

The Export PractitionerTM

DECEMBER
2021

VOLUME 35
NUMBER 12

Timely News and Analysis of Export Regulations

INSIDE

Industry Urges
Security, Diversity

ALSO INSIDE

Georgia Man
Gets Prison for
Arctic Exports

UAE Bank
Settles Sudan
Sanctions Charges

Coal Exec
Pleads Guilty to
FCPA Conspiracy

Navy Officer
Convicted of
Military Exports

BIS Clarifies
Wassenaar Rule

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The Export Practitioner

DECEMBER 2021

Volume 35

Number 12

Publisher

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Editor

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

(301) 460-3060

www.exportprac.com

AT A GLANCE

4 | FEATURE

To protect the information and communications technology (ICT) supply chain, companies and industry trade groups warned the administration against overly restrictive requirements and unilateral trade measures, while encouraging partnerships with allies and increased transparency into the whole ICT ecosystem.

DEPARTMENTS

7 | FOCUS ON ENFORCEMENT

- Georgia Man Sent to Prison in Arctic Export Conspiracy
- UAE Bank Settles Charges of Violating Sudan Sanctions
- Two Brothers Indicted in Odebrecht Bribery Scheme
- Pa. Firm Settles BIS Charges of Exporting to Huawei
- Former Coal Exec Pleads Guilty to FCPA Conspiracy
- Navy Officer Convicted of Exporting Military Boats

11 | EXPORT CONTROLS

- BIS Clarifies Recent Wassenaar Cyber Rule
- U.S.-EU Export Control Work Needs Industry Input

13 | TRADE SANCTIONS

- Sanctions Imposed on Eritrean Entities, Officials
- OFAC Expands Syrian Humanitarian Exception

15 | POLICY BRIEFS

- State Official Previews New Arms Transfer Policy
- Commission Urges Interagency Review of Export Controls
- DDTC Answers Questions About Disclosures, Debarments

END NOTES: Entity List, Iran, Burundi

Industry Urges Transparency, Resilience in ICT Supply Chain

To protect the information and communications technology (ICT) supply chain, companies and trade groups warned the administration against overly restrictive requirements and unilateral trade measures, while encouraging partnerships with allies and increased transparency into the whole ICT ecosystem.

In a much-anticipated Federal Register notice in September, the Bureau of Industry and Security (BIS) requested public comments on the administration's report on "supply chains for critical sectors and subsectors of the [ICT] industrial base, including the industrial base for the development of ICT software, data and associated services" (see *The Export Practitioner*, October 2021, page 25). More than 30 individuals, companies and trade associations commented on the notice.

CTIA, which represents the U.S. wireless communications industry, requested that Commerce Secretary Gina Raimondo "recognize that any federal supply chain policies should be focused on supporting continued innovation in global technology as well as maximizing transparency with the private sector."

The Information Technology Industry Council (ITI) made 10 specific recommendations, including: build and leverage robust public-private partnerships; strengthen the technology workforce; enhance cooperation with global partners; invest in critical technologies; avoid the wholesale repatriation of ICT supply chains; fund existing legislation such as CHIPS for America; develop investment tax credits for critical ICT products; address negative impacts of tariffs; streamline policymaking; and avoid overly restrictive federal procurement requirements.

ITI argued that "ICT supply chain resiliency can be enhanced through targeted policy measures aimed at incentivizing R&D, developing the domestic workforce, working with partners and allies, and streamlining supply chain security policymaking."

"ICT supply chain resiliency can be enhanced through targeted policy measures aimed at incentivizing R&D."

Firms Encourage Diverse Product Lines

Similarly, HP suggested four key policy actions: prioritize ICT ecosystem projects in the Manufacturing Supply Chain Resilience Fund; foster key trade relationships and collaborate with allies; reassess China 301 tariffs on ICT components; and alleviate port bottlenecks and shipping challenges.

In addition, HP encouraged Commerce "to recognize several other specialized electronic components – namely, liquid crystal displays, printed circuit boards, and graphics cards – and other essential items – lithium ion batteries, power supplies/ adaptors, and plastic/ metal mechanical parts – as important contributors to the electronics supply chain, as well as for other industries, including the automotive industry, and to focus policies and incentives on reshoring those component suppliers as well."

HP said it "encourages prioritizing incentives for both final PC product assembly capability and key component manufacturing." The company added: "As part of the final assembly process, it is important to ensure sufficient control over the provenance (source) of firmware (BIOS) installation and configuration settings for devices shipped to end users to minimize risk of counterfeit or malicious activity."

Trade Groups Recommend Coordination

The Coalition of Services Industries (CSI) urged coordination on investment screening and export controls with the European Union (EU) and other trading partners. "The government should avoid taking unilateral actions that would disadvantage exports from U.S. companies while competitors in allied nations are allowed to continue selling the same products and services into the global market. Such an outcome would needlessly handicap U.S. industry without yielding improvements in security," CSI noted.

CSI also urged the administration to ensure that the World Trade Organization (WTO) moratorium on duties on electronic transmissions is made permanent. “If the ban were allowed to lapse, governments around the world would be in a position to impose tariffs on the data used to design and manufacture semiconductors, R&D-related data flows, and a host of other commonly used services that are essential to world trade. Such a development would be nearly impossible to implement in practice, would add immense uncertainty to existing trade and digital flows, and be highly disruptive to global supply chains,” the group commented.

