

# The Export Practitioner<sup>TM</sup>

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Timely News and Analysis of Export Regulations

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Pharma

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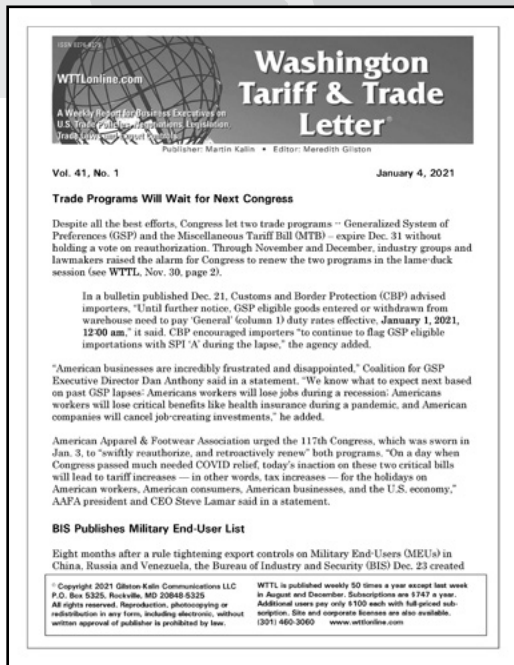
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## Supply Chain Ministerials, With and Without the Big Link

The Departments of State and Commerce hosted ministers from select trading partners to “improve supply chain resiliency,” and the exclusion of the world’s second largest economy made evident the diplomatic objectives. China was not invited to the meeting, and US officials said they aim to increase “friend-shoring” to move production of key supplies to allied nations.

The US and representatives of 17 countries Japan, the EU, UK and India agreed to work together to improve and diversify global supply chains, and to follow four principles in addressing the topic: transparency, diversification, security, sustainability, according to the joint [statement](#) published July 20. “This includes our intent to cooperate to eradicate the use of forced labor in global supply chains,”

*China was not invited to the meeting, and US officials said they aim to increase ‘friend-shoring’*

Meanwhile, the EU [concluded](#) parallel discussions with China, the 9th EU-China High-Level Economic and Trade Dialogue (HED). Topics included supply chain resiliency and financial services access, particularly for European Leasing firms and access to the Shanghai Clearing House for European banks. The EU raised objections to the “growing politicization of the business environment in China,” as well as to the “economic coercion” imposed on Lithuania for its recognition of Taiwan. Forced labor was not publicly discussed.

## WTO on Illicit Pharma and Medical Kit.

A high-level roundtable of Top officials of six global organizations called for greater coordination in the fight against illicit trade in medical products. Assistant Director-General of the World Health Or-

ganization Mariângela Simão emphasized that the rise of e-commerce has turned illicit trade in medical products in particular into a “global problem” that demands more attention from the international community. The WTO estimates that illicit trade in pharmaceuticals in 2019 was between \$9 – 28 billion in 2019, and has grown since.

Secretary-General of the World Customs Organisation Kunio Mikuriya noted that “customs are playing a role of facilitating legitimate trade but we are also the first line of defence in the fight against illicit trade which is posing safety and security risks”. He highlighted the importance of access to data, information sharing and coordination of capacity building activities to assist customs officials around the world in combatting illicit trade.

WTO Deputy Director-General Anabel González, who moderated the event, underscored this point: “The nefarious forces that drive illicit trade in medical products are difficult to uncover, and even more difficult to counter. But despite the secrecy that cloaks illicit activities, one thing is certain: the battle against illicit trade is not one in which a single country will emerge a winner, nor one that a single international organization or any other actor can fight alone”.

roundtable also saw the launch of a WTO [publication](#) entitled “Tackling Illicit Trade in Medical Products”

## Graves Blames Hill for No FTAs, Trump for Allies’ Distrust.

At the Center for Strategic and International Studies last week, Deputy Secretary of Commerce Don Graves [discussed](#) Commerce’s international economic agenda: strategic economic alliances, export controls and CFIUS; and promoting the U.S. private sector as an international partner. In the Q&A with James Lewis, SVP and Director of the CSIS Strategic Technologies Program. He addressed complaints about the lack of formal trade agreements in the administration’s first 18 months.



**CUSTOMS – CTPAT Compliance Handbook**

The Customs Trade Partnership Against Terrorism (CTPAT) has released a Trade Compliance Handbook for interpreting CTPAT's modernized Trade Compliance program. The new CTPAT Trade Compliance program is an evolution of the former Importer Self-Assessment (ISA) program. In exchange for compliance with regulatory trade requirements imposed by CBP and other government entities, the CTPAT Trade Compliance program offers a combination of legacy CTPAT and ISA benefits, as well as benefits developed in collaboration with partners of the CTPAT Trusted Trader Pilot and the Trusted Trader Working Group.

**EXIM - SME Funding lags prior year.** Through June, EXIM has authorized \$1.05 billion in small business transactions, nearly one quarter of the agen-

cy's total authorizations. For FY 2021, small business authorizations totaled more than \$1.6 billion, representing 28.2 percent of total authorizations. The government's fiscal year ends September 30.

