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RAPTAC Wrap: Industry Response to Semiconductor Controls

The year's final meeting of the BIS Regulations and Procedures Technical Advisory Committee (RAPTAC) afforded participants a high-level overview of what industry comments on October's semiconductor export controls will look like. The comment period for the interim final rule published October 13, 2022, at [\[87 FR 62186\]](#) is extended until January 31, 2023.

Hillary Hess, Director Regulatory Policy at BIS opened the meeting acknowledging the challenges of the 2022: "It's been a difficult year, 2022. We started in Russia and recently have been interacting with China and it's been a kind of a tense year. But one thing, one positive note of this year is that it really has encouraged what we had already started - that level of cooperation with our allies. We're all export control people and know the importance of of multilateralism when it comes to export controls. So, I do think that's been a bright spot in an otherwise turbulent year."

John Cooney, Vice President of Global Advocacy and Public Policy for SEMI, the semiconductor equipment and supply chain group emphasized the importance of a multilateral approach: "The regulations as released on October 7 are only going to be effective in meeting the state of national security objectives if allied countries adopt mirrored rules for end use and choke point controls. Regrettably, the new and expanded rules on advanced computing and manufacturing were announced by the administration with no agreement yet in place from Allied countries, also home to mature manufacturing ecosystems consisting of experienced exporters. As a result, SEMI member companies are concerned that currently there is not a level playing field between U.S. companies."

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www.wttonline.com

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

Jimmy Goodrich, the vice president for global policy at the Semiconductor Industry Association led the RAPTAC through an overview of market size and structure, noting the interconnected nature of the industry: “You think about it as an upside-down pyramid - at the very top you have the \$4 trillion electronics market and you have the half-trillion dollar semiconductor market, and the \$100 billion plus semiconductor capital equipment market, all supporting each other. All the innovation that's happening at the very narrow tip of this upside-down pyramid supports all of the innovation that's happening upstream.”

The October Rule had unintended consequences, “for example, the novel usage of the US persons rule, the fact that many of our allied partners who had facilities in China had a crisis for a couple of days before that was resolved.

“And we still want to stress just how important that is to ensure that there's a level playing field and also that the rule is effective. Ultimately, if the end users in the country of concern are able to access the technology, then it's not effective.

“We also raise a number of suggestions. For example, the end user compliance around the US persons rule requires significant amount of due diligence, and many companies are concerned that one company's due diligence may differ from the others. One company may identify what they believe is a restricted end user, and another company may come up with a different assessment. So we will suggest or ask [for] some sort of list that might help guide the industry.

“We hope there could be more clarity regarding standards that will allow companies to apply for a license even though we understand that's presumption of denial, and that is a high bar certainly. We would like to understand if there are situations for pure civilian usage, for nonsensitive end users, healthcare, those kinds of situations, where there may be possible license exceptions provided.”

US Africa Forum Talks Investment.

Last week's US – Africa Leaders Summit included events hosted by the US Trade Representative, including an opportunity for frank talk about slavery. Ambassador Katherine Tai hosted the US-AGOA forum, as well as a plenary session with trade ministers and a bipartisan group of members of Congress on the House Ways and Means and Foreign Affairs Committees who discussed their support for deepening the U.S. – Africa trade and investment ties.

The African Growth and Opportunity Act (AGOA) was enacted in 2000 and has since been at the core of U.S. trade and investment policy with sub-Saharan Africa. AGOA provides eligible sub-Saharan African countries with duty-free access to the U.S. economy and has helped drive investment on the continent.

Mauritania needs to do more work to address forced labor, especially hereditary slavery, Deputy US Trade Representative Sarah Bianchi told Mauritania's Minister of Economy Ousman Mamoudou Kane. The two officials discussed Mauritania's efforts to deal address forced labor, according to a readout from USTR.

Ms. Bianchi recognized the progress Mauritania has made on this issue to date, in particular increasing funding for anti-slavery courts, limiting the rotation of judges, legalizing NGOs and increasing outreach and

engagement with civil society to address slavery. Mauritania lost its preferential access to the US market under the African Growth and Opportunity Act in 2019 over the forced labor issue.

