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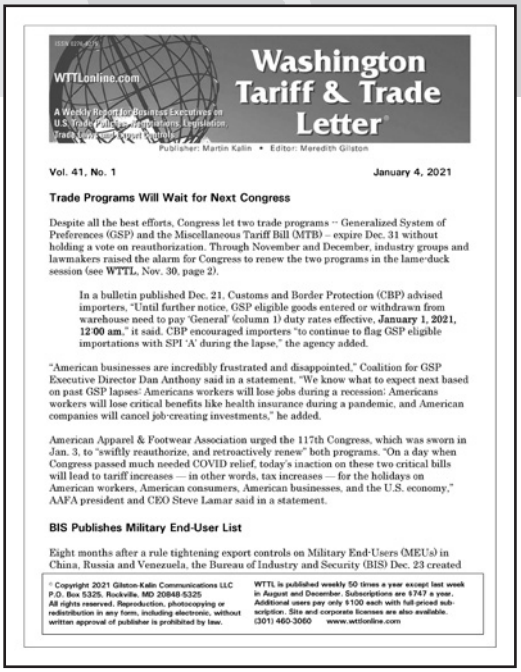

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A Weekly Report for Business Executives on U.S. Trade Policy, Export Regulations, Legislation, Trade Data and Export Strategies

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Trade Programs Will Wait for Next Congress

Despite all the best efforts, Congress let two trade programs -- Generalized System of Preferences (GSP) and the Miscellaneous Tariff Bill (MTB) -- expire Dec. 31 without holding a vote on reauthorization. Through November and December, industry groups and lawmakers raised the alarm for Congress to renew the two programs in the lame-duck session (see **WTTL**, Nov. 30, page 2).

In a bulletin published Dec. 21, Customs and Border Protection (CBP) advised importers, "Until further notice, GSP eligible goods entered or withdrawn from warehouse need to pay 'General' (column 1) duty rates effective, **January 1, 2021, 12:00 am**," it said. CBP encouraged importers "to continue to flag GSP eligible importations with SPI 'A' during the lapse," the agency added.

"American businesses are incredibly frustrated and disappointed," Coalition for GSP Executive Director Dan Anthony said in a statement. "We know what to expect next based on past GSP lapses: Americans workers will lose jobs during a recession; Americans workers will lose critical benefits like health insurance during a pandemic, and American companies will cancel job-creating investments," he added.

American Apparel & Footwear Association urged the 117th Congress, which was sworn in Jan. 3, to "swiftly reauthorize, and retroactively renew" both programs. "On a day when Congress passed much needed COVID relief, today's inaction on these two critical bills will lead to tariff increases — in other words, tax increases — for the holidays on American workers, American consumers, American businesses, and the U.S. economy," AAFA president and CEO Steve Lamar said in a statement.

BIS Publishes Military End-User List

Eight months after a rule tightening export controls on Military End-Users (MEUs) in China, Russia and Venezuela, the Bureau of Industry and Security (BIS) Dec. 23 created

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AT A GLANCE

4 | FEATURE

Reverse CFIUS - lawmakers in the US are exploring the idea to screen outbound foreign investment: a proposal that may prove to be a test case for defining the limits of its balancing strategy.

DEPARTMENTS

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FEATURE

Screening Outbound Foreign Investment - Containing China Without Stifling Economic Freedom

-Gaurav Sansanwal*

Screening of Outbound Foreign Investment: The Context

China's ambitious use of capital outflows as a tool of economic statecraft continues to generate critical national security concerns among its adversaries and competitors. As economies seek to contain the adverse impact of China's "Go Out" policy, they run the risk of taking the competition too far. According to the Organisation for Economic Co-operation and Development (OECD), at least 32 states modified their investment policies between October 2020 and October 2021. [1]

This points to the growing momentum in institutionalizing frameworks governing inbound capital flows. While the move toward transparency in investment-related decision-making is welcome, the return of expansive "national security" definitions, negative lists, trade barriers, and the increasing use of export controls has the potential to have a stifling effect on growth and innovation. Employing legacy tools of the "protectionism" era to fight the contemporary challenge of "decoupling" may not be prudent in instances where the costs outweigh the benefits of state intervention.

Given the novelty of the emerging great power competition, there is a need to evolve new frameworks that seek to relentlessly advance national interest without disproportionately compromising on economic freedom. It is against this backdrop of intensifying competition with China that lawmakers in the US are exploring the idea to screen outbound foreign investment: a proposal that may prove to be a test case for defining the limits of its balancing strategy.

If passed by the Senate in its present form, the committee would have the jurisdiction to review any "covered transaction" with a "country of concern".

"Reverse CFIUS" Regime: The Proposal

While the strategy to protect the "national security innovation base" has so far focused on reviewing inbound investment under the mandate of the Committee on Foreign Investment in United States (CFIUS), there is now growing interest in Washington to establish a "reverse CFIUS" regime that seeks to target outbound investments. This has led to the passage of the America COMPETES Act in the House of Representatives.[2] The Act seeks to create a new interagency committee, Committee on National Critical Capabilities (CNCC), chaired by the United States Trade Representative. If passed by the Senate in its present form, the committee would have the jurisdiction to review any "covered transaction" with a "country of concern". While previous legislative efforts to establish an outbound screening mechanism have failed, there seems to be a persistent move toward this direction. Support for such a screening regime has also been echoed by the US Secretary of Commerce.[3]

1 Organisation of Economic Co-operation and Development, "Freedom of Investment Process: Investment policy developments in 62 economies between 16 October 2020 and 15 October 2021", https://www.oecd.org/investment/investment-policy/Investment-policy-monitoring-October-2021-ENG.pdf , November 2021, accessed April 18, 2022.

2 US House of Representatives, "Text of H.R. 4521, The America COMPETES Act of 2022", https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR4521RH-RCP117-31.pdf , n/d, accessed April 18, 2022.

3 Politico, "Raimondo open to enhanced screening of U.S. investments in China", https://subscriber.politicopro.com/article/2022/03/raimondo-open-to-enhanced-screening-of-u-s-investments-in-china-00019326 , March 22, 2022, accessed April 18, 2022.

Containing Outbound Investments: The Rationale

According to an analysis done by the Rhodium Group, the total value of acquisitions and greenfield investments done by American investors in China from 2010 to 2020 was around $150 billion, with the total investment peaking in 2012 at $15.4 billion. Similarly, US investors have also infused around $60 billions of venture capital into Chinese funds.[4] Thus, the fact that Wall Street has contributed to the ballooning of China's foreign reserves cannot be over-emphasized. What is equally evident from a perusal of facts and figures is the fact that this capital outflow from the US has significantly slowed down in the last couple of years, due to a variety of reasons ranging from the COVID-19 pandemic to the increased geopolitical risk of operating in China.

Among the American manufacturers producing in China, 72 percent reported having no plans to move production out of China in the next three years.

