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Concessions to Allies Fail to Quell EV Flap

New guidance issued by the US reaffirms that **EU companies can benefit from the Commercial Clean Vehicle Credit** scheme under the US Inflation Reduction Act, according to the European Commission, providing modest relief for the grievance imposed by the North American assembly requirement for passenger vehicles.

Under the US guidance, Commercial Clean Vehicle Credits will be available to EU companies without requiring changes to established or foreseen business models of EU producers. The Clean Vehicle Credits of the Inflation Reduction Act remains of concern to the EU, as it contains discriminatory provisions which de facto exclude EU companies from benefiting.

Valdis Dombrovkis, EU Trade commissioner, told the *Financial Times* that American subsidies like those in the IRA run the risk of driving the EU to entertain "overtures and propositions" from China in response. Dombrovkis told the FT "We welcome this important first step, which is the outcome of our fruitful discussions with the US. EU companies should now be able to take advantage of the US Commercial Clean Vehicle credits. However, we will continue talks with our joint tast force regarding other aspects of the IRA where we have important concerns."

In a whitepaper issued December 29th, the Treasury and the IRS announced their intent to issue proposed guidance regarding the critical mineral and battery component requirements in March of 2023. Those new rules could reduce the credit amount that buyers of some vehicles may be eligible for. Until the agency does that, new vehicles won't have to meet those requirements to qualify for a full $7,500 tax credit.

Mining booster Sen. Joe Manchin (D-WV) slammed the delay in issuing the battery content requirements. "The information released today from the Treasury Department outlining how they will be implementing the commercial and consumer EV tax credits bends to the desires of the companies looking for loopholes and is clearly inconsistent with the intent of the law," he said in a statement.

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Commerce Funded – Trade Boosted $105 Million to $814 Million

The omnibus spending bill signed last week by President Biden allocates the department $11.2 billion in net discretionary funding, an increase of $1.3 billion above the previous fiscal year, and an additional $1.9 billion in emergency relief funding to respond to recent natural disasters, and fund scientific and environmental research and other nondefense related programs.

$625 million, $55 million above fiscal year 2022, for the International Trade Administration, to help create jobs here at home by increasing U.S. exports, and continued funding for International Trade Administration enforcement and compliance to protect U.S. industries against unfair foreign trade practices.

$191 million, an increase of $50 million above fiscal year 2022, for the Bureau of Industry and Security to advance U.S. national security through effective export controls.

OFAC / Russian Oil Guidance.

OFAC issued Preliminary Guidance on Implementation of the Price Cap Policy for Petroleum Products of Russian Federation Origin, giving shippers a window to ship before complying. Russian petroleum products loaded onto a vessel prior to February 5, 2023, and unloaded at the port of destination prior to April 1, 2023, will not be subject to the petroleum products determination.

During the specified period U.S. service providers can continue to provide covered services with respect to Russian petroleum products purchased at any price.

Once Russian petroleum products or Russian oil are substantially transformed (e.g., subjected to any of the refining processes listed) in a jurisdiction other than the Russian Federation, they are no longer considered to be of Russian Federation origin, and thus the price cap no longer applies. OFAC does not consider blending operations, to be substantial transformation. U.S. persons may reasonably rely upon a certificate of origin but should exercise caution if they have reason to believe such certificate has been falsified or is otherwise erroneous.

ExIm / Borneo Refinery Ask Doubled

The Export-Import Bank of the US announced that September's ask for $49 million long-term loan guarantee to support the export of approximately $36 million worth of U.S. engineering services and refining equipment has been doubled. The application is now for a $99.7 million direct loan to support the export of approximately $64 million in U.S. equipment and services. There has been no change in the expected output of the facility.

The Balikpapan Refinery Expansion is being carried out by the refinery's owner, Indonesian state-owned oil and natural gas producer PT Pertamina (Persero). The project is part of the Indonesian government's Refinery Development Master Plan program to revamp and upgrade five refineries in the country. Pertamina signed a $1.5bn loan agreement with the South Korean Eximbank to finance the Balikpapan refinery expansion in July 2019.

***Nikkei Asia* reports Pertamina has been struggling to find international partners to jointly invest in projects aimed at upgrading Indonesia's aging refineries.** Saudi Aramco pulled out of an upgrade in 2020 at a refinery in Central Java province, after signing a joint venture agreement with Pertamina in 2016. In October 2022 Pertamina announced plans to invest up to $50 billion to build and expand refineries this year, with nearly half ($24 Billion) going to a greenfield project in East Java with Russian state energy company Rosneft.