Huawei, the subject of substantial export controls, said it is “fully prepared to engage in a direct dialogue” with the U.S. “to fully understand and seek to address concerns about Huawei’s ongoing participation in the U.S. ICT supply chain.”

Commerce “must employ a collaborative and holistic risk-management framework in assessing and mitigating ICT supply chain risks. Country-based and categorical exclusions of particular suppliers do little to address the actual risks from a global supply chain perspective. Such exclusions reduce the diversity of the supply chain and potentially amplify the vulnerabilities of the global ICT supply chain,” Huawei argued.

MITRE suggested “the U.S. build cooperative agreements with allied governments regarding the security of IT products, and how we will exchange information and employ common practices. Further, the U.S. should work with these nations to balance domestic production in allied countries with the current trade dependencies on foreign manufacturing and any potential impact of a trade war,” the company noted.

Companies Urge Diversification, Visibility

Flex, an electronics manufacturing services (EMS) provider, urged “strengthening our supply chains and revitalizing the manufacturing base requires better tools, better supply chains, better manufacturing processes, and government policies that support productivity innovation, provide practical education, welcome global talent, and reduce barriers to trade. Policies intended to incentivize ICT supply chain diversification must address these issues or face likely failure.”

“Policies intended to incentivize ICT supply chain diversification must address these issues or face likely failure.”

Palantir recommended solutions that would allow for the breaking down silos between data, people and processes across the supply chain, as well as enhancing real-time visibility into the ICT ecosystem.

“Full visibility into the ICT manufacturing ecosystem and network operations will enable the U.S. Government to predict future disruptions and implement/ coordinate necessary regulatory controls to mitigate risks to national security while minimizing the negative impacts to U.S. businesses,” it wrote.

Microsoft warned against overly restrictive policies. “The

U.S. cannot expect to retain its technological leadership, much less strengthen it by enhancing U.S. companies’ ability to create and sell sensitive or critical ICT technologies, if U.S. industry is subject to overly restrictive measures that could stall or halt important aspects of its

business. The very same companies that are developing cutting-edge products and services for the ICT supply chain are also the companies most likely to be affected by restrictive sourcing requirements,” the company commented.

Intel noted that “it is essential that the U.S. reclaims significant share of global chipmaking capacity in order to mitigate the potential for more significant disruptions and restore balance to global chipmaking,” the company commented. “Aside from shortages and disruptions due to COVID19, the ICT supply chain also faces challenges in providing data about composition and provenance of ICT hardware,” it added.

“Intel sees opportunity in developing tools and approaches that treat hardware components as ‘digital products’ – that is, products whose traits such as authenticity, provenance, posture, and change histories can be tracked and communicated, digitally, across a digital supply chain,” the company wrote.

Cyber Firms Recommend Embedded Security

Open source software firm GitLab recommended embedding security “in highly frequent software development and release cycles. This process is heavily reliant on incorporating standardized security practices during development, thus not slowing down the delivery and deployment of the software.”

“The high release cadence makes it possible for any criti-

cal software patches to be delivered quickly so as to limit the impact and potential blast-radius of any discovered vulnerabilities,” the company commented.

Cybersecurity provider Kaspersky recommended four action items: building a clear institutional framework at the federal and state level; adopting coordinated risk assessments of critical supply chains; ensuring dynamic management of ICT products through vulnerability treatment; and building a clear framework for effective and timely incident response.

“In defining what would be the optimal level of security for critical sectors and subsectors within supply chains, it is important to rely on an evidence-based risk assessment of ICT products and services. This should not be an abstract concept

implemented in isolation, but conducted in the context of use and taking into account the combination of threats and vulnerability (threats assessment and threat modelling),” the company wrote.

“This should not be an abstract concept implemented in isolation, but conducted in the context of use.”

Conclusion

Like in previous requests for comments, the administration will have a lot to chew on. What will work for one company and its existing global supply chain might not be feasible for another firm with a smaller security budget. Reshoring major production to the U.S. will take time and resources, and in the end, might not provide the security and transparency industry requires.

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Georgia Man Sent to Prison in Arctic Export Conspiracy

A Ga. business owner was sentenced to 51 months in prison followed by three years of supervised release for conspiracy to procure a Vectra 40G power turbine from a U.S. manufacturer and ship the Vectra to a blocked Russian company that intended to use the turbine on an Arctic deepwater drilling platform.

Dali Bagrou received the sentence Nov. 10, 2021, in Savannah U.S. District Court. Bagrou's U.S.-based company World Mining and Oil Supply (WMO) was sentenced to five years' probation. Bagrou and WMO pleaded guilty in July.

Codefendant Oleg Vladislavovich Nikitin was sentenced in September to 28 months in prison (see *The Export Practitioner*, October 2021, page 12). Nikitin and his Russian company KS Engineering (KSE) pleaded guilty in March.

Co-defendant GVA International Oil and Gas Services (GVA) pleaded guilty in May. KSE and GVA were sentenced to five years' probation. Italian national and GVA owner Gabriele Villone was sentenced in June 2020 to 28 months in prison on related charges. Other charged parties were KSE employee Anton Cheremukhin and GVA employee Bruno Caparini.

