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Timely News and Analysis of Export Regulations

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Meredith Gilston

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Wassenaar Members Update Computer Performance Controls

The Wassenaar Arrangement (WA) was not only able to hold its annual plenary Dec. 23, 2021, but also it updated the performance level on top-shelf computers for the first time in three years.

Members revised the computer controls in Category 4, changing the Adjusted Peak Performance (APP) from 29 to 70 Weighted TeraFLOPS (WT). In 2019, members made no changes to that parameter, leaving the APP at 29 WT for the second year in a row (see *The Export Practitioner*, January 2020, page 14).

U.S. adoption of these changes will await publication of amendments to the Export Administration Regulations (EAR), which, based on past experience, probably won't be until the summer of 2022 or later. The Bureau of Industry and Security (BIS) just implemented cybersecurity controls that the WA agreed to at its 2017 plenary (see below).

China, which is not a Wassenaar member, issued a white paper on the country's export controls a week after the plenary. "China has maintained communication and exchanges with the Wassenaar Arrangement. The two sides have held five rounds of in-depth dialogue on control principles, lists, and best practices pertaining to the export of conventional arms and relevant dual-use items and technologies," the white paper said.

Other changes to the WA control lists include "the introduction of controls for computer-assisted-design software tools for high-end components and new classes of metallic and organic substrates used in highly sophisticated application," plenary chair Károly Dán said.

"Some controls were relaxed, such as those applying to fluorinated silicon fluids, metal working parameters for commercial applications, the performance level of High-Performance Computers and multi-mode lasers, and radars used in automotive anti-collision applications," the chair added.

In its summary of changes, no new entries were listed as

"consequential changes." Of the more than 40 line-items, 13 were listed as "editorial," including changing the spelling of airfoils to aerofoils in three different places.

The December 2020 Wassenaar plenary and all other 2020 meetings were canceled due to COVID restrictions. "Control Lists adopted by the December 2019 Plenary will remain in force and discussions on possible updates will continue based on proposals submitted in 2020 and 2021," the chair said in a statement at the time.

"Although COVID-19 related disruptions continued to affect the WA work programme, Participating States resumed some in-person meetings and cooperated intersessionally in

order to exchange information and experiences in the effective export control of conventional arms and dual-use goods and technologies, as well as to continue the comprehensive and systematic review of the WA Control Lists, thus ensuring their ongoing relevance," the chair

noted after the most recent plenary.

Changes Include New Entries, Updated Parameters

Under Category 2 (Materials Processing) the entry for 2.E.3.b.2. was deleted, not having been used 2020. The category includes a new Nota Bene regarding gas turbine engines: "For 'technology' for metal-working manufacturing processes for gas turbine engines and components, see 9.E.3. and ML22."

In Category 3 (Electronics), controls include new entries on "frequency switching time." For example, a new listing for 'Frequency synthesizer' "electronic assemblies" now includes this paragraph: "f. Less than 100 μ s for any frequency change exceeding 5.0 GHz within the synthesized frequency range exceeding 75 GHz but not exceeding 90 GHz." In addition, gallium oxide (Ga₂O₃) or diamond was added to controls on

China, which is not a Wassenaar member, issued a white paper on the country's export controls a week after the plenary.

high-resistivity materials.

Other changes included new entries for Electrical Computer-Aided Design (ECAD) software and Gate-All-Around Field-Effect Transistor (GAAFET). ECAD is defined as “a category of “software” tools used for designing, analyzing, optimizing, and validating the performance of integrated circuit or printed circuit board.”

GAAFET is “a device having a single or multiple semiconductor conduction channel element(s) with a common gate structure that surrounds and controls current in all of the semiconductor conduction channel elements. Note: This definition includes nanosheet or nanowire field-effect and surrounding gate transistors and other GAAFET semiconductor channel element structures.”

In Category 6 (Sensors and Lasers), the parameter for average or CW output power changed from 15 to 25 W. For example, in “individual multiple-transverse mode semiconductor “lasers” having any of the following: 1. Wavelength of less than 1,400 nm and average or CW output power, exceeding 25 W.”

In a technical note, the word «used» was replaced with «designed». “For the purposes of 6.A.8., ‘marine radar’ is a radar that is designed to navigate safely at sea, inland waterways or near-shore environments.”

In Category 9 (Aerospace and Propulsion), controls include a new entry for ‘pressure gain combustion’ together with a local definition in a new Technical Note. “In ‘pressure gain combustion’ the bulk average stagnation pressure at the combustor outlet is greater than the bulk average stagnation pressure at the combustor inlet due primarily to the combustion process, when the engine is running in a ‘steady state mode’ of operation.”

Security Industry Wants Broader Exceptions to Wassenaar Rule

Comments in response to a recent BIS rule implementing changes to controversial cyber intrusion software controls ranged from security analysts who asked for broader exceptions to the rule, to nonprofits who requested BIS expand the definition to cover other surveillance tools.

In November, BIS published 29 new Frequently Asked

Questions (FAQs) on the rule implementing changes Wassenaar members agreed to at its December 2017 plenary (see *The Export Practitioner*, December 2021, page 11). After eight years of industry comments and agency pushback, BIS finally published its interim final rule in October and received 12 comments.

The rule, which will go into effect Jan. 19, creates a new License Exception Authorized Cybersecurity Exports (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.

“The rules use outdated concepts of technology that are rapidly becoming irrelevant in the face of the realities of modern computing environments, software, and the global supply chains supporting these systems. Broad

additional exemptions are needed to prevent significant harms to cybersecurity industry, research, and supply chain crisis recovery,” Sergey Bratus, Ph.D., research associate professor at Dartmouth College, commented.

