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Commerce Spreads Wings, Bares Talons

The 35th Annual BIS Update Conference on Export Controls and Policy gave practitioners straight talk on industrial security after the most demanding four months in the field since the Roosevelt Administration.

Commerce Secretary Gina Raimondo opened the conference saying that “export controls are the red-hot center” of geostrategy today, and the Department is committed to its mission.

“Since the controls were put in place, global exports of semiconductors to Russia from all sources have declined by almost 90 percent, leaving Russian companies without the chips they need for a wide variety of goods, including weapons like precision guided missiles and tanks.

“Russia may be forced to ground between half and two-thirds of its commercial aircraft by 2025 in order to cannibalize them for spare parts. These controls are working. Now to sustain it.

“Yesterday [June 28], we continued to make good on our commitment to aggressively enforce our Russia controls by identifying and adding to the Entity List various parties in China and elsewhere that contracted to supply Russia following the invasion of Ukraine.

“This is an unequivocal message to parties everywhere that the U.S. and its allies and partners will continue to closely monitor backfill attempts and will not hesitate to act swiftly to hold parties accountable who attempt to circumvent our controls.

“What if SMIC or other Chinese-based semiconductor companies are found supplying chips to Russia? We will shut them down and we can, because almost every chip in the world and in China is made using U.S. equipment and software and I intend to make good on that commitment if it's necessary.

“National security is a shared responsibility. Government plays a major role, but we need continued input, support, and diligent compliance from the private sector.”

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BIS Update *(continued)*

Under Secretary of Commerce for Industry and Security Alan Estevez, with more than three decades in the Pentagon maintaining military readiness, and who boasted last month of “slowly strangling the Russian military” set the tone for the conference.

“This is the coolest job in Washington, and I’ve had cool jobs at DoD. I am the Chief Technology Protection Officer of the United States.

“In 36 years at DoD maintaining combat power, I’ve learned you never want to let your warfighters have a fair fight. Export controls are one more factor to maintain our qualitative advantage. They play a key role in protecting that advantage, to squash Russian military capability. It’s pretty hard to build 21st century weapons without semiconductors.

“With two Foreign Direct Product Rule expansions, and over 300 additions to the entity list, If I were you, I would not get on a Russian airplane.

“As to Russian steps to circumvent the controls, we are working closely with Canada Border Services and the US EU Trade & Technology Council to identify backfill entities. Those who attempt it, they’re going to be in a world of hurt.

‘Winston Churchill said ‘never let a good crisis go to waste.’ Cooperation with allies, the EU, Japan, the IPEF countries is improving from all of this. Although given Russian membership in the Wassenaar Arrangement, there is concern about updating [dual-use lists].

(after an extended discussion of BIS outreach, Section 232 actions, and a plug for CHIPS act passage)

“I can put this all very simply: 1. Russia Bad, 2. China Bad Too. 3. Allies Good. International cooperation is critical.”

Axelrod Shines the Apple, Turns the Screws

Assistant Secretary for Export Enforcement Matt. Axelrod used his June 30 presentation at the Outlook Conference to unveil the balance of Enforcement changes he’d indicated were in the works in February, as well as new initiatives to expect.

Charging charging letters are public when filed with the Administrative Law Judge (announced June 2). “That’s not to say we’ll always go straight to a charging letter. In appropriate cases, we will still use pre-charging letters, which are not public, and which allow us to give a company notice of what we think they’ve done wrong. In appropriate cases, pre-charging letters can be a useful tool as they allow us to have conversations and negotiations about a resolution prior to a charging letter being issued publicly.”

“Today [June 30] I am announcing four policy changes.

