

The Export Practitioner™

MAY
2022

VOLUME 36
NUMBER 5

Timely News and Analysis of Export Regulations

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The Export Practitioner

MAY 2022
Volume 36
Number 5

Publisher

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Editor

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The Export Practitioner
Is published monthly by
Gilston-Kalin Communications, LLC
P.O. Box 5325,
Rockville, MD 20848-5325

(703) 283-5220

www.exportprac.com

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China Syndrome

While Ukrainians suffer the savagery of the Red Army, practitioners and policymakers continue to wrangle with challenges from the other red menace. All of this calls for vigilance in export compliance.

Corporate and Federally funded research organizations, academic and private, have seen an explosion of awareness of the need for robust training and controls, as “sanctions” and “economic espionage” enter the popular vernacular.

The Department of Justice may have rebranded the controversial “China Initiative” program launched by the Trump Administration in 2018, but enforcement and convictions continue, along with concerns about the activities it counters.

With the blander moniker “Strategy for Countering Nation-State Threats,” in February Justice rolled out a broader initiative to address the threat foreign espionage presents to the research community.

Matthew Olsen, Assistant Attorney general for National Security announced the renaming of the program in a speech February 23. “Hostile foreign governments assault our democratic and economic institutions in pursuit of strategic competitive advantage...

“We see nations such as China, Russia, Iran and North Korea becoming more aggressive and more capable in their nefarious activity than ever before. These nations seek to undermine our core democratic, economic and scientific institutions. And they employ a growing range of tactics to advance their interests and to harm the United States.”

Olsen acknowledged the appearance of xenophobia and racism created by the name, as well as pushback from academia.

“[Labeling it China Initiative] fueled a narrative of intolerance and bias. To many, that narrative suggests that the

Justice Department treats people from China or of Chinese descent differently,” he said, noting “increasing concerns from the academic and scientific community about the department’s pursuit of certain research grant fraud cases. We have heard that these prosecutions — and the public narrative they create — can lead to a chilling atmosphere for scientists and scholars that damages the scientific enterprise in this country.”

A December study by the MIT Technology Review found that Justice had no definition of what constitutes a China Initiative case, and while the Initiative was created to focus on economic espionage, many cases focused on “research integrity” issues. The study also noted that nearly 90% of the defendants charged were of Chinese heritage.

Many researchers caught in the dragnet worked in healthcare and biomedicine, not the priority counterespionage fields of artificial intelligence, quantum computing,

and semiconductor technology. Of the six defendants who either pled or were found guilty, only Charles Lieber of Harvard and Simon Ang of the University of Arkansas researched topics related to those key industries, according to Foreign Policy Research Institute.

“By grouping cases under the China Initiative rubric, we helped give rise to a harmful perception that the department applies a lower standard to investigate and prosecute criminal conduct related to that country or that we in some way view people with racial, ethnic or familial ties to China differently,” acknowledged Olsen.

“Dropping the name is good,” says Steven Pei, an electrical engineer at the University of Houston and vocal critic of the initiative told Science. “But the real issue is how the new policy will be implemented.

Justice had no definition of what constitutes a China Initiative case, and while the Initiative was created to focus on economic espionage, many cases focused on “research integrity” issues.

The White House Office of Science and Technology has released new guidance to federal funding agencies, including procedures to correct inaccurate or incomplete prior disclosures. These agencies have primary responsibility for research integrity and security.

Where individuals voluntarily correct prior material omissions and resolve related administrative inquiries, Justice will now counsel against a criminal prosecution under longstanding department principles of prosecutorial discretion, according to Olsen.

The newly-named “Strategy for Countering Nation-State Threats” has three strategic imperatives:

“We will continue to aggressively investigate and prosecute espionage, export control and sanctions violations, and interference with our critical infrastructure.

“We will bring all tools to bear, including the regulatory authorities of the Committee on Foreign Investment in the United States and Team Telecom — as well as criminal process where appropriate — to prevent and mitigate harms from economic espionage, hostile manipulation and cyber-enabled malicious activity.

“Third, we must defend our democratic institutions and values to ensure that the promise of freedom remains a reality in the face of rising authoritarianism.”

Rep Judy Chu (D-CA), the first Chinese American Woman elected to Congress and Chair of the Congressional Asian Pacific American Caucus applauded the change in moniker and broadening of focus. “Instead of keeping our country safe from global threats, the China Initiative put more lives at risk by relying on racial profiling & spreading xenophobia, with careers ruined in the process” she tweeted.

Opposition lawmakers scrambled to keep the focus on the Middle Kingdom, with Sen. Rick Scott (R-FL) introducing S. 3960, “A bill to establish the CCP Initiative Program and for other purposes.”

According to the proposed bill: “The Initiative must be separate from and not under the authority or discretion of any other Department of Justice initiative dedicated to coun-

tering nation-state threats; and all resources used for the CCP Initiative must solely be set aside for the CCP Initiative and cannot be combined to support any other Department of Justice program, including other programs and initiatives dedicated to countering nation-state threats.”

