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US-EU TTC Export Controls Group Gets Traction

Last Week's Stakeholder Outreach of the Working Group 7 - Export Controls of the US-EU Trade and Technology Council (TTC) afforded a timely update, as well as a reminder to industry and academia that your input is sought.

The TTC has been "the major factor allowing both sides of the Atlantic to respond [to the Russian aggression] as it developed," said Peter Sandler, Director for Enforcement, Market Access, SMEs, Legal Affairs and Technology at European Commission. "While the core tranche of the TTC was envisaged before the events of February 25th...clearly one action has taken priority, response to Russian aggression in the Ukraine."

"We are working on a new round of sanctions, to better align with the US," said Sandler, as well as "broadening regulatory consultations to produce joint export restrictions on Emerging Technologies, like quantum computing." The TTC is also developing a new "Enforcement Coordination Mechanism," as well as assessing how the TTC can contribute in peripheral areas, like the Western Balkans, the EU [P2P](#) Dual-Use and Arms Control Program, and State's Export Control and Related Border Security ([EXBS](#)) Program.

"Technology transfer is not separate, but embedded" in the Working Group's mission, said Matt Borman Deputy Assistant Secretary of Commerce for Export Administration. Comments submitted to the group by Sabine van Gastel of EECARO, the European Export Control Association for Research Organizations, provide "exactly the kind of specificity we're looking for," said Borman. **Both Borman and Sandler separately suggested creation of a stakeholder outreach specific to University Export Controls.**

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Other challenges discussed by participants included the disposition of stranded dual-use and restricted technologies when selling Russian subsidiaries, to which Broman suggested reaching out to BIS for guidance, and alignment and harmonization of EU and US controls.

Practitioners wishing to contribute to the working group's conversation can join via the EC's Futurium Platform. <https://futurium.ec.europa.eu/en/EU-US-TTC/wg7>

DDTC Rolls Out Open General License Program

State's Directorate of Defense Trade Controls (DDTC) is issuing two open general licenses as part of a new pilot program: [Open General License No. 1](#) permits the retransfer (as defined in ITAR § 120.51) of unclassified defense articles to the Governments of Australia, Canada, or the United Kingdom, and to members of the Australian and United Kingdom communities (as defined in ITAR §§ 126.16(d) and 126.17(d)) and Canadian-registered persons (as defined in ITAR § 126.5(b)). [Open General License No. 2](#) permits the reexport (as defined in ITAR § 120.19) of unclassified defense articles between or among the same governments and entities defined in OGL 1. Both licenses are subject to requirements, limitations, and provisos as described in each license. The OGLs cannot be used to export Defense Articles. [Fact sheet](#).

Supply Chain Ministerials, With and Without the Big Link

The Departments of State and Commerce hosted ministers from select trading partners last week to "improve supply chain resiliency," and the exclusion of the world's second largest economy made evident the diplomatic objectives. China was not invited to the meeting, and US officials said they aim to increase "friend-shoring" to move production of key supplies to allied nations.

The US and representatives of 17 countries Japan, the EU, UK and India agreed to work together to improve and diversify global supply chains, and to follow four principles in addressing the topic: transparency, diversification, security, sustainability, according to the joint [statement](#) published July 20. "This includes our intent to cooperate to eradicate the use of forced labor in global supply chains,"

Meanwhile, the EU [concluded](#) parallel discussions with China, the 9th EU-China High-Level Economic and Trade Dialogue (HED). Topics included supply chain resiliency and financial services access, particularly for European Leasing firms and access to the Shanghai Clearing House for European banks. The EU raised objections to the "growing politicization of the business environment in China," as well as to the "economic coercion" imposed on Lithuania for its recognition of Taiwan. Forced labor was not publicly discussed.

Yellen Calls to Reorient Trading Practices

During her first Secretarial visit to Asia, Treasury Secretary Janet Yellen called for a "reorientation of the world's trading practices" in the backdrop of Russia's invasion of Ukraine and emerging geopolitical competition with China. Speaking in South Korea, the Secretary sounded alarm on China by identifying its potential to "exercise unwanted geopolitical leverage" as a key risk. Tying national security risks to

macroeconomic fluctuations in the present inflationary environment, Yellen suggested that “predictability” of trading more with close partners could “help prevent some price spikes”.

