

# EP

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EU 2022 EXPORT CONTROL FORUM

## From Ukraine, to Emerging Tech, to New Space

*A review of hot topics, and what to expect in 2024*

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2022 EXPORT CONTROL FORUM

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**ON THE COVER:** Airmen and Marines load 155 mm M777 howitzers onto a C-17 at March Air Reserve Base, Calif. The weapons are a part of the assistance the U.S. is providing for wartime operations in Eastern Europe. (U.S. AIR FORCE PHOTO BY STAFF SGT. SHAWN WHITE)

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## Highlights from the 2022 Export Control Forum

**T**he 2022 Export Control Forum, organized by the European Commission and the Czech Presidency of the Council, took place on Dec. 6, 2022, with

participants representing Member States, industry and research organizations, as well as partners and allies.

Panelists discussed latest developments in the area of export controls as well as challenges within the current geopolitical framework and the role of multilateral export control regimes.

The Forum included a discussion between the EU and some of its main partners in the coalition

on sanctions — US, UK and Japan — in a show of cooperation against Russia’s war of aggression against Ukraine. **Assistant Secretary of Commerce Thea Kendler** represented the Bureau of Industry and Security in a panel, delivering prepared

remarks. Ukraine also joined the Forum with the participation of Deputy Minister of Economy, Ihor Fomenko, who welcomed the EU’s proactive role in helping Ukraine and shared a frontline view of the war.

The Export Control Forum closed with a discussion on transatlantic cooperation, where the EU and the US recognized work under the Trade and Technology Council as instrumental to address challenges on export controls.



**Peter Sandler, Director Enforcement, DG Trade** *opened the conference:*

One year on, the implementation of the new regulation (**Regulation 2021/821**) has gained new urgency from the situation in Ukraine. For example, we’re seeing very clearly now the added value that it’s able to bring as a catalyst for exchanging information amongst Member States, but also for working with partners around the

world. And the Commission has been working hard on a number of fronts to make a reality of the new regulation, even if the demands on resources that the conflict has created inside the European Union means that we’re not as far in some areas as we might have wanted to be.

Work on enforcement remains absolutely crucial to ensure the effectiveness of the export controls that we put in place, and there I

welcomed the very good work that has been done together with the Member States in in something that we call the *enforcement coordination mechanism*, which is a framework which ensures cooperation and information exchange, best practices and information about what's actually happening when export controls are breached and possible infringements, and how those are followed up between customs enforcement and licensing authorities.

**Bernd Lange, Chair INTA Cttee, European parliament.**

The dual use issue is now on top of the agenda. For a long time it was more or less in the bubble of the trade people, but now regarding some latest development, you have really export control in the center of politics.

So it's clear. We saw a lot of various spyware cases. We had a discussion about mass surveillance, emotional recognition, face recognition in some countries. And then as Peter mentioned, of course the sanctions related to the Russian invasion in Ukraine. So a lot of items are now really based on the new dual use regulation and their implementation.

Specifically, I welcome the **setting up of the emerging technology expert group**. This work is really needed and we need also quite soon, concrete results, the guidelines of cyber surveillance for Member States and companies. It is under our consultation quite soon and this is really crucial for the whole exercise

And to **stronger reporting and monitoring for the Member States** of the and the collaboration to get a better picture of the cyber surveillance is really crucial, and also here we are looking for the guidelines, so that we can go here as well in the right direction.

Thirdly, we want to have also **further international cooperation**, the TTC, the trade and Technology Council with the United States?

It's an important part of the trade of the European Union. **Two percent of all EU exports, around about €40 billion in 2021, are linked to dual use items**. So it's quite relevant chair of EU trade. And this leads also to the question of capacity in control. Sometimes I feel we are really. not only one year behind, sometimes even more so. Which mechanism can really improve the dynamic reaction of us?

And lastly, **what about the Wassenaar agreement**

**arrangement?** Is this still a valid tool knowing that Russia is also part of this, or should we go ahead with an own European instrument, perhaps in cooperation with other like-minded countries?

**Lucaš Prokeš, Acting Deputy Minister Industry and Trade, Czech Republic.**

This year, the overall frame for discussion is the export control in times of conflict. After two years of restrictions caused by the COVID-19 pandemic, all EU countries and their allies have adopted measures in response to Russia's attack on Ukraine sovereignty this year.

The combination of the above-mentioned factors has led to the disruption of global supply chains, a sharp increase in energy prices and a subsequent rise in inflation, with consequent negative impacts on economic operators and U exporters. In this context, it is important to reinforce the cooperation among EU Member States, as well as without third partner countries.

It might seem paradox, but the broadest and deepest reflection on EU security so far is responsive in nature and was driven by events, which are obviously the Russian aggression against Ukraine. The war gave EU a choice: either to accept a blatant violation of all principles that we stand for and to watch the international order sinking into a brute force struggle, or to close ranks and confront this challenge together with our partners. We chose to defend our values.

**Export Controls and Emerging Technologies**

**Anna Maj Hultgård, Swedish Ambassador at Large and incoming Chair of the EU Council's Dual-Use working party, introduced a panel on Emerging Technologies:**

"The last decades, export controls have been relatively geopolitically neutral tools aimed at preventing WMD proliferation and preventing WMD terrorism. Following Russia's war of aggression against Ukraine, it had an instant catalyzing effect on the evolution of export controls.

"It has been mentioned it's nothing new, but emerging technologies and the growing inventory of the dual use application is increasingly challenging policymakers. How to balance technological development, economic competitiveness and national security priorities?"

# Wassenaar Update

**Jeffrey Arnold, Senior Officer, Policy, Wassenaar Arrangement Secretariat:**

As the arrangement concluded its plenary meeting just last week, this morning we've heard the question posed whether the multilateral export control regimes can address the challenges of emerging technologies in the current environment. And I think the Wassenaar arrangement has shown in the recent past and especially in the last year, its ability to achieve meaningful and tangible outcomes even in the present very challenging environment. So I think that it's fair to say that the answer is yes, we can. Nevertheless, the current situation requires more time and effort by the arrangements members than ever before. The participating states have continued to invest that time and effort in 2022, despite increasing and unexpected demands on their experts and policy officials, due to the environment and the conflicts that have broken out. But the investment of this time and effort has borne fruit.

**In the Wassenaar arrangement context, we have been able to reach consensus on several significant decisions despite the significant technical, geopolitical and economic challenges.** Beyond the active conflicts of today's geopolitical context, the loss of most of the last two years to pandemic related disruptions would have made 2022 somewhat of a catch up year. In any case, the arrangement was able to resume its full work program of in person meetings in 2022.

**Addressing emerging technologies of security concern was a continuing focus in both the technical and the policy aspects of the arrangements work throughout the year.** Those of you who have already reviewed the arrangements summary of changes to the WA control list document, as well as the new version of the list themselves, both of which were posted to our website immediately following the plenary meeting, will have seen that the former document is not as lengthy as it

had been in pre COVID years.

During the 2022 list review process, Wassenaar arrangement experts considered 256 documents relating to over 100 national proposals, counter proposals and technical working group papers. While this was a fairly typical annual workload, it was certainly not a typical year.

