

The Export PractitionerTM

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Timely News and Analysis of Export Regulations

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Burma Sanctions**

ALSO INSIDE

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Export Charges

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Settles OFAC
Cuba Sanctions

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Agencies Warn Industry of Burma Business Risks

A year after a February 2021 Burmese coup, the administration Jan. 26, 2022, issued a business advisory to “inform the public of the heightened risks associated with doing business in Burma.” This was only the latest in a long line of U.S. actions against the country.

State, Treasury, Commerce, Labor, Homeland Security and the USTR’s office issued the caution to “inform individuals, businesses, financial institutions, and other persons, including investors, consultants, and research service providers of the heightened risks associated with doing business in the country, and in particular with the military regime, which is involved in human rights abuses.”

A week after the advisory, Treasury’s Office of Foreign Assets Control (OFAC) Jan. 31 designated seven individuals and two entities connected to Burma’s military regime, including the union attorney general, chief justice of Burma’s Supreme Court and chairman of the Anti-Corruption Commission (ACC).

Also designated was KT Services & Logistics Company Limited (KTSL) which has leased TMT Port in Yangon from blocked entity Myanmar Economic Holdings Public Company Limited (MEHL) since 2016. OFAC designed MEHL in March 2021.

OFAC also blocked the Directorate of Procurement of the Commander-In-Chief of Defense Services (Army) for operating in the defense sector of the Burmese economy. The Directorate “is responsible for the purchase of arms and equipment from around the world for use by the Burmese military,” the agency noted.

The Bureau of Industry and Security (BIS) added four Burmese entities to its Entity List in July 2021: Wanbao Mining and two subsidiaries, Myanmar Wanbao Mining Copper

and Myanmar Yang Tse Copper; and King Royal Technologies Co. (see *The Export Practitioner*, August 2021, page 18). The three copper mining firms have revenue-sharing agreements with MEHL, which BIS added to the Entity List three months earlier.

Sectors of Concern Include Arms, Metals, Real Estate

“Businesses and individuals with potential exposure to, or involvement in operations or supply chains tied to, the military regime that do not conduct appropriate due diligence run the risk of engaging in conduct that may expose them

to significant reputational, financial, and legal risks, including violations of U.S. anti-money laundering laws and sanctions,” the agencies noted.

“Additionally, businesses and individuals should be wary of the associated illicit finance risks as well as reputational and legal risks of

conducting business and utilizing supply chains under military control in Burma,” the joint advisory noted.

The specific entities and sectors of greatest concern within Burma include: state-owned enterprises; gems and precious metals; real estate and construction projects; and arms, military equipment and related activity, the agencies explained.

In the arms sector, the agencies advised U.S. industry to “implement the screening measures necessary to ensure they do not facilitate trade” with the Burmese military or countries that do business with it.

“Countries with entities that have previously sold or transferred arms and other military equipment, including dual-use goods, to Burma and have not subsequently enacted arms embargos include China, India, Israel, Japan, Democrat-

A week after the advisory, Treasury’s Office of Foreign Assets Control (OFAC) designated seven individuals and two entities connected to Burma’s military regime.

ic People's Republic of Korea, the Philippines, Russia, Serbia, Singapore, South Africa and Ukraine," they noted.

"These countries had previously sold or offered services related to ammunition ranging from small arms use to torpedoes and missiles, cameras and radios with military use, military grade vehicles including aircraft and automobiles, navigation and position system services for the military, and unmanned aerial vehicles with potential military uses," the agencies added.

The agencies also warned importers to use caution in the gems and metals sector. "Given the insufficient reporting requirements in Burma for cross-border transfers of goods and funds, the U.S. government recommends that gem, pearl, and precious metal importers undertake enhanced due diligence to better understand their supply chains and to ensure they are not sourcing from or brokering through military-owned or -operated entities, even if their supply chain seems to be completely outside of Burma," they noted.

In November, State, Treasury and Commerce issued a similar Business Advisory to "caution U.S. businesses currently operating in, or considering operating in, Cambodia to be mindful of interactions with entities involved in corrupt business practices, criminal activities and human rights abuses," the agencies said (see *The Export Practitioner*, January 2022, page 11).

U.S., Allies Impose Additional Sanctions

In adding sanctions on Burmese government officials, the U.S. joined Canada and the United Kingdom (UK). "Following reports of appalling violations of humanitarian law, escalations in violence, and the lack of tangible progress being made toward a peaceful resolution, Canada is taking coordinated action with its international partners and allies to bring human rights violators in Myanmar to account," the Canadian Foreign Ministry said in a statement Jan. 31.

"A year after the coup, the military regime has shown no sign of reversing course. Canada's announcement of additional measures is being coordinated with those of the United Kingdom and the United States and underscores the interna-

tional community's collective resolve to put increased pressure on the military to initiate genuine and inclusive political dialogue to end the crisis," the ministry added.

