

ISSN 0276-8275

WTTOnline.com

A Weekly Report for Business Executives on
U.S. Trade Policies, Negotiations, Legislation,
Trade Laws and Export Controls

Washington Tariff & Trade Letter®

Vol. 42, No 45

November 14, 2022

Russia's Further Fall from Favor

Thursday, the U.S. Department of Commerce announced that it will no longer treat Russia as a market economy in its antidumping (AD) proceedings.

"This decision will ensure that Commerce's dumping calculations reflect economic realities on the ground and that U.S. industries get the relief from unfair imports that they are entitled to under the law," Commerce said in a statement. "This decision is an important acknowledgement of the rise of Russian state-influence in their economy, which puts U.S. industries at a disadvantage when trying to compete globally."

Commerce's analysis found that extensive government involvement in the economy has led to distorted prices and costs in Russia, which do not accurately reflect whether Russian companies are fairly pricing imports into the United States.

As a result of the decision, in future cases involving imports from Russia, Commerce will apply an alternative methodology to calculate the AD duties on imports from Russia, using market-based prices and costs from a country at a comparable level of economic development that produces comparable merchandise. For new segments of antidumping duty (AD) proceedings with an initiation (POI) or period of review (POR) starting after November 1, 2022, Commerce will use its non-market economy methodology to calculate the AD rates. If the POI or POR is entirely before November 1, 2022, Commerce will use its market economy methodology to calculate the rates.

Commerce's market and non-market economy determinations are based on evaluation criteria set out in U.S. law: currency convertibility, how wages are determined, the climate for foreign investment, government control of the means of production, government control over firm business decisions, and any other appropriate considerations. In its decision, Commerce found extensive backtracking in these areas, particularly since the invasion of Ukraine.

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Washington granted Russia market economy status in 2002, leading to Russia's entering the World Trade Organization in 2012. In May, a bipartisan group of Senators [asked](#) Commerce Secretary Raimondo to reverse the market economy designation, and in September, Commerce announced its intent to investigate Russia's market economy status in the context of a review of **Urea Ammonium Nitrate Solutions** and **Emulsion Styrene-Butadiene Rubber** from Russia. (*see Briefs*)

Commerce's decision can be found by referring to **case number A-821-835** in Commerce's Antidumping and Countervailing Duty Centralized Electronic Service System ([ACCESS](#)).

U.S.-Korea Dual-use Export Controls Group Launched

Commerce's Bureau of Industry and Security (BIS) and Korea's Ministry of Trade, Industry and Energy (MOTIE) launched the *U.S.-Korea Supply Chain and Commercial Dialogue Dual-use Export Controls Group*. The export controls working group is tasked with identifying specific actions to advance export controls cooperation.

Koreans refer to it as the **Korea-U.S. Supply Chain and Commercial Dialogue (SCCD)**, *Yonhap News Agency* reports. The inaugural session South Korea and the United States on Tuesday discussed the impacts of Washington's restrictions on exports of advanced semiconductor equipment to China and ways to resolve related uncertainties in the industry, Seoul's industry ministry said.

This working group will see to fruition the working plan that U.S. Secretary of Commerce Gina Raimondo and Korean Minister of Trade, Industry and Energy Lee Chang-Yang outlined earlier this year, executing on the following objectives:

- To enhance U.S.-Korean coordination and ensure that export controls are consistent with the promotion of bilateral trade and the stability of the global supply chain in the field of advanced manufacturing
- To promote convergent control approaches addressing new security challenges
- To ensure efficient stakeholder engagement and support in the development and implementation of effective export control approaches

"MOTIE appreciates that Korea and the U.S. have maintained close cooperation in various bilateral and multilateral export control discussions" said Deputy Minister for Trade and Investment Dongmin Moon. "This working group will serve as an effective platform to enhance mutual understanding of export control regulatory system of each side and explore successful ways for the further coordination."

Yellen Touts "Friendshoring," US Investment in India

Speaking to a group of business leaders in New Delhi on Friday, Treasury Secretary Yellen struck a constructive tone on US-Indian financial relations:

"In a world where supply chain vulnerabilities can impose heavy costs, we believe it's important to strengthen our trade ties with India and the large number of countries that share our approach to

economic relations. This includes both developing and advanced economies. Our goal is to vigorously promote global economic integration while creating greater redundancies in our supply chain to mitigate concentration risks. We also want to diversify away from risky countries like Russia that seek to weaponize trade integration to advance their geopolitical aims.