However, given the investors' continued commitment to the Chinese market, this slowdown appears to be transitionary in nature. In this regard, Peterson Institute for International Economics[5] has reported the findings of a survey by the American Chamber of Commerce in Shanghai[6] conducted in July 2021. Among the American manufacturers producing in China, 72 percent reported having no plans to move production out of China in the next three years. Similar results have been observed in the annual China Business Confidence Survey by the European Union Chamber of Commerce in China, which found that only 9 percent of the 600 European companies operating in China reported plans to shift current or planned investment out of China.[7] Therefore, outbound investments to China in the middle of what is increasingly being defined as an "economic war" by US Senators and Congresspersons alike— is likely to invite regulation.[8]

Regulating Outbound investments: The Concerns

According to the Rhodium Group's US-China Investment Project, the outbound investment screening mechanism, as drafted, would have covered around 43 percent of all US transactions in China between 2000 and 2019.[9] This points to the profound implications that this regime will have on the capital flows between the US and other economies. Given that the United States would be the first country in the world to enact an outbound investment screening regime, there is a need to address and mitigate resultant concerns.

Investment protectionism is a two-way street. The first concern with respect to outbound screening is, therefore, that of reciprocity. Screening of outbound investment from the US is likely to further divide the world into divergent trading and investment blocs. When contextualized against the broader trend of decoupling by the West and its allies, and increasing de-dollarization by China and its partners, and the overall thinning of international institutions —a reverse CFIUS process is likely to further accentuate the divide. This may accelerate the overall "de-globalization" trend but will also crystallize "re-globalization" within blocs.

A secondary concern relates to the strategic leverage that financial integration provides to the West and its allies. The

4 US-China Investment Project, Rhodium Group, "An Outbound Investment Screening Regime for the United States?", https://rhg.com/wp-content/uploads/2022/01/RHG_TWS_2022_US-Outbound-Investment.pdf , January 2022, accessed April 18, 2022.

5 Peterson Institute for International Economics, "Foreign corporates investing in China surged in 2021", https://www.piie.com/blogs/realtime-economic-issues-watch/foreign-corporates-investing-china-surged-2021 , March 29, 2022, accessed April 18, 2022.

6 American Chamber of Commerce in Shanghai, "AmCham Shanghai Releases 2021 China Business Report", https://www.amcham-shanghai.org/en/article/amcham-shanghai-releases-2021-china-business-report , September 23, 2021, accessed April 18, 2022.

7 European Union Chamber of Commerce in China, "European Companies in China Navigate COVID-19, More Perilous Waters Lie Ahead", https://www.europeanchamber.com.cn/en/press-releases/3345 , June 8, 2021, accessed April 18, 2022.

8 Politico, "We're in an economic war: White House, Congress weigh new oversight of U.S. investments in China", https://www.politico.com/news/2022/02/19/china-investments-economy-us-congress-00008745 , February 19, 2022, accessed April 18, 2022.

9 Rhodium Group, "Two Way Street- An Outbound Investment Screening Regime for the United States?", https://rhg.com/research/tws-outbound/ , January 26, 2022, accessed April 18, 2022.

Ukraine crisis is a testament to the powerful weaponization of finance and business as a viable strategy to check the behavior of international actors. Targeting outbound investment will reduce this leverage. Further, this may push some countries toward China in a moment of "all in, all out" strategic choice. A related cost would be that of soft power. It was, after all, the belief that no nation has been able to "stop ideas at the border" that led to the emergence of investment liberalization. Violation of the spirit of open market behavior will not only violate free trade agreements and increase opportunity costs for US investors, but also reduce the inventive for other economies to pursue po-market policies.

Limiting review to only economically significant transactions will ensure that market activity is not significantly disrupted.

Crafting a Balancing Strategy: The Options

As lawmakers move toward the impending regulation of outbound investments, the question of mitigating concerns and addressing regulatory gaps assumes importance. In so far as the loss of strategic leverage is concerned, there is a need to reconsider the existing broad definition of what constitutes as a "country of concern". The definition, provided under Section 1001 (4) of the similarly worded National Critical Capabilities Defense Act of 2021, includes countries having a "nonmarket economy".

Given that precluding American investment in such countries will further push them toward China and reduce incentive for adoption of pro-market policies, there is a need to limit the definition. A decline in Chinese investments under the One Belt, One Road initiative has, for instance, created an unprecedented opportunity for American firms to invest in such countries, where the risk premium is high. Targeting investments in these "non-market" economies will, therefore, be a mistake in as much as it would solidify China-led alliances.

Similarly, the definition with respect to what constitutes to be a "national critical capability", was earlier defined under Section 1001 (11) of the National Critical Capabilities Defense Act of 2021. This needs to be crystallized further, to ensure that what is critically important is clearly defined. There may be a further need to evolve an essential security "test" that much like the Competition law framework, determines a starting threshold of what may be a "covered transaction". Limiting the review to only economically significant transactions will ensure that market activity is not significantly disrupted, and further that there is less logistical burden on the new committee.

Conclusion

The debate on outbound investment needs to be contextualized to ensure regulatory focus in the age of evolving great power competition. According to the Atlantic Council's calculations based on data obtained from the Bureau of Economic Analysis, despite a 97% growth rate from 2010 levels, China accounted for a mere 1.9% of all US FDI positions abroad in 2019. Thus, while there may be a need to regulate outbound investment, we should be conscious of sizing its scale appropriately so as to ensure that the incoming regime is not over-expansive, and over-expensive in terms of associated costs to growth, innovation, and strategic toolkit. In conclusion, while increased transparency in investment scrutiny is welcome, effort should also be made to avoid definitional vagueness, wherever possible.

**Gaurav Sansanwal is an attorney and graduate student at Georgetown University's School of Foreign Service. He can be reached on Twitter at @GSansanwal.*

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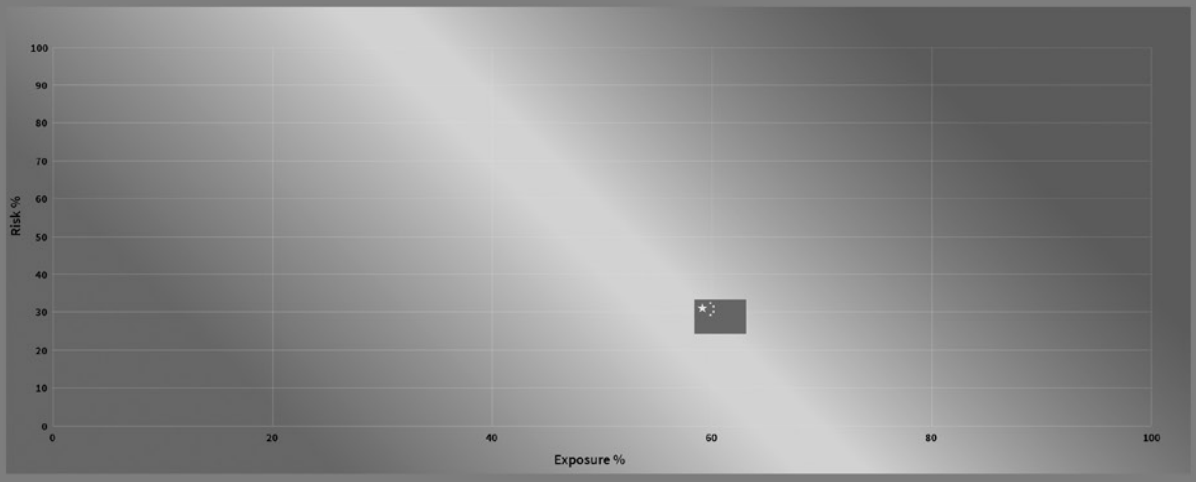