**Agreement was reached on a relatively modest 23% of proposals.** Many of these agreed proposals were editorial in nature, improving the clarity and consistency of the lists. This figure is admittedly low in comparison with pre COVID years, but should still be considered a meaningful outcome given the complexity of the topics, the different technical approaches taken by participating states regarding emerging technologies and the strategic situation facing the participating states.

**For example, agreements were reached on two new dual use controls, one for permanent magnet submarine propulsion motors, including rim driven motors. And another on technology for gas turbine engines which would enable supersonic flight.** In addition to these new controls, validity notes, which are essentially expiration dates, on lawful interception on digital investigation tools and on suborbital spacecraft were removed, confirming the relevance of these controls, which were introduced in 2019 and therefore making them permanent.

There was also a full program of standard setting and other policy related work over the last year. Information exchange on national licensing and enforcement offices was resumed after a two-year gap. **These exchanges included discussion of measures to strengthen outreach to industry, academia and the research community, with a particular emphasis on applying effective controls to intangible transfers of technology.**

Exchanges also continued on many other topics, including, for example, post shipment cooperation between exporting and importing

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*Agreements were reached on two new dual use controls, one for permanent magnet submarine propulsion motors, including rim driven motors, and another on technology for gas turbine engines which would enable supersonic flight.*

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states. The arrangement continued to consider proposals for new best practice guidelines, as well as its review of several existing public documents. As a result of this review, **participating states agreed to update the best practices regarding very sensitive list items for the first time since it was adopted in 2000, as well as the end user assurances consolidated indicative list.** Both of these are also up now available on the Wassenaar

Arrangement website.

Along with all other best practice guidelines, sharing the results of the arrangements work with our outreach partner countries continues to be a priority. **In June 2023, the arrangement is planning another enhanced technical briefing for some 45 outreach partner countries.** This briefing will provide an opportunity to discuss the latest changes to the control list and to exchange experiences on export control implementation.

Before I close, I would like to note that **India, Argentina and Mexico will be rotating into roles as chairs of WA bodies as of the 1st of January.** And lastly, as many of you are aware, **Ambassador Philip Griffiths's tenure as head of Secretariat will also end on the 1st of January.** After 10 1/2 years of stewardship, he's been a steady hand and will be greatly missed by myself and the rest of his team. **He will be succeeded by Ambassador Gergy Molnar of Hungary,** whose appointment was agreed at last week's plenary meeting.

## Space, the New Frontier

**Kolja Brockmann of the Stockholm International Peace Research Institute (SIPRI)** *presented findings from SIPRI's October report **New Space and Commercialization of the Space Industry — Challenges for the MTCR.***

The New Space industry is an example of recent dynamics that bring together many of the challenges linked to emerging technologies, but also to those raised by the emergence of new actors and business practices in a sector where the transfer of dual use goods, software and technology are extremely prevalent.

What is new space? There is no clear definition, but the term "new space" broadly describes the rise of innovative approaches and commercialization in the space industry. So essentially new space refers to new entrepreneurial businesses or startups in the global space sector, as well as the shifting dynamics of the sectors commercialization and the new business practices that come with it that are embraced by companies in new space.

So for example, new space companies often adopt the lean organizational structures and flat hierarchies that we associate with startups. They're much more reliant also on private investment and venture capital, rather than being tied to government funding through national space programs, as was often the case in the past in the space industry.

Who is part of this new space industry and how does it really differ? Well, there is no

clear demarcation of who is part of new space.

In a way, it is everyone who identifies with it. In our research we focused on these new entrepreneurial space companies and startups, of all sizes, likely to identify with new space.

**Many of them have had limited exposure, awareness and experience with export controls,** which makes this also a topic that is interesting in this context.

New space is certainly driving the diversification of actors and activities in the global space industry, and there's a significant increase of private actors in the space sector now, including both large corporations and small startups. The number of states with space, ambitions and indigenous capability has also risen. And with a wide variety of new space applications, the types of activity have also transformed and range from launching and maintaining mega constellation of micro and nano satellites, on orbit servicing, to visions for the exploration of exploitation of space resources, and space tourism.

**So why should we be concerned about new space from an export control perspective?** Well, the dual use dilemma concerning space launch vehicles and related to use equipment is not new, but the trends I just described mean that we will likely see many more and more diverse. actors gaining access to dual use missile technology, satellite technology, and

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pursuing its development outside of the environment of more state controlled national space programs.

**New space companies today already develop, test, produce, use and market a range of relevant dual use technologies including micro launchers.** Some of these smaller micro launchers increasingly resemble medium or intermediate range ballistic missiles because certain characteristics that previously were more strongly associated with missiles, like rapid deployability, have now become desirable for certain commercial applications.

For example, quickly replacing satellites from a constellation that are offered as a commercial service. If this continues as a trend, it could

also mean increasing commercial availability of technology and know-how related to rockets and missiles with these characteristics to an extent that we haven't seen before.

**The other factor here is many new space companies are very innovative and they embrace emerging technologies and novel applications of technologies.** For example, developing their own additive manufacturing machines to produce various components for their launch vehicles and including rocket engine components. So we're seeing the emerging technologies factor coming in here very strongly as well.

We definitely need to consider proliferation risks and scenarios in this particular emerging context with the growth of commercial space industries in more and

more states. We need to look at the availability of know-how and missile related items on commercial markets. This could likely result in new opportunities for certain actors for illicit procurement. And it could also increase the risk of diversion of dual use technology.

Intangible transfers of technology is a really important part here as well, because exchanging information is a big part of this as well, and the embrace of the digitization here is also particularly high in in new space, there's a lot of data. In general, if you think about long space launches that have to take part at spaceports in other countries for example.

There are two areas that are particularly important and worth highlighting in this case. One is **awareness raising and engagement with the new space industry.** And I think this is an area where a lot of work needs to be done. States have started to do this actively, but there's a lot to be desired. We've engaged with a whole number of companies and startups in in this area as part of our project, and there are still certain deficiencies when it comes to to awareness and there's a lot of strengthening of compliance more generally that is required

Another area that I mention is the **investment and financing models that we are seeing here. And this is something where we need to think slightly beyond export controls.** So the EU fortunately has a now an FDI screening regulation and this is something that is very important in this context because with the very competitive environment that we're seeing in in this sector, there is also certain vulnerabilities and there's need to rely on external funding and with that often transfers of technology go hand in hand.



Earth, as seen from the Artemis I mission's Orion spacecraft in Nov. 2022.

SOURCE: NASA



# EU Export Controls — State of Play

**Stephane Chardon, Head of Sector Trade & Security, EC Director General Trade**, gave seminar attendees an overview of recent developments and trends in EU export control framework.

This year we have adopted the delegated regulation [C\(2022\)7424](#) on 21st of October. This is a public document, it's available and I think it's important that exporters start to prepare to adjust the compliance management systems in light of this new this new list. The new list will enter into force early January 2023

We are considering an exceptional update of the list in light of the decision of the Australia Group to incorporate new technologies, in particular biotechnologies adopted by the plenary meeting of the Australia Group back in July 2022 and which have just been published by the Australia Group.

