030331-FACRL-IA-02
March 31, 2003

FAC No.

[text deleted] Esquire
[text deleted]
[text deleted]
Washington, DC [text deleted]

Dear Mr. [text deleted]:

This responds to your letters of [text deleted] on behalf of [text deleted] requesting that the Office of Foreign Assets Control ("OFAC") reconsider the interpretation stated in our [text deleted] letter to the firm of [text deleted], *i.e.*, that the proposed export of [text deleted] from the United States to [text deleted] for reexport to Iran would be prohibited by § 560.204 of the Iranian Transactions Regulations, 31 C.F.R. Part 560 (the "ITR"), and that the proposed transactions do not meet the general license criteria set forth in ITR § 560.511. In the alternative, you request a specific license authorizing the transactions described in your letters. According to your [text deleted] letter, the [text deleted] would be exported from the United States to [text deleted] for reexport to Iran, where the [text deleted] would be connected to [text deleted] machines manufactured by [text deleted], an [text deleted] company under contract with [text deleted] Iranian companies to construct [text deleted] in Iran. You state in your [text deleted] letter that the value of the [text deleted] represents [text deleted] of the cost of the [text deleted].

As stated in our [text deleted] letter, ITR § 560.511 provides, by general license, an "insubstantial United States content" exception to the prohibitions in § 560.204, in cases where all of the conditions set forth therein are met. Section 560.511 applies to the exportation or supply of goods or technology from the United States or by U.S. persons, wherever located, for substantial transformation or incorporation into a foreign-made end product in a country other than the United States or Iran. You assert that the proposed transactions meet the criteria for the general license set forth in ITR § 560.511 because the [text deleted] will be incorporated into a foreign-made end product and their contribution is *de minimis*.

First, with respect to whether the U.S.-origin content of the [text deleted] meets the *de minimis* requirements, it does appear from the statements made in your [text deleted] letter and attached affidavit from [text deleted] that the value of the [text deleted] relative to the value of the [text deleted] machines may be less than 10%. You state, however, that your understanding is that the [text deleted] are the only U.S.-origin component in the [text deleted]. The proper application of ITR § 560.511 requires more than a party's understanding with respect to the existence of other U.S.-origin components in a complex product. Section 560.511(a)(2)(iv) requires that in cases involving a complex product made of a combination of goods (including software) and technology, the aggregate value of all U.S.-origin goods (including software) and technology contained in the foreign-made end product is less than 10% of the total value of the

foreign-made product. Furthermore, the contractual price for the [text deleted] is quoted as including [text deleted]. No value of the foreign-made end product alone is provided. Therefore, we are unable to determine whether the value test is in fact met in this case. In any event, as discussed below, satisfaction of the *de minimis* requirement would not be dispositive of whether the transaction is licensed under § 560.511.

Second, you contend that the [text deleted] are 'incorporated' into the [text deleted] machines. You support this contention by claiming that the [text deleted], including the [text deleted], are single, integrated machines as imported into Iran, notwithstanding that each machine cannot be shipped in a single conveyance. You further state that the U.S. Commerce Department, Bureau of Industry and Security ("BIS"), in their [text deleted] letter submitted with your application, reached the same conclusion on incorporation with respect to the proposed transaction; that a rule proposed by the U.S. Customs Service ("Customs") to treat multiple shipments of certain merchandise as a single entry is "instructive" with respect to the issue of incorporation; and that the Harmonized Tariff Schedule of the United States classifies an [text deleted] as a discrete piece of equipment.

We disagree with your contention that BIS concluded in their [text deleted] letter that the [text deleted] are incorporated into the [text deleted]. In that letter, BIS presumes that the U.S.-origin item in question is incorporated into a product manufactured in a third country and subsequently exported to Iran in applying the Export Administration Regulations ("EAR") *de minimis* rule to the reexport transaction. No guidance is given as to what constitutes "incorporated" for purposes of determining whether the reexport is subject to the EAR. With respect to the proposed Customs rule, OFAC operates under different statutes from the Customs Service (and BIS), and the meaning of "incorporation" for Customs' (and BIS's) purposes may differ from that applied to export or reexport transactions subject to OFAC jurisdiction. The same principle applies to an item's tariff classification.

We have evaluated the information you have provided and have concluded that the interconnectedness of the [text deleted] to the [text deleted] would not constitute the degree of assembly or manipulation of the U.S.-origin good required to fit within the incorporation standard of § 560.511, even if the [text deleted] were to be fully assembled in [text deleted] before being reexported to Iran.

In sum, for the reasons stated herein and in our letter of [text deleted], we hereby confirm our conclusion that the [text deleted] are not incorporated into the [text deleted] for purposes of the § 560.511 general license, and it would be contrary to current U.S. Government policy to issue a specific license authorizing the proposed transactions. Accordingly, your license request is hereby denied.

Sincerely,

Richard Newcomb

R. Richard Newcomb
Director
Office of Foreign Assets Control