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Improvements would support the administration's drive for eliminating regulatory burdens and for facilitating secure high-technology exports that would sustain American jobs and improve America's trade balances, former DDTC Chief Brian Nilsson writes.

Placing "higher walls around fewer, more critical items" was supposed to solve the problem of harmful arms exports. However, there are still serious questions about whether there are higher walls around military technologies important in modern warfare, Colby Goodman argues.

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Export Control Reform at 10: A Birthday or an Epitaph?

By Brian H. Nilsson *

In the summer of 2009 we had the perfect storm in the realm of strategic trade export controls: a president seeking out complicated, in-the-weeds but important issues that needed attention even though they were not headline news, combined with the fortuitous alignment of the key departments and agencies with the right people in all the right positions.

The administration entrusted a small team of government experts from across the licensing, enforcement and intelligence communities to put together their view of a perfect export control system. Sixty days later, the Export Control Reform Initiative, or ECR, was born.

ECR envisioned the nirvana of an ultimate end state comprised of the Four Singles: a single control list; a single licensing agency; a single primary enforcement agency; and a single information technology (IT) system. A supplement to the ECR report to the president was a detailed three-phase implementation plan, with the goal of completing major reforms in all four focus areas by the end of Phase II while leaving the existing interagency infrastructure in place. Phase III would require legislation for the consolidation of the licensing and some of the export enforcement agencies.

The departments have met a major milestone with the last rewritten U.S. Munitions List (USML) categories going into effect this month, bringing to an end the 10-year effort to complete the initial rewrite of the entire USML (see related story, page 16). We are now largely at the end of Phase II, with the rewritten USML, the continued efforts of the multiagency Export Enforcement Coordination Center, and most of the licensing agencies on the single IT system (see End Notes, page 21).

The perfect storm has passed, and the key export control departments and agencies today are struggling with insufficient staffing, the lack of senior leadership – the permanent undersecretary positions at Commerce, Defense and State are vacant – and no congressional focus on any further export control reforms, leaving no prospects for Phase III legislation.

The perfect storm has passed,
and the key export control
departments and agencies today
are struggling.

So should we now mourn the end of ECR, given these challenges? Or should we find some middle ground where further improvements can be made that would not require the heavy lift of a new ECR-like effort? It's my view that there are prospects for such improvements, largely process-

oriented, that can still be undertaken that would not require a major reform effort. These improvements would support the administration's drive for eliminating regulatory burdens and for facilitating secure high-technology exports that would sustain American jobs and improve America's trade balances.

(1) Reprioritize keeping the export control lists current

Control lists are only as good as they are current. The key ECR problem was updating the long-static USML and to then keeping current, by design a never-ending process. The timeline developed in ECR to do that is admittedly slow – request public comments on a given category, draw from those inputs to draft proposed rules, and publish final rules – but it is better than no process at all. Current constraints have impeded State and Commerce from continuing this process. The process needs to resume with regularity, to include soliciting input on how the ECR-era process can be improved or replaced

(2) Resume efforts to harmonize definitions

Because of the necessity of maintaining broad controls to ensure controls on commercial firearms, State’s Directorate of Defense Trade Controls (DDTC) has been unable to proceed with proposed new, more tailored definitions for such terms as defense services, technical data and public domain. With commercial firearms now transferred to Commerce, DDTC can tailor these controls as it did for its enumerated USML controls, a major improvement that would enable DDTC to better focus on the most sensitive items.

Like industry, allies and partners had to reclassify their ITAR-controlled items to determine which remain on the USML.

(3) Harmonizing Foreign Military Sales (FMS) with Export Control Reforms

Excluding FMS from ECR was an explicit decision at the time, given the magnitude of what we were already undertaking, with an acknowledgement that a successful ECR would introduce new problems to FMS that would need to be resolved. With the completion of the initial rewrite of the entire USML, that time has now come.

The policy decisions to prioritize USML controls only on those items that warrant it and move all other items to Commerce jurisdiction are now complete, so less sensitive items can flow more easily to U.S. allies and partners. Like industry, those allies and partners had to reclassify their ITAR-controlled items to determine which remain on the USML and which moved to Commerce. But allies and partners must also track how they obtained the formerly ITAR-controlled items, via FMS or via DDTC export license, to determine their ongoing re-export and transfer obligations.

The issue for resolution is a legal one on how to permit now-Commerce-controlled items that were exported under FMS to move under Commerce authorities. The options include legislation to amend the Arms Export Control Act (AECA), update the delegated AECA authorities in Executive Order 13637, or reinterpret existing AECA definitions to obviate the need for new

legal authority to reconcile the FMS requirements with the Commerce regulations. Implementation would require significant changes in Defense and State in how they administer their FMS responsibilities.

(4) Reorganize BIS’s Export Administration to merge the munitions division into the other licensing offices

A key part of the decision to transfer less sensitive USML items to Commerce jurisdiction was to create a new dedicated munitions licensing division within Commerce to receive and process license applications for those items. That decision was politically necessary at the time to address

congressional concerns. Commerce has since proven that it is capable of handling the licensing of these items. With no current prospects for Phase III legislation, this leaves the former bifurcated licensing work streams now permanently trifurcated, moving away from the goal of a single licensing agency. With the transfer of commercial firearms and related items to Commerce now complete, with an anticipated BIS increase of more than 10,000 licenses a year, it makes sense to merge the munitions division into the pre-existing licensing offices. This rationalization would better utilize BIS licensing staff as their licensing volumes surge. The Defense Technology Security Administration has already pro-actively implemented a comparable rationalization, merging its former munitions and dual-use licensing divisions into one.

(5) Put Office of Foreign Assets Control (OFAC) licensing on a timeline

OFAC was a key partner in the ECR effort, taking the lead on administering the consolidated screening list on behalf of the three licensing departments. To improve OFAC licensing, an Executive Order was developed that would have put OFAC on a licensing process timeline developed for its unique needs. This effort was not completed because of concerns expressed by Treasury at the time and the prioritization of other issues. This is a

procedural issue that requires a policy decision. BIS was placed on its own timeline via Executive Order 12981 back in the mid-1990s that was controversial at the time, but has worked well for a timely and predictable process. OFAC and its licensing constituency would benefit from this as well.

The lack of a consolidated position on pending license applications is a uniquely State problem.

within the secretary's office that would meet regularly to hear disputes between the different State bureaus on the department's position on pending OFAC and BIS license applications. The lack of a consolidated position on pending license applications is a uniquely State problem that warrants a uniquely State solution.

(6) Create an internal State Department Operating Committee-like process to litigate internal disputes on OFAC and BIS license applications

This is another process improvement that was well-developed within State but was never completed. The concept was to create an Operating Committee-type body within the now-defunct Office of Sanctions Policy

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Higher or Weaker Walls Over Sensitive U.S. Arms Exports?

By Colby Goodman *

Sometimes good intentions are just good intentions. In the push for major changes to the U.S. arms export control system from 2010-13, the Obama administration often said the U.S. government was not effectively preventing harmful arms exports. One major culprit was “an overly broad definition of what should be subject to export classification and control,” according to then-Defense Secretary Robert Gates.