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Estevez Comes Out Swinging

Alan Estevez, the newly installed Undersecretary of Commerce for Industry and Security shared his thinking at what he called his "coming out party" May 25 at the Atlantic Council in Washington. In a conversation with Keith Krach, Silicone Valley entrepreneur and former Under Secretary of State for Economic Growth, Energy, and the Environment, Estevez discussed the challenges of, and our collective response to, competition with the "totalitarian twins" of China and Russa.

Excerpts include:

"I view my job at Commerce is to deny our adversaries access to advanced technologies. In fact, to my friends who have no idea what it is I do, I've been calling myself the Chief Technology Protection Officer of the United States.

"Let me talk a little bit about what we're doing with regard to both Russia and China. Right now we are slowly strangling the Russian military. We've cut off their access to global semiconductors- military access to global semiconductors that is bleeding into the commercial sector. We know of two tank plants that have closed because they can't produce right now, and again as you know we see the destruction of Russian armor and Ukraine. That's going to pay dividends in the long term…

"The most important thing I want to point out is that we've done that in conjunction with 37 other nations and across the globe that are standing with us. The technocratic autocracies don't have what we have, friends. We have friends that will stand by us, they are standing by us, and standing by Ukraine against that aggression.

"With China what we need to, again looking long, we need to take those partnerships that we've just unified, those 37 nations and whoever else wants to join that club and build what I call the digital export regime for the 21st century. To protect our technology and the technology of our allies from going into China's evil military fusion; stop them from using our technology against us. That's what I intend to do with Commerce, and we are dedicated to that. That's my top priority in the long term, closing those risk gaps.

"I've talked a lot about defense, stopping them from getting it. There is an offensive component to this. There's a bill before the House and Senate right now, there's a conference on, the bipartisan Innovation Act that will provide, it's really just seed money, as you know $50 billion is not really a lot of money in the semiconductor space. That is a national security imperative to get that bill passed

"We need to diversify our supply chains, move supply chains out of the adversarial nations and provide our own networks the capability to produce. I realize this is a global thing; it's not just the United States but for all. Getting that bill passed is a national security imperative, so for those of you who care about such things, call your congressman and tell them we need to get this done.

"You buy from people you trust, you partner with people you trust, and this whole area of technology is all about trust, and nobody trusts China and Russia. Any American company, and any allied company as well, needs to be looking and assessing the risk calculus, based on what's going on in the world today. Many companies walked away from their assets in Russia, and I realize that it's much easier than the Chinese scenario, but the reality is they need to look and say, 'these are people who do not respect the law.' If you don't start figuring out how you're going to diversify, what you can afford to lose , and how you're going to manage your business, you're putting

yourself at a disadvantage over the long term.

"I can't stop people from making bad deals, but I can stop them from selling the most advanced technology. People want to sell stuff to China; I'm not going to let them sell really cool stuff, but it goes back to my earlier statement about eyes wide open here. That big market comes with strings and the Chinese, they're announced their behavior. So people need to watch out."

"Enforcement, Enforcement, Enforcement," says Raimondo

Testifying before the Senate Appropriations Committee May 11, Commerce Secretary Gina Raimondo lauded the impact of the coordinated allied efforts to restrict Russian access to critical industrial technology, citing reports that captured Russian military equipment is "filled with semiconductors that they took out of dishwashers and refrigerators….I am deadly serious about enforcement, and we have been extremely clear with everyone, especially China, that we won't tolerate any circumvention of these export controls."

Axelrod Maintains Enforcement Drumbeat

Continuing to emphasize that greater consequences drive greater compliance, BIS Export Enforcement Chief Matt Axelrod updated practitioners on the changes to export control enforcement firms can expect from Commerce.

In a broad-ranging speech to the Society for International Affairs May 16, Axelrod reviewed the evolution of export control over the four decades since his office was established, recent developments regarding Russian sanctions, and policy changes planned "in the coming months."

While enhanced screening mechanisms, an expanded Entity List, and the highly publicized moves in Russian aviation have garnered much attention, Axelrod noted his team's outreach and education initiative, directed at firms with prior commercial relationships with sanctioned entities in Russia, has so far engaged 440 U.S. companies.

"A number of enforcement inquiries" have been opened, though public charges take longer to prepare. "Down the line you'll see the results of that hard work – "Axelrod said, "in the form of public charges against companies that are putting profits ahead of the welfare of the Ukrainian people."

"We are going to be making some changes to our administrative enforcement programs in order to increase prevention, increase transparency, and incentivize compliance and deterrence

Our view is that, in addition to our obligation to enforce the law when it's been violated, we also have an obligation to companies that are playing by the rules. If we are not vigorously enforcing against violators, then those companies that are obeying the law are unfairly disadvantaged in the marketplace."

First, Administrative Charging Letters will be made public when filed, as is now the case with the SEC. Currently information on violations is not released until after the case is resolved, if ever.

Second, OEE will discourage the use of no admit/no deny settlements. Such settlements, while expedient, fail to make public a statement of facts, "making it more difficult for other companies to learn from their peers' mistakes and adjust their behavior accordingly." Further, current practice affords companies reduced fines when a settlement is reached. "In other enforcement contexts, companies must admit to their conduct in order to qualify for the reduced penalty."

Third, penalties will be higher. "Given the amount of federal resources it takes to gather the evidence necessary to bring one of these cases, and the national security stakes, penalties must be high enough to both punish and deter those who would violate the law. If penalties are low, it is too easy for companies to do a cost-benefit analysis and conclude that they would rather risk paying a small fine on the back end if they get caught than invest in compliance systems or forego revenue from sales, they should be turning down up front."

Reform of the voluntary self-disclosure process has apparently been shelved. In a similar dis-

cussion we reported in March, Axelrod noted that of the 400 self-disclosures last year, only three prompted an administration resolution, with no criminal investigations. At the time, Axelrod said his office was having trouble issuing timely letters of response; we imagine the past two months have scarcely afforded time to catch up.

Axelrod also said that the BIS Regulations and Procedures Technical Advisory Committee (RPTAC) is seeking to reprioritize antiboycott enforcement in a similar fashion.

Kendler Schools Academia

Assistant Secretary for Export Administration Thea Kendler reached out to the academic research community, asking for their assistance and cooperation, while making it clear that to ignore export regulation will not make it go away.

"The risk of failing to think through the national security concerns of new technologies is real."

