

Vol. 42, No. 3

January 17, 2022

BIS Delays Effective Date of Wassenaar Cyber Rule

Responding to industry comments, the Bureau of Industry and Security (BIS) Jan. 12 delayed the effective date of its October rule establishing new controls on certain cybersecurity items and a new License Exception, Authorized Cybersecurity Exports (ACE). The agency may modify the rule in advance of March 7, the new effective date.

BIS received 12 comments on the rule implementing changes to controversial cyber intrusion software controls that Wassenaar Arrangement (WA) members agreed to at its December 2017 plenary. The comments ranged from security analysts who asked for broader exceptions to the rule, to nonprofits who requested BIS expand the definition to cover other surveillance tools (see **WTTL**, Dec. 20, page 4).

The agency said “it is important to allow enough time for industry to implement the compliance measures and procedures necessary to comply with the published interim final rule, as well as for BIS to provide the public with additional guidance.” In November, BIS published 29 new Frequently Asked Questions (FAQs) on the rule.

Specifically, the original rule created new Export Control Classification Numbers (ECCNs) 4A005 and 4D004, as well as a new paragraph 4E001.c and made conforming changes to other ECCNs in refer to the new language. It also created a new License Exception ACE that authorizes exports of cybersecurity items and certain IP network surveillance products to most destinations, except those listed in Country Groups E:1 and E:2.

Hong Kong Trading Firm Settles Iran Sanctions Charges

Offshore trading firm Sojitz (Hong Kong) Limited agreed Jan. 11 to pay Treasury’s Office of Foreign Assets Control (OFAC) a \$5,228,298 civil penalty to settle charges of violating Iran sanctions. “Sojitz HK made U.S. dollar payments through U.S. financial institutions for Iranian-origin high density polyethylene resin (HDPE) from its bank in Hong Kong to

the HDPE supplier's banks in Thailand," the agency said. Sojitz HK voluntarily self-disclosed the violations. "From August 2016 through May 2018, certain Sojitz HK employees acting contrary to company-wide policies and procedures caused Sojitz HK to purchase approximately 64,000 tons of Iranian-origin HDPE from a supplier in Thailand for resale to buyers in China. Under the terms of the HDPE Trading arrangement, Sojitz HK paid the purchase price by wire transfer to the Thai supplier upon the supplier's shipment of the HDPE to the Chinese buyers," OFAC said.

"Sojitz HK's noncompliant employees omitted the HDPE's Iranian country of origin information from all relevant transactional documents over a period of two years, despite having been told explicitly and repeatedly by the company's compliance personnel that such conduct violated U.S. sanctions and company policy," it added.

The company "undertook significant remedial measures," including: termination of the noncompliant employees; revision of sanctions screening procedures to require that the counterparties in all business transactions be subject to mandatory compliance screening; and enhancement of the independence and capability of its sanctions compliance unit.

U.S. No Longer Hamstrung by India Import Barriers

Two years after the country was declared ineligible for certain benefit programs and retaliated against U.S. products, the Biden administration Jan. 10 welcomed India's agreement to allow imports of U.S. pork and pork products into the country.

"This new opportunity marks the culmination of nearly two decades of work to gain market access for U.S. pork to India – and it signals positive movement in U.S.-India trade relations," Agriculture Secretary Tom Vilsack said in a statement. "We will continue working with the Indian government to ensure that the U.S. pork industry can begin shipping its high-quality products to consumers as soon as possible."

The previous administration terminated India's designation as a beneficiary developing country under the Generalized System of Preferences (GSP) in May 2019, as the country "has not assured the United States that India will provide equitable and reasonable access to its markets," the White House statement said at the time (see [WTTL](#), June 10, 2019, page 9).

In 2020, the U.S. was the world's third-largest pork producer and second-largest exporter, with global sales of pork and pork products valued at \$7.7 billion. In fiscal year 2021, the U.S. exported more than \$1.6 billion of agricultural products to India.

The National Pork Producers Council (NPPC) welcomed the deal. "After decades of work, a market that had been closed to U.S. pork is being opened," said NPPC President Jen Sorenson. "We look forward to the new access, which will allow us to provide affordable, wholesome and nutritious U.S. pork products to consumers in India," she added.

Union Groups Urge Continued China Tariffs, New Trade Tools

In advance of the second anniversary of the phase-one China trade deal, unions and labor groups Jan. 13 called on the administration to move beyond the purchase commitments in the deal. In addition, they called on President Biden to leave in place import tariffs and work with allies.

The U.S. “must now pivot from the transactional to the transformational. Continuing to focus on the unfulfilled commodity purchases in the Phase 1 deal is not how we will strengthen America’s national and economic security,” Alliance for American Manufacturing (AAM) President Scott Paul said in a statement.