"They also reinforce Canada's call to all countries to suspend all operational support for Myanmar's military and to cease the transfer of arms, material, dual-use equipment and technical assistance to Myanmar's military and its representatives. Taken together, these measures will hinder the military leadership's ability to operate," it said.

"This latest round of sanctions will freeze the assets of these individuals and enforce a travel ban preventing them coming to the UK. They come on top of previous designations on dozens of individuals as well as businesses and business networks to limit the junta's access to finance," the UK Foreign Office said in a separate state-

ment.

At the same time, the High Representative of the European Union (EU), and the foreign ministers of Albania, Australia, Canada, New Zealand, Norway, South Korea, Switzerland, the UK and the U.S. issued a joint statement on the one-year anniversary of the coup.

"We call on all members of the international community to support efforts to promote justice for the people of Myanmar; to hold those responsible for human rights violations and abuses accountable; to cease the sale and transfer of arms, materiel, dual-use equipment, and technical assistance to the military and its representatives; and to continue supporting the people of Myanmar in meeting urgent humanitarian needs," they said

Congress Urges Further Sanctions, Humanitarian Aid

Members of Congress on both sides of the aisle welcomed the increased sanctions, but urged the administration to do more. "These well-intentioned efforts have not been enough. There is more the Biden administration must do. And there is more that must be done by our democratic partners in the region," Sen. Mitch McConnell said on the Senate floor Feb. 1.

"The administration should be prioritizing Burma in its diplomacy throughout Asia, especially India. Along with our partners, the United States should expand sanctions to fur-

In the arms sector, the agencies advised U.S. industry to "implement the screening measures necessary to ensure they do not facilitate trade."

ther isolate the military and security forces. We should move to expose countries like Russia and China that aid and abet the repression of the people of Burma,” he added.

House members also urged further actions. “We applaud the steps the Biden administration has taken thus far to impose sanctions on military officials and its affiliated conglomerates to

hold the perpetrators for the coup and ensuing human rights atrocities to account,” Reps. Gregory Meeks (D-N.Y.), Ami Bera, M.D. (D-Calif.) and Steve Chabot (R-Ohio) said in a

joint statement. “With the military refusing to accede to the demands of the Burmese people and the international community, the United States must do more,” they added.

“This latest round of sanctions will freeze the assets of these individuals and enforce a travel ban.”

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Fla. Diving Company Owner Sentenced for Libya Exports

Peter Sotis of Delray Beach, Fla., owner and principal of Add Helium LLC, and Emilie Voissem of Sunrise, the company's office manager, were sentenced Jan. 12, 2022, in Miami U.S. District Court on charges of exporting dual-use goods, including four rebreathers, to Libya without the required Commerce license in 2016.

Sotis was sentenced to 57 months in prison followed by three years' supervised release; Voissem will serve five months in prison followed by three years' supervised release.

Both were convicted in October after a six-day trial (see *The Export Practitioner*, November 2021, page 10). Sotis was arrested in October 2019 and released on \$250,000 bond. Rebreathers, which absorb carbon dioxide out of scuba diver's exhaled breath, are classified under Export Control Classification Number (ECCN) 8A002.

"After being warned on multiple occasions about the risks associated with shipping rebreathers to Libya, Defendants pushed forward with the shipment anyway, depriving the [shipping company] of critical information about the shipment while simultaneously trying to make them ultimately responsible for it," a Justice sentencing memo noted.

"In late July 2016, Voissem received email communications from Global Forwarding's compliance department about potential concerns with shipping to Libya, and Voissem shared those messages with Sotis," it said.

"Even if any lingering doubt could have reasonably existed in Defendants' minds after receiving these repeated warnings, that doubt was eliminated in early August when Special Agent Wagner visited Add Helium, expressed his skepticism that shipment to Libya would be permitted in light of recent events, and directed Defendants not to ship the rebreathers while the license determination was pending," the memo added.

Hong Kong Trading Firm Settles Iran Sanctions Charges

Offshore trading firm Sojitz (Hong Kong) Limited agreed Jan. 11, 2022, to pay Treasury's Office of Foreign Assets Control (OFAC) a \$5,228,298 civil penalty to settle charges of violating Iran sanctions.

"Sojitz HK made U.S. dollar payments through U.S. financial institutions for Iranian-origin high density polyethylene resin (HDPE) from its bank in Hong Kong to the HDPE supplier's banks in Thailand," the agency said. Sojitz HK voluntarily self-disclosed the violations.

"To circumvent company policy, the noncompliant employees omitted the HDPE's Iranian country of origin information."

"From August 2016 through May 2018, certain Sojitz HK employees acting contrary to company-wide policies and procedures caused Sojitz HK to purchase approximately 64,000 tons of Iranian-origin HDPE from a supplier in Thailand for resale to buyers in China. Under the terms of the HDPE Trading arrangement, Sojitz HK paid the purchase price by wire transfer to the Thai supplier upon the supplier's shipment of the HDPE to the Chinese buyers," OFAC said.

