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## Export Controls and Economic Sanctions

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**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

## **Export Controls and Economic Sanctions**

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This article discusses the significant legal developments that occurred in the area of export controls and economic sanctions in 2017.

### **I. Economic Sanctions Developments**

#### **A. RUSSIA AND UKRAINE RELATED SANCTIONS**

It has been a watershed year in Russian sanctions. Although sanctions against the Russian government had existed in some form since at least 2014,<sup>1</sup> the Russian government's suspected interference in the 2016 U.S. presidential election, which it allegedly conducted through a hacking and influence campaign,<sup>2</sup> resulted in a wave of sanctions against the Russian government and high-profile Russian individuals. While the first wave of sanctions occurred in the aftermath of the election, the U.S. Congress initiated new sanctions against Russia, which President Donald Trump signed into law, though the President expressed reservations about the new sanctions.

The Obama administration suspected that the Russian government was meddling in the 2016 U.S. presidential election as the election was being conducted. After Republican candidate Donald Trump won a surprise victory in the 2016 U.S. presidential election, the Obama administration ejected thirty-five suspected Russian operatives from the United States and imposed sanctions on the Main Intelligence Directorate (GRU) and the

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1. See Exec. Order No. 13685, 79 Fed. Reg. 77,357 (Dec. 24, 2014); Exec. Order No. 13661, 79 Fed. Reg. 15,535 (Mar. 19, 2014); Exec. Order No. 13660, 79 Fed. Reg. 13,493 (Mar. 10, 2014) (issuing sanctions against the Russian government for, among other things, its military actions in Ukraine).

2. Karoun Demirjian, *Senate Intelligence Committee Leaders: Russia Did Interfere in 2016 Elections*, WASH. POST (Oct. 4, 2017), [https://www.washingtonpost.com/powerpost/senate-intelligence-committee-leaders-russia-did-interfere-in-2016-elections/2017/10/04/1459291c-a91f-11e7-850e-2bdd1236be5d\\_story.html?utm\\_term=.4900a3eb0228](https://www.washingtonpost.com/powerpost/senate-intelligence-committee-leaders-russia-did-interfere-in-2016-elections/2017/10/04/1459291c-a91f-11e7-850e-2bdd1236be5d_story.html?utm_term=.4900a3eb0228).

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

28 THE YEAR IN REVIEW

[VOL. 52]

Federal Security Service of the Russian Federation (FSB).<sup>3</sup> The administration also placed sanctions on four intelligence officers and three companies that assisted in the hack and closed down two Russian government compounds in New York and Maryland.<sup>4</sup> The first official Russian sanction of 2017 came on January 4, when the U.S. Department of Commerce added five Russian entities involved in Russia's election-related cyber operations to the Commerce Department's Entity List.<sup>5</sup> Through the list, any item subject to the United States' Export Administration Regulations (EAR) cannot be exported, re-exported, or transferred to the listed entities unless the Commerce Department licenses the transaction.<sup>6</sup>

The next steps toward Russian sanctions occurred days before Donald Trump's inauguration. On January 11, 2017, a bipartisan group of U.S. Senators introduced the Countering Russian Hostilities Act of 2017.<sup>7</sup> The Countering Russian Hostilities Act of 2017 was designed to target all of Russia's oil and gas sector and all debt that the Russian government issued, and the Act adopted a "secondary sanctions" approach that would have applied the sanctions to non-U.S. persons.<sup>8</sup>

Although that bill appears to have died in committee, it served as a harbinger for legislative activity on a similar bill in summer 2017. In July, Congress passed the Countering America's Adversaries Through Sanctions Act (the Act),<sup>9</sup> which passed in the U.S. House of Representatives with a 419-3 vote on July 25, and in the U.S. Senate with a 98-2 vote on July 27.<sup>10</sup> The bill codified and strengthened existing sanctions, particularly in the Russian defense, energy, and financial sectors.<sup>11</sup> It also created a Congressional review requirement on the President's ability to change U.S. sanctions against Russia and Crimea, as well as creating certain reporting requirements upon the executive branch.<sup>12</sup>

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3. David E. Sanger, *Obama Strikes Back at Russia for Election Hacking*, N.Y. TIMES (Dec. 30, 2016), <https://www.nytimes.com/2016/12/29/us/politics/russia-election-hacking-sanctions.html>.