As you know, we have a system which combines the European regulation as the main foundation on which the system is built, but this is supplemented and complemented by a number of national measures issued by the Member States.

We try to ensure transparency on these measures so that you have the full picture of applicable export controls for your company. In the Official Journal there was a [publication](#), on the 8th of February of this year, where you can see the **whole list of national measures that also apply to exporters**.

A third regular element updates in our European export control world is the publication of an annual report. We have published [this year's report](#) on 1st of September. It is available on our on our web page and this really covers the whole spectrum of the activities of European Export control authorities.

There has been also quite some work on the cyber surveillance technology front. Last year we reactivated the Surveillance Technology Expert Group. Experts from the Member States have been invited to exchange information on cyber surveillance technologies in the course of this year. We still have a few things to work on with respect to the cyber guidelines, but **the plan is that we will issue a draft guidelines for the controls**

**of non-listed cyber service technologies in the first quarter of 2023, so early next year.**

Roughly a year ago we set up formally an emerging technology expert group. This ETAG, as it is called, started operations this year — information exchanges between experts from Member States on risk assessments, for instance, for emerging technologies, and also discussions regarding some specific technologies, such as quantum computers.

We are certainly inviting also stakeholders to provide inputs into this work and to signal to us issues that they would like to see addressed at the EU level when it comes to emerging technology. So there is a there is an open door. We are very conscious, in this area, perhaps even more than in other areas, the contribution from industry and and indeed also from research organizations is crucial for us to develop a good understanding and form.

**We continue to develop the Dual Use electronic System (DUeS)**, connecting the Member States and the Commission. This year we introduced new functionalities and importantly functionalities to support information exchange in relation to the Russia sanctions. This is the primary tool that supports information exchange within the EU.

**We are developing an electronic licensing system** which is now deployed in three Member States, and and Slovenia very soon will be the 4th Member State. This has attracted the attention of some of our partners, for instance in the Western Balkans, and that we are starting to discuss the possibility of deploying the same tool in some of our partner countries. This is obviously important for you as industry because this is going to be the interface between the export control competent authorities and exporters.

**A third work strand is what we call the “eLicensing Bridge,”** to connect the electronic licensing systems of the Member States with the customs system so that we have a real time communication between the customs and the competent authorities. This has really the potential to greatly enhance the efficiency, but also the effectiveness of our of our controls.



Raimondo says clean energy, biotech and computing technology are areas in which the U.S. must protect its advantage.

CREATIVE COMMONS IMAGES, FROM LEFT: LINNAEA MALLETTE, ВИТАЛИЙ СМОЛЫГИН, FLASH ALEXANDER

## Raimondo Calls for Strategic Export Controls in MIT Speech

**THE UNITED STATES NEEDS** to be more strategic and less reactive in its use of export controls, Commerce Secretary Gina Raimondo said yesterday in a major speech on US-China relations. “For too long, US export controls strategy was reactive,” she told the audience at an event sponsored by the Massachusetts Institute of

Technology marking 50 years since China’s opening to the West.

“We need to be more strategic and more targeted, with a laser focus always on protecting our national security,” she continued.

“The United States must protect its advantage and take the lead against China in three advanced technologies sectors — computing-related technologies, including microelectronics, quantum information systems and artificial intelligence; second, biotechnologies and biomanufacturing and third, clean energy technologies.

“We will continue to take action to protect our advantage and maintain as large a lead as possible in these foundational technologies,” Ms. Raimondo said. “We are moving aggressively to reform our current capabilities and create new ones

to accomplish this goal. Together with the private sector, we are going to bolster our system of export controls, enhance our investment screening regimes, strengthen our supply chain resiliency, and develop innovative solutions to counter China’s economic coercion and human rights abuses.”

### Challenge to National Security

Beijing poses a set of growing challenges to US national security by deploying its military in ways that undermine security and the free flow of global trade, she said. China “dominates the manufacturing of many critical materials and goods and has exploited other economies’ dependence on its market for political coercion. It also seeks to dominate certain advanced technology sectors, while



Secretary of Commerce  
Gina Raimondo

using many of those technologies to advance its military modernization and undermine fundamental human rights at home and abroad.”

The Administration is countering China by “redoubling our efforts to safeguard our core technologies by strategically and continuously updating our export control policies and investment screening frameworks,” the Commerce chief stated. She pointed to recent new export controls aimed at limiting China’s ability to acquire US advanced technology and new guidance to the Committee on Foreign Investment in the United States to direct a focus on certain critical new risk factors when evaluating potential inbound investment, such as technological leadership, supply chain dependency and foreign company access to personal data.

*Ms. Raimondo stressed that the United States is not seeking an economic decoupling from China, which is its third largest export market.*

### Not Seeking Decoupling

At the same time, Ms. Raimondo stressed that the United States is not seeking an economic decoupling from China, which is its third largest export market. Instead, Washington wants to make the bilateral relationship right “by protecting and also actively promoting our economic interests.”

The Administration wants “to promote trade and investment in areas that do not threaten our core economic and national security interests or human rights values,” she said. “Annual trade between our two countries has grown exponentially from \$4.7 million in 1972 to more than \$750 billion today. This trade provides revenues for American companies, jobs for American workers, and connectivity with the Chinese people.”

## CSIS Report Calls for Beefier BIS

“MODERN, DATA-DRIVEN DIGITAL technologies utilizing AI and machine learning can and should play an integral role in enhancing BIS export control enforcement capabilities,” according to a recent report from the Center for Strategic and International Studies. But it’s going to cost.

““It is premature for the United States to suggest that its recent export controls on Russia will achieve its intended objectives without additional resources for enforcement. While there is no realistic way to reliably measure how much Russia and China are increasing their investment in export control evasion activity, there

is every reason to suspect that both countries are massively increasing such investments,” say the authors, noting real BIS funding has not increased in a decade.

“Current and former BIS staff state that the major government databases that they use to monitor trade flows and identify suspicious activity can perform only a fraction of the needed functionality and crash routinely. Instead of knowledge graph databases and machine learning—capabilities that have revolutionized both the private sector and other federal agencies with similar missions—BIS analysts perform their work primarily using Google searches and Microsoft Excel.

“BIS’s greatest deficiencies

are arguably in taking advantage of open-source data and data that is available for purchase from the private sector.

“CSIS analysis of relevant comparable data-driven digital technology modernization efforts by other U.S. government agencies with similar mission requirements suggests that this could be accomplished with an additional appropriation for technology modernization at BIS of roughly \$25 million annually for five years.

“In addition to the \$25 million for technology modernization and analyst staff, Congress should provide \$18.4 million in annual funding for additional enforcement agents. The current criminal

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investigator cadre is spread too thin to counter threats to U.S. national security. It is routine for a single BIS ECO to be responsible for working with multiple foreign countries or entire regions,” the report recommends. Assistant Secretary Alan Estevez compared the sums required to “a helicopter,” though noting he was still operating under a continuing resolution to last year’s budget.