Placing “higher walls around fewer, more critical items” would solve the problem. Seven years later, however, there are serious questions about whether there are higher walls around military technologies important in modern warfare.

Push for Higher Walls

Gates’s concern about the overly broad definition of arms was based on his time as deputy director for intelligence at the Central Intelligence Agency. In his April 20, 2010, speech, Gates said, “it soon became apparent that the length of the list of controlled technologies outstripped our finite intelligence monitoring capabilities and resources. It had the effect of undercutting our efforts to control the critical items.”

A few State officials also told me at the time that they had been requested to do investigations (post-export end-use checks) on U.S.-approved exports of items such as washers for certain weapons systems, which they thought was a waste of time.

The Obama administration in fact frequently stated that the U.S. arms export control system was harmful because “we devote[d] the same resources to protecting M1A1 tank brake pads as we do to protecting the M1A1 tank itself.”

While the administration often exaggerated these points, many parts and components did require a separate license.

According to Gates, “many parts and components of a major piece of defense equipment - such as a combat vehicle or aircraft - require their own export licenses. It makes little sense to use the same lengthy process to control the export of every latch, wire, and lug nut for a piece of equipment like the F-16, when we have already approved the export of the whole aircraft.” Instead, the U.S. government should focus on the five percent of cases that are riskier.

While the administration often exaggerated these points - M1A1 tanks had always received much more vetting than their brake pads - many parts and components did require a separate license. In 2011, the Government Accountability Office (GAO) also published a report that highlighted clear gaps in State post-export end-use checks for sensitive night vision goggles to countries in the Middle East.

In response, the Obama administration led an effort to move an estimated 30,000 munitions-related items from State’s more strictly controlled U.S. Munitions List (USML) to Commerce’s more loosely controlled Commerce Control List (CCL). This effort included up to 90 percent of the items controlled under the USML’s military vehicle category.

For the military aircraft category, “missile launchers, radar warning receivers, and laser/missile warning systems” would continue to be controlled under the USML. However, items such as F-16 wings, rudders, fuel tanks, and landing gear would move to the CCL. The administration would also move some items formerly classified as significant military equipment.

But, did the Obama administration simultaneously elevate reviews or checks on key U.S. military technologies that stayed on the USML? It certainly was not enough for

the Obama administration to just move tens of thousands of munitions off the USML. There was also a risk that the move would likely result in a dip in State revenue and personnel for examining arms exports.

Gaps in Implementation

In a recently published report entitled *Holes in the Net: U.S. Arms Export Control Gaps in Combatting Corruption*, I argue that there are a number of gaps in State's efforts to place higher walls around arms on the USML. These gaps are in State's Directorate for Defense Trade Control's (DDTC) basic review of arms export licenses and in their more detailed pre- and post-export end-use checks. The problems appear to have been widened under the Trump administration.

In July 2018, for instance, State's Inspector General (IG) found several weaknesses in the way DDTC reviews arms export applications in an audit. Specifically, the IG found that DDTC had "approved 20 of the 21 applications (95 percent) [IG] reviewed despite lacking required information...."

In eight cases, the IG found inconsistencies within the application on the quantities, types of arms, or values, which are indicators of a possible diversion of U.S. weapons or bribery. The IG audit also found 17 cases in which DDTC should have notified Congress for additional scrutiny, but DDTC did not.

State is no longer increasing the number of its end-use checks in a year. In the department's annual report on end-use checks for fiscal year (FY) 2016, DDTC said there was an increase in the percentage of end-use checks they initiated compared to the total export applications for the year from 1.3 percent in FY 2015 to 1.75 percent in FY 2016.

DDTC seemed to indicate that this increase showed it was beginning to elevate its reviews of more sensitive military items. However, the most recent end-use report for FY 2018 under the Trump administration shows a drop in the percentage of end-use checks to 1.3 percent,

which is similar to percentage levels before the reform started.

There are also some key gaps in the way DDTC conducts its end-use checks. In 2016, State developed a new framework for reviewing arms sales, which recommend asking several key questions about corruption. These questions include whether or not the intended recipient of U.S. arms is "permitting illicit trafficking across borders, buying and selling positions or professional opportunities, stealing government assets and resources, engaging in bribery, or maintaining rolls of ghost personnel." However, DDTC does not regularly look at the above defense sector corruption indicators when conducting its pre-export end-use checks.

It also appears there have been some challenges with DDTC's post-export end-use checks. In the department IG's audit of DDTC in 2018, they noted

serious delays, from 77 to 300 days, in conducting post-export end-use checks. In FY 2018, DDTC had also only conducted around nine pre- or post-export end-use checks for all arms exports to the Middle East and North Africa despite the ongoing risks of diversion in the region.

What could be done to elevate State checks on key military technologies and weapons systems? DDTC has said one of the key reasons for some of the above gaps has been staff turnover and an overall staff reduction. DDTC told the department's IG that its licensing office had a 28 percent reduction in staffing as of July 2018, and some licensing officers were finding it difficult to keep up with their workload. Staff turnover also made it difficult for DDTC to conduct end-use checks in the Middle East in FY 2018.

Fixing the Gaps

While DDTC has hired some staff to help address the gaps in end-use checks for the Middle East, they still have not been able to add enough staff to address all of the above concerns. The Trump administration's hiring freeze and reductions in State funding have also impacted

The IG audit found 17 cases in which DDTC should have notified Congress for additional scrutiny, but DDTC did not.

DDTC's efforts to hire new staff. Congress, however, could address this gap by elevating funding for DDTC personnel, which would also help speed up DDTC's review of arms export applications generally.

It also appears that the Trump administration's focus on increasing the number of U.S. arms sales to key U.S. partners and allies around the world has impacted some State focus on enhancing risk assessments. There, however, are continuing efforts to enhance these risk assessments at State, including related to defense sector corruption indicators.

In some ways, Gates was right when he said there was a need to place higher walls around key U.S. military technologies and weapons systems to prevent them from

reaching the wrong hands. If the United States does want to make good on one of its initial reasons for the reform, there are still opportunities to do so. Without these improvements, however, the United States will be back where it started at the beginning of the reform, not effectively preventing harmful arms exports.

The administration's reduction in State funding has impacted DDTC's efforts to hire new staff.

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ENGINEER PLEADS GUILTY TO EXPORTING TECHNICAL DATA

Former Raytheon engineer Wei Sun pleaded guilty Feb. 14, 2020, in Tucson, Ariz., U.S. District Court to one charge of exporting arms and munitions without the required State licenses. A superseding indictment against Sun was filed Jan. 29. Sentencing is set for April 28.

Specifically, in December 2018 Sun transported a computer with four files that “constituted defense articles in the form of technical data” controlled by the International Traffic in Arms Regulations (ITAR) under U.S. Munitions List (USML) Category XI(d) and one file of technical data controlled under USML Category IV(i).

“While employed at RMS [Raytheon] for approximately ten years, Sun worked as an electrical engineer and had access to information directly relating to advanced and sensitive missile defense-related technology, some of

Sun [has] worked on a ITAR-controlled project, he was not to take the RMS computer outside the United States as it contained export controlled information, and that taking the computer overseas would be in violation of RMS company policy and prohibited under federal export control law,” it added.

