA, 8 U.S.C. § 1182(f), authorizes the President to suspend entry of any aliens or class of aliens if that entry “would be detrimental to the interests of the United States.” Excerpts follow from the proclamation.

---

In order to foster greater resolve to address trafficking in persons (TIP), specifically in punishing acts of trafficking and providing protections to the victims of these crimes, consistent with the Trafficking Victims Protection Act of 2000, as amended (the “Act”) (22 U.S.C. 7101 *et seq.*), it is in the interests of the United States to restrict the international travel and to suspend entry into the United States, as immigrants or nonimmigrants, of certain senior government officials responsible for domestic law enforcement, justice, or labor affairs who have impeded their governments’ antitrafficking efforts, have failed to implement their governments’ antitrafficking laws and policies, or who otherwise bear responsibility for their governments’ failures to take steps recognized internationally as appropriate to combat trafficking in persons, and whose governments have been ranked more than once as Tier 3 countries, which represent the worst anti-TIP performers, in the Department of State’s annual Trafficking in Persons Report, and for which I have made a determination pursuant to section 110(d)(1)–(2) or (4) of the Act. The Act reflects international antitrafficking standards that guide efforts to eradicate this modern-day form of slavery around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

**Section 1.** The entry into the United States, as immigrants or nonimmigrants, of the following aliens is hereby suspended:

(a) Senior government officials—defined as the heads of ministries or agencies and officials occupying positions within the two bureaucratic levels below those top positions—responsible for

domestic law enforcement, justice, or labor affairs who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies, or who otherwise bear responsibility for their governments' failures to take steps recognized internationally as appropriate to combat trafficking in persons, and who are members of governments for which I have made a determination pursuant to section 110(d)(1)–(2) or (4) of the Act, in the current year and at least once in the preceding 3 years;

(b) The spouses of persons described in subsection (a) of this section.

**Sec. 2.** Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interest of the United States.

**Sec. 3.** Persons covered by sections 1 or 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

**Sec. 4.** Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

**Sec. 5.** The Secretary of State shall implement this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of Homeland Security, may establish.

\* \* \* \*

### ***b. Trafficking Victims Protection Act sanctions***

Consistent with § 110(c) of the Trafficking Victims Protection Act, as amended, 22 U.S.C. § 7107, the President annually submits to Congress notification of one of four specified determinations with respect to “each foreign country whose government, according to [the annual Trafficking in Persons report]—(A) does not comply with the minimum standards for the elimination of trafficking; and (B) is not making significant efforts to bring itself into compliance.” The four determination options are set forth in § 110(d)(1)–(4). On September 14, 2009, President Obama issued Presidential Determination No. 2009–29, imposing certain sanctions on, and providing partial or full waivers for, 16 of the 17 countries that the 2009 Trafficking in Persons Report listed as Tier 3 countries. Daily Comp. Pres. Docs., 2009 DCPD No. 00714, pp. 1–3; 74 Fed. Reg. 48,365 (Sept. 23, 2009). See Chapter 3.B.3. for discussion of the 2009 report. The Memorandum of Justification Consistent with the Trafficking Victims Protection Act of 2000, Regarding Determinations with Respect to “Tier 3” Countries summarized the determinations the President made and their effect, as excerpted below; the memorandum also included a separate discussion of each of the named countries. The full text of the memorandum of justification is available at [www.state.gov/g/tip/rls/other/2009/129593.htm](http://www.state.gov/g/tip/rls/other/2009/129593.htm).

---

Pursuant to Section 110(d) of the Trafficking Victims Protection Act (the “TVPA” or the “Act”), the President has made determinations regarding the 17 countries placed on Tier 3 in the State

Department's 2009 Trafficking in Persons Report. The President has determined to sanction Burma, Cuba, the Democratic People's Republic of Korea (DPRK), Eritrea, Fiji, Iran, and Syria, and Zimbabwe. The United States will not provide certain non-humanitarian, non-trade-related assistance to the Governments of Burma, Cuba, the DPRK, Eritrea, Fiji, Iran, Syria, and Zimbabwe until such governments comply with the Act's minimum standards to combat trafficking or make significant efforts to do so. The United States will not provide funding for participation by officials or employees of the Government of Cuba in educational and cultural exchange programs until that government complies with the Act's minimum standards to combat trafficking or makes significant efforts to do so. Furthermore, the President determined, consistent with the Act's waiver authority, that provision of certain assistance to the Governments of Burma, Eritrea, Fiji, Iran, Syria, and Zimbabwe would promote the purposes of the Act or is otherwise in the national interest of the United States. The President also determined, consistent with the Act's waiver authority, that provision of all bilateral and multilateral assistance to Chad, Kuwait, Malaysia, Mauritania, Niger, Papua New Guinea, Saudi Arabia, and Sudan that otherwise would have been cut off would promote the purposes of the Act or is otherwise in the national interest of the United States.