The Vectra 40G was "designed and manufactured for integration with gas generators to enable direct drive of high-power gas compressors," the Bagrou plea agreement said.

The Bureau of Industry and Security (BIS) added the intended Russian recipient company to its Entity List in September 2014. At the same time, BIS reiterated previous restrictions on exports intended for the Arctic, shale or deepwater exploration.

UAE Bank Settles Charges of Violating Sudan Sanctions

Mashreqbank psc (Mashreq), a United Arab Emirates (UAE) financial institution, agreed Nov. 9, 2021, to pay \$100 million in penalties under a Consent Order with the N.Y. State Department of Financial Services (DFS) for violating now-repealed Sudan sanctions.

As part of the global settlement between Mashreq, the DFS and the Federal Reserve Board of Governors (FRB), Treasury's Office of Foreign Assets Control (OFAC) also issued a Finding of Violation.

Between January 2005 and February 2009, Mashreq's London branch processed 1,760 outgoing payments totaling more than \$4 billion through U.S. financial institutions "that related to U.S. dollar transfers from accounts of Sudanese banks held outside the United States," OFAC said.

"The Department's investigation found that Mashreqbank instructed its employees to avoid populating certain fields in the payment messages sent between banks so as to conceal the prohibited Sudanese element of these transactions, thus bypassing the sanction filters of other banks which might

"Mashreqbank instructed its employees to avoid populating certain fields in the payment messages."

otherwise trigger an alert or freeze the transaction," DFS noted.

"Because the payment messages sent to the U.S. financial institutions did not include the originating Sudanese bank, Mashreq's U.S. correspondents could not interdict the payments, and the payments were successfully processed through the U.S. financial system," OFAC said.

"Despite its intentions to comply with U.S. sanctions requirements, Mashreq acted recklessly regarding its U.S. sanctions obligations when it employed payment practices that did not identify the involvement of U.S.-sanctioned parties in specific payments, a fact that would have allowed U.S. intermediary financial institutions involved in processing those payments to, at a minimum, interdict those payments," OFAC added.

Mitigating factors included Mashreq's representing to OFAC that "over the past four years it spent more than \$122 million on compliance enhancements, including through the implementation on new systems, retention of consultants, and hiring of additional staff covering risk assessment, internal controls, independent reviews, and training. Addi-

tionally, Mashreq represented to OFAC that it plans to spend an additional \$40 million on further compliance improvements and enhancements,” the agency said.

In July 2010, the U.S. office of Mashreq Bank agreed to pay the Bureau of Industry and Security (BIS) a \$12,800 civil penalty to settle four antiboycott charges of furnishing information concerning its business relationships with or in a boycotted country (see *The Export Practitioner*, September 2010, page 12).

Two Brothers Indicted in Odebrecht Bribery Scheme

Luis Enrique Martinelli Linares and Ricardo Alberto Martinelli Linares, brothers who are dual citizens of Panama and Italy, were indicted Nov. 15, 2021, in Brooklyn U.S. District Court on charges of 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.

Between 2009 and 2012, “the Offshore Company Accounts received approximately \$28 million in bribe proceeds.”

Luis Martinelli Linares was extradited from Guatemala the same day to face charges; Ricardo Martinelli Linares is still in that country. Both were charged in a criminal complaint in July 2020 (see *The Export Practitioner*, August 2020, page 10).

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 ad-

ditional financial transactions through U.S. banks, 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.

Pa. Firm Settles BIS Charges of Exporting to Huawei

A Pa. company agreed to pay Bureau of Industry and Security (BIS) an \$80,000 civil penalty to settle four charges of exporting ThermoJet-ES precision temperature cycling systems to Huawei and related entities after the Chinese telecom firm was added to the BIS Entity List.

SP Industries, Inc. (dba SP Scientific) of Warmminster agreed Nov. 8, 2021, to pay the civil penalty for exporting the items to Huawei and two subsidiaries, Huawei Device Co., Ltd. and HiSilicon Technologies Co., Ltd., without the required BIS licenses between May and August 2019.

The company voluntarily self-disclosed that the violations involving four shipments were “pursuant to errors in its export screening process,” the agency said. Items were classified EAR99. Huawei and the related entities were added to the Entity List in May 2019.

SP has no comment at this time, a company spokesperson wrote in an email to *The Export Practitioner*.

Former Coal Exec Pleads Guilty to FCPA Conspiracy

A former coal executive pleaded guilty Nov. 17, 2021, in Pittsburgh U.S. District Court to conspiracy to violate the Foreign Corrupt Practices Act (FCPA) for his role in a scheme to pay bribes to officials of the Egyptian state-owned coal company Al Nasr Company for Coke and Chemicals.

Frederick Cushmore Jr. worked for Corsa Coal Corp. between October 2016 and November 2020 in various international sales positions, including VP, head of international sales. Sentencing is set for March 24, 2022.

“The purpose of the conspiracy was for Cushmore and his co-conspirators... to obtain and retain lucrative sales contracts with, and other business advantages from, Al Nasr by making corrupt bribe payments” to Egyptian government officials, the criminal information noted.

“Beginning in ...early 2018, Cushmore was the principal point of contact between Company 1 and Al Nasr and was responsible for Company 1’s business relationship with Al Nasr. Among other things, Cushmore negotiated the terms of Company 1’s coal shipments to Al Nasr,” the information said.