“We call this strategy “friendshoring.” Modernizing our trade relationships in this way will pay dividends. Increased trade between our two countries can result in economic benefits for our people. It will also provide greater reliability and certainty for consumers and businesses on key goods and inputs. As Prime Minister Modi said, resilient trade in the 21st century requires trust, transparency, and timeliness. Deepening our integration will serve all three of these goals. We are already seeing new supply chains develop in India. This includes manufacturing investments by American companies.

“Apple and Google have both announced plans to expand phone production in India. Hasbro, an American toy conglomerate, began shifting manufacturing from China to India and Vietnam in 2019. And it plans to continue doing so. We will continue to build business and commercial ties through meetings like the U.S.-India Commercial Dialogue and CEO Forum.

“Further, our government is partnering with India to grow local industries and connect them to global supply chains. We believe our investments will benefit both countries. For example, the U.S. International Development Finance Corporation has a very active portfolio in India – investing in projects from microfinance to renewable energy. Last year, it approved up to \$500 million in debt financing for America’s largest solar manufacturer to build a solar module production facility in Tamil Nadu. **The loan is the largest single debt financing transaction in the institution’s history.** Once finished, the facility will strengthen global supply chains by diversifying solar panel production. At the same time, it will support Prime Minister Modi’s renewable energy ambitions.”

DTAG Plenary

The Defense Trade Advisory Group (DTAG) to the Defense Directorate of Trade Compliance (DDTC) presented their findings on three topics in a public meeting November 9, Part 130 Reporting, Development vs Production Controls, and Joint Ventures in ITAR.

ITAR Part 130 Reporting

DDTC has asked DTAG to identify instances, whether required or discretionary, where industry provides information required under AECA Section 36(b)(1) to the Departments of State or Defense by any means; and Provide recommendations to DDTC ensuring that if DDTC moves to an annual Part 130 reporting requirement, the Departments of State and Defense would receive information required under AECA Section 36(b)(1) before the required notifications to Congress.

DTAG recommended that DDTC consolidate the annual Part 130 reporting at the time of a registrant’s renewal of registration and explored the feasibility of offering an annual Part 130 reporting schedule. DTAG was unable to identify any required reporting by industry to DSCA as part of its review.

Based on DTAG's findings a move to an annual Part 130 reporting requirement will not change or affect reporting as currently executed to support Congressional notification of FMS cases and therefore recommends that DDTC move to an annual Part 130 reporting requirement as previously recommended. DTAG believes that an annual Part 130 report will improve the accuracy, readability, and consistency of Part 130 information.

Development & Production

ITAR § 121.1 contains fifteen entries that control developmental items based on DOD funding and each has a "Note" that releases items once they are in "production." The ITAR consolidation / restructuring interim final rule (effective 9/6/2022) adds definitions for "development" and "production" phases (§ 120.43(a) and (b)(1), respectively). DDTC requests that the DTAG review the interaction between § 120.43(a) and (b)(1), and § 121.1 "developmental" entries and recommend clarifications if necessary, to better illustrate the two phases and when a transition from one stage to the other occurs.

The ITAR is not clear on where developmental controls fall within the Order of Review. Developmental controls are more like specially designed catch-alls than enumerated entries.

- New discoveries and continuous improvement mean that commodities are often in "development"
- Clarifying the relationship between developmental and development would be helpful – are they the same thing?
- Whether a separate definition, or different defined term, is needed for "developmental" is a topic worth exploring in the future
- Developmental "catch" and production "release" need to be objective determinations that are clear from the regulations.

Joint Ventures

DDTC requests the DTAG address this question: What factors should parent companies take into consideration to ensure that joint ventures comply with the various requirements of the ITAR?*

DTAG recommendations:

- No "one size fits all" approach
- Policy approach to registration should remain flexible to accommodate unique circumstances of some JVs.
- A JV should not be treated any differently from other business entities just because it is a JV.
- DDTC publish FAQ(s) on registering JVs to include what factors would influence that decision.
- DTAG offers our assistance in formulating the FAQs in future plenary.

Chinese Magnet Indictments

Kentucky-based managers of a U.S. subsidiary of China's Forsee Group are charged with wire fraud, violations of the Arms Export Control Act, and smuggling of goods for their roles in an illegal scheme to send export-controlled defense-related technical data to China and to unlawfully supply U.S.

Department of Defense (DOD) with Chinese-origin rare earth magnets for aviation systems and military items.

Phil Pascoe, his wife Monica, and Scott Tubbs of Quadrant Magnetics LLC face up to 20 years in prison for sending approximately 70 drawings containing export-controlled technical data to an affiliated company in China without a license from the U.S. government, in violation of the Arms Export Control Act and the International Traffic in Arms Regulations. The technical data drawings were the property of two U.S. companies and related to end-use items for aviation, submarine, radar, tank, mortars, missiles, infrared and thermal imaging targeting systems, and fire control systems for DOD.