As of November 2021, China's total imports of covered products from the U.S. were \$221.9 billion, compared with a phase-one target of \$356.4 billion (62%), according to Peterson Institute numbers. Over the same period, U.S. exports to China of covered products were \$199.2 billion, compared with a phase-one target of \$330.9 billion (60%).

Paul called on the administration not to lift the tariffs on Chinese imports. “We must sharpen and deploy new tools to defend against China’s unfair trade practices such as industrial subsidies, state ownership, overcapacity in key sectors, labor exploitation, non-enforcement of environmental regulations, and currency misalignment,” he urged.

Paul also cited the Uyghur Forced Labor Prevention Act (H.R. 6256) as evidence of the “broad, bipartisan support” for transforming the U.S.-China relationship. President Biden signed the bill, which bans imports from Xinjiang region of China and imposes sanctions on foreign individuals responsible for forced labor in the region, in December (see **WTTL**, Jan. 3, page 7). The Senate unanimously passed the bill a week earlier, two days after the House passed the compromise bill by voice vote.

* * * Briefs * * *

UNCOATED PAPER: In 5-0 “sunset” votes Jan. 11, ITC said revoking antidumping duty orders on imports of uncoated paper from Australia, Brazil, China, Indonesia and Portugal and countervailing duty orders on imports from China and Indonesia would renew injury to U.S. industry.

EXPORT ENFORCEMENT: Peter Sotis of Delray Beach, Fla., owner and principal of Add Helium LLC, and Emilie Voissem of Sunrise were sentenced Jan. 12 in Miami U.S. District Court on charges of exporting dual-use goods, including four rebreathers, to Libya without required Commerce license in 2016. Sotis was sentenced to 57 months in prison followed by three years’ supervised release; Voissem will serve five months in prison followed by three years’ supervised release. Both were convicted in October after six-day trial (see **WTTL**, Nov. 1, 2021, page 6). Sotis was arrested in October 2019 and released on \$250,000 bond. Rebreathers, which absorb carbon dioxide out of scuba diver’s exhaled breath, are classified under ECCN 8A002. “After being warned on multiple occasions about the risks associated with shipping rebreathers to Libya, Defendants pushed forward with the shipment anyway, depriving the [shipping company] of critical information about the shipment while simultaneously trying to make them ultimately responsible for it,” Justice sentencing memo noted.

USMCA: Canada Jan. 13 joined Mexico's request for dispute panel to address U.S. "interpretation of the rules of origin governing the regional value content calculations that must be performed for a vehicle to qualify" for duty-free treatment under U.S.-Mexico-Canada (USMCA) agreement. Mexico requested panel week earlier (see **WTTL**, Jan. 10, page 1). Mexico and Canada requested consultations with U.S. in August.

NICARAGUA: OFAC Jan. 10 designated six Nicaraguan government officials, including defense minister, director general and deputy director general of Nicaraguan Institute of Telecommunications and Mail (TELCOR) and board president of state-owned Nicaraguan Mining Company (ENIMINAS), following "fraudulent national elections orchestrated by their regime," agency said. In November, OFAC designated Public Ministry of Nicaragua as well as nine Nicaraguan government officials, including vice minister of finance, minister of energy and mines, and president of Nicaraguan Institute of Energy (see **WTTL**, Nov. 22, page 8).

NORD STREAM: Senate failed Jan. 13 to pass bill to impose sanctions on entities responsible for planning, construction or operation of Nord Stream 2 pipeline (S. 3436). Vote was 55-44 but needed 60 votes to pass. "Shutting down the pipeline with sanctions now, however, will deter Russian aggression by continuing their reliance on Ukraine to export gas into Europe. Today's bipartisan vote to sanction the pipeline sends a strong message to the president: It's time to reverse course," Sen. Pat Toomey (R-Pa.) said in statement.

SOLAR TARIFFS: Justice Jan. 14 appealed Court of International Trade (CIT) ruling (Slip op. 21-154) reinstating exclusion of imported bifacial solar modules from Section 201 safeguard tariffs and reducing tariff rate from 18% to original 15%. CIT issued ruling in November (see **WTTL**, Nov. 22, 2021, page 1). Solar industry groups denounced appeal. "Continuing this legal fight in light of the history of the case is another government misstep in this long and tortured saga and provides no benefit to the American workers, public, or clean energy goals," John Smirnow, General Counsel and VP, Solar Energy Industries Association, said in statement.

Still Working Remotely in 2022?

- When many individuals in your organization need to read *Washington Tariff & Trade Letter*, there's an easy way to make sure they get the news they need as quickly and conveniently as possible.
- That's through a site or corporate license giving an unlimited number of your colleagues access to each weekly issue of *WTTL*.
- With a low-cost site or corporate license, you can avoid potential copyright violations and get the vital information in *WTTL* to everyone who should be reading it.

For more information and pricing details, call: 301-460-3060