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March 29, 2012

Mr. Adam J. Szubin
Director
Office of Foreign Assets Control
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington D.C. 20220
Attention: Licensing Division

**Re: Request for Interpretive Guidance Regarding U.S. Participation in
International Standards Development**

Dear Director Szubin:

On behalf of the American National Standards Institute ("ANSI"), and after consultation with the U.S. National Institute of Standards and Technology (NIST), we submit this request for interpretive guidance regarding whether participation in standards development activities with international organizations, such as the International Organization for Standardization ("ISO"), creates exposure for ANSI members or experts from the U.S. or other countries under U.S. trade laws when such activities include participants from countries, such as Iran, that are subject to U.S. trade sanctions, including those administered by the Office of Foreign Assets Control ("OFAC").

We believe participation in standards-setting activities as described herein does not violate the U.S. economic sanctions regulations.¹ ANSI recently became aware, however, of

¹ For ease of reference, this request focuses primarily on Iran and the provisions of the Iranian Transactions Regulations ("ITR"). ANSI understands that separate sanctions programs for other countries are each considered to be unique, but the analysis for these sanctions programs should be similar.

concerns expressed by members of the oil and gas industry as to whether their continued participation in ISO standards development is permissible in light of the ITR prohibition on exports to Iran.² The scope of this issue is large, and will have an effect on thousands of technical experts and others across hundreds of international standards development committees.

Thus, despite ANSI's belief that participation in standards-setting activities does not violate the U.S. economic sanctions programs administered by OFAC, given the uncertainty expressed by some ANSI members in recent days, we request that OFAC publish clear and prompt guidance confirming that understanding. The implications of not receiving a timely and favorable interpretation are enormous. In ISO alone, U.S. interests participate in 623 ISO Committees developing International Standards that underpin global trade.

I. EXECUTIVE SUMMARY

ANSI coordinates the United States private-sector voluntary standardization system and is the sole U.S. representative to two of the three international standards development organizations – ISO and, via the U.S. National Committee (“USNC”), the International Electrotechnical Commission (“IEC”). The U.S. Department of State is the U.S. representative to a third international standards organization – the International Telecommunication Union (“ITU”). All three international standards organizations include U.S.-sanctioned countries as members, including Iran.

International standards development typically starts with a request by an industry sector that an international standard be developed in a given area and ends with a published international standard. When the request for a new standard is first made, the international standards organization creates technical committees, subcommittees and working groups to write the standards. International standards can be based on existing standards that are contributed by one or more of the member bodies and/or various information exchanged among technical experts, including information that may not have been public before it was exchanged. The standards-writing committees that share drafts of standards during the stages of development may include individual experts from the U.S. and experts from other member bodies of the international organizations, including from sanctioned countries. During the drafting process, these experts are encouraged to share drafts with “mirror committees” in their countries to ensure that consensus is reached. If the draft standard receives the requisite level of approval, the final text is agreed for publication as an international standard and may be adopted or sold in each member’s own country.

² Some of these participants expressed concerns to NACE International (“NACE”), that administers a maintenance committee under ISO’s Technical Committee 67, responsible for certain petroleum-related materials. NACE filed an emergency request with OFAC on March 8, 2012, seeking confirmation that ITR prohibitions would not prohibit participation by U.S. nationals in several working group meetings then scheduled for March 10-11, 2012. OFAC has since invited NACE to file a request for interpretive guidance. NACE has informed ANSI that it will defer to this filing which ANSI submits on behalf of all its members and participants, including NACE.

ANSI is hearing escalating concerns by members of the oil and gas industry about whether their continued participation in ISO standards development is permissible in light of the U.S. prohibitions on exports to Iran. Indeed, many industry experts in leadership positions have recently stepped down from those positions and other participants are walking away from the ISO standards community out of fear that their continued involvement would be considered problematic under the ITR rules. Specifically, these parties are concerned that their engagement in ISO standardization activities, under which information shared with ISO by U.S. experts is, in turn, shared with other participants selected by other sanctioned member bodies such as Iran, will be considered a violation of the ITR. These concerns are now spreading to other sectors outside of the oil and gas industry and are leading many to question whether continued participation in any international standards activities is permitted. These concerns affect not only ANSI and its members but other technical experts and the companies they work for, both in the U.S. and overseas, including U.S. persons working for foreign companies abroad and non-U.S. persons working for U.S. companies both here and abroad.

ANSI does not believe that the U.S. sanctions were intended to handicap U.S. participation in international standards development, and does not believe that participation actually violates the provisions of the ITR or any other U.S. sanctions program. Although the ITR broadly prohibit the exportation or reexportation of goods, technology, or services from the United States or by United States persons to Iran, the standards development process does not involve the export of goods, technology, or services to or from Iran.