**EXIM and the government of Guyana** signed a Memorandum of Understanding to explore options for utilizing EXIM financing, which include direct loans, loan guarantees, and insurance products, to finance the sale of U.S. exports to Guyana for government projects totaling up to **\$2 billion**.

Sectors in which projects may be identified, including but not limited to infrastructure; energy telecommunications; water treatment and and agriculture.

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## ThermoFisher SCIENTIFIC

### Instrument Distributor Pleads Guilty

Thermo Fisher Scientific's exclusive distributor for Russia and Ukraine, New Hampshire based Intertech Trading Corp. pleaded guilty July 11 to 14 felony counts of failure to file export information. As reported earlier [EP July 2022], the original search warrant details 414 shipments, including four shipments totaling \$40 million to the FSB, or Russian State Security Agency.

### More PDVSA indictments.

Two more bankers have been charged in connection with the laundering more than \$1.2 billion corruptly obtained from Venezuela's state-owned energy company, Petróleos de Venezuela S.A. (PDVSA). Ralph Steinmann, and Luis Fernando Vuteff, both former executives of Aquila Swissinvest, are each charged with one count of conspiracy to commit money laundering.

In 2018 Matthias Krull of Julius Baer Group was sentenced to 10 years for his role in the scheme, later reduced to 3-1/2 years for his cooperation with prosecutors.



## OFAC

### OFAC Cites Bank for Lax Refresh of Screening Lists

The United States Department of the Treasury's

Office of Foreign Assets Control (OFAC) today announced the issuance of a Finding of Violation to MidFirst Bank, a financial institution headquartered in Oklahoma City, Oklahoma, for violations of the Weapons of Mass Destruction Proliferators Sanctions Regulations. The violations related to MidFirst's maintaining accounts for and processing of 34 payments on behalf of two individuals added to OFAC's List of Specially Designated Nationals and Blocked Persons (the "SDN List") for 14 days post-designation.

The violations stemmed from MidFirst's misunderstanding of the frequency of its vendor's screening of new names added to the SDN List against its existing customer base. MidFirst reported to OFAC that its sanctions screening vendor notified MidFirst that the blocked persons had been added to the SDN list on October 5, 2020, 14 days after their addition. MidFirst then promptly blocked accounts belonging to the blocked persons.

The agreement between MidFirst and its vendor provided for periodic screening of MidFirst's customers against the SDN List. Although the vendor conducted daily screenings of new customers and of existing customers with certain account changes (e.g., changes to a customer's name or address), the vendor only screened MidFirst's entire existing customer base once a month. MidFirst misunderstood the scope of the contract with its vendor, mistakenly believing that the daily screenings would screen its entire customer base against additions and changes to the SDN List.

[https://home.treasury.gov/system/files/126/20220721\\_midfirst.pdf](https://home.treasury.gov/system/files/126/20220721_midfirst.pdf).

**OFAC also announced a Settlement Agreement with American Express National Bank** for 214 apparent violations of OFAC's Kingpin sanctions. As part of the Agreement, Amex will remit \$430,500 to settle its potential civil liability. Regulators found that Amex processed transactions for an account whose supplemental card holder was designated in connection with money laundering.



A BETTER TOMORROW

### **BAT Smokes a Half Billion on Sanctions Violations**

British American Tobacco reserved \$545 million to settle violations of US Sanctions, restating its first and second quarter results. BAT announced in April that it was cooperating with Justice and OFAC, but declined to disclose any details, citing the ongoing investigation.

BAT had indicated in March that it would scale

back marketing in Russia, but declined to cease operations or divest. BAT lists international sanctions regimes among risk factors, warning that operations in sanctioned countries including Iran, Belarus and Cuba “expose the group to the risk of significant financial costs.”

Net of the charges, BAT posted half-year profits of £3.7 Billion.

### **Mahan Airways Enforcement**

BIS issued a Denial of Export Privileges to Joyce Marie Eliabachus, convicted in 2020 of operating a procurement field office for the sanctioned Iranian carrier Mahan Airways out of her New Jersey home. [EP June 2022].

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## US-EU TTC Export Controls Group Gets Traction

July 19th's Stakeholder Outreach of the Working Group 7 - Export Controls of the US-EU Trade and Technology Council (TTC) afforded a timely update, as well as a reminder to industry and academia that your input is sought.

The TTC has been "the major factor allowing both sides of the Atlantic to respond [to the Russian aggression] as it developed," said Peter Sandler, Director for Enforcement, Market Access, SMEs, Legal Affairs and Technology at European Commission. "While the core tranche of the TTC was envisaged before the events of February 25th...clearly one action has taken priority, response to Russian aggression in the Ukraine."