**This would be at odds at odds with incoming House Leadership’s determination to gut BIS.** Rep. Jim Banks (R-Indiana), chair of the Republican Study Committee is sponsor of H.R.9241 - Prioritizing National Security in Export Controls Act of 2022, which proposes slashing BIS funding, blacklisting senior personnel, and moving responsibility for export licensing to the Department of Defense.

## State Inks Quantum Tech Collaboration

**STATE’S BUREAU OF ARMS CONTROL**, Verification and Compliance has signed a Memorandum of Understanding to engage in a public-private partnership with the Quantum Technology Center (QTC) at the University of Maryland. The QTC will supply the Department with technical information and input regarding the latest developments in quantum technologies and the related enabling technologies.

“The Department will need to understand the convergence of quantum technologies with other emerging technologies and forecast the global impact as the technology develops and is applied,” read a statement. “This partnership will ensure that the Department’s international initiatives are informed by a sound technical understanding of this emerging field.” [\[Release\]](#)

## Forced Labor Enforcement Gets Real

**ENFORCEMENT OF THE UYGHUR** Forced Labor Prevention Act (UFLPA) has begun in earnest, according to a DHS official. “We’ve moved a lot of resources over to this new enforcement priority. It’s a, it’s a new line of work for us that Congress gave to us. We are trying to work closely with Congress to get supplemental resources so we can hire even additional people. But overall CBP has really acted in the nimble and agile way,” Undersecretary for Policy Robert Silvers told the WSJ Risk & Compliance Forum last week.

“Our enforcement priorities are really as follows:

- The first is those those three categories that I mentioned, **polysilicon, tomatoes and cotton.**

- We also are prioritizing any good shipped from sanctioned entities, entities that are listed on a new entity list that the new law required us to develop. So any shipments with a tie to those are getting prioritized under our risk based enforcement approach.

- We’re also prioritizing shipments that we believe may have been illegally transhipped, that is shipped from shanghai to somewhere else and then shipped onward.



**Cotton is an enforcement priority for CBP.**

CREATIVE COMMONS: MARK YANG

- And we’re also prioritizing enforcement where we see affiliated entities of companies known to operate in Xinjiang and we have reason to believe. That the products that those affiliates are sending here may contain components from Xinjiang province.

“We have worked closely with companies. We

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**Undersecretary for Policy Robert Silvers**

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tell them what kinds of documents would be helpful for us to see. We talked to them on the phone, we talked to them in real time and we've been able to clear a lot of shipments that were initially detained for further inspection very, very quickly so that they could go onward into commerce. I think it's really important to note that.

**"We have not seen, you any kind of major disruptions at the ports to trade flow.** We have a mission to enforce our forced labor laws and that's really important. We also have a mission to facilitate lawful commerce and trade in this country. And we take that really seriously too. And the vast, vast, vast majority of trade and cargo is really flowing through unimpeded, but we're doing risk based targeting.

**"It's really heartening to see the sort of compliance-tech, Reg-tech market out there innovate and bring new solutions to market.** I'm not going to call out a particular technology or anything like that, but I'll say it's great to see that. We also are exploring what we can do with technology to create efficiency in this process too. So for example, cotton from Xinjiang province is one of the product categories as prioritized for enforcement. There's interesting new DNA testing technology that can be used to do on apparel for example, or other products made with cotton where you can tell if the by the DNA whether the product may have originated in Xinjiang province. So we're testing that technology now and we're actually looking to see can we do any pilot programs with industry to to further test that kind of technology.

**CTPAT Members Prioritized**

We're also doing a number of other initiatives to provide greater guidance, greater transparency, greater opportunities for streamlining to industry. So for example, we have a trusted trader program called CTPAT. Anybody in the import or community is a very familiar with it. It's a a counterterrorism trusted trader program that's existed for a long time.

**"We've now included forced labor compliance as a required element to be a member of that Trusted Trader program.** And what I can announce today is that we will be prioritizing for inspection any

shipments under this new Uyghur Enforcement Act that are brought in by CTPAT members in good standing. We really appreciate the work that our CTPAT members have put into earning trusted trader status. And so this is going to be a benefit is that they will get a prioritized review of Fair shipments under the new forced labor law.

**"As I've engaged with the trade community over the last, the course of the last year, the vast majority of companies want to comply with this law. I think they find abhorrent the idea that forced labor may affect their supply chains. They don't want to trade with slave labor anymore than any of us want to buy products made with slave labor.**

**"UFLPA has certainly been the biggest issue that the forced Labor Enforcement Task Force has taken on since the law was passed last year. But we're not a one trick pony. I actually think before too long you're going to see us issue another. Withhold release order."**

**Customs Slams Door on Big Sugar Slavers**

**BIG SUGAR SUFFERED AN UNCOMMON SETBACK** when US Customs and Border Patrol issued a Withhold Release Order (WRO) against a Dominican affiliate of Florida's Fanjul organization, based on information that "reasonably indicates the use of forced labor in its operations."

The DR receives the largest single-country allocation for raw sugar under the U.S. Tariff Rate Quota (TRQ). For FY 2020, the DR's share of the TRQ was around 17 percent, with the sanctioned firm, Central Romana, the largest beneficiary of the program.

Central Romana is controlled by brothers Alfonso "Alfy" and Jose "Pepe" Fanjul, Florida-based owners of Domino Sugar, Florida Crystals, Tate & Lyle and other holdings.

Customs' action comes on the heels of a scathing congressional report in July which highlighted "a culture of fear... [where] workers described being directed to stay quiet and not speak to anyone about their conditions before our visit." In September 2022, the U.S. Department of Labor identified sugarcane from **Continues on next page**



**Dominican Republic-based sugar grower Central Romana has received a Withhold Release Order. The company is controlled by the Fanjul brothers, owners of Domino Sugar and Florida Crystals.**

CREATIVE COMMONS:  
LYNN ROGNSVOOG

**Continued from previous page**

the Dominican Republic in its List of Goods Produced by Child Labor or Forced Labor, and the U.S. Department of State placed the Dominican Republic on its Tier 2 list in their July 2022 Trafficking in Persons Report.

The WRO represents an uncharacteristic setback for one of Florida’s most influential dynasties and an industry with serious political chops. In the US, fewer than 4,500 farmers grow sugar (cane or beets) and the existing market allotment supports prices at roughly twice the world levels. This amounts to a subsidy of over \$700,000 per grower, according to the American Enterprise Institute. The Fanjul brothers share of the subsidy is estimated between \$150 million and \$200 million a year, while the cost per US consumer is estimated around \$10 per year.

Senators Marco Rubio (R-FL) and Rick Scott (R-FL) have been loyal defenders of the Fanjul brothers’ sugar subsidies, though support in the house of Representatives has grown less steadfast. Rep. Sheila Cherfilus-McCormick (D-FL) reportedly did not take money from the sugar industry, while Rep. Brian Mast (R-FL) has said he’s probably “the only representative in the history of this district to vote against the sugar industry.” Florida Gov. Ron DeSantis has long shared little love with Big Sugar, which threw its considerable weight behind his opponent, Agriculture Commissioner Adam Putnam, during the 2018 gubernatorial race.