"Immediately prior to the HDPE Trading, these noncompliant employees were explicitly and repeatedly advised that they could not make U.S. dollar payments in connection with Iran-related business transactions. Nevertheless, to circumvent company policy, the noncompliant employees omitted the HDPE's Iranian country of origin information from relevant transactional documents, including by requesting that the Thai supplier make no reference to Iran on the bills of lading," it added.

"Sojitz HK's noncompliant employees omitted the HDPE's Iranian country of origin information from all relevant transactional documents over a period of two years, despite having been told explicitly and repeatedly by the company's compliance person-

nel that such conduct violated U.S. sanctions and company policy,” OFAC noted.

The company “undertook significant remedial measures,” including: termination of the noncompliant employees; revision of sanctions screening procedures to require that the counterparties in all business transactions be subject to mandatory compliance screening; and enhancement of the independence and capability of its sanctions compliance unit, the agency said.

The company “undertook significant remedial measures,” including termination of the noncompliant employees.

“We are continually improving our policies and procedures to comply with relevant laws and regulations, including those with respect to sanctions,” a company spokesperson wrote in an email to The Export Practitioner.

San Diego Firm Settles DDTC Export Charges

San Diego manufacturer Torrey Pines Logic and its owner and founder Dr. Leonid Volfson agreed Jan. 31, 2022, to pay State’s Directorate of Defense Trade Controls (DDTC) an \$840,000 civil penalty under a consent agreement to settle five charges of violating International Traffic in Arms Regulations (ITAR) through unauthorized exports of defense articles to various countries, including proscribed destinations.

The alleged violations involve exports of U.S. Munitions List (USML) Category XII defense articles, including thermal imaging systems, the S30 Sentinel, a hand-held device designed to detect optical systems pointed at the viewer, to Bulgaria, Canada, Estonia, Germany, Russia, Spain, Switzerland, Lebanon and China, both proscribed destinations, and the attempted unauthorized export of USML Category XII defense articles to Singapore.

“Certain alleged violations also involve Respondents engaging in ITAR-regulated activities while

ineligible; and failing to maintain and produce export transaction records,” the proposed charging letter noted. “Certain violations involved defense articles designated as Significant Military Equipment (SME),” it added.

“Respondents did not voluntarily disclose certain violations; and Respondents did not obtain a license or other approval from the Department for the export of defense articles while a commodity jurisdiction (CJ) request was pending with the Department,” the letter said.

In November 2018, Respondents attempted to export two thermal imaging systems (a TPL T25 model and a TPL T20 model), controlled under USML XII(c)(2)(i) and designated as SME, to Singapore without a State license or other approval. “Dr. Volfson attempted to travel on a commercial airline from an airport in Seattle, Washington to Singapore via Tokyo, Japan with the two thermal imaging systems in his carry-on luggage,” it noted.

In addition, invoices from April to November 2015, while the CJ was pending, demonstrated that Respondents without authorization exported 13 shipments of T10 units, small form-factor thermal imagers, to Bulgaria, Canada, Estonia, Germany, Lebanon, Russia, Spain, Switzerland and China, the charging letter said.

In July 2014, DDTC provided Respondents with a CJ determination (CJ-0301-14) finding that the S30 Sentinel was regulated as a defense article under USML Category XII(b) and designated as SME. Despite having received this CJ determination, Respondents, without authorization, exported S30 Sentinel imaging systems to Japan in December 2014, January 2015 and March 2015. Similarly, documentation appears to show that Respondents again, without authorization, exported S30 Sentinels to Japan on April 3 and May 5, 2015.

“Despite being generally ineligible to engage in activities regulated under the ITAR and not being registered, Respondents disclosed that they violated the ITAR by conducting ITAR-controlled activities during the relevant time period, including by manufacturing and supporting the export of the S30 Sentinel to Japan and Thailand,” the charging letter said.

Of the civil penalty, \$420,000 will be paid

through four installments over the next three years. The remaining \$420,000 is assessed for remedial compliance measures and will be suspended “on the condition that this amount... shall be applied to Consent Agreement-authorized remedial compliance costs,” DDTC noted.

Airbnb Subsidiary Settles OFAC Cuba Sanctions

Airbnb Payments, a wholly owned subsidiary of Airbnb, agreed Jan. 3, 2022, to pay Treasury’s Office of Foreign Assets Control (OFAC) a \$91,172.29 civil penalty to settle charges of violating Cuba sanctions.

The activity included “payments related to guests traveling for reasons outside of OFAC’s authorized categories as well as a failure to keep certain required records associated with Cuba-related transactions,” the agency said. The firm voluntarily self-disclosed the apparent violations.

“Airbnb Payments also processed payments related to 44 confirmed transactions involving non-U.S. persons engaging in Cuba travel transactions on Airbnb, Inc.’s platform prior to OFAC issuing a specific license to Airbnb, Inc. to engage in such conduct,” OFAC noted.

As Airbnb launched its services in Cuba following U.S. regulatory changes in January 2015, “the scaling up of its services in Cuba appears to have outpaced the company’s ability to manage the associated sanctions risks via its technology platforms,” it added.