*The TTC has been "the major factor allowing both sides of the Atlantic to respond [to the Russian aggression] as it developed,"*

"We are working on a new round of sanctions, to better align with the US," said Sandler, as well as "broadening regulatory consultations to produce joint export restrictions on Emerging Technologies, like quantum computing." The TTC is also developing a new "Enforcement Coordination Mechanism," as well as assessing how the TTC can contribute in peripheral areas, like the Western Balkans, the EU P2P Dual-Use and Arms Control Program, and State's Export Control and Related Border Security (EXBS) Program.

"Technology transfer is not separate, but embedded" in the Working Group's mission, said Matt Borman Deputy Assistant Secretary of Commerce for Export Administration. Comments submitted to the group by Sabine van Gastel of EECARO, the European Export Control Association for Research Organizations, provide "exactly the kind of specificity we're looking for," said Borman. Both Borman and Sandler separately suggested creation of a stakeholder outreach specific to University Export Controls.

Other challenges discussed by participants included the disposition of stranded dual-use and restricted technologies when selling Russian subsidiaries, to which Borman suggested reaching out to BIS for guidance, and alignment and harmonization of EU and US controls.

Practitioners wishing to contribute to the working group's conversation can join via the EC's Futurium Platform. <https://futurium.ec.europa.eu/en/EU-US-TTC/wg7>



## DDTC Rolls Out Open General License Program

State's Directorate of Defense Trade Controls (DDTC) is issuing two open general licenses as part of a new pilot program: Open General License No. 1 permits the retransfer (as defined in ITAR § 120.51) of unclassified defense articles to the Governments of Australia, Canada, or the United Kingdom, and to members of the Australian and United Kingdom communities (as defined in ITAR §§ 126.16(d) and 126.17(d)) and Canadian-registered persons (as defined in ITAR § 126.5(b)). Open General License No. 2 permits the reexport (as defined in ITAR § 120.19) of unclassified defense articles between or among the same governments and entities defined in OGL 1. Both licenses are subject to requirements, limitations, and provisos as described in each license. The OGLs cannot be used to export Defense Articles. Fact sheet.

Marwa Hassoun and colleagues at Arent Fox note in a NLR post: "[In] projects requiring the transfer of technical data, reexporters and transferors are limited to only unclassified technical data for orga-



nizational-level, intermediate-level, or depot-level maintenance, repair, or storage of a defense article. In other words, these new OGLs cannot be used for projects involving the transfer of design or production technical data, substantially limiting their utility outside the maintenance and repair context.”

*Our friend David Hayes notes in a LinkedIn comment, “Sadly, likely to be severely limited in the UK by reliance on the “approved community” concept, which has already been demonstrated to deter UK companies.*

“One option to increase utilisation would be to adopt an approach similar to the 740.21(c)(1) previous licence language from STA, instead of the current approved community requirement.

“To use the OGL a UK party must previously have been a party to an Agreement. DDTC has this information and, if the party could not be trusted to handle ITAR, why were they approved?

“I would not suggest including named sublicenses in previous agreements in the scope, as many are just back ups and are never actually used to handle ITAR.

“Looking at this the other way, the UK can send classified items to the US under open license. I am not suggesting that the treaty or OGLs should extend to classified, merely pointing out that the equities here are somewhat out of balance and a little easing may help both parties achieve their goals.”

## University China Defense Tracker

Due diligence when collaborating with Chinese universities cannot be overstressed in the present regulatory environment. Regulators continue to assert that many of China’s civilian universities are working as part of its “Military- Civil Fusion” strategy. **According to the State department**, Chinese Communist Party’s strategy is to “develop the most technologically advanced military in the world” by eliminating “barriers between China’s civilian research and commercial sectors, and its military and defense industrial sectors”.

The Australia-based think tank, Australian Strategic Policy Institute (ASPI) has **launched a tracker** that seeks to collate information regarding Chinese universities engaged in defense research. **Their analysis has indicated** that China’s 12 major defense conglomerates, have over 100 civilian universities potentially serving as “feeder schools”. Key “dual-use” technologies being researched at these universities include quantum computing, advanced nuclear technology, artificial intelligence, big data, 5G, and robotics.

A useful risk management tool for those looking to collaborate with such universities, the ASPI tracker characterizes the related regulatory risk from Low to Very High. (GS)

## EU Adopts “Maintenance and Alignment” Sanctions Package

The new sanctions announced July 21 include a prohibition to purchase, import, or transfer, directly or indirectly, gold, if it originates in Russia and it has been exported from Russia into the EU or to any third country after. This prohibition also covers jewelry. Gold is Russia’s second most valuable export after petroleum products.

The package also extends the list of controlled items, which may contribute to Russia’s military and technological enhancement or the development of its defense and security sector, thereby reinforcing export controls on dual use and advanced technology.

### *“Gold is Russia’s second most valuable export after petroleum products”*

The package continues the exemption from the prohibition to engage in transactions with certain State-owned entities as regards transactions for agricultural products and the supply of oil and petroleum products to third countries.

