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OFAC Rewrites Cyber Sanctions Rule

Treasury's Office of Foreign Assets Control (OFAC) is amending the Cyber-Related Sanctions Regulations, reissuing them in their entirety. This [final rule](#) replaces the regulations that were published in abbreviated form on December 31, 2015, and includes additional interpretive guidance and definitions, general licenses, and other regulatory provisions.

Originally issued April 1, 2015 under E.O. 13694, Treasury has authority to block property of any person determined be responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located outside the United States that are likely to result in, or have contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States.

Cyber-Related CAATSA Provisions – The Countering America's Adversaries Through Sanctions Act (CAATSA), established new sanctions authorities and exceptions, in addition to amending, modifying, or otherwise affecting certain Ukraine-related executive actions. Title II of CAATSA required the imposition of sanctions with respect to, among others, activities of the Russian Federation that undermine cybersecurity and persons who knowingly provide financial services in support of activities that undermine cybersecurity.

OFAC is incorporating the prohibitions in section 224(a)(1) of CAATSA, as well as the exceptions listed in section 236 of CAATSA, into the Regulations. OFAC has already implemented section 10 of SSIDES, as amended by section 228 of CAATSA, in 31 CFR part 589. OFAC anticipates incorporating the menu-based provisions of section 224(a)(2) of CAATSA into 31 CFR chapter V at a later date.

Section 578.204 of subpart B provides that all expenses incident to the maintenance of blocked tangible property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked funds, unless otherwise authorized. The section further provides that **blocked property may be sold or liquidated** and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

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www.wttonline.com

Editor: Frank Ruffing +1.703.283.5220. fruffing@traderegs.com

New § 578.405 explains that the prohibition on transactions with blocked persons in § 578.201 applies to **services performed by U.S. persons on behalf of a person whose property and interests in property are blocked**, as well as to services received by U.S. persons where the service is performed by, or at the direction of, a person whose property and interests in property are blocked. OFAC is redesignating the authorization for payments for legal services from funds originating outside the United States, and redesignating the authorization for emergency medical services.

OFAC is adding three new general licenses to the Regulations: a general license authorizing the investment and reinvestment of certain, a general license authorizing the official business of the U.S. government, and a general license authorizing certain official business of international entities and organizations. General licenses and statements of licensing policy relating to this part also may be available through the **Sanctions Related to Significant Malicious Cyber-Enabled Activities** page on OFAC's [website](http://www.treas.gov/ofac): www.treas.gov/ofac.

New BIS Rule to Aid 5G Standards Efforts

Treasury's The Bureau of Industry and Security (BIS) has issued an interim final [rule](#) revising the Export Administration Regulations (EAR) to authorize the release of certain technology and software in the context of standards setting and development in standards organizations.

The changes made in this interim final rule address concerns from U.S. industry and other stakeholders about whether BIS licenses are required to release low-level technology for legitimate standards activities to parties on the Entity List stemming from the listing of Huawei and a number of its non-U.S. affiliates.

"U.S. stakeholders need to be fully engaged in international standards organizations, particularly where the critical but sometimes invisible standards that they set have important national security as well as commercial implications," said Under Secretary of Commerce for Industry and Security Alan Estevez. "Today's rule provides much needed clarification to U.S. industry and other organizations that will allow for continued U.S. leadership in these critical bodies."

The final rule amends the EAR to revise the standards authorization by:

- Clarifying the scope and application of standards activities covered
- Including EAR99 and Anti-Terrorism-only controlled "software" in the scope
- Authorizing the release of specified "software" and "technology" when specifically for the "development," "production," and "use" of cryptographic functionality; and
- Applying the scope of the authorization to all entities listed on the Entity List.

Material changes were made to Part 744 Control Policy: End-User and End-Use Based, and Part 772-Definitions of Terms. BIS is requesting comment on the revisions promulgated in this interim final rule.

Indo-Pacific Talks Produce Agreements to Talk

Which was the desired outcome. Unlike a conventional trade agreement, IPEF does not involve tariff cuts and other trade liberalization measures, leading critics to question the initiative's value to participating countries. On Thursday the U.S. announced the launch of an education and training program on digital skills targeting women and girls, in response to skepticism on whether IPEF, without market access and tariff liberalization, can deliver tangible benefits.

Pressure from the hill for involvement in negotiations continues to mount, with Rep. Rosa DeLauro (D-Conn.) and 36 colleagues sending a [letter](#) to the Administration noting "Robust congressional and stakeholder consultation is necessary for crafting durable trade policy."

At the conclusion of the Senior Officials and Ministerial meetings, the partners reached consensus on ministerial statements for each of the four IPEF pillars: Trade; Supply Chains; Clean Economy; and Fair Economy.