## Senate Blocks AML Legislation

**IN A WIN FOR THE LEGAL INDUSTRY**, the Senate stripped the ENABLERS Act from the National Defense Authorization Act. The amendment would have closed a key loophole identified by anti-corruption experts: While US banks are required to make sure the money they accept is not “dirty,” other enablers have no such obligations. The law would mandate that real estate companies, law firms, and companies in several other sectors report suspicious activity.

ABA President Deborah Enix-Ross led the campaign to gut the bill, arguing it would regulate lawyers as “financial institutions” under the Bank Secrecy Act (BSA) and could require them to report attorney-client privileged and other protected client information to the government.

ABA members who oppose the bill “are attempting to manipulate and hyperbolize concerns over attorney-client privilege, in order to make a case that is really about blocking the ability of an extremely tiny — yet vocal and profit-minded — group of attorneys in the United States who wish to keep profiting by being able to do business with criminals.” said Scott Greytak, Advocacy Director for Transparency International US.

## Proposed FinCEN Rule on Beneficial Ownership Access

**THE FINANCIAL CRIMES ENFORCEMENT NETWORK** (FinCEN) issued a Notice of Proposed Rulemaking (NPRM) governing the circumstances under which beneficial ownership information may be disclosed to federal agencies; state, local, tribal, and foreign governments; and financial institutions, and how it must be protected.

“In this next step, the proposed rule would provide the highest standards of security and confidentiality while ensuring that the new beneficial ownership database is highly useful to law enforcement agencies in its efforts to combat financial crime,” said FinCEN Acting Director Himamauli Das in a statement Dec. 15, 2022.

This NPRM follows the final reporting rule that FinCEN issued on Sept. 30, 2022, requiring most corporations, limited liability companies,

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and other similar entities created in or registered to do business in the U.S. to report information about their beneficial owners.

The proposed rule also sets standards for protecting sensitive information. The NPRM also proposes amendments to the final reporting rule to specify when reporting companies may report FinCEN identifiers associated with entities. FinCEN further proposes to subject each category of authorized recipients to security and confidentiality protocols that align with the scope of the access and use provisions. [\[NRPM Factsheet\]](#)

EU

## Scheme to Spend Russian Funds to Rebuild Ukraine

**THE EUROPEAN COMMISSION IS PROPOSING** to create a new structure to manage frozen and immobilized public Russian assets, invest them and use the proceeds for Ukraine.

The announcement includes measures to ensure accountability for war crimes. Russia does not accept the jurisdiction of the International Criminal Court (ICC). This means that the crime of aggression committed by political and military leadership cannot be prosecuted by the ICC.

“Russia must pay for its horrific crimes. We will work with the ICC and help set up a specialized court to try Russia’s crimes. With our partners, we will make sure that Russia pays for the devastation it caused, with the frozen funds of oligarchs and assets of its central bank,” said EC President Ursula von der Leyen in announcing the scheme.

A similar bill in the U.S. Senate, S. 3838: The Asset Seizure for Ukraine Reconstruction Act, was introduced in March by Sen. Sheldon Whitehouse (D-Rhode Island). While the House version passed in April, the Senate version has languished. The bill does not suggest that those whose assets are seized must be linked to or convicted of a crime. The Biden administration shall “determine the constitutional mechanisms through which the President can take steps to seize and confiscate assets under the jurisdiction of the United States” of any foreign person on whom the president has imposed sanctions due to their links to Putin’s regime. That pesky Fourth Amendment...

EU

## Proposal to Criminalize Sanctions Violations

The European Commission has released a proposal to harmonize criminal offences and penalties for the violation of EU restrictive measures. Individual persons could be liable to a maximum penalty of at least five years in prison; companies could be liable to penalties of no less than 5% of the total worldwide turnover of the legal person (company) in the business year preceding the fining decision. The proposal will be discussed by the European Parliament and the Council.

EU

## Ownership Registers Blocked

Public access to beneficial ownership data “constitutes a serious interference with the fundamental rights to respect for private life and to the protection of personal data, according to the Court of Justice of the European Union.

The ruling, prompted by a Luxembourg case, has prompted member states to begin removing public access, setting back anti-money laundering compliance efforts, according to the Financial Times. “It’s a kleptocrat’s dream,” tweeted Bill Browder. “The damage this will do to those of us fighting corruption will be enormous.”

UK

## Economic Crime Bill

UK’s Second Economic Crime Bill is at odds with the EU decision. Hogan Lovells reminds clients, “An existing overseas entity (and its officers) who owns land but has failed to register at Companies House before 31 January 2023, will commit an offence, potentially punishable by imprisonment or a fine or both.”

UK

## SRA Sanctions Regime Guidance

Solicitors Regulation Authority has published guidance on the UK Sanctions Regime for SRA-regulated firms, solicitors, registered European lawyers and registered foreign lawyers.

“The sanctions regime applies to all firms that provide legal services, not just those that are captured by the anti-money laundering regulations. So some firms will need to take a closer look at, for example, implementing effective client due diligence measures,” said SRA Chief Executive Paul Philip in the release.

SRA has also published a warning notice to the legal profession about getting involved in abusive litigation aimed at silencing legitimate critics, known as strategic lawsuits against public participation (SLAPPs).



## Russia Sanctions Dodgers Nabbed

► The Commerce Department’s Bureau of Export Administration has suspended the export privileges of two companies and three persons for the unauthorized export to Russia of sensitive items subject to US export controls. The temporary denial order issued will apply to two shell companies and three individuals who routed shipments and layered financial transactions in order to obscure the true Russian end users.

In a related action, the Justice Department unsealed a 16 count indictment filed in the Eastern District of New York charging the three named by Commerce, and four more individuals for export violations and other criminal violations to include conspiracy and other charges related to a global procurement and money laundering network on behalf of the Russian government.

The respondents are alleged to have used this network to purchase and export highly sensitive and heavily regulated electronic components, including advanced semiconductors, for the Russian military, defense sector and research institutions. As alleged, the defendants were affiliated with **Serniya Engineering** and **Sertal LLC**, Moscow-based companies that operate under the direction of Russian intelligence services to procure

advanced electronics and sophisticated testing equipment for Russia’s military industrial complex and research and development sector.

35 year old New Hampshire resident **Alexey Brayman** allegedly received an on-going supply of “advanced electronics and sophisticated testing equipment used in quantum computing, hypersonic and nuclear weapons development and other military and space-based military applications,” shipped through his wife’s home-based Etsy Crafts Business. Brayman, identified in court documents as an Israeli citizen who was born in Ukraine, turned himself in on Tuesday.

**Vadim Konoshchenok**, 48, of St. Petersburg — suspected to be an FSB officer — would then ship or physically smuggle U.S.-origin items from Estonia to Russia, including dual-use electronics, military-grade tactical ammunition and other export-controlled items. On Oct. 27, 2022, Konoshchenok was stopped at the Estonian border with 35 different types of semiconductors and other electronic components, as well as thousands of U.S.-made 6.5mm bullets, which are used in military sniper rifles.