At the AGOA summit, Ms. Tai said that African ministers said they appreciate the AGOA program, but what they really need to meet their development goals is more US investment. Ministers discussed the future of AGOA with US officials and members of Congress, who will write the next iteration of AGOA legislation.

Opening the AGOA summit, Ms. Tai said she wanted to hear about ways to improve AGOA, “including how we can increase the utilization rates, particularly among smaller and less-developed countries, as well as ensure that the program’s benefits fully reach all segments of society.”

But she also emphasized that “more work is needed, especially with regard to achieving meaningful progress on investigating and expeditiously prosecuting slavery cases,” according to the readout.

Russia Sanctions Dodgers Nabbed

The Commerce Department’s Bureau of Export Administration has suspended the export privileges of two companies and three persons for the unauthorized export to Russia of sensitive items subject to US export controls. The temporary denial order issued yesterday will apply for a renewable 180 days to two shell companies and three individuals who routed shipments and layered financial transactions in order to obscure the true Russian end users.

In a related action, the Justice Department unsealed a 16 count indictment filed in the Eastern District of New York charging the three named by Commerce, and four more individuals for export violations and other criminal violations to include conspiracy and other charges related to a global procurement and money laundering network on behalf of the Russian government.

The respondents are alleged to have used this network to purchase and export highly sensitive and heavily regulated electronic components, including advanced semiconductors, for the Russian military, defense sector and research institutions. As alleged, the defendants were affiliated with Serniya Engineering and Sertal LLC, Moscow-based companies that operate under the direction of Russian intelligence services to procure advanced electronics and sophisticated testing equipment for Russia’s military industrial complex and research and development sector.

35 year old New Hampshire resident Alexey Brayman allegedly received an on-going supply of “advanced electronics and sophisticated testing equipment used in quantum computing, hypersonic and nuclear weapons development and other military and space-based military applications,” shipped through his wife’s home-based Etsy Crafts Business. Brayman, identified in court documents as an Israeli citizen who was born in Ukraine, turned himself in on Tuesday.

Vadim Konoshchenok, 48, of St. Petersburg;— suspected to be an FSB officer – would then ship or physically smuggle U.S.-origin items from Estonia to Russia, including dual-use electronics, military-grade tactical ammunition and other export-controlled items. On Oct. 27, 2022, Konoshchenok was stopped at the

Estonian border with 35 different types of semiconductors and other electronic components, as well as thousands of U.S.-made 6.5mm bullets, which are used in military sniper rifles.

On Nov. 24, 2022, Konoshchenok was again stopped attempting to cross into Russia with approximately 20 cases containing thousands of U.S.-origin bullets, including tactical rounds and .338 military sniper rounds. Konoshchenok discussed “fabricating” business records to conceal the ammunition shipments, on one occasion describing them as “auto parts.” Incident to Konoshchenok’s arrest, Estonian authorities searched a warehouse held in the name of Konoshchenok’s son and recovered approximately 375 pounds worth of ammunition.

Yellen about “Friendshoring”

In an essay distributed by *Project Syndicate*, **Treasury Secretary Janet Yellen** spelled out the rationale for an active government role in the global supply chain. Following are excerpts, the full piece can be read [\[here\]](#).

“Comparative advantage explains the efficiency gains of international trade and specialization. But we have learned that we must also account for the reliability of trade. We need secure trade that reaps the benefits of economic integration while providing greater reliability of supply for the goods we depend on. **Three key risks are of particular concern-**

“**The first risk is over-concentration.** The US and its partners have a strong interest in creating redundancies in our supply chains. We must avoid over-concentration of the production of critical goods in any particular market. Concentration of sources for key components can sometimes lower costs. But it leaves supply chains vulnerable to cascading disruptions that hurt workers and consumers.

“**Second, we must protect against geopolitical and security risks.** Not only is Russia waging a brutal war against the Ukrainian people; it has also weaponized commodity exports against the world. For too long, much of the world was too willing to believe Russia’s claim that it was a reliable supplier of cheap and convenient energy. **Third, we must shift away from supply chains that violate core human rights.** It is time for a systematic approach to address these vulnerabilities.