In addition, the “informational materials” exemption in the ITR and other sanctions programs exempt standards development from regulation. As explained more fully below, many new international standards are derived from the existing national standards of participating countries, or are based on technical information already in existence and supplied by the entities participating in the technical committees or working groups. As a result, ISO standards development activities intended to promulgate these standards as international standards fall within the informational materials exemption contemplated by the Berman amendment.

Moreover, the ITR’s general license for publishing activities authorizes ANSI participation in the standards development process. This general license applies to all activity undertaken by ISO as a publisher of international standards, including collaborating on the creation and enhancement of written publications, augmenting written publications with explanatory text, and substantive editing of written publications. Although government entities are excluded from the general license, the vast majority of participants in the standards setting process, including those from Iran, are more akin to research institutions which are specifically allowed under the general license.

Finally, the effectiveness of the U.S. standards setting process is a key to global competitiveness and growth. As the U.S. representative to ISO and IEC, ANSI is uniquely able

to monitor the activities and priorities of its competitors and trade partners. From proposed new areas of technical activity to policy decisions at the highest level of ISO and IEC, the responsibility to coordinate and disseminate this important strategic information rests with ANSI through close coordination with the SDOs, government, consumers, and industry that constitute its membership. Any decisions or actions that would hinder U.S. participation in these activities would compromise this nation's ability to compete worldwide and compromise the ability of the U.S. government to protect health, safety, and the environment.

Given the importance of international standards activities to U.S. interests abroad, immediate clarity and assurance is needed to ensure that ANSI, its members, and its participants, may continue their important work in international standardization and related activities without interruption.

II. FACTUAL BACKGROUND

A. ANSI's Role in the U.S. and International Standardization System

ANSI is the administrator and coordinator for the United States private-sector voluntary standardization system. It is a private, non-profit membership organization that operates with the participation of a diverse array of private- and public-sector organizations, including the U.S. government. ANSI oversees the creation, promulgation, and use of thousands of standards, guidelines, and conformity assessment activities that directly impact businesses and consumers in nearly every industry and product line. As the voice of the system, ANSI works in close collaboration with stakeholders from both industry and government to identify consensus-based solutions to national and global priorities. ANSI is the sole U.S. representative and dues-paying member of the two major non-treaty international standards organizations: the ISO, and, via USNC, the IEC.³

ANSI is not itself a standards developing organization ("SDO"). Instead, standards may be developed by an ANSI-accredited SDO, as well as by a professional society, a trade association, or a consortium. ANSI recognizes that there are multiple paths to a globally relevant standard, and that no single method of standards development can satisfy the needs of all sectors. The U.S. voluntary consensus standards system that ANSI administers is a stakeholder-driven process. In contrast to the government-directed prescriptive standards that characterize the systems in place in a number of other countries, the U.S. government does not coordinate or direct the standards system in the United States. That role is performed by ANSI.

³ In this submission, ANSI will focus on ISO and IEC-related activities. However, the same concerns that arise relating to technical participation by U.S. government and industry experts in these organizations also arise in connection with ANSI's participation in other international organizations that are involved with conformance to standards, such as the International Laboratory Accreditation Cooperation and the International Accreditation Forum.

ANSI also promotes the use of U.S. standards internationally, advocates U.S. policy and technical positions in international and regional standards organizations, and encourages the adoption of international standards as national standards where they meet the needs of the user community. Given the global nature of trade and supply chains, standards play a significant role in ensuring the international competitiveness of U.S. business interests. International standards reflect consensus of a wide stakeholder group and drive significant economies of scale. ANSI and the U.S. government have long advocated that countries should consider adopting and using international standards where available, and that the opportunity to participate in standardization activities should be made available to all interested stakeholders.⁴

B. The U.S. Government's and Industry's Role in ANSI

U.S. government and industry experts participate throughout ANSI's governance structure, and in the policy committees that make decisions affecting the U.S. standardization system and its competitiveness worldwide. Indeed, 30 U.S. government agencies are ANSI members, and representatives from these agencies and other industry groups populate all of ANSI's policy committees.⁵

The composition of ANSI's Board of Directors⁶ demonstrates representation from U.S. government agencies, businesses, professional societies and trade associations, standards developers, and consumer and labor organizations. ANSI's Board of Directors includes representation from: 1) NIST; 2) the U.S. Consumer Product Safety Commission; 3) the U.S. Department of Defense; 4) the U.S. Department of Energy; and 5) the U.S. Environmental Protection Agency.

Through ANSI, thousands of U.S. government employees and industry experts are engaged in international standardization activities every day, including more than 250 individuals from NIST. These government experts contribute actively to the development of globally relevant standards for health, safety, and sustainability. And they work in collaboration with thousands of technical experts from U.S. industry, trade associations, consumer groups, and academia who bring strong U.S. positions and influence to the international standards table.