On Nov. 24, 2022, Konoshchenok was again stopped attempting to cross into Russia with approximately 20 cases containing thousands of U.S.-origin bullets, including tactical rounds and .338 military sniper rounds. Konoshchenok discussed “fabricating” business records to conceal the ammunition shipments, on one occasion describing them as “auto parts.”

Incident to Konoshchenok’s arrest, Estonian authorities searched a warehouse held in the name of Konoshchenok’s son and recovered approximately 375 pounds worth of ammunition.



## Iran Exports: Up to 20 Years for Nozzle Scheme

► Alabama man **Ray Hunt**, 69, was indicted on 15 counts of conspiracy, unlawful export, smuggling and submitting false or misleading export information associated with sales of flow control items to Iran. Now he may spend the rest of his life in prison.

Hunt, a naturalized US Citizen also known as Abdolrahman Hantoosh, is alleged to have conspired to export U.S.-origin parts used in the oil and gas industry, including control valves and oil tubing, through his Alabama-based company, Vega Tools LLC, to customers in Iran. The scheme transshipped the goods to Iran through Turkey and the UAE to evade U.S. sanctions.

The indictment reads like how-not-to for export compliance. In one case, Hunt allegedly misstated the valuation on a shipment by a factor of ten; in another he instructed his forwarder to change the declared value from \$4,000 to \$2,465.74, just below the \$2,500 value threshold for an EEI filing requirement. “At no time did any person or entity apply for or obtain a required license from OFAC for the transactions alleged herein,” according to the charging documents.

## ABB Writes Big Check, Carries On

► **ABB’s** \$315 million settlement of charges associated with bribing a South African official for power plant contracts includes a three-year deferred prosecution agreement (DPA), along with two subsidiaries pleading guilty to conspiracy to violate the anti-bribery provisions of the FCPA.

“This resolution demonstrates the Criminal Division’s thoughtful approach to appropriately balancing ABB’s extensive remediation, timely and full cooperation, and demonstrated intent to bring the misconduct to the department’s attention promptly upon discovering it, while also accounting for ABB’s historical misconduct,” Justice said in a statement.

ABB previously plead guilty for contract fraud in Egypt in 2001, an FCPA bribery case

in Nigeria in 2004, two deferred prosecution agreements and guilty pleas for Iraq and Mexico FCPA violations in 2010, and other resolutions. There will be no requirement for an independent compliance monitor, as they promised not to do it again. Chief Executive Björn Rosengren told the Wall Street Journal. “We have a clear zero-tolerance approach to non-ethical behavior within our company.”

## Condos Seized from Sanctioned Ukraine Lawmaker

► In the first use of criminal and forfeiture powers targeting the concealment of ownership by senior foreign political officials, passed as part of the National Defense Authorization Act of 2021, a federal court in Brooklyn charged **Andrii Derkach**, 55, of Ukraine, with conspiracy to violate the International Emergency Economic Powers Acts (IEEPA), bank fraud conspiracy, money laundering conspiracy, and four counts of money laundering in connection with the purchase and maintenance of two condominiums in Beverly Hills, Cal. Derkach allegedly concealed his interest in the transactions and violated sanctions imposed in 2020 “for attempting to influence the U.S. electoral process.”

The U.S. Attorney’s Office for the Eastern District of New York filed and announced a civil forfeiture suit naming the Subject Condominiums and two financial accounts as defendants in rem, seeking forfeiture of those properties on the basis of their involvement in, and status as proceeds of, criminal violations of the federal money laundering laws, the IEEPA, and federal law criminalizing the concealment of assets of senior foreign political figures. [\[Justice Announcement\]](#)

Derkach, who remains at large, is alleged by the Ukrainian State Security Service (SBU) to have set up network of private security firms to help facilitate the entry of Russian units into cities during Moscow’s February 24 invasion. The 2020 US sanctions arose from his involvement in former President Trump’s efforts to discredit then-candidate Joe Biden’s son Hunter.



## OFAC Targets Dirty Nickel Miner

► Treasury's Office of Foreign Assets Control (OFAC) sanctioned one Russian national and one Belarusian national for their role in exploiting the Guatemalan mining sector, as well as three associated entities connected with their corruption schemes. These individuals and entities are designated pursuant to Executive Order (E.O.) 13818, which builds upon and implements the Global Magnitsky Human Rights Accountability Act and targets perpetrators of serious human rights abuse and corruption around the world.

The named entities are subsidiaries of the **Solway Investment Group**, a Swiss-based holding company for the interests of Russo-Estonian Industrialist Aleksandr Bronstein. The leader of Solway's mining operations in Guatemala, Russian national **Dmitry Kudryakov**, along with Belarusian national **Iryna Litviniuk** allegedly led multiple bribery schemes over several years involving politicians, judges, and government officials. In addition, Litviniuk conducted corrupt acts in furtherance of Russian influence peddling schemes by unlawfully giving cash payments to public officials in exchange for support for Russian mining interests. Solway has suspended the two pending an investigation.

Solway operates mines and smelting plants in Guatemala, Ukraine, Macedonia and Indonesia, with a focus on nickel production. Solway co-operates with the Guatemala-based company Pronico, whose mine has caused an environmental disaster with emissions of high levels of nickel in Guatemala's largest lake,

resulting in diseases and eczema among the local Maya people around the lake.

Aleksandr Bronstein founded Solway Investment in 2002, after chairing the board of directors of Siberian-Urals Aluminum Company, a Russian bauxite and aluminum producer that merged in 2007 with its main competitor in the country, Rusal, and notorious Swiss trader Glencore. Previously, Bronstein headed the London-based trading company Raznoimport, which for a long time, was the Soviet Union's sole importer and exporter of minerals.

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## Russia Oil Trade Rules Issued

► OFAC has published a Determination pursuant to Executive Order (E.O.) 14071 to implement the **price cap policy for crude oil of Russian Federation origin** along with a guidance on the implementation of the price cap policy for crude oil of Russian Federation origin.

OFAC has also issued 3 new Russia-related general licences which relate to the maritime transport of crude oil of Russian Federation origin

**General License 55** authorises certain services related to Sakhalin-2 which relate to the maritime transport of crude oil,

**General License 56** which relates to the importation of crude oil into the Republic of Bulgaria, the Republic of Croatia, or landlocked European Union Member States as described in Council Regulation, and

**General License 57** which authorises certain services related to vessel emergencies.

[Notice]

## Venezuela Talks Resume, Chevron G/L issued

► The US-Backed Opposition “Unitary Platform” and the Maduro regime announced the resumption of talks in Mexico City; leading to an easing of US Sanctions on the OPEC nation.

Press reports suggest parties will announce an agreement to unfreeze and direct nearly \$3 billion in Venezuelan funds for humanitarian assistance. The UN will directly oversee this aid and will prioritize access to health care and essential medicine, addressing child malnutrition, and restoring electricity and other critical infrastructure.