“**We first need to recognize that the private sector does not internalize the right level of economic resilience by itself.** Even when companies pursue a privately optimal level of resilience through insurance policies and inventory build-up, they will often not consider national-security concerns or how an interruption in their production could affect other firms or consumers. **Governments play a critical role in strengthening economic resilience at a national level.**

“We don’t seek to produce everything ourselves. Nor do we seek to limit trade to a small group of countries. That would substantially harm the efficiency gains of trade and hurt US competitiveness and innovation. Rather, our core goal is to diversify away from risky countries and concentrated supply chains.

“**Of course, in any discussion of friend-shoring, it is natural to ask: Who are our friends?** Friend-shoring is not for a closed group of countries. It is open and inclusive of our partners in emerging markets and developing countries, in addition to advanced economies. Countries need to work together to develop climate resilience, particularly for the most vulnerable communities. Beyond the effect on the climate, our

collective movement away from fossil fuels will also reduce our vulnerability to oil- and gas-price shocks and our exposure to autocratic regimes, which often control much of the world's reserves of fossil fuels.

“As we pursue these initiatives, we will remain focused on friend-shoring for sectors and products that are critical to our national and economic security. We will coordinate with our trading partners on high standards for human rights, labor, and the environment. And we will continue to support trade integration, which has yielded significant benefits for the global economy.

“When we look back decades from now, I believe that the past three years will be viewed as a uniquely volatile period in our modern history. We have all been subject to enormous disruptions in our collective lives: the pandemic, a terrible war in Europe, and increasingly destructive natural disasters. But I also believe that it will be viewed as a moment when the US and its partners advanced a new pillar of our economic agenda, one focused on resilience. I am confident that this agenda will strengthen our economic dynamism while providing greater economic stability for our people.”

BIS Blacklists Grows With FDP & UVL

The Commerce Department's Bureau of Industry and Security (BIS) added 36 Chinese entities and nine Russian parties to the Entity List which applies stringent license requirements that will severely restrict these entities' access to commodities, software, and technologies subject to the Export Administration Regulations (EAR).

Twenty-one entities are major artificial intelligence (AI) chip research and development (R&D), manufacturing, and sales entities that are or have close ties to government organizations that support the PRC military and defense industry. These include hypersonic weapons development, design and modelling of vehicles in hypersonic flight, designing and producing ballistic missile radomes, using proprietary software to model weapons design and damage, and other efforts to support military-civil fusion activities tied to the PLA Air Force and Navy.

The Entity List Foreign Direct Product rule is also being applied to these entities, which will severely restrict their ability to obtain U.S.-origin technologies and other items produced in foreign countries if they are produced using substantial U.S. technology, tools, or other inputs or components.

A second rule removes 25 Chinese parties from the Unverified List (UVL) due to satisfactory completion of End-Use Checks (EUCs) and verification of those entities' *bona fides*, including in cooperation with the PRC government.

“Our new end-use check policy requiring the timely completion of end-use checks by host governments to avoid placement on our Unverified and Entity Lists is yielding results,” **said Assistant Secretary of Commerce for Export Enforcement Matthew S. Axelrod**. “When a host government facilitates a check that results in our ability to confirm a company's *bona fides*, the company comes off the Unverified List, as demonstrated by today's 25 removals of Chinese companies from our restricted party lists. But when a host government persists in preventing a check, there are real consequences, as demonstrated by today's addition of 9 Russian parties to the Entity List.”

Two PRC entities that were on the UVL—Yangtze Memory Technologies Co (YMTC), and Shanghai Micro Electronics Equipment (Group) Co., Ltd – are being added to the Entity List for reasons not related to host government actions preventing completion of an end-use check. YMTC and a Japanese subsidiary were targeted because of “risks of diversion,” according to the *Financial Times*.

This is the first rule issued pursuant to the changes to the EAR released in October clarifying that sustained lack of cooperation by a host government that effectively prevents BIS from determining compliance with the EAR, including the timely scheduling of End-Use Checks by a foreign government, is grounds for adding an entity to the Entity List.

The text of the rules released today are available on the Federal Register’s website here: [\[link\]](#) and here [\[LINK\]](#). The effective date for both rules is December 16, 2022.