The determinations also indicate the Secretary of State's subsequent compliance determination regarding Swaziland. It is significant that one of the 17 Tier 3 countries took actions that averted the need for the President to make a determination regarding sanctions and waivers. Information highlighted in the Trafficking in Persons Report and the possibility of sanctions, in conjunction with our diplomatic efforts, encouraged this country's government to take important measures against trafficking.

Section 110(d)(1)(B) of the Act interferes with the President's authority to direct foreign affairs. We, therefore, interpret it as precatory. Nonetheless, it is the policy of the United States that, consistent with the provisions of the Act, the U.S. Executive Director of each multilateral development bank, as defined in the Act, and of the International Monetary Fund will vote against, and use the Executive Director's best efforts to deny any loan or other utilization of the funds of the respective institution to the Governments of Burma, Cuba, the DPRK, Eritrea, Fiji, Iran, Syria, and Zimbabwe (with specific exceptions for Eritrea, Fiji, and Zimbabwe) for Fiscal Year 2010, until such governments comply with the minimum standards or makes significant efforts to come into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act.

## **B. MODIFICATION OF SANCTIONS AND RELATED ACTIONS**

### **1. Cuba**

On April 13, 2009, President Obama announced a new policy to promote democracy and human rights in Cuba and directed the Secretaries of State, Treasury, and Commerce to take certain actions to achieve that objective. In his memorandum to the three secretaries, the President stated:

The promotion of democracy and human rights in Cuba is in the national interest of the United States and is a key component of this Nation's foreign policy in the Americas. Measures that decrease dependency of the

Cuban people on the Castro regime and that promote contacts between Cuban-Americans and their relatives in Cuba are means to encourage positive change in Cuba. The United States can pursue these goals by facilitating greater contact between separated family members in the United States and Cuba and increasing the flow of remittances and information to the Cuban people.

Further excerpts below from the President's memorandum set forth the steps the President directed the secretaries to take. The President's memorandum is available at 2009 Daily Comp. Pres. Docs., DCPD No. 00257, pp. 1-2; *see also* the White House fact sheet describing the President's initiative, available at [www.whitehouse.gov/the-press-office/fact-sheet-reaching-out-cuban-people](http://www.whitehouse.gov/the-press-office/fact-sheet-reaching-out-cuban-people).

---

\* \* \* \*

(a) Lift restrictions on travel-related transactions for visits to a person's family member who is a national of Cuba by authorizing such transactions by a general license that shall:

- Define family members who may be visited to be persons within three degrees of family relationship (e.g., second cousins) and to allow individuals who share a common dwelling as a family with an authorized traveler to accompany them;
- Remove limitations on the frequency of visits;
- Remove limitations on the duration of a visit;
- Authorize expenditure amounts that are the same as non-family travel; and
- Remove the 44-pound limitation on accompanied baggage.

(b) Remove restrictions on remittances to a person's family member in Cuba by:

- Authorizing remittances to individuals within three degrees of family relationship (e.g., second cousins) provided that no remittances shall be authorized to currently prohibited members of the Government of Cuba or currently prohibited members of the Cuban Communist Party;
- Removing limits on frequency of remittances;
- Removing limits on the amount of remittances;
- Authorizing travelers to carry up to \$3,000 in remittances; and
- Establishing general license for banks and other depository institutions to forward remittances.

(c) Authorize U.S. telecommunications network providers to enter into agreements to establish fiber-optic cable and satellite telecommunications facilities linking the United States and Cuba.

(d) License U.S. telecommunications service providers to enter into and operate under roaming service agreements with Cuba's telecommunications service providers.

(e) License U.S. satellite radio and satellite television service providers to engage in transactions necessary to provide services to customers in Cuba.

(f) License persons subject to U.S. jurisdiction to activate and pay U.S. and third-country service providers for telecommunications, satellite radio, and satellite television services provided to individuals in Cuba, except certain senior Communist Party and Cuban government officials.

(g) Authorize, consistent with national security concerns, the export or reexport to Cuba of donated personal communications devices such as mobile phone systems, computers and software, and satellite receivers through a license exception.

(h) Expand the scope of humanitarian donations eligible for export through license exceptions by:

- Restoring clothing, personal hygiene items, seeds, veterinary medicines and supplies, fishing equipment and supplies, and soap-making equipment to the list of items eligible to be included in gift parcel donations;
- Restoring items normally exchanged as gifts by individuals in “usual and reasonable” quantities to the list of items eligible to be included in gift parcel donations;
- Expanding the scope of eligible gift parcel donors to include any individual;
- Expanding the scope of eligible gift parcel donees to include individuals other than Cuban Communist Party officials or Cuban government officials already prohibited from receiving gift parcels, or charitable, educational, or religious organizations not administered or controlled by the Cuban government; and
- Increasing the value limit on non-food items to \$800.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

On September 3, 2009, the Department of Commerce’s Bureau of Industry and Security issued a final rule, revising its restrictions on exports and reexports of gift parcels to Cuba and of personal baggage of individuals traveling from the United States to Cuba. The new rule also created a new license exception for certain donated consumer communication devices and expanded the licensing policy concerning certain telecommunications links, including satellite radio and satellite television services. 74 Fed. Reg. 45,985 (Sept. 8, 2009); *see also* the Department of Commerce’s press release of September 3, available at [www.bis.doc.gov/news/2009/bis\\_press093032009.htm](http://www.bis.doc.gov/news/2009/bis_press093032009.htm).