The EU will not sanction Airbus titanium supplier VSMPO-Avisma PJSC, the *Wall Street Journal* notes. Boeing announced in March it had ceased dealings with the Rostec affiliate, though key component subcontractors like Barnes Group have made no similar commitments. Sanctions on Russia’s arms makers and tycoons have been applied inconsistently by the NATO allies, with some governments levying penalties and others not, a *Reuters* review showed. Avisma does not appear on Commerce’s Consolidated screening list.

## UK Soldiers on

The UK’s Russia (Sanctions) (EU Exit) (Amendment) (No. 12) Regulations 2022, which introduce

new investment restrictions, entered into force today (19 July 2022). Explanatory Memorandum & Impact Assessment. See updated Statutory Guidance. The UK also adopted the Russia (Sanctions) (EU Exit) (Amendment) (No. 13) Regulations 2022 (Explanatory Memorandum), which amend the designation criteria. The Regulations prohibit people / entities from undertaking certain investment activities, OFSI and the National Crime Agency (NCA) last week issued a ‘Red Alert’ on financial sanctions evasion by Russian elites and enablers.

**OFAC issued Russia-related General License 45** (wind down of financial contracts involving debt or equity issued by an entity in the Russian Federation) and **General License 46** (Transactions in Support of an Auction Process to Settle Credit Derivative Transactions Prohibited by Executive Order 14071). OFAC also published **two new Frequently Asked Questions** related to the above actions and **two amended Frequently Asked Questions** regarding the purchase of Russian debt and transactions related to divestment in a Russia-related project.

**Agricultural and medical trade are not targets of the sanctions imposed by the United States on Russia.** Treasury has issued a **Fact Sheet** to further clarify that the United States has not imposed sanctions on the production, manufacturing, sale, or transport of agricultural commodities (including fertilizer), agricultural equipment, or medicine relating to the Russian Federation (Russia). In addition, Treasury’s Office of Foreign Assets Control has issued a broad general license [**GL 6B**] to authorize certain transactions related to agricultural commodities, agricultural equipment, medicine, and medical devices.

**OFAC also issued Russia-related General License 25C**, Telecommunications and Certain Internet-Based Communications **General License 30A**, SEFE Securing Energy for Europe GmbH (formerly known as Gazprom Germania GmbH) **General License 44**, Accounting Services to U.S. Individuals Located in Russia; and published three **amended Russia-related Frequently Asked Questions**

## END NOTES

STATE released its **Section 353 Undemocratic Actors Report**, citing 60 individuals. Section 353 of the United States–Northern Triangle Enhanced Engagement Act, as amended, directs the Department of State to identify individuals who have knowingly engaged in acts that undermine democratic processes or institutions, engaged in significant corruption, or obstructed investigations into such acts of corruption in Guatemala, Honduras, El Salvador, and Nicaragua. Section 353 generally renders the individuals listed in this report ineligible for visas and admission to the United States.

STATE announced an Executive order enabling the U.S. to impose financial and travel **sanctions on those who are responsible for unjustly holding U.S. nationals**, whether their captor is a terrorist network or a state actor. State is also introducing a new risk indicator to Travel Advisories – the “D” indicator, which warns U.S. citizens of the risk of wrongful detention by a foreign government.

STATE released its 2022 Trafficking in Persons **Report** adding Vietnam, Cambodia and Brunei to its blacklist, joining Malaysia and Myanmar among countries “whose governments do not fully meet the minimum [anti-trafficking] standards and are not making significant efforts to do so.”

**BURMA – Further Sanctions.** Spokesperson Ned Price told a press briefing that the US is considering further sanctions against Burma/Myanmar. “We of course don’t preview our own sanctions, but all options that serve to cut off the regime’s revenue, which it uses to perpetrate this violence – it’s on the table.”

STATE - **Investment Climate Statements** for 2022 have been released, describing investment climates of more than 160 countries and economies that are current or potential markets for U.S. companies. The reports cover topics including Openness to Investment, Legal and Regulatory Systems, Protection of Real and Intellectual Property Rights, Financial Sector, State-Owned Enterprises, Responsible Business Conduct, Corruption, and Labor Policies and Practices.

## CALENDAR

### 16th Annual Defence Exports Conference - London

The 2022 Conference theme is on optimizing global trade compliance efficiency and will be held September 13-14, 2022. Speakers to include:

- Shainila Pradhan, Director, Export Control Joint Unit, U.K Department for International Trade
- Robert Hart, Chief, Regulatory and Multilateral Affairs, U.S. Department of State
- Thea Kendler, Assistant Secretary for Export Administration, Bureau of Industry and Security

Registration: <http://www.defence-exports.com/PR1EIN>

**Baker McKenzie will host their Annual Compliance Conference**, which attracts over 6,000 in-house senior legal and compliance professionals from across the world. The event will be held across five weeks from 6 September – 6 October 2022. Details

**Caribbean Trade Mission and Business Conference**, taking place October 23-28 in Miami, which will showcase U.S. private sector solutions and technologies to 14 markets in the Caribbean, including Guyana. Information.