“Any means of control must have clear exceptions for these applications. It is vitally important that these exceptions protect smaller innovative entities, which tend to overwhelmingly lead cybersecurity innovation and create new classes of tools to solve software repair, updating, patching, and sustainability challenges,” Bratus wrote. “The control should also be careful to not hurt some of the very goals which appear to be driving implementation,” he added.

Dave Aitel, partner at Cordyceps Systems, recommended adding one more exception to License Exception ACE: “a restriction on only having to worry about the technology controls if they are part of a commercial transaction,” he wrote.

“Tons of effort has clearly gone into ACE to avoid negatively affecting the research community, but because of a lack of clarity, we are going to force everyone in that community to hire an export control lawyer at great expense and stress - and the last thing we need is a dampening effect on our security community right now,” Aitel added.

In contrast, some firms welcomed the rule. “Alleviating licensing burdens will have an immediate, positive impact on U.S. industry as U.S. exporters are able to export commercially available items without a license. U.S. companies and international partners use the cybersecurity items con-

In Category 9 (Aerospace and Propulsion), controls include a new entry for ‘pressure gain combustion.’

trolled under the Interim Final Rule --hardware, software, and technology -- in their continuous efforts to deter cyber criminals, and the ability to share these items across borders will strengthen U.S. national security and ensure business continuity,” space technology company Maxar commented.

Trade Groups Want Clear Guidelines

Citing the complexity of the rule, the Cybersecurity Coalition requested that BIS: develop clear guidelines on the rule; ensure appropriate opportunities for industry engagement and input on the guidelines; and delay implementation until the guideline production and subsequent engagement with industry have taken place.

For example, the Coalition would like more clarification on what specific categories of cybersecurity products the new controls cover. “The controls included in the interim final rule mirror the WA, but this is the first time these controls would be applied to exports from the United States. Further guidelines would be helpful to ensure that cybersecurity companies are correctly interpreting any nuances that exist between the different controls. The FAQ does address many of the Coalition’s questions regarding the coverage of penetra-

tion testing software but does not clearly state which other product categories are covered,” it commented.

CompTIA also requested more clarification and even a decision tree. “BIS should clarify that simply having personal knowledge is not inherently treated as ‘technology.’ As written, the answer may cause cybersecurity researchers to mistakenly believe that they need an export license simply to travel to certain destinations even if

they aren’t creating discrete pieces of documentation/other forms of ‘technology’ that could be subject to the EAR,” the group commented.

Access Now, an international non-governmental, non-profit organization, requested that BIS consider controlling a larger set of surveillance technology items, beyond cybersecurity items, including biometric surveillance technologies; electronic systems or equipment, designed for surveillance and monitoring of the electromagnetic spectrum for military intelligence or security purpose; and unmanned aerial vehicles capable of conducting surveillance.

“Further guidelines would be helpful to ensure that cybersecurity companies are correctly interpreting any nuances.”

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Atlanta Man Gets Prison for False Export Information

An Atlanta man was sentenced to 19 months in prison followed by two years' supervised release for submitting false or misleading export information. Shawn Sabi received the sentence Dec. 13, 2021, in Savannah, Ga., U.S. District Court. He pleaded guilty in May.

In March 2021, Sabi "did knowingly cause freight forwarder Carotrans International to fail to file a Shippers Export Declaration in the Automated Export System by falsely declaring... the contents of the shipment to be only '115 pieces used household goods and personal effects,' when in fact, Sabi knew the shipment... contained his personal firearms, ammunition, and other items," the plea agreement noted.

A Bureau of Industry and Security (BIS) agent "reviewed the records, leading to a search of the container in which a shotgun, a rifle, and three handguns were discovered concealed inside the legs of an aluminum shelving unit, along with ammunition and other materials," Justice noted in a press release.

Unnamed Individual Settles OFAC Iran Sanctions Charges

An unnamed U.S. citizen agreed Dec. 8, 2021, to pay Treasury's Office of Foreign Assets Control (OFAC) a \$133,860 civil penalty to settle four charges of violating Iran sanctions. Between February and March 2016, the individual "arranged for, and received, four payments on behalf of an Iranian company using a personal bank account" in the U.S., the agency said.

The person did not voluntarily disclose the apparent violations, OFAC added. Specifically, the individual "accepted payment in the United States on behalf of an Iran-based company selling Iranian-origin cement clinker to another company for a project in a third country," the agency noted.

"U.S. person-1 coordinated and further facilitated the sale of the clinker with a family member working at the Iranian cement company by relaying

logistical and shipping information to the purchasing company," OFAC charged.

"This enforcement action highlights the broad range of prohibitions on dealings with Iran for natural U.S. persons, including those who act as intermediaries between non-U.S. parties. U.S. sanctions on Iran encompass a wide range of conduct, including dealings in goods of Iranian origin, providing services to Iran or persons normally resident in Iran, and facilitating other prohibited activity," the agency said.

"U.S. person-1 coordinated and further facilitated the sale of the clinker with a family member."

Although the individual's facilitation of the payments involved a family member, the Iran sanctions regulation "generally authorizes certain personal remittances to or from Iran only if the transactions are 'noncommercial.' OFAC found the underlying transactions to be commercial, and thus unavailable for the authorization," it added.