A more substantive legislative contribution comes in the form of the US Innovation and Competition Act of 2021 (S.1260) and the America Competes Act of 2022 (HR.4521) currently in reconciliation by a 107 person conference committee on Capitol Hill.

Both Acts prohibit any scientist supported by China’s foreign research programs from receiving federal research dollars—a consensus that makes the ban likely to be included in the final language. It also would require universities to disclose

more information about gifts and contracts from foreign sources, and publish a list of Chinese scientific institutions affiliated with the People’s Liberation Army

Both Acts prohibit any scientist supported by China’s foreign research programs from receiving federal research dollars.

Chinese Chips in the Soup

The Financial Times reports the US Government has information China’s biggest memory manufacturer has been supplying Huawei in violation of export controls. Yangtze Memory Technologies Co (YMTC), a state-owned semiconductor firm, has already drawn attention as a potential supplier for future Apple iPhones.

In an April letter to Apple CEO Tim Cook, Sen. Marco Rubio (R-FL) said. “YMTC is a rapidly expanding, state-owned company with extensive links to the Chinese Communist Party’s (CCP) armed wing, the People’s Liberation Army (PLA). It is unacceptable that sales of the next generation of iPhones would end up strengthening the Chinese military and put the lives of American service-members at risk as a result.”

Congress has been pressing Commerce (BIS) to include YMTC on the entity list, a move with implications for the revenues of not just Apple, but the US Semiconductor Equipment industry. Apple and most semiconductor suppliers owe nearly one-third of their revenue to China. Having lost cus-

tomers Huawei and Semiconductor Manufacturing International Corporation (SMIC) to BIS actions, industry pushback can be expected.

"Dominance in the semiconductor market is a key objective of the Chinese Communist Party's 'Made in China 2025' plan, which seeks to satisfy 70% of the country's demand for chips domestically within the next five years," warned Roslyn Layton of China Tech Threat in in a Forbes article last year. "To achieve that goal, the Chinese government has used state-owned companies to pilfer sensitive US-made 'dual-use' technologies, which have both civilian and military applications."

"Mr. Estevez needs to hit the ground running," Layton said in a post earlier this month regarding the confirmation of Alan Estevez as BIS Chief. "With recent news that Apple is sourcing chips from YMTC for the iPhone, BIS must stop dragging its feet on calls to add the Chinese military fab to the Entity List."

Taiwan Continues to Seeks Place at the IPEF Table

As President Biden puts Asian economies at the center of trade policy, Taiwan's Chief Trade Negotiator John Deng reportedly pressed U.S. Trade Representative Katherine Tai to include the island in the United States' forthcoming Indo-Pacific Economic Framework (IPEF). USTR's readout of the call made no mention of the framework, or the request from Minister Deng.

"I am particularly concerned that Taiwan is being shut out of the Indo-Pacific Economic Framework, even though the administration may try to kind of hide this by never formally closing the doors, so to speak, to participation; Taiwan's offer to become a full member is not being accepted," said Rep. Ann Wagner (R-MO) at hearing of the House Committee on Foreign Affairs April 28.

"There is nothing that is closing the door on anyone, including Taiwan," replied Secretary of State Anthony Blinken.

"It's going to be open, it's going to be inclusive and I imagine we're going to be engaging virtually every country in the region,"

There is still uncertainty regarding Taipei's role in the IPEF, with growing calls from Congress inclusion. Over 200 members of Congress signed a letter March 30 urging the USTR and Department of Commerce to have Taiwan participate in at least part of the IPEF, arguing that "Taiwan's inclusion would also send a clear signal that the United States stands with its allies and partners, and will not be bullied by the PRC,"

On March 31 Reuters reported that US Trade Representative Lori Raimondo told members of the Senate Finance Committee that the administration was not considering Taiwan's inclusion at the time.

According to the White House's Indo-Pacific Strategy document, "China's coercion and aggression spans the globe, but it is most acute in the Indo-Pacific." U.S. efforts to strengthen relationships with partners in the region will remain mindful of Chinese sensitivities.

"Our objective is not to change the PRC but to shape the strategic environment in which it operates, building a balance of influence in the world that is maximally favorable to the United States, our allies and partners, and the interests and values we share. We will also seek to manage competition with the PRC responsibly."

China, which claims Taiwan as its own territory, has condemned the U.S. Indo-Pacific push, saying Washington is creating "exclusive clubs," and warned of a Ukraine-style "tragedy" for Asia. In a phone conversation with his Vietnamese counterpart Bui Thanh Son, Chinese Foreign Minister Wang Yi said the Ukraine issue "has once again made Asian countries realize that maintaining peace and stability is precious and indulging in group confrontation will lead to endless risks", according to the South China Morning Post.

"There is nothing that is closing the door on anyone, including Taiwan" -Secretary of State Anthony Blinken.