*** Briefs ***

Biodiversity Summit? Meh. COP15, the “Conference of Parties to the UN Convention on Biological Diversity,” convened last week in Montréal with a fraction of the fanfare the COP17 Climate talks generated in Egypt last month. Gillian Tett of the *Financial Times* reports “the most significant conference on biodiversity in a decade” has drawn little media attention. **Former Treasury Secretary Henry Paulson** notes “if human society continues on this trajectory, we face a future where 30 to 50 percent of all species may be lost by the middle of the 21st century.” Read that again.

Senate GOP Slams OECD Pillar Two. Senate Republicans sent President Biden a stern letter asserting OECD’s Pillar Two UTPR is inconsistent with our bilateral tax treaties. The Pillar Two Model Rules are designed to ensure large multinational enterprises (MNEs) pay a minimum level of tax on the income arising in each jurisdiction where they operate.

“While some may believe that implementation by foreign countries of the model rules, including the UTPR, will lead the United States to follow suit, Congress’s hand will not be forced. Nor will Congress sit idly by as U.S. companies and profits are taxed in a manner inconsistent with U.S. law and our bilateral tax treaties.” The [letter](#) was signed by all Republican members of the Senate Finance Committee and House Ways and Means Committee, as well as Senate Foreign Relations Committee Ranking Member James Risch (R-Idaho).

“The United States led the world in being the first to adopt a minimum tax on the foreign earnings of domestically parented multinational enterprises, and both I and the President remain deeply committed to take the additional steps needed to implement this agreement, too,” said Treasury Secretary Janet Yellen in a statement recognizing the European Union’s [adoption](#) of the OECD initiative.

Senate Blocks AML Legislation. In a win for the Legal Industry, the Senate stripped the ENABLERS Act from being included in the National Defense Authorization Act. The ENABLERS Act amendment would have closed a key loophole identified by leading anti-corruption experts: While US banks are required to conduct due diligence to make sure the money they accept is not “dirty,” other enablers

have no such obligations. The law would mandate real estate companies, law firms, and companies in several other sectors report suspicious activity to federal authorities.

ABA President Deborah Enix-Ross led the campaign to gut the bill, arguing it would regulate lawyers as “financial institutions” under the Bank Secrecy Act (BSA) and could require them to report attorney-client privileged and other protected client information to the government. ABA members who oppose the bill “are attempting to manipulate and hyperbolize concerns over attorney-client privilege, in order to make a case that is really about blocking the ability of an extremely tiny—yet vocal and profit-minded—group of attorneys in the United States who wish to keep profiting by being able to do business with criminals.” said **Scott Greytak, Advocacy Director for Transparency International US**.

Justice - Ericsson will face an additional year’s scrutiny from a U.S.-mandated monitor appointed in connection with a bribery settlement the company reached in late 2019, according to a [company statement](#). The Stockholm-based telecommunications company said Wednesday it had agreed with the U.S. Justice Department and Securities and Exchange Commission to extend the term of its independent compliance monitor until June 2024.

Dr. Andreas Pohlmann of the firm Pohlmann & Company – Compliance and Governance Advisory LLP has been Ericsson’s monitor. Former Chief Compliance Officer of Siemens AG, Pohlmann is well acquainted with compliance monitorships of the U.S. DOJ and the U.S. SEC and the World Bank.

Last March Justice determined that company breached the 2020 DPA by failing to make subsequent disclosure related to the investigation post-DPA. “This extension will allow the company, under the monitorship, to further embed best in class governance, risk management and compliance frameworks across the organization,” the company said in a statement.

USTR Section 301 Tariff Exclusions United States Trade Representative Friday announced a nine-month extension of 352 product exclusions in the China Section 301 Investigation that had been scheduled to expire at the end of 2022.

FinCEN Rule on Beneficial Ownership Access proposed. The Financial Crimes Enforcement Network (FinCEN) issued a Notice of Proposed Rulemaking (NPRM) governing the circumstances under which beneficial ownership information may be disclosed to Federal agencies; state, local, tribal, and foreign governments; and financial institutions, and how it must be protected.