4. *Id.*

5. *U.S. Expands Sanctions, Takes Other Steps in Response to Russia's Election-Related Cyber Operations*, COVINGTON & BURLING, LLP (Jan. 4, 2017), [https://www.cov.com/-/media/files/corporate/publications/2017/01/us\\_expands\\_sanctions\\_takes\\_other\\_steps\\_in\\_response\\_to\\_russias\\_election\\_related\\_cyber\\_operations.pdf](https://www.cov.com/-/media/files/corporate/publications/2017/01/us_expands_sanctions_takes_other_steps_in_response_to_russias_election_related_cyber_operations.pdf).

6. *Id.*

7. Countering Russian Hostilities Act of 2017, S. 94, 115th Cong. (2017).

8. Ed Krauland, Meredith Rathbone, Peter Jeydel, & Alexis Early, *Groundbreaking Russia Sanctions Bill Introduced in the Senate*, STEPTOE & JOHNSON LLP (Jan. 13, 2017), <https://www.steptoelaw.com/publications-11738.html>.

9. Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886 (2017).

10. *Congress Adopts Significant New Sanctions Against Russia, Iran, and North Korea*, COVINGTON & BURLING LLP 1 (July 28, 2017), [https://www.cov.com/-/media/files/corporate/publications/2017/07/congress\\_adopts\\_significant\\_new\\_sanctions\\_against\\_russia\\_iran\\_north\\_korea.pdf](https://www.cov.com/-/media/files/corporate/publications/2017/07/congress_adopts_significant_new_sanctions_against_russia_iran_north_korea.pdf).

11. *Id.*

12. *Id.*

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**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EXPORT CONTROLS &amp; ECONOMIC SANCTIONS 29

President Trump signed the Act into law on August 2, 2017, although he did not do so without reservations. In his signing statement, he described the Act as “encroach[ing] on the executive branch’s authority to negotiate,”<sup>13</sup> and could cause China, Russia, and North Korea to work together more frequently.<sup>14</sup>

While it is unclear if the bill has caused China, Russia, and North Korea to work together more frequently, President Trump’s constitutional objections to the bill may have merit. Daniel Hemel, Assistant Professor at the University of Chicago Law School, wrote in the *Yale Journal of Regulation: Notice & Comment* that the bill is “unnecessarily unconstitutional.”<sup>15</sup> Section 216—which requires the President to submit a report to the House or Senate if he seeks to waive or terminate sanctions against Russia, with Congress having thirty days to respond and the President meanwhile being in limbo—becomes problematic under one scenario.<sup>16</sup> If Congress passes a joint resolution denying the President’s proposed action, the President is blocked from taking that action for twelve calendar days after the joint resolution, and if the President vetoes the joint resolution, he cannot conduct the proposed action for an additional ten calendar days.<sup>17</sup> This, Hemel argues, violates the presentment clause of the Constitution, because “[i]t allows Congress to alter the legal landscape for 12 days (plus possibly 10 more) with a simple majority vote and without the president’s signature” by allowing Congress to change the law “without presenting a bill to the president and either having him sign it or overriding his veto.”<sup>18</sup>

## B. CUBA

On June 16, 2017, the Trump Administration issued a National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM).<sup>19</sup> Seeking to promote greater freedom and democracy and increased free enterprise in Cuba, the NSPM stated that it shall be U.S. policy to:

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13. Press Release, Donald Trump, President of the U.S., Statement by President Donald J. Trump on Signing the “Countering America’s Adversaries Through Sanctions Act” (Aug. 2, 2017), <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-signing-countering-americas-adversaries-sanctions-act/>.

14. *Id.*

15. Daniel Hemel, *The Russia Sanctions Bill Is Unconstitutional — and Unnecessarily So*, YALE J. ON REG.: NOTICE & COMMENT (July 25, 2017), <http://yalejreg.com/nc/the-russia-sanctions-bill-is-unconstitutional-and-unnecessarily-so/>.

16. *Id.*

17. *Id.*

18. *Id.*

19. The NSPM was originally posted by the Trump Administration on the White House’s website on June 16, 2017. Subsequently, the NSPM was published on the Federal Register. See National Security Presidential Memorandum: Strengthening the Policy of the United States Toward Cuba, 82 Fed. Reg. 48,875 (Oct. 20, 2017).