⁴ See Exhibit A, Testimony of Mary H. Saunders, Director, Standards Coordination Office, National Institute of Standards and Technology, U.S. Department of Commerce, before the House Committee on Science, Space, and Technology Subcommittee on Technology and Innovation on Promoting Innovation, Competition, & Economic Growth: Principles for Effective Domestic and International Standards Development, February 29, 2012, also available at <http://www.nist.gov/director/ocla/upload/Mary-Saunders-NIST-Testimony-for-House-Subc-T-I-on-Standards-2-29-12.pdf>.

⁵ See Exhibit B, which contains rosters of ANSI policy committees, reflecting U.S. government member participation.

⁶ See Exhibit C for a list of ANSI Board members.

These active participants represent a large segment of leading companies in the U.S. in all areas of business, manufacturing, and technology, including 3M/Quest Technologies, Adobe Systems, The Boeing Company, Duracell, Shell, Eaton Electrical, General Electric, Energizer, Hewlett Packard, Hubbell Incorporated, Intel, Kimberly-Clark, Rockwell Automation, RR Donnelley, Siemens, Sun Chemical, and Tyco Electronics, to name just a few. This robust participation reflects the critical importance major U.S. companies and organizations place on engagement in international standardization. They are committed to having their voices heard to ensure that they are part of the process that shapes product design and acceptability, facilitates market access, and strengthens U.S. competitiveness in the global market.

C. ISO/IEC and ITU Overview

ISO is a worldwide federation of national standards bodies with a current membership of 163 countries, including 100 “Full Members” (able to participate in any and all ISO governance and technical standards development activities) and 63 “Subscribing” and “Correspondent” Members (aimed at smaller or developing countries). With over 18,000 ISO standards in existence, and some 4,000 standards being actively developed or revised each year, ISO’s scope as an organization covers all possible subjects of international standardization, with the exception of electrotechnical subjects (addressed by IEC) and telecommunications subjects (addressed by ITU).

Full ISO members may choose to actively participate in (referred to as P membership) or simply observe (referred to as O membership) the activities of ISO committees, based on their national interests. Each country is represented by one organization, typically the national organization most representative of standardization for the country. National organizations may be private-sector organizations or they may be governmental agencies. ANSI is the sole U.S. representative and dues-paying member of ISO. As a founding member of ISO, ANSI plays an active role in both its governance at the policy level and in many of its technical activities.

Similarly, ANSI, via the USNC, is a founding member of the IEC, and is the sole U.S. representative to this organization. The USNC/IEC serves as the focal point for U.S. parties who are interested in the development, promulgation and use of globally-relevant standards for the electrotechnical industry. IEC currently has a total membership of 163 countries, including 60 “Full Members”, 22 “Associate Members” (limited voting rights), and 81 “Affiliate Members” (aimed at developing countries).

The U.S. also participates directly in international standards development through its membership in ITU. The ITU is a United Nations specialized agency for information and communication technology (“ICT”). ITU currently has a membership of 193 countries and over

700 private-sector entities and academic institutions. U.S. interests in ITU are represented by the U.S. Department of State, with broad participation from private-sector entities and other federal agencies, including the Federal Communications Commission and the U.S. Department of Commerce.⁷ ITU works alongside ISO and IEC as part of the World Standards Cooperation (“WSC”),⁸ which was established in 2001 in order to strengthen the voluntary consensus-based international standardization system, ensure transparency, and avoid duplication and overlap of technical work among the three organizations.

D. The International Standards Development Process

Through ANSI, the U.S. has immediate access to and influence in the ISO and IEC standards development processes at the technical level. ANSI actively participates in the technical programs of both the ISO and the IEC, and serves as the international “Secretariat” for many key ISO and IEC committees and subgroups. ISO and IEC have joint rules (“Directives”) for the development of international standards, with minor differences provided in Directive supplements for each organization. Although formally under a different set of rules, the same principles of international standards development are shared with the ITU. Thus, for illustration purposes, only the ISO process is discussed in this section.

1. Stages of ISO Standards Development

In ISO, the standards development process typically starts with a suggestion by a particular industry sector that an international standard be developed in a given area. If the proposal is approved by a majority of ISO members, a new committee is formed and ISO delegates the responsibility of managing the committee to one of the participating member countries. The ISO member body that assumes this role is called the “Secretariat” of the committee. The Secretariat is responsible for coordinating the work of the committee and ensuring the timely progression of the ISO deliverables under its auspices.

The ISO standards development processes involve a series of development stages, from consideration of proposals for new work, through drafting of standards in working groups, to national voting and commenting, to final formal confirmation, publication, and periodic review. Each stage presents ANSI and its stakeholders from the United States, as well as other ISO

⁷See http://www.itu.int/cgi-bin/htsh/mm/scripts/mm.list?_search=1&_map=&_search_countryid=244&_country=United%20States%20of%20America

⁸ See <http://www.iso.org/sites/WSC/about.html>.

members, with opportunities to influence the results of the ISO standards development process.⁹ Information shared in the development of ISO standards in ISO committees at any stage may be regarded as public and open information as there are no restrictions on those participating to keep it confidential, and indeed, as noted below, those participating are encouraged to seek broad input.