“For example, when Airbnb, Inc. first launched in Cuba, Airbnb Payments used a manual process to screen Hosts and Guests for potential sanctions issues until Airbnb Payments was able to implement a customized Internet Protocol blocking system designed to permit Cubans to act as Hosts on Airbnb, Inc.’s platform while simultaneously preventing Cubans from transacting as Guests on the platform,” OFAC charged.

“Similarly, the recordkeeping Apparent Violations related to the Experience transactions were primarily due to technical defects involving an older version of the Airbnb, Inc. mobile application that re-

mained operational for Cuba-related travel. The older version of the application did not maintain complete functionality for Guests to make an attestation regarding their reason for travel to Cuba,” it added.

When Airbnb first launched in Cuba, Airbnb Payments used a manual process to screen Hosts and Guests for potential issues.

“Airbnb operates in more than 220 countries and regions around the world, and we take sanctions compliance very seriously. We are pleased to have reached this agreement with OFAC,” Airbnb spokesperson Christopher Nulty said in an email to The Export Practitioner.

R.I. Man Charged with Exporting Ghost Guns

Robert Alcantara of Providence, R.I., was charged Jan. 6, 2022, in Manhattan U.S. District Court with conspiring to export more than 100 firearms, including untraceable “ghost guns,” and with making false statements.

“Alcantara sold most of the firearms in the Dominican Republic. When interviewed by law enforcement about his sales and shipments of firearms, Alcantara then falsely stated that he had never sold firearms or transported them to the Dominican Republic,” the criminal complaint noted.

“Most of the firearms are ‘ghost gun’ handguns that Alcantara purchased in incomplete form and then finished at a workstation at his house, although Alcantara was also involved in the sale of rifles,” it added.

In April 2021, for example, Alcantara sent a picture of the firearms to a co-conspirator, and shortly thereafter the co-conspirator “messed Alcantara a picture of a large payment he made in the currency of the Dominican Republic,” the complaint noted.

In August 2021, Alcantara and another co-conspirator “exchanged messages indicating either that they were meeting together in the Dominican Repub-

lic or that a shipment of Alcantara's was going to a destination in the Dominican Republic," it added.

UAE Resident Charged with Illegally Exporting to Iran

Kambiz Attar Kashani, a dual Iranian-U.S. citizen who resides in the United Arab Emirates (UAE), was arrested Jan. 14, 2022, and charged in Brooklyn U.S. District Court with conspiracy to illegally export U.S. goods, technology and services, to end users in Iran, including the Central Bank of Iran (CBI), without the required licenses from Treasury's Office of Foreign Assets Control (OFAC).

Exported items included: two subscriptions to proprietary computer software program, several fixed attenuators, two subscriptions to operating software, six power supplies and several storage systems.

OFAC designated CBI in November 2018 as part of the "snap back" of nuclear-related sanctions against Iran that were lifted under the Joint Comprehensive Plan of Action (JCPOA). The agency added further sanctions in September 2019 (see *The Export Practitioner*, October 2019, page 17).

"To procure goods, technology and services manufactured and sold by U.S. companies, Iran Company 1 -- sometimes acting on behalf of CBI -- tasked Kashani and others to purchase the goods, technology and services and arrange their transshipment into Iran," the criminal complaint noted.

"To fulfill Iran Company 1's requests, Kashani and his co-conspirators used UAE Company 1 and UAE Company 2 -- companies in which Kashani is at least a partial owner and that appear to exist solely to circumvent U.S. export laws and sanctions by illegally procuring goods, services and technology for their only direct customer, Iran Company 1 -- to conceal their purchases of U.S. goods, technology and services for end users in Iran," it added.

"Kashani and others intentionally concealed from U.S. companies that they intended to ship U.S.-origin goods, technology and services from UAE Company 1 and UAE Company 2 to Iran," the complaint said.

UK Resident Pleads Guilty to Illegal Iran Exports

A resident of the United Kingdom pleaded guilty to exporting and attempting to export an Industrial Microwave System (IMS) and counter-drone system to Iran without the required license from Treasury's Office of Foreign Assets Control (OFAC) between May 2017 and January 2018.

Saber Fakhri entered the plea Jan. 25, 2022, in D.C. U.S. District Court. Four indictments were unsealed at same time: Canadian Bader Fakhri, United Arab Emirates (UAE) national Altaf Faquih and Iranians Alireza Taghavi and Jalal Rohollahnejad.

The Bureau of Industry and Security (BIS) added Rohollahnejad to its Entity List in March 2020 for procuring goods on behalf of Rayan Roshd Afzar Company, which has been linked to Iranian Revolutionary Guards Corps (IRGC) (see *The Export Practitioner*, April 2020, page 22).