“Cushmore and Executive A, acting on behalf of Company 1, and with the knowledge of their co-conspirators, contracted to pay Agent A commissions, through Company 2, intending that a portion of such commissions would be used to pay bribes to foreign officials at Al Nasr,” it added.

Navy Officer Convicted of Exporting Military Boats

A jury in Jacksonville, Fla., U.S. District Court found active-duty U.S. Navy officer Fan Yang guilty Nov. 12, 2021, after an eight-day trial on charges of conspiracy to unlawfully smuggle military-style inflatable boats, with Evinrude MFE military outboard motors, to China from September 2018 through October 2019. Sentencing is set for March 16, 2022.

Chinese citizen Ge Songtao, chairman of Shanghai Breeze Technology, was sentenced in July to 42 months in prison for related charges (see *The Export Practitioner*, August 2021, page 10). Yang, Ge, Yang’s wife Yang Yang of Jacksonville and Chinese national Zheng Yan, a Shanghai Breeze employee, were indicted in October 2019.

All four were charged with conspiring to submit false export information and to fraudulently attempt to export articles from U.S. Yang Yang and Zheng Yan previously were sentenced to time served.

“Yang Yang’s email to Wing caused the entry of a Shipper’s Export Declaration into AES [Automated Export System] for the Wing raiding craft and Evinrude MFE engines. Based on the information provided by her, the declaration identified no intermediate consignee and falsely listed the ultimate consignee of the Wing raiding craft and Evinrude MFE engines as Belt Consulting Company in Hong Kong, rather than Shanghai Breeze in Shanghai,” Songtao’s plea agreement noted.

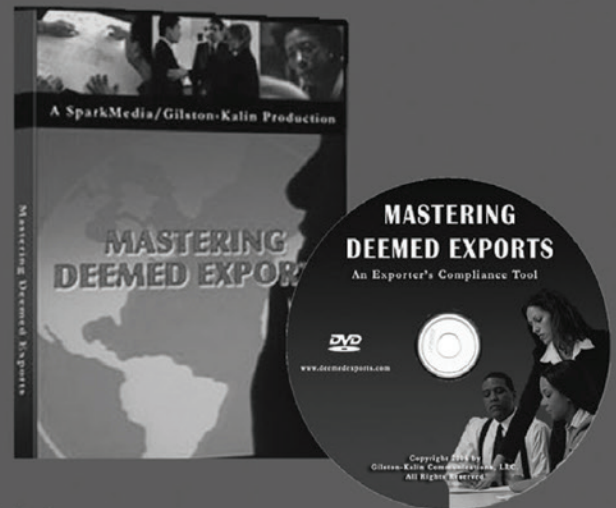
“In 2016 and 2019, United States law did not require a license to export Wing raiding craft or Evinrude MFE engines to Shanghai Breeze” in China, it added.

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BIS Clarifies Recent Wassenaar Cyber Rule

In an attempt to soothe industry nerves, the Bureau of Industry and Security (BIS) Nov. 12, 2021, published 29 new Frequently Asked Questions (FAQs) on its recent rule implementing changes to controversial cyber intrusion software controls.

After eight years of industry comments and agency pushback, BIS published its interim final rule in October, implementing changes that Wassenaar Arrangement (WA) members agreed to at its December 2017 plenary (see *The Export Practitioner*, November 2021, page 4).

One FAQ answered whether non-published, machine-executable exploits (and other forms of proprietary “intrusion software”) are considered “cybersecurity items” for purposes of the Export Administration Regulations (EAR).

“No. The [WA] decisions related to ‘intrusion software’ do not place exploits (sometimes referred to as ‘payload’) within the control scope of ECCN [Export Control Classification Number] 4D004,” the agency noted.

“In real-world situations, ‘payload’ delivered onto a targeted computer or other network-capable device may simultaneously meet the definition of ‘intrusion software’ (classified EAR99) while also having the command and control characteristics of ‘software’ classified ECCN 4D004. Such software that both meets the definition of ‘intrusion software’, and is also designed to generate, command and control, or deliver other ‘intrusion software’, is considered ‘intrusion software’ for purposes of the EAR,” BIS wrote.

FAQs Address Zero-Day, Pen Testing

Another answered whether companies would be required to share their zero-day exploits with the government in order to get an export license. “Exploits that meet the definition of ‘intrusion software’ are not controlled, and information pertaining to the discovery of a vulnerability is also not controlled. Therefore, BIS would not request a company to share the technical details of any exploitable vulnerability,

zero-day or otherwise,” the FAQ said.

The agency also addressed penetration testing products and whether all such product would fit the definition of intrusion software. “Some penetration testing products meet the description of systems, equipment or software ‘specially designed’ or modified for the generation, operation or delivery of, or communication with, ‘intrusion software’ set forth in proposed ECCNs 4A005 and 4D004,” BIS wrote.

“However, there are some tools that are used in penetration testing that are not caught by the entries because they do not do the things described in the definition. For example, tools such as port scanners, packet sniffers and protocol analyzers would not be controlled,” it added.