American engineering consultant Bechtel International carried out the front-end engineering design studies for the Balikpapan project, while Korea's Hyundai Engineering and Australian engineering consultant WorleyParsons are providing engineering, procurement, and construction (EPC) services for the expansion. Suppliers include France's Axens Technologies and Air Liquide for process technologies, UK-based calibration instrument supplier WIKA for site development and construction, and Spain-based oil and gas company Novargi to deliver the waste heat recovery. In 2020 Siemens was awarded the contract to supply compression and power generation equipment.

OFAC / Danish Freezer Maker Iced

OFAC announced a settlement with Danfoss A/S. a Danish refrigeration manufacturer, with the firm agreeing to pay $4.4 million to settle its potential civil liability for 225 apparent violations of the Iranian Transactions and Sanctions Regulations, the Syrian Sanctions Regulations, and the Sudanese Sanctions Regulations.

The apparent violations occurred when Danfoss FZCO, Danfoss's wholly owned United Arab Emirates (UAE)-based subsidiary, directed customers in Iran, Syria, and Sudan to make payments to its bank account at the UAE branch of a U.S. financial institution. The settlement amount reflects OFAC's determination that Danfoss's apparent violations were non-egregious and not voluntarily self-disclosed. The statutory civil monetary penalty applicable ranged from a base of $21,899,000 to a maximum of $71,383,826.

Aggravating factors included failure to exercise a due degree of caution or care in complying with U.S. sanctions requirements when it used its U.S. Branch Account to receive payments from, and make payments to, customers in sanctioned jurisdictions. Although Danfoss FZCO did not recognize warning signs that such transactions were prohibited, OFAC found no evidence that Danfoss willfully disregarded the relevant prohibitions. By accepting multiple payments from third parties in non-sanctioned jurisdictions, Danfoss FZCO prevented the foreign branch of a U.S. financial institution from appropriately screening and rejecting these transactions; it also enabled businesses in Iran, Syria, and Sudan to engage in international commerce through the U.S. financial system.

Mitigating factors included Danfoss's quick action to ascertain the root causes of the conduct at issue. It also adopted new and more effective internal controls and procedures to prevent a recurrence of the apparent violations, including ceasing doing business entirely in Iran, Syria, and Sudan; new procedures for monitoring and documenting payments to its U.S. bank accounts to identify true originators and reject any payments that originate from a sanctioned jurisdiction; and updating its Export Control Standards and its Export Control Manual to reinforce its employees' understanding of U.S. export controls and sanctions and to help employees identify sanctions compliance red flags.

CBP / CAATSA Action on North Korean Labor

U.S. Customs and Border Protection (CBP) began detaining merchandise produced or manufactured by three importers at all U.S. ports of entry on Dec. 5, 2022. This enforcement action is the result of a CBP investigation indicating that these companies use North Korean labor in their supply chains in violation of the Countering America's Adversaries Through Sanctions Act (CAATSA).

Two of the companies, Jingde Trading Ltd. and Zhejiang Sunrise Garment Group Co. Ltd are involved in Auto Parts and T-Shirts, respectively. Specific products of the third firm, Rixin Foods. Ltd could not be identified.

CAATSA prohibits the entry of goods, wares, and articles mined, produced, or manufactured wholly or in party by North Korean nationals or North Korean citizens anywhere in the world, unless clear and convincing evidence is provided that such goods were not made with convict labor, forced labor, or indentured labor under penal sanctions.

CBP will detain merchandise from these entities at all U.S. ports of entry unless there is clear and convincing evidence that forced labor was not present at any stage of the production process. Evidence must be provided within 30 days of notice of detention. If the importer fails to provide clear and convincing evidence within this timeframe, the merchandise may be subject to seizure and forfeiture.

"CBP is committed to keeping America's supply chains free of goods produced with forced labor and to eliminating this horrific practice," said CBP Office of Trade Executive Assistant Commissioner AnnMarie R. Highsmith. "North Korea's forced labor system operates both domestically and internationally and supports the North Korean Government's weapons of mass destruction and ballistic missile programs, and it is also a major human rights violation. Legally and morally, we cannot allow these goods into our commerce."