1. **Imposition of Significantly Higher Penalties:** To ensure that the most serious administrative violations trigger commensurately serious penalties. All appropriate cases are properly deemed “egregious,” which opens the door to more significant penalties under our regulations ensure that the existing aggravating penalty factors are applied more uniformly to escalate penalty amounts where appropriate, which parallels how mitigating factors are currently applied to reduce penalty amounts
2. **Non-Monetary Resolution for Less Serious Violations:** To help clear through pending administrative cases where the violations do not reflect serious national security harm but do rise above the level of cases warranting a warning letter or no-action letter, we are going to offer settlement agreements that do not require monetary penalties. Instead, we will seek to resolve cases by focusing on remediation – through the imposition of a suspended denial order with certain conditions, such as training and compliance requirements. Any such resolution will be contingent on the violator’s willingness to accept responsibility, admit to the conduct, and commit to enhanced compliance measures.
3. **Elimination of “No Admit, No Deny” Settlements:** We want companies – and industry generally – to have the opportunity to learn from others and avoid making the same mistakes. When we enter a resolution, the settling party gets significant credit, in the form of a reduced penalty. But to earn that reduced penalty, there needs to be an admission that the underlying factual conduct occurred. That way, others will have a clear sense of what the company or individual did that got them into trouble and can modify their own behavior accordingly.
4. **Dual-Track Processing of Voluntary Self-Disclosures (VSDs).** For those VSDs involving minor or technical infractions, we will resolve them on a “fast-track” with a warning letter or no-action letter within 60 days of receipt of a final submission. The VSDs that are not fast-tracked will be assigned to a Special Agent and an OCC attorney. In the most serious cases, the Department of Justice’s Counterintelligence and Export Controls Section will assign an attorney as well. By fast-tracking the minor violations while assigning specific personnel to the potentially more serious ones, we will be able to use our finite resources more effectively while also allowing companies that submit more minor VSDs to receive a quicker turnaround.

“We are considering revising the EAR to recategorize the relative seriousness of the various **antiboycott violations**. In addition, we are evaluating current penalty levels to determine whether they should be higher – both to sanction those who violate the law and to deter those who would. And, last, like I announced today with regard to export cases, we’re considering whether to eliminate “no admit, no deny” settlements in order to incentivize compliance and strengthen deterrence. I expect to have more to say about where we’ll land on these questions in the coming weeks.

With fourteen items in the Prerule / Proposed Rule Docket at BIS, few expect the pace to let up.

Cap and Gown; Cloak and Dagger

Assistant Secretary Axelrod briefed Outlook attendees on BIS's "Academic Outreach Initiative," addressing squarely the shortcomings highlighted in the GAO's recent critique of enforcement agencies' work in the university community [GAO-22-105727]. Axelrod announced the Initiative in a speech at the National Association of College and University Attorneys Annual Conference in Pittsburgh on June 28.

"What those of us at Export Enforcement are particularly concerned about is proprietary research, which consists of research restricted from publication because it is considered confidential from a business or national security perspective, is generally controlled for either traditional export or "deemed export" purposes.

First, we will strategically prioritize engagement. We will be specifically prioritizing for engagement those universities whose work has resulted in an elevated risk profile. These are institutions that: (1) are involved in research and development for the U.S. Department of Defense; (2) have ties to foreign universities that are on the Entity List; or (3) are conducting research in sensitive technologies subject to the EAR (for example, applied laboratories conducting proprietary research on emerging technologies).

Second, we will assign "Outreach Agents" for prioritized institutions. , so that each prioritized university has a dedicated point of contact. Outreach Agents will seek to meet regularly with their university counterparts, not less than once per quarter.

Third, we will offer background briefings. Our Outreach Agents will seek to brief their partner universities on known national security risks associated with specific foreign entities.

And, fourth, we will offer training. For prioritized research institutions, we will offer trainings on how export controls apply in academic settings and on applicable national security threats. In addition, our Outreach Agents will offer hands-on training to help ensure those institutions know how to vet potential partners to determine connections to parties on the Entity List or that are otherwise of concern.

Senate Calls to License Export of Personal Data

Bipartisan legislation has been introduced in the Senate to regulate export of personal data that could potentially threaten national security. Sponsored by Senators Marco Rubio (R-Tex), Ron Wyden (D-Ore), Cynthia Lummis (R-Wyo), Sheldon Whitehouse (D-RI) and Bill Hagerty (R-Tenn), **the Protecting Americans' Data from Foreign Surveillance Act (S.4495)** seeks to block sharing of private, sensitive information with foreign adversaries.

The draft mandates the Secretary of Commerce to restrict and regulate bulk exports of sensitive personal data to other countries by issuing licenses. While exports to "low-risk" countries would

remain unrestricted, those to “high-risk” countries would be presumptively denied. If passed in the present form, the Act would impose export control penalties on senior executives “who knew or should have known that their employees were directed to illegally export personal data”.

EXIM Competitiveness Report

The Export-Import Bank of the United States (EXIM) released its annual *Report to the U.S. Congress on Global Export Credit Competition* for 2021, also known as the EXIM Competitiveness Report.

Recommendations from EXIM’s 2021-2022 Advisory Committee and its subcommittee members include the following key items:

- EXIM should work with other U.S. government agencies, including by providing blended financing like that offered by other OECD members.
- Identify where the agency is an outlier among ECAs globally.
- Partner with larger U.S. exporters to create awareness of EXIM programs for their small business suppliers (indirect exporters).
- Review internal processes, making the due diligence, underwriting, and approval processes more efficient, commensurate with foreign peers.

EXIM’s Competitiveness Report aggregates input from U.S. exporters and lenders as well as export credit agency counterparts and comprehensively analyzes official export credit and trade-related finance provided by governments around the world. The report includes an annual global survey of official MLT export credit practitioners, and an account of U.S. exporter and lender experiences with EXIM during that period. https://img.exim.gov/s3fs-public/oig/reports/EXIM_2021_Competitiveness_Report.pdf

USTR Automotive Goods USMCA Report

USTR and the Interagency Autos Committee published their first biennial review of the operation of the USMCA with respect to trade in automotive goods, including a summary of actions taken by producers to demonstrate compliance with the automotive rules of origin, use of the alternative staging regime, enforcement of such rules of origin, and other relevant matters; as well as whether the automotive rules of origin are effective and relevant in light of new technology and changes .

The delay in issuing additional regulations designed to implement the USMCA has increased uncertainty and the administrative burden that producers face in complying with the Agreement. Acknowledging challenges adapting to the new recordkeeping and calculations required under the USMCA’s rules of origin, industry is complying with requirements. Industry further reports that the increased complexity of the rules, has strained producers that are simultaneously dealing with critical input shortages and supply chain challenges.

Vehicle producers also commented on the burden of meeting various certification requirements—particularly those to demonstrate compliance with the Labor Value Content and steel and aluminum purchase requirements. This is the first report submitted under section 202A(g)(1)(B) of the Act. Subsequent reports will be submitted every two years through 2030.

<https://ustr.gov/sites/default/files/2022%20USMCA%20Autos%20Report%20to%20Congress.pdf>

CBP Launches Green Trade Strategy

U.S. Customs and Border Protection (CBP) announced the launch of the Green Trade Strategy, a framework to incentivize green trade, strengthen CBP's environmental enforcement posture, accelerate green innovation, and improve climate resilience and resource efficiency.

The Strategy establishes a model to combat the negative impacts of climate change on the agency's trade mission while strengthening existing enforcement activities against environmental trade crimes including illegal logging; wildlife trafficking; illegal, unreported, and unregulated fishing; and illegal mining.

The Strategy presents four strategic goals to guide CBP's trade-related environmental activities:

- **Incentivize Green Trade** – provide facilitation benefits and other incentives to promote environmentally-friendly trade practices and supply chains
- **Strengthen Environmental Enforcement Posture** – enforce against environmental bad actors to drive meaningful changes in trade practices
- **Accelerate Green Innovation** – promote and invest in the deployment of innovative, sustainable trade practices by government and private industry
- **Improve Climate Resilience and Resource Efficiency** – decrease the greenhouse gas emissions associated with CBP operations and strengthen the resilience and sustainability of trade infrastructure and assets.

CBP already enforces several environmental trade laws and practices to help combat environmental degradation, protect endangered species, and ensure American consumers and industry have access to sustainable products.

*** Briefs ***

“Perfectly Clear,” Sen. McConnell (R-Ky) Sets to Spike CHIPS Act. In a tweet Thursday, the Senate minority leader vowed to stall the United States Innovation and Competition Act (S-1260) in retaliation for parliamentary efforts to lower prescription drug prices. This week, TSMC, Intel and Global Foundries all issued public warnings that continuing to delay chipmaking incentives could cause them to scale back their plans to make semiconductors in the U.S. Earlier Taiwan's GlobalWafers announced a CHIPS Act-contingent \$5 billion investment in Sherman, Texas.

Commerce added 36 entities in nine countries to the Entity List, including five Chinese firms specifically blacklisted for allegedly supporting Russia's military and defense industrial base [87 FR 38920]. The rule includes language redesignating “The South China Sea” with grid coordinates, Modified were nine entities supporting the International Space Station. Former Apple camera supplier Nanchang O-Film Tech was removed from the list.

The Financial Crimes Enforcement Network (FinCEN) and BIS issued a joint alert [FIN-2022-Alert003] to financial institutions, advising them to be “vigilant against efforts by individuals or entities to evade BIS export controls”. The alert provides financial institutions with an overview of BIS’s export restrictions to date, a list of certain commodities of concern, and other information they can use and incorporate into their risk-based screening of financial transactions. In addition, it provides select transactional and behavioral red flag indicators of export control evasion, including red flags derived from recent Bank Secrecy Act reporting.

OFAC Sanctions actions announced June 28 include Russia-Related General License 39, General License 40, General License 41, and General License 42. OFAC is also issuing Russia-Related General License 43. OFAC has published a Determination Pursuant to Section 1(a)(i) of Executive Order 14068 as well as one new Frequently Asked Question and one amended Frequently Asked Question. Among additions to the entity list are aerospace firms Ilyushin Aviaton, Tupolev, and United Aircraft, a.k.a. Sukhoi, builder of the Su-57 Felon stealth fighter.

The Russian Elites, Proxies and Oligarchs (REPO) Task Force has blocked or frozen more than \$30 billion worth of sanctioned Russians’ assets, according to a Joint announcement from Justice and Treasury. The Task Force has further immobilized about \$300 billion worth of Russian Central Bank assets and conducted several high-profile seizures of yachts and homes. Justice and Treasury launched REPO on March 16 in response to Russia’s invasion of Ukraine. Besides the United States, its members include Australia, Britain, Canada, France, Germany, Italy, Japan and the European Commission

OFAC Blocked Property Reminder 31 C.F.R. § 501.603 of the Reporting, Procedures and Penalties Regulations (RPPR) requires holders of blocked property to provide the Office of Foreign Assets Control (OFAC) with a comprehensive list of all blocked property held as of June 30 of the current year by September 30.

https://home.treasury.gov/system/files/126/ofac_blocked_property_guidance.pdf

OFAC Global Terrorism Sanctions Regulations rules have been adopted to implement a September 9, 2019 counter-terrorism Executive order [87 FR 39337]. Changes are principally technical and conforming amendments. OFAC has amended the Regulations several times since the original E.O. “Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process” was issued in January 1995.

Exim announced \$525 million long-term loan guarantee to support the export of approximately \$366 million worth of U.S. engineering services, design services, licenses, catalysts, and refining equipment to Malaysia, and \$39.8 million in medium-term insurance to support the export of approximately \$45.7 million worth of U.S. aluminum beverage cans and ends manufacturing equipment to Brazil.

Labor Retires Trade Adjustment Assistance Act The Trade Adjustment Assistance for Workers Program expired June 30 and the Department of Labor’s Employment and Training Administration has begun phasing-out activities. The termination provisions under Section 285(a) of

the Trade Act of 1974 require the department to cease making determinations on petitions immediately. The department may continue to make determinations on requests to amend previously certified petitions. Fiscal Year 2022 program training funds will be available to states through 2025.

USDA Global Fertilizer Market Price Study. Examining the three main macro-fertilizer groups – nitrogen phosphorus and potassium, the report surveys suppliers, users, and the impact of the Russian invasion of Ukraine. Russia and Belarus account for nearly 20 percent of global exports. https://www.fas.usda.gov/sites/default/files/2022-06/IATR%20Fertilizer%20Final_0.pdf

The UK plans to retain steel tariffs to protect the British steel industry, with Prime Minister Boris Johnson stating that the protectionist measures were in line with what the other European countries have done. The tariffs imposed affect imports from China, India, and Turkey. Explaining the “tough choice”, PM said that the steel industry was going through a difficult time owing to energy prices. Such an action would be in breach of WTO rules.

India’s largest trading partner is the United States, according to recent data, with the total value of annual bilateral trade reaching \$119.42 billion, now exceeding trade with China. This is being seen by some as further evidence of India’s attempt to “decouple” from China at a time when India has pledged support to the US-led Indo-Pacific Economic Framework.

*** Appointments / Calendar ***

CUSTOMS – CBP announced its intention to nominate Commerce International Trade Administration Deputy Assistant Secretary Ian Saunders to become the next Secretary General of the World Customs Organization (WCO). As the U.S. Government’s intended nominee for the WCO’s most senior position, Saunders will stand for election at the June 2023 WCO Council meeting. If elected by a majority of the 184 customs Directors General who comprise the Council, Saunders will become the first American official to serve as WCO Secretary General since 1999.

COMMERCE – BIS Encryption Controls Virtual Seminar. Presented by BIS, co-sponsored by Professional Association of Exporters and Importers. August 10-11, 2022 9:00 a.m. to 12:00 p.m. PDT (UTC -7) each day. Cost: \$300. To register contact the PAEI Admin at (408) 532-7234 or email paeadmin@paei.org. Last day to register is Friday, August 5. California MCLE: 5.5 credit hours.

*** ITC Actions***

Dioctyl Terephthalate From South Korea -
Institution of a Five-Year Review
[87 FR 39556]

Furfuryl Alcohol From China - Institution of a
Five-Year Review
[87 FR 39559]

Light-Walled Rectangular Pipe and Tube From
Taiwan Institution of a Five-Year Review
[FR 39562]

Sulfanilic Acid From China and India
Termination of Five-Year Review
[87 FR 39562]

Helical Spring Lock Washers From China and
Taiwan; Termination of Five-Year Reviews [87
FR 39869]

**Commission Determination Not to Review an
Initial Determination Granting Return of Bond;**
Termination of Bond Return Proceeding;
Certain Light-Emitting Diode Products, Fixtures,
and Components Thereof 87 FR 39870

**Foreign Trade Zones (FTZs): Effects of FTZ
Policies and Practices on U.S. Firms** Operating
in U.S. FTZs and Under Similar Programs in
Canada and Mexico; Submission of
Questionnaire and Information Collection Plan
for

*** Proclamation***

**Increasing Duties on Certain Articles From the
Russian Federation** [87 FR 38875] Proclamation
10420 of June 27, 2022 increasing the column 2
rates of duty to 35 percent ad valorem on
certain other products of the Russian
Federation, the importation of which has not
already been prohibited.

*** ITA AD/CVD Actions***

Crystalline Silicon Photovoltaic Cells, , From
China: Final Results of Antidumping Duty
Administrative Review and Final Determination
of No Shipments [87 FR 38379]

**Polyethylene Terephthalate Film, Sheet, and
Strip** From Taiwan: Preliminary Results of
Antidumping Duty Administrative Review and
Preliminary Determination of No Shipments [87
FR 38374]

Sodium Nitrite From the Russian Federation:
Preliminary Affirmative Determination of Sales
at Less Than Fair Value Final [87 FR 38377] and
Affirmative Countervailing Duty Determination
[87 FR 38375]

Truck and Bus Tires From the People's Republic
of China: Final Results of the Countervailing
Duty Administrative Review [87 FR 39063]

Multilayered Wood Flooring From the People's
Republic of China Final Results of Antidumping
Duty Administrative Review and Final
Determination of No Shipments
[87 FR 39464]

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