Also effective September 3, the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued a final rule amending the Cuban Assets Control Regulations (“CACR”), 31 C.F.R. part 515, to implement the President’s April 13 directive, to implement certain provisions of the Omnibus Appropriations Act, 2009 (Pub. L. No. 111–8, 123 Stat. 524), and to make certain technical and conforming changes. A Treasury Department fact sheet, dated September 3 and available at [www.treas.gov](http://www.treas.gov) [search

“tg273”], provided details on the rule changes implementing the President’s April 13 initiative.\*

## 2. Terrorism Unblockings

On November 3, 2009, OFAC determined that Barakaat International, Barakaat International Foundation, and Patricia Rosa Vinck, who had been designated pursuant to E.O. 13224, should be removed from the Treasury Department’s list of Specially Designated Nationals and Blocked Persons. 74 Fed. Reg. 58,373 (Nov. 12, 2009); *see also* A.2.b. *supra*. The 1267 Committee previously removed all three from its Consolidated List. A Treasury Department press release, dated November 3 and excerpted below, provided additional detail on the action. The full text of the press release is available at [www.treas.gov](http://www.treas.gov) [search “tg345”].

---

\* \* \* \*

Vinck, Barakaat International, and Barakaat International Foundation were all designated by the Treasury Department under Executive Order 13224 and by the U.N. 1267 Committee. The Treasury Department and the United Nations designated Vinck in January 2003 and the two Barakaat entities in November 2001.

Vinck is the wife of Nabil Abdul Salam Sayadi, who headed the Belgium office of the Global Relief Foundation (GRF), an organization designated in October 2002 by the United States and the United Nations for its support to al Qaida. Vinck served as the secretary of GRF’s Belgium office and facilitated GRF’s activities. Following U.S. and U.N. sanctions against her, Vinck ceased her activities on behalf of GRF.

The Barakaat organizations were part of a financial conglomerate operating in 40 countries around the world that facilitated the financing and operations of al Qaida and other terrorist organizations. The U.S. and U.N. sanctions against these entities assisted the global effort to prevent them from routing funds to al Qaida and other terrorist groups, and the two organizations are no longer operating. Other designated entities and individuals related to the Barakaat conglomerate remain on the U.S. and U.N. sanctions lists.

---

\* Editor’s note: On January 21, 2010, the Federal Communications Commission (“Commission”) issued a public notice announcing its receipt of a letter from the Department of State, dated January 12, 2010, providing new guidance consistent with President Obama’s April 13 directive concerning licensing of the provision of telecommunications service between the United States and Cuba. The public notice advised that “[t]he Commission will act upon applications to provide facilities-based telecommunications services between the United States and Cuba consistent with the guidance set out in the 2010 State Department letter . . . and Commission’s policies and rules.” The Commission’s public notice, which attached the State Department’s letter, is available at [www.fcc.gov/ftp/Daily\\_Releases/Daily\\_Business/2010/db0121/DA-10-112A1.pdf](http://www.fcc.gov/ftp/Daily_Releases/Daily_Business/2010/db0121/DA-10-112A1.pdf). *Digest 2010* will discuss relevant aspects of the updated policy guidance the State Department provided and the Commission’s notice.

\* \* \* \*

### 3. Sudan

#### ***a. Goods and services for diplomatic missions and personnel; regional Government of Southern Sudan***

Effective June 10, 2009, OFAC issued a rule amending the Sudanese Sanctions Regulations, 31 C.F.R. part 538, to authorize the provision of goods or services in the United States to Sudan's diplomatic missions to the United States and the United Nations as well as their employees, subject to certain conditions. The amendments also authorize the regional Government of Southern Sudan and its employees to import certain goods or services into the United States, subject to certain conditions. 74 Fed. Reg. 27,433 (June 10, 2009). Excerpts below from the preamble to the final rule provide additional background on the amendments.

---

\* \* \* \*

Today, OFAC is amending section 538.515 of the [Sudanese Sanctions Regulations, 31 C.F.R. part 538]. Before its amendment, section 538.515 authorized all transactions ordinarily incident to the importation of any goods or services into the United States destined for official or personal use by the diplomatic missions of the Government of Sudan to the United States and to international organizations located in the United States, subject to certain conditions. OFAC is amending this section to expand the scope of the authorization to include the provision of goods or services in the United States to the diplomatic missions of the Government of Sudan to the United States and the United Nations, and to the employees of the diplomatic missions of the Government of Sudan to the United States and the United Nations, subject to certain conditions.