Two Brothers Plead Guilty in Odebrecht Bribery Scheme

Two brothers, both dual citizens of Panama and Italy, pleaded guilty in Brooklyn U.S. District Court to conspiracy to commit money laundering for their roles in a bribery scheme involving Brazilian construction conglomerate Odebrecht S.A. and a high-ranking government official in Panama.

Ricardo Alberto Martinelli Linares pleaded guilty Dec. 14. He was extradited from Guatemala Dec. 10. His brother Luis Enrique Martinelli Linares pleaded guilty two weeks earlier, the same day as his own extradition. Ricardo is scheduled to be sentenced May 13, 2022; Luis one week later.

Both were indicted in November (see *The Export Practitioner*, December 2021, page 8). The brothers were charged in a criminal complaint in July 2020.

Between August 2009 and January 2014, the defendants allegedly "established shell companies in

foreign jurisdictions; served as the signatories on certain of the shell company bank accounts; and personally sent and caused to be sent wire transfers through the structure of shell company bank accounts to conceal and spend bribery proceeds,” the complaint noted.

The defendants “later conducted numerous additional financial transactions through U.S. banks,

Between 2009 and 2014, the defendants allegedly established shell companies in foreign jurisdictions.

some of which were located in New York, New York, involving the proceeds of bribe payments from Odebrecht,” it added.

The defendants were “close relatives” of the Panama government official, the complaint noted. In total, between 2009 and 2012, “the Offshore Company Accounts received approximately \$28 million in bribe proceeds from Odebrecht for the benefit of the Panama Government Official,” it said.

Odebrecht and its subsidiary Braskem agreed in December 2016 to pay a combined penalty of \$3.5 billion to settle Foreign Corrupt Practices Act (FCPA) charges with U.S., Brazilian and Swiss authorities related to schemes to pay hundreds of millions of dollars in bribes to government officials in 12 countries, including Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela.

Md. Business Owner Pleads Guilty to Illegal Exports

The owner of a Md. export and logistics business pleaded guilty Dec. 17, 2021, in Baltimore U.S. District Court to charges of attempting to export goods, including five ionization chambers and one fission chamber, to Hong Kong without the required licenses. Jorge Orencel owned and operated Sumtech.

Sentencing is set for Feb. 22, 2022. In February 2017, “Orencel emailed Co-conspirator #1, indicating that he had received the ionization chambers from

Company A, but that the fission chamber was not included in the package,” the plea agreement noted.

“Orencel further stated that although Company A had indicated that the fission chamber was regulated because it contained nuclear material, Orencel had obtained a ruling from the Nuclear Regulatory Commission that the item was not barred from export due to the small amount of nuclear material contained within the chamber,” it added.

After a law enforcement visit in March 2017, Orencel “shipped the ionization chambers to an address in Hong Kong. Orencel sent those chambers to Hong Kong even though he knew that the End User Statement and Statement by Ultimate Consignee and Purchaser that he had previously provided to Company A had stated that the items were destined for Argentina and would not be re-exported,” the plea agreement noted.

In October 2017, Orencel admitted to law enforcement agents that “he had never intended to ship the fission chamber to Argentina and that he had listed Argentina as the final destination in order to convince Company A to release the fission chamber for shipment,” it added.

“He further stated that he planned to contact UPS, after it had picked up the fission chamber from Company A, and direct UPS to change the shipping address to Hong Kong,” the plea agreement said.

Sumtech “specializes in distributing high technology merchandise, including laboratory supplies and devices, safety equipment, environmental monitoring systems, and industrial controls instruments,” according to its website.

TD Bank Settles More OFAC Sanctions Charges

Delaware-based financial institution TD Bank, N.A. (TDBNA) agreed Dec. 23, 2021, to pay Treasury’s Office of Foreign Assets Control (OFAC) a \$115,005.04 civil penalty to settle charges of violating North Korea and other sanctions.

Specifically, the bank “processed 1,479 transactions totaling \$382,685.38 and maintained nine accounts on behalf of employees of the North Korean

mission to the United Nations without a license from OFAC,” the agency said.

“At account opening, the account holders of all nine accounts presented to TDBNA North Korean passports. However, these passports did not generate an alert during the customer screening process because TDBNA relied heavily on a vendor-supplied Politically Exposed Persons (PEP) list (“PEP list”), which did not include government employees of sanctioned countries,” OFAC noted.

“In addition, TDBNA employees often misidentified North Korea (referring to it as Korea or South Korea or using a country code meant for South Korea) or left the citizenship field blank in the customer profiles,” it added. In addition, TD maintained two accounts for more than four years for a U.S. resident who was on OFAC’s Specially Designated Nationals (SDN) list.

Violations “resulted from multiple sanctions compliance breakdowns, including screening deficiencies and human error, and highlight the importance of maintaining and following proper escalation procedures and ensuring adequate employee training,” OFAC added.

Bank Updated Operating Procedures

TD Bank voluntarily self-disclosed the violations. In addition, it undertook the following remedial measures: enhancing its controls for identifying government officials of sanctioned countries; updating its operating procedures to specify that reviews of customers in or affiliated with sanctioned jurisdictions must be escalated; and providing targeted training to address the appropriate adjudication criteria for determining whether potential customers may be PEPs from a sanctioned country.

“We believe the settlement is a fair resolution of these matters. In both cases, TD Bank, N.A. self-identified and remediated technical issues and mistakes that were limited in scope,” the company said in a statement. “At TD Bank, we have stringent processes and procedures in place that reflect our strong and unwavering commitment to U.S. sanctions compliance,” it added.