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Answer Questions About Your Company Profile and Compliance Processes

Classification

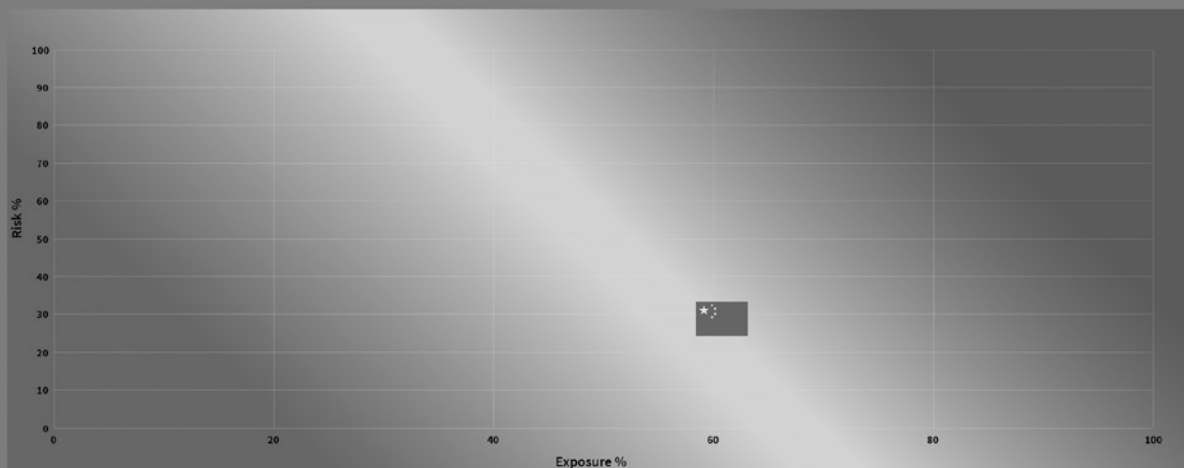
贵公司是否出于中国出口管制的目的对你们的产品进行分类?
guì gōng sī shì fǒu chū yú zhōng guó chū kǒu guǎn zhì de mù dì duì nǐ men de chǎn pǐn jìn xíng fēn lèi?
Does your company classify your products for Chinese export control purposes?

☐ Yes ☐ No ☐ I don't know ☐ N/A

是否有中国出口控制下的关于出口分类的企业政策文件?
shì fǒu yǒu zhōng guó chū kǒu guǎn zhì xià de guān yú chū kǒu fēn lèi de qǐ yè zhèng cè?
Is there a documented Corporate Policy on Export Classification under Chinese Export Controls?

☐ Yes ☐ No ☐ I don't know ☐ N/A

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Freeze it, Sieze it, Forfeit says AG

The Justice Department will ask for authority to confiscate sanctioned individual assets as part of the President's supplemental budget request to support Ukraine. On April 28 Justice announced a package of proposals to Congress that would:

- Enhance the Justice Department's ability to hold the Kremlin and Russian oligarchs accountable for the ongoing invasion of Ukraine. Providing this authority requires amendments to multiple statutes governing the use of forfeited funds.
- Expand forfeiture authorities under the International Emergency Economic Powers Act (IEEPA) to reach property used to facilitate sanctions violations, taking away the violators' "tools of the trade." This proposal would amend IEEPA's penalty provision to extend the existing forfeiture authorities to facilitating property, not just to proceeds of the offenses.
- Add criminal violations of IEEPA and the Export Control Reform Act (ECRA) to the definition of racketeering activity in the Racketeer Influenced and Corrupt Organizations (RICO) Act.
- Extend the statute of limitations from five years to 10 years.
- Expand upon existing U.S. law to facilitate enforcement of foreign restraint and forfeiture orders for criminal property.

Compliance Breakdown at Toll

Australia-based global logistics firm Toll Holdings Limited agreed to remit \$6,131,855 to settle its potential civil liability for 2,958 apparent violations of Iranian, North Korean, and Syrian Sanctions and Regulations, as well as the Weapons of Mass Destruction Proliferators and Global Terrorism Sanctions Regulations.

These payments were in connection with sea, air, and rail shipments conducted by Toll, its affiliates, or suppliers to, from, or through North Korea, Iran, or Syria, or the property or interests in property of an entity on OFAC's list of Specially Designated Nationals and Blocked Persons.

At one point a Toll employee at its headquarters' treasury office sent an email instructing employees in Toll's United Arab Emirates and South Korea affiliates to avoid including the names of sanctioned jurisdictions on invoices.

The breakdown of internal controls resulted in part from Toll's rapid expansion without a requisite increase in compliance resources. Beginning in 2007, Toll began to acquire a number of small, local, or regional freight forwarding companies, including in the Asia Pacific region. By 2017, Toll had almost 600 invoicing, data, payment, and other system applications spread across its various business units.

While Toll had a sanctions compliance policy in place, its compliance program, personnel, and associated controls failed to keep up with the pace and complexity of its growing operations, including with respect to the risks associated with the use of U.S. financial institutions to make or receive payments related to U.S.-sanctioned jurisdictions and persons.

The statutory maximum civil monetary penalty applicable in this matter is \$826,431,378. The settlement amount reflects OFAC's determination that Toll's apparent violations were non-egregious and voluntarily self-disclosed.