“A penetration testing tool not designed to avoid detection by ‘monitoring tools’ would not be controlled. Also, a vulnerability scanner, which just finds vulnerabilities in a system without actually exploiting them and extracting data, would not be captured by the proposed rule,” BIS noted.

U.S.-EU Export Control Work Needs Industry Input

As the U.S. and the European Union (EU) continue their work on a Trade and Technology Council (TTC), the Biden administration wants industry input, specifically on export control policies and controls on emerging technologies. Toward this end, the Bureau of Industry and Security (BIS) Nov. 30, 2021, requested comments “regarding areas and priorities for U.S. and EU export control cooperation to help inform the work” of the Export Control Working Group.

The TTC ended its inaugural collaboration in Pittsburgh in September with the participants pivoting to future negotiations. As far as outcomes, the participants specifically addressed investment screening regimes, export controls, global semiconductor supply chains and trade barriers (see *The Export Practitioner*, October 2021, page 4).

“Comments should address ways in which existing U.S. and/or European Union dual-use export control policies and practices may be more transparent, more efficient and effective, more convergent, and fit

for today's challenges, in particular with regards to the control of emerging technologies," BIS wrote in the Federal Register notice. Comments are due Jan. 14, 2022.

The agency requested "comments on ways in which existing U.S. and/or European Union dual-use export control policies and practices may be more transparent, more efficient and effective, more convergent, and fit for today's challenges, in particular with regards to the control of emerging technologies."

Public comments "will assist BIS in developing

ideas and proposals, as well as facilitate a productive dialogue with the European Union," the notice said.

"Comments providing specific and concrete examples where further convergence in U.S. and EU export control practices and policies could enhance international security and the protection of human rights, and support a global level-playing field and joint technology development and innovation, would be particularly helpful," it added.

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Sanctions Imposed on Eritrean Entities, Officials

Following up on the administration's previous executive order, Treasury's Office of Foreign Assets Control (OFAC) Nov. 12, 2021, designated four entities and two individuals "in response to the growing humanitarian and human rights crisis and expanding military conflict in Ethiopia," the agency said. This is just the latest administration action against the African country.

The administration imposed open-ended sanctions on persons involved with the humanitarian crisis in Ethiopia in September. Most recently, State's Directorate of Defense Trade Controls (DDTC) Nov. 1 published a rule codifying the export license policy of denial for Ethiopia and Eritrea (see *The Export Practitioner*, November 2021, page 21).

The designated individuals and entities are: Eritrean Defense Force, the People's Front for Democracy and Justice (PFDJ), Abraha Kassa Nemariam, Hidri Trust, Red Sea Trading Corporation and Red Sea CEO Hagos Ghebrehiwet W Kidan. Kassa is the head of the Eritrean National Security Office; Hidri Trust is the holding company of all PFDJ business enterprises.

At the same time, OFAC issued General License (GL) 4 which authorizes transactions and activities "that are ordinarily incident and necessary to the wind-down of transactions involving Hidri Trust or Red Sea Trading Corporation" through Dec. 14.

The U.S. "stands ready to pursue additional actions, including against the Government of Ethiopia and the Tigray People's Liberation Front, if there is not tangible progress toward a cessation of hostilities," OFAC Director Andrea Gacki said.

OFAC Expands Syrian Humanitarian Exception

A month after releasing the results of the department's sanctions review, Treasury's Office of Foreign Assets Control (OFAC) Nov. 24, 2021, expanded the authorizations for nongovernmental organizations (NGOs) to engage in certain transactions and activi-

ties under an existing General License (GL) in its Syrian sanctions regulations.

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

The GL authorizes NGOs "to engage in activities in support of certain not-for-profit activities in Syria, including: humanitarian projects that meet basic human needs; democracy-building; education; non-commercial development projects directly benefitting the Syrian people; and the preservation and protection of cultural heritage sites," Treasury explained in a new Frequently Asked Question (FAQ).

These activities include early-recovery-related transactions and activities by NGOs in certain sectors including the provision of healthcare and health-related services, educational support and training services and agricultural-related services; as well as activities related to shelter and settlement assistance, and clean water assistance, it added.

The transactions and activities that NGOs are authorized to engage in include: transactions with persons who meet the definition of the term Government of Syria that would otherwise be prohibited; new investment (i.e., a transaction that constitutes a commitment or contribution of funds or other assets, or a loan or other extension of credit) in Syria that would otherwise be prohibited; export or reexport of services that would otherwise be prohibited; and purchase of refined petroleum products of Syrian origin for use in Syria that would otherwise be prohibited, the FAQ noted.

"The U.S. government prioritizes expanding humanitarian access throughout Syria to alleviate the suffering of the Syrian people, who continue to face armed conflict, food insecurity, and the COVID-19 pandemic. The U.S. remains committed to ensuring that humanitarian assistance from the international community, including early-recovery-related humanitarian activities, reaches Syrian civilians," said OFAC Director Andrea Gacki.



Remote trade compliance assessments according to Chinese regulations and in the Chinese language

Answer Questions About Your Company Profile and Compliance Processes

Classification

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

Does your company classify your products for Chinese export control purposes?