## China's Evolving Data Governance Regime\*

*The following report was prepared by the The U.S.-China Economic and Security Review Commission and released July 26, 2022. It has been lightly edited for publication.*

With China's ambitions to become a leader in the digital economy by 2025 and a "cyber superpower," data governance has been a top priority for Chinese policymakers.

Beijing sees that sustaining economic growth and leading in global innovation requires expanding and protecting China's digital capabilities, both for digitally-enabled trade in goods and provision of digital services, which account for an increasing proportion of overall economic activity.

In addition to the economic benefits of a secure digital economy, maintaining "cybersovereignty" is important for Chinese policymakers in carving out new legal and regulatory systems.

**Contrary to the U.S. vision of a free and open internet, upholding cybersovereignty means that cyberspace, data, and networks are regarded as sovereign territory subject to local laws of individual countries.** This concept is critical to the Chinese Communist Party's (CCP) strategy to maintain information control, political stability, and limitations on expression of popular dissent.

**While some of China's protections on data appear similar to those in other countries, they are generally more restrictive.** Since the passage of China's Cybersecurity Law in 2017, the Chinese government has been creating an expansive thicket of laws, regulations, and technical standards related to the collection, sharing, commercialization, and protection of data.

The Chinese government is developing more specific regulations and standards in sectors of particular concern, such as finance and transportation. China has also implemented more restrictive data protection and cybersecurity rules for government and national-security related data.

**China's development of its data governance regime is also part of a broader CCP strategy to influence global data governance norms.** Many of

China's data-related measures encourage China's "formulation of international rules and standards." In September 2020, Chinese Foreign Minister Wang Yi presented a Global Initiative on Data Security, which Foreign Ministry spokesman Zhao Lijian characterized as "contributing China's wisdom to international rules-making" for data. The initiative has since been endorsed by leaders from Tanzania, the Philippines, Russia, and Ecuador.

In March 2021, China signed a "Cooperation Initiative on Data Security" with the Arab League. The initiative urges countries not to weaponize the use of data while also encouraging cybersovereignty and local data storage—policies that have raised concerns among human rights experts as well as U.S. tech firms. Authoritarian or illiberal governments are increasingly interested in these types of cybersovereignty-based policies, as they can be used to seize data and computing equipment for vaguely-defined "national security" purposes, jeopardizing the protection of civil and intellectual property rights.

**China's data governance regime stands to increase fragmentation of global data policies and the digital economy.** Running counter to the free flow of data approach favored by the United States and many democratic countries, Chinese policy positions clearly appeal to certain governments around the world.

Vietnam's cybersecurity law, adopted in 2019, mirrors the 2017 Chinese law. Similarly, the military junta in Myanmar has recently proposed a draft cybersecurity law that has clearly drawn from its Chinese counterpart.

While China's approach to data has influenced some of its closest neighbors, it has also produced friction in regional forums. China has historically refused to sign onto the Asia Pacific Economic Cooperation's (APEC) Cross-Border Privacy Rules, which it claims is a U.S.-led initiative to hoard data, and subsequently has hampered consensus-building within APEC on other digital economy work.

Under the Regional Comprehensive Economic Partnership (RCEP), China's insistence against explicit prohibitions on data transfer restriction and protections on source code was a key contention with the governments of Japan and Singapore, which have enshrined protections on source code and free

flows of data in other agreements. As a result of this difference, RCEP includes both a broad principle on protecting the free flow of data and a broad exception for governments to create restrictions where a member may deem it “necessary to achieve a legitimate public policy objective.” China’s membership in RCEP and growing trade relationships in the region may lend it greater influence in the coming years as ASEAN builds out a data governance regime.

**The United States is leading a digital agenda with allies and partners to incorporate a broad set of economic and security concerns.** Under the U.S.-EU Trade and Technology Council, both sides are moving forward with specific working groups on technology standards cooperation and data gover-

nance and technology platforms.

Similarly, the Biden Administration’s Indo-Pacific Economic Framework includes negotiations on the digital economy as well as digital and emerging technologies. The United States has already cemented certain policies on cybersecurity capacity building, cross-border data flows, and online consumer and data privacy protections through commitments in the U.S.-Mexico-Canada Agreement, in the U.S.-Japan Digital Trade Agreement, and under the Trans-Atlantic Data Privacy Framework signed with the European Commission. The United States is also a strong supporter of APEC’s Cross-Border Privacy Rules and several initiatives at the WTO aimed at reducing barriers to digital trade and e-commerce.