2. Technical Committees and Subcommittees

ISO standards are developed by technical committees and subcommittees.¹⁰ These technical committees and subcommittees may establish further substructures, such as working groups, comprised of national delegations of experts from the industrial, technical, and business sectors that have need for the standards and will implement them. The experts on these delegations may be joined by others with relevant knowledge, such as representatives of government agencies, testing laboratories, consumer associations, environmentalists, and academic institutions.

The national delegations of experts are appointed by the ISO national member body for the country concerned. In the case of the U.S., ANSI appoints the U.S. national delegation and in the case of Iran, for example, the Institute of Standards and Industrial Research of Iran (“ISIRI”) chooses the Iranian national delegation. These delegations to ISO and IEC technical committee and subcommittee meetings are required to represent national consensus positions. Experts serving on working groups are expected to have relevant knowledge and individual expertise, but they are also informed of their national body consensus positions. According to ISO rules, the national member body is expected to take account of the views of the range of parties interested in the standard under development and to present a consolidated, national consensus position to ISO. All actions taken at the technical committee or subcommittee level are actions taken by consensus among national delegations from the ISO members that choose to participate actively. Thus, no individual member exerts control or benefits in greater proportion to any other member.

3. Working Groups

Within ISO working groups, experts appointed by the ISO member from their country may initially share their expertise verbally or in writing in order to begin the work of drafting an ISO standard. This sharing of expertise is not effectuated through a direct transfer of knowledge between experts from one specific member body to another specific member body. Rather, the

⁹ ISO’s procedures also allow for “fast-tracked” standards, allowing standards organizations to submit an already-developed standard for approval as an ISO standard without having to subject that standard to every stage of ISO standards development.

¹⁰ See Exhibit D for a list of all ISO Technical Committees, also available at <http://www.iso.org/iso/en/stdsdevelopment/tc/tclist/TechnicalCommitteeList.TechnicalCommitteeList>

ISO process is an international collective and the information is thus shared with the ISO working group.

Information is shared within ISO working groups with the specific intention that it be used for the development of ISO standards, and it may be general technical knowledge or it may be information which is not public prior to being exchanged in the groups. Participating experts are expected to have any needed permission from their companies or organizations to share the latter type of information in the ISO standard development process. Information that is made available to participants in ISO working groups is not subject to any restrictions placed on its further dissemination.

ISO's rules encourage participating experts to share information and drafts with national mirror committees to assist in the consensus-building process. As detailed below, ANSI establishes U.S. "Technical Advisory Groups" ("TAGs"), comprised of U.S. parties interested in and affected by an ISO standard for the purpose of serving as the national mirror committee in relation to the ISO committee developing that standard. For its part, ISIRI establishes "National Committees" to serve as Iran's national mirror committees for these same purposes. In addition, individuals not party to the relevant working group may obtain relevant information, documents and drafts upon request to an ISO member, or ISO Central Secretariat in Geneva. The information provided may or may not be included in the final standard.

National persons or government officials from all member bodies, including Iran or other sanctioned countries, have the right to be named by their ISO member to be an expert to an ISO working group and have direct access to the information and documents shared within the working group. After the ISO working group has completed its drafting of the standard, the document will be referred to the technical committee or subcommittee for processing through formal voting stages to confirm consensus and approval.

4. Public Review

After the working group reaches an agreement on a draft standard, the draft standard is reviewed by the Technical Committee. During formal voting stages of ISO draft standards, the drafts are made widely and publicly available (Draft International Standard ("DIS") stage). At this stage, ISO members are expected to make the drafts available to anyone in their own country for review and comment, in order to comply with a World Trade Organization ("WTO") Technical Barriers to Trade ("TBT") Code of Good Standards Practice requirement for a 60-day public review period.¹¹ The draft standard is made available to all ISO members for a five-month voting period. If 67 percent of those committee member returning votes are in favor, and not more than 25 percent of all members' returning votes are negative, there will be the requisite

¹¹ http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm

consensus approval of the draft standard. All Full ISO or IEC members are welcome to vote at these stages regardless of whether they actively participated in the committee that developed the standard.

Upon publication, ISO and IEC standards are publicly available, are copyright protected and are generally sold by ISO, IEC, and member organizations. In addition, ISO standards may be “nationally adopted” by member bodies, meaning that member bodies are free to use ISO standards as their own on a national or regional basis.