In January 2017, TD Bank previously agreed to pay OFAC \$516,105 to settle apparent violations of Cuba and Iran sanctions (see *The Export Practitioner*, February 2017, page 11). Between 2007 and 2012, TD Bank processed 167 transactions totaling \$2.13 million through the U.S. on behalf of customers, including a sales agent of a blocked Iranian entity and Cuban nationals residing in Canada.

Former Navy Sailor Sent to Prison for Military Exports

A former U.S. Navy sailor was sentenced Dec. 21, 2021, in San Diego U.S. District Court to 30 months in prison and a \$20,000 fine for conspiracy to export sensitive military equipment, including ballistic helmets and plates, to China. Ye Sang “Ivy” Wang pleaded guilty in July.

Her husband, co-defendant Shaohua “Eric” Wang, was sentenced in February 2020 to 46 months in prison for his role in the scheme. He pleaded guilty in September 2019. The Wangs were indicted in May 2019.

“Given her 14 years in the U.S. Navy, her knowledge of her husband’s history as an officer in the People’s Liberation Army, and her understanding that her husband’s business involved shipping military equipment to China, the Defendant no doubt understood the importance of export controls on military equipment, and the very real consequences of giving items, such as devices which can identify U.S. military personnel in the field, to her husband. She nonetheless had no qualms purchasing military equipment using her position in the U.S. Navy, and handing it over to him for sale to Chinese buyers,” a Justice sentencing memo noted.

“At some point during this conspiracy, [Eric] Wang emailed an Excel spreadsheet to the Defendant listing military equipment, including export-controlled military equipment (the Excel Spreadsheet). [Eric] Wang gave the Defendant the Excel Spreadsheet for her to buy items from that spreadsheet and provide them to him, so he could sell them,” the memo added.

Husband Sold Equipment to Chinese Buyers

“At the time that the Defendant was purchasing military equipment for [Eric] Wang, including items on the Excel Spreadsheet, she knew that he was selling military equipment to Chinese buyers. She told the agents as much when she was interviewed in October 2018,” Justice said.

“For example, from December 2017 through January 2018, the Defendant sent emails from her military email address to the Tactical Night Vision Company (TNVC) requesting quotes for military equipment, which were on the Excel Spreadsheet,” the memo added.

“Specifically, she sought to purchase CORE Survival HEL-STAR 6 Multi Function Marker Light, and the CORE Survival HEL-STAR 5 Three Function

Marker Light from TNVC. OpsCore XP FAST high-cut helmets are also on the Excel Spreadsheet, as is the Program Interface Module-701 (PIM-701). These items are all export controlled,” it said.

In March 2018, “while the investigation was ongoing, a U.S. Navy work colleague told Defendant that she was ‘in big trouble.’ Defendant was deployed. She believed her ‘big trouble’ was in reference to her criminal export activity with her husband, so she texted [Eric] Wang,” Justice noted.

“After further texts on or about March 27, 2018, and March 28, 2018, [Eric] Wang texted Defendant, ‘In other words, take helmets and plates. What else? Only helmets and plates are sensitive, there isn’t anything else.’ Defendant responded, ‘Correct. It’s nothing. In other words ... just hide these things,’” it added.

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Agencies Impose Export Controls on Cambodia

Don't say you weren't warned. In the latest in a string of administration action, the Bureau of Industry and Security (BIS) and State's Directorate of Defense Trade Controls (DDTC) Dec. 9, 2021, imposed export controls on Cambodia to address corruption, human rights abuses and China's growing influence. Specifically, BIS and DDTC added the country to their respective list of embargoed destinations.

In November, State, Treasury and Commerce cautioned U.S. businesses "to be mindful of interactions with entities involved in corrupt business practices, criminal activities and human rights abuses," the agencies said. The advisory addressed two primary areas of risk exposure for U.S. companies: illicit finance activities and related risks for financial, real estate, casino and infrastructure sectors; and entities involved in trafficking in persons, wildlife and narcotics trafficking in Cambodia and related risks for manufacturing and timber sectors.

For its part, DDTC imposed an export licensing policy of denial on Cambodia. "The policy of denial applies to licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Cambodia, with exceptions related to conventional weapons destruction and humanitarian demining activities," the agency's Federal Register notice said.

The BIS rule added Cambodia to four lists: those countries subject to the licensing policy; those subject to military end use and end-user controls; those subject to military intelligence end use and end-user controls; and those in Country Group D:5.

"BIS also imposed a more restrictive review policy for license applications containing items controlled for national security, regardless of the end-user. It further renders end users in Cambodia ineligible for, or subject to further restriction with regard to, use of certain license exceptions for exports, reexports, and in-country transfers," the notice said.

Initiative Connects Export Controls, Human Rights

Just in time for International Human Rights Day, the White House and allies Australia, Denmark and Norway Dec. 10, 2021, launched the Export Controls and Human Rights Initiative, continuing the Biden administration's focus on the connection between human rights and national security. Other countries, including Canada, France, the Netherlands and the United Kingdom (UK), expressed support for the initiative.

"Over the coming year of action, we commit to working to establish a voluntary, nonbinding written code of conduct."

"Over the coming year of action, we commit to working to establish a voluntary, nonbinding written code of conduct around which like-minded states could politically pledge, to use export control tools to prevent the proliferation of software and other technologies used to enable serious human rights abuses. In addition, we will use the year of action to consult with industry and academia in our efforts," the four partners said in a joint statement.