"In October 2017, Saber Fakhri, upon instructions provided by his co-conspirators (including Taghavi) told the Massachusetts Company that a company in Dubai would be the end user of the IMS. At the time, Saber Fakhri made those representations to the Massachusetts Company, he knew that the IMS in fact had an ultimate end destination in Iran," the statement of facts noted.

In November 2017, based on the information provided to the Massachusetts Company by Saber Fakhri, a U.S. logistics company filed an Electronic Export Information (EEI) document with Customs and Border Protection (CBP) that listed a company in Dubai as the ultimate consignee for the IMS, the court document added.

"In May 2017, Saber and Bader Fakhri began negotiations with the Maryland Company for the purchase of a CDS, stating that they would be for a customer in the United Arab Emirates. In fact, the defendant and Bader Fakhri hoped to acquire the CDS on behalf of Taghavi," it noted.

BIS Extends Controls on Geospatial Imagery Software

To give itself more time to consult multilateral regime partners, the Bureau of Industry and Security (BIS) Jan. 6, 2022, extended export controls on “software specially designed to automate the analysis of geospatial imagery” for another year. The agency cited the pandemic and the “limited deliberations” at the Wassenaar Arrangement’s 2021 plenary for the extension.

In January 2020, BIS added the software to its “holding” Export Control Classification Number (ECCN) 0Y521 series, specifically under ECCN 0D521. The agency extended the controls for a year in January 2021 (see *The Export Practitioner*, February 2021, page 13).

The U.S. submitted a proposal for multilateral control of the 0D521 software to the Wassenaar Arrangement “in a timely manner, within the first year of the item’s 0D521 classification. However, due to the pandemic, the Wassenaar Arrangement did not formally convene in 2020 and therefore was unable to consider acceptance of the proposal,” the rule said.

“The Wassenaar Arrangement’s limited deliberations in 2021 due to the pandemic did not allow for sufficient discussion of this proposal. An additional extension of time is appropriate in order for the U.S. Government to continue its effort at the Wassenaar Arrangement in 2022,” BIS added.

Industry Comments on Brain-Computer Interface Technology

We’ve heard this song before. In response to a request for comments on potential export controls on brain-computer interface (BCI) technology, industry groups and academic researchers urged the Bureau of Industry and Security (BIS) to exclude certain uses, including automotive applications and medical devices.

In October, BIS started chipping away at the task of identifying potential emerging technologies and requested comments on the potential uses of BCI technology and whether export controls on this tech-

nology would be effective and appropriate (see *The Export Practitioner*, November 2021, page 14). The agency received 18 comments in response.

The Alliance for Automotive Innovation proposed any potential controls explicitly exclude software, hardware and systems “designed for civil automobile applications.” The group commented that “any controls on BCI should not impede the development of innovative technologies that will help make motor vehicles cleaner, safer, and smarter. Emerging technologies remain crucial to transforming personal mobility, and the automotive industry is already leveraging BCI to support next-generation vehicle safety features.”

“Any proposed rulemaking should consider the distinct differences between ‘rehabilitative’ and ‘enhancing’ technologies.”

Blackrock Neurotech focused on the two major categories of brain computer interfaces: those that have promise for “rehabilitative” applications and those that can be described as “enhancing,” the company commented. “Any proposed rulemaking should consider the distinct differences between ‘rehabilitative’ and ‘enhancing’ technologies so as to narrowly craft rules that reflect their very different applications and implications,” it wrote.

Firms, Universities

Ask for Exceptions

Synchron, a Brooklyn company that is developing an implantable BCI medical device for the treatment of paralysis, urged BIS to “limit any discussion of export controls to encompass only those BCI products that are intended for non-medical use,” it wrote.

“The U.S. currently holds a major technology advantage over the rest of the world in the field of invasive BCI. Any U.S. export controls placed on implanted BCI medical technology, either hardware or software, would substantially hinder this leadership position,” Synchron added.

University of Pittsburgh researchers echoed Syn-

chron's sentiment. "BCI technology and science have been an international endeavor for many years, and we expect this to continue. Since most companies trying to develop and commercialize BCI technologies are small and work with limited resources, we feel strongly that additional export control restrictions and market limitations will have a significant negative impact on their overall development, and will disproportionately affect U.S. technological leadership," they commented.

"While there may be narrow areas of U.S. national security concern with respect to BCIs, we believe the United States benefits by supporting the global development of BCI-based platforms led by U.S.-based companies. This is an opportunity for the United States to become a global leader in the technological revolution that is forming around precision measurement of the brain. For this to become reality, the scope of any new export controls relating to BCIs should be narrowly applied to security-related applications and controlled multilaterally," HI LLC, which does business as Kernel, commented.

BIS Delays Effective Date of Wassenaar Cyber Rule

Responding to industry comments, the Bureau of Industry and Security (BIS) Jan. 12, 2022, delayed the effective date of its October rule establishing new controls on certain cyber-security items and a new

License Exception, Authorized Cybersecurity Exports (ACE). The agency may modify the rule in advance of March 7, the new effective date.