**Table: Key Chinese Measures and Norms on Data Governance\***

TITLE	PURPOSE	DATE
Cybersecurity Law	Establishes general security practices and authorities over cybersecurity matters; security process requirements and reviews for all organizations in China, including broad liabilities; restrictions on cross-border data transfer; and a framework for implementing regulations specific to critical sectors and information.	Effective June 2017
Measures for the Administration of Scientific Data	Restricts overseas access to scientific data by foreign investors in China; limits joint research by Chinese and foreign partners; and requires government review for cross-border transfer of scientific data. Scientific data such as basic and applied research generated through government funding must be reported directly to government entities.	Effective March 2018
E-Commerce Law	Establishes a registration system for e-commerce platforms, third-party sellers, and individual sellers; provides consumers the option to decline targeted marking and search options.	Effective January 2019
Encryption Law	Establishes three encryption categories with different levels of protection and use; a testing and certification system for encryption, some of which must go through an accredited body; and an import licensing system and export controls for national security-related commercial encryption.	Effective January 2020
Opinions on Strictly Cracking Down on Illegal Securities-Related Activity in Accordance with Law	Calls for stronger supervision and enforcement of cross-border listings, including improvement of laws and regulations related to data security, transfer, and management involved in such listings.	Published July 2021

# PUBLICATIONS OF NOTE

TITLE	PURPOSE	DATE
Several Provisions on the Management of Automobile Data Security (Trial)	Outlines obligations for organizations on the collection, protection, sharing, and use of data collected by automobiles.	Effective August through October 2021
Data Security Law	Establishes a system of data classification and obligations for organizations handling data, including security requirements and assessments for its protection, collection, use, and transfer domestically and overseas.	Effective September 2021
Personal Information Protection Law	Similar to the EU's General Data Protection Regulation, yet more restrictive, the law establishes rights to personal information for all individuals in China and obligations for organizations handling personal information for its protection, collection, use, and transfer domestically and overseas.	Effective November 2021
Cybersecurity Review Measures	Outlines security review procedures for operators of critical information infrastructure and organizations handling data sensitive to national security, including IPOs and organizations handling data of more than one million users.	Revision effective February 2022
Internet Information Service Algorithmic Recommendation Management Provisions	Establishes new security, privacy, and content management rules for internet services that rely on algorithmic recommendations. Providers allow consumers greater control to enable or disable algorithmic recommendations.	Effective March 2022
Security Assessment Measures on the Cross- Border Transfer of Data	Specifies when any organization handling data is required to undergo a security assessment from the national cybersecurity and informatization department to transfer data across Chinese borders, relying first on a self-assessment.	Effective September 2022

*\*Source: The U.S.-China Economic and Security Review Commission "China's Evolving Data Governance Regime" released July 26, 2022*

## USTR Details Sec. 301 Tariff Exclusion Rationale

*Responding to a remand by the Court of International Trade, August 1 the USTR submitted a 90 page discussion of the rationale for the imposition and selective waiver of the 2018 Section 301 Tariff Action against China. The filing is good beach reading; for those still our desks, a summary:*

The Remand Determination provides further

explanation of the Trade Representative's determination, at the direction of the President, to impose additional tariffs and the rationale for the decisions to retain or remove certain tariff subheadings from the Final List 3 and Final List 4 modifications.

In selecting subheadings to include, the "selection process took account of likely impacts on U.S. consumers and involved the removal of subheadings identified by analysts as likely to cause disruptions to the U.S. economy, as well as tariff lines subject to



legal or administrative constraints.”

With these considerations in mind, of the 6,031 lines proposed for the final list, the Trade Representative determined to remove 297 HTS lines (286 full 8-digit lines and 11 partial 8-digit lines). These 297 HTS lines had an import value in 2017 of approximately \$19 billion. The removed lines included:

- products that were subject to U.S. WTO cases on rare earths/critical materials;
- U.S.-caught fish processed in China and shipped back to the United States;
- a partial exclusion of an electronics line to remove consumer products;
- certain health and safety products;
- basic chemical lines where China accounts for more than 90% of U.S. imports;
- inputs for pesticide and other agricultural chemicals;
- textile-related inputs;
- certain agriculture products;
- child safety furniture (e.g., high-chairs, car seats, playpens);
- and certain other products identified as critical inputs

**Rare earths and critical minerals**, including tungsten and molybdenum, accounted for 98 of the 297 lines removed. Rare earths and critical minerals are key industrial inputs with limited supply and were the subject of disputes at the World Trade Organization, where the United States, European Union, and Japan challenged China’s restrictions on the export of various forms of rare earths, tungsten, and molybdenum, which are used in the production of various kinds of electronic goods.

The Trade Representative determined to remove 11 HTS subheadings that were included in the list of 35 critical minerals determined by the Secretary of Interior to be critical for the economic and national security of the United States Based on public comments, as well as recommendations through the interagency process by the Departments of Defense, Energy, and Commerce, the Trade Representative determined to remove certain tariff subheadings from List 4 for national security reasons.

**The Alaska Seafood Marketing Institute** asserted that Alaska’s seafood industry relies heavily on

Chinese processing of U.S.-caught seafood in order to remain competitive globally. Alaska accounts for 60 percent of U.S. commercial fishing the Department of Commerce recommend the removal of U.S.-caught seafood from the final list. determined to remove seven of the 10 proposed subheadings pertaining to seafood.