Paragraph (a) of the revised section 538.515 authorizes the importation of goods or services into the United States by, and the provision of goods or services in the United States to, the diplomatic missions of the Government of Sudan to the United States and the United Nations, subject to four conditions: (1) The goods or services must be for the conduct of the official business of the missions, or for personal use of the employees of the missions, and not for resale; (2) such transactions must not involve the purchase, sale, financing, or refinancing of real property; (3) such transactions are not otherwise prohibited by law; and (4) all such transactions must be conducted through an account at a U.S. financial institution specifically licensed by OFAC. A note to paragraph (a)(4) of the revised section 538.515 states that U.S. financial institutions are required to obtain specific licenses to operate accounts for, or extend credit to, the diplomatic missions of the Government of Sudan to the United States and the United Nations.

Paragraph (b) of the revised section 538.515 authorizes the importation of goods or services into the United States by, and the provision of goods or services in the United States to, the employees of the diplomatic missions of the Government of Sudan to the United States and the United Nations, subject to two conditions: (1) The goods or services must be for personal use of the

employees of the missions, and not for resale; and (2) such transactions are not otherwise prohibited by law.

Paragraph (c) of the revised section 538.515 authorizes the importation of goods or services into the United States by the regional Government of Southern Sudan and its employees that involve the transit or transshipment of goods from the Specified Areas of Sudan through areas of Sudan other than the Specified Areas of Sudan, subject to two conditions: (1) The goods or services must be for the conduct of the business of the regional Government, or for personal use of the employees of the regional Government, and not for resale; and (2) such transactions are not otherwise prohibited by law. A note to paragraph (c) of revised section 538.515 explains that the authorization contained in this paragraph permits the regional Government of Southern Sudan and its employees to import into the United States goods or services that have transited or transshipped through areas of Sudan other than the Specified Areas of Sudan without the need to obtain a specific license under § 538.417. The importation of goods and services into the United States by the regional Government of Southern Sudan not involving the transit or transshipment through areas of Sudan other than the Specified Areas of Sudan is already exempt under §§ 538.212(g) and 538.305(b) and, therefore, requires no authorization. Similarly, the provision of goods and services in the United States to the regional Government of Southern Sudan and its employees already is exempt pursuant to §§ 538.212(g) and 538.305(b) and also requires no authorization.

\* \* \* \*

### ***b. Agricultural commodities, medicine, and medical devices***

Effective September 9, 2009, OFAC issued a final rule amending the Sudanese Sanctions Regulations by issuing a general license authorizing exports and reexports of agricultural commodities, medicine, and medical devices to certain areas of Sudan, as well as related transactions. 74 Fed. Reg. 46,361 (Sept. 9, 2009). Excerpts below from the Background section of the rule explain the action taken. *See also* 74 Fed. Reg. 61,030 (Nov. 23, 2009) (interim final rule making technical changes to the Sudanese Sanctions Regulations and the Iranian Transactions Regulations with respect to exports of agricultural commodities, medicine, and medical devices).

---

\* \* \* \*

OFAC today is further amending the SSR [Sudanese Sanctions Regulations] to resolve a tension between E.O. 13412 [71 Fed. Reg. 61,369 (Oct. 17, 2006)] and the DPAA [Darfur Peace and Accountability Act, Pub. L. No. 109-344, 120 Stat. 1869] on the one hand, and the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7201–7211) (“TSRA”) on the other. Pursuant to E.O. 13412 and the DPAA, most trade and related activities—other than trade with the Government of Sudan or relating to Sudan’s petroleum or petrochemical industries—are allowed with the Specified Areas of Sudan. These Specified Areas, however, remained subject to regulations promulgated pursuant to section 906(a)(1) of TSRA, which provides that the export of agricultural commodities, medicine, and medical devices to the government of a country that has been determined by the Secretary of State, under section 6(j) of the Export Administration Act of 1979,

50 U.S.C. App. 2405(j) (the “EAA”), to have repeatedly provided support for acts of international terrorism, or to any entity in such a country, shall be made pursuant to one-year licenses issued by the United States government.

Because Sudan has been determined by the Secretary of State to be a country that has repeatedly provided support for acts of international terrorism pursuant to section 6(j) of the EAA, the entire country remained subject to TSRA’s licensing requirements under the SSR.

The overlap of TSRA with E.O. 13412 and the DPAA—as previously implemented in the SSR—resulted in the requirement that OFAC authorize the export of agricultural and medical items to the Specified Areas of Sudan, even though no OFAC authorization was required to export most other items to those areas.

Therefore, in view of the underlying policy objectives and findings concerning the Specified Areas of Sudan that resulted in the elimination of most of the previous economic sanctions against these areas within Sudan, including export sanctions analogous to those covered by TSRA, OFAC has determined that specific licenses for TSRA-related transactions with respect to the Specified Areas of Sudan should no longer be required.