Her remarks May 5 to the Association of University Export Control Officers at their annual conference included the following:

"While the U.S. higher education system is the crown jewel of our open society, it is also a front line in protecting our national security...More and more, this link between commercial technology and national security requires us to think about how technological breakthroughs and innovation will operate outside the lab, in the worst-case scenario. There is no distinction between industry and academia for a procurement agent.

"Controlling exports, of course, is not the same as cutting off exports. Export controls on a technology enable us to look at the destination, end use, and end user involved in a collaboration. This gives us insight into whether such exports or collaborators are a U.S. national security concern… Our job – yours and mine – is to make sure that American innovation is protected, and the academic community is a critical partner in our efforts.

"A strong relationship between the Bureau of Industry and Security and the institutions you represent is essential to ensuring U.S. national security, including long-term technological leadership… Given the widespread threats we face, we can't have our academic institutions, researchers, and faculty stick their heads in the sand and reflexively hold that all controls are bad for innovation.

"The risk of failing to think through the national security concerns of new technologies is real. Developing technologies without considering how they may be applied outside the lab is reckless.…

"Last year BIS asked for public comments on a control we were considering on brain computer interface (BCI) technology. We received 18 comments, the general thrust of which was: Don't regulate or you'll kill innovation.

"I understand the initial instinct behind the commenters' responses to our request for comments on BCI technology. But an outright condemnation of export controls is not tenable given the potential for the technology's nefarious uses. "Let me be clear. If a technology poses a risk to national security, BIS controls it."

FMC to Require Compliance Officers

The Federal Maritime Commission has completed Fact Finding 29, a two-year long study of the maritime shipping supply chain presenting its final report. Commissioner Rebecca Dye, who led the effort, proposed several new rules for shippers, including the following:

"We will require compliance officers for ocean carriers and seaports and marine terminal operators. These compliance officers should report directly to CEO's and not to the general counsel or reside in the general counsel office."

Playbook for Evading Airline Sanctions

Aerospace suppliers and repair centers considering compliance with recent sanctions on Russia and Belarus have an updated case study from BIS' experience with Iran's largest private airline. In an Order Renewing Order Temporarily Denying Export Privileges dated May 13 [87 FR 30173], BIS has updated sanctions against Mahan Air and related persons for a pattern of export violations that began fourteen years ago.

The saga of Mahan Airlines' fleet, and the movable feast of ruses to keep it flying has a cast of characters out of Ian Fleming, with transactions spanning from the UK to the Antipodes, most recently ensnaring the Australian logistics operator Toll Group, which concluded an OFAC enforcement case with a $6.1 million civil penalty earlier this year, precipitated by Mahan-related transactions.

Iran's first private airline, Mahan Air began operations in 1992 with 2 Tupolev Tu-154M, and currently fields 55 Aircraft: 25 Airbus models, Three Boeing 747 variants and 17 BAe 146-300 regional jets. Maintaining a fleet of 55 aircraft, most of which are subject to the EAR for U.S., has called for a broad network of procurement agents and repair depots, as well as the assistance of the freight forwarding community, unwitting or otherwise.

According to the British High Court, three 747-400s were unlawfully taken by Mahan Air from their real owner, Blue Sky Airlines, Armenia's flag carrier, in 2008, using forged bills of sale. When ordered to bring the aircraft back to Europe, Mahan claimed it could not do so because it was being investigated by the Iranian authorities for fraud, and the aircraft had to be kept in Iran.

The acquisition of these aircraft in violation of EAR triggered the initial TDO, and subsequent efforts to maintain them, among the oldest 747s still in service, have contributed to the continuation of the orders.

Defunct Anglo-Persian Steel Trader Balli Group, financier of the initial 747 transaction, settled in 2010 with BIS with $15 million civil penalty and a requirement to conduct five external audits and submit related audit reports. The firm entered UK receivership in 2013.

Over the years, parties have been added and removed to the TDO, and Mahan has continued to operate the aircraft, adding numerous Airbus and BAe jets, as well as an additional US origin aircraft, an MD-82.

In 2010 Mahan participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the United Arab Emirates ("UAE").

In 2012, one of the 747s was designated a "Specially Designated Global Terrorist" by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), for its role in ferrying troops and supplies for Iran's Revolutionary Guard.

The February 2013 renewal order laid out efforts by Mahan Airways and other persons to procure two U.S.-origin GE CF6-50C2 engines, and other aircraft parts in violation of the TDO and the Regulations.

Through 2013, Mahan continued to work with Turkish and Thai agents to obtain the GE engines, as well as attempting to purchase two Honeywell engines through an Indonesian supplier. Later that year and in 2014, Mahan acquired two BAe regional jets from a Ukrainian carrier then on the Entity List. The BAE aircraft are powered with U.S.-origin engines, subject to the EAR and classified under ECCN 9A991.d.

Also in 2014, Mahan sent a navigation component, an inertial reference unit bearing from its Airbus fleet to the US for repair. The IRU is a U.S.-origin item, subject to the Regulations, classified under ECCN 7A103, and controlled for missile technology reasons.

Over the next five years Mahan continued to build its Airbus fleet, through acquisitions in violation of the EAR, and developed supply channels in Indonesia, Malaysia, and the UAE.

During the same period, Joyce Eliabachus, working out of her home in Morristown, NJ facilitated at least 49 shipments containing 23,554 license-controlled aircraft parts from the United States to Mahan in Iran, all exported without the required licenses. In 2020 a Federal District Judge sentenced Eliabachus to 18 months in prison for her role in the scheme.

In 2019 the Mahan enterprise was involved in the unlicensed export of a U.S.- origin atomic absorption spectrometer, an item subject to the Regulations, from the United States to Iran via the UAE. Also that year Indonesian associates facilitated the shipment of damaged Mahan parts to the U.S. for repair and return back to Iran, in violation of the EAR. In these instances, the fact that the items were destined to Iran/Mahan was concealed from U.S. companies, shippers, and freight forwarders.

Of the 861 passenger and cargo aircraft currently in service in Russia, 332 were manufactured by Boeing, and 304 were made by Airbus.

According to the aviation analytics firm Cirium, of the 861 passenger and cargo aircraft currently in service in Russia, 332 were manufactured by Boeing, and 304 were made by Airbus. Dozens of the rest are from Bombardier and other western manufacturers, while only 136 are Russian-made Sukhoi planes.

If you or a client have access to western aircraft, parts or MRO facilities, the Mahan experience shows the resourcefulness of a rogue carrier one-thirteenth the size of the Russians.

Glencore Agrees to $1.2 Billion Settlement

Notorious conflict mineral miner and commodity trader Glencore International settled with the CFTC May 24 for conduct involving manipulation and foreign corruption in the U.S. and global oil markets. Formerly known as Marc Rich & Co, Glencore is required to pay a total of $1.186 billion, which consists of the highest civil monetary penalty ($865,630,784) and highest disgorgement amount ($320,715,066) in any CFTC case.