**PUBLISHED IN COOPERATION WITH  
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**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

30 THE YEAR IN REVIEW

[VOL. 52

- (a) End economic practices that disproportionately benefit the Cuban government or its military, intelligence, or security agencies or personnel at the expense of the Cuban people.
- (b) Ensure adherence to the statutory ban on tourism to Cuba.
- (c) Support the economic embargo of Cuba described in section 4(7) of the [LIBERTAD] Act of 1996 (the embargo).
- (d) Amplify the efforts to support the Cuban people through the expansion of Internet services, free press, free enterprise, free association, and lawful travel.
- (e) Not reinstate the “Wet Foot, Dry Foot” policy, which encouraged untold thousands of Cuban nationals to travel unlawfully to the United States.
- (f) Ensure that engagement between the United States and Cuba advances the interests of the United States and the Cuban people.<sup>20</sup>

The NSPM mandated that the Department of State (State Department), the Department of the Treasury (Treasury Department), and the Department of Commerce (Commerce Department) coordinate with each other and take all necessary actions to implement these policy objectives, including making amendments to the applicable regulations.<sup>21</sup>

Subsequently, on November 9, 2017, in accordance with the NSPM’s mandate for it to identify entities and subentities that are under the control of, or act for on behalf of, the Cuban military, intelligence, or security services or personnel, the State Department released its List of Restricted Entities and Subentities Associated with Cuba (Cuba Restricted List).<sup>22</sup> In total, the State Department placed approximately 180 Cuban entities on the Cuba Restricted List, including two Cuban ministries, two tourist agencies, five marinas, five large Cuban holding companies, and dozens of hotels and subentities of the five holding companies.<sup>23</sup>

On the same date that the State Department issued its Cuba Restricted List, the Treasury Department’s Office of Foreign Assets Control (OFAC) also published amendments to its Cuban Assets Control Regulations (CACR).<sup>24</sup> Among other things, these amendments established new CACR provisions that generally prohibit U.S. persons from engaging in certain direct financial transactions with entities and subentities identified on the Cuba Restricted List and made changes to numerous provisions and general licenses throughout the CACR to limit certain pre-existing exemptions to incorporate this new prohibition on financial transactions with entities and subentities on the Cuba Restricted List.<sup>25</sup> OFAC also amended the CACR

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20. *Id.* at 48,876.

21. *Id.* at 48,876-77.

22. The State Department’s List of Entities and Subentities Associated with Cuba, 82 Fed. Reg. 52,089 (Nov. 9, 2017) [hereinafter Cuba Restricted List].

23. *Id.* at 52,089-91.

24. Cuban Assets Control Regulations, 82 Fed. Reg. 51,998 (Nov. 9, 2017) (to be codified at 31 C.F.R. pt. 515) [hereinafter CACR].

25. *Id.* at 51,999-52,004.

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**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EXPORT CONTROLS &amp; ECONOMIC SANCTIONS 31

to place restrictions on certain types of authorized travel to Cuba by U.S. persons (*e.g.*, people-to-people travel, educational travel, and travel related to support for the Cuban people). These new restrictions require, among other things, that people-to-people travel and educational travel must be conducted under the auspices of an organization that is subject to U.S. jurisdiction and that the U.S. person traveling must be accompanied by a person subject to U.S. jurisdiction who is a representative of the sponsoring organization.<sup>26</sup> In addition, OFAC also expanded the CACR's definition of "prohibited officials of the Government of Cuba" to include certain additional individuals.<sup>27</sup>

The Commerce Department's Bureau of Industry and Security (BIS) also published amendments to certain Cuban-related provisions set forth under the Export Administration Regulations (EAR) on November 9, 2017.<sup>28</sup> In accordance with the NSPM, BIS amended the EAR to establish a general policy of denial for license applications to export or re-export items for use by entities and subentities on the Cuba Restricted List, unless the transaction is determined by BIS, in consultation with the State Department, to be consistent with the NSPM.<sup>29</sup> In addition, BIS amended License Exceptions Gift Parcels and Humanitarian Donations (GFT), Consumer Communications Devices (CCD), and Support for the Cuban People (SCP) to make clear that those license exceptions do not permit exports or re-exports to any "prohibited officials of the of the Government of Cuba" as that term has now been defined under the CACR by the amendments made by OFAC that are discussed above.<sup>30</sup> Less restrictively, BIS also amended License Exception SCP to create "a single provision authorizing the export and re-export to Cuba of items, without specifying types, for use by the Cuban private sector for private sector economic activities" provided that all applicable requirements can be satisfied (*e.g.*, the items must be "designated as EAR99 or controlled only for anti-terrorism reasons on the Commerce Control List (CCL)" and "may not be used to primarily generate revenue for the state or used to contribute to the operation of the state").<sup>31</sup>