Instead, OFAC is authorizing such transactions through a general license, set forth at SSR § 538.523(a)(2), provided that such transactions do not involve any property or interests in property of the Government of Sudan or relate to the petroleum or petrochemical industries in Sudan. In accordance with the requirements set forth in section 906(a)(1) of TSRA, this general license covers exports shipped within the twelve-month period beginning on the date of the signing of the export contract. In addition, each year by the anniversary of its effective date on September 9, 2009, OFAC will determine whether to revoke the general license. Unless revoked, the general license will remain in effect. However, specific licenses for TSRA-related transactions with respect to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing are still required.

Existing prohibitions and safeguards satisfy TSRA’s requirement that procedures be in place to deny the general license for exports to entities within Sudan promoting international terrorism. For instance, the requirement that no U.S. person engage in any transaction with anyone on OFAC’s List of Specially Designated Nationals and Blocked Persons, including persons designated under the terrorism programs administered by OFAC, provides a mechanism for denying TSRA-related exports to certain entities within the Specified Areas of Sudan. In addition, if it deems necessary, OFAC may amend, modify, or revoke the new general license pursuant to § 501.803 of the Reporting, Procedures and Penalties Regulations, 31 CFR part 501 (the “RPPR”). . . . Section 538.502 of the SSR similarly provides OFAC with the authority to exclude any person, property, or transaction from the operation of the general license or to restrict the applicability of the general license with respect to any persons, property, or transactions. Finally, the requirement that all U.S. persons maintain records of any transaction subject to OFAC-administered sanctions for a period of not less than five years pursuant to RPPR § 501.601, and OFAC’s authority to obtain these records pursuant to RPPR § 501.602, allow OFAC to monitor activities under the general license in order to determine whether it should exercise these authorities.

Those transactions now authorized by the general license set forth at § 538.523(a)(2) of the SSR include the sale, exportation, and reexportation of agricultural commodities, medicine, and medical devices, the financing of and payment for such sales, and the brokering of TSRA sales. However, the transshipment or transit of TSRA-related exports through areas of Sudan other than the Specified Areas of Sudan, and any related financial transactions that are routed through

depository institutions located in an area of Sudan other than the Specified Areas, remain prohibited under §§ 538.417 and 538.418 of the SSR.

#### 4. Tom Lantos Block Burmese JADE Act

On January 15, 2009, President Bush waived the financial sanctions under § 5(b) of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 ("JADE Act"), Pub. L. No. 110-286, 122 Stat. 2632, with respect to those individuals and entities described in § 5(a)(1) of the JADE Act who are not included on the Department of the Treasury's List of Specially Designated Nationals and Blocked Persons. 74 Fed. Reg. 3957 (Jan. 21, 2009). Section 5(b) of the JADE Act provides:

(1) **BLOCKED PROPERTY.**—No property or interest in property belonging to a person described in subsection (a)(1) may be transferred, paid, exported, withdrawn, or otherwise dealt with if—

(A) the property is located in the United States or within the possession or control of a United States person, including the overseas branch of a United States person; or

(B) the property comes into the possession or control of a United States person after the date of the enactment of this Act.

(2) **FINANCIAL TRANSACTIONS.**—Except with respect to transactions authorized under Executive Orders 13047 (May 20, 1997) and 13310 (July 28, 2003), no United States person may engage in a financial transaction with the SPDC or with a person described in subsection (a)(1).

Excerpts follow from the Presidential determination.

---

By the authority vested in me as President by the Constitution and laws of the United States, including the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286) (JADE Act) and section 301 of title 3, United States Code, in order to ensure that the United States Government's sanctions against the Burmese leadership and its supporters continue to be implemented effectively, to allow the reconciliation of measures applicable to persons sanctioned under the JADE Act with measures applicable to the same persons sanctioned under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and to allow for the implementation of additional appropriate sanctions:

(1) I hereby waive, pursuant to section 5(i) of the JADE Act, the provisions of section 5(b) of the JADE Act with respect to those persons described in section 5(a)(1) of the JADE Act who are not included on the Department of the Treasury's List of Specially Designated Nationals and Blocked Persons. Because the imposition of effective and meaningful blocking sanctions requires the identification of those individuals and entities targeted for sanction and the authorization of certain limited exceptions to the prohibitions and restrictions that would otherwise apply, I hereby determine and certify that such a limited waiver is in the national interest of the United States.

\* \* \* \*

## 5. Nonproliferation

During 2009 the Treasury Department clarified several existing designations it had made pursuant to Executive Order 13382, discussed *supra*. For example, OFAC identified eight additional aliases for a previously designated Chinese entity, LIMMT Economic and Trade Company, Ltd. ("LIMMT"), effective April 7, 2009.\* Later in the year OFAC announced changes to its identifying information for three previously designated entities: First Persia Equity Fund, Mehr Cayman Ltd, and IRISL Benelux NV. 74 Fed. Reg. 40,003 (Aug. 10, 2009) (two entities); 74 Fed. Reg. 41,784 (Aug. 18, 2009) (one entity).