Stericycle Jabbed for Bribery.

The medical waste processor entered into a three-year deferred prosecution agreement with Justice and the S.E.C., with fines and disgorgements in excess of \$80 million, related to \$10 million in bribes and kickbacks by its Latin American operations. In addition to enhancing its compliance training, the firm agreed to retain an Independent Monitor for two years.

Newmont's Cuban Dynamite

On April 21, OFAC announced an agreement with Newmont Corporation, the Colorado mining concern, to settle potential civil liability for four apparent violations of the Cuban Assets Control Regulations (CACR). During 2016 and 2017, Newmont Suriname, a wholly owned subsidiary, purchased Cuban-origin explosives and explosive accessories from a third-party vendor involving four separate transactions. The settlement noted Newmont had failed to provide compliance training for its in-country personnel.

Separately, OFAC announced an agreement with Chisu International Corporation of Florida to settle potential civil liability for the same apparent violations of the Cuban Assets Control Regulations. Between June 2016 and November 2017, Chisu and its affiliates in Suriname and Panama on four occasions procured Cuban-origin explosives and related accessories originating from Cuban entity Unión Latinoamericana de Explosivos (ULAEX) on behalf of a Newmont for the U.S. company's mining project in Suriname.

SwRI Veteran Charged with Stealing, Exporting Research

A Texas Engineer and his wife were arrested April 12 on criminal charges related to the husband's involvement in alleged export violations and both of their alleged involvement in a scheme to defraud the Southwest Research Institute (SwRI) in San Antonio.

Xiaojian Tao a twenty-year veteran of the Lab is charged with one count of illegal export of defense articles; one count of unlawful export of commerce-controlled goods; and one count of making a false statement with regards to the Export Control Reform Act (ECRA). Tao allegedly exported items to China without having obtained a required export license

For decades, Tao and his wife operated a consulting firm, Tyletech, which acted as conduit for the alleged scheme.

"Although Tao certified that each year he would notify [SwRI] of any conflicts of interest and follow Standards of Conduct, Tao and Lang hid Tao's role in Tyletech, instead funneling business from [SwRI] to Tyletech," said the indictment. Tyletech in turn furnished research product to Chinese entities.

Tao's career at SRI included roles as Manager, Fuel Systems and Contamination Research, Director of Data Processing, and Institute Engineer, according to LinkedIn and other sources.

Tao allegedly exported items to China without having obtained a required export license. Tao faces a maximum of 20 years in prison on each of the export counts and the false ECRA statement.

For decades, Tao and his wife operated a consulting firm, Tyletech, which acted as conduit for the alleged scheme.

San Antonio based SwRI is an independent, non-profit, applied research and development organization with more than 2,700 employees and an annual research volume of more than \$726 million, principally government-funded.

KU Professor Convicted of Concealing China Affiliation

A former University of Kansas (KU) professor was convicted by a federal jury April 7 on three counts of wire fraud and one count of false statements after he deliberately concealed that he was also employed by a government-affiliated university in the People's Republic of China (PRC), while working on U.S. government funded research at KU.

Feng Tao conducted research under contracts between KU and two U.S. government agencies, the Department of Energy (DOE) and the National Science Foundation (NSF). Tao caused KU to submit to DOE and NSF hundreds of thousands of dollars in reimbursement requests for expenditures associated with the grants.

Tao faces up to 20 years in federal prison and a fine up to \$250,000 for wire fraud, and up to 10 years and a fine up to \$250,000 on each of the program fraud counts

GE Engineer Spied for China

April 7, a federal jury convicted a Xiaoping Zheng, 59, of conspiracy to commit economic espionage. Zheng worked for GE Power & Water in Schenectady, New York, as an engineer specializing in sealing technology. Zheng and others in China conspired to steal GE's trade secrets surrounding GE's steam and gas turbine technologies. Sentencing is scheduled for Aug. 2. Zheng faces up to 15 years in prison, a fine of up to \$5 million, and a term of supervised release of up to three years.

Not Just Turtles Anymore

In an apparent response to criticism that the "China Initiative" was only catching Turtle Smugglers, April 29 Justice's Environment and Natural Resources Division, Environmental Crimes Section, unsealed an indictment charging a major seafood distributor and eight of its employees and associates with smuggling, Lacey Act violations and conspiracy

to violate the Endangered Species Act, stemming from their trafficking in large volumes of eels.

The indictment alleges American Eel Depot conspired to unlawfully smuggle large quantities of live baby European eels (elvers) out of Europe, to their eel-rearing factory in China. After rearing the elvers to maturity, defendants' Chinese facility would then slaughter and process the eels for shipping to the United States, to be sold as sushi products.

Over a four-year period, the defendants imported approximately 138 ocean containers full of eel meat into the United States, with a market value exceeding \$160 million. Six of those containers were seized after it was determined the eels were European, mislabeled to evade detection.