The indictment further alleges that Quadrant Magnetics imported rare earth magnets that were smelted and magnetized in China. Quadrant then sold these magnets to two U.S. companies which included them in components sold to DOD for use in the F-16, the F-18, and other defense assets in violation of the Defense Acquisition Regulations System (DFARS).

Under the DFARS specialty metal clause, rare earth magnets sold to DOD must be produced and magnetized in the United States or an approved country. China is not an approved country

**** Briefs ****

CBP Chief Gets the Bum's Rush Less than a year after his Senate Confirmation, US Customs and Border Protection Commissioner Chris Magnus has reportedly been asked to resign by Homeland Security Secretary Alejandro Mayorkas. Border Patrol Agents and DHS Trump Loyalists have blamed Magnus for the growing number of border apprehensions. The former Tucson, Arizona Police Chief also has been criticized for his focus on reforming the perceived racist and violent culture of the Border Patrol, according to *Politico*.

CBP / TBML - Just Kidding. Despite Executive Assistant Commissioner Ann Marie Highsmith's assertion last month that "we here in the Office of Trade plan to prioritize in the new fiscal year trade-based money laundering," the CBP Office of Public Affairs has confirmed there are no plans to include TBML in the CBP's enforcement priorities.

Exim Bank / Watch List EXIM Bank is establishing a Watch List to act as a central repository of names of parties that have given rise to concerns by EXIM Bank personnel. Parties are added to the Watch List when there is a reasonable basis to believe that the party had engaged in, or is associated with persons that have engaged in, either criminal conduct or conduct that could affect EXIM Bank adversely. The Watch List will be imbedded into the EXIM Online application system ("EOL") and/or other application or screening systems. The Watch List is not an exclusion or debarment list. [87 FR 68153]

Iran / Russia Arms Tech *Sky News* reports that Russian shipments of currency to purchase Iranian arms include captured western weapons systems for further study. "We think that the Iranians have proven that they have an efficient reverse-engineering system, as we can see with the UAVs they have reverse-

engineered from the US's UAV captured in 2011," the report quoted sources. "It seems that Iran also wants to benefit from the war [in Ukraine] by receiving from the Russians Western capabilities that will be useful for them in the future - as happened in the past." A Lockheed Martin RQ-170 Sentinel surveillance drone - was captured in December 2011 and provided the design template for Iran's Shahed 171 Simorgh UAV now being deployed in Ukraine,

UK / OFSI Annual Review HM Treasury's Office of Financial Sanctions Implementation has issued an [extended version](#) of their 2021-2022 Annual Review. As well as reporting on data from 1 April 2021 to 31 March 2022 (the financial year), OFSI has decided to include additional reporting on data from 24 February to 24 August 2022 (the first 6 months of Russia's invasion). Additionally, data on Russian assets reported frozen to OFSI since the beginning of the invasion covers the period 22 February to 20 October. The OFSI also updated the [details of the 33 General Licenses](#) issued after the February invasion.

UK / SFO in Flux Former FBI Deputy General Counsel and European head of investigations at Exiger Lisa Osofky will not seek reappointment as head of the UK's Serious Fraud Office after her five-year term expires next summer. The *Financial Times* [reports](#) the agency has struggled to maintain staffing due to low salaries. The director's salary is around £180,000. The SFO's chief capability officer told MPs the Office had a permanent vacancy rate between 20 and 25 percent, due to low pay and promotion prospects, according to the *FT*. "We are trying to backfill some of that [vacancy gap] with temporary staff . . . The growing cost of living and the salaries we offer are becoming an increasing challenge for us."

Germany / Investment The Berlin government blocked the sale of Elmos Semiconductor SE's wafer facility to a Swedish subsidiary of China's Sai MicroElectronics Inc. as well as a proposed takeover of ERS Electronic GmbH, which makes chipset cooling components, [Bloomberg](#) reports. The move follows on the visit of Chancellor Olaf Scholz to Beijing. Economy Minister Robert Habeck told reporters critical German infrastructure and manufacturing should 'remain as far as possible in European hands.'

OFAC / al-Qa'ida Sanctions. Treasury's Office of Foreign Assets Control (OFAC) [designated](#) two business associates of a sanctioned al-Qa'ida financial facilitator and external operations plotter, Ahmed Luqman Talib. The two individuals are Talib's business partner in Sri Lanka and Talib's Türkiye-based brother-in-law and business partner.