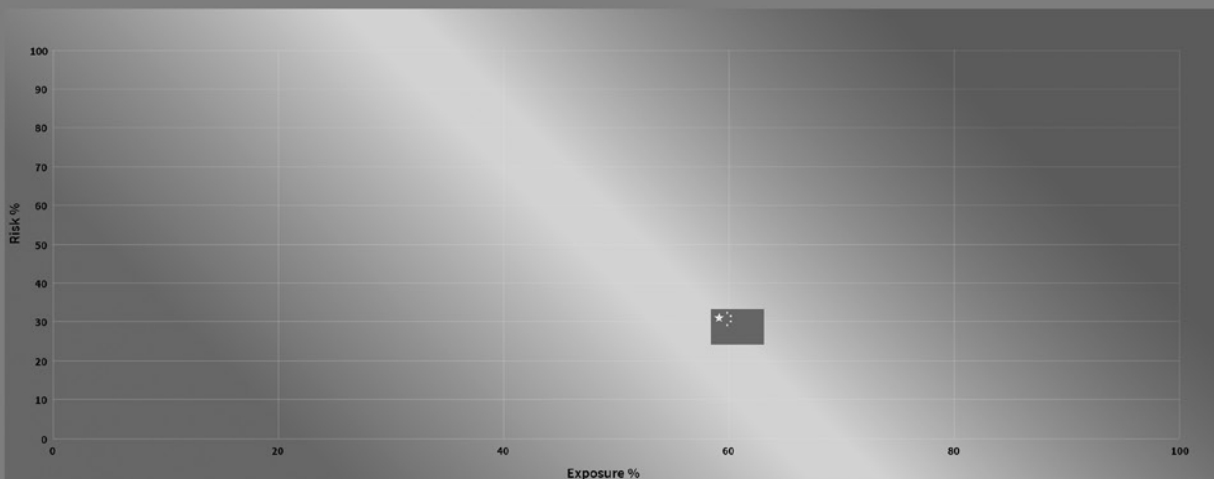
☐ Yes ☐ No ☐ I don't know ☐ N/A

是否有中国出口控制下的关于出口分类的企业政策文件?
shì fǒu yǒu zhōng guó chū kǒu guǎn zhì xià de guān yú chū kǒu fēn lèi de qǐ yè zhèng cè?

Is there a documented Corporate Policy on Export Classification under Chinese Export Controls?

☐ Yes ☐ No ☐ I don't know ☐ N/A

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State Official Previews New Arms Transfer Policy

The Biden administration is developing a new Conventional Arms Transfer (CAT) Policy that will reflect “the president’s goals of putting diplomacy first, respecting human rights and international humanitarian law, revitalizing and reimagining alliances, and delivering for the American people,” Tim Betts, the principal deputy assistant secretary of State for political military affairs, told the Defense Trade Advisory Group (DTAG) Nov. 4, 2021.

In a January blog post, a group of arms control experts urged the administration to “ensure that U.S. arms do not continue to fuel human rights violations, civilian harm, corruption, and criminal violence” (see *The Export Practitioner*, February 2021, page 16).

One of their recommendations was to develop and release a new CAT Policy. The previous White House in April 2018 proposed new CAT and Unmanned Aerial Systems (UAS) export policies to streamline direct sales.

In developing the new policy, “we seek to elevate human rights, stress the principles of restraint and responsible use, and consider our partners’ security sector governance within our holistic approach to evaluating proposed arms transfers,” Betts told the DTAG.

Specifically, “this administration will not approve arms transfers where we believe such transfers are not in our national interest because of the risk of diversion, civilian harm, misuse, or contrary to any of the other criteria,” he added.

Toward this end, Betts called out “the administration’s decision to recalibrate our relationship with Saudi Arabia, indefinitely suspending two large precision guided munitions cases previously approved to Saudi Arabia.”

The same day, State notified Congress of its approval of a possible Foreign Military Sale to Saudi Arabia of 280 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM) and related equipment for an estimated cost of \$650 million.

“The new CAT Policy will strengthen the U.S. manufacturing and defense industrial base and helps ensure resiliency in global supply chains. It will also

help promote research and innovation into emerging defense technologies, ensuring that the United States and its allies and partners can maintain technological advantages over current and potential adversaries,” Betts noted.

Commission Urges Interagency Review of Export Controls

In its annual report released Nov. 17, 2021, the U.S.-China Economic and Security Review Commission (USCC) made two dozen recommendations to Congress, including two that involve tackling export controls and China head-on. Specifically, the Commission urged Congress to fully implement two pieces of recent legislation, especially provisions directing agencies to identify emerging and foundational technologies.

A second recommendation to Congress involves the use of export controls and Chinese nuclear weapons research.

Testifying at a USCC hearing in September, acting Bureau of Industry and Security (BIS) Under Secretary Jeremy Pelter defended his agency’s pursuit of multilateral export controls, but stopped short of giving a specific timeline of when to expect final rules on emerging and foundational technology (see *The Export Practitioner*, October 2021, page 15).

“Congress [should] ensure the effective implementation of the Export Control Reform Act of 2018 and the Foreign Investment Risk Review Modernization Act of 2018,” the USCC recommended. Specific actions included: create a Technology Transfer Review Group (TTRG); authorize the TTRG to direct BIS to implement export controls; authorize and require the TTRG to oversee multilateral engagement related to export controls, foreign investment screening, and technology transfer regulations; and require that additional resources be provided to improve and expand end-user verification of export controls.