FIVE MEN CHARGED WITH BUYING, SELLING IRANIAN OIL

Five men were arrested and charged Feb. 11, 2020, in Philadelphia U.S. District Court with violating Iran sanctions from July 2019 to February 2020. The defendants allegedly conspired to arrange for the purchase of Iranian oil for sale to a Chinese refinery.

Nicholas Hovan of New York; Zhenyu Wang, aka “Bill Wang,” Robert Thwaites and Nicholas James Fuchs of Dallas; and Daniel Ray Lane, president of Dallas-based Stack Royalties, were charged with “attempting to facilitate the purchase of petroleum directly from Iran, to mask the origins of the petroleum due to sanctions, and to sell the petroleum to China under masked origins,” the criminal complaint noted.

During a September 2019 meeting in Dallas, “Lane confirmed that he was aware of the sanction restriction but stated that he did not have a problem with sanctions by adding ‘sanctions can always be massaged ... you know, there is always a way around it,’” the complaint charged.

“When discussing the financing of a separate deal, Lane inquired if ‘they ever need to wash it further’ to include ‘assets that actually generate them income.’ Lane further suggested using mineral rights because the value of the asset is whatever Lane claims it to be in an affidavit,” it added.

“The sale of oil is the lifeblood of the Iranian economy. At the same time the United States was increasing its sanctions in order to pressure Iran to stop its malign activities, these defendants put greed ahead of country,” Assistant Attorney General John Demers said in a statement.

“The RMS computer contained documents bearing ITAR warnings, schematics ... and other ... ITAR documents.”

which constituted defense articles controlled and regulated under the Arms Export Control Act, ” the indictment said.

A January 2019 criminal complaint noted that the technical data related to a field programmable gate array. “Sun admitted that the RMS computer contained documents bearing ITAR warnings, schematics which he believed were likely ITAR controlled, and other previously generated ITAR documents,” the complaint said.

Prior to the trip to Hong Kong, Sun “informed a RMS official of upcoming travel overseas and his intention to take with him a RMS-issued HP laptop computer. The RMS official knew that Sun was assigned to work on a RMS Ballistic Missile Defense (BMD) system project and believed that Sun’s computer contained ITAR controlled data,” the complaint noted.

“The RMS official directed Sun that, because

MORE ALSTOM, MARUBENI EXECs INDICTED IN BRIBERY SCHEME

A superseding indictment was unsealed Feb. 18, 2020, in New Haven, Conn., U.S. District Court against two former executives of the Indonesian subsidiary of the French power company Alstom S.A. and a former executive of Japanese trading company Marubeni for their alleged participation in a scheme to bribe Indonesian officials in exchange for assistance in securing contracts.

Reza Moenaf and Eko Sulianto, the former president and sales director of Alstom's subsidiary in Indonesia; and Junji Kusunoki, the former deputy general manager of Marubeni's Overseas Power Project Department, were charged in the February 2015 indictment with conspiracy to violate the Foreign Corrupt Practices Act (FCPA) and conspiracy to commit money laundering.

A week later, the same judge granted Lawrence Hoskins, former Alstom Power Inc. (API) senior VP in Asia, his motion for a new trial on seven FCPA charges for his role in the multi-company scheme. He was convicted in November after a two-week trial (see *The Export Practitioner*, December 2019, page 7).

"Permitted to view the evidence objectively and without the duty view it in the light most favorable to the Government, the Court harbors significant doubt that Defendant acted as an agent of API in connection with the Tarahan Project, in the absence of persuasive evidence demonstrating that API had authority to control Mr. Hoskins or that he agreed to be so controlled," Judge Janet Bond Arterton wrote.

"The Court agrees with Defendant that the Government primarily demonstrated that API generally controlled the Tarahan Project, but not that API had control over Mr. Hoskins's actions sufficient to demonstrate agency," she added.

Arterton did not dismiss money laundering charges against Hoskins. At press time, sentencing was set for March 6. Alstom executive Frederic Pierucci was sentenced in September 2017 to 30 months in prison less time served for related charges.

The charges involved officials from Perusahaan Listrik Negara (PLN), the Indonesian

state-owned and controlled electricity company. Between 2002 and 2009, Alstom, its subsidiaries, and Marubeni "partnered to bid on and carry out various power projects in Indonesia through PLN, including the Tarahan Project and the Muara Tawar Projects," the indictment said.

The Consortium retained several consultants to assist them in obtaining the contracts for the projects. "The consultants' primary purpose was not to provide legitimate consulting services to the Consortium but was instead to pay bribes to Indonesian officials who had the ability to influence the award of the contracts," it added.

"The Consortium was ultimately awarded the Tarahan Project and Muara Tawar Project contracts and made payments to Consultants A and B for the purpose of paying Indonesian government officials, including Official 1, Official 2, Official 3, and Official 4, in exchange for their assistance in awarding the Tarahan Project and the Muara Tawar Projects contracts to the Consortium," the indictment noted.

Marubeni agreed to pay an \$88 million criminal fine for its role in March 2014. Alstom S.A. was formally sentenced in November 2015 in New Haven court for violating the FCPA and paid a \$772 million fine.

AIRLINE SETTLES BIS ANTIBOYCOTT CHARGES

In an order posted Feb. 7, 2020, Kuwait Airways Corporation (New Jersey) agreed to pay the Bureau of Industry and Security (BIS) a \$700,000 civil penalty to settle charges of violating the agency's antiboycott regulations.

The company settled 14 charges of refusing to do business from August 2014 through November 2015. The airline refused the boarding of individuals holding Israeli passports en route from N.Y. JFK to London Heathrow airport.

One flight handling report included this language: "Politely explained that Israeli [nationals] are not accepted on KU flights," according to the BIS order dated Jan. 14.

Of the penalty, \$100,000 will be suspended for three years and then waived if the company commits no further violations.

HOUSTON MAN SENT TO PRISON FOR TRADE SECRETS

A Houston man was sentenced to 16 months in prison for conspiracy to steal trade secrets involving the development of syntactic foam, a dual-use marine product. Shan Shi was sentenced Feb. 10, 2020, in D.C. U.S. District Court.

Shi was convicted in July 2019 following a nine-day trial (see *The Export Practitioner*, August 2019, page 10). He was originally charged in May 2017 along with six others: three U.S. citizens, a Canadian and two Chinese nationals.

Uka Kalu Uche was sentenced to 12 months' probation in July 2018 after pleading guilty in

CHINESE NATIONAL INDICTED ON USML EXPORT CHARGES

An indictment against Cho Yan Nathan Man was unsealed Feb. 18, 2020, in D.C. U.S. District Court on charges of money laundering and exporting defense articles to Hong Kong without State licenses from October 2018 to January 2019.

Man was arrested in Switzerland in June 2019 and extradited to the U.S. just before the indictment was unsealed. U.S. Munitions List (USML) items included a pair of Excelis enhanced night vision goggles, a Glare Mout Plus, an L-3 target pointer illuminator aiming light, and a Surefire four-prong muzzle adapter for a rifle.