Highlighting the danger of over-reliance on a single producer, Yellen made a case for trading more closely with allies by “friend- shoring”. Given that South Korea is a crucial partner in the Biden administration’s efforts to decouple from China, the remarks are significant. While Secretary Yellen has repeatedly attacked China for its economic behavior, [media reports suggest](#) that she has also advocated for the U.S. to relax at least some of its tariffs on Chinese imports.

EU Adopts “Maintenance and Alignment” Sanctions Package

The new [sanctions](#) announced July 21 include a prohibition to purchase, import, or transfer, directly or indirectly, gold, if it originates in Russia and it has been exported from Russia into the EU or to any third country after. This prohibition also covers jewelry. Gold is Russia’s second most valuable export after petroleum products.

The package also extends the list of controlled items, which may contribute to Russia’s military and technological enhancement or the development of its defense and security sector, thereby reinforcing export controls on dual use and advanced technology.

The package continues the exemption from the prohibition to engage in transactions with certain State-owned entities as regards transactions for agricultural products and the supply of oil and petroleum products to third countries.

The EU will not sanction Airbus titanium supplier VSMPO-Avisma PJSC, the *Wall Street Journal* notes. Boeing announced in March it had ceased dealings with the Rostec affiliate, though key component subcontractors like Barnes Group have made no similar commitments. Sanctions on Russia’s arms makers and tycoons have been applied inconsistently by the NATO allies, with some governments levying penalties and others not, a [Reuters](#) review showed. Avisma does not appear on Commerce’s Consolidated screening list.

UK Soldiers on

The UK’s Russia (Sanctions) (EU Exit) (Amendment) (No. 12) Regulations 2022, which introduce new investment restrictions, entered into force today (19 July 2022). Explanatory Memorandum & Impact Assessment. See updated Statutory Guidance. The UK also adopted the Russia (Sanctions) (EU Exit) (Amendment) (No. 13) Regulations 2022 (Explanatory Memorandum), which amend the designation criteria. The Regulations prohibit people / entities from undertaking certain investment activities, OFSI and the National Crime Agency (NCA) last week issued a ‘Red Alert’ on financial sanctions evasion by Russian elites and enablers.

Amidst political uncertainty, UK continues to pursue trade deals. Negotiations have been launched for an “innovation-focused” Free Trade Agreement with Israel, described by the Press Office as UK’s fellow “services superpower”. Given that UK’s existing bilateral FTA with Israel has no specific provision for

services, there is significant potential to boost services exports to Israel in high-value industries such as insurance and technology.

Meanwhile, UK persists in signing state-level trade MoUs, with North Carolina following Indiana's footsteps. The Governor the Tarheel State executed a Memorandum of Understanding with on "Cooperation and Trade Relations", with a view to "strengthen economic ties and transition to a clean energy economy". While the MoU seeks to accomplish trade goals through a "working group", the same will not be binding, on account of the Constitution's Commerce Clause that mandates the Union decides on trade issues.

CHIPS, Data Privacy and Protection Acts Move Forward

The United States Innovation and Competition Act (USICA), dubbed the "CHIPS Act" passed a procedural vote in the Senate, as the Chair of the USICA Conference Committee led efforts to reconcile differences between the Senate-passed USICA and House-passed America COMPETES Act. This bipartisan agreement will enable the Act to move forward.

Meanwhile, American Data Privacy and Protection Act was passed by the Energy and Commerce Committee. The Act seeks to evolve a national standard for privacy that will minimize the amount of information that firms are allowed to collect, process, and transfer. Passed by a bipartisan effort through the Committee process, the Act will now move to the House.

OFAC Cites Bank for Lax Refresh of Screening Lists

The United States Department of the Treasury's Office of Foreign Assets Control (OFAC) today announced the issuance of a Finding of Violation to MidFirst Bank, a financial institution headquartered in Oklahoma City, Oklahoma, for violations of the Weapons of Mass Destruction Proliferators Sanctions Regulations. The violations related to MidFirst's maintaining accounts for and processing of 34 payments on behalf of two individuals added to OFAC's List of Specially Designated Nationals and Blocked Persons (the "SDN List") for 14 days post-designation.