The order finds that from as early as 2007 through at least 2018, Glencore manipulated U.S. price-assessment benchmarks relating to physical fuel oil products, and related futures and swaps

The order further finds that Glencore paid bribes and kickbacks to employees and agents of certain state-owned entities (SOEs), including in Brazil, Cameroon, Nigeria, and Venezuela, and misappropriated confidential information from employees and agents of certain SOEs in Mexico. Glencore's unlawful conduct involved personnel throughout its oil trading group, including senior traders, desk heads, and supervisors up to and including the global head of the oil group, and resulted in hundreds of millions of dollars in improper gains.

Parallel Criminal Actions

Justice's Criminal Division simultaneously announced two separate FCPA settlements with Glencore.

The charges in the FCPA matter arise out of a decade-long scheme by Glencore and its subsidiaries to make and conceal corrupt payments and bribes through intermediaries for the benefit of foreign officials across multiple countries.

Pursuant to a plea agreement, Glencore has agreed to a criminal fine of more than $428 million and to criminal forfeiture and disgorgement of more than $272 million. Glencore has also agreed to retain an independent compliance monitor for three years.

Justice has agreed to credit nearly $256 million in payments that Glencore makes to resolve related parallel investigations by other domestic and foreign authorities. The CFTC order recognizes and offsets certain forfeiture and penalty payments to be made to the DOJ in those cases.

Glencore also had charges brought against it by the U.K.'s Serious Fraud Office (SFO) and reached separate parallel resolution with the Brazilian Ministério Público Federal (MPF).

Pfizer IP Scheme Trips on Luggage

A married couple who worked as research scientists for Pfizer, pleaded guilty in federal court to criminal charges stemming from their efforts to gather confidential mRNA research to advance the husband's competing laboratory research in China.

Married since at least 1993. Chenyan Wu and Lianchun Chen worked for multiple pharmaceutical companies, including Pfizer. In 2012 Wu moved to China and opened a laboratory focused on mRNA vaccine research. While her husband was in China, Chen remained in the United States, working for Pfizer in La Jolla. Her research during that time focused on mRNA vaccines.

According to her plea agreement, from as early as November 2013, through at least June 2018, Chen repeatedly accessed Pfizer computers and copied confidential materials, emailing them to her husband in China over her personal Hotmail account.

In February 2021, Wu shut down his business in China and attempted to move his laboratory to the United States. He packed up its contents into five suitcases and flew to Seattle-Tacoma International Airport. Wu's customs form did not declare any biological or chemical items on the form, nor did he declare these items in person to the Customs officer while going through Customs Inspection.

While inspecting the defendant's suitcases, officers discovered chemical and biological samples, medical/biological equipment, and research documentation, all of which had been undeclared and was improperly packaged. Initial inspection revealed about 700 to 1,000 unlabeled centrifuge tubes, which appeared to contain proteins and multiple containers of lab chemicals.

Customs officials seized the suitcases and called in FBI Seattle's Hazardous Evidence Response to help inventory the items. FBI Agents then interviewed Wu at his home in San Diego, where he said that China had strict rules and paperwork to ship to the United States and that was why he wanted to "take a gamble, to be honest" when he brought chemicals and biological materials illegally into the United States in his luggage.

Chen is scheduled to be sentenced on August 11; Wu is scheduled to be sentenced on August 12.

Coca Cola Chemist gets 14 Years.

May 9, Dr. Xiaorong You, aka Shannon You, 59, of Lansing, Michigan stole trade secrets related to formulations for bisphenol-A-free (BPA-free) coatings for the inside of beverage cans while working at The Coca-Cola Company and Eastman Chemical Company.

The stolen trade secrets belonged to major chemical and coating companies, including Akzo-Nobel, BASF, Dow Chemical, PPG, Toyochem, Sherwin Williams, and Eastman Chemical Company.

Dr. You stole the trade secrets to set up a new BPA-free coating company in China with a corporate partner, Weihai Jinhong Group, and millions of dollars in Chinese government grants to support the new venture, according to the prosecutors.

Colgate Toothpaste Thief Flossed

A 20-year veteran research technician and scientist for Colgate Palmolive was sentenced May 9 to 21 months in prison for wire fraud conspiracy associated with the theft of toothpaste formulas to start a competing enterprise in North Macedonia.

In 2012, Muamer Reci, 58, of Haskell, New Jersey, established a company, Reci & Sons to effect the scheme, not disclosing the business interest to his employer. Reci was found to have transmitted proprietary formulas and processes, as well as a copy of his business plan, from his work e-mail account.

One Year in Prison for a Decade of Non-Proliferation Export Violations.

Obaidullah Syed, 67, of Northbrook, Ill was sentenced last month to 12 months in prison for illegally exporting high-performance computing platforms, servers, and software applications to Pakistan's Atomic Energy Commission (PAEC) without obtaining the required authorization from Commerce.

From 2006 to 2015 Syed and others falsely represented to U.S.-based computer manufacturers that the shipments were intended for Pakistan- based uni-

versities or Syed's businesses, when the true end user of each shipment was either the PAEC or a research institute that trained the agency's engineers and scientists.

The PAEC is a Pakistani government agency designated by the U.S. government as an entity which may pose an unusual or extraordinary threat to the national security, foreign policy, or economy of the United States.

Prior to sentencing, Syed forfeited $247,000 of criminally derived cash to the U.S. government.

First Sons Sentenced in Odebrecht Saga

Two sons of the former President of Panama, Ricardo Martinelli, were each sentenced in Federal Court to 36 months in prison for laundering $28 million in a bribery and money laundering scheme involving Odebrecht S.A. the Brazil-based global construction conglomerate. The defendants were also ordered to forfeit more than $18.8 million, pay a $250,000 fine and serve two years' supervised release.

Luis Enrique Martinelli Linares, 40, and Ricardo Enrique Martinelli Linares, 42, each pleaded guilty to conspiracy to commit money laundering and admitted to agreeing with others to establish offshore bank accounts in the names of shell companies to receive and disguise over $28 million in bribe proceeds from Odebrecht for the benefit of their father.

Initially charged by criminal complaint in June,2020, the brothers were arrested in Guatemala the following month and extradited to the US late last year.

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BIS Finalizing Changes to Cyber License Exceptions (ACE)

BIS is finalizing changes to License Exception ACE and corresponding changes in the definition section of the Export Administration Regulations (EAR) in response to public comments to an October 21, 2021 interim rule. That rule established a new control on certain cybersecurity items, as well as adding a new License Exception-Authorized Cybersecurity Exports (ACE) that authorizes exports of these items to most destinations except in certain circumstances. This action amends the October 21 rule that became effective March 7, 2022.

§740.17 License Exception- Encryption Commodities, Software, and Technology (ENC) BIS is revising § 740.17 by adding a new end-use restriction (§ 740.17(f)) equivalent to the end-use restriction in § 740.22(c)(4) of License Exception ACE, to avoid an unintended circumstance in which the § 740.22(c)(4) License Exception ACE end-use restriction could be evaded by adding cryptographic or cryptanalytic functionality to the 'cybersecurity item' and exporting, reexporting or transferring (in-country) the resulting 'encryption item' subject to the EAR under License Exception ENC.