In November, the Bureau of Industry and Security (BIS) added four companies in Israel, Russia and Singapore to its Entity List, including Israeli firms NSO Group and Candiru that "developed and supplied spyware to foreign governments that used this tool to maliciously target government officials, journalists, businesspeople, activists, academics, and embassy workers," BIS said at the time (see *The Export Practitioner*, December 2021, page 17).

Separately, Treasury's Office of Foreign Assets Control (OFAC) designated 15 individuals and 10 entities in China, Bangladesh, Burma and North Korea for their connection to human rights abuse and repression.

Agencies Target Facial Recognition Programs

The agency also imposed investment restrictions on one company -- SenseTime Group Limited -- “in connection with the surveillance technology sector of the [Chinese] economy, highlighting the human rights abuse enabled by the malign use of technology,” OFAC said.

BIS added SenseTime and 27 other Chinese entities, including 20 government and municipal security bureaus and eight companies, to its Entity List in October 2019 (see *The Export Practitioner*, November 2019, page 14).

“Specifically, these entities have been implicated in human rights violations and abuses in the implementation of China’s campaign of repression, mass arbitrary detention, and high-technology surveillance against Uyghurs, Kazakhs, and other members of Muslim minority groups” in the region, BIS noted at the time.

“SenseTime 100 percent owns Shenzhen SenseTime Technology Co. Ltd., which has developed facial recognition programs that can determine a target’s ethnicity, with a particular focus on identifying ethnic Uyghurs. When applying for patent applications, Shenzhen SenseTime Technology Co. Ltd. has highlighted its ability to identify Uyghurs wearing beards, sunglasses, and masks,” OFAC said.

BIS Will Revisit Proposed License Amendments

What was old is new again. The Bureau of Industry and Security (BIS) intends to publish a proposed rule on export license amendments in 2022, Timothy Mooney, senior export policy analyst with the agency’s Regulatory Policy Division, told the Regulations and Procedures Technical Advisory Committee (RAPTAC) meeting Dec. 14, 2021.

If this sounds familiar, BIS circulated a proposed rule in 2017, but applied the brakes due to interagency concerns at the time, Mooney said (see *The Export Practitioner*, November 2017, page 14). The earlier

proposal was “pretty ambitious,” and the new one will have to be more limited in terms of what changes to allow, he told RAPTAC.

Since the original proposal, export licenses are now four years in duration and can include more end-users, which only adds to the complexity. At the same time, the “need has increased,” Mooney said. The prior rule would have proposed adopting a license amendment process, including making changes to SNAP-R system to allow for licensees to request certain changes (amendments) to currently valid licenses.

At the time of the 2017 proposal, BIS officials believed that the benefits of adopting the license amendments process would create a more “efficient and transparent” process for requesting changes and reduce the number of new licenses that need to be reviewed.

Administration Takes Action on Dozens of Chinese Firms

In a coordinated action, Treasury’s Office of Foreign Assets Control (OFAC) and the Bureau of Industry and Security (BIS) added 45 firms to its respective block lists to address ongoing threats to U.S. national security and foreign policy, both human rights abuses in Xinjiang and support of Iran’s military programs.

For its part, OFAC Dec. 16, 2021, blocked U.S. investment in eight Chinese technology firms that “actively support the biometric surveillance and tracking of ethnic and religious minorities in China, particularly the predominantly Muslim Uyghur minority in Xinjiang.” In the Federal Register the next day, BIS added 37 entities in China, Georgia, Malaysia and Turkey to its Entity List.

The OFAC-designated entities, which are already on the BIS Entity List, are: Cloudwalk Technology; Dawning Information Industry; Leon Technology Company Limited; Megvii Technology Limited; Netposa Technologies Limited; drone firm SZ DJI Technology; Xiamen Meiya Pico Information; and Yitu Limited.

BIS added CloudWalk Technology and NetPosa to the Entity List in June 2020 for human rights viola-

tions and abuses in Xinjiang (see *The Export Practitioner*, June 2020, page 21). Cloudwalk has developed facial recognition software designed to track and surveil members of ethnic minority groups, OFAC noted. The others were added in October 2019.

Chinese Foreign Ministry Spokesperson Zhao Lijian denounced OFAC's move. "China always opposes U.S. moves to overstretch the concept of national security and exert unwarranted suppression on Chinese companies. The Chinese side has already shared the facts and truth on Xinjiang-related issues on many occasions. We will closely follow the relevant situation and firmly safeguard the legitimate rights and interests of Chinese companies," he said in his daily press briefing.

Blocked Entities Support Chinese Military

Added to the BIS Entity List, the Academy of Military Medical Sciences (AMMS) in China and eleven of its research institutes "use biotechnology processes to support Chinese military end uses and end users, to include purported brain-control weaponry," the latest BIS notice said.

China Electronics Technology Group Corporation 52nd Research Institute, Shaanxi Reactor Microelectronics, Shanghai AisinoChip Electronics, Hangzhou Hikmicro Sensing Technology, Aerosun Corporation, Changsha Jingjia Microelectronics, Fujian Torch Electron Technology and Inner Mongolia First Machinery Group were added "for their support of China's military modernization."

HMN International, Jiangsu Hengtong Marine Cable Systems, Jiangsu Hengtong Optic-Electric, Shanghai Aoshi Control Technology, and Zhongtian

Technology Submarine Cable were included "for acquiring and attempting to acquire U.S.-origin items in support of military modernization for the People's Liberation Army."

Wavelet Electronics, Comtel Technology Limited, and HSJ Electronics "have supplied or attempted to supply U.S.-origin items that could provide material support to Iran's advanced conventional weapons and missile programs."