Oligarch Indicted, \$10 million Seized

Konstantin Malofeyev, 47, of Russia, was charged April 6 with conspiracy to violate U.S. sanctions and violations of U.S. sanctions in connection with his hiring of a former Fox News producer and transferring his \$10 million investment in a U.S. bank to a business associate in Greece. Along with the indictment, the United States issued a seizure warrant for Malofeyev's U.S. investment.

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European Sanctions Get Smart

Pending EU sanctions on Russian energy will be “smart,” crafted to cushion the costs to importers, according to European Commission executive vice president Valdis Dombrovskis in an interview with the Times of London.

“We are working on a sixth sanctions package and one of the issues we are considering is some form of an oil embargo. When we are imposing sanctions, we need to do so in a way that maximizes pressure on Russia while minimizing collateral damage on ourselves,”

JP Morgan said this week an immediate ban on Russian Oil Imports could send prices to \$185 per barrel. A full embargo would cut supply by 4 million barrels per day, Natasha Kaneva, Head of Global Commodities Strategy at J.P. Morgan, told Bloomberg.

Self-sanctioning by European traders has begun to reduce imports, though Russia remains the region’s largest oil supplier, accounting for more than a quarter of imports. India, on the other hand, has already bought more than twice as much crude from Russia in the two months since the invasion of Ukraine on Feb. 24 as it did in the whole of 2021, according to Reuters.

Natural gas continues to flow to Europe from Gazprom via the Ukraine Pipeline, although Russia’s state-owned energy firm cut supplies of natural gas to Poland and Bulgaria earlier this week, after both nations refused to pay for the commodity in rubles

Helsinki Commission calls for Visa Bans on Putin’s Lawyers

Rep. Steve Cohen (D-Tenn) Co-Chairman of the Commission on Security and Cooperation in Europe, better known as the Helsinki Commission, last week wrote to Secretary of State Antony Blinken recommending a travel ban on six “foreign enablers” of Russian oligarchs.

“Oligarchs, who hire lawyers to engage in abusive lawsuits against journalists to silence them,

cannot exert malign influence in our system and the systems of our democratic allies without their enablers.... One method of deterrence is limiting the privilege of traveling to the United States.”

“Among the worst such enablers have been certain lawyers in the United Kingdom. Despite our close ties with the United Kingdom, the nature of its libel laws and the vast amount of blood money in its financial system make it an ideal place for oligarchs to abuse the law to harass and intimidate.”

Bill Browder, Head of the Global Magnitsky Justice campaign, and CEO of Hermitage Capital Management outlined the initiative earlier this month in testimony to the Helsinki Commission: “I urge the US Congress to take the following steps to ensure that the Russian government and other authoritarian regimes can never use these tactics again:

1. To create and maintain a list of law firms, PR firms and private investigation firms involved in enabling dictatorships and oligarchs to persecute journalists, activists and political opposition figures and to prohibit the US government from doing any business with these firms going forward.
2. Cancel the visas of foreign enablers who are involved in persecuting journalists, activists, and political opposition figures on behalf of dictatorships.
3. The Foreign Agent Registration Act should be properly enforced.
4. The Mutual Legal Assistance Treaty with Russia should be suspended.
5. Anti-SLAPP provisions should apply to all courts to allow publicly important information on corruption and human rights abuses of foreign government officials and their agents to be freely disseminated without fear of reprisal. (A SLAPP suit — or “strategic lawsuit against public participation” — is typically filed by parties with extensive resources in an effort to bury opponents in expensive litigation).

Browder further encouraged the U.K. Foreign Office to impose like visa restrictions on U.S. attorneys

who represent oligarchs and Russian officials, like John Moscow, who turned 30 years in the Manhattan District Attorney's office into a white-collar defense practice at Baker & Hostetler (he's now with Lewis Baach Kauffman Middlemass). At Baker & Hostetler, Moscow represented Denis Katsiv who benefited from the \$230 million tax scheme which precipitated the death of Browder's attorney, Sergei Magnitski.

BIS Runs the Table on CCL for Russia

The Bureau of Industry and Security has expanded license requirements for Russia and Belarus under the Export Administration Regulations (EAR) to all items on the Commerce Control List (CCL). The rule applies the additional restrictions established under previous Russia and Belarus rules to the three categories of unilaterally controlled technology remaining on the Commerce Control List (CCL).

These are Categories 0-2, which include materials and equipment relevant to nuclear, chemical, and materials processing. While most items in Categories 0-2 already required a license for Russia and Belarus (or are subject to the licensing authorities of other agencies), this rule imposes new license requirements for items including certain composite materials, medical products containing certain toxins or genetically modified organisms, hydraulic fluids, pumps, valves, and lower-level machine tools.

Yale Scorecard on Sanctions Compliance

While 600 companies have pulled out of Russia, the degree of commitment varies, according to an ongoing review by the Yale School of Management. High profile total departures like BP, Exxon and Shell

have ceased operations completely, and nearly 250 U.S. firms have suspended operations without permanently divesting. Disney, IBM, Visa and Xerox fall into this category.