§ 740.22 Authorized Cybersecurity Exports (ACE). BIS is revising the definition of the term 'Government end user' by including "more-sensitive government end users" and "less-sensitive government end users, and included a note related to utilities; transportation hubs and services; and retail or wholesale firms engaged in the manufacture, distribution, or provision of items or services specified in the Wassenaar Arrangement Munitions List.

End-use restrictions. License Exception ENC is not authorized for any of the covered items if the exporter, reexporter, or transferor "knows" or has "reason to know" at the time of export, reexport, or transfer (in-country), including deemed exports and reexports, that the item will be used to affect the confidentiality, integrity, or availability of information or information systems, without authorization by the owner, operator, or administrator of the information system, including "cryptanalytic items," network penetration tools, or automated network vulnerability analysis and response tools

License Exception ACE authorizes export, reexport, and transfer (in-country), including deemed exports and reexports, of 'cybersecurity items,' except for deemed exports or reexports to E:1 and E:2 nationals, or to certain 'government end users.' *[Docket No. 220520-0118]*

BIS Firearms Export Notification Change

In a final rule published June 1, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to add a new section to the EAR to adopt a congressional notification requirement for certain license applications of semi-automatic firearms meeting certain value and destination requirements. This rule does not change the interagency license process for these firearms or how license applicants currently structure or generally apply for BIS licenses. *[Docket No. 220524-0120]*

UK End-Use Rules Updated

The Export Control Joint Unit of the UK Department of International Trade made effective May 19 new end-use controls applying to military related items.

The actions follow on the issuance of Strategic Export Licensing Criteria in the *Trade Policy Update Written Ministerial Statement of 8 December 2021*.

The *Ministerial Statement* enhanced the UK's military end-use controls to allow them to apply to a wider array of end-use scenarios. It also announced that China, Hong Kong, and Macau will be added to the list of those destinations subject to an arms embargo.

Catch-all export controls may be imposed, on a case-by-case basis, to items not specified in the UK Strategic Export Control Lists. In practice, this means that even if the items which you intend to export do not usually require an export license, you might still require one.

Military end-use controls can be applied in the following circumstances:

Where otherwise non-controlled items (goods, software and technology) are or may be *intended for incorporation into military items* listed in Schedule 2 to the *Export Control Order 2008,* as amended. This includes production, test or analytical equipment and components for the development, production or maintenance of military items listed in Schedule 2, or for use in any unfinished products in a plant for the production of Scheduled military items.

Where otherwise non-controlled items are or may be *intended for use as parts or components of military items* listed in Schedule 2. This is when they were exported without authorization or in violation of an authorization granted by the Secretary of State.

Military end-use controls apply where the exporter has been 'informed' that an export requires a license.

Where the exporter has been informed that otherwise non-controlled items are or may be intended for use by *military, para-military, or police forces, security services or government intelligence organization,* or for an entity involved in the procurement, research, development, production or use of items on behalf of the entities above.

It does not apply to medical goods for the benefit of the civilian population of a country, the export of consumer goods generally available to the public, or the transfer of software or technology generally available to the public.

This control will only be invoked where it is assessed that the export would be capable of having a 'relevant consequence," described as a threat to UK or international peace, security, or stability; an act contravening the international law of armed conflict; terrorism, internal repression, or an act that breaches human rights.

Military end-use controls apply where the exporter has been 'informed' that an export requires a license. This means you have been notified by ECJU that an export license is required for a particular export. In this case you must apply for a standard individual export license (SIEL) using SPIRE, the online export licensing system.

If you are 'aware' that your items are or may be intended for one or more of the specified end-uses you must contact ECJU who will decide whether an export license is required.

EU Dual-Use Regs Updated for Russia

May 3 the European Commission imposed further restrictions on exports of dual-use goods, technology and on the provision of related services to Russia.

Navigation goods and technologies; equipment, technology and services for Russia's energy industry (excluding nuclear industry and the downstream sector of energy transport) are impacted, as well as imposing additional export restrictions on a range of advanced technologies.

The measure removes Russia from the destination lists of Union general export authorizations EU003, EU004 and EU005, to prevent Russia from gaining access to critical technologies and dual-use items. *http://data.europa.eu/eli/reg_del/2022/699/oj*

Bad Clam Ban - Proposed Section 1758 Controls on Four Marine Toxins

BIS has proposed new unilateral export controls on four naturally occurring, dual-use biological toxins (specifically, the marine toxins brevetoxin, gonyautoxin, nodularin and palytoxin). As these toxins are now capable of being more easily isolated and purified due to novel synthesis methods and equipment, the absence of export controls on such toxins could be exploited for biological weapons purposes. BIS proposes to amend the CCL by adding these toxins to Export Control Classification Number (ECCN) 1C351.d [Docket No. 220516-0114]

- **Nodularins** are naturally produced in cya-

nobacteria, and share significant structural homology and, presumably, function with microcystins (currently controlled under ECCN 1C351.d.9).

- **Brevetoxins** are neurotoxins, gonyautoxins are saxitoxins (currently controlled under ECCN 1C351.d.12); both produced by marine dinoflagellates.
- **Palytoxins,** naturally produced in certain corals and dinoflagellates, are among the most toxic non-protein compounds and are of particular concern due to their thermostability and effective inhalation exposure route. In lethal cases, death is generally caused by cardiac arrest.

Dinoflagellates can result in a visible coloration of the water, known as red tide (a harmful algal bloom), which can cause shellfish poisoning if humans eat contaminated shellfish. Some dinoflagellates also exhibit bioluminescence—primarily emitting blue-green light. Thus, some parts of the ocean light up at night.

The rule also proposes to make conforming changes to §742.18—Chemical Weapons Convention (CWC) and ECCN 1C991 (Vaccines, immunotoxins, medical products, diagnostic and food testing kits) to reflect the proposed renumbering of the toxins in ECCN 1C351.d.

Respondents to BIS's November 19 ANPRM indicated their preference for multilateral export controls over unilateral export controls, because the former typically place U.S. industry on a more level playing field versus producers/suppliers in other countries.

MBDA Readies ITAR Avoiding Missile

European missile consortium MBDA will soon ship a new Block 6 variant of the ASRAAM dogfight missile that removes American-made components, so that export of the weapon will not be subject to U.S. international traffic in arms regulations (ITAR), The Defense Post reports.

The ASRAAM Block 6 will be integrated with the UK's Eurofighter Typhoon in 2022 and the F- 35 in 2024.

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Sanctions Train Rolls On

May 31 the European Commission finalized its sixth round of sanctions on imports of Russian oil (not gas). According to Commission President Charles Michel, "the European Council was able to agree on a sixth package of sanctions that will, to be concrete, make it possible to ban Russian oil with a temporary exception concerning oil that comes by pipeline.