Also in 2009 the Commerce Department's Bureau of Industry and Security removed seven entities from its Entity List and corrected the addresses listed for information for four entities on the Entity List. 74 Fed. Reg. 8182 (Feb. 24, 2009); 74 Fed. Reg. 11,472 (March 18, 2009); 74 Fed. Reg. 68,146 (Dec. 23, 2009).

## 6. Narcotics Unblockings

On April 8, 2009, OFAC unblocked the property and interests in property of one individual, who had been placed on its list of Specially Designated Nationals and Blocked Persons pursuant to the Foreign Narcotics Kingpin Designation Act (21 U.S.C. §§ 1901-1908, 8 U.S.C. § 1182). 74 Fed. Reg. 17,283 (Apr. 14, 2009).

During 2009 OFAC also unblocked the property and interests in property of 102 other individuals and 17 entities, which had been designated as Specially Designated Narcotics Traffickers pursuant to Executive Order 12978 (1995). 74 Fed. Reg. 7546 (Feb. 17, 2009) (one

---

\* Editor's note: Also on April 7, 2009, the New York County District Attorney's Office unsealed a criminal indictment against LIMMT, which was designated under E.O. 13382 in 2006. 74 Fed. Reg. 19,635 (Apr. 29, 2009); *see also* [www.treas.gov](http://www.treas.gov) [search "tg84"].

individual); 74 Fed. Reg. 10,994 (March 13, 2009) (one individual); 74 Fed. Reg. 16,259 (Apr. 9, 2009) (four individuals); 74 Fed. Reg. 18,609 (Apr. 23, 2009) (two individuals); 74 Fed. Reg. 22,807 (May 14, 2009) (four individuals); 74 Fed. Reg. 30,205 (June 24, 2009) (four individuals); 74 Fed. Reg. 33,022 (July 9, 2009) (49 individuals); 74 Fed. Reg. 34,397 (July 15, 2009) (four individuals, three entities); 74 Fed. Reg. 39,734 (Aug. 7, 2009) (one individual); 74 Fed. Reg. 34,397 (Aug. 26, 2009) (one individual); 74 Fed. Reg. 47,993 (Sept. 18, 2009) (seven individuals, one entity); 74 Fed. Reg. 52,296 (Oct. 9, 2009) (three individuals); 74 Fed. Reg. 57,399 (Nov. 5, 2009) (ten individuals, 13 entities); and 74 Fed. Reg. 62,886 (Dec. 1, 2009) (eight individuals).

## 7. Belarus Sanctions

On May 21 and again on November 13, 2009, OFAC renewed a general license authorizing transactions between U.S. persons and two Belarusian entities, Lakokraska OAO and Politsk Steklovolokno OAO. On May 15, 2008, OFAC identified the two entities as being owned by the Belarusian petrochemical conglomerate Belneftekhim and thus subject to the sanctions imposed by Executive Order 13405 (2006). The general license extends until May 15, 2010, and was first issued on September 4, 2008. See [www.treas.gov/resource-center/sanctions/Documents/belarus\\_gl\\_1b.pdf](http://www.treas.gov/resource-center/sanctions/Documents/belarus_gl_1b.pdf), [www.treas.gov/resource-center/sanctions/Documents/belarus\\_gl\\_1c.pdf](http://www.treas.gov/resource-center/sanctions/Documents/belarus_gl_1c.pdf). See also *Digest 2008* at 807.\*

## C. OTHER ISSUES

### 1. Litigation

#### ***a. Licensing requirement for Cuban company's application to renew trademark***

On March 30, 2009, the U.S. District Court for the District of Columbia granted summary judgment for the Treasury Department's Office of Foreign Assets Control ("OFAC"), in a case challenging OFAC's denial of a Cuban company's request for a license it needed to renew the trademark HAVANA CLUB. *Empresa Cubana Exportadora de Alimentos y Productos Varios d/b/a Cubaexport v. U.S. Dep't of the Treasury, Office of Foreign Assets Control*,

---

\* Editor's note: On May 17, 2010, OFAC renewed the license until November 30, 2010. See [www.treasury.gov/resource-center/sanctions/Programs/Documents/belarus\\_gl\\_1d.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/belarus_gl_1d.pdf).

606 F. Supp. 2d 59 (D.D.C. 2009). For previous developments in the case, see *Digest 2006* at 1006–15 and *Digest 2007* at 828–30.

The court held that OFAC correctly interpreted § 211(a)(1) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105–277, 112 Stat. at 2681–88, and its implementing regulations, 31 C.F.R. § 515.527, in determining that Cubaexport needed a specific license to renew the trademark. The court also held that OFAC’s procedures for making its determination did not violate the Administrative Procedure Act. Taking into account a supplementary declaration submitted by OFAC Director Adam J. Szubin on November 27, 2007, the court held further that OFAC’s determination was reasonable. The court also concluded that OFAC had not violated Cubaexport’s constitutional rights “if any—to procedural due process, substantive due process, or under the Takings Clause.” For the supplementary declaration of OFAC Director Szubin, see [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

As of the end of 2009, Cubaexport’s appeal was pending before the U.S. Court of Appeals for the District of Columbia Circuit.