### C. IRAN SANCTIONS

On October 13, 2017, the Trump administration announced it would not be recertifying Iran's compliance with the Joint Comprehensive Plan of Action (JCPOA), the nuclear agreement between the P5+1 and Iran.<sup>32</sup> The

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26. *Id.*

27. *Id.* at 51,999-52,000.

28. Amendments to Implement United States Policy Toward Cuba, 82 Fed. Reg. 51,983 (to be codified at 15 C.F.R. pts. 740, 746).

29. *Id.* at 51,984.

30. *Id.* at 51,985-86.

31. *Id.*

32. Press Release, Donald Trump, President of the U.S., Remarks by President Trump on the Iran Strategy (Oct. 13, 2017), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-iran-strategy/>. The Joint Comprehensive Plan of Action (JCPOA) is an

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 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

32 THE YEAR IN REVIEW

[VOL. 52]

administration's failure to recertify Iranian compliance with the JCPOA—an action required every ninety days under the Iran Nuclear Agreement Review Act (INARA)—triggered a sixty-day time period during which Congress can utilize an expedited process to pass legislation on Iran, including sanctions relating to Iran's nuclear program.<sup>33</sup> Congress is not required to pass legislation during this sixty-day period—it only enjoys an expedited legislative process.<sup>34</sup> Congress could still introduce legislation at a later date following the sixty-day period, but such legislation would not benefit from the expedited process. INARA is U.S. domestic legislation; failure to recertify Iran's compliance with the JCPOA to Congress under INARA is not a U.S. withdrawal from the JCPOA. International sanctions will not be reimposed under the JCPOA's "snap back" mechanism unless the U.N. dispute resolution commission finds significant non-performance and the U.N. Security Council fails to adopt a measure continuing sanctions lifting within a certain time period.<sup>35</sup>

Throughout the past year, OFAC has also sanctioned various individuals and entities in connection with Iran's ballistic missile program and for human rights violations, actions outside the scope of the JCPOA and nuclear-related sanctions.<sup>36</sup> The Countering America's Adversaries Through Sanctions Act (CAATSA) became law in August 2017 and imposed additional sanctions on Iranian persons and entities related to Iran's ballistic

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executive agreement to curb Iran's nuclear program made in 2015 between the P5+1 countries and Iran, under which Iran received sanctions relief by these countries in 2016 after the International Atomic Energy Agency (IAEA) certified Iran's compliance with the initial phases of the agreement. The P5+1 country group refers to the five permanent members of the U.N. Security Council (the U.S., the U.K., France, Russia, and China) and Germany.

33. In 2015, Congress passed the Iran Nuclear Agreement Review Act ("INARA") to allow Congressional review and oversight of executive agreements on Iran's nuclear program. *See* 42 U.S.C. § 2160e(e).

34. *See id.*

35. *See* S.C. Res. 2231, Annex A – JCPOA ¶¶ 36-37 (July 20, 2015).

36. *See* Notice of OFAC Sanctions Actions, 82 Fed. Reg. 48,591-92 (Oct. 18, 2017) (adding IRGC and other Iranian and Chinese entities to SDN List for terrorism-related activities and weapons of mass destruction proliferators for support to IRGC or Iran's military); Notice of OFAC Sanctions Actions, 82 Fed. Reg. 44,026-28 (Sept. 20, 2017) (designating individuals and entities for engaging in support of Iranian SDNs or malicious cyber-enabled activity, including support to IRGC ballistic missile program and cyber attacks against U.S. financial system); Notice of OFAC Sanctions Actions, 82 Fed. Reg. 39,154-55 (Aug. 17, 2017) (designating subentities of SDN entity responsible for development and production of Iranian ballistic missiles); Notice of OFAC Sanctions Actions, 82 Fed. Reg. 33,943-45 (July 21, 2017) (designating individuals and entities for supporting Iran's military and IRGC and Iran-based transnational criminal organization); Sanctions Actions Pursuant to Executive Order 13382, 82 Fed. Reg. 23,715-16 (May 23, 2017) (designating Iranian senior officials and China-based network supporting Iran's ballistic missile program); Sanctions Actions Pursuant to Executive Order 13553, 82 Fed. Reg. 18,342-43 (Apr. 18, 2017) (sanctioning Tehran Prisons Organization and Iran State Prison Organization official for human rights abuses); Sanctions Actions Pursuant to Executive Order 13224, 82 Fed. Reg. 9961 (Feb. 8, 2017) (sanctioning entities and individuals involved in procuring technology and/or materials to support Iran's ballistic missile program and acting on behalf of or supporting IRGC).