[Pillar I \(Trade\)](#) As the Framework is not a Trade Agreement, the ministers agreed to a statement of principles calling for "high-standard provisions in areas that are foundational to resilient, sustainable, and inclusive economic growth, including labor, environment, digital economy, agriculture, transparency and good regulatory practices, competition, inclusivity, trade facilitation, and technical assistance and economic development." The statement did note a commitment to build on the outcome reached in the [WTO Joint Initiative on Services Domestic Regulation](#), and notes an intention "to advance inclusive digital trade by building an environment of trust and confidence in the digital economy, by addressing discriminatory practices, and by promoting trusted and secure cross-border data flows."

[Pillar II \(Supply Chains\)](#) Seeks to coordinate actions to mitigate and prevent future supply chain disruptions. "To address the serious flaws in our supply chains exposed by the pandemic, we are pursuing an accelerated implementation of the World Trade Organization's Trade Facilitation Agreement, which will streamline the movement of goods across borders. Ministers commit "to fair and open markets and the rules-based multilateral trading system with the WTO at its core."

Further cooperation shall Establish Criteria for Critical Sectors and Goods, and Increase Resiliency and Investment in Critical Sectors and Goods. Ministers agreed to Establish an Information-Sharing and Crisis Response Mechanism, Strengthen Supply Chain Logistics, and Enhance the Role of Workers based on the [ILO Declaration on Fundamental Principles and Rights at Work](#).

[Pillar III \(Clean Economy\)](#) has the expected pledges to "unlock the region's abundant clean energy resources and substantial carbon sequestration potential, and promote usage of low- and zero-emissions goods and services."

[Pillar IV \(Fair Economy\)](#) seeks "to level the playing field for businesses and workers within IPEF member countries in the Indo-Pacific region by preventing and combating corruption, curbing tax evasion, and improving domestic resource mobilization." Ministers pledge to implement and accelerate progress on the United Nations Convention against Corruption (UNCAC), standards of the

Financial Action Task Force (FATF), and as applicable, the OECD Anti-Bribery Convention. On Tax, the statements call to support the ongoing work of the “OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting’s [Two-Pillar Solution](#) to Address the Tax Challenges Arising from the Digitalisation of the Economy.”

H-Bomb Site as “New Hong Kong” Yields FCPA Case

Two Marshall Island nationals, Cary Yan, 50, and Gina Zhou, 34, were extradited from Thailand and charged with allegedly violating the Foreign Corrupt Practices Act (FCPA), money laundering, and conspiracy to commit those offenses in connection with a scheme to bribe elected officials of the Republic of the Marshall Islands (RMI) in exchange for passing certain legislation.

Yan and Zhou allegedly offered and paid tens of thousands of dollars in bribes to elected RMI officials – including, among others, members of the RMI legislature – in exchange for supporting legislation creating a semi-autonomous region within the RMI called the Rongelap Atoll Special Administrative Region (RASAR) that would benefit the business interests of the defendants and their associates.

Promoters sought introduce tax incentives, a new tax-free shipping port and services for offshore companies registered in Rongelap. The plans sparked talk of passports for sale and an easy way to access the United States, through its Compact of Free Association agreement with the Marshall Islands, according to press reports.

Rongelap was twice evacuated after extensive nuclear tests by the United States from 1946-1958 covered its people in clouds of radioactive white ash, burning them and poisoning them for generations to come.

BIS Sanctions Jailed Raytheon Engineer

Commerce suspended the export privileges of Wei Sun for ten years. Sun is currently serving a 38-month sentence for violating the Arms Export Control Act (AECA).

Sun was employed in Tucson for 10 years as an electrical engineer with Raytheon Missiles and Defense. Raytheon Missiles and Defense develops and produces missile systems for use by the United States military. During his employment, Sun had access to information to defense-related technology. Some of this defense technical information constituted what is defined as “defense articles,” which are controlled and prohibited from export without a license under the AECA and the International Traffic in Arms Regulations (the ITAR).

From December 2018 to January 2019, Sun traveled from the United States to China on a personal trip. On that trip, Sun brought unclassified technical information in his company-issued computer, including data associated with an advanced missile guidance system that was controlled and regulated under the AECA and the ITAR. Despite having been trained to handle these materials correctly, Sun knowingly transported the information to China without an export license in violation of the AECA and the ITAR.

“Sun was a highly skilled engineer entrusted with sensitive missile technology that he knew he could not legally transfer to hostile hands,” said Assistant Attorney General John C. Demers at Sun’s sentencing in 2020. “Nevertheless, he delivered that controlled technology to China.”

EU Dual Use Regime Report

The European Commission published a [report](#) on the implementation of [Regulation \(EU\) 2021/821](#) governing the control of exports, brokering, technical assistance and transfer of dual-use items. 2021 saw the adoption of a new Export Control Regulation, which marks an important milestone in the development of EU export control policy.