#### ***b. Challenge to Executive Order 13224 sanctions***

On August 19, 2009, the U.S. Court of Appeals for the Ninth Circuit affirmed a district court judgment in a case bringing challenges under the U.S. Constitution to various aspects of the terrorism–related sanctions the United States imposes pursuant to Executive Order 13224 and its implementing regulations. *Humanitarian Law Project v. U.S. Treasury Dep’t*, 578 F.3d 1133, 1145–48 (9th Cir. 2009). The plaintiffs, humanitarian organizations and U.S. citizens, sought to support what they characterized as certain lawful and non–violent activities of the Kurdistan Worker’s Party (“PKK”) and the Liberation Tigers of Tamil Eelam (“LTTE”), both of which are designated as Specially Designated Global Terrorists under E.O. 13224, and challenged restrictions on the provision of services to designated individuals and entities.

The appeals court affirmed the district court’s judgment that the Humanitarian Law Project (“HLP”) lacked standing to challenge the President’s designation authority under the International Economic Powers Act (“IEEPA”), 50 U.S.C. § 1701–1707, and the United Nations Participation Act (“UNPA”), 22 U.S.C. § 287c. In reaching that conclusion, the Ninth Circuit noted that “HLP has never been designated, or threatened with designation, on account of” the President’s designation authority. Similarly, the Ninth Circuit affirmed the district court’s judgment that HLP lacked standing to challenge the Treasury Department’s regulations for licensing activities that IEEPA otherwise prohibits. As the Ninth Circuit stated, HLP “cannot show injury–in–fact with respect to the licensing regulations as it has never applied for, or been denied, a license.”

On the merits of HLP's challenge to the Secretary of the Treasury's authority to designate individuals and organizations pursuant to E.O. 13224, the Ninth Circuit "agree[d] with the district court that the Secretary's authority to designate terrorist groups is adequately constrained by criteria in the Executive Order." The court also rejected HLP's challenge to E.O. 13224's prohibition on "the making or receiving of any . . . services to or for the benefit of those persons listed in the Annex to this order or determined to be subject to this order." As the Ninth Circuit stated:

[T]he ban on "services" to designated organizations is not unconstitutionally vague; 'services' are clearly enough delineated by examples in the regulations for a person of ordinary intelligence to understand what kind of activities are not permitted. HLP worries that protected speech such as independent advocacy may be caught in the net, but the Secretary [of the Treasury] does not interpret the ban this way, nor do we.

The Ninth Circuit also rejected HLP's challenges to the civil and criminal penalties under IEEPA, holding that "IEEPA's civil penalties may be imposed without *mens rea* requirements because they are indeed civil; its criminal penalties require a culpable state of mind and the Constitution does not additionally require specific intent to further terrorist activities." In holding that "neither the civil penalty nor designation offends the First and Fifth Amendments for lack of sufficient *mens rea*," as HLP claimed, the court stated in part:

On balance, we conclude that HLP has not shown by "clearest proof" that either the civil penalty or designation is so punitive as to be criminal. [citation omitted] Although designation presents a closer call than the civil penalty, at the end of the day we are influenced by the fact that designation, at the core, is a function of national security and foreign policy and thus serves an alternative function other than punishment. As such, we accord deference to the executive branch's decision that designation is necessary for the national interest. As a penalty, designation is not excessive in relation to that purpose.

On October 22, 2009, the Ninth Circuit granted HLP's motion to hold the case in abeyance and for an extension for the time to file a petition for

rehearing pending the Supreme Court's decision in a related case, *Humanitarian Law Project v. Holder*, discussed in Chapter 3.B.1.c.(2)(iii)(B).\*

## 2. Examples of Sanctions Enforcement Under U.S. Criminal Law

The U.S. Department of Justice takes criminal enforcement measures against knowing and intentional violations of U.S. sanctions laws. On December 16, 2009, for example, the Department of Justice announced that Credit Suisse had agreed to forfeit \$536 million to the United States and the New York County District Attorney's Office to settle claims arising from its violations, over a period of ten years, of U.S. sanctions law and New York state law. A Department of Justice press release, excerpted below, provided details on the forfeiture—the largest of its kind—and Credit Suisse's violations. The full text of the press release is available at [www.justice.gov/opa/pr/2009/December/09-ag-1358.html](http://www.justice.gov/opa/pr/2009/December/09-ag-1358.html); see also the Department of Justice's press release dated January 9, discussing Lloyds TSB Bank plc's agreement to forfeit \$350 million to the United States and the New York County District Attorney's Office for violations of the International Emergency Economic Powers Act, available at [www.justice.gov/opa/pr/2009/January/09-crm-023.html](http://www.justice.gov/opa/pr/2009/January/09-crm-023.html).