BIS received 12 comments on the rule implementing changes to controversial cyber intrusion software controls that Wassenaar Arrangement (WA) members agreed to at its December 2017 plenary.

The comments ranged from security analysts who asked for broader exceptions to the rule, to non-profits who requested BIS expand the definition to cover other surveillance tools (see *The Export Practitioner*, January 2022, page 4).

"Based on issues raised by some of the public comments, BIS may consider some modifications for the final rule." The agency said, "it is important to allow enough time for industry to implement the compliance measures and procedures necessary to comply with the published interim final rule, as well as for BIS to provide the public with additional guidance." In November, BIS published 29 new Frequently Asked Questions (FAQs) on the rule.

Specifically, the original rule created new Export Control Classification Numbers (ECCNs) 4A005 and 4D004, as well as a new paragraph 4E001.c and made conforming changes to other ECCNs that refer to the new language. It also created a new License Exception ACE that authorizes exports of cybersecurity items and certain IP network surveillance products to most destinations, except those listed in Country Groups E:1 and E:2.

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dì duì nǐ men de chǎn pǐn jìn xíng fēn lèi?

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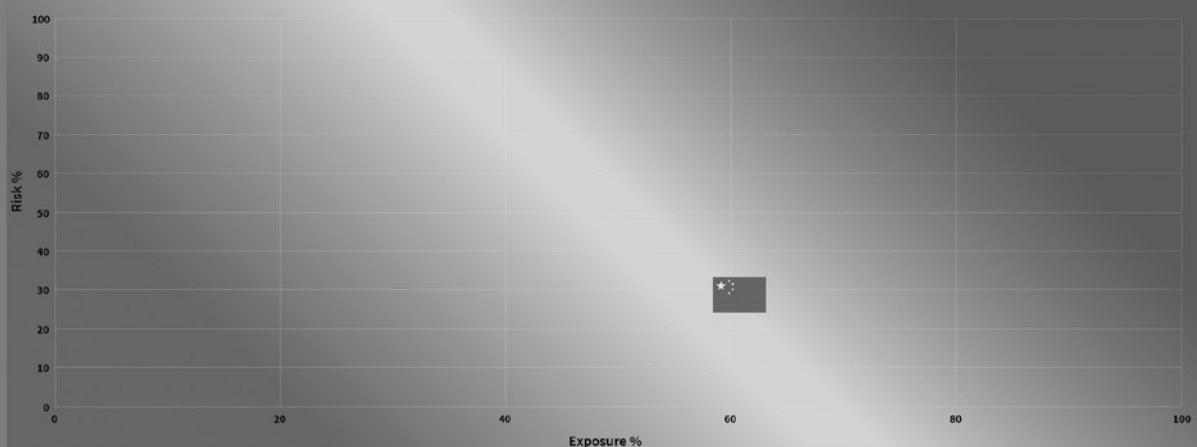
是否有中国出口控制下的关于出口分类的企业政策文件？

☐ Yes ☐ No ☐ I don't know ☐ N/A

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Administration, Congress Ready Russian Sanctions

Time to brush up on the foreign-direct product (FDP) rule that officials used to sanction Huawei during the previous administration. If Russia invades Ukraine, U.S. officials are prepared to revert to that toolbox again. At the same time, Congress is ready to require a wide range of other sanctions.

“Much like financial sanctions which restrict foreign capital, export controls deny something to Russia that it needs and can’t easily replace from anywhere else,” a senior administration official said during a teleconference Jan. 25, 2022.

“In the case of export controls, what we’re talking about are sophisticated technologies that we design and produce that are essential inputs to Russia’s strategic ambitions,” the official added.

“You can think of these export controls as trade restrictions in the service of broader U.S. national security interests. We use them to prohibit the export of products from the U.S. to Russia and, potentially, certain foreign-made products that fall under U.S. export regulations,” the official said.

“The reason they work is: If you step back and look at the global dominance of U.S.-origin software, technology, and tooling, the export control options we’re considering alongside our allies and partners would hit Putin’s strategic ambitions to industrialize his economy quite hard. And it would impair areas that are of importance to him, whether it’s in artificial intelligence or quantum computing, or defense, or aerospace, or other key sectors,” they said.

“These measures would have minimal impact on global supply chains, because we’re talking about denying to Russia downstream products that are critical to its own ambitions to develop high-tech capabilities in aerospace and defense, lasers and sensors, maritime, AI, robotics, quantum, et cetera,” the official said.

“In each of these supply chains, we and/or our allies and partners design and produce the technology. And the export control would deny to Russia a sophisticated input that it can’t replace through domestic production or alternate supplies,” they added.

Congress Urges Comprehensive Response

The U.S., “alongside allies and partners, continues to prepare a range of severe economic measures to impose on Russia if it further invades Ukraine. And, to repeat, we are prepared to implement sanctions with massive consequences that were not considered in 2014,” the official noted.