**HTS subheading 8517.62.00, covers a large variety of products related to the transmission of electronic data, such as routers and modems, as well as consumer goods, such as smart watches, and wireless headphones.** Comments included assertions that national security and privacy risks could arise if U.S. consumers switched to cheaper Chinese devices that store user information in China. (Dell Technologies, Fitbit Inc).

The proposed HTS subheading had an estimated annual trade value of \$22 billion (2018), accounted for over 10 percent of the aggregate trade value of the proposed modification, and was, by far, the largest HTS subheading by trade value for which additional duties had been proposed.

USTR worked with the U.S. International Trade Commission, Customs and Border Protection, and the Census Bureau to create a **new 10-digit statistical code that separated routing and switching apparatus from other, more consumer electronics.** This allowed USTR to include on Final List 3 the Made in China 2025 products, while excluding consumer products.

**Health and Safety Products** included, rubber and plastic gloves, sanitary paper, hair nets, precursor chemicals used to manufacture pharmaceuticals, bicycle and all other safety helmets, bicycle safety lights, and children’s safety furniture. When considering “larger product categories like vinyl exam gloves, 97 percent is in China. Surgical drapes, it’s 90 percent plus in China.”

**Pharmaceuticals were never proposed for additional duties.** Following the recommendation of HHS, and based on health and safety concerns for consumers, due to their limited availability outside of China, the Trade Representative determined to remove certain pharmaceutical inputs from Final List 3.

**There is either no domestic or limited domes-**

**tic supply of particular chemicals included in 300 HTS subheadings to fulfill market demand.** Chinese suppliers which accounted for 90 percent or more of U.S. imports were excluded from the tariffs. This resulted in the removal of 76 eight-digit subheadings

**USDA recommended the removal of the subheading covering glyphosate acid,** an herbicide input which USDA determined, in its expertise, was only available from China for generic producers and was the most widely used herbicide in the United States. USTR determined to remove 14 eight-digit subheadings for which China accounted for 70 percent or more of U.S. imports, and one ten-digit statistical reporting number for glyphosate acid.

***“Approximately one-third of the subheadings removed were subject to additional duties under Section 232.”***

**Finished apparel which accounts for 93.5 percent of textile imports from China is not included in the tariff action,** notes the National Council of Textile Organizations. Inputs such as fibers, yarns, and fabrics, totaling just 6.5 percent of textile imports from China, are subject to tariffs. USTR allowed exemption certain chemicals, dyes, and finishes integral to the textile manufacturing process, including goose and duck down. The American Down and Feather Council noted that down is a bi-product of China's poultry industry, which accounts for 80 percent of global consumption of goose and duck meat.

**Inputs used in the production of lithium-ion batteries, lightbulbs, and faucets** benefited from the removal of eight tariff subheadings for certain critical inputs for manufactured goods. Moen Incorporated noted that 90% of global faucet component volume is in China. Other comments noted that with no viable source of inputs for lithium ion batteries outside of China, tariffs will undermine the competitiveness of domestic automakers.

**Numerous comments from industrial importers cited “labor and environmental constraints”**

with one stating it “would be cost-prohibitive to produce glucosamine in the United States, because the production process creates a tremendous amount of waste water, which would violate domestic environmental policies.” USTR included no discussion of the benefits to the U.S. of offshoring such processes.

**White Goods** suppliers Whirlpool and Carrier failed to get the relief they sought, in part because the USTR noted, removing all eight HTS subheadings requested by Whirlpool would have reduced the aggregate level of the proposed action by more than \$8 billion and removing the four additional HTS subheadings requested by Carrier would have reduced the aggregate level of the proposed action by an additional \$2.5 billion (an aggregate value of approximately \$10.5 billion). This is more than half of the total lines removed from Proposed List 3 (approximately \$19 billion)

**Proposed List 1 included many steel products,** however, the Trade Representative decided not to include the subheadings on List 1 because the products were already subject to additional duties under Commerce's Section 232 investigation. Of the 515 subheadings removed from List 1, approximately one-third of the subheadings removed were subject to additional duties under Section 232.

**On grounds of national emergency and military readiness, USTR removed four tariff subheadings for cranes and lifts** from Final List 4, along with intermodal containers, of which there are no domestic manufacturers.

**Approximately one third of the comments regarding Printed Materials related to the inclusion of religious texts, including Bibles.** Comments asserted that due to the unique paper, printing, and binding needs of Bible production, that there are no domestic facilities with the ability to produce any significant portion of volume needed to meet the demand of the U.S. market. “An unhampered circulation of knowledge and religious thought is a fundamental characteristic of the United States,” said HarperCollins Christian Publishing. USTR determined to remove specifically religious texts contained in 4901.99.0040, from the final list.



## Anti-Gun Senators' Misguided Aim at Firearm Exports

By Larry Keane\*

If you didn't watch the U.S. Senate Banking, Housing, and Urban Affairs Committee hearing on Advancing National Security and Foreign Policy Through Export Controls: Oversight of the Bureau of Industry and Security (BIS), no one will blame you for missing out. I endured the pain for you.

