



DEPARTMENT OF THE TREASURY OFFICE OF PUBLIC AFFAIRS

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Before The Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs

Chairman Coleman, Ranking Member Levin and other distinguished members of the Subcommittee, I appreciate the opportunity to discuss the responsibilities of the Office of Foreign Assets Control, or OFAC, as these pertain to the United Nations "Oil-for-Food" program and the Iraqi sanctions.

My testimony today will center on the Committee's interest in OFAC's role regarding the administration, compliance and oversight of U.S. persons authorized to participate in the "Oil-for-Food" program as well as those who obtained licenses to engage in transactions related to travel to, and within, Iraq.

Before turning to a discussion of these responsibilities and processes, however, I would like to provide you with a general overview of OFAC's mission and jurisdictional authorities.

Mission and Jurisdiction

Since becoming Director of OFAC in October of 2004, I have learned first hand that it is an exceptional agency of experienced, knowledgeable professionals dedicated to carrying out the complex mission of administering and enforcing economic sanctions programs based on U.S. foreign policy and national security goals with a workforce of 140 authorized full-time staff.

OFAC currently administers 29 economic sanctions programs against foreign governments, entities and individuals. Though eight of these 29 programs have been terminated, they still require residual administrative and enforcement activities.

OFAC's authority to impose controls on transactions and to freeze foreign assets is derived from the President's constitutional and statutory wartime, and national emergency powers. In performing its mission, OFAC relies principally on delegations of authority made pursuant to the President's broad powers under the *Trading with the Enemy Act* ("TWEA"), *International Emergency Economic Powers Act* ("IEEPA"), and the *United Nations Participation Act* ("UNPA") to prohibit or regulate commercial or financial transactions involving specific foreign countries, entities, or individuals. In administering and enforcing economic sanctions programs, OFAC maintains a close working relationship with other federal departments and agencies to ensure that these programs are implemented properly and enforced effectively. OFAC works directly with the Department of State ("State"); the Department of Commerce ("Commerce"); the Department of Justice, the Federal Bureau of Investigation (FBI), the Department of Homeland Security's U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE); bank regulatory agencies; and other law enforcement agencies to fulfill our mission.

I would also note, Mr. Chairman, that all of the programs we administer require that we work closely with the broad range of industries potentially affected by these programs. We are expanding and improving our communication with our diverse constituencies ranging from the financial and services sectors to manufacturing and agricultural industries. The cooperation we receive from U.S. corporations in complying with sanctions is generally exceptional.

UN/Iraq Sanctions Overview and Implementation

Following the Iraq invasion of Kuwait on August 2, 1990, the UN Security Council issued UNSC Resolution 661 on August 6, 1990, imposing sweeping economic sanctions against Iraq and providing protective measures with respect to Kuwait. Resolution 661 also established a committee consisting of all members of the UN Security Council to monitor and supervise implementation of the sanctions (the "661 Committee"). Following the invasion of Kuwait, the President also issued Executive Order 12722, on August 2, 1990, which froze the assets of the Government of Iraq in the United States or under the control of U.S. persons and imposed a comprehensive trade embargo against Iraq. Following the adoption of UNSC Resolution 661, the President issued Executive Order 12724 on August 9, 1990, broadening the sanctions previously imposed. These sanctions were implemented by OFAC through the Iraqi Sanctions Regulations, 31 C.F.R. Part 575 (the "Regulations").

Section 575.205 of the Regulations prohibited any goods, technology or services from being exported from the U.S. to Iraq, except for donated articles intended to relieve human suffering that were authorized by OFAC on a case-by-case basis. Under sections 575.520 and 575.521 of the Regulations, U.S. persons could apply to OFAC for authorization to export to Iraq donated food and donated supplies intended strictly for medical purposes.

Except as otherwise authorized, section 575.207 of the Regulations prohibited U.S. persons from engaging in transactions relating to travel to Iraq by any U.S. citizen or permanent resident alien, or to activities by any U.S. citizen or permanent resident alien within Iraq. This prohibition included payments by U.S. persons for their own travel or living expenses while in Iraq. The Regulations did not prohibit travel transactions related to travel to Iraq or to activities within Iraq

that were: (1) necessary to effect the departure of a U.S. citizen or permanent resident alien from Kuwait or Iraq; (2) relating to travel and activities for the conduct of the official business of the United States Government or the United Nations; or (3) by persons regularly employed in journalistic activity by recognized newsgathering organizations.

OFAC referred travel applications to the Department of State for foreign policy guidance in appropriate cases, such as when an applicant claimed a compelling humanitarian consideration (e.g., a critical illness of an immediate family member in Iraq), or where circumstances indicated that a national interest was at stake. In these instances, licensing determinations were made on a case-by-case basis in consultation with the Department of State. In addition, U.S. persons planning to travel to Iraq under a U.S. passport were required by the Department of State to have their passports validated for travel to Iraq by the Office of Passport Services.