The violations stemmed from MidFirst's misunderstanding of the frequency of its vendor's screening of new names added to the SDN List against its existing customer base. MidFirst reported to OFAC that its sanctions screening vendor notified MidFirst that the blocked persons had been added to the SDN list on October 5, 2020, 14 days after their addition. MidFirst then promptly blocked accounts belonging to the blocked persons.

The agreement between MidFirst and its vendor provided for periodic screening of MidFirst's customers against the SDN List. Although the vendor conducted daily screenings of new customers and of existing customers with certain account changes (e.g., changes to a customer's name or address), the vendor only screened MidFirst's entire existing customer base once a month. MidFirst misunderstood the scope of the contract with its vendor, mistakenly believing that the daily screenings would screen its entire customer base against additions and changes to the SDN List.

OFAC also announced a [Settlement Agreement](#) with American Express National Bank for 214 apparent violations of OFAC's Kingpin sanctions. As part of the Agreement, Amex will remit \$430,500 to settle its potential civil liability. Regulators found that Amex processed transactions for an account whose supplemental card holder was designated in connection with money laundering.

IG Slams CBP and DHS on Intellectual Property Enforcement.

DHS and CBP Should Improve Intellectual Property Rights Management and Enforcement, according to a critical [review](#) by the Department of Homeland Security's Inspector General.

"DHS and CBP did not coordinate or manage IPR strategy, and CBP does not have accurate data to demonstrate the full extent or effectiveness of its IPR enforcement. DHS did not effectively coordinate or monitor an IPR strategy because PLCY prioritized its workload based on ad hoc guidance from the Secretary and the White House. Additionally, CBP did not strategically manage IPR or produce an IPR risk assessment. It did not manage or assess risk because the Office of Trade did not have standard operating procedures for its responsibilities and OFO officials believed "common sense" paired with intelligence reports and targeting satisfied requirements to conduct risk assessments. Without a strategic IPR approach, DHS was limited to fragmented efforts from individual components, and CBP may be unable to determine whether it focused finite resources on violations with the greatest risk.

"CBP also did not have accurate data to manage the IPR enforcement process. It did not have data to measure the efficiency and effectiveness of its IPR targeting, monitor alternative enforcement actions when not seizing shipments that violated IPR, report reliable seizure data, or track its contributions toward disrupting IPR violators through investigative referrals. These problems occurred because CBP did not establish guidance, identify parameters for alternatives to seizure, provide oversight to ensure reporting of accurate data, establish a data system for alternatives to seizure or investigative referrals, and did not maintain an auditable record of changes to manually processed data. CBP is unable to determine whether its finite enforcement resources focused on violations with the greatest risk and may be missing opportunities to enhance its targeting effectiveness and contributions toward disrupting IPR violators.

The report contains recommendations aimed at improving the Office of Strategy, Policy, and Plans and the U.S. Customs and Border Protection intellectual property rights management and enforcement..

In other IP news, Crowell & Moring LLP has [published a blog](#), analyzing the IP protection measures undertaken by the Department of Justice. The analysis has drawn inferences after considering the data published by DOJ in its annual reports between 2009 and 2020. The authors found that DOJ provided financial awards worth over \$32 million to local IP law enforcement task forces, for the implementation of the Prioritizing Resources and Organization for Intellectual Property Act, 2008. While California received the most number of awards, many small states also received substantial awards.

***** Briefs *****

Sen. Bob Menendez (D-N.J.), Chairman of the Senate Foreign Relations Committee and senior member of the Senate Banking Committee, [called](#) on the Biden Administration to return control of semiautomatic firearm exports to the State Department. Doing so would make the exports subject to the **Arms Export Control Act**, giving Congress the right to disapprove a sale.

OFAC issued Russia-related General License 45 (wind down of financial contracts involving debt or equity issued by an entity in the Russian Federation) and **General License 46** (Transactions in Support of an Auction Process to Settle Credit Derivative Transactions Prohibited by Executive Order 14071). OFAC also published **two new Frequently Asked Questions** related to the above actions and **two amended Frequently Asked Questions** regarding the purchase of Russian debt and transactions related to divestment in a Russia-related project.