Noting the role of the Trade and Technology Council (TTC) in coordinating consultations, the report addresses revisions to the EU Control List. The Regulation is binding in its entirety and directly applicable in all Member States, with provisions for the U.K. and Northern Ireland.

The Dual Use Coordination Group (DUCG) took initiatives to address certain technical implementation issues and set up dedicated expert groups to implement the requirements of the new Regulation, holding six meetings in 2021. The role of technical expert groups is now recognised in the new Regulation, and the Surveillance Technology Expert Group (STEG) was. The STEG allows experts from Member States to contribute to the development of EU controls on exports of cybersurveillance technologies. A new Technical Expert Group on emerging technologies (ETEG) was launched as a dedicated forum for information exchange on risks associated with exports of emerging technologies and the challenges associated with their control.

The Commission, supported by the DUCG, continued to develop the Dual-Use e-System (DUeS) as the IT backbone of the EU export control network. 2021 marked the first year of operation of the dual-use eLicensing system, with its introduction in two Member States - Latvia and Romania. The eLicensing project is also developing in new directions to make controls more effective, for example, by connecting the eLicensing system with national customs systems via the Customs’ Single Window environment.

In 2021, the Regulation primarily applied to the export of about 1884 dual-use items listed in Annex I (the "EU Control List") and classified in 10 categories from Annex I to Regulation (EU) 821/2021. These dual-use items relate to circa 1.000 “commodities” from the “customs nomenclature”, including chemicals, metals and non-metallic mineral products, computers, electronic and optical products, electrical equipment, machinery, vehicles and transport equipment, etc. and typically fall at the high-tech end of this large, mixed commodity area.

EU FDI Screening Report

The European Commission released its [Second Annual Report](#) on the screening foreign direct investments into the EU. Global foreign direct investment (FDI) inflows reached EUR 1.5 trillion in 2021, 52% more than in 2020. In 2021 over 4 000 transactions done by foreign investors in the EU,

20.5% more than in 2020. The rebound was skewed towards the acquisition of equity stakes in existing companies, which was 32% higher compared to 2020.

The US and the UK dominated foreign transactions with 58% of the acquisitions and 60% of the greenfield investments. Information and Communications Technology (ICT) was the top sector by number of foreign acquisition (30%) and the second by foreign greenfield investments, after wholesale and retail. Manufacturing came next with 26% of all foreign acquisitions and 12% of the greenfield investments. In 2021, 53% of all foreign acquisitions in manufacturing targeted high-tech firms, compared to 45% in 2020.

Chinese greenfield investments in the EU failed to recover in 2021, and decreased by an additional 4% on a year-on-year basis, bringing Chinese greenfield investments 56% below the levels recorded in 2019

WTO – Keep Appellate Body Blocked, say Senators.

Three Republican senators are urging the Administration to maintain the US blockade of new members of the World Trade Organization’s Appellate Body. Sens. Chuck Grassley (Iowa), Tom Cotton (Ark) and Marco Rubio (Fla) told US Trade Representative Katherine Tai to keep the resurrection of the Body out of any dispute settlement reform negotiations at the WTO.

“As you may know, the United States has blocked new members to the appellate body since 2011, when the Obama Administration blocked an appointment, citing the WTO’s failure to protect American interests,” they wrote. “The Trump Administration followed in this tradition. This rare bipartisan agreement was the result of a clear and consistent pattern of the WTO intentionally undermining American sovereignty, while enriching the Chinese Communist Party (CCP),” wrote the senators.

*** Briefs ***

CENSUS – July Trade Figures The international trade deficit in goods and services decreased to \$70.6 billion in July from \$80.9 billion in June (revised), as exports increased and imports decreased. The July decrease in the goods and services deficit reflected a decrease in the goods deficit of \$8.2 billion to \$91.1 billion and an increase in the services surplus of \$2.1 billion to \$20.4 billion. Year-to-date, the goods and services deficit increased \$136.6 billion, or 29.0 percent, from the same period in 2021. The goods and services deficit with China decreased \$12.0 billion to \$100.8 billion in the second quarter. Exports decreased \$2.8 billion to \$47.1 billion and imports decreased \$14.8 billion to \$147.9 billion. [Release](#)

OFAC – General License [No. 13B](#) Authorizing payment of taxes, fees, etc, to the extent such transactions are prohibited by Directive 4 under Executive Order (E.O.) 14024, provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation.

USTR - Section 301 Tariffs Continue The Administration will continue imposing Section 301 tariffs on imports from China while reviewing the tariffs. The announcement comes despite recent remarks by President Biden and other Administration officials that removal of at least some of the tariffs is under consideration. USTR will conduct a review of the tariffs, although it has not yet provided details on the next steps in the review process.

USTR – McKalip Nomination Moves Ahead. September 7th the Senate Finance Committee approved Doug McKalip’s nomination to serve as Chief Agricultural Negotiator in the Office of the United States Trade Representative with a vote of 27-0. McKalip’s nomination will now go to the full for confirmation.

USTR – Australia FTA [Notice](#) of tariff-rate quota quantity limitations: subchapter XIII of chapter 99 of the HTSUS is modified. Annual Update.

CBP/OFAC - Jujube Dates Spark Outrage. In a [letter](#) to CBP Commissioner Chris Magnus and OFAC Director Andrea Gacki, Rep. Jim Banks (R-Indiana) and 26 colleagues called for more aggressive enforcement of the Uyghur Forced Labor Prevention Act (UFLPA) which went into effect in June. Citing widespread availability of Xinjiang-sourced Red Jujube Dates in supermarkets and by Amazon, the lawmakers asked for an accounting of enforcement of the UFLPA to date.

DoD/DoC Space Cooperation The Departments of Commerce and Defense signed a Memorandum of Agreement September 9th, formalizing the organizations’ relationship for basic space situational awareness space traffic management and coordination for civil and commercial entities.

SPACE LAW – McGill University is leading efforts to publish the [Manual on International Law Applicable to Military Uses of Outer Space](#) (MILAMOS), [Breaking Defense](#) notes the manual is modeled on other legal manuals that, while not official or legally binding, heavily influence the decision-making of military and government lawyers around the world when planning operations in other domains. These include the [1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea](#) and Harvard University’s 2013 [Manual on International Law Applicable to Air and Missile Warfare](#).

USDA - Sugar Quotas Extended All sugar entering the United States under the FY 2022 World Trade Organization raw sugar TRQ will be permitted to enter U.S. Customs territory through December 31, 2022, two months later than the previously announced entry date. [\[87 FR 55388\]](#)

USMCA - Canada Softwood Challenge Canada has launched a challenge against US duties on Canadian softwood lumber imports under the US-Mexico-Canada Agreement’s dispute settlement system. The Commerce Department recently halved the antidumping and countervailing duties it imposed on Canadian softwood lumber, but Ottawa is arguing that the tariffs should be removed completely. Despite its decision to launch a Chapter 10 USMCA complaint, Ottawa would prefer to work with the United States on a negotiated solution “that would allow a return to predictable cross-border trade in softwood lumber.”

***** Calendar *****

Sept 22nd OTEXA - Modernized Trade Data Tools. Thanks to new and upgraded trade data tools from the Office of Textiles and Apparel (OTEXA), it's now easier than ever to view and analyze regularly published import and export trade data. OTEXA's economists will host a tutorial of all the new features and functions in the modernized OTEXA trade data platform on September 22 at 2:00 PM EST. [Register](#)

Sept 28th UKCA Marking – How to Comply Webinar The UKCA (UK Conformity Assessed) marking is a new UK product marking that is used for goods being placed on the market in Great Britain (England, Wales and Scotland). It covers most goods which previously required the CE mark. UKCA marking became part of UK law on exit day, 31 January 2020 and will be mandatory as of January 1, 2023. The UKCA mark applies to most goods previously subject to the CE marking.

You'll hear from private sector and Commercial Service experts about the new certification requirement, when and how to use the UKCA mark, rules for usage, technical documentation and record keeping, alternative options, and compliance mechanisms. The program will also include a Q&A session with speakers from: *U.S. Embassy in London - Make UK - UK Department for Business, Energy & Industrial Strategy - BSI Group – United Kingdom Accreditation Service (UKAS) – U.S. Commercial Service*
September 28, 2022 11:00 am EDT/8:00 am PDT. Registration [here](#). For questions, contact: Anastasia Xenias - Anastasia.Xenias@trade.gov, or Robert Straetz - Robert.Straetz@trade.gov

September 29th Protecting Your Business Interests: Corporate Espionage, Global Security & Compliance

Learn the ways to mitigate your company's overall risk, comply with U.S. Export Control Laws, travel safely abroad, and carefully evaluate international business partners. This webinar is for US companies to hear from Senior Level Speakers from the Commerce and State Departments, Secret Service and FBI.

- Latest Trends in Corporate Espionage with an Intelligence Update & Industry Developments. An Overview of How to Protect Your Products, Equipment and Company.
- Hot Topics including protecting Your Computers and portable devices overseas, and vetting your overseas partners and
- How To Assure Your Company that Recent Foreign Nationals Being Hired Do Not Work For the Competition

The webinar will take place on September 29, 12:30pm - 1:30pm EDT. [Register](#)

October 5th – 6th ACE/AES Export Compliance Seminar

It's critical to provide accurate data in your export filing using the Automated Commercial Environment (ACE) to avoid costly penalties. This 2-day virtual program features experts from the U.S. Census Bureau, Bureau of Industry and Security, and U.S. Customs & Border Protection to provide you with important training on these requirements.

[Register \(\\$95\)](#)