Treasury’s Office of Foreign Asset Control (OFAC) issued Venezuela-related General License 8K, “Authorizing Transactions Involving Petróleos de Venezuela, S.A. (PdVSA)



Necessary for the Limited Maintenance of Essential Operations in Venezuela or the Wind Down of Operations in Venezuela for Certain Entities” and Venezuela-related General License 41, “Authorizing Certain Transactions Related to Chevron Corporation’s Joint Ventures in Venezuela.” Additionally, OFAC is issuing two new Venezuela-related Frequently Asked Questions (FAQs 1098 and 1099). The FAQs clarify the permissibility of supporting Chevron in country.

## OFAC BRIEFS

### Iranian Security Officials

► Designating three Iranian security officials for the Iranian regime’s continued crackdown on ongoing protests throughout the country, including most recently in Kurdish areas. Sanctioned individuals include the **Governor of Sanadaj**, the **regional head of the National Police**, and **IRGC Ground Forces commander** overseeing Iran’s West Azerbaijan province which includes the city of Mahabad.

### DPRK Officials

► OFAC sanctioned three individuals December 1 for being officials of the **Workers’ Party of Korea (WPK)**. These individuals have provided support to the Democratic People’s Republic of Korea’s (DPRK) development of weapons of mass destruction (WMD) and ballistic missiles. OFAC’s action follows the

European Union’s designation of **Jon Il Ho, Yu Jin**, and **Kim Su Gil** in April as persons responsible for the DPRK’s WMD or ballistic missile programs.

### Turkish Tycoon

► **Sitki Ayan**, industrialist and school chum of Turkish President Tayyip Erdogan was added to the May 25 designation of trading partners of the Qods Force of Iran’s Islamic Revolutionary Guard Corps. Ayan and his ASB Group of companies were named, as well as his son and several business associates. Treasury’s announcement came following aggressive reporting from Politico.

### Hizballah Accountants

► OFAC took action December 1 against two individuals and two companies based in Lebanon for providing financial services to

Hizballah, along with an additional individual involved in facilitating weapons procurement for Hizballah. **Al-Khobara for Accounting, Auditing, and Studies** provides accounting services to U.S.-designated AQAH, Hizballah’s quasi-financial institution. Auditors for Accounting and Auditing provides financial services to Hizballah’s Central Finance Unit.

### Corruption / Rights Sweep

► In recognition of International Anti-Corruption Day and Human Rights Day, OFAC is sanctioning over 40 individuals and entities that are connected to corruption or human rights abuse across nine countries.

OFAC also designated two individuals and the networks of entities that they control in

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connection with serious human rights abuse aboard distant water fishing vessels.

Included in the action are European and Indian film producers who engaged The DPRK government-run animation studio, **SEK Studio (SEK)**. SEK has been subcontracted by foreign companies to provide low-cost labor and has utilized its animation workers that are located in the DRRK and the PRC to fulfill these contracts. SEK has also evaded sanctions targeting the DPRK government using front companies.

Also named were **officials in El Salvador and Guatemala**, the former **President of Guinea**, the **son of the former President of Mali**, and a **Philippine evangelist and sex trafficker**. The roster is completed by **Iranian security officials**, **Russian and Breakaway Ukraine administrators**, and Chinese **officials of the Tibetan Autonomous Region (TAR)** responsible for “stability policies” involving extrajudicial killings, physical abuse, arbitrary arrests, and mass detentions forced sterilization, coerced abortion, restrictions on religious and political freedoms in Tibet.

## Fishing violations

➤ Illegal, unreported, and unregulated (IUU) fishing was targeted as OFAC sanctioned

two Chinese nationals, 157 vessels and their companies, including **Pingtang Marine Enterprises**, the first time Treasury has designated an entity listed on the NASDAQ stock exchange.

According to the National Oceanic and Atmospheric Administration, “addressing forced labor is particularly challenging within the seafood industry. Vessels sometimes spend months to years at sea, impeding the escape from, or the reporting of, labor abuse. Emotional and physical abuse, sometimes resulting in death; excessive overtime; poor living conditions; deceptive or coercive recruiting; and non-payment or underpayment of wages are some examples of the abuses sustained by fishing sector workers subjected to human trafficking, including forced labor.”

## Entity List Additions

➤ Commerce adds twenty-four to the Entity List under the destinations of Latvia, Pakistan, Russia, Singapore, Switzerland, and the United Arab Emirates. These companies have supplied and/or attempted to supply items subject to the EAR — to a designated entity in Iran; have involvement in unsafeguarded nuclear activities and missile proliferation-related activities in Pakistan; and significantly contribute to Russia’s military and/or defense industrial base. [87 FR 75173]

VIDEO TRAINING

# Mastering Deemed Exports

The simple way to train your employees on complicated EAR and ITAR Deemed Export rules.

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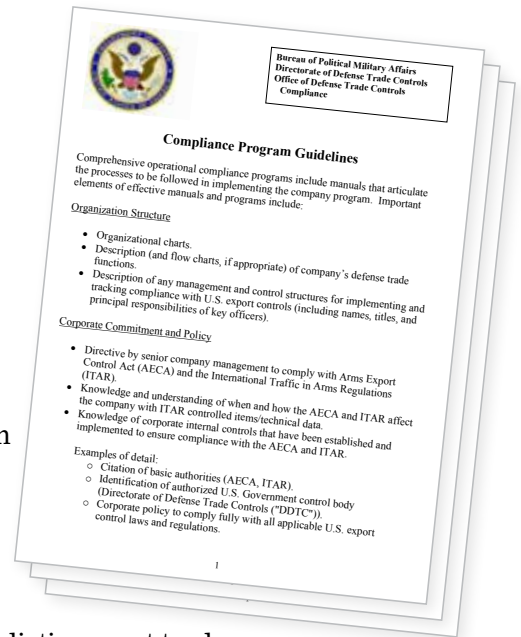
# EXPORT LICENSING

## DDTC / ITAR Compliance Guidelines Published

► The guidelines are intended to provide an overview of an effective compliance program and an introduction to defense trade controls, including information on the laws and regulations the U.S. Department of State, Bureau of Political-Military Affairs, Directorate of Defense Trade Controls (DDTC), administers.

The Guidelines provide information on the elements of an effective ITAR Compliance Program (ICP) and how to design and implement an ICP for organizations that manufacture, export, broker, or temporarily import defense articles and defense services described on the United States Munitions List (USML).

The elements are specifically focused on assisting organizations developing a program to comply with the ITAR. Many organizations engage in activities that fall under the jurisdiction of multiple U.S. trade laws and regulations. Therefore, organizations should ensure their ICP functions effectively within the context of a holistic export trade compliance program



## RAPTAC

### Industry Response to Semiconductor Controls

► The year's final meeting of the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC) afforded participants a high-level overview of what industry comments on October's semiconductor export controls will look like. The comment period for the interim final rule published October 13, 2022, at [87 FR 62186] is extended until January 31, 2023.

**Hillary Hess, Director Regulatory Policy at BIS** opened the meeting acknowledging the challenges of the 2022: "It's it's been a difficult year, 2022. We started in Russia and recently have been interacting with China and it's been a kind of a tense year. But one thing, one positive note of this year is that it really has encouraged what we had already started - that level of cooperation with our allies. We're all export control people and know the importance of of multilateralism when it comes to export controls. So, I do think that's been a bright spot in an otherwise turbulent year.

