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BIS publishes “Red Flags” list for Russia Sanctions

August 16th BIS Published a primer on “red flags” for export control evasion associated with the Russian sanctions, highlighting techniques and conduits commonly used. The department [lists](#) 16 specific technologies of interest, from Aircraft Parts and Equipment (ECCN 9A991) to Vacuum Pumps (ECCN 2B999). These commodities support the development of maritime technology, microelectronics, and other technologies that can be used to support Russia’s military and defense sector.

Illicit actors often attempt to procure EAR99 items – a category generally referring to low-tech consumer goods not specified on the Commerce Control List that do not require a license for export, re-export, or transfer to most destinations. [EAR 99 transactions can still constitute a violation.](#)

Red flags include the customary due diligence (entities with little to no web presence, the physical address does not exist, or it is residential), as well as connecting the dots: transactions associated with atypical shipping routes for a product and destination, or transactions involving freight-forwarding firms that are also listed as the product’s final end customer, especially items going to traditional Russian transshipment hubs.

BIS has identified 18 countries as transshipment points through which restricted or controlled exports have been known to pass before reaching destinations in Russia or Belarus. These include Armenia, Brazil, China, Georgia, India, Israel, Kazakhstan, Kyrgyzstan, Mexico, Nicaragua, Serbia, Singapore, South Africa, Taiwan, Tajikistan, Turkey, United Arab Emirates, and Uzbekistan.

In some instances, controlled U.S. items may be legally exported to these and other jurisdictions as inputs to produce other finished goods. **However, further export to Russia or Belarus of those finished products and goods, potentially through additional transshipment points, may be prohibited.** BIS guidance on re-exports can be found [here](#).

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WTO Wrap

[India has proposed a special meeting of the General Council of the WTO](#) to consider the contentious issue of extending the scope of the COVID-19 vaccine patent waiver to the production and supply of diagnostics and therapeutics. [Adopted earlier this year on June 17 during the MC12 meeting](#), the targeted TRIPS waiver was announced with the commitment to decide on its possible extension “no later than six months”. Many developed countries continue to oppose the idea, arguing that such a waiver would hurt medical research and investment.

In a related development, WTO will hold its annual [Trade and Public Health Workshop in Geneva from 28 November to 2 December 2022](#), with a special focus on pandemic preparedness and response. The deadline to submit applications to participate is 30 September 2022.

In another news, [Pakistan has adopted WTO’s Trade Facilitation Agreement](#) for cross-border regulatory agencies. Concluded at the WTO’s 2013 Bali Ministerial Conference, the Agreement includes provisions for facilitating the movement, release, and clearance of goods in transit.

Meanwhile, the debate on WTO’s institutional design and role continues, as [experts consider if the organization should adopt a more “pragmatic” approach to free trade](#), to better address challenges such as the Ukraine war. As trade and security become increasingly interconnected, a significant challenge to “free trade” arises from the fear that a country may wage a war and use the same to justify departure from its obligations and weaken others economically.

While the WTO agreement binds all members to certain obligations, it also includes what is known as the “national security exception”. Article XXI (b) (iii) of the GATT accordingly allows a WTO Member to adopt measures that may be inconsistent with its obligations, in cases where they are “necessary for the protection of its essential security interests”. Given that the self-reporting requirements for invoking this provision are low, there is a potential for misuse, as was determined to have been done by Russia in 2016 after its first invasion of Ukraine. There is, therefore, an emergent need to further limit the invocation of the principle, by narrowing its definition and scope.

[Findings from a new research](#) have further revealed that the permanent staff of the WTO Secretariat have more influence over the final text of WTO rulings than the adjudicators themselves. The bureaucracy of the organization is involved with decision-making at all levels of the process. The paper has found that the staff writes “issue papers” and drafts proposed solutions, even before the adjudicators meet to consider the issue. The internal and confidential deliberations of the panel start with a presentation of the Secretariat’s proposals and the staff actively participates in the same. After the conduct of deliberations, the staff also sets the tone for the decision by writing the draft ruling.

The findings raise questions as to the independent judicial character of WTO rulings in as much as the decisions appear to be guided more by the organization’s internal bureaucracy.

Arms Trade Treaty Conference to Focus on Diversion

Post-shipment on-site inspections are one of the main focuses of the German presidency of the Eighth Conference of States Parties (CSP8) to the 2013 Arms Trade Treaty (ATT), which is scheduled to take place on 22–26 August in Geneva. The ATT is the first legally binding international agreement that aims to establish common standards for regulating the trade in conventional arms.

In advance of the conference, the Stockholm International Peace Research Institute (SIPRI) published two [papers](#) on post shipment inspections and stockpile management systems which help to inform manufacturers and exporters of the military materiel that will be the focus of controls on the value of on-site inspections and the opportunities to integrate the topic in design.

States that adopt post-shipment on-site inspections shall continue to fully apply the export licensing assessment criteria that they are legally or politically required to implement, such as those under the ATT, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies (Wassenaar Arrangement), and the European Union (EU) common position on arms exports.

A growing number of states and international and regional organizations, provide assistance for the management and accountability of states' small arms and light weapons (SALW) stockpiles. This support is generally categorized as physical security and stockpile management (PSSM) assistance. On-site inspections are a focused, short-term verification measure mainly aimed at ensuring that exported weapons have not been transferred in ways that contravene commitments provided by the importer. PSSM assistance is a longer-term engagement aimed at improving a state's system of weapons management over time.

The authors note that on-site inspections cannot replace the need for accountability throughout the life cycle of a weapon, which begins with effective and verifiable record-keeping. For example, in Afghanistan, end-use monitoring officials of the USA-led Combined Security Transition Command–Afghanistan (CSTC–A) used a centralized, worldwide US Government system, the Security Cooperation Information Portal (SCIP), to record weapons distributed to Afghan security forces and subsequent end-use checks. However, CSTC–A colleagues simultaneously rolled out a separate database, CoreIMS, to Afghan security forces to register and manage these weapons themselves. This led to dilution of registration and data entry efforts in both systems. Only about 40 per cent of items distributed by the US Government were ever actually recorded in the SCIP, according to a 2019–20 audit.

The US Army, among others, has since 2005 used radio frequency identification (RFID) devices embedded in ammunition packaging, and even in individual weapon systems in some cases, to automatically record when items enter and leave armories and magazines, and when they arrive in or depart from the possession of different units. Conflict Armament Research and TTE-Europe GmbH, funded by the EU, have begun trialing RFID devices suitable for placement in individual small arms themselves.

SIPRI recommends that states conducting on-site inspections should explore requiring either manufacturers or importers to adopt and use RFID chips or other detectable tracking technologies, both as a means of inspection visits and as a means through which the importing state can improve its PSSM standards.

House Seeks to Rein in 232 Actions, Mirroring Senate

The Bicameral Congressional Trade Authority Act would require the president to submit to Congress any proposal to adjust imports in the interest of national security under Section 232 of the Trade Expansion Act of 1962. A substantially similar bill [S.2934] was introduced in the Senate last October by Pat Toomey (R-Pa). The House version was originally introduced by Rep. Mike Gallagher (R-Wis) in 2019 as H.R.940. The Current version (H.R. 8666) is sponsored by Gallagher’s downstate colleague, Rep. Ron Kind (D-Wis).

Under the bill, Members of Congress have a 60-day period following submission to review the president’s proposal. A joint resolution to approve the proposal would qualify for expedited consideration in both chambers. The requirement would apply to all future Section 232 actions, in addition to those taken within the last four years. The bill would restore the national security intent behind Section 232 by transferring national security investigatory authority from the Department of Commerce to the Department of the Defense.

“Section 232 national security tariffs have historically been imposed sparingly and strategically. The previous administration’s wanton use of this unilateral authority showed the need for Congress to reassert its constitutional prerogatives to provide oversight of U.S. trade relations,” said co-sponsor Don Beyer (D-Va).

Low-Level Crypto Washer Extradited to U.S.

An alleged cryptocurrency money launderer was extradited this week from the Netherlands to the United States to face Federal charges. Denis Mihaqlovic Dubnikov, 29, a Russian citizen, made his initial appearance in federal court Sept 17 in Portland, Oregon.

According to court documents, Dubnikov and his co-conspirators laundered the proceeds of ransomware attacks on individuals and organizations throughout the United States and abroad. Specifically, Dubnikov and his accomplices laundered ransom payments extracted from victims of Ryuk ransomware attacks.

In July 2019, Dubnikov allegedly laundered more than \$400,000 in Ryuk ransom proceeds. Those involved in the conspiracy laundered at least \$70 million in ransom proceeds. First identified in August 2018, Ryuk is a type of ransomware software that, when executed on a computer or network, encrypts files and attempts to delete any system backups. In October 2020, law enforcement officials specifically identified Ryuk as an imminent and increasing cybercrime threat to hospitals and healthcare providers in the United States.

Justice Department components who worked on this seizure coordinated their efforts through the department's Ransomware and Digital Extortion Task Force, which was created to combat the growing number of ransomware and digital extortion attacks.

ITA Calls for Comments on AI Competitiveness

International Trade Administration (ITA) is [requesting](#) public comments to gain insight on the current global AI market and stakeholder concerns regarding international AI policies, regulations, and other measures which may impact U.S. exports of AI technologies. ITA seeks broad input from all interested stakeholders—including U.S. industry, researchers, academia, and civil society—on the potential opportunities for and challenges to increasing U.S. export competitiveness for AI-enabled technologies. The initiative, led by Barton Meroney, Executive Director, Office of Manufacturing Industries, seeks to answer 12 questions, ranging from ranging from standards and IP protection to how AI can be incorporated in future trade agreements. Comments to be submitted in writing by October 17, 2022

*** Briefs ***

FMC. The Federal Maritime Commission has established a [webpage](#) dedicated to its actions and activities related to the implementation of the Ocean Shipping Reform Act of 2022 (OSRA). This page provides links to key OSRA documents including rulemakings, Industry Advisories, and press releases.

DSCA Clarification of Minimal-Dollar Value Lines on Foreign Military Sales and Building Partner Capacity Cases. Specifically, this [policy](#) identifies exceptions to the general prohibition against the use of minimal-dollar value lines on FMS and BPC cases that will not require the Implementing Agency (IA) to submit a request for an exception to policy (ETP)

DCSA Security Assistance Management Manual [E-Change](#) 589: Program Support Charges Army's Commercial Repair and Return (CR&R) Program and Simplified Non-Standard Acquisition Program (SNAP)

CBP published an updated [rule](#) that streamlines the vessel repair entry process by extending the timeframe for vessel operators to provide completed vessel repair entries and to apply for relief from assessment of duties associated with vessel repairs occurring abroad. The rule now extends the timeframe from 90 days to 150 days and eliminates the need for filing extension requests.

CBP [Continuation](#) of comment period for CBP Forms 4457 and 4455, used to show proof of prior possession of a foreign made item taken on a trip abroad and later returned to the United States.

STATE is designating Paraguayan Vice President Hugo Velazquez and Yacyretá Bi-National Entity Legal Counsel Juan Carlos "Charly" Duarte for involvement in significant corruption, including bribery of a public official and interference in public processes. Electricity generation in Paraguay is dominated by the large binational hydropower projects of Itaipu (Brazil-Paraguay) and Yacyreta (Argentina-Paraguay) which provide over 99% of the country's electricity and generate a large electricity surplus for export.

ATF&E Definition of Frame or Receiver and Identification of Firearms. Corrections to be published August 22. This [document](#) makes some minor technical corrections to the final rule, which otherwise remains the same as previously published.

ITA Invites comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown in the [notice](#), are being manufactured in the United States.

ITA [extends](#) the solicitation period for membership on the Renewable Energy and Energy Efficiency Advisory Committee (the Committee) for the 2022-2024 term, to widen the pool of qualified candidates. All nominations for immediate consideration for appointment must be received by 5:00 p.m. Eastern Daylight Time (EDT) on August 25, 2022.

*** Calendar ***

Public Meeting in Preparation for the International Maritime Organization TC 72 Meeting The Department of State will conduct a public meeting at 10:00 a.m. on Wednesday, October 12, 2022, both in Washington, DC and by way of teleconference. [Announcement](#)

Loyal readers,

[The Washington Tariff & Trade Letter](#) and sister publication [The Export Practitioner](#) are being re-imagined for the next four decades, graphically and editorially

This is your journal. Please take a moment to share with us your thoughts.

Sam, Meredith, Marty and I will be grateful. Thank you.

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

International Trade Commission (ITC) Blotter

- Investigations; Determinations, Modifications, and Rulings, etc.: Large Residential Washers from China scheduled for publication on 08/22/2022.
 - Investigations; Determinations, Modifications, and Rulings, etc.: Certain Mobile Electronic Devices scheduled for publication on 08/22/2022.
 - Sodium Nitrite From Russia on 08/19/2022.
 - Certain Laparoscopic Surgical Staplers, Reload Cartridges, and Components Thereof; Notice of Commission Determination To Institute a Rescission Proceeding; Rescission of the Remedial Orders; Termination of the Rescission Proceeding on 08/19/2022.
 - Certain Chocolate Milk Powder and Packaging Thereof; Notice of Request for Submissions on the Public Interest on 08/18/2022.
 - Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Settlement; Termination of the Investigation; Certain Barcode Scanners, Scan Engines, Mobile Computers With Barcode Scanning Functionalities, Products Containing the Same, and Components Thereof on 08/17/2022.
- Certain Earpiece Devices and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Advisory Opinion Proceeding Based on Settlement; Termination of the Advisory Opinion Proceeding on 08/17/2022.
- Certain Barcode Scanners, Scan Engines, Mobile Computers With Barcode Scanning Functionalities, Products Containing the Same, and Components Thereof II; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Due to a Settlement Agreement; Termination of Investigation on 08/17/2022..

- Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest on 08/15/2022. a complaint entitled Certain Audio Players and Components Thereof I, DN 3634;
- Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest 08/15/2022. a complaint entitled Certain Audio Players and Components Thereof II, DN 3635;.

ITA AD/CVD Blotter

- Antidumping or Countervailing Duty Investigations, Orders, or Reviews: Certain Steel Nails from India scheduled for publication on 08/22/2022.
 - Antidumping or Countervailing Duty Investigations, Orders, or Reviews: Certain Steel Nails from Sri Lanka scheduled for publication on 08/22/2022.
 - Antidumping or Countervailing Duty Investigations, Orders, or Reviews: Certain Steel Nails from the Sultanate of Oman scheduled for publication on 08/22/2022.
 - Antidumping or Countervailing Duty Investigations, Orders, or Reviews: Certain Steel Nails from Thailand scheduled for publication on 08/22/2022.
 - Antidumping or Countervailing Duty Investigations, Orders, or Reviews: Certain Steel Nails from the Republic of Turkey scheduled for publication on 08/22/2022.
 - Antidumping or Countervailing Duty Investigations, Orders, or Reviews: Sodium Nitrite from the Russian Federation scheduled for publication on 08/22/2022.
- Sulfanilic Acid From India: Rescission of Countervailing Duty Administrative Review; 2021 on 08/19/2022.
- Polyester Staple Fiber From the Republic of Korea and Taiwan: Continuation of the Antidumping Duty Orders on 08/19/2022.

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- [Certain Cold-Rolled Steel Flat Products From the People's Republic of China and the Republic of Korea: Continuation of Countervailing Duty Orders](#) on [08/19/2022](#).
 - [Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Continuation of the Antidumping and Countervailing Duty Orders](#) [08/17/2022](#).
 - [Barium Chloride From India: Preliminary Negative Determination of Sales at Less Than Fair Value, Postponement of Final Determination](#) on [08/17/2022](#).
 - [Sodium Nitrite From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures](#) on [08/17/2022](#).

[Certain Preserved Mushrooms From the Netherlands, Poland, and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations](#) on [08/16/2022](#).

- [North American Free Trade Agreement \(NAFTA\), Article 1904; Binational Panel Review: Notice of Completion of Panel Review](#) on [08/15/2022](#). Final Results of Antidumping Duty Administrative Review; 2016-2017 (Secretariat File Number: USA-MEX-2019-1904-01) was completed and the panelists were discharged.

July 25, 2022

Washington Tariff & Trade Letter