A second recommendation to Congress involves the use of export controls and Chinese nuclear weap-

ons research. “Congress [should] direct the administration to conduct an interagency review of any Chinese universities that maintain research or training arrangements with China’s nuclear weapons research institutes, such as the Chinese Academy of Engineering Physics and the Northwest Institute of Nuclear Technology.”

Specific actions included: assess whether current U.S. export controls adequately address risks from the transfer and exchange of information and technologies with applications to nuclear research; identify Chinese universities and research institutes that should be added to the Entity List; and identify Chinese universities and research institutes that merit a presumption of denial for all export licenses involving items covered by the Export Administration Regulations.

DDTC Answers Questions About Disclosures, Debarments

Have questions about violations and disclosures, debarments, rescissions and reinstatements? State’s Directorate of Defense Trade Controls (DDTC) has answers, in a series of new Frequently Asked Questions (FAQs) published Nov. 22, 2021. The FAQs tackle thorny questions, including what to do when receiving a DDTC request for information.

In that case, take a deep breath. “If DDTC reached out to you with questions regarding a potential violation that you have not previously reported through a voluntary disclosure, please submit a complete and detailed response, attaching any requested or otherwise relevant documentation following the format and procedures for disclosures outlined in ITAR [International Traffic in Arms Regulations] and reference the DDTC letter and the DTCC case number therein. This is referred to as a ‘Directed Disclosure,’” the agency noted.

Other subjects covered include where to send voluntary disclosures, how long it takes to get a voluntary disclosure case number, how to obtain an extension, how to find the status of a previous disclosure, and how much time companies have to file a disclosure after a violation.

The agency answered whether companies need to wait until a voluntary disclosure case is closed before applying for a related DDTC license. “No. After you receive a DTCC case number, you may apply for a DDTC license that is related to the matters disclosed,” it said.

“Please note that your license application must reference the related DTCC case number in the appropriate block of the license application. If you do not yet know the DTCC case number, do not include a placeholder or fictitious number on the license application,” DDTC added.

Agency Grants Requests on Case-by-Case Basis

On statutory debarments, answers include whether individuals who are recipients of grants under the Deferred Action for Childhood Arrivals (DACA) policy are considered U.S. persons. (No.)

DDTC also addressed exceptions for debarred parties to participate in an ITAR-controlled activity. “A request for such authorization is commonly referred to as a ‘transaction exception request.’ DDTC grants transaction exception requests on a case-by-case basis after a full review of the relevant circumstances. The person submitting a transaction exception request to DDTC should explain why the debarred party should be permitted to be part of the transaction,” the agency wrote.

The agency clarified the difference between a rescission of statutory debarment and the reinstatement of export privileges, and where the two processes converge. “The Department will only reinstate export privileges if the applicant demonstrates, to the satisfaction of the Assistant Secretary of State for Political-Military Affairs, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns and to deal with the causes that resulted in the conviction or ineligibility,” it wrote.

“If the Department decides to reinstate export privileges in response to a request for reinstatement from an applicant that is also statutorily debarred, the Department will also rescind the applicant’s statutory debarment,” DDTC wrote.

END NOTES

ENTITY LIST: In Federal Register Nov. 26, 2021, Bureau of Industry and Security (BIS) added 27 foreign entities and individuals in China, Japan, Pakistan and Singapore to its Entity List, including three affiliates of Corad Technology Limited, Chinese entity added to list in 2019 (see *The Export Practitioner*, September 2019, page 18). At same time, agency added Moscow Institute of Physics and Technology to its Military End-User (MEU) list “on the basis of its production of military products for a military end-user,” notice said.

MORE ENTITY LIST: BIS in Federal Register Nov. 4 added four companies in Israel, Russia and Singapore to Entity List. Agency added 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,” notice said. Positive Technologies in Russia and Computer Security Initiative Consultancy PTE in Singapore “traffic in cyber exploits used to gain access to information systems, threatening the privacy and security of individuals and organizations worldwide,” it added. Two weeks before, agency implemented Wassenaar controls on cyber intrusion software and surveillance products (see *The Export Practitioner*, November 2021, page 4).

VENEZUELA: Treasury’s Office of Foreign Assets Control (OFAC) Nov. 24 issued General License (GL) 8I, extending previous GL that authorized transactions involving Petróleos de Venezuela, S.A. (PdVSA) necessary for maintenance of operations for Chevron, Halliburton, Schlumberger Limited, Baker Hughes and Weatherford International. Specifically, OFAC extended GL expiration date to June 1, 2022, from Dec. 1.

IRAN: OFAC Nov. 18 designated six Iranian individuals and one Iranian entity -- cyber company Emennet Pasargad -- for “attempting to influence the 2020 U.S. presidential election.” Designated entities include

company manager, two employees and three members of company board. Emennet was designated under its former name, Net Peygard Samavat Company, in February 2019 and “rebranded itself to evade U.S. sanctions and continue its disruptive cyber operations,” OFAC noted (see *The Export Practitioner*, March 2019, page 18).

MORE IRAN: At press time, Joint Commission of Joint Comprehensive Plan of Action (JCPOA) -- China, France, Germany, Russia, UK and Iran -- were meeting in Vienna to “continue the discussions on the prospect of a possible return of the United States to the JCPOA and how to ensure the full and effective implementation of the agreement by all sides,” EU announced Nov. 3. President Biden explored return to JCPOA with E3 -- leaders of Germany, France and UK -- on sidelines of main G20 talks in October.