---

\* \* \* \*

The violations relate to transactions Credit Suisse illegally conducted on behalf of customers from Iran, Sudan and other countries sanctioned in programs administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC).

A criminal information was filed today in the U.S. District Court for the District of Columbia charging Credit Suisse with one count of violating the IEEPA. Credit Suisse waived indictment, agreed to the filing of the information, and has accepted and acknowledged responsibility for its criminal conduct. Today, Credit Suisse also entered into an agreement with OFAC to settle the apparent civil violations of IEEPA and other authorities arising from this conduct. Credit Suisse agreed to forfeit the funds as part of the deferred prosecution agreements

---

\* Editor's note: On June 21, 2010, the Supreme Court issued a decision upholding the constitutionality of 18 U.S.C. § 2339B, affirming in part and reversing in part the Ninth Circuit's judgment and remanding the case. *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010). As to the plaintiffs' due process claims under the Fifth Amendment, the Court limited its decision to the specific activities at issue in the case and held that the statute was not vague as applied. With respect to the First Amendment claim, the Court likewise sustained the statute with respect to the support at issue as striking an appropriate balance between national security imperatives and free speech. *Digest 2010* will discuss relevant aspects of the Court's decision. Following the Court's decision in that case, the plaintiffs chose not to seek rehearing of the Ninth Circuit's August 2009 decision in *Humanitarian Law Project v. U.S. Treasury Dep't*.

reached with the Department of Justice and the New York County District Attorney's Office and in settlement of the civil claims with OFAC.

\* \* \* \*

Under IEEPA, it is a crime to willfully violate, or attempt to violate, any regulation issued under the act, including the regulations related to Iran, Sudan, Burma, [and] Cuba . . . .

According to court documents, beginning as early as 1995 and continuing through 2006, Credit Suisse, in Switzerland and the United Kingdom, altered wire transfers involving U.S. sanctioned countries or persons. Specifically, according to court documents, Credit Suisse deliberately removed material information, such as customer names, bank names and addresses, from payment messages so that the wire transfers would pass undetected through filters at U.S. financial institutions. Credit Suisse also trained its Iranian clients to falsify wire transfers so that such messages would pass undetected through the U.S. financial system. This scheme allowed U.S. sanctioned countries and entities to move hundreds of millions of dollars through the U.S. financial system.

For its Iranian clients, Credit Suisse promised that no message would leave the bank without being hand-checked by a Credit Suisse employee to ensure that the message had been formatted to avoid U.S. filters. If an Iranian client provided payment messages that contained identifying information, Credit Suisse employees would remove the detectable information so that the message could pass undetected through OFAC filters at U.S. financial institutions. According to court documents, Credit Suisse's international communications showed a continuous dialogue about the scheme, assessing how to better process Iranian transactions to ensure increased business from existing and future Iranian clients. For example, in 1998, Credit Suisse provided its Iranian clients with a pamphlet entitled, "How to transfer USD payments", which provided detailed payment instructions on how to avoid triggering U.S. OFAC filters or sanctions. Additionally, Credit Suisse processed 88 payments for those listed as "Specially Designated Nationals" by OFAC. Specially Designated Nationals are individuals and entities specifically named by OFAC to be subject to U.S. sanctions. Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

\* \* \* \*

The bank's forfeiture of \$268 million to the United States and \$268 million to the New York County District Attorney's Office will settle forfeiture claims by the Department of Justice and the state of New York and civil claims by OFAC related to the misconduct. In light of the bank's remedial actions to date and its willingness to acknowledge responsibility for its actions, the Department will recommend the dismissal of the information in two years, provided Credit Suisse fully cooperates with, and abides by, the terms of the agreement.

Throughout the investigation, Credit Suisse has provided prompt and substantial cooperation, including working with regulators to find a method consistent with Swiss law to disclose a significant portion of the data, communications and documentation underlying the misconduct. . . .

### **3. Annual Report on Economic Sanctions Imposed Against Sudan**

In January 2009 OFAC issued its annual report on the effectiveness of U.S. economic sanctions imposed against Sudan, as required by § 10(b) of the Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, 121 Stat. 2516. See *Digest 2007* for background on the legislation. The report is available at [www.treas.gov/resource-center/sanctions/Documents/sudan\\_report\\_030509.pdf](http://www.treas.gov/resource-center/sanctions/Documents/sudan_report_030509.pdf).

#### **Cross References**

*Elimination of U.S. travel ban on individuals with HIV, Chapter 1.C.2.*

*Exemption of certain individuals associated with Iraqi and Kurdish organizations from terrorism-related provisions of the Immigration and Nationality Act, Chapter 1.C.3.*

*Designations of Foreign Terrorist Organizations, Chapter 3.B.1.c.(2)*

*Sudan peace process, Chapter 17.A.2.*

*Security Council arms embargoes, Chapter 18.B.7.b. and c.*