5. ANSI-Accredited U.S. TAGs

As noted, ANSI’s mirror committees at ISO take the form of ANSI-accredited U.S. TAGs. These TAGs are populated by “U.S. National Interested Parties,” a term defined to mean stakeholders who are directly and materially affected by the relevant ISO standards activity and satisfy one of the following additional attributes: 1) an individual representing a corporation or an organization domiciled in the U.S. (including U.S. branch offices of foreign companies authorized to do business in one or more states as defined by the relevant state’s corporation law within the U.S.); 2) an individual representing a U.S. federal, state, or local government entity; or 3) a U.S. citizen or permanent resident. It is through the U.S. TAGs that government, industry, and other stakeholders work together to formulate U.S. positions and advance U.S. technology at ISO and IEC.

The primary purposes of each U.S. TAG are to:

- Develop and submit New Work Item Proposals (“NPs”) for development as international standards by ISO and IEC within the related ISO or IEC committee. If the proposed standard is to be based on an existing U.S. standard, copyright permission must be granted to ISO or IEC from the holder of the copyright of the U.S. standard.
- Develop national consensus U.S. positions and comments on the standards under development in the relevant ISO or IEC committee, or on NPs which may be submitted by other countries.
- Decide on the delegates and experts to represent the U.S. at the international meetings of the relevant ISO or IEC committee.
- Determine whether an ISO or IEC standard should be revised, reconfirmed, or withdrawn when it undergoes its periodic review to ensure its ongoing relevance.

All materially affected and interested parties have the right to participate on a U.S. TAG and there can be no undue financial barrier or membership requirement in another organization for such parties to participate. Most, if not all, U.S. TAGs are administered by organizations that are members of ANSI.

6. U.S. Government Participation in ISO Technical Work

The U.S. government participates in dozens of ISO and IEC technical committees through U.S. TAGs and its participation helps ensure that U.S. government interests are preserved. Exhibit E reflects the breadth of U.S. government involvement in ISO and IEC activities. Two examples illustrate this:

a. U.S. Department of Energy – ISO Technical Committee 242 (Energy Management)

In 2007, the U.S. Department of Energy (“DoE”), an ANSI member, expressed interest in a new field of ISO technical activity on energy management. ANSI worked with representatives of the DoE and other stakeholder interests to develop a proposal to ISO that resulted in the formation of ISO Technical Committee 242 (“TC 242”), *Energy Management*. ANSI serves as Secretariat of TC 242, serving jointly with the standards member body from Brazil. Since the formation of TC 242, the DoE has made substantial technical and financial contributions to the committee’s work developing international energy management standards.

Specifically, DoE staff participates in key leadership roles. For example, Roland Risser, the Program Manager, DoE’s Building Technologies Program, serves as the U.S. TAG Chairperson for the mirror committee and Aimee McKane, Senior Program Manager, Lawrence Berkeley National Laboratory’s Industrial Partnerships Program, serves as the U.S. TAG Vice Chairperson. Both individuals serve on the U.S. delegation to TC 242. Their contributions serve to ensure that the family of standards that will support ISO 50001: 2011 Energy Management Systems will be consistent with U.S. energy policy and strategy. There are 48 countries participating in the work of TC 242, including Iran.

b. U.S. Food and Drug Administration – ISO Technical Committee 34 Subcommittee 9 (Microbiology)

In 2011, the U.S. Food and Drug Administration (“FDA”), an ANSI member, expressed interest in participating in ISO TC 34/SC 9, relating to food microbiology. The FDA wanted to form an ANSI-accredited U.S TAG because ISO’s methods for food microbiology have become the official reference methods of the European Union and other countries around the world. As the U.S. had not previously participated in ISO TC 34/SC 9, FDA (and other U.S. affected organizations) had no official input regarding the adoption of microbiological testing methods for foods, even though national public health and trade interests were at stake. In order to remedy the situation, ANSI and the FDA supported the formation of a U.S. TAG, which allowed U.S. stakeholders to have a voice in standards developed under TC 34/SC 9. Creating the U.S. TAG

has permitted the U.S. government to advance its public health mission and ensure the accuracy and reliability of ISO reference methods, making imported foods safer for U.S. consumers.

The Secretariat of ISO TC 34 is AFNOR, France's member body to ISO. There are currently 32 participating countries in ISO TC 34/SC 9, including Iran.