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**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EXPORT CONTROLS &amp; ECONOMIC SANCTIONS 33

missile program, the Islamic Revolutionary Guard Corps' (IRGC) terrorism-related activities, and human rights abuses.<sup>37</sup>

#### D. NORTH KOREA SANCTIONS

On September 21, 2017, the United States imposed additional sanctions on North Korea through Executive Order 13810 (E.O. 13810). In addition to expanding primary and secondary sanctions, E.O. 13810 also expanded Specially Designated National (SDN) criteria to include operating in certain industries, ports of entry, engaging in at least one significant import to or export from North Korea, supporting SDNs, and being owned, controlled, or operated on behalf of an SDN.<sup>38</sup> The executive order further imposed sanctions on foreign financial institutions for transactions with SDNs or trade with North Korea.<sup>39</sup> Prior to E.O. 13810, CAATSA enacted strict measures on North Korea through expansion of SDN criteria in specific industries, targeting vessels, prohibiting certain financial transactions, withholding assistance to governments supplying North Korea with defense articles or services, denying importation of North Korean goods unless it can be proven goods were not produced with forced labor, blocking transactions of foreign persons employing North Korean laborers, and mandating additional Congressional reporting requirements.<sup>40</sup>

As North Korea becomes more isolated internationally, recent OFAC actions have focused on targeting North Korea's nuclear program and financial institutions through designating individuals and entities, including Chinese and Russian parties, with ties to North Korea.<sup>41</sup>

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37. 22 U.S.C. §§ 9401-9411 (2017); Countering America's Adversaries Through Sanctions Act (CAATSA), Pub. L. No. 115-44, tit. I (Aug. 2, 2017); *see* Notice of OFAC Sanctions Actions, 82 Fed. Reg. 48,591-92 (Oct. 18, 2017) (adding IRGC to SDN List for terrorism-related activities and consistent with CAATSA); *see also* OFAC FAQs: *Iran Sanctions*, Questions 533-34, U.S. DEP'T OF TREASURY (Oct. 30, 2017), [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_iran.aspx#caatsa](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#caatsa); *see also* OFAC FAQs: *Iran Sanctions*, Question 535, U.S. DEP'T OF TREASURY (Oct. 13, 2017), [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_iran.aspx#caatsa](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#caatsa) (stating that the Islamic Revolutionary Guards Corps (IRGC) has not been designated as a Foreign Terror Organization (FTO) by the U.S. State Department); *see also* State Sponsors of Terrorism, U.S. Dep't of State, *available at* <https://www.state.gov/j/ct/list/c14151.htm/> (adding North Korea to the list of State Sponsors of Terrorism in November of 2017).

38. *See* Exec. Order No. 13810, 82 Fed. Reg. 44,705 (Sept. 20, 2017).

39. *See id.*

40. *See* Countering America's Adversaries Through Sanctions Act (CAATSA), Pub. L. No. 115-44, tit. III §§ 311, 311-18, 321 (Aug. 2, 2017).

41. *See* Notice of OFAC Sanctions Actions, 82 Fed. Reg. 45,946-48 (Oct. 2, 2017) (designating North Korean banks and nationals, linked to financial systems, operating in China, Russia, Libya, and U.A.E.); Notice of OFAC Sanctions Actions, 82 Fed. Reg. 40,644-47 (Aug. 25, 2017) (designating Chinese, Russian, and third-country entities and individuals supporting North Korean nuclear and ballistic missile programs, energy trade, exportation of North Korean workers, and North Korean SDNs to access U.S. and international financial systems); Notice of OFAC Sanctions Actions, 82 Fed. Reg. 35,054-55 (July 27, 2017) (designating Chinese individuals and entities in North Korea's transportation and financial service industries