BIS also added Chinese firms Hong Kong Cheung Wah Electronics Technology Company Limited, Hyper Systems Union Limited, Shenzhen Rion Technology, and Thundsea Electric Limited; Gensis Engineering in Georgia and Turkey; Integrated Scientific Microwave Technology in China and Malaysia; ROV Solutions in China and Georgia; SAEROS Safety ERO Company in Georgia; and Vangurd Tec Makina Sanyit Ithalat in Turkey.

"Specifically, these entities are a part of a network used to supply or attempt to supply Iran with U.S.-origin items that would ultimately provide material support to Iran's defense industries, in violation of U.S. export controls."

At the same time, BIS added three additional aliases (HMN Technologies, Huahai Zhihui Technology Co., Ltd., and HMN Tech) to the existing entry for Huawei Technologies.

China "is choosing to use these technologies to pursue control over its people and its repression of members of ethnic and religious minority groups. We cannot allow U.S. commodities, technologies, and software that support medical science and biotechnical innovation to be diverted toward uses contrary to U.S. national security," Commerce Secretary Gina Raimondo said.

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Allies Target Belarus SOEs, Sovereign Debt

Along with its major allies, the Biden administration Dec. 2, 2021, imposed further sanctions on Belarus “in response to the Lukashenka regime’s blatant disregard for international norms and the wellbeing of its own citizens.”

Treasury’s Office of Foreign Assets Control (OFAC) designated 20 individuals and 12 entities and identified three aircraft as blocked property, as well as imposed restrictions on dealings in new issuances of Belarusian sovereign debt in the primary and secondary markets.

“We remain committed to supporting the democratic aspirations of the people of Belarus and stand together to impose costs on the regime—and those who support it—for its efforts to silence the voices of independent civil society, media and all Belarusians seeking to speak the truth about what is happening in their country,” Canada, the European Union (EU), the United Kingdom (UK) and the U.S. said in a joint statement.

This action comprises the fifth tranche of Belarus-related sanctions since the fraudulent 2020 presidential election. In August, OFAC designated 23 individuals and 21 entities, and the White House issued an executive order (EO) authorizing further sanctions (see *The Export Practitioner*, September 2021, page 12). Designations included Belaruskali OAO, one of the world’s largest producers of key fertilizer ingredient potassium chloride (potash).

OFAC Designates Potash Trader

In the latest action, designated entities included Belarus’ state-owned tourism company, a government-controlled cargo carrier, an authorized state special exporter, key firms in the Belarusian defense industry, state-owned enterprises (SOEs) that produce special purpose equipment for Belarusian military and law enforcement agencies.

In addition, OFAC blocked the Open Joint Stock Company Belarusian Potash Company (BPC), which handles the trading of potash for Belaruskali OAO, and BPC subsidiary Agorozkvit LLC. At the same

time, the agency issued General License (GL) 5, authorizing the wind-down of transactions involving BPC or Agorozkvit through April 1, 2022.

On sovereign debt, OFAC issued Directive 1, which prohibits “all transactions in, provision of financing for, and other dealings in new debt with a maturity of greater than 90 days” issued on or after Dec. 2 by the Belarus Finance Ministry or the country’s Development Bank.

“The addition of U.S. restrictions on dealings in new issuances of Belarusian sovereign debt in the primary and secondary markets demonstrates close coordination with partners and allies to restrict the Lukashenka regime’s access to international capital markets,” Treasury said.

OFAC Authorizes Certain Transactions with Taliban

Almost four months after withdrawing troops from Afghanistan, the Biden administration Dec. 22, 2021, authorized certain transactions with the Afghan government “to facilitate the continued flow of humanitarian assistance and other support for the Afghan people.”

Specifically, Treasury’s Office of Foreign Assets Control (OFAC) issued three General Licenses (GLs) authorizing transactions and activities involving the Taliban or the Haqqani Network.

At an October hearing, Deputy Treasury Secretary Wally Adeyemo outlined one of five initiatives that emerged from a recent sanctions review: “expanding sanctions exceptions to support the flow of legitimate humanitarian assistance” (see *The Export Practitioner*, November 2021, page 16).

GL 17 authorizes conduct of the official business of the U.S. government by employees, grantees, or contractors; GL 18 authorizes conduct of the official business of certain international organizations and other international entities, including the United Nations and the Red Cross.

GL 19 authorizes transactions that are ordinarily incident and necessary to the following activities by nongovernmental organizations (NGOs): humanitarian projects to meet basic human needs; activities to

support rule of law, citizen participation, government accountability and transparency, human rights and fundamental freedoms, access to information, and civil society development projects; education; non-commercial development projects directly benefitting the Afghan people; and environmental and natural resource protection.

The new GLs “explicitly do not authorize financial transfers to the Taliban or the Haqqani Network, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services related to the activities specified,” OFAC noted.

At the same time as the troop withdrawal, the Bureau of Industry and Security (BIS) suspended all licenses for exports to the Afghan government and said it is continuing to monitor the situation, agency officials told the Update conference in September (see *The Export Practitioner*, September 2021, page 17). State’s Directorate of Defense Trade Controls (DDTC) said it was reviewing all export licenses to the country’s government in a similar announcement two weeks earlier.

EU, U.S. Coordinate Sanctions on Russia

The Biden administration’s push to have the European Union (EU) finalize a broad package of sanctions against Russian banks and energy companies is proving far more difficult for the 27-member body than expected. A large part of the difficulty is that 40 percent of Europe’s energy needs comes from Russia.