This NPRM follows the [final reporting rule](#) that FinCEN issued on September 30, requiring most corporations, limited liability companies, and other similar entities created in or registered to do business in the United States to report information about their beneficial owners to FinCEN.

WTO – China Chip Complaint. China filed a complaint at the World Trade Organization Monday, a response to the broad technology controls imposed by Washington in October. The measure is strictly symbolic, as the next step for resolution, the Appellate Body, remains hamstrung by bickering among members.

CBP – Customs Broker Permit User Fee Payment. Notice to customs brokers that the annual user fee that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due no later than February 24, 2023. The annual user fee reflects the changes made by two final rules, published in the Federal Register on October 18, 2022, that eliminate broker districts and district permits, and transition all customs brokers to a single national permit. Pursuant to fee adjustments required by the Fixing America's Surface Transportation Act (FAST ACT) and U.S. Customs and Border Protection (CBP) regulations, **the annual user fee payable for calendar year 2023 will be \$163.71.** [[87 FR 77132](#)]

CBP – Free Trade Agreements CBP proposes to extend the expiration date of this information collection with no change to the burden hours, method of collection or to the information collected. The US has entered into FTAs with 20 countries. Respondents can obtain information on how to make claims under these FTAs at <http://www.cbp.gov/trade/free-trade-agreements>, and use a standard fillable format for the FTA submission by going to <http://www.cbp.gov/document/guides/certification-origin-template>. [[87 FR 77131](#)]

State/DDTC - ITAR Amendment This proposed rule would add to ITAR § 120.54 two activities that are not controlled events (defined herein, and in the previous rule, to mean “an export, reexport, retransfer, or temporary import”) and therefore do not require authorization from the Department. While previously not specified in the ITAR, the Department's long-standing policy is that these two proposed activities are not controlled events.

First, subject to certain conditions, the taking of defense articles outside a previously approved country by the armed forces of a foreign government or United Nations personnel on a deployment or training exercise is not an export, reexport, retransfer, or temporary import.

Second, a foreign defense article that enters the United States, either permanently or temporarily, and that is subsequently exported from the United States pursuant to a license or other approval under this subchapter, is not subject to the reexport and retransfer requirements of this subchapter, provided it has not been modified, enhanced, upgraded, or otherwise altered or improved or had a U.S.-origin defense article integrated into it. Send comments on or before February 14, 2023. [[87 FR 77046](#)]

OFAC / Russia Actions include the following Russia – related sanctions:

- Publication of Russian Harmful Foreign Activities Sanctions Regulations Web **General License 54**; [87 FR 76930](#) *Excepting VEON Ltd.*
- Publication of Russian Harmful Foreign Activities Sanctions Regulations Web **General License 13C**; [87 FR 76930](#) *Excepting transactions with Russian Central Bank, National Wealth Fund, and Ministry of Finance*
- Publication of Russian Harmful Foreign Activities Sanctions Regulations Determination and Web **General Licenses 55 , 56, and 57**; [87 FR 76931](#) *Sakhalin-2, European Union, Vessel Emergencies*
- Publication of Global Terrorism Sanctions Regulations Web **General License 21**; [87 FR 76932](#) *Authorizing Limited Safety and Environmental Transactions Involving Certain Vessels.*

- Russia-related [General License 8E](#), "Authorizing Transactions Related to Energy," [General License 58](#), "Authorizing the Wind Down and Rejection of Transactions Involving Public Joint Stock Company Rosbank," and [General License 59](#), "Authorizing Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Public Joint Stock Company Rosbank." OFAC is also publishing [two Frequently Asked Questions \(1103 & 1104\)](#).

*** 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.

Kharon Global Sanctions Summit 2023 February 9, London. Speakers to include **Rich Nephew**, State Department Coordinator on Global Corruption, **Brett Freedman**, Justice Department Chief of Staff, **Huw Walters**, UK MoD Director Economic & Investment Security, and **Sam Zell**, Founder and Chairman, Equity Group Investments. Yes, [The Grave Dancer](#). \$895 / £730 [[Registration](#)]

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

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Frank Ruffing, Editor +1.703.283.5220 fruffing@tradereqs.com