STATE released its **Section 353 Undemocratic Actors Report**, citing 60 individuals. Section 353 of the United States–Northern Triangle Enhanced Engagement Act, as amended, directs the Department of State to identify individuals who have knowingly engaged in acts that undermine democratic processes or institutions, engaged in significant corruption, or obstructed investigations into such acts of corruption in Guatemala, Honduras, El Salvador, and Nicaragua. Section 353 generally renders the individuals listed in this report ineligible for visas and admission to the United States.

STATE announced an Executive order enabling the U.S. to impose financial and travel **sanctions on those who are responsible for unjustly holding U.S. nationals**, whether their captor is a terrorist network or a state actor. State is also introducing a new risk indicator to Travel Advisories – the “D” indicator, which warns U.S. citizens of the risk of wrongful detention by a foreign government.

STATE released its 2022 Trafficking in Persons Report adding Vietnam, Cambodia and Brunei to its blacklist, joining Malaysia and Myanmar among countries “whose governments do not fully meet the minimum [anti-trafficking] standards and are not making significant efforts to do so.”

EXIM Board of Directors unanimously approved a final commitment to renew a 90 percent guarantee of a \$70 million facility for Bank of America and Spirit AeroSystems, Inc. under EXIM’s supply chain finance guarantee program, totaling \$63 million in EXIM support.

USTR released the **in-quota allocations under the tariff-rate quotas (TRQs) on imported raw cane sugar** and sugar-containing products for Fiscal Year (FY) 2023 (October 1, 2022 through September 30, 2023). Noticeably absent from the list was Nicaragua, deeper in the doghouse for its authoritarian bent and ties to Russia.

The **Consumer Technology Association** released a report finding that importers of technology products from China paid over \$32 billions in tariffs between mid-2018 to the end of 2021. The trade group has

contended that “Section 301 tariffs” have stalled US manufacturing and job growth, because while dependency may have reduced on China in some sectors, this has been offset by increased imports from Vietnam, Taiwan, South Korea, Malaysia, and other countries.

BIS issued a Denial of Export Privileges to Joyce Marie Eliabachus, convicted in 2020 of operating a procurement field office for the sanctioned Iranian carrier Mahan Airways out of her New Jersey home.

*** Appointments ***

The [EXIM Board of Directors](#) welcomed its newest Board Member, [Owen Herrnstadt](#), who was sworn in on July 15, 2022. Director Herrnstadt joins EXIM President and Chair Lewis, First Vice President and Vice Chair Judith DelZoppo Pryor, and Director Spencer Bachus to form a four-person Board quorum.

*** Calendar ***

Commerce’s Trade Finance Advisory Council (TFAC) will hold a virtual meeting on Thursday, August 4, 2022 from approximately 1:00 to 2:45 p.m. Eastern Standard Time (EST). The TFAC serves as the principal advisory body to the Secretary of Commerce on policy matters relating to access to trade finance for U.S. exporters, including small- and medium-sized enterprises, and their foreign buyers. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Friday July 29, 2022. Contact Patrick Zimet at Patrick.Zimet@trade.gov

Baker McKenzie will host their Annual Compliance Conference, which attracts over 6,000 in-house senior legal and compliance professionals from across the world. The event will be held across five weeks from 6 September – 6 October 2022. [Details](#)

International Trade Commission (ITC) Blotter

Factfinding Investigation - Institution

US-Korea FTA Rules of Origin

Commission Vote

Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, and the United Kingdom

Section 337 Institution

Rotating 3-D LiDAR Devices

Commission Vote

Urea Ammonium Nitrate from Russia and Trinidad and Tobago

Administrative Review and Preliminary Determination of No Shipments; 2020-2021

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

Certain Aluminum Foil From the People's Republic of China: Initiation of Circumvention Inquiries of the Antidumping Duty and Countervailing Duty Orders

Commerce AD/CVD Blotter

Heavy Walled Rectangular Welded Steel Pipes and Tubes From Mexico: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results

Citric Acid and Certain Citrate Salts From Colombia: Preliminary Results of Antidumping Duty Administrative Review; 2020-2021

Certain Steel Nails From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020-2021

Certain Magnesia Carbon Bricks From the People's Republic of China: Notice of Covered Merchandise Referral and Initiation of Covered Merchandise Inquiry

Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty