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Estevez Comes Out Swinging

Alan Estevez, the newly installed Undersecretary of Commerce for Industry and Security shared his thinking at what he called his “coming out party” May 25 at the Atlantic Council in Washington. In a conversation with Keith Krach, Silicone Valley entrepreneur and former Under Secretary of State for Economic Growth, Energy, and the Environment, Estevez discussed the challenges of, and our collective response to, competition with the “totalitarian twins” of China and Russia.

Excerpts include:

“I view my job at Commerce is to deny our adversaries access to advanced technologies. In fact, to my friends who have no idea what it is I do, I've been calling myself the Chief Technology Protection Officer of the United States.

“Let me talk a little bit about what we're doing with regard to both Russia and China. Right now we are slowly strangling the Russian military. We've cut off their access to global semiconductors- military access to global semiconductors that is bleeding into the commercial sector. We know of two tank plants that have closed because they can't produce right now, and again as you know we see the destruction of Russian armor and Ukraine. That's going to pay dividends in the long term...

“The most important thing I want to point out is that we've done that in conjunction with 37 other nations and across the globe that are standing with us. The technocratic autocracies don't have what we have, friends. We have friends that will stand by us, they are standing by us, and standing by Ukraine against that aggression.

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“With China what we need to do, again looking long, we need to take those partnerships that we've just unified, those 37 nations and whoever else wants to join that club and build what I call the digital export regime for the 21st century. To protect our technology and the technology of our allies from going into China's evil military fusion; stop them from using our technology against us. That's what I intend to do with Commerce, and we are dedicated to that. That's my top priority in the long term, closing those risk gaps.

“I've talked a lot about defense, stopping them from getting it. There is an offensive component to this. There's a bill before the House and Senate right now, there's a conference on, the bipartisan Innovation Act that will provide, it's really just seed money, as you know \$50 billion is not really a lot of money in the semiconductor space. That is a national security imperative to get that bill passed

“We need to diversify our supply chains, move supply chains out of the adversarial nations and provide our own networks the capability to produce. I realize this is a global thing; it's not just the United States but for all. Getting that bill passed is a national security imperative, so for those of you who care about such things, call your congressman and tell them we need to get this done.

“You buy from people you trust, you partner with people you trust, and this whole area of technology is all about trust, and nobody trusts China and Russia. Any American company, and any allied company as well, needs to be looking and assessing the risk calculus, based on what's going on in the world today. Many companies walked away from their assets in Russia, and I realize that it's much easier than the Chinese scenario, but the reality is they need to look and say, ‘these are people who do not respect the law.’ If you don't start figuring out how you're going to diversify, what you can afford to lose, and how you're going to manage your business, you're putting yourself at a disadvantage over the long term.

“I can't stop people from making bad deals, but I can stop them from selling the most advanced technology. People want to sell stuff to China; I'm not going to let them sell really cool stuff, but it goes back to my earlier statement about eyes wide open here. That big market comes with strings and the Chinese, they're announced their behavior. So people need to watch out.”

Tai Lows at Canada Dairy Policy

USTR Katherine Tai today announced that the United States is, for the second time, requesting dispute settlement consultations with Canada under the United States – Mexico – Canada Agreement (USMCA) to address dairy restrictions by Canada that are contrary to its USMCA commitments. The challenge is aimed at Canada's dairy tariff-rate quota (TRQ) allocation measures, which deny allocation access to eligible applicants, including retailers, food service operators, and other types of importers, and impose new conditions on the allocation and use of the TRQs.

BIS Finalizing Changes to Cyber License Exceptions (ACE)

BIS is finalizing changes to License Exception ACE and corresponding changes in the definition section of the Export Administration Regulations (EAR) in response to public comments to an October 21, 2021 interim rule. That rule established a new control on certain cybersecurity items, as well as adding a new License Exception-Authorized Cybersecurity Exports (ACE) that authorizes exports of these items

to most destinations except in certain circumstances. This action amends the October 21 rule that became effective March 7, 2022.

Uyghur Enforcement to Begin

The Uyghur Forced Labor Prevention Act (UFLPA) signed into law in December becomes effective June 21. Companies should be prepared to respond to inquiries from CBP with sufficient evidence and support to demonstrate that goods imported from Western China were not produced wholly or in part with forced labor.

The Act establishes a rebuttable presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region, or produced by certain entities, is prohibited by Section 307 of the Tariff Act of 1930 and that such goods, wares, articles, and merchandise are not entitled to entry to the United States. The presumption applies unless the Commissioner of U.S. Customs and Border Protection (CBP) determines that the importer of record has complied with specified conditions and, by clear and convincing evidence, that the goods, wares, articles, or merchandise were not produced using forced labor.

As many as 1 million Uyghurs and members of other Turkic minorities were held in concentration camps in 2018, according to estimates by UN and US officials. The US and other governments now officially refer to Beijing's targeting of Uyghurs and other Muslim minorities as a form of "genocide."

CBP's Office of Trade Relations will host webinars on June 1, 7, and 16, 2022, to provide an overview of the Uyghur Forced Labor Prevention Act (UFLPA). Details and Registration:

<https://www.cbp.gov/node/375773/printable/print> Info: UFLPAInquiry@cbp.dhs.gov

Customs Seizes Slave Palm Oil

Customs officers have seized four shipments of palm oil in Baltimore since February 11 due to information indicating that the palm oil was manufactured by forced labor, a form of modern slavery. The palm oil shipments are valued at nearly \$2.5 million.

All four shipments of palmitic acid were produced in Malaysia and destined to a processing facility in Delaware. The combined weight of the four shipments of palmitic acid came to 544,176 pounds and had an appraised value of about \$2,466,500.

On January 28, CBP issued a Notice of Finding to the Federal Register [FRN 2022-01779] that certain palm oil and derivative products made wholly or in part with palm oil produced in Malaysia with the use of convict, or forced or indentured labor are inadmissible in violation of 19 USC 1307 and 19 CF.

Compliance Officer Charged in Drone Tech Scheme

A NASA Contractor responsible for the compliant distribution of US Army aeronautical software is charged with smuggling and violating export control laws by allegedly secretly funneling sensitive aeronautics software to a Beijing university, according to a complaint unsealed May 26.

Soong was employed by Universities Space Research Association (USRA) between April 2016 and September 2020 as a program administrator. USRA is a nonprofit corporation contracted by NASA to, among other things, distribute domestically and internationally sensitive aeronautics-related software developed through the Army's Software Transfer Agreement (STA) program. As USRA's STA program administrator, Soong was responsible for overseeing certain software license sales, conducting export compliance screening of customers, generating software licenses, and, on occasion, physically exporting software.

The complaint alleges Soong unlawfully and without a license exported and facilitated the sale and transfer of software to an entity on the Entity List—Beijing University of Aeronautics and Astronautics (BUAA). The Army flight-control software packages, referred to in the complaint as CIFER, allow a user to develop a dynamic model of an aircraft based on collective flight test data. The complaint alleges that Soong arranged to sell the CIFER software package to Beijing Rainbow Technical Development Ltd., as an intermediary for the purchase to disguise BUAA's involvement, as Soong knew that BUAA could not receive this technology without a license from the Department of Commerce.

Treasury Targets Oil Smuggling Network

OFAC is designating an international oil smuggling and money laundering network led by Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) officials and backed by senior levels of the Russian Federation government and state-run economic organs.

As early as April 2021, Qods Force officials and the former Afghan Charge d'Affaires in Moscow raised funds in coordination with senior levels of the Russian government and intelligence apparatus. Members of the group had previously been linked to a scheme to defraud the Afghanistan-based Kabul Bank of more than \$800 million.

Through UAE, Turkish and Chinese intermediaries, the group worked with the Russian government and Russian state-owned Rosneft to ship large quantities of Iranian oil to companies in Europe on behalf of the IRGC-QF, as well as to facilitate payments for oil from Venezuelan state-owned oil and natural gas company, PDVSA.

Subsidiaries of Beijing-based **Haokun Energy Group Company Limited** and Iran-based **Petro China Pars Co**, were sanctioned for their involvement in the sale and purchase of tens of millions of dollars' worth of Iranian crude oil from the IRGC-QF. PetroChina Company Limited is a Chinese oil and gas company and is the listed arm of state-owned China National Petroleum Corporation. The company is Asia's largest oil and gas producer

*** Briefs ***

GLENCORE Agrees to \$1.2 Billion Settlement. Notorious conflict mineral miner and commodity trader Glencore International settled with the CFTC May 24 for conduct involving manipulation and foreign corruption in the U.S. and global oil markets. Formerly known as Marc Rich & Co, Glencore is required to pay a total of \$1.186 billion, which consists of the highest civil monetary penalty (\$865,630,784) and highest disgorgement amount (\$320,715,066) in any CFTC case.

The Fraud Section of the Department of Justice's Criminal Division simultaneously announced two separate criminal actions against Glencore. The CFTC order recognizes and offsets certain forfeiture and penalty payments to be made to the DOJ in those cases. The UK Serious Fraud Office also announced separate criminal charges against Glencore.

PFIZER IP Theft. A married couple who worked as research scientists for Pfizer, pleaded guilty in federal court today to criminal charges stemming from their efforts to gather confidential mRNA research to advance the husband's competing laboratory research in China. According to her plea agreement, from as early as November 2013, through at least June 2018, Lianchun Chen repeatedly accessed Pfizer computers and copied confidential materials, emailing them to her husband in China over her personal Hotmail account.

In February 2021, Chenyan Wu shut down his lab in China and attempted to move his laboratory to the United States. He packed up its contents into five suitcases and flew to Seattle-Tacoma International Airport. Wu's customs form did not declare any biological or chemical items on the form, nor did he declare these items in person to the Customs officer while going through Customs Inspection.

COLOMBIA The White House designated Colombia a "Major Non-NATO Ally" May 23. The designation provides foreign partners with benefits in defense trade and security cooperation. While MNNA status provides military and economic privileges, it does not entail any security commitments to the designated country.

PANAMA Two sons of the former President of Panama, Ricardo Martinelli, were each sentenced in Federal Court to 36 months in prison for laundering \$28 million in a bribery and money laundering scheme involving Odebrecht S.A. the Brazil-based global construction conglomerate. The defendants were also ordered to forfeit more than \$18.8 million, pay a \$250,000 fine and serve two years' supervised release. Luis Enrique Martinelli Linares, 40, and Ricardo Enrique Martinelli Linares, 42, each pleaded guilty to conspiracy to commit money laundering and admitted to agreeing with others to establish offshore bank accounts in the names of shell companies to receive and disguise over \$28 million in bribe proceeds from Odebrecht for the benefit of their father.

VENEZUELA As anticipated, OFAC issued a revised General license for Venezuela, permitting Chevron and its contractors to conduct minimal trade with the national oil company and other entities related to Chevron's stranded assets in the country. The license specifically forbids he drilling, lifting, or processing of, purchase or sale of, or transport or shipping of any Venezuelan-origin petroleum or petroleum products.

VENEZUELA OFAC announced a settlement with Banco Popular de Puerto Rico (BPPR) May 27. The bank agreed to remit \$225,937.86 to settle its potential civil liability for 337 apparent violations of the Venezuela Sanctions Regulations. BPPR processed transactions totaling \$853,126 maintaining the personal accounts of two low level employees of the Government of Venezuela. The settlement amount reflects OFAC's determination that BPPR's apparent violations were non-egregious and voluntarily self-disclosed.

***** Appointments & Calendar *****

The White House and Department of Transportation announced Friday the appointment of retired General **Stephen R. Lyons**, former Commander of the U.S. Transportation Command (USTRANSCOM), as the Biden Administration's new port envoy to address bottlenecks in the supply chain. **The Supply Chain Disruptions Task Force** was set up in June of 2021 to address "supply and demand mismatches" amid the economic recovery from the COVID-19 pandemic. Transportation Secretary Pete Buttigieg leads the task force's focus on ports and trucking issues, among others. The Task Force's leadership also includes Agriculture Secretary Tom Vilsack on food and agriculture and Commerce Secretary Gina Raimondo on homebuilding and semiconductors.

BIS - Regulations and Procedures Technical Advisory Committee (RPTAC) will meet June 14, at 10:00 a.m., EST (*sic*), via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed. To join the conference, submit inquiries to Yvette Springer at Yvette.Springer@bis.doc.gov no later than June 7, 2022

BIS - Emerging Technology Technical Advisory Committee (ETTAC) will meet on June 16, at 11:00 a.m., EDT via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on the identification of emerging and foundational technologies with potential dual-use applications as early as possible in their developmental stages both within the United States and abroad To join the conference, submit inquiries to Yvette Springer at Yvette.Springer@bis.doc.gov

DDTC - DECCS Licensing 2.0 Webinar June 9 DDTC's IT Modernization Team hosts an overview of the updated Licensing application coming this summer to DECCS. The application is being updated to work on a new software platform, providing greater flexibility, security, and administration of the application to the support team. The session will focus on: Goals for the update, Demonstration, Impacts on Existing and in-progress license submissions, Future submissions, and Timeline of release. *Registration to open shortly at <https://www.pmdtc.state.gov/>*

CFIUS Conference June 16, 8:00am-4:00pm. Deputy Treasury Secretary Wally Adeyemo will headline the conference, to be held at in the Cash Room at Treasury and online. Info: CFIUSConference@treasury.gov

BIS Update 2022 June 29 - July 1 The Bureau of Industry and Security (BIS) will offer a hybrid Update Conference on Export Controls and Policy from Wednesday, June 29-Friday, July 1, 2022. This 35th annual conference will be offered in-person at the Marriott Marquis in Washington, D.C., and virtually for the first two days. Use this link <https://events.eplly.com/bis2022> to register..

CBP - Trade Symposium and Customs Trade Partnership Against Terrorism (CTPAT) Conference will be a combined event with the 2022 Trade Facilitation and Cargo Security Summit to be held on July 18-20 in Anaheim, CA. Event will include industry speakers, panel discussions and workshops that will highlight the latest requirement updates and best practices for navigating today's complex supply chain challenges. Registration and event details at TradeEvents@cbp.dhs.gov

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