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## BIS Clarifies Classification of Integrated Circuits

In Frequently Asked Questions (FAQs) published Sept. 17, the Bureau of Industry and Security (BIS) clarified the classification of integrated circuits (ICs) used in U.S. government programs or by persons under contract to the U.S. government. One FAQ answered whether those ICs are considered to be “rated as radiation hardened” under Export Control Classification Number (ECCN) 3A001.a.1 or ECCN 9A515.d or e.

Unless “designed, rated, certified, or otherwise specified or described as meeting by the manufacturer to meet control parameters” in those ECCNs, those ICs are not radiation hardened, the agency said. “Subsequent use of integrated circuits does not change the classification of the underlying standard process technology,” BIS wrote.

“For example, if a 3A991 integrated circuit is ‘tested’ by the USG and meets the radiation-hardened parameters in 3A001.a.1, the classification of the IC does not change from 3A991 and the underlying standard process technology does not change its classification from 3E991,” it added. BIS also clarified the impact to the classification of those standard fabrication process technologies that do not meet the “required” standard. “Only that portion of the technology that is ‘required’ is controlled under 3E001 as it relates to 3A001.a.1. or 9E001 as it relates to 9A515.d or .e,” it said.

“For Department of Defense acquisition programs relying on onshore foundries for integrated circuit production and which include approved Program Protection Plans, authorized program personnel may rely, as necessary, on existing industry technology control plans to assist in certifying that an export of technical data does not occur during the production of integrated circuits,” the last FAQ said.

## Biden Fills Ex-Im Bank, Trade Posts

Women in trade, rejoice. President Biden Sept. 13 started the process of filling key trade posts at the Export-Import (Ex-Im) Bank, Commerce and the U.S. Trade Representative’s

(USTR) office. He announced his intent to nominate Reta Jo Lewis to be the first Black woman Ex-Im Bank president, Marisa Lago to be Commerce under secretary for international trade, and Elaine Trevino to be the first woman of color and first Latina as USTR chief agricultural negotiator.

At the same time, Biden sent the Senate the nominations of former Justice official Matthew Axelrod to be BIS assistant secretary for export enforcement (see **WTTL**, Aug. 23, page 5), María Luisa Pagán to be deputy USTR in Geneva and Christopher Wilson to be the first USTR chief innovation and intellectual property (IP) negotiator (see **WTTL**, Aug. 16, page 5).

Lewis is currently a senior fellow and director of congressional affairs at the German Marshall Fund of the United States (GMF). Prior to joining GMF in 2015, she served as the first special representative for global intergovernmental affairs under Secretary of State Hillary Clinton.

Lago serves as director of the NYC Department of City Planning and chair of the City Planning Commission. Lago previously served in the Obama administration as Treasury assistant secretary for international markets and development. Trevino is president of the trade association Almond Alliance of California (AAC). Elaine previously served as a deputy secretary at the California Food and Agriculture Department.

Lago previously was nominated to be deputy USTR in 2015, but after waiting eight months to get a confirmation hearing, she spent only an hour before the Senate Finance Committee, providing boilerplate answers to the committee's questions. She had to share half that hour with another nominee to head the Pension Benefit Guaranty Corporation (see **WTTL**, July 27, 2015, page 6). Lago's nomination was returned in January 2017 without any further Senate action.

Lawmakers, administration officials and industry groups welcomed the nominations. Sen. Sherrod Brown (D-Ohio) applauded the president "for nominating such a well-qualified woman to lead Ex-Im," he said in a statement. "Ex-Im helps create hundreds of thousands of good-paying manufacturing jobs in Ohio and around the country," he said. "I look forward to speaking with Lewis to learn how she will help more of Ohio's workers and businesses compete against China and how she will ensure Ex-Im supports our emerging clean energy economy."

USTR Katherine Tai sang Trevino's praises. "Trevino understands the importance of America's farmers and farming communities to the vitality of our economy. Her experience will help the Biden-Harris administration craft durable trade policy that creates broad-based prosperity," she said in a statement.

Agriculture groups agreed. "Trevino has experience fighting for trade policies and agreements that are also important to the meat and poultry industry. Recently [she] has been outspoken on the need to address the crisis at our ports and has worked closely with the Meat Institute to develop policies that promote U.S. agriculture trade," Julie Anna Potts, North American Meat Institute president and CEO, said.

## Lawmakers Applaud Sanctions over Ethiopian Conflict

After more than 10 months of conflict in Ethiopia, the Biden administration Sept. 17 imposed open-ended sanctions on persons involved with the humanitarian and human rights crisis in the country. Lawmakers on both sides of the aisle welcomed the sanctions, saying it's about time.

For his part, the president signed a new Executive Order (EO) that provides for menu-based sanctions on foreign persons including those “determined to be responsible for or complicit in actions or policies that expand or extend the ongoing crisis in northern Ethiopia or obstruct a ceasefire or peace process,” a Treasury Frequently Asked Question (FAQ) noted.

On the export side, the U.S. “has imposed defense trade restrictions for exports to Ethiopia amid the ongoing conflict and reported human rights abuses,” a White House fact sheet noted. The U.S. “urges other countries to implement similar measures to stop the flow of weapons to any parties to the conflict and support a negotiated ceasefire,” it added.

“The actions of those involved in the conflict will determine whether the U.S. government imposes sanctions,” the fact sheet said. The administration “is prepared to impose sanctions if there is not progress toward a resolution of the conflict. If there is progress, the United States is prepared to work with the international community to mobilize critical assistance for Ethiopia to recover from this conflict, reorganize its significant debt, and revitalize its economy,” it added.

At the same time, Treasury’s Office of Foreign Assets Control (OFAC) issued three general licenses (GL): Ethiopia GL 1 authorizes official activities of certain international organizations and other international entities, GL 2 allows certain transactions in support of nongovernmental organizations’ activities, and the last exempts transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates.

Specifically, those transactions allowed under GL 2 include: “activities to support humanitarian projects and to meet basic human needs; activities to support democracy building; activities to support education; activities to support non-commercial development projects directly benefiting the people of Ethiopia or Eritrea, including those related to health, food security, water and sanitation; and activities to support environmental and natural resource protection,” one FAQ noted.

“After months of threatening action, I’m glad the administration has finally established a program to impose financial sanctions on certain persons and entities perpetrating human rights abuses linked to the Tigray war. As I have said previously, the United States and its allies must quickly transition from ‘hands-off’ diplomacy to ‘hands-on’ engagement,” Sen. Jim Risch (R-Idaho) said in a statement.

Rep. Gregory Meeks (D-N.Y.) also welcomed the sanctions. “This action imposes targeted measures against culpable actors and not innocent Ethiopian people who have been victimized by this crisis,” he said in a statement. “We will continue working with our partners and allies to use all available diplomatic tools to support a peaceful solution to this conflict,” Meeks added.

## **BIS Requests Comments on ICT Supply Chain**

In a much-anticipated Federal Register notice Sept. 20, BIS requests public comments on the administration’s report on “supply chains for critical sectors and subsectors of the information and communications technology (ICT) industrial base, including the industrial base for the development of ICT software, data, and associated services.” Comments are due in 45 days.

“For the purposes of this report, the scope of the ICT industrial base shall consist of hardware that enables terrestrial distribution, broadcast/wireless transport, satellite support, data storage to include data center and cloud technologies, and end user devices including home devices such as routers, antennae, and receivers, and mobile devices; “critical” software; and services that have direct dependencies on one or more of the enabling hardware,” the notice said.

BIS is particularly interested in information including: critical goods and materials underlying the supply chain; design, development and manufacturing capabilities necessary to produce or supply critical goods; defense, health, environmental, economic, geopolitical, human-rights risks or other contingencies that may disrupt the supply chain; resilience and capacity of American manufacturing supply chains; allied and partner actions and possible avenues of international engagement; and policy recommendations and/or executive, legislative or regulatory changes needed.

In addition, the administration is “specifically interested in comments related to validation standards of component and software integrity, standards and practices ensuring the availability and integrity of software delivery and maintenance, and security controls during the manufacturing phase of ICT hardware and components,” the notice says.

## **U.S., Australia Deal Causes Trade Pearl-Clutching**

Sometimes a choreographed diplomatic announcement causes more problems than it solves. In a seemingly straightforward joint statement, the leaders of Australia, the United Kingdom (UK), and the U.S. Sept. 15 announced the creation of “an enhanced trilateral security partnership” called AUKUS. Within two days, both China and France denounced the deal.

Citing the cancellation of a five-year old submarine program binding Australia and France, French Foreign Minister Jean-Yves Le Drian Sept. 17 recalled the country’s

ambassadors to the U.S. and Australia “for consultations,” he said in a statement. “This exceptional decision is justified by the exceptional gravity of the announcements made [Sept. 15] by Australia and the United States,” Le Drian added.

The day before, Le Drian denounced the deal more explicitly. “This decision is contrary to the letter and spirit of the cooperation which prevailed between France and Australia, based not only on a relationship of political trust but also the development of a very high-level defense industrial and technological base in Australia,” he said in a joint statement with French Armed Forces Minister Florence Parly.

“The American decision, which leads to the exclusion of a European ally and partner like France from a crucial partnership with Australia at a time when we are facing unprecedented challenges in the Indo-Pacific region, be it over our values or respect for a multilateralism based on the rule of law, signals a lack of consistency which France can only notice and regret,” the two ministers added.

At the same time, Chinese officials tried to separate Beijing’s application to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) from the U.S.-Australia deal. “China’s official application to join the CPTPP... has no connection with the agreement among the U.S., the UK and Australia,” Foreign Ministry Spokesperson Zhao Lijian told reporters.

“I want to emphasize that China is a staunch advocate for trade liberalization and facilitation, and an important participant in cooperation and economic integration in the Asia-Pacific,” he said. “People can tell what China works for is economic cooperation and regional integration. What the U.S. and Australia push for is wars and destruction,” Zhou added.

As a first initiative under AUKUS, the three leaders committed to “a shared ambition to support Australia in acquiring nuclear-powered submarines for the Royal Australian Navy.” Leveraging expertise from the U.S. and the UK, “building on the two countries’ submarine programs to bring an Australian capability into service at the earliest achievable date,” they said. Further trilateral collaboration will focus on “cyber capabilities, artificial intelligence, quantum technologies, and additional undersea capabilities,” the joint leaders’ statement noted.

**\* \* \* Briefs \* \* \***

**EXPORT ENFORCEMENT:** Mehrdad Ansari, Iranian citizen and UAE resident, was sentenced Sept. 14 in San Antonio U.S. District Court to 63 months in prison followed by three years’ supervised release for his role in scheme to obtain dual-use and military parts for Iran without OFAC or Commerce licenses from October 2007 through June 2011. Federal jury convicted Ansari in May (see **WTTL**, May 10, page 7). He was extradited from Georgia in March 2020. Codefendant Susan Yip (aka Susan Yeh), Taiwanese citizen, was sentenced to two years in prison in October 2012 on related charges. Yip pleaded guilty to conspiracy to violate Iran sanctions. Mehrdad Foomanie (aka Frank Foomanie) of Iran remains at large. June 2011 indictment was unsealed at same time as Yip’s sentencing.



ITC: Monica Bhattacharyya was named ITC administrative law judge (ALJ), Commission announced Sept. 13. Since 2012, she has served as investigative attorney in ITC's Office of Unfair Import Investigations. Prior to ITC, Bhattacharyya worked for more than 12 years in private practice, including as partner in intellectual property group of Kasowitz Benson Torres LLP law firm.

EX-IM BANK: Ex-Im Bank board Sept. 16 appointed former Sen. Heidi Heitkamp (D-N.D.) to be chair of Ex-Im Advisory Committee and Baker & McKenzie LLP Partner James O'Brien as chair of Sub-Saharan Africa Advisory Committee (SAAC). "From financing the products and innovations that will drive the global energy transition to unlocking capital and new markets for small businesses across the country, Ex-Im is on the pathway back to being a leader," Heitkamp said in statement. During her Senate tenure, Heitkamp was vocal about filling Ex-Im vacancies, including in 2018 when she asked for unanimous consent for vote on four Ex-Im board nominees (see **WTTL**, April 23, 2018, page 9).

TRADE PEOPLE: Former Deputy USTR and acting Ex-Im President Jeffrey Gerrish joined Schagrin Associates as partner, firm announced Sept. 7. Gerrish was previously partner at Skadden Arps law firm (see **WTTL**, July 6, 2020, page 7). "I am looking forward in the next stage of my career to working on behalf of existing and new clients at Schagrin Associates to find creative solutions to the challenges and opportunities presented by international trade," Gerrish said in statement.

UK SHUFFLE: In UK Cabinet reshuffle, Trade Minister Liz Truss moved to foreign secretary post Sept. 15, replacing Dominic Raab who became deputy prime minister. Conservative MP Anne-Marie Trevelyan replaced Truss in trade office. After call with WTO Director General Ngozi Okonjo-Iweala, Trevelyan tweeted: "We need a [WTO] that champions a free, fair, rules-based international trading system, providing stability for businesses & consumers globally."

SANCTIONS: Three Florida residents were charged Sept. 14 in Miami U.S. District Court with violating Iran sanctions and money laundering. Former college professor Mohammad Faghihi, his wife Farzaneh Modarresi, and his sister Faezeh Faghihi operated Florida diagnostic lab Express Gene. Defendants allegedly purchased genetic sequencing equipment from U.S. manufacturers and exported machines to Iran without required OFAC license.

NORD STREAM: In advance of Senate Banking Committee vote on Treasury nominees Brian Nelson and Elizabeth Rosenberg, which was then postponed, Sens. Pat Toomey (R-Pa.) and Ted Cruz (R-Texas) Sept. 13 doubled down on hold on State and Treasury nominees over Biden administration's Nord Stream sanctions waiver (see **WTTL**, Aug. 23, page 1). "There is a way out of this impasse. If the president sanctions NS2 AG—the Gazprom-owned holding company responsible for the construction and operation of the pipeline—under CAATSA Section 228, Cruz will lift his holds on career State Department nominees and Treasury Department nominees and Toomey will drop his objection to Nelson and Rosenberg," lawmakers wrote to Banking and Foreign Relations Committee chairs.