OFAC / Russia GLs Issued. OFAC issued [General License 8D](#) "Authorizing Transactions Related to Energy," and [General License 53](#) "Authorizing Transactions for Diplomatic Missions of the Russian Federation Prohibited by Directive 4 under Executive Order 14024," as well as publishing one Russia-related [Frequently Asked Question](#) (1096) related to the diplomatic missions license.

Commerce / BIS Paperwork Reduction Notice This collection of information involves ten miscellaneous activities described in Sections 744.15(b), Part 744 Supplement No. 7, paragraph (d), § 748.4 and Part 758 of the EAR that are associated with the export of items controlled by the Department of Commerce. Most of these activities do not involve submission of documents to the BIS but instead involve exchange of documents among parties in the export transaction to ensure that each party understands its obligations under U.S. law. Others involve writing certain export control statements on shipping documents or reporting unforeseen changes in shipping and disposition of exported commodities. [\[87 FR 67867\]](#)

Vietnam / Illegal Timber. US and Vietnamese officials discussed Hanoi's effort to prevent illegally harvested timber from entering the supply chain during the second meeting of the Timber Working Group under the bilateral agreement on illegal logging and timber trade. The agreement is aimed at keeping illegally harvested or traded timber out of the supply chain and protect the environment and forest ecosystems.

Emulsion Styrene-Butadiene Rubber / Czech Republic and Russia The Commerce Department announced its affirmative final determination in the antidumping duty investigations. Commerce found final antidumping duties of 8.04 percent for the Czech Republic and 8.15 percent to 17.47 percent for Russia. Imports of emulsion styrene-butadiene rubber from the Czech Republic were valued at \$16.5 million in 2021. Russian imports were valued at \$31.7 million. The International Trade Commission will make its final determination around December 6 on whether a US industry is being injured by the imports.

CBP-EAPA / Thermal Paper In the *Allegations*, the PRCA asserts that Gorilla Paper evaded the Orders by importing thermal paper either from Germany or South Korea into the United States that were transshipped through Turkey and misclassified. The PRCA alleges the Turkish suppliers do not produce thermal paper, but instead purchase jumbo rolls from producers in other countries to convert into smaller thermal paper rolls

*** Appointments ***

International Development Finance Corp / New Risk Chief. Jody Myers has been named Chief Risk Officer of the US International Development Finance Corp (DFC). A graduate of Vanderbilt Law, Myers was previously CRO of Western Union, and formerly served with the International Monetary Fund, Treasury Department and the National Security Council.

Formerly the Overseas Private Investment Corporation (OPIC) and USAID's Development Credit Authority, the DFC manages over \$15 billion in assets in direct loans, loan guarantees and political risk insurance, as well as equity funding both direct and through investments in private equity funds.

*** Calendar ***

USTR / China Section 301 Tariff Comment Period Opens November 15. The public docket on the web portal at <https://comments.USTR.gov> will open for interested persons to submit comments until January 17, 2023 at 11:59 p.m. EST [[Announcement](#)]

Global Year-End Review of Import/Export & Trade Compliance Developments.

November 15 through 17. **Baker McKenzie's** trade compliance lawyers from around the world will review the major global legislative, judicial and administrative activities and trends in export controls, trade sanctions, customs compliance, and import requirements. [[Agenda & Registration](#)]

WSJ Risk & Compliance Forum on Nov. 16 Speakers to include **Brian Nelson** from the U.S. Treasury Department and **Robert Silvers** from the Department of Homeland Security, along with multiple experts on corporate risk and compliance. Sign up [[here](#)] for discussions on economic sanctions, forced labor, climate change regulation, whistleblowers and cybersecurity.

Emerging Technology Technical Advisory Committee (ETTAC) will meet on November 18, 2022, at 9:00 a.m., Room 48019, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. 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. Open Session: 2:40 p.m.-4:00 p.m. The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov no later than November 10, 2022.

Transportation and Related Equipment Technical Advisory Committee will meet on November 16, 2022, 9:30 a.m., in the Herbert C. Hoover Building, Room 48019, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology. To join the conference, submit inquiries to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov no later than November 9, 2022.

Materials and Equipment Technical Advisory Committee will meet on November 17, 2022, 10:00 a.m., Eastern Standard Time, at Gryphon Scientific, LLC, 6930 Carroll Avenue, 9th Floor, Takoma Park, Maryland 20912. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology. To join the conference, submit inquiries to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov, no later than November 10, 2022.

EU Export Control Forum on Dec. 6. The European Commission and the Czech Presidency of the Council will hold the 2022 Annual Export Control Forum, an opportunity for experts from EU Member States and the European Parliament, industry, academia and civil society to review and discuss the latest export control developments in the EU and globally. The Forum will convene selected panels of experts, to be followed by dialogue with stakeholders. [[Registration](#)]