About 75 firms have partially suspended activity. For example PepsiCo continues its dairy marketing, and Wall Street banks like JP Morgan and Goldman Sachs are profitably trading the dislocated markets in Russian debt and derivatives. At least 96 multinationals have announced they are pausing further investment while continuing to operate as before, including Cargill, Johnson & Johnson, Siemens and Abbott and Amerisource Bergen.

At least 162 companies have announced no voluntary changes to their operations in Russia. Koch Industries claims that to close its plants would invite nationalization, while International Paper (IP) says it "may sell" its stake in Ilim Group, a Russian forest products company. A recent IP news release confirmed "International Paper has no intention to seek suspension of operations or initiate any liquidation or bankruptcy proceedings with respect to Ilim Group." Other firms staying the course include AB InBev, Acer, Danaher, ThyssenKrupp, Jabil and Red Bull.

Burma Sanctions Mount

The House approved by voice vote April 6 legislation (HR 5497) imposing sanctions on Burma's military. The bill would create a new position at the State Department, a Special Coordinator for Burmese Democracy, to promote an international effort to impose and enforce multilateral sanctions on Burma and coordinate US interagency efforts on Burma.

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Global Cross-Border Privacy Forum / New Certification

Commerce Secretary Gina Raimondo and representatives of the Asia Pacific Economic Cooperation (APEC) announced this week an ambitious broadening of scope for the Cross Border Privacy Rules System (CBPRs), to create a Global CPBR certification system intended to include more than the nine current member states of the APEC CBPR.

First-of-their-kind certifications to demonstrate compliance with internationally recognized data privacy standards

“The establishment of the Global CBPR Forum reflects the beginning of a new era of multilateral cooperation in promoting trusted global data flows that are critically important to our modern economy. The Global CBPR Forum intends to establish the Global Cross Border Privacy Rules (CBPR) and Privacy Recognition for Processors (PRP) Systems, first-of-their-kind data privacy certifications that help companies demonstrate compliance with internationally recognized data privacy standards”

The CBPR System covers transfer of information from CBPR-certified companies in participating economies. All approved accountability agents and certified companies will automatically be recognized in the new Global CBPR Forum based on the same terms that they are recognized within the APEC CBPR.

Trans-Atlantic Data Privacy Framework

The U.S. E.U. Transatlantic Data Privacy Framework announced March 25, remains pending Executive Order, which would then be sent to Brussels for an adequacy decision. In her testimony to the Senate

Commerce Committee Commerce Wednesday April 27, Commerce Secretary Gina Raimondo indicated the Executive Order will be ready “very soon.”

The proposed Framework includes safeguards to limit access to data by U.S. intelligence authorities, A new two-tier redress system to investigate and resolve complaints of Europeans on access of data by U.S. Intelligence authorities, which includes a Data Protection Review Court, and obligations for companies processing data transferred from the EU, including the requirement to self-certify their adherence to the Principles through the U.S. Department of Commerce.

April 26 the US Chamber of Commerce and the Business Roundtable led a multi-association letter to the White house in support of the Framework. The Chamber notes the data transfer relationship between the U.S. and EU is worth about \$7.1 trillion and global data flows now contribute more to global growth than global trade in goods.

EXIM Now to Fund Domestic Projects

The Export-Import Bank of the United States (EXIM) announced a new program to deploy the agency’s existing medium- and long-term loans and loan guarantees in financing mostly domestic production and projects. The Make More in America Initiative is open to all sectors, with financing priority available to “environmentally beneficial projects, small businesses, and transformational export area transactions, including semiconductors, biotech and biomedical products, renewable energy, and energy storage.”

Eligibility for Exim Financing is now determined by the “export nexus” – the percentage of production or shipments tied to exports.

- For small, minority and women-owned

business, “transformational” exports, and climate-related transactions, the required nexus is 15 percent.

- For projects in other sectors, 25 percent of output exported or expected to be exported is required.

The amount of EXIM financing made available for individual projects will be scaled based on the number of U.S. jobs supported, both during construction and over the life of EXIM’s financing.

- Each job-year (e.g., one job over five years is five job-years) allows for up to \$189,242 in financing.
- This standard will replace the U.S. content required in traditional EXIM transactions to foreign buyers.

The push may help the Bank meet its mandate for competing with China’s export credit programs. EXIM’s China and Transformational Exports Program (CTEP) last year booked \$140 million in credits and guarantees, versus the stated goal of \$27 billion.

“EXIM is doing exactly what Congress told the Bank to do when we reauthorized its charter in 2019: help American exporters compete with China and other nations. [...] EXIM is helping reshore critical supply chains.” Said Sen. Sherrod Brown, (D-Ohio), Chair of the Senate Committee on Banking, Housing, and Urban Affairs in a statement.

Noting that the program would provide taxpayer subsidies to domestic manufacturing facilities and infrastructure projects—even if the EXIM-financed projects do not export anything, Sen Pat Toomey (R-Pa) stated, “[T]his unprecedented program subverts Congressional intent by straining the interpretation of EXIM’s charter to such an extent as to make it meaningless. This is worse than mission creep.”