Along with those four alleged exports, Man "did transport, transmit, and transfer, and attempt to transport, transmit, and transfer monetary instruments and funds from a place outside of the United States, that is, Hong Kong and elsewhere, to and through places inside the United States, with the intent to promote the carrying on of specified unlawful activity, that is, export control violations involving items controlled under the USML," the indictment noted.

ITALIAN NATIONAL PLEADS GUILTY TO CONSPIRACY TO EVADE SANCTIONS

Italian national Gabriele Villone, owner of GVA International Oil and Gas Services (GVA), pleaded guilty Feb. 25, 2020, in Savannah, Ga., U.S. District Court to conspiracy in a scheme to procure a Vectra 40G power turbine from a U.S.-based manufacturer and ship the Vectra to a Russian company that intended to use the turbine on an Arctic deepwater drilling platform.

A superseding indictment was unsealed in December against two Russian nationals, two Italian nationals, including Villone, a U.S. citizen, and various companies in a conspiracy to evade U.S. sanctions (see *The Export Practitioner*, January 2020, page 11).

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

The Bureau of Industry and Security (BIS)

"The defendant agreed in exchange to actively bring in new technology and high-level talented people."

April; Samuel Abotar Ogoe pleaded guilty in October 2018 and Johnny Wade Randall was sentenced to 24 months' probation in April 2018 after pleading guilty in December 2017.

Kui Bo a Canadian citizen residing in Houston, pleaded guilty in April 2018. Two of Shi's codefendants testified as cooperating witnesses at trial, Justice noted.

Between 2012 and 2017, Chinese manufacturer CBM-Future New Material Science and Technology Co. Ltd. (CBMF) and employees of its Houston-based company CBMI allegedly engaged in a systematic campaign to steal the trade secrets of a global engineering firm with a subsidiary in Houston.

"In March 2014, CBMF agreed to provide two million of its shares to the defendant as part of a joint agreement acknowledging their mutual buoyancy material experience, though tellingly there is no evidence that the defendant had any experience with composite syntactic foam. The defendant agreed in exchange to actively bring in new technology and high-level talented people," the sentencing memo noted.

"CBMF transferred to CBMI millions of dollars over the course of the conspiracy, particular during and after the transfer of the trade secrets, and it appears CBMI had no other source of income or way to pay salaries and expenses," it added.

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.

In addition to Villone and GVA, the other charged parties were: Oleg Vladislavovich Nikitin; Nikitin's Russian-based company KS Engineering (KSE); KSE employee Anton Cheremukhin; GVA employee Bruno Caparini; Dali Bagrou and Bagrou's U.S.-based company World Mining and Oil Supply (WMO).

The parties "knowingly included materially false information in the contracts to obscure the true end user and end use of the Commodity," the Villone plea agreement said. In October 2017, for example, Villone "drafted a series of materially false responses and other information, such as '[the Commodity] will be buy (sic), delivered, 'installed' literally in United States Atlanta facilities,' and 'no export outside U.S.'"

ONE MORE PRISON SENTENCE IN PDVSA BRIBERY SCHEME

A former procurement officer of Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA), was sentenced to 70 months in prison for conspiracy to obstruct an official proceeding relating to bribes paid by the owner of U.S.-based companies to Venezuelan government officials.

Alfonso Eliezer Gravina Munoz (Gravina) of Katy, Texas, received the sentence Feb. 19, 2020, in Houston U.S. District Court. He pleaded guilty in December 2018 (see *The Export Practitioner*, January 2019, page 14).

Gravina is the 7th individual to be sentenced in Houston court in a larger investigation into bribery at PDVSA. Most recently, Juan Jose Hernandez Comerma of Weston, Fla., was sentenced in January to 48 months in prison and a \$127,000 fine for his role in the scheme to bribe PDVSA purchasing officials (see *The Export Practitioner*, February 2020, page 8).

Gravina previously pleaded guilty to conspiracy to launder money in December 2015. Those charges related to laundering of bribes that Gravina received from two U.S. businessmen, Roberto Rincon and Abraham Shiera. Rincon and Shiera are due to be

sentenced in August.

"Despite knowing that U.S. government authorities were investigating corruption at PDVSA and specifically that... the government was focusing on bribes paid by companies controlled by Co-conspirator 1, Gravina concealed facts about Co-conspirator 1's payment of bribes to PDVSA officials in his interviews with the government," the most recent indictment noted.

"In addition, Gravina informed Co-conspirator 1 that U.S. government authorities were investigating Co-conspirator 1 and informed Co-conspirator 1 about certain facts the U.S. authorities had learned about the

Gravina is the 7th individual to be sentenced in Houston court in a larger investigation into bribery at PDVSA.

methods by which Co-conspirator 1 paid and concealed bribes. This led Co-conspirator 1 to destroy evidence and instruct others to destroy evidence," it added.

SWISS AIRLINE SERVICES PROVIDER SETTLES OFAC SANCTIONS CHARGES

Treasury's Office of Foreign Assets Control (OFAC) might feel some "I told you so." A Swiss transportation services provider agreed Feb. 26, 2020, to pay a civil penalty of almost \$8 million to settle violations of OFAC global terrorism sanctions between April 2013 and February 2018.

Société Internationale de Télécommunications Aéronautiques SCRL (SITA) agreed to pay \$7,829,640 to settle 9,256 apparent violations. SITA did not voluntarily self-disclose the apparent violations.

Specifically, SITA "provided commercial services and software that were subject to U.S. jurisdiction, and benefitted certain SITA member airlines after OFAC designated those airlines as specially designated global terrorists [SDGTs]," the agency said. OFAC identified blocked entities Mahan Air, Syrian Arab Airlines and Caspian Air as SITA member-owners.

"These SDGT airlines may have received

or benefitted from SITA's goods, services, or technology that were subject to United States jurisdiction because they were provided from or through the United States or were U.S.-origin." OFAC said.

"Prior to OFAC's investigation, SITA knew it was providing services to SDGTs and implemented periodic measures to comply with U.S. economic sanctions laws and regulations. For example, at or shortly after the time of the respective SDGT airlines' designation by OFAC, SITA terminated many of the services provided to these airlines that it knew were subject to U.S. jurisdiction," the agency noted.

OFAC Warned Industry of Risk

"This enforcement action highlights the benefits companies operating in high-risk industries can realize by implementing effective, thorough, and on-going risk-based compliance measures, especially when engaging in transactions concerning the aviation industry," it added.

Citing deceptive acts by Iranian airlines and recent enforcement actions, OFAC warned the U.S. civil aviation industry in July 2019 to be especially careful in considering business with Iran or select third countries (see *The Export Practitioner*, August 2019, page 15).

"This settlement takes into account SITA's proactiveness in communicating with and approaching OFAC, our cooperation and the remedial actions we have already taken," a company spokesperson wrote via email to *The Export Practitioner*. "SITA conducts all its business lawfully and in accordance with the highest ethical standards," the company added.

CARDINAL HEALTH PAYS \$8 MILLION TO SETTLE FCPA CHARGES

Ohio-based pharmaceutical company Cardinal Health agreed Feb. 28, 2020, to pay the Securities and Exchange Commission (SEC) more than \$8 million to settle charges it violated the Foreign Corrupt Practices Act (FCPA) related to improper payments made by employees of its former Chinese subsidiary.