7. Participation by U.S.-Sanctioned Countries

Iran, Cuba, North Korea, and Sudan are each represented in ISO/ IEC and Sudan, Cuba, and Iran are each represented in ITU. As noted, Iran participates in ISO and IEC through ISIRI, which is Iran's counterpart to ANSI. The following chart compares participation by the United States in ISO and IEC with participation by these other countries:

Country Name	ISO Member?	ISO Activity	IEC Member?	IEC Activity
United States	Yes, full and founding	623 (P and O)	Yes, full and founding	162 (P)
Iran	Yes, full	382 (P and O)	Yes, full	45 (P and O)
Cuba	Yes, full	202 (P and O)	Yes, associate	5 (P and O)
North Korea	Yes, full	95 (O)	No	-
Sudan	Yes, full	10 (O)	No	-

See Exhibit F for additional background information relating to participation by each noted country in the activities of ISO and IEC. There is significant overlap in the committees in which the United States participates (through ANSI) and the committees in which these other countries participate through their respective member bodies. For example, out of the 382 Committees in which ISIRI participates at ISO, ANSI also participates in 326 of them.

III. LEGAL ANALYSIS

As more fully explained below, ANSI believes that U.S. participation in international standards development does not violate the provisions of the ITR or any other U.S. sanctions program. Moreover, certain exemptions and authorizations allow for ANSI and its members, including the U.S. government, as well as technical experts, to fully participate in ISO standards-development activities in the above-described organizations (ISO, IEC and ITU). Finally, U.S. participation in international standards development is consistent with U.S. policy on publishing, international organizations, and the exchange of informational materials.

A. The ITR Prohibitions Do Not Apply to Standards-Setting Activities

The ITR broadly prohibit the exportation or reexportation of goods, technology, or services from the United States or by "United States persons" to Iran or the Government of Iran,

except as authorized by a general or specific license.¹² They also prohibit the “importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran.”¹³ These prohibitions apply to “United States persons,” who are defined as (a) entities organized under the laws of the United States, including foreign branches, (b) U.S. citizens and U.S. permanent resident aliens, and (c) persons or organizations physically in the United States.¹⁴

ANSI is an entity organized under the laws of the United States; thus, it is subject to the prohibitions of the ITR. In addition, ANSI's member organizations similarly qualify as entities organized under the laws of the United States and are therefore subject to the prohibitions of the ITR. The ISO standards-setting process, however, does not involve the export of goods, technology or services to or from Iran, whether directly or indirectly, and thus the ITR are not applicable to ANSI or its members in its work with ISO (and IEC, ITU).

As discussed above, ISO standards are designed to have general applicability, and information shared during the standards-setting process is shared for the purpose of developing international, rather than country-specific, standards. Although these standards, once developed, may subsequently be adopted by certain countries as their national standards, no information is shared during the standards-setting process with the specific intent of transferring that information to or from Iran. As indicated previously, the information that is shared within ISO working groups is shared collectively with all members of the working group. Thus, any collaboration that takes place among the members of the working group is done collectively, rather than with individual countries.

Moreover, the OFAC regulations do not prohibit U.S. entities from participating in international organizations in which an Iranian entity is a member, provided the U.S. person does not export any goods or services to Iran and participation in the organization does not confer any special privileges or services to the Iranian entity.¹⁵ Even if Iran, through ISIRI, is an active participant in the standards-setting process and ultimately votes on the proposed standard, there is no intention that the standard itself be developed specifically for the benefit of Iran.

Guidance issued by OFAC would support the understanding that the development of international, rather than country-specific standards, would not violate the prohibitions of the

¹² 31 C.F.R. §560.204.

¹³ *Id.* at §560.201.

¹⁴ *Id.* at §560.314.

¹⁵ In separate guidance, OFAC has explicitly permitted Iranian membership in a U.S.-based nonprofit, professional membership association. *See* Guidance on Professional Membership Association, November 3, 2003.

ITR.¹⁶ Section 560.204 indicates that the provision of goods, technology, or services is prohibited when a person in a third country knows or has reason to know that the goods, technology, or services are intended specifically for Iran. In the context of trans-shipments from the U.S. through a third country to Iran, OFAC has explained that “reason to know” can be established in a number of ways, including the following:

- 1) when the third party “deals exclusively or predominantly with Iran,” or
- 2) through a course of dealing, general knowledge of the industry, or working relationships between the parties it is evident that the goods will be sent to Iran.¹⁷

The ISO standards-setting process does not provide ANSI, its members, or any of the other ISO members with “reason to know” that information shared during the process is specifically intended for Iran. Even if an Iranian entity were participating in standards development at the micro-level, such as in technical committees, subcommittees, or working groups, there would be no reason for any of the other participants to know that their work to develop an international standard would be destined specifically for Iran.¹⁸

Moreover, the sharing of technical information at the working group level does not rise to the level of an export to Iran, even if a member from Iran is participating in the working group. The technical information is shared with the working group as a whole, rather than with individual members. The information is shared for the purpose of developing an international standard, which ultimately will be shared with all ISO members, assuming the standard receives approval. Iran has no power at the working group level to control how that information is disseminated.

Because the ISO standards-setting process does not involve the export of goods, technology, or services to Iran, the ITR prohibitions do not apply to ANSI, its members, or technical experts that are involved in ISO standards-setting activities (or IEC and ITU).