**John Cooney, Vice President of Global Advocacy and Public Policy for SEMI**, the semiconductor



equipment and supply chain group emphasized the importance of a multilateral approach: "The regulations as released on October 7 are only going to be effective in meeting the state of national security objectives if allied countries adopt mirrored rules for end use and choke point controls.

"Regrettably, the new and expanded rules on advanced computing and manufacturing were announced by the administration with no agreement yet in place from Allied countries, also home to mature manufacturing ecosystems consisting of experienced exporters. As a result, SEMI member companies are concerned that currently there is not a level playing field between U.S. companies."

**Jimmy Goodrich, the vice president for global policy**



**at the Semiconductor Industry Association** led the RAPTAC through an overview of market size and structure, noting the interconnected nature of the **Continues on next page**

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industry: “You think about it as an upside-down pyramid — at the very top you have the \$4 trillion electronics market and you have the half-trillion dollar semiconductor market, and the \$100 billion plus semiconductor capital equipment market, all supporting each other. All the innovation that’s happening at the very narrow tip of this upside down pyramid supports all of the innovation that’s happening upstream.”

The October Rule had unintended consequences, “for example, the novel usage of the US persons rule, the fact that many of our allied partners who had facilities in China had a crisis for a couple of days before that was revolved.

“And we still want to stress just how important that is to ensure that there’s a level playing field and also that the rule is effective. Ultimately, if the end users in the country of concern are able to access the technology, then it’s not effective.

“We also raise a number of suggestions. For example, the end user compliance around the US persons rule requires significant amount of due diligence, and many companies are concerned that one company’s due diligence may differ from the others. One company may identify what they believe is a restricted end user, and another company may come up with a different assessment. So we will suggest or ask [for] some sort of list that might help guide the industry.

“We hope there could be more clarity regarding standards that will allow companies to apply for a license even though we understand

that’s presumption of denial, and that is a high bar certainly. We would like to understand if there are situations for pure civilian usage, for nonsensitive end users, healthcare, those kinds of situations, where there may be possible. Stability of license exceptions provided.”

## Team Telecom Nixes Cuba Link

► The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, aka “Team Telecom” has recommended that the Federal Communications Commission deny a 2018 application by management of the **ARCOS-1 Cable System** to add a new landing station in Cojimar, Cuba

“The United States supports an open, interoperable, secure, and reliable internet around the world, including in Cuba. Unfortunately, the Cuban government does not share that view,” said Assistant Attorney General Matthew G. Olsen of the Justice Department’s National Security Division. “As long as the Government of Cuba poses a counterintelligence threat to the United States, and partners with others who do the same, the risks to our critical infrastructure are simply too great.”

As submitted to the FCC, the ARCOS-1 Cable System application would have allowed for the only direct, commercial subsea cable connection between the United States and Cuba. This raised national security concerns, as the cable-landing system in Cuba would be owned and controlled by Cuba’s state-owned telecommunications monopoly, Empresa de Telecomunicaciones de Cuba S.A. (ETECSA). The Government of Cuba — which the United States recognizes as authoritarian and a foreign adversary of the United States — could access sensitive U.S. data traversing the new cable segment through its control of ETECSA.

There is an existing cable between Florida and the U.S. Guantanamo Bay Naval Base (the GTMO-1 cable system), and a cable from Guantanamo Bay to Puerto Rico (the GTMO-PR cable system). The Americas Region Caribbean Optical-Ring System (ARCOS-1) is a 8,700 km submarine cable system connecting 24 landing points in 15 countries, including the U.S., the Bahamas, the Turks and Caicos Islands, the Dominican

**ARCOS-1 Cable System links 15 Caribbean countries**



SOURCE: FIBERATLANTIC.COM/SYSTEM/R61GK

Republic, Puerto Rico, Curacao, Venezuela, Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, Belize, and Mexico.

ARCOS-1 USA and A.SurNet hold 96% of the voting and ownership interests in the ARCOS-1 cable system, with the remaining ownership held by 18 international carriers. A.SurNet owns and operates the ARCOS-1 cable landing station in North Miami Beach, Florida. ARCOS-1 USA and A.SurNet are owned by Liberty Latin America, spun off from Liberty Global in 2018.

Earlier this month Team Telecom indicated “no objection” to the leveraged buyout of television news producer Tegna by Caymans-registered Standard General, despite entreaties from the Communications Workers of America News Guild.

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## STATE – DDTC

### Suspension of Capacitors on U.S. Munitions List

► DDTC temporarily suspended for a period of six (6) months the applicability of § 120.11(c) of the International Traffic in Arms Regulations (ITAR) for certain capacitors described in U.S. Munitions List (USML) Category XI(c) (5). The Department assessed that it is in the security and foreign policy interests of the United States to facilitate commercial uses of certain capacitors when integrated into any item not described on the USML (for example, certain items used in energy exploration and commercial aviation).

Order is for the temporary suspension of ITAR § 120.11(c) with respect to capacitors described in USML Category XI(c)(5) that have a voltage rating of one hundred twenty-five volts (125 V) or less and have been integrated into, and included as an integral part of, any item not described on the USML. Such articles are licensed by the Department of Commerce when integrated into, and included as an integral part of, items subject to the EAR. Capacitors described in USML Category XI(c)(5) remain subject to the controls of the ITAR in all other circumstances, including as stand-alone articles. The export, reexport, retransfer, or temporary import of technical data and defense services directly related to all

defense articles described in USML Category XI(c)(5) remain subject to the ITAR. [Notice]

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## STATE – DDTC

### Cyprus Licensing Open to Review

► Following the Secretary of State’s certification to Congress that the **Republic of Cyprus** meets the statutory requirements to remove the policy of denial for exports, re-exports, and transfers of defense articles to the Republic of Cyprus for fiscal year 2023, exemptions to licensing requirements are now available, provided the conditions for use of those exemptions are met. Applications for licenses and other authorizations submitted to the Directorate of Defense Trade Controls involving the Republic of Cyprus and nationals of the Republic of Cyprus are subject to review. [87 FR 71250]

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## BIS

### Japan-U.S. Commercial and Industrial Partnership

► **Comments sought** regarding areas and priorities for U.S. and Japan export control cooperation to help inform the work of the Japan-U.S. Commercial and Industrial Partnership (JUCIP) Export Control Working Group.

Comments should address ways in which existing U.S. and/or Japanese dual-use export control policies and practices may be more transparent, more efficient and effective, and more convergent, including in identifying and controlling emerging or foundational technologies, and in better facilitating research collaboration between Japan and U.S. research organizations.

Comments providing specific and concrete examples where further convergence in U.S. and Japanese export control practices and policies could enhance international security and support a global level-playing field and joint technology development and innovation, would be particularly helpful. Comments must be received by BIS January 17, 2023. The regulations.gov ID for this rule is BIS-2022-0029 [87 FR 73748]