In an October Frequently Asked Question (FAQ), the Bureau of Industry and Security (BIS) clarified a real-world example of the FDP rule, whether a company may export a non-U.S. product to a designated entity without confirmation that a license was obtained authorizing the incorporation of the components (see *The Export Practitioner*, November 2021, page 15). At press time, BIS published a rule clarifying and reorganizing the FDP rules in its regulations.

Four days before the background briefing, Rep. Gregory Meeks (D-N.Y.) introduced the House version of the Defending Ukraine Sovereignty Act of 2022 (H.R. 6470), which would include: sanctions on the Nord Stream 2 pipeline, Russian extractive industries and at least three Russian financial institutions; prohibiting all transactions of new Russian debt; sanctions on Vladimir Putin and other Russian leaders; expedited security assistance for Ukraine; expanded programming to counter Russian disinformation and cyber activity. and a national security waiver. Sen. Robert Menendez (D-N.J.) and 41 co-sponsors introduced the Senate version earlier in January (S. 3488).

“It is necessary that the United States, together with our transatlantic allies, make clear that any activities constituting an invasion by the Russian army into sovereign territory will be met with significant

repercussions. This legislation would impose significant consequences on Russia, both financially and otherwise,” Meeks said in a statement.

On the Senate floor Jan. 13, the day after introducing the Senate version, Menendez called the bill “a comprehensive response to the threat facing Ukraine.” The bill “would impose massive, crippling sanctions on multiple sectors of Russia’s economy. It would impose the harshest sanctions on Putin and senior Kremlin officials themselves. It would effectively cut Russia off from the international financial system,” he said.

That same day the Senate failed to pass a bill to impose sanctions on the entities responsible for planning, construction or operation of the Nord Stream 2 pipeline (S. 3436). The vote was 55-44 but needed 60 votes to pass.

“Shutting down the pipeline with sanctions now, however, will deter Russian aggression by continuing their reliance on Ukraine to export gas into Europe. Today’s bipartisan vote to sanction the pipeline sends a strong message to the president: It’s time to reverse course,” Sen. Pat Toomey (R-Pa.) said in a statement.

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CFIUS Extends Deadline for Excepted Foreign States

Hearing no complaints, Treasury Jan. 6, 2022, extended the deadline for countries to fit the criteria to be considered “excepted foreign state” and “excepted real estate foreign state” by one year to Feb. 13, 2023. The department proposed the extension in November and only received two public comments on the change.

Extending the effective date “provides foreign states with additional time to meet the determination factors.”

“These terms operate together with other relevant terms to provide an exception from the jurisdiction of the Committee on Foreign Investment in the United States [CFIUS] over covered investments by certain foreign persons who meet specific criteria establishing sufficiently close ties to certain foreign states,” the most recent Federal Register notice said.

In parallel with the rule, CFIUS identified New Zealand as an eligible foreign state “based, among other factors, on its intelligence-sharing relationship with the United States and its collective defense arrangement and cooperation with the United States,” a Treasury fact sheet noted.

In January 2020, the Committee identified Australia, Canada and the United Kingdom (UK) as eligible excepted foreign states. At the same time, Treasury published other final changes to the regulations, including a new definition of “principal place of business” and updated treatment of a 2018 pilot program (see *The Export Practitioner*, February 2020, page 22).

The criteria for “excepted foreign state” is “whether such foreign state ‘has established and is effectively utilizing a robust process’ to analyze foreign investments for national security risks and to facilitate coordination with the United States on mat-

ters relating to investment security,” the proposed Treasury rule noted.

To be considered an “excepted real estate foreign state,” the foreign state must have “‘made significant progress’ in establishing and effectively utilizing the robust process and coordination,” it added.

One of the comments asked about the impact of the pandemic and the excepted foreign state determinations. “Extending the effective date of the second criterion in each definition provides foreign states with additional time to meet the determination factors,” it noted.

The Committee “had determined that extending the time period before which such requirements become applicable is desirable given certain ongoing changes to foreign investment review regimes,” the department added.

Justice Would Not Prosecute Firm for Foreign Payment

In its second opinion procedure release in six years, Justice Jan. 31, 2022, said it would not take any enforcement action under the Foreign Corrupt Practices Act (FCPA) against an unnamed U.S.-based multinational firm for making a \$175,000 cash payment to a third-party intermediary to obtain the release of the company’s vessel, its captain and crew.

“Shortly following the detention of the captain onshore and of the crew onboard the Requestor vessel, a third party purporting to act on behalf of the Country A Navy approached Requestor and demanded a financial payment to release the captain and to permit the crew and the vessel to leave Country A waters,” Justice said in its opinion (No. 22-01).

“Although the Third-Party Intermediary represented the payment to be an official payment to the government of Country A, the nature of the demand and the manner of payment raised concerns for Requestor that the payment was intended for one or

more Country A government officials,” it added.

“Based on the specific facts presented by Requestor, the proposed payment would not trigger an enforcement action under the anti-bribery provisions of the FCPA because Requestor would not be making the payment ‘corruptly’ or to ‘obtain or retain business,” the opinion said.