USTR Report on Intellectual Property

The office of the United States Trade Representative (USTR) released their annual Special 301 Report

The report calls out the European Union’s exclusionary geographical indications (GI) policies.

reviewing the state of intellectual property protection and enforcement by trading partners around the world, identifying seven priority regimes (China, Russia, India, Indonesia, Argentina, Chile and Venezuela) and a watch list of 20 others, including Brazil, Canada, Mexico and Turkey.

The Report identifies concerns regarding:

- challenges with border and criminal enforcement against counterfeits, including in the online environment;
- high levels of online and broadcast piracy, including through illicit streaming;
- inadequacies in trade secret protection and enforcement in China, Russia, and elsewhere;
- troubling “indigenous innovation” and forced technology transfer policies that may unfairly disadvantage U.S. right holders in markets abroad;
- other ongoing, systemic issues regarding IP protection and enforcement, as well as market access, in many trading partners around the world.

The report calls out the European Union’s exclusionary geographical indications (GI) policies. According to the National Milk Producers Federation, the EU misuses protections meant for proper GIs to monopolize common cheese terms and raise unjustified trade barriers to block dairy exports from outside the bloc. The EU also pursues trade agreements worldwide that prohibit American-made products, including cheese, from using names like parmesan, asiago, and feta.

End Use Monitoring: Blue Lantern & Golden Sentry

State's Directorate of Defense Trade Controls (DDTC) released their FY2021 report on End-Use Monitoring of Defense Articles and Defense Services April 14. Blue Lantern monitoring includes pre-license, post-license/pre-shipment, and post-shipment checks to verify the bona fides of foreign consignees and end-users, confirm the legitimacy of proposed transactions, and to the extent possible, confirm recipients are complying with use and transfer requirements. The Blue Lantern program is managed by the Country and End-Use Analysis Division (CEA), Office of Defense Trade Controls Policy, DDTC, Bureau of Political-Military Affairs, to satisfy Section 40A of the Arms Export Control Act,

DDTC approved 19,125 export authorization requests. CEA initiated Blue Lantern checks on 281 export authorizations or authorization requests (62 pre-license checks, 164 post-shipment checks, and 55 checks that involved both pre-license and post-shipment elements) in more than 70 countries, generally in line with FY 2020 figures. Blue Lantern checks in FY 2021 were performed on approximately one percent of the license applications approved in FY 2021. CEA closed 256 Blue Lantern checks in FY 2021, an increase of more than 38 percent from FY 2020. Of these, 175 (68 percent) reported "favorable" results, with 77 cases deemed "unfavorable" in FY 2021. Unfavorable findings were in line with the average rate of unfavorable outcomes for the past five fiscal years (30 percent). Because the selection process is risk-based, transactions targeted for closer scrutiny are more likely to result in unfavorable findings than a random sampling of license applications.

The leading cause of an unfavorable finding was derogatory information/foreign party deemed unreliable recipient of USML (21 checks), meaning the check generated information calling into question the foreign party's ability to comply with the ITAR. The second most common reason for an unfavorable check was refusal to cooperate (29 checks), where the foreign party failed to provide a comprehensive

response in a timely manner. The third most common reason was unlicensed party (11 checks), where the check detected the participation of an entity not listed on the license or authorization request. For FY 2021, CEA documented no instance of indications of potential or actual diversion (i.e., involving intentional actions to change end-use or end-user for nefarious purposes) and four instances of unauthorized re-exports/retransfers (i.e., poor compliance arising from a misunderstanding of, or lack of sufficient training in, the ITAR).

In FY 2021 CEA reviewed 72,472 DDTC Watch List name matches or "hits" (including false hits) and made 1,487 new entries and 1,889 modifications to the DDTC Watch List. DDTC's Watch List is an internal screening tool containing more than 224,500 entities, ranging from entities that require further review to restricted or denied parties. CEA uses this database to flag export authorization applications for possible Blue Lantern checks.

Blue Lantern checks not only review specific transactions but also analyze the management structure and security controls of foreign companies that may pose a risk of diversion due to their acquisition by another foreign entity, bearing on dozens of licenses and agreements per entity.

Golden Sentry Program, the DoD's response to Section 40A ensures end-use verification of defense articles and defense services that incorporate sensitive technology; are particularly vulnerable to diversion or other misuse; or would have significant consequences if diverted or misused.

The program must also prevent the diversion through reverse engineering or other means of technology incorporated in transferred defense articles. During FY21, personnel assigned to U.S. Embassies in over 107 countries conducted over 2,418 physical security checks of storage facilities and accountability inventories of over 206,000 EEUM designated defense articles worldwide.

END NOTES

Confirmations & Appointments

Arun Venkataraman was sworn in as Assistant Secretary of Commerce for Global Markets and Director General of the U.S. and Foreign Commercial Service for the International Trade Administration (ITA). Prior to his appointment, he served as Counselor to the Secretary of Commerce, advising the Department on trade and other international economic matters. Before joining the Biden Administration, Arun was a Senior Director at Visa, leading global government engagement strategy on a range of international policy issues including digital economy, trade, tax and sanctions. He also served in the Obama Administration as ITA's Director of Policy and the Office of the U.S. Trade Representative as its Director for India.