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

34 THE YEAR IN REVIEW

[VOL. 52]

**E. SUDAN SANCTIONS**

On October 12, 2017, sanctions on the government of Sudan were revoked in response to the Sudanese government's actions taken to maintain a cessation of hostilities, improve humanitarian access, and address regional conflicts and the threat of terrorism.<sup>42</sup> But the Darfur sanctions program remains in effect, certain Sudanese officials continue to be listed as SDNs pursuant to other authorities, and Sudan remains designated by the State Department as one of four state sponsors of terrorism.<sup>43</sup> Because other authorities remain in effect sanctioning Sudan, OFAC issued a General License A to authorize the export and re-export of certain Trade Sanctions Reform and Export Enhancement Act (TSRA) items to Sudan.<sup>44</sup>

**F. VENEZUELA**

Much of the sanctions activity on Venezuela in 2017 has focused on targeting certain individuals designated as SDNs, including narcotics traffickers, and prohibiting transactions with the government of Venezuela and entities under its control.<sup>45</sup> Significantly, Venezuelan President Nicolás

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supporting WMD proliferators); Sanctions Actions Pursuant to Exec. Orders 13722, 13382, and 13687, 82 Fed. Reg. 26,841 (June 9, 2017) (targeting North Korean military, nuclear, and WMD programs by designating individuals and entities connected to programs' revenue from labor, coal, minerals, and overseas financial operations); Sanctions Actions Pursuant to Exec. Orders 13722, 13382, and 13687, 82 Fed. Reg. 17,331-32 (Apr. 10, 2017) (designating North Korean individuals and entities supporting North Korean government in Russia, China, Vietnam, and Cuba to provide financial support or WMD procurement services for U.N., or U.S., designated sanctioned entities).

42. Press Release, Heather Nauert, spokesperson, U.S. Dep't of State, Sanctions Revoked Following Sustained Positive Action by the Government of Sudan (Oct. 6, 2017), <https://www.state.gov/tr/pa/prs/ps/2017/10/274659.htm>; see also Press Release, Bureau for African Affairs, The Secretary's Report on Whether the Government of Sudan Has Sustained the Positive Actions That Gave Rise to E.O. 13761 (Oct. 12, 2017), <https://www.state.gov/p/af/rls/2017/274667.htm>.

43. See *OFAC FAQs: Other Sanctions Programs*, Question 531, U.S. DEP'T OF TREASURY (Oct. 6, 2017), [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_other.aspx#revocation](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#revocation); see also *id.* at Questions 528-32; see *State Sponsors of Terrorism*, U.S. DEP'T OF STATE, <https://www.state.gov/j/ct/list/c14151.htm> (last visited Jan. 24, 2017).

44. See *General License A: Authorizing Certain Transactions Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA)*, U.S. DEP'T OF TREASURY (Oct. 6, 2017), [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tsra\\_gla.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/tsra_gla.pdf); see also *OFAC FAQs: Other Sanctions Programs*, Questions 528-29, U.S. DEP'T OF TREASURY (Oct. 6, 2017), [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_other.aspx#revocation](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#revocation).

45. See Exec. Order No. 13808, 82 Fed. Reg. 41,155-56 (Aug. 24, 2017); Notice of OFAC Sanctions Actions, 82 Fed. Reg. 37,985-86 (Aug. 14, 2017) (adding members of Venezuelan Constituent Assembly to SDN List); Sanctions Actions Pursuant to Executive Order of March 8, 2015, "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela," 82 Fed. Reg. 37,290 (Aug. 9, 2017) (designating Venezuelan president Nicolás Maduro as SDN); Sanctions Actions Pursuant to Executive Order of March 8, 2015, "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EXPORT CONTROLS &amp; ECONOMIC SANCTIONS 35

Maduro and members of the Constituent Assembly were designated as SDNs for seeking to rewrite the Venezuelan constitution, dissolve state institutions, and undermine democratic processes.<sup>46</sup> Eight Venezuelan Supreme Court of Justice members were also designated as SDNs for rulings over the past year that have undermined the democratically-elected legislature and allowed President Maduro to rule through emergency decree.<sup>47</sup>

## II. Export Control Developments

The U.S. Department of State's Directorate of Defense Trade Controls (DDTC) and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) undertook