In April of 1995, the Security Council adopted UNSC Resolution 986 (Oil-for-Food) as a temporary measure to provide for the humanitarian needs of the Iraqi people. In May of 1996, the Government of Iraq signed a Memorandum of Understanding setting out detailed arrangements for the implementation of Resolution 986. Under Oil-for-Food, the Government of Iraq was permitted to sell and to export from Iraq petroleum and petroleum products as well as purchase and import humanitarian materials and supplies to meet the essential needs of the civilian population in Iraq. The proceeds from sales of Iraqi-origin petroleum and petroleum products were to be deposited into a special escrow account at the New York branch of Banque Nationale de Paris (“BNP New York”) where they would be used to fund purchases made by the Government of Iraq.

The Secretary-General established a panel of independent experts in the international oil trade to oversee oil-purchase contracts and ensure that they complied with requirements provided for in Resolution 986. The panel was responsible for assessing the pricing mechanisms for petroleum purchases in order to determine whether they reflected fair market value. The panel was also responsible for providing analysis and recommendations to the 661 Committee.

With respect to purchases of humanitarian materials and supplies, the Government of Iraq was required to prepare a categorized list of humanitarian goods and supplies it intended to purchase and import pursuant to Resolution 986 and submit it to the Secretary-General. The Secretary-General would then forward the distribution list to the 661 Committee. Individual contracts for purchases of humanitarian goods and supplies were submitted to the 661 Committee through the relevant UN mission of the exporting state. Committee members could disapprove any contract. Payment from the Iraq escrow account at BNP New York would only be approved for items included in the distribution list, unless the 661 Committee decided otherwise on a case-by-case basis. Experts in the UN Secretariat were to examine each contract, especially regarding quality and quantity of the goods and supplies in order to determine whether a fair price and value were reflected in the document.

Effective December 10, 1996, OFAC amended the Regulations to provide statements of licensing policy with respect to Oil-for-Food, which appeared in the December 11, 1996, edition of the Federal Register. Section 575.522 of the Regulations authorized U.S. persons to enter into executory contracts with the Government of Iraq for the purchase of Iraqi-origin petroleum and

petroleum products, and to trade in oilfield parts and equipment and civilian goods, including medicines, health supplies and foodstuffs. U.S. persons were also authorized to enter into executory contracts with third parties outside OFAC's jurisdiction that were incidental to permissible executory contracts with the Government of Iraq. U.S. persons were not authorized to engage in transactions related to travel to, or within, Iraq for the purpose of negotiating and signing executory contracts. However, U.S. persons could enlist and pay the expenses of non-U.S. nationals to travel to Iraq on their behalf for the purpose of negotiating and signing executory contracts.

OFAC required U.S. persons, who had entered into executory contracts with the Government of Iraq for the sale of humanitarian materials and supplies or oilfield parts and equipment, to submit an application to OFAC for a case-by-case review and approval prior to performance of each contract. OFAC referred each application to the Department of State and if appropriate the Commerce Department for guidance on whether to authorize performance of the contract. State was then responsible for submitting the contract to the UN 661 Committee for review concerning whether to authorize release of funds from the Iraq account at BNP New York to pay for the goods upon their delivery to Iraq. OFAC issued a license determination after it received from State a copy of the 661 Committee approval of payment and a separate memorandum from State recommending that a specific license be issued to the applicant.

OFAC issued approximately 1050 specific licenses to U.S. persons for various aspects of the Oil-for-Food program, primarily under three provisions of the Regulations. Sales to the Government of Iraq of oilfield parts and equipment and humanitarian aid were subject to licensing under, respectively, sections 575.524 and 575.525 of the Regulations. Three U.S. companies were authorized under section 575.524 to sell oilfield parts and equipment directly to the Government of Iraq, and 23 U.S. companies were authorized under section 575.525 to make direct sales to the GOI of humanitarian aid. A total of 48 licenses were issued to these 26 U.S. companies authorizing performance of sales contracts entered into with the Government of Iraq.

Section 575.523 of the Regulations authorized the performance of contracts approved by the UN 661 Committee for the purchase of Iraqi-origin petroleum or petroleum products directly from the GOI. Nine U.S. companies were each issued a license under this section.

Most U.S. persons licensed by OFAC under this program were authorized to engage in trade transactions with third country entities who were contractors or subcontractors with the Government of Iraq. In other words, these remaining approximately 1000 specific licenses either authorized U.S. persons to engage in transactions with third parties related to sales to the GOI, or else authorized non-U.S. persons to engage in transactions involving U.S.-origin goods or components being supplied to the Government of Iraq. For example, under 575.523, OFAC issued thirteen specific licenses to seven U.S. persons for activities that facilitated the purchase of Iraqi oil by third parties.

Finally, the general license in section 575.526 of the Regulations authorized U.S. persons to import into the United States, and otherwise deal in, Iraqi-origin petroleum and petroleum products provided that the goods in question had been approved for purchase and export from Iraq by the 661 Committee.