B. The Provisions of the Berman Amendment Authorize ANSI Participation in the Standards-Setting Process

¹⁶ Guidance on Transshipments to Iran, July 22, 2002.

¹⁷ *Id.*

¹⁸ Additional guidance by OFAC confirms that in order for the ITR to apply, the provision of any goods or services by a U.S. person must be for the predominant benefit of Iran. For example, in Guidance on Sponsorship of Certain Conferences, August 18, 2000, OFAC prohibited a U.S. oil company from financing conferences jointly organized by an entity of the Government of Iran and attended by Iranian government representatives. Both conferences were to address issues pertaining specifically to the Iranian petroleum industry, as opposed to the global petroleum industry at large.

In 1988, *via* the Berman Amendment,¹⁹ and again in 1994, *via* the Free Trade in Ideas Amendment,²⁰ Congress amended the International Emergency Economic Powers Act (“IEEPA”), which is the statute that provides the underlying authority for the ITR, to exclude from the President’s powers to impose economic sanctions the authority to regulate or prohibit trade in informational materials. Accordingly, the ITR exempt “information and informational materials” from the prohibitions on exportation and reexportation of technology and services and importation of services. The ITR also were later amended to exclude from the prohibitions of the ITR activities related to publishing.

With respect to “information and informational materials,” the ITR provide the following:

The importation from any country and the exportation to any country of information and informational materials . . . whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of [the ITR].²¹

The regulations define the term “information and informational materials” to include “[p]ublications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.”²² To qualify as “information and informational materials,” the materials (1) must be fully created and in existence at the date of the transactions, (2) cannot be substantively or artistically altered or enhanced, and (3) cannot constitute the provision of marketing or business consulting services.²³

Although the illustrative list of “information and informational” materials does not explicitly list industry consensus standards, the legislative history of the Berman and Free Trade in Ideas Amendments indicate that Congress intended for the exemption to be broadly construed so that U.S. economic sanctions do not hamper the exchange of ideas and information.

¹⁹ Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988).

²⁰ Pub. L. No. 103-236, Sec. 525.

²¹ 31 C.F.R. §560.210.

²² The statutory language in IEEPA states that information and informational materials, “including but not limited to” the materials OFAC identifies in its regulations, are excluded from regulation by the President. Thus, the statute makes clear that the type of information listed by OFAC in the definition of information and informational materials is meant to be illustrative, not exhaustive. *See* 50 U.S.C. §1702(b)(3).

²³ 31 C.F.R. § 560.210.

Specifically, the legislative history of the Berman Amendment states that the amendment “clarifies that . . . the International Emergency Economic Powers Act do[es] not authorize regulations on the export or import of informational material not otherwise controlled under the Export Administration Act.” H.R. Conf. Rep. No. 100-576, at 839. The text of the Free Trade in Ideas Amendment states “[i]t is the sense of the Congress that the President should not restrict travel or exchanges for informational, educational, religious, cultural, or humanitarian purposes or for public performances or exhibitions, between the United States and any other country.” Pub. L. No. 103-482, Sec. 525(a). The legislative history further explains the following:

[The Berman Amendment] established that no embargo may prohibit or restrict directly or indirectly the import or export of information that is protected under the First Amendment to the U.S. Constitution. The language was explicitly intended, by including the words “directly or indirectly,” to have a broad scope. However, the Treasury Department has narrowly and restrictively interpreted the language in ways not originally intended. The present amendment is only intended to address some of those restrictive interpretations, for example limits on the type of information that is protected or on the medium or method of transmitting the information.

The committee of conference intends these amendments to facilitate transactions and activities incident to the flow of information and informational materials without regard to the type of information, its format, or means of transmission.

H.R. Conf. Rep. No. 103-482, 1994 U.S.C.C.A.N. 398, 483. Thus, given Congress’ intent to “not limit the type of information that is protected” or “the medium or method of transmitting the information,” it is reasonable to conclude that industry consensus standards, and the development of such standards, would fall under the intended information and informational materials exemption in the statute.

Although the ITR require that “informational materials” be fully created and in existence at the time of the transactions, new international standards may be derived from existing national standards of the participating countries, or are based on technical information already in existence and supplied by the entities participating in the technical committees or working groups. As explained previously, ANSI promotes the use of already existing U.S. standards for adoption internationally. ANSI also accredits U.S. Technical Advisory Groups whose primary purpose is to develop and transmit, via ANSI, U.S. positions on international standards-setting

activities. In many instances, existing U.S. standards are presented to the ISO through ANSI, where they are adopted in whole or in part as international standards.