In November 2010, Cardinal acquired the Chinese subsidiaries of a pharmaceutical distribution company and rebranded them as "Cardinal China," the SEC order noted. "Cardinal China terminated most of the marketing accounts due in part to known FCPA-related compliance risks associated with channeling the marketing expenses of third parties through its own books and records," it added.

"Despite these risks, until 2016, Cardinal China maintained and operated marketing accounts for a European supplier of non-prescription, over-the-counter dermocosmetic products," the SEC noted.

Firm Approved Marketing Expenses

"In 2016, Cardinal China learned that the marketing employees and the dermocosmetic company had hidden the purpose of certain purported marketing payments, which were redirected to healthcare professionals who provided marketing services to the dermocosmetic company, and to other employees of state-owned retail entities who had influence over purchasing decisions," it added.

"Cardinal China regularly authorized and made payments from the marketing accounts at the direction of the dermocosmetic company without controls sufficient to provide reasonable assurance that the transactions were executed in accordance with management's general or specific authorization, and failed accurately to record on its books and records payments made from the accounts," the order said.

The company divested the Chinese pharmaceutical and medical device distribution business in 2019 and voluntarily disclosed possible violations to Justice and SEC, a company spokesperson wrote via email to *The Export Practitioner*. Justice declined to take any action against Cardinal Health, the company added.

Under the settlement, Cardinal agreed to pay \$5.4 million in disgorgement, \$916,887 in prejudgment interest, and a \$2.5 million civil penalty. The company neither admitted nor denied the SEC charges.

PEACE BILLS COULD BLOCK COMMERCIAL ARMS EXPORTS

As part of a larger package outlining a “Pathway to Peace,” Rep. Ilhan Omar (D-Minn.) Feb. 12, 2020, introduced two bills that could impact commercial export licenses and the administration’s authority to impose economic sanctions.

It remains unclear how these bills would interact with existing country groups and arms embargoes, not to mention whether the bills would get bipartisan support from lawmakers.

The Stop Arming Human Rights Abusers Act (H.R. 5880) would establish “red lines based on internationally recognized gross violations of international human rights and international humanitarian law,” Omar said at an event in Washington.

Countries that cross those lines, as determined by a bipartisan commission, would face prohibitions on “arms sales including those controlled by the Commerce Department,” such as tear gas, as well as other security assistance programs and law enforcement exchanges, she added.

While Omar mentioned Commerce rules, the bill only specifies items under State jurisdiction. “The President shall prohibit the issuance of licenses to export defense articles, defense services, and munitions items, as such terms are defined for purposes of the Arms Export Control Act, to the government of the foreign country or any agent or instrumentality of such government,” the bill says.

Congress Would Need to Approve Sanctions

Another bill in the package, the Congressional Oversight of Sanctions Act (H.R. 5879) would require a joint resolution of Congress to approve sanctions issued under the International Emergency Economic Powers Act (IEEPA), as well as congressional approval to renew existing sanctions.

“If a joint resolution to extend the emergency is not enacted in ... within 60 days after the first day on which either House of Congress is in session following the date of the declaration, the President may not declare a new national emergency based on substantially

similar facts during the 1-year period following such 60-day period,” the bill says.

John Glaser, director of foreign policy studies at the Cato Institute, called the package of bills “a welcome addition to the public discussion on global peace and security.”

Former Deputy National Security Advisor Ben Rhodes agreed, saying the proposal is “an ambitious and comprehensive package that outlines progressive approaches to some of the most important issues facing the United States and our world today.”

BIS RESTRICTS EXPORTS TO RUSSIA, YEMEN

As part of a “comprehensive review,” Bureau of Industry and Security (BIS) Feb. 24, 2020, revised the Export Administration Regulations (EAR) Country Group designations for Russia and Yemen “based on national security and foreign policy concerns, including proliferation-related concerns,” the Federal Register notice said.

Specifically, the rule removed Russia from more favorable treatment under Country Groups A:2 and A:4 and added it to Country Groups D:2 and D:4 and added a presumption of denial for items are controlled for proliferation of chemical and biological weapons, nuclear nonproliferation, or missile technology reasons. Separately, this rule removed Yemen from Country Group B and added it to Country Group D:1.

BIS “is currently undertaking a comprehensive review of all Country Groups in the [EAR] to ensure that they appropriately reflect current U.S. national security and foreign policy, including nonproliferation interests,” the notice said.

“Russia has not been cooperative in allowing BIS to perform pre-license checks or post-shipment verifications related to U.S.-origin goods,” the agency said. In addition, the presumption of denial “further accentuates the seriousness with which the United States takes Russia’s use of a ‘novichok’ nerve agent in the attack against Sergei Skripal and his daughter Yulia Skripal in the United Kingdom” in March 2018.

“The ongoing conflict in Yemen has fostered

international terrorism and instability in the Arabian Peninsula, including the proliferation of small arms, unmanned aerial systems, and missiles,” BIS noted. “There are concerns about the diversion to unauthorized and prohibited end uses and users of U.S.-origin items controlled for national security reasons,” it added.

“As these changes were made to U.S. export controls that are agreed upon at the multilateral level, it will be important to watch whether the EU [European Union] and other jurisdictions that participate in the relevant multilateral bodies will follow,” Steptoe attorneys wrote in a blog post Feb. 26.

LAWSUIT OVER USML TRANSFERS COMES DOWN TO DEADLINE

With the conclusion to the 10-year export control reform effort resting on lawyers’ shoulder, the legal fight over final rules transferring firearms and ammunition from the U.S. Munitions List (USML) to Commerce Control List (CCL) is uncertain just days before the rules are scheduled to go into effect.

At the oral argument Feb. 28 in Seattle U.S. District Court on the preliminary injunction 22 states filed to block the transfers, the judge did not rule from the bench as expected. In his ruling that must come before the March 9 deadline, based on his questions, it seems likely he will not dismiss the state attorneys general’s (AGs) case on jurisdictional grounds.

Observers find it likely that the judge will enter a preliminary injunction in favor of the states but limit it to just new language controlling software and technology for 3D printing. The judge could reject the state AGs argument that he must enjoin the rules in their entirety, even though they only complain

about the dissemination of 3D printed firearms technology.

The states announced their court action the same day as the rules’ publication in January and formally filed their motion Feb. 6 (see *The Export Practitioner*, February 2020, page 4). Judge Robert Lasnik previously ruled against the administration’s decision to allow internet distribution of data files for 3D-printed guns.

The day before the oral argument, the states replied to the government’s opposition to the motion. “The parties agree 3D-printed guns are a national security threat but diverge on whether the Final Rules, by their plain text, will effectively deregulate those items notwithstanding that threat. The Government seeks to evade a ruling on this legal question by raising numerous procedural and standing issues that were correctly rejected by Judge Lasnik in the prior related case,” they wrote Feb. 27.

“As for the substance of the Final Rules, the Government is incorrect that they ‘do not deregulate the transferred items.’ Their arguments that the States ‘misinterpret[ed]’ the rules are based on their own atextual, informal, and vague ‘interpretations’ advanced for the first time here, which are not entitled to any deference and will not prevent irreparable harm to the States,” the state AGs added.