** Briefs ***

Coming Clean Pays for Safran in China Case. The US Justice Department declined prosecution of French aerospace and defense conglomerate Safran, S.A. for a multi-year bribery scheme to obtain lucrative train lavatory contracts with the Chinese Government. Declination was based on Safran's timely and voluntary self-disclosure; proactive cooperation; timely and full remediation, including efforts to enhance its anti-corruption and compliance program, and other factors, including that Safran was successor in interest to its acquired subsidiaries – the misconduct had occurred prior to their acquisition by Safran. Safran agreed to disgorge $17 million of profits associated with the contracts, [Declination Letter]

Commerce / Penalties Adjustments. The civil monetary penalties provided by law within the jurisdiction of the Department of Commerce, are adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 Consumer prices were us 7.7 percent over year ended October 2022. Adjustments ranged from:

> **Export Controls Act of 2018,** violation, maximum from $328,121 to $353,534.
> **Chemical Weapons Convention** Implementation Act, violation, maximum from $8,433 to $9,086.
> **South Pacific Tuna Act of 1988**, violation, maximum from $575,266 to $619,820. [FR 2022-28363]

Auto Supply Chain and Forced Labor are surveyed in a recent report by Sheffield Hallam University. Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region illustrates the rise of Chinese auto parts industry, one fourth of the exports of which go to US plants. The report contains extensive documentation of labor transfers, profiles of individual companies, and explanations of the development of relevant industries in the Uyghur Region. Accompanying the report, researchers published a website permitting users to evaluate the potential forced labor content of their preferred automotive brand.

Burkina Faso / AGOA terminated The White house terminated Ouagadougou's designation as a beneficiary sub-Saharan African country for purposes of section 506A of the Trade Act (African Growth and Opportunity Act effective January 1, 2023. The move was originally announced November 2. The decision follows two coups that shook the Sahel nation amidst a seven-year Islamist insurgency that has cost thousands of lives and forced close to 2 million people from their homes. More than a third of national territory remains outside government control. Burkina Faso is a landlocked country in West Africa with a population of 20,321,378.

OFAC/ Syria Treasury removed the remaining designations on Swiss Oil Trader Halis Betkas. In December 2014 , Treasury designated Switzerland-based Rixo International Trading Ltd and Bluemarine SA, as well as Bektas, an executive of both companies for acting for or on behalf of the Government of Syria, and the Syrian regime's procurement of specialty fuels and base oil used in its military campaign against the Syrian people. In March 2020 the designations on Bektas' other firms were lifted.

*** Calendar ***

DDTC Webinar: U.S. Export Control Seminar for Australian, Canadian, and UK Government, Industry, and University Communities Please join the U.S. Departments of State, Commerce, and Defense for a free virtual seminar on U.S. export controls. The seminar will cover topics related to the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), and Foreign Military Sales (FMS) specifically tailored to Australian, Canadian, and UK government, industry, and university communities. There will be two sessions. **The Canada and UK session runs January 23 – 26, 2023. The Australia session runs February 6 – 9, 2023 (D.C. time) / February 7 – 10, 2023 (Canberra time).** Click here for tentative agendas: Canada & UK seminar, Australia seminar.

To register for this event, please email the following information to the U.S. Department of State at DDTCRSVP@state.gov: Registration deadline for the Canada and UK seminar is January 17, 2023. Registration deadline for the Australia seminar is January 30, 2023. Each seminar session is limited to the first 900 registrants.

2023 Washington International Trade Conference, sponsored by Washington International Trade Association (WITA) virtually on Zoom, Monday, February 13, and Hybrid, Tuesday, February 14. [Registration]

ITC Blotter :

Gas Powered Pressure Washers from China and Vietnam	701-TA-684 and 731-TA-1597-1598 (Preliminary)	Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations	Dec 30, 2022
Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, South Korea, and Switzerland	701-TA-576-577 and 731-TA-1362-1367 (Review)	Institution of Five-Year Reviews	Dec 27, 2022
Circular Welded Pipe and Tube from Brazil, India, Mexico, South Korea, Taiwan, Thailand, and Turkey	701-TA-253 and 731-TA-132, 252, 271, 273, 532-534, and 536 (Fifth Review)	Institution of Five-Year Reviews	Dec 27, 2022
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Germany	731-TA-709 (Fifth Review)	Institution of a Five-Year Review	Dec 27, 2022
Emulsion Styrene-Butadiene Rubber from Brazil, Mexico, Poland, and South Korea	731-TA-1334-1337 (Review)	Scheduling of Full Five-Year Reviews	Dec 22, 2022
Steel Nails from the United Arab Emirates	731-TA-1185 (Second Review)	Commission Determination to Conduct a Full Five-Year Review	Dec 22, 2022

Dear Reader,

The Washington Tariff and Trade Letter and her sister publication The Export Practitioner will be getting a makeover after forty years.

We hope you continue to find our material useful for your work, and we thank you for your readership.

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