Outreach

Because of the complexity of the Oil-for-Food program, OFAC engaged in an outreach program to assist licensees in understanding their obligations. OFAC provided guidance about the Program's requirements in hundreds of sanctions workshops. It also published information on Iraqi sanctions in numerous plain-language brochures, including *Iraq: What You Need to Know About U.S. Sanctions*, and *Foreign Assets Control Regulations for the Financial Community, ... for Exporters and Importers, ... for the Insurance Industry*, and ... *for the Securities Industry*. Further, it referenced the program in articles published in industry magazines for bankers, for shippers, and for the international trade community.

In addition to engaging in this general guidance, in January of 1997, OFAC issued a memorandum to the attention of the U.S. Customs Service recommending that Customs require importers of Iraqi petroleum or petroleum products to provide a copy of the 661 Committee approval for which the petroleum or petroleum products in question comprised all or a part of the original purchase. In addition, OFAC suggested that Customs might wish to request from the importer a brief statement describing the type and amount of the imported Iraqi products and affirming that, to the best of the importer's knowledge and belief, the imported Iraqi petroleum or petroleum products comprised all or a portion of the purchase covered in the accompanying UN document. In a memorandum to OFAC dated March 6, 1997, Customs confirmed that it had issued instructions to Customs field offices pursuant to the guidance contained in OFAC's memorandum.

In December of 2000, OFAC also published explicit information about authorized and unauthorized payments under the Oil-for-Food program. This document, entitled "Guidance on Payments for Iraqi Origin Petroleum," was prepared in response to media reports that the Government of Iraq had attempted to force its oil customers to violate UN Security Council Resolutions by demanding that they pay premiums in the form of surcharges, port fees or other payments into an Iraqi controlled account. The guidance specifically stated that no transfer of funds or other financial or economic resources to or for the benefit of Iraq or a person in Iraq could be made except for transfers to the 986 Escrow Account. The document mirrored a December 15, 2000, communication from the 661 Committee with the following explicit points:

- 1.) The Sanctions Committee did not approve a surcharge of any kind on Iraqi Oil.
- 2.) Payments for purchasing Iraqi crude oil could not be made to a non-UN account.
- 3.) Therefore, buyers of Iraqi oil should not pay any kind of surcharge to Iraq.

Designation Authority

Under the Iraq sanctions program, OFAC had the authority to specially designate -- that is, to identify publicly and to block assets of any person, whether an individual or a business, that was directly or indirectly owned or controlled by the Government of Iraq, or that purported to act for or on behalf of that government. As an essential element of the Iraq sanctions, OFAC began an initiative to identify front companies and agents used to acquire technology, equipment, and resources for Iraq or to otherwise act for or on behalf of the Government of Iraq. Iraq Specially Designated Nationals (SDN) included Iraqi governmental bodies, representatives, agents,

intermediaries or fronts, and could be either overt or covert entities of the government. The designations not only exposed these persons and blocked their assets but also cut them off from participation in the U.S. financial and economic systems. Ultimately, OFAC named approximately 300 separate entities or individuals as Iraq SDNs.

Enforcement

OFAC also worked closely with federal law enforcement agencies to enforce sanctions against Iraq. For example, CBP has responsibility to interdict goods destined to or from OFAC-sanctioned countries or groups. CBP inspectors contact OFAC's Enforcement Division when suspect goods are detained to determine if OFAC has issued licenses for these goods. OFAC's outreach training to CBP inspectors at the Federal Law Enforcement Training Center and at CBP Ports of Entry throughout the country included information about sanctions against Iraq.

Moreover, OFAC has completed over 300 investigations and audits against U.S. financial institutions, corporations and individuals involving violations of the Iraq sanctions program. The violations investigated ranged from unauthorized attempts to export goods to Iraq by U.S. companies to the operation of brokerage accounts for Specially Designated Nationals of Iraq by brokerage firms. In addition, audits of banking transactions conducted by OFAC have revealed other cases involving funds transfers destined for Iraq transmitted by U.S. banks. OFAC's action against violators included the issuance of warning letters, the imposition of civil monetary penalties and, where no violation was found, no further agency action depending on the nature, circumstances and scope of the violation.

Finally, OFAC criminal investigations are conducted by ICE, the Commerce Department's Office of Export Enforcement ("OEE"), and the FBI. OFAC plays a coordinating and advisory role in such cases, and works closely with agents and Assistant U.S. Attorneys. OFAC often provides an expert witness at trial. Criminal charges of IEEPA violations have been brought in at least 13 cases since August 1990, for unlicensed transactions with Iraq. These cases have involved illegal exports, money remittances and dealings in Iraqi oil.

OFAC is also working with agents in a number of on-going criminal investigations, including investigations by the Department of Justice of potential violations of the Oil-for-Food program. In one case, dealing with the purchase of Iraqi oil in excess of the amount authorized by the U.N. under Oil-for-Food, OFAC ordered a U.S. company to place in excess of several million dollars into a blocked account at a U.S. financial institution. In another case, OFAC provided information from an Oil-for-Food license file to a U.S. Attorney's Office.

Conclusion

I thank the Committee for the opportunity to discuss OFAC's role in implementing economic sanctions against Iraq, including its role in the Oil-for-Food program. I look forward to taking your questions.