STILL MORE IRAN: Reps. Gregory Meeks (D-N.Y.), Michael McCaul (R-Texas), Ted Deutch (D-Fla.) and Joe Wilson (R-S.C.) Nov. 30 introduced Stop Iranian Drones Act (SIDA) (H.R. 6089) to 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)....OFAC Oct. 29 designated two companies and four individuals that provide critical support to UAV programs of Iran’s Islamic Revolutionary Guard Corps (IRGC) and its expeditionary unit, the IRGC Qods Force (IRGC-QF). Designations include Saeed Aghajani, commander of IRGC Aerospace Force (IRGC ASF) UAV Command; Abdollah Mehrabi, chief of IRGC ASF Research; Kimia Part Sivan Company (KIPAS) and Mohammad Ebrahim Zargar Tehrani; Oje Parvaz Mado Nafar Company (Mado Company) and its managing director Yousef Aboutalebi.

BURUNDI: President Biden Nov. 18 signed Executive Order (EO) terminating sanctions on Burundi that have been in place since 2015. At same time, OFAC removed 19 individuals from its list of Specially Designated Nationals. U.S. “recognizes the positive reforms pursued by President Ndayishimiye, while

continuing to press the Government of Burundi to improve the human rights situation in the country and hold accountable those responsible for violations and abuses,” Deputy Treasury Secretary Wally Adeyemo said in statement. In addition, all property and interests in property blocked solely pursuant to Burundi Sanctions Regulations are unblocked; and “OFAC will remove the Burundi Sanctions Regulations from the Code of Federal Regulations at a future date,” agency said. President Obama imposed sanctions on government officials of central African country in November 2015 (see *The Export Practitioner*, December 2015, page 21).

NICARAGUA: OFAC Nov. 15 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, “in response to the sham national elections” held week earlier, agency said. OFAC in June designated four other Nicaraguan government officials, including President Ortega’s daughter, coordinator of Creative Economy Commission; president of Central Bank of Nicaragua; deputy of Nicaraguan National Assembly (NNA); and brigadier general of Nicaraguan Army (see *The Export Practitioner*, July 2021, page 17).

HUAWEI: President Biden Nov. 11 signed Secure Equipment Act of 2021 (S. 1790/H.R. 3919), which directs Federal Communications Commission (FCC) to clarify that it will no longer review or issue new equipment licenses to companies that pose national security threat. Senate passed bill by unanimous consent in October (see *The Export Practitioner*, November 2021, page 19).

NORD STREAM: Sen. Jim Risch (R-Idaho) and five GOP cosponsors Nov. 4 introduced amendment to FY2022 National Defense Authorization Act (NDAA) that would impose mandatory sanctions on Nord Stream 2 AG, company in charge of Russian pipeline project. Two weeks later, Risch objected to proceeding with debate without that amendment, which “is the Senate companion to bipartisan language that is already included in the House-passed NDAA,” Risch said on Senate floor Nov. 18. At press time, Senate was still debating larger bill. At October hearing on Treasury’s sanctions review, Sen. Pat Toomey (R-Pa.) repeated his opposition to Biden administration’s sanctions waiver: “The administration has also chosen to ignore a law requiring sanctions for Russia’s Nord Stream 2 pipeline” (see *The Export Practitioner*, November 2021, page 16).

LNG EXPORTS: Sen. Bill Cassidy (R-La.) and four Republican cosponsors Nov. 3 reintroduced Small Scale LNG Access Act (S. 3145), which would expedite approval of natural gas exports equal to or less than 51.1 billion cubic feet per year. In July 2018, Energy announced it would expedite approvals for “small-scale” natural gas, including liquefied natural gas (LNG), exports to non-FTA countries that meet two criteria: application proposes to export no more than 51.75 billion cubic feet per year of natural gas, and proposed export qualifies for categorical exclusion under department’s National Environmental Policy Act (NEPA) regulations (see *The Export Practitioner*, August 2018, page 25).

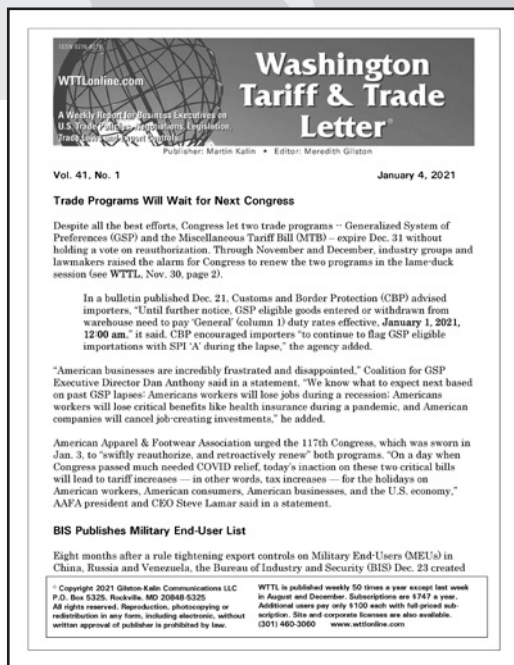
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