Grant Harris was sworn in as Assistant Secretary of Commerce for Industry and Analysis for the International Trade Administration (ITA). Harris previously served as CEO of Connect Frontier LLC, where he advised companies and organizations on strategy, policy, and mitigating risk with respect to doing business in emerging and frontier markets. Harris also taught business in emerging markets at Northwestern University's Kellogg School of Management and the University of California Berkeley's Haas School of Business. Harris served in the Obama administration as Special Assistant to the President and Senior Director for African Affairs at the White House.

James C. O'Brien was confirmed as State's Head of the Office of Sanctions Coordination, with the rank of Ambassador. O'Brien is a principal and founder of Albright Stonebridge group. He was special presidential envoy for the Balkans in the Clinton Administration and worked for 12 years at the State Department in the Secretary's office, the office of policy planning, and the legal adviser's office. He is a graduate of Yale Law School and Macalester College.

Katherine Vidal was confirmed as Under Secretary of Commerce for Intellectual Property and **Director of the United States Patent and Trademark Office**. Most recently managing partner of Winston & Strawn's Silicon Valley office, Vidal began her career as an electrical engineer at General Electric and Lockheed Martin. Her BSEE is from Binghamton University, her MSEE from Syracuse University, and JD

From the University of Pennsylvania.

Richard DalBello, has been appointed to be the new **Director of NOAA's Office of Space Commerce (OSC)**, the coordinator of space commerce policy activities within the U.S. Department of Commerce. DalBello has more than 30 years of public and private sector commercial space experience. In his previous position as Virgin Atlantic's Vice President of Global Engagement, he managed international business development for the company's fleet of carrier aircraft and space vehicles.

Unfilled positions in Treasury still include Assistant Secretary of the Treasury for Investment Security, Under Secretary for International Affairs, Assistant Secretary for Management, Assistant Secretary for International Markets, Treasurer of the United States and General Counsel.

Calendar

WTO's 12th Ministerial Conference (MC12) will take place June 12-15 at WTO headquarters in Geneva. MC12 was originally scheduled to take place June 2020 in Nur-Sultan, Kazakhstan, but was postponed due to the COVID-19 epidemic. It was rescheduled for early December 2021 then postponed due to the outbreak of the Omicron variant of COVID-19. The Draft Agreements, Ministerial Decisions and Negotiating Group Reports have been prepared since November, though many technical subcommittees have not met since before the pandemic.

The WTO Work Programme on E-commerce will be worth watching. The 1998 Declaration on Global Electronic Commerce contained the following operative text on electronic transmissions: Members will "continue their current practice of not imposing customs duties on electronic transmissions". This wording has been replicated in subsequent decisions renewing the moratorium, while e-commerce has grown markedly.

Most developing countries are net importers of digital products, and advocate an active industrial policy on E-commerce, including tariffs on digital sector im-

ports. India and South Africa have indicated they will push for an end to the moratorium

BIS – Update 2022

June 29 thru July 1, BIS will hold the Annual Conference on Export Controls and Policy at the Marriott Marquis in Washington, DC. Update will be an in-person event this year, with more details coming soon. Last year's conference scheduled for July was postponed, then moved to virtual due to the pandemic. Details from BIS pending.

BIS - Encryption Controls

August 10-11, via teleconference. Details from BIS pending

Treasury CFIUS Conference

June 16, 8am to 4pm. Department of the Treasury Cash Room, Washington, DC, and online. This in-

augural event will feature speakers from across the U.S. Government who will provide insights on CFIUS authorities, processes, and practice primarily for the business community. For questions regarding the event, contact IUSConference@treasury.gov

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

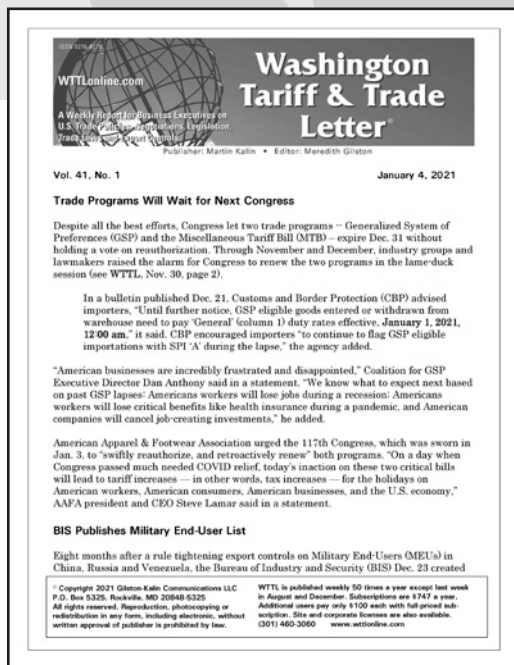
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