In a background briefing Dec. 29, 2021, the day before a call between President Biden and Russian President Vladimir Putin, a senior administration official said, “We have coordinated with our allies to impose severe sanctions on the Russian economy and financial system, far beyond what was implemented in 2014.”

The official added: “Still — and the President will emphasize this to President Putin — we are united with our allies in our willingness to engage in principled diplomacy with Russia.”

Following a closed-door meeting of the European

Council Dec. 16 lasting more than two hours, the EU issued its strongest public statement since the crisis started, where Russia has lined up thousands of troops on the Ukraine border.

“We would like to be in a situation where relations with Russia are good, but this is very much depending on the choices made by Moscow. Let there be no doubt: If Russia were to move against Ukraine, the Union will be in a position to take sanctions that could extract a massive cost. We have done our work in that respect,” European Commission President Ursula von der Leyen said following the meeting.

The European statement was backed up by a similar echo from the Biden administration’s National Security Council (NSC). National Security Advisor Jake Sullivan “affirmed the U.S. commitment to continued close coordination, noting that our unity with Allies and partners is our greatest strength and that we will not make any decisions related to their security without them. All participants emphasized their commitment to Ukraine’s sovereignty and territorial integrity in the face of Russian aggression,” NSC spokesperson Emily Horne said Dec. 16.

That statement has great importance because Russian President Vladimir Putin has been attempting to peel off reluctant members of the EU. “We hope that the United States will enter into serious talks with Russia in the near future regarding this matter, which has critical importance for maintaining peace and stability, using the Russian draft treaty and agreement as a starting point,” Russia said in a press release Dec. 17.

But the Biden administration is having none of it. “There’re decades of precedent here and having these conversations through a range of formats: during the height of the Cold War and in the post-Cold war era through the NATO-Russia Council, the OSCE [Organization for Security and Cooperation in Europe], and other mechanisms. There’s no reason we can’t do that moving forward to reduce instability. But we’re going to do that in partnership and coordination with our European allies and partners,” White House Spokesperson Jen Psaki said Dec. 17, on Air Force One en route to South Carolina.

Census Proposes Adding Country of Origin to AES

It's December, time for changes to the Automated Export System (AES). Census proposed one AES change and announced another as a done deal, that will add clarity to the agency's record-keeping and will force exporters to keep track of one more data point.

In the Federal Register Dec. 15, 2021, Census proposed adding "a conditional data element, country of origin, when Foreign origin is selected in the Foreign/Domestic Origin Indicator field" in the AES. "In addition to the new export reporting requirement, the proposed rule would make remedial changes to the FTR [Foreign Trade Regulations] to improve clarity and to correct errors," the notice said. Comments are due Feb. 14, 2022.

Census proposed adding "a conditional data element, country of origin, when Foreign origin is selected."

A week earlier, the bureau notified exporters of a change that will go into effect in January. Starting Jan. 13, AES will deploy a new compliance alert for exports filed under License Type C33: No License Required (NLR).

"An item may require a BIS export license or license exception and may not be exported under the License Type C33 NLR depending on the reason for control of the ECCN [Export Control Classification Number(s)] and Country of Destination," the Dec. 6 broadcast noted.

"If a filer attempts to file Electronic Export Information (EEI) with an ECCN(s) and Country of Destination combination that is prohibited to be shipped under NLR, pursuant to the EAR, they will now receive" Response Code: 66Q, Census told exporters, who will have six months to correct the record. This is not a change in regulations, BIS officials told the agency's RAPTAC meeting Dec. 14.

NDAA Passes Without Export, Sanctions Amendments

When the Senate passed the 2022 National Defense Authorization Act (NDAA) in an 88-11 vote Dec. 15, 2021, the compromise bill did not include two high-profile amendments: one that would impose mandatory sanctions on Nord Stream 2 AG, and the other that would reinstate congressional notification on certain firearms exports. President Biden signed the bill Dec. 27.

Sen. Jim Risch (R-Idaho) and five GOP cosponsors introduced the Nord Stream amendment in November (see *The Export Practitioner*, December 2021, page 18).

"The final bill should have included my amendment to deter Russian aggression against Ukraine by stopping the Nord Stream 2 (NS2) pipeline," Risch said after the Senate debate. "Stopping NS2, when roughly a third of Russia's budget comes from oil and gas, would show Putin Congress is serious about consequences for his actions," he added.

Rep. Michael McCaul (R-Texas) introduced the amendment on the House side, which was removed by Democrats at the request of the White House. "The Nord Stream 2 pipeline is a Russian malign influence project. To remove this bipartisan amendment at a time when Russia is amassing troops on Ukraine's border sends a dangerous message to Putin and to our adversaries that America is weak," McCaul said in a separate statement.

The firearms amendment, sponsored by Rep. Norma Torres (D-Calif.), would have reinstated congressional notification before export licenses valued at \$1 million or more could be issued for semi-automatic weapons that had previously been on the U.S. Munitions List (USML).

The amendment passed the House in a 215-213 vote in September, but it subsequently was removed from the final bill before being sent over to the Senate (see *The Export Practitioner*, October 2021, page 22).

Census Nears Proposal on Puerto Rico Filing Requirement

Census is close to publishing a Federal Register notice in response to comments on removing export filing requirements from shipments from U.S. states to Puerto Rico, Omari Wooden, Census assistant division chief, trade outreach and regulations, told the Bureau of Industry and Security (BIS) Regulations and Procedures Technical Advisory Committee (RAP-TAC) meeting Dec. 14, 2021.