Technical information shared at the working group level is similarly fully created and in existence at the time it is shared within the group. This information is made available to all participants in the ISO working groups without restrictions placed on its further dissemination. Even individuals who are not part of the individual working groups are able to obtain relevant information, documents and drafts upon request. Although this technical information may form the basis for the international standard, it may or may not be included in the final standard. Thus, the new international standards may be derived from existing national standards, as well as existing technical information already developed by the participating members of the ISO technical committees or working groups. Because of this, ISO standards-setting activities intended to promulgate these standards as international standards fall within the informational materials exemption contemplated by the Berman amendment.

C. The General License for Publishing Activities Authorizes ANSI Participation in the Standards-Setting Process

In 2007, OFAC issued amendments to the ITR that explicitly authorize all persons subject to U.S. jurisdiction to engage in activities related to publishing:

To the extent that such activities are not exempt from this part, and subject to the restrictions set forth . . . [below], U.S. persons are authorized to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers in paper or electronic format (collectively, “written publications”). This section does not apply if the parties to the transactions described in this paragraph include the Government of Iran. . . . For the purposes of this section, the term “Government of Iran” does not include any academic and research institutions and their personnel. . . .²⁴

Specifically allowed under this provision is: “[c]ollaborating on the creation and enhancement of written publications”; “[a]ugmenting written publications through the addition of items such as photographs, artwork, translation, explanatory text”; and [s]ubstantive editing of written publications.”²⁵ This general license therefore applies to all activity undertaken by ISO as a publisher of international standards.

²⁴ 31 C.F.R. §560.538.

²⁵ 31 C.F.R. §560.538(a)(1).

Although this general license does not apply where one of the parties to the transaction is the “Government of Iran,” the license specifically excludes academic and research institutions from the definition of the term “Government of Iran.” As mentioned previously, ISIRI was created under the Iranian Department of Trade, but ISIRI does not consider itself to be a government organization. Moreover, a review of ISIRI’s charter and activities suggests that it qualifies as a research institution. Specifically, ISIRI is tasked with conducting research aimed at standardization, determining and formulating national standards, and testing samples for compliance with applicable standards.²⁶ As a result, even with ISIRI participation in ISO standards-setting activities, the general license for publishing activities appears to authorize ANSI, its members, and technical experts’ participation in ISO standards-setting activities.

D. U.S. Participation in International Standards Development is a Compelling Policy Objective

The expansion of global trade is increasingly important to the growth of the U.S. economy, to productivity and innovation, and to the continued revitalization of the American workforce. Without perspective on the international standardization landscape, our nation’s products, services, and personnel cannot hope to be competitive in the global marketplace. As the Obama Administration recently confirmed, the “vibrancy and effectiveness of the U.S. standards system” is a key to global competitiveness and growth as well as a means to maximize agency resources effectively.²⁷

This is especially true in emerging technology areas, such as nanotechnology, smart grid, information and communication technologies, cyber security, and electric vehicles. Developing and developed economies alike are playing an increasingly significant role in standardization activities. It is vital for the U.S. to maintain its key role in developing globally relevant, responsive standards. Therefore, we must be at the table where international standards are being set.

As the U.S. representative to ISO and IEC, ANSI is uniquely able to monitor the activities and priorities of its competitors and trade partners. From proposed new areas of technical activity to policy decision at the highest level of ISO and IEC, the responsibility to coordinate and disseminate this important strategic information rests with ANSI through close coordination with the SDOs, government, consumers, and industry that constitute its

²⁶ See <http://std.isiri.org/EN/Duties&Responsibilities.htm>.

²⁷ "Principles for Federal Engagement in Standards Activities to Address National Priorities" (M-12-08); January 17, 2012, memorandum issued by the Office of Management and Budget, U.S. Trade Representative, and Office of Science and Technology Policy.

membership. In this capacity, ANSI not only secures a seat at the table for U.S. exports, but also is in the unique position to provide information about what our competitors and trade partners around the world are doing. In addition, ANSI can provide a strategic link to those U.S.-domiciled SDOs developing international standards that support global competitiveness. Unilateral decisions regarding U.S. participation in international standardization would have dramatic consequences, especially when it comes to the continued success of our products, services, and workforce on the global state.

IV. CONCLUSION

Currently, the U.S. is one of the most active participants at the international standardization table – a level of engagement and interaction that gives our nation a competitive advantage in the global marketplace. Any decisions or actions that would hinder U.S. participation in these activities would compromise this nation's ability to compete worldwide and compromise the ability of the U.S. government to protect health, safety, and the environment.

Overall, the participation by ANSI, its members, technical experts, and all other participants in the international standards-setting process is consistent with the provisions of the ITR and other U.S. embargo programs. This participation is also supported by U.S. policy regarding the promulgation and adoption of international standards, which cannot be undertaken without the full and active participation of all members, including embargoed countries.

Thank you for your consideration of this request. If you have additional questions or need additional information, please do not hesitate to contact the undersigned.

Sincerely yours,



Mark Wasden
Counsel to ANSI

Attachments