“Put simply, under the specific facts presented by Requestor, there does not appear to be a sufficient business purpose associated with the payment — and relatedly, there is a lack of a corrupt intent under the FCPA. The situation at hand is thus readily distinguishable from other situations in which a company is threatened with severe economic or financial consequences in the absence of a payment,” it added.

END NOTES

CHINA: State in Federal Register Jan. 21 imposed sanctions on three Chinese companies that “have engaged in missile technology proliferation activities” and their sub-units and successors: China Aerospace Science and Technology Corporation (CASC) First Academy, China Aerospace Science and Industry Corporation (CASIC) Fourth Academy and Poly Technologies Incorporated (PTI). Measures include: denial of all new individual export licenses, denial of all U.S. government contracts, and ban on imports from sanctioned entities. Chinese Foreign Ministry spokesperson Zhao Lijian denounced move. “China’s normal cooperation with relevant countries does not violate any international law or involve proliferation of WMDs,” he said.

RUSSIA: OFAC Jan. 24 issued general licenses (GLs) 13Q and 15K, extending previous GLs that expanded sanctions relief for Russian conglomerate GAZ Group. Specifically, OFAC extended GL expiration date to April 27. “These new licenses are being extended for a shorter period of 90 days,” agency said.

MORE RUSSIA: OFAC Jan. 20 designated four individuals engaged in Russian government-directed influence activities to destabilize Ukraine, including two current Ukrainian Members of Parliament, former Ukrainian official who fled Ukraine to seek refuge in Russia, and former deputy secretary of Ukrainian National Security and Defense Council. “The four individuals have played various roles in Russia’s global influence campaign to destabilize sovereign countries in support of the Kremlin’s political objectives,” agency said.

VENEZUELA: OFAC Jan. 20 issued GL 5I delaying effectiveness until Jan. 20, 2023, of authorization of licenses applicable to holders of Petroleos de Venezuela, S.A. (PdVSA) 2020 8.5 percent bond.

NOMINATIONS: Senate Banking Committee Jan. 19 re-approved slew of nominations, including Owen Herrnschmidt to be Export-Import (Ex-Im) Bank board member; Reta Jo Lewis to be Ex-Im Bank president; Judith DelZoppo Pryor to be Ex-Im first VP; and Arun Venkataraman to be Commerce assistant secretary and director general of U.S. and Foreign Commercial Service. Lewis vote was 13-11; all other nominees were approved by voice vote. President Biden sent nominations back to Senate earlier in January. Still awaiting Senate confirmation is BIS Under Secretary nominee Alan Estevez.

NICARAGUA: OFAC Jan. 10 designated six Nicaraguan government officials, including defense minister, director general and deputy director general of Nicaraguan Institute of Telecommunications and Mail (TELCOR) and board president of state-owned Nicaraguan Mining Company (ENIMINAS), following “fraudulent national elections orchestrated by their regime,” agency said. In November, OFAC designated Public Ministry of Nicaragua as well as nine Nicaraguan government officials, including vice minister of finance, minister of energy and mines, and president of Nicaraguan Institute of Energy (see *The Export Practitioner*, December 2021, page 18).

CIVIL PENALTIES: In Federal Register Jan. 10, State adjusted for inflation civil monetary penalties (CMP) for Chemical Weapons Convention Implementation Act and certain penalty provisions of Arms Export Control Act (AECA). Under new rule, for each violation of AECA section 38(e), new maximum adjusted penalty level will be \$1,272,251 (previously \$1,183,736); section 39A(c), \$925,041 (previously

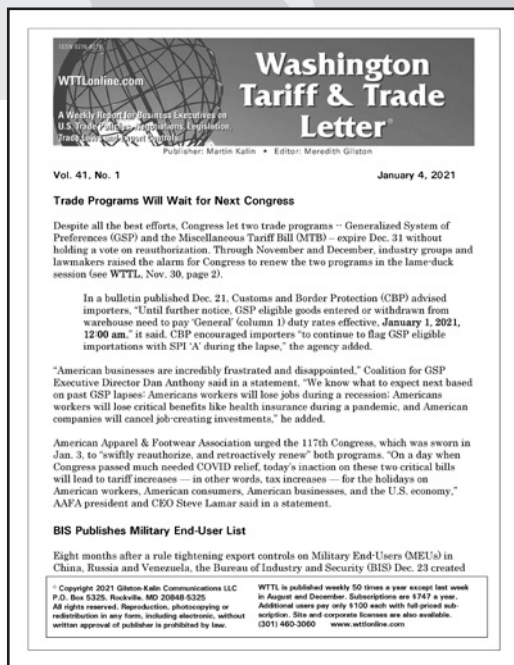
\$860,683); and section 40(k), \$1,101,061 (previously \$1,024,457) ... In Federal Register Jan. 4, Commerce adjusted for inflation CMP for Export Controls Act of 2018. Under new rule, for each violation new maximum adjusted penalty level will be \$328,121 (previously \$308,901).

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