Whether this will be a proposal or an interim final rule has not been determined, but Wooden said the rule is “not going to be the end of the conversation.” Census first published its long-promised Advance Notice of Proposed Rulemaking (ANPR) in September 2020, requesting comments on the unique Electronic Export Information (EEI) filing requirements (see *The Export Practitioner*, October 2020, page 15).

With the 2020 ANPR, the bureau requested public comments specifically on what impact the change would have and where companies and agencies could get replacement data on exports to the island.

“The Census Bureau is exploring options to include Puerto Rico in existing surveys to mitigate the significant loss of information about the economy of Puerto Rico that would result from eliminating the filing requirement. However, using other existing surveys to collect data on the economy of Puerto Rico would not result in the same data set that is currently available,” the notice said.

Census received 60 comments on the rule, including a mix of positive and negative responses. “To our knowledge, this is the only source for such data on shipments to and from Puerto Rico and from the U.S. Virgin Islands,” Atlantic Overseas Express commented.

“Additionally, EEI data represents the minimum useful trade information, and it is collected through an existing government system that is familiar to our industry. The creation of a new reporting requirement and system would only increase the costs and burdens on shippers, carriers, and end customers,” it added.

The National Federation of Independent Busi-

ness (NFIB) urged Commerce “to eliminate the EEI filing requirement for shipments between a point in one of the fifty States and a point in Puerto Rico or the U.S. Virgin Islands, or between points in the two territories,” it wrote.

“Commerce should minimize any governmental paperwork burden (electronic or otherwise) on, and minimize any invasion into the privacy of, U.S. citizens engaged in lawful commercial transactions within the United States,” NFIB commented in 2020.

END NOTES

NOMINATIONS: In slew of voice votes before leaving for holiday recess, Senate Dec. 18 confirmed Elizabeth Rosenberg as Treasury assistant secretary for terrorist financing and Matthew Axelrod as BIS assistant secretary for export enforcement...Four days earlier, Senate confirmed Thea Kendler to be BIS assistant secretary by voice vote...Senate Dec. 2 confirmed by 50-49 vote Brian Eddie Nelson to be Treasury under secretary for terrorism and financial crimes. Sen. John Thune (R-S.D.) did not vote.

IRAN: Sens. Jim Risch (R-Idaho) and Bob Menendez (D-N.J.) Dec. 16 introduced Senate version of Stop Iranian Drones Act (SIDA). Bill would clarify that U.S. sanctions under Countering America’s Adversaries Through Sanctions Act (CAATSA) include supply, sale or transfer to or from Iran of unmanned combat aerial vehicles (UAVs). House Foreign Affairs Committee week earlier approved parallel House version (H.R. 6089) by voice vote. “Iran’s armed drone capability presents a growing threat to the Middle East. This legislation rightly imposes costs on the Iranian drone program and its supporters,” Risch said in statement. Reps. Gregory Meeks (D-N.Y.), Michael McCaul (R-Texas), Ted Deutch (D-Fla.) and Joe Wilson (R-S.C.) introduced House bill in November. OFAC in October designated two companies and four individuals that provide critical support to Iran’s Islamic Revolutionary Guard Corps (IRGC) UAV programs and its expeditionary unit, the IRGC Qods Force (IRGC-QF) (see *The Export Practitioner*, November 2021, page 21).

HABLA ESPANOL: Bureau of Industry and Security (BIS) Dec. 21 released two Spanish-language guidance documents, Elementos de un ECP (Elements of an ECP) and Directrices de Cumplimiento Para Las Exportaciones (Export Compliance Guidelines). Elements of an ECP can be found here: <https://bis.doc.gov/index.php/documents/compliance-training/export-management-compliance/2888-elements-of-an-export-compliance-program-spanish/file> Spanish version of Export Compliance Guidelines is here: <https://bis.doc.gov/index.php/documents/compliance-training/export-management-compliance/2889-jk-417-699-ecp-spanish/file>

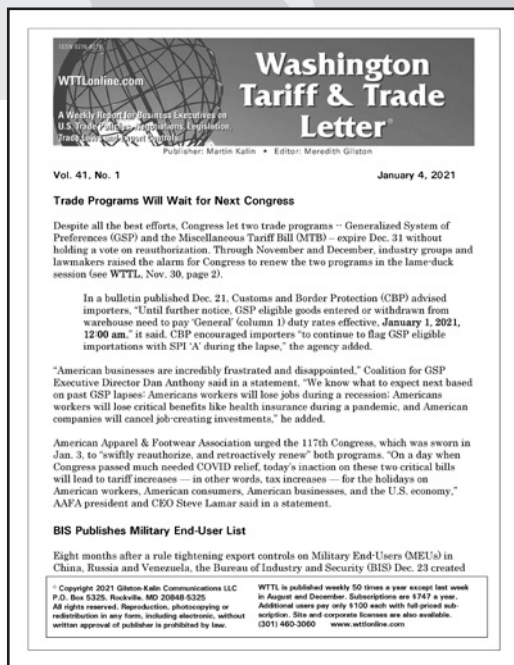
CENTRAL AFRICAN REPUBLIC: OFAC Dec. 17 Central African Republic (CAR) militia leader Ali Darassa “for serious human rights abuses” as head of militia group Union for Peace in CAR (UPC). In August 2020, OFAC designated CAR militia leader Bi Sidi Souleymane ((see *The Export Practitioner*, September 2020, page 22). Month earlier, DDTC revised CAR export licensing policy of denial to add exemptions approved in recent UN Security Council resolutions.

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