The spectacle was made more agonizing by antigun Sens. Bob Menendez (D-N.J.) and Elizabeth Warren (D-Mass.) complaining they can't use their Senate roosts to block firearm exports. This was root-canal level of pain.

The agony is that these two senators are still trying to undo export reforms ("Export Control Reform – ECR") initiated by the Obama administration and finalized for sporting firearms and ammunition products under the Trump administration. It took more than a decade to transition export licensing responsibility for firearms and ammunition to the Department of Commerce – Bureau of Industry Security (BIS) from the Department of State – Directorate of Defense Trade Controls (DDTC). The bipartisan ECR actually enhanced national security by allowing the State Department to focus on what Obama Defense Secretary Robert Gates called "the crown jewels" –

military hardware like tanks, missiles, fighter jets, and artillery – while allowing Commerce to oversee exports of commercial products including sporting and commercial firearms.

### Human Rights Claims

The witness was Under Secretary of Commerce for Export Administration Alan Estevez, whose nomination by President Biden Sen. Menendez blocked until he extracted a change to the export administration regulations ("EAR") that I'll explain later.

In his questioning of Under Secretary Estevez, Sen. Menendez tried to characterize the BIS licensing process as lacking with concerns to human rights reviews. This, of course, isn't true. Every single firearm export license application goes through an interagency review by the Department of Commerce (DoC), Department of State (DoS) including the Bureau of Democracy, Human Rights, and Labor, Department of Defense (DoD) and the Department of Energy (DoE). Any agency involved can block an export license. That's right, the State Department can stop an export on human rights grounds. Or course, Sen. Menendez knows this because he is the Chairman of the Senate Foreign Relations Committee that has jurisdiction over the State Department. Additionally, BIS uses the interagency resources to check foreign parties against all the U.S. Government's watch lists to ensure nothing is being exported to places or people the United States does not want. If that's not enough, all firearm license applications undergo a 100 percent end-user check by BIS's Office of Export Enforcement (OEE), even if that purchaser was just checked by OEE last month, last week or yesterday. No other industry, and no other commodity controlled by BIS, undergoes 100 percent end-user checks.

Sen. Menendez's real problem is that the new voluntary BIS rule implementing Congressional Notification for semiautomatic firearms being exported to certain countries doesn't allow Congress to disapprove the license. This is the rule change extracted from Commerce Secretary Gina Raimondo to allow the Senate to vote on Mr. Estevez's nomination. He wants the ability for Congress to say "no" to a sale that has been approved after interagency review.

Prior to the ECR, when DDTC licensed the export of commercial firearms, Congress required DDTC, after the same interagency review described above, to give it notice of sales over \$1 million dollars (virtually all firearm exports). But the truth is – as Chairman Menendez knows – Congress has never stopped an export of firearms after receiving notice.

## **‘Rubber Stamp’ Claims**

Sen. Warren wasn’t to be left out. She demanded – again – that all semiautomatic firearms be banned for export, and export control of firearms transferred back to the State Department’s Directorate of Defense Trade Controls (DDTC). She pivoted to math that only Congress can understand.

Sen. Warren claimed that BIS approved \$15.7 billion in firearm licenses in a 16-month period versus \$12 billion approved by DDTC in a similar period. Under Secretary of Commerce Estevez tried to correct her by saying the BIS figure includes all weapons, not just firearms. Sen. Warren even insultingly asked Under Secretary Estevez whether BIS was working for the United States or “the gun industry.”

Sen. Warren stuck to her own fuzzy math, claiming this showed a “30 percent increase in firearm exports,” which is untrue. Selective facts didn’t end there. She ignored that the State Department can deny exports in their reviews to castigate BIS that “only .4 percent of license applications are denied.” This set her up to wrongly claim firearm exports are going to “bad” countries like Mexico or the Philippines. In fact, BIS has been doing a deep review of all licenses for these two countries, and if a license is

granted, BIS has in some cases added restrictions and reporting requirements.

Sen. Warren’s big “.4 percent denial” claim is deliberately misleading. This figure is merely a percentage of total license applications and has nothing to do with commodities being licenses, the value of those licenses or the countries of intended export. It doesn’t account for hundreds of applications for firearm parts, or small firearm or ammunition orders, not to mention the thousand-plus applications for individuals in Brazil alone, most of which have nothing to do with semiautomatic firearms. License denials from DDTC are an equally small percentage.

Sen. Warren was clearly looking for a “made-for-television” campaign moment. The problem is her facts were so slanted, they fell on their own before she even had the chance to trample them. When it comes to U.S. export controls, Sens. Menendez and Warren have one goal – stop legal firearm exports any way they can. They want to use BIS as an instrument to cause economic harm to members of our industry.

*\*Larry Keane is SVP for Government & Public Affairs, Assistant Secretary and General Counsel for the National Shooting Sports Foundation (NSSF), the firearm industry trade association.*

This article was originally published on the NSSF website July 22, 2022 under a different title. <https://www.nssf.org/articles/antigun-senators-bloviate-over-inability-to-block-firearm-exports/>

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