The National Shooting Sports Foundation (NSSF) and Washington gunsmith Fredric’s Arms & Smiths, LLC also filed a motion opposing the lawsuit. “The attorneys general target only the export reforms treatment of technical data related to 3D-printed firearms, yet seek an injunction against, or to vacate altogether, the reforms that make American businesses more competitive. This is an unacceptable overreach by states to dictate federal export policy,” Lawrence Keane, NSSF senior VP and general counsel, said in a statement.

TRADE SANCTIONS

U.S., SWITZERLAND FINALIZE IRAN TRADE CHANNEL

U.S. and Swiss governments Feb. 27 finalized the terms of the Swiss Humanitarian Trade Arrangement (SHTA), which will “facilitate the flow of humanitarian goods to the Iranian people while safeguarding against the Iranian regime’s diversion of humanitarian trade for malign purposes,” Treasury said in announcing the channel.

In a January press conference, Treasury Secretary Steven Mnuchin warned European allies against using the INSTEX barter mechanism, which could be subject to secondary sanctions, in favor of the approved Swiss framework for humanitarian transactions (see *The Export Practitioner*, February 2020, page 16).

“The SHTA presents a voluntary option for facilitating payment for exports of agricultural commodities, food, medicine, and medical devices to Iran in a manner that ensures the upmost transparency. Under the SHTA, participating financial institutions commit to conducting enhanced due diligence to ensure that humanitarian goods reach the people of Iran and are not misused by the Iranian regime,” Treasury said.

At the same time, Treasury issued General License (GL) 8 authorizing certain humanitarian-related transactions involving the Central Bank of Iran (CBI) along with several Frequently Asked Question (FAQs).

“Non-U.S. persons do not risk exposure under U.S. secondary sanctions for engaging in humanitarian-related transactions or activities involving the CBI that would be authorized under GL 8 if engaged in by a U.S. person, provided such transactions and activities do not involve any person designated in connection with Iran’s support for international terrorism or WMD proliferation, other than the CBI,” the department explained.

A day earlier, the remaining members of the Joint Commission of the Joint Comprehensive Plan of Action (JCPOA) met in Vienna. Despite Mnuchin’s warning, “participants welcomed positive developments in the processing of first transactions by INSTEX and the addition of four European countries as new shareholders, with more to follow, while acknowledging the importance of further strengthening the instrument,” read the chair’s statement following the meeting Feb. 26.

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HUAWEI LEGAL FIGHTS: WIN SOME, LOSE SOME

In a case of give with one hand and take with the other, several legal fights between the administration and Chinese telecom firm Huawei were either dismissed or escalated. For one, the Federal Communications Commission (FCC) began collecting information from telecommunications carriers receiving Universal Service Funds (USF) on the use of Huawei and ZTE equipment and services in their networks.

In another, a judge in Sherman, Texas, U.S. District Court dismissed on almost all grounds Huawei's complaint against the constitutionality of the 2019 National Defense Authorization Act (NDAA) regarding its exclusion of Huawei and ZTE products.

Finally, the Bureau of Industry and Security (BIS) extended a narrow and temporary General License (GL) authorizing some transactions with Huawei through April 1. On the same day, a 16-count superseding indictment was filed in Brooklyn U.S. District Court charging the Chinese firm and several subsidiaries with racketeering and conspiracy to steal trade secrets.

"We are moving forward quickly to identify where equipment and services from these suppliers are embedded in our communications networks and, where they do have a foothold, to be in a position to help remove them," said FCC Chairman Ajit Pai in a statement Feb. 26, 2020.

The commission voted in November to block U.S. rural wireless carriers from accessing USF if they use Chinese services and equipment and require carriers to remove and replace equipment using ZTE and Huawei. In turn, Huawei filed a petition with the Fifth Circuit Court in New Orleans in December seeking to overturn the order (see *The Export Practitioner*, January 2020, page 4).

District Judge Dismisses NDAA Complaint

Section 889 of the 2019 NDAA prohibits the Defense secretary from procuring or obtaining, as well as entering into, extending or renewing a contract with an entity that uses telecom equipment or services produced by the two Chinese companies.

"Contracting with the federal government

is a privilege, not a constitutionally guaranteed right—at least not as far as this Court is aware. Despite Section 889's particularized nature and its impact on Huawei's current and future contractual relationships, it is rationally related to a legitimate congressional purpose and thus does not violate Huawei's due process rights," District Judge Amos Mazzant wrote Feb. 18.

"The statute does not directly impact any of Huawei's private contractual relationships; rather, it limits who the federal government may contract with and what the subject of those contracts may be. Any effect the statute may have on Huawei's contractual relationships is 'collateral or incidental' to the statute's primary restrictions," he added.

"Contrary to Huawei's argument, the prohibition on Huawei products is not permanent. In the event that security threats posed by Huawei subside, the DNI [director of national intelligence] may waive the prohibition," Mazzant wrote.

In a motion to dismiss filed in July, the U.S. defended the constitutionality of the 2019 NDAA. Huawei requested a summary judgment in a motion filed in May.

As Firm Faces New Charges, BIS Extends General License

"The 45-day extension is necessary to allow existing telecommunication providers—particularly those in rural U.S. communities—the ability to continue to temporarily and securely operate existing networks while they identify alternatives to Huawei for future operation," Commerce said in a press release Feb. 13. The formal notice was published in the Federal Register Feb. 18. BIS previously extended the GL in November.

The misappropriated intellectual property alleged in the indictment included trade secret information and copyrighted works, such as source code and user manuals for internet routers, antenna technology, robot testing technology, a base station designed for use in wireless network, a networking device, and architecture for memory hardware. The six unidentified U.S. technology companies are based in Northern California, Illinois, New York and Washington state.

Also included in the newest indictment are further details related to the company's

involvement in business and technology projects in sanctioned countries, such as Iran and North Korea.

“Huawei representatives and employees repeatedly denied to some of the Victim Institutions that Huawei was involved in numerous projects in North Korea. For example, in or about March 2013, Huawei employees told representatives of Financial Institution 4 that, in sum and substance, Huawei had no business in North Korea. These representations were false,” the indictment noted.

“Huawei and Huawei Device USA made efforts to move witnesses with knowledge about Huawei’s Iran-based business to the PRC, and beyond the jurisdiction of the U.S. government, and to destroy and conceal evidence in the United States of Huawei’s Iran-based business. By impeding the government’s investigation, Huawei and Huawei Device USA sought to avoid criminal prosecution with respect to Huawei’s Iran-based activities, which would subject Huawei and its U.S. affiliates and subsidiaries, including Huawei Device USA, to the threat of economic harm,” it added.

In a statement, Huawei called the charges “political persecution, plain and simple. These charges do not reveal anything new. They are based largely on resolved civil disputes from the last 20 years that have been previously settled, litigated, and in some cases, rejected by federal judges and juries.”

“None of our products or technologies have been developed through the theft of trade secrets. Huawei’s development is the result of our huge investment in R&D and the hard work of our employees over the past three decades. We rely on the trust and support that our customers, suppliers, and partners place in us,” the company added.

“The Chinese government encourages Chinese enterprises to conduct overseas business cooperation in accordance with local laws, the market principle and international rules. The U.S. has been misusing its national power to oppress specific Chinese companies with no proof of any wrongdoing,” Chinese Foreign Ministry Spokesperson Geng Shuang said in a press briefing Feb. 14.

U.S. Needs to Join Forces Against Huawei, Barr Says

If there were any questions about the relationship between Beijing and Washington, since the Trump administration came to office, it was all put to rest by Attorney General Bill Barr in remarks at an event in Washington Feb. 6.

Barr took a broad historical perspective on the ongoing disputes with China, but he had practical advice for U.S. companies to protect themselves against Huawei and other Chinese security threats.

For one, Barr argued for deploying export controls and the Committee on Foreign Investment in the U.S. (CFIUS) to stop malevolent players. “Outside cyberspace, defendants pose as U.S. customers to avoid export controls and recruit U.S. employees or co-opt insiders to steal trade secrets,” he argued.

“At academic and other research institutions, China uses talent programs to encourage the theft of intellectual property. And finally, China complements its plainly illicit activities with facially legal but predatory behavior: the acquisition of U.S. companies and other investments in the United States,” Barr added.

“In 2015, the Chinese leadership launched its “Made in China 2025 plan,” -- a sustained, highly coordinated campaign to replace the United States as the dominant technological superpower. The dictatorship has mobilized all elements of Chinese society, all government, all corporations, all academia, and all of its industrious people, to execute seamlessly on an ambitious plan to dominate the core technologies of the future,” the attorney general said.

On the 5G front, he said the U.S. needs to move urgently, because China is ahead of the game. “China has built up a lead in 5G, capturing 40 percent of the global infrastructure market. And for the first time in history, the United States is not leading the next technological era. It has been estimated that the industrial internet powered by 5G could generate new economic opportunities in the range of \$23 trillion by 2025,” Barr argued.

“If China establishes sole dominance over 5G, it will be able to dominate the opportunities

arising from a stunning range of emerging technologies that will be dependent on and interwoven with the 5G platform,” he added.

Moreover, he said, there is a five-year window before it’s all over. “Within the next five years, 5G global territory and application dominance will be determined. The question is whether, within this window, the United States and our allies can mount sufficient competition to Huawei to retain and capture enough market share to sustain the kind of long-term and robust competitive position necessary to avoid surrendering dominance to China,” Barr cautioned.

A recent decision by France’s largest telecom company, Orange, could be the sweet music Barr wants to hear (see *The Export Practitioner*, February 2020, page 22). Orange chose European, not Chinese companies for its 5G rollout, specifically Nokia and Ericsson.

Barr pleaded for the U.S. to join forces with these players that can give Huawei a run for its money. “While much has to be done, it is imperative to make two decisions right away. First, we have to deploy the spectrum necessary for a robust 5G system in the United States. We haven’t done this,” Barr warned.

The second is to recognize that “there are only two companies that can compete with Huawei right now: Nokia and Ericsson. They have the reliable products. They can guarantee performance. They have proven successful in managing customer migration from 4G to 5G,” he said.

“The main concern about these suppliers is that they have neither Huawei’s scale nor the backing of a powerful country with a large embedded market, like China. Now, there have been some proposals that these concerns could be met by the United States aligning itself with Nokia and/or Ericsson through American ownership of a controlling stake, either directly or through a consortium of private American and allied companies,” Barr argued.

MORE COMPANIES SETTLE PRIVACY SHIELD VIOLATIONS

Four more companies have settled the Federal Trade Commission (FTC) charges of making false claims of participating in the European Union (EU)-U.S. Privacy Shield

framework. The settlements involve mobile services provider Click Labs Inc., performance development company Incentive Services, disaster recovery firm Global Data Vault and managed services provider TDARX.

Under the proposed settlements, “all four companies are prohibited from misrepresenting their participation in the EU-U.S. Privacy Shield framework, as well as any other privacy or data security program sponsored by any government or any self-regulatory or standard-setting organization,” the agency said Jan. 29. Five other companies reached separate settlements with the agency in September (see *The Export Practitioner*, October 2019, page 19).

In addition to the false claims, Global Data Vault and TDARX “also substantively violated the Privacy Shield principles by failing to verify annually that statements about their Privacy Shield practices were accurate and failing to affirm that they would continue to apply Privacy Shield protections to personal information collected while participating in the program,” the FTC noted.

WHITE HOUSE SUBMITS BIS, STATE BUDGET TO CONGRESS

In its proposed fiscal year (FY) 2021 budget released Feb. 11, 2020, the administration gave a little and took a little. While the budget is not binding until Congress approves it, which looks unlikely, the numbers reveal the White House policy priorities. Several House members already have said it is a non-starter, as it has been for the last three years, because of cuts to social programs and a Democratic majority.

For one, Commerce would receive \$7.9 billion, a \$7.3 billion (48 percent) decrease over 2020 enacted levels. The budget requests \$137.7 million for the Bureau of Industry and Security (BIS). “This funding will augment the Bureau’s efforts to curtail illegal exports of sensitive products and technologies while facilitating secure trade with U.S. allies and close partners,” Commerce noted. That is \$10 million more than the 2020 budget request.

“Supporting the Presidential, Secretarial, and Administration priorities and Export Control Reform Act of 2018 (ECRA) implementation to advance national security and overall economic competitiveness and enhance overall export

compliance efforts. BIS requests five positions and \$1.046 million in FY 2021, to continue our efforts to identify and review emerging and foundational technologies (as directed in ECRA Sec. 1758), and exercise jurisdiction over new sub-sets of technologies,” Commerce said in its congressional budget submission.

“To align BIS’s enforcement mission with the Department of Justice’s ‘China Initiative’ and address this whole-of-China government effort, BIS requests eight positions and \$2.642 million for new analytical and law enforcement tools, analysts, and agents to protect U.S. technology from misappropriation and punish violators that seek to acquire such technology contrary to U.S. national security and foreign policy interests,” it added.

“To combat advancements in technology, BIS requests three positions and \$1.312 million to acquire specialized tools and expertise in forensic analysis for such things as trace evidence, key photographic images, key financial records, relevant phone numbers, and associated names,” Commerce said.

The budget requests nearly \$41 billion in base funding for State and USAID, a \$11 billion (21 percent) decrease from the 2020 enacted level. Like in previous years, the budget “proposes to eliminate funding for several independent agencies, including for the U.S. Trade and Development Agency (USTDA), as part of the administration’s continued effort to move the nation towards fiscal responsibility, to redefine the proper role of the federal government, to prioritize rebuilding the military and to make critical investments in the Nation’s security,” the State budget justification noted.

END NOTES

EX-NOMINATIONS: President Feb. 12, 2020, withdrew nomination of Jessie Liu, former U.S. attorney for D.C., to be Treasury under secretary for terrorism and financial crimes, same day as scheduled Senate Banking Committee hearing. White House nominated Liu in January, replacing Sigal Mandelker. Liu previously served as Treasury deputy general counsel and in Justice National Security Division.

ACTING NO MORE: Two years later, DDTC Chief Mike Miller has been named to post in

permanent capacity, agency announced Feb. 14. Miller was named acting deputy assistant secretary in December 2017, temporarily replacing Brian Nilsson, who retired the day before (see *The Export Practitioner*, January 2018, page 4). Prior to DDTC post, Miller was director for regional security and arms transfers (RSAT) in Political-Military Affairs Bureau.

NEW TOOL: DDTC took step closer to one of four singles imagined under export control reform Feb. 18 when agency released registration and licensing applications on DECCS platform. “DECCS will replace DETRA, DTRADE, EFS, ELLIE, and MARY, providing users access to a number of DDTC business applications through a single, cloud-based portal,” agency said. DDTC launched new collection format for Commodity Jurisdiction form DS-4076 on DECCS portal in December (see *The Export Practitioner*, January 2020, page 21). <https://www.pmdtc.state.gov/deccs>

MALI: Treasury’s Office of Foreign Assets Control (OFAC) Feb. 6 issued regulations to implement July 2019 Executive Order (EO) 13882 regarding Mali. Agency “intends to supplement this part 555 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy,” it said. OFAC in December designated four Malian individuals for “threatening the peace, security, or stability of Mali” and one individual for “obstructing humanitarian assistance” (see *The Export Practitioner*, January 2020, page 21).

VENEZUELA: OFAC Feb. 18 designated Rosneft Trading S.A., Swiss-incorporated, Russian-controlled oil brokerage firm, and board chair and president Didier Casimiro, for operating in Venezuelan oil sector. “Casimiro has held meetings with Petroleos de Venezuela (PdVSA) officials that have involved assessing projects and opportunities to strengthen strategic relationships for Rosneft Trading S.A. with PdVSA,” OFAC said. At same time, OFAC issued General License (GL) 36 authorizing certain activities necessary to wind-down of Rosneft transactions until May 20.

MORE VENEZUELA: OFAC Feb. 7 designated Venezuelan state-owned airline Consorcio

Venezolano de Industrias Aeronauticas y Servicios Aereos, S.A. (CONVIASA) and dozens of CONVIASA aircraft as blocked property of Venezuelan government. “The illegitimate Maduro regime relies on the Venezuelan state-owned airline CONVIASA to shuttle corrupt regime officials around the world to fuel support for its anti-democratic efforts,” said Treasury Secretary Steven Mnuchin. OFAC in January identified 15 aircraft as blocked property of PdVSA (see *The Export Practitioner*, February 2020, page 26).

REPORTING: OFAC Feb. 20 published two new FAQs clarifying previous changes to Reporting, Procedures and Penalties Regulations (RPPR). “OFAC expects all U.S. persons and persons otherwise subject to U.S. jurisdiction, including parties that are not U.S. financial institutions, to comply fully with all requirements of this rule, including the expanded requirement ... to provide reports to OFAC regarding rejected transactions within 10 business days of the rejected transaction,” new FAQ said. “OFAC would expect at a minimum that all rejected transaction reports include required information

that is applicable in all reject scenarios (e.g., information regarding the submitter of the report, the date the transaction was rejected, the legal authority or authorities under which the transaction was rejected, and any relevant documentation received in connection with the transaction),” it added. Agency revised RPPR in June 2019 (see *The Export Practitioner*, July 2019, page 21).

DEFENSE SERVICES: DDTTC Feb. 19 posted two new FAQs, adding to previous guidance on registration and authorization requirements for U.S. persons providing defense services abroad (see *The Export Practitioner*, February 2020, page 14). On “safe harbor” period: “U.S. persons who believe they may have been furnishing defense services without authorization, and request authorization for current or future defense services, may disclose their activities in conjunction with their request for authorization. Such disclosures will be treated as an initial notification,” FAQ said. “In such cases, the applicant may proceed with the described activities on a provisional basis unless otherwise notified by DDTTC,” agency added.

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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?

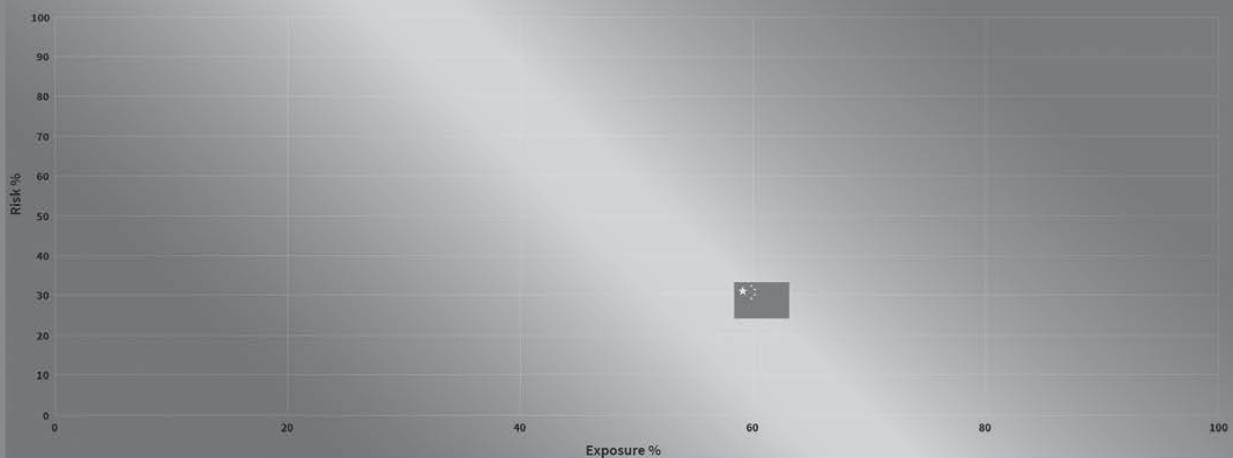
是否有中国出口控制下的关于出口分类的企业政策文件?

Yes No I don't know N/A

shì fǒu yǒu zhōng guó chū kǒu guǎn zhì xià de guān yú chū kǒu fēn lèi de qǐ yè zhèng cè?

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FCPA

Assist clients with FCPA compliance and provide advice regarding the scope, meaning, and application of the FCPA and other anti-corruption laws.



INDUSTRIAL SECURITY

Assist clients with industrial security matters in the context of cross-border corporate acquisitions involving the defense and high-tech industries. We have experience with filings with the Committee on Foreign Investment in the U.S. (CFIUS), which is responsible for regulating foreign direct investment in the United States. We also advise companies on Foreign Ownership, Control, or Influence (FOCI) mitigation and provide guidance on how transactions might be structured to best anticipate FOCI concerns.

MEET THE TEAM

- ✓ Attorneys and Trade Advisors with impeccable credentials, specialized knowledge, and a wealth of experience.
- ✓ Our attorneys adhere to the highest professional standards and have achieved local and international preeminence in their practice areas.
- ✓ Widely published and sought after to participate in international trade discussions.
- ✓ Recognized by organizations like Who's Who Legal, Chambers and Partners, Super Lawyers, and Women in Compliance Awards.
- ✓ Members of the International Lawyer Network, a global law firm network providing our clients with access to legal services in 69 countries on six continents.