The ban on accounting, trust and corporate formation, or management consulting services may prove nettlesome for professional services providers.

"To be very clear, this means that there is immediately an impact of 75% of Russian oil that is targeted by this measure. And this means that before the end of the year, nearly 90% of Russian oil that is imported at European level will be covered by this measure.

Earlier, President Biden and his G-7 counterparts met with President Zelenskyy of Ukraine May 8 and **announced another raft of sanctions** to support the war effort.

New initiatives include:

- Sanctioning three of Russian's state-controlled television stations,
- Prohibitions on U.S. persons providing accounting, trust and corporate formation, and management consulting services to any person in the Russian Federation,
- Further industrial sanctions, and addition of more individuals subject to visa restrictions.

In support of these actions, Commerce published revisions to the Export Administration Regulations (EAR) May 11, amending part 746 of the EAR (Embargoes and Other Special Controls) to broaden the scope of industry sanctions. The Rule adds 205 HTS codes at the 6-digit level and 478 corresponding 10-digit Schedule B numbers to supplement 4 to Part 746. These should be reviewed carefully by those brave souls still seeking to grow their Russian sales.

The actions also named nine Russian shipping concerns and their vessels, along with companies associated with the Moscow Industrial Bank and executives of Gazprombank.

The ban on accounting, trust and corporate formation, or management consulting services may prove nettlesome for professional services providers. In conjunction with the Executive Order, OFAC issued two General Licenses, GL34 and GL35 which provide limited safe haven for the winding down of operations and provision of credit rating and audit services. Both GLs note that transactions otherwise prohibited remain so, including those with blocked individuals and entities.

OFAC General License 31- Patent & Trademark Sanctions

Treasury's Office of Foreign Assets Control (OFAC) May 5 issued General License 31, stating that routine patent, trademark, copyright, and other intellectual property protection measures associated with the Russian Federation are permitted.

Filing applications, receipt, and maintenance of intellectual protection is permitted, including prosecution of enforcement proceedings. Transactions with sanctioned financial institutions remain prohibited.

In March the United States Patent and Trademark Office (USPTO) terminated engagement with Russia's agency in charge of intellectual property, the Federal Service for Intellectual Property (Rospatent), and with the Eurasian Patent Organization.

The USPTO also terminated engagement with officials from the national intellectual property office of Belarus. Questions regarding dealings with Rospatent should be directed to OFAC at *OFAC_Feedback@treasury.gov.*

Evraz Sanctions Forged

May 5, the UK Foreign Office announced sanctions on Evraz plc, the global steelmaker owned by Roman Abramovich. "Evraz PLC produce 28% of all Russian railway wheels and 97% of rail-tracks in

Russia. This is of vital significance as Russia uses rail to move key military supplies and troops to the front line in Ukraine," the Foreign Office said. Evraz owns mills in Oregon and Colorado, as well as four plants in Canada. The company's North American operations are exempted from the actions.

While the EU and UK have sanctioned Abramovich, his role as self-styled peace envoy has protected him from US sanctions. "It's a kind of useful fiction for Abramovich to keep alive," a former NSC Russia Director told the Washington Post May 5, "To the extent that his negotiation efforts have staved off U.S. sanctions, I'd say they've definitely been more beneficial to him — and perhaps even Moscow — than to Ukraine."

In March the US did sanction a Gulfstream G650 (LX-RAY) associated with the tycoon, and in mid-May a 787 Dreamliner (P4-BDL) owned by Abramovich was added to the SDN List.

END NOTES

BRITAIN Aeroflot Slots Stranded. The UK Department for Transport announced that Aeroflot, Ural Airlines, and Rossiya Airlines will not be permitted to sell their unused landing slots at UK airports – preventing Russia from cashing in on an estimated £50 million. The news comes as the Transport Secretary, Grant Shapps takes up Presidency of the International Transport Forum, which he will use to call for a united response against Russia's invasion of Ukraine.

CHINA Lockdown Pig Enters Logistics Snake: An estimated 260,000 TEU (twenty-foot equivalent units) of Shanghai's unshipped cargo is set to swamp the market this summer, making the peak season "even more chaotic" than last year, reports Loadstar, citing a study from consultancy Drewry.

COLOMBIA The White House designated Colombia a "Major Non-NATO Ally" May 23, The designation provides foreign partners with benefits in defense trade and security cooperation. While MNNA status provides military and economic privileges, it does not entail any security commitments to the designated country.

CYPRUS The Cypriot foreign ministry said the Republic has now fulfilled the requirements of the US 2019 partnership act and hopes that Washington will fully lift its decades-old arms embargo on Cyprus. In a statement, the ministry appeared positive regarding the possibility of a total lifting of the US arms embargo against Cyprus, imposed in 1987

NORTH KOREA (DPRK) State, Treasury and the FBI issued a joint advisory May 16 to warn of attempts by DPRK information technology workers to obtain employment while posing as non-North Korean nationals. The DPRK "dispatches thousands of highly skilled IT workers around the world to generate revenue that contributes to its weapons of mass destruction," reports the advisory.

RUSSIA / BIS Issued a Temporary Denial Order terminating the right of Rossiya Airlines to participate in transactions subject to the Export Administration Regulations (EAR), including exports and reexports from the United States. BIS also publicly identified additional aircraft in likely violation of U.S. export controls, including a 787 Dreamliner owned by Russian oligarch Roman Abramovich. Providing any form of service to aircraft subject to the EAR that may have violated these controls on Russia or Belarus requires authorization.

SYRIA The US officially lifted sanctions on foreign investments in breakaway regions of northern Syria last week, but American officials said there were no plans to remove sanctions on the Assad regime's government. Before the civil war, the North of Syria was home to most industry and all oil reserves.

VENEZUELA Limited changes to existing sanctions will permit Chevron to resume negotiations with the state-owned oil company PDVSA, though drilling and export is still prohibited, according to senior government. "It does not allow entry into any agreement with PDVSA or any other activity involving PDVSA or … Venezuela's oil sector. So, fundamentally, what they are doing is just allowed to talk." Chevron's stranded assets in Venezuela are reported to exceed $2.6 billion.

Cari Stinebower of Winston & Strawn

Steinbower sat down recently with The Export Practitioner to discuss compliance, policy, and her practice.

[EP] In Sherlock Holmes' "The Silver Blaze," a horse was stolen, and the clue was the dog didn't bark. When you look at the current flurry of activity, what's the most important thing you think people aren't paying enough attention to in the practice?

[CS] I think everyone's trying to do the right thing, but the big gap is that the bad guys are always going to find ways to exploit the situation to make money, so the compliance costs go up for the good corporations.

The bad guys, like what we saw with respect to the exploitation of the Iranian sanctions, when the Chinese oil traders started buying up crude at a low price, they've established these routes now, and we're starting to see them using them for Russian oil and for others, like Venezuelan cargo as well.

It seems to me that there is a flurry of activity around the Russian sanctions but the financial channels to get around sanctions already exist; the patterns have already been established.

So it may be that compliance is an expensive thing to roll out, but the patterns that we've seen before we're seeing again - which is the use of front companies and third-party peer groups. You know the weak link, which is going to be China, and to a certain degree India with respect to their willingness to deal with sanction parties.

Is there more we're missing in the conversation now that sanctions are everywhere?

Coming at this from the sanctions perspective is something I do because that's what I see every day, but the flip side of that, I think is that the governments are using sanctions as a way of getting credit for doing something, even though from apparent perspective it may be even more about making the news story than actually changing patterns of behavior.

Do you think sanctions, what we're seeing now, is a dry run for what would happen should China cross the straits into Taiwan?

Yes, I think they are because governments want to be able to say they're doing something. In the past, in 2018, they said that they couldn't do something like what they've done to Russia because Russia was such a significant trading partner with the United States. Now we see that the consensus is that governments are willing to do more than the sectoral sanctions we saw the past against Russia.

So, if they're willing to do it against Russia and feel the bite on US economy, the European economy all the worse so, because of the oil and gas restrictions, then in theory they would be willing to do the same with China if they rolled across the Taiwan straits.

The challenge is whether that really would stop the behavior or whether it would just be calculated as the cost of doing business in order to attain the ultimate goal. That would be the southern ports in Ukraine. or would be Taiwan with China. It may be that the Chinese and the Russians just figure it's worth the cost

The message that should be out there is that the governments are using sanctions as a tool because they at least can say they're doing something, even if it's not 100% effective.

We used to hear that the sanctions are a tool in the toolbox. not the primary tool. But that implies

that governments would have an interest in doing other things. In in the Russia context, you can see that they're providing support to the Ukrainians, but the bright line is no boots on the ground.

It may be that over the tools that the foreign policy world is well I've used the primary sanctions and that the commercial hit that businesses take is just like you know that's a calculation that that the economies are willing to take. China is a little bit more difficult because of business ties between the two; you have support relationships are so much more significant for the US economy.

So question is, if the government is going to fall back on sanctions as their go to for everything, then shouldn't we be encouraging businesses to speed up cross border diversification to the supply chain?

Are you finding Foreign Direct Product Rules making it harder to comply with export restrictions?

Yes. I think the Huawei Foreign Direct Product Rule was an experiment that worked better than the policy folks thought it would. When we saw the two foreign direct product rules in Russia rolled out, something we were hearing from Commerce was that, as a result of how successful it was in Huawei, they're now going to use it in other contexts.

I think we had seen industry standards changing over the years, to an expectation that if you're a US manufacturer you would have end users certificates and be able to track something all the way down the chain. It's been there for a while, although frankly when we do M&A due diligence we're still seeing a lot of the midsize and smaller manufacturers are not doing that yet.

On the larger scale, the end user certifications are there, but there's also this expectation, and has been for a number of years, that you would be able to track and catch export control violations, at least on the on the retransfer re export side, when things like repair and warranty are triggered.

For example, you're selling a widget you expect to end up in at a certain company in China and then find out it's actually in North Korea or some other jurisdiction, it's being used by someone else. There's this expectation that that you would do something about it. Maybe that just includes a conversation with the Department of Commerce, because the liability it travels with it.

I think that there the government is looking at more ways of enforcing on the back end as well. You could impose penalties on non-US parties for sure.

The focus of enforcement has been moving from entities to individuals. Do you think enforcement of the Russian sanctions could get messy if this trend continues?

Yeah, I know that 2012 MoneyGram case raised a lot of interest in the anti-corruption and anti-money laundering space because there was liability for the compliance officers, and there were a couple of other cases like Brown Brothers in the AML space where the compliance officers were held responsible, but in those cases it was it was fairly egregious. It was either complete complicit behavior or just complete blindness.

So yes, we're getting a lot of questions, but the questions have been coming in for a number of years with respect to what triggers the individual responsibility. I think the consensus still is if you're a good corporation, you have a good corporate citizenship, a good compliance program and something happens, but not because of willful blindness or negligence, the liability still won't be there.

Where you have the smaller businesses or businesses that are specifically set up to engage in evasion or avoidance, then the then the individual liability makes more sense

Is it possible to conduct business on a global scale, with a disparate sales force, and still execute an effective compliance program?

It's a challenge for sure. The baseline assumption has to be that, if you're going to have a UK based or US based compliance program, living up to the UK Bribery Act or the FCPA, you're going to put yourself at a business disadvantage against local businesses

where they're not going to have the same restrictions or the same sort of ethos that you would.

If you're a US headquartered business with a sales force around the world, the message to the sales team throughout the world could be that you're not going to be paid on Commission, and that there will be an expectation that compliance with UK Bribery or FCPA, as a matter of principle, is imbued into the compensation structure.

If the incentive is to make is to make as much money as possible as quickly as possible it doesn't work. If people are in a jurisdiction where there's a tradition of red envelopes or kickbacks, and they're seeing their competitor making all this money, and they can't because they're not providing the traditional right prize, then there are you know, challenges. You can't not reward them for doing the right thing.

You said something there worth repeating. Compensation drives compliance

It does and government, at least in the MoneyGram case 2012, had said that companies should consider things like clawing back compensation if it's later found that underlying activity related to money laundering or corruption. You've seen it happen periodically where a company has taken back compensation. In the 1MDB case some of their companies involved took back some compensation from some of their senior executives, but it's a hard thing. It's a hard thing to do once you've paid out a salary or bonus structure to go back in and take it back if you could show malfeasance

How do you get into this business Cari?

The first three years out of law school, I was working for the DNC on the 1996 campaign cleanup-the Clintons and of course everything else…let's talk about allegations of global corruption! It was pretty intense working hours and high pressure, so after three years of that I wanted to be true to myself - I wanted to go back into the International space. I took a job at OFAC.

I had I had my master's in foreign policy, and at the time I wasn't sure whether I wanted to follow the legal track or to focus on foreign policy, so the Treasury job seemed like way is of splitting my interests. I switched from counter narcotics to counter terrorism after, well on 9/11, and just never looked back after that.

So you like what you do?

I like having diverse issues. You never know what your day's going to look like. You wake up to your to your emails in the morning and there's always something to challenge you, some new question that you wouldn't have expected.

And there's a large client base, so lots of different people. Lots of repeat clients, some clients I've been with my entire career, which is which is nice. You understand and you become part of the corporate culture. You've gone through investigations; you've helped grow compliance programs; you know people. It's a really nice role

How well do you sleep at night?

From a from a conscious perspective, or from a workload perspective? (laughs) Sometimes you wake up in the middle of the night and worry about unintended consequences or exposures or something like that, but in general the clients that are coming to us are the ones that really do want to do the right thing.

Thank you Cari.

Cari Stinebower, of Winston & Strawn's Washington office practices in the area of economic sanctions, export controls, and anti-money laundering. Former counsel and program officer at OFAC, she is a member of the American Bar Association's Gatekeepers' Task Force and a Vice-Chair of the ABA's Anti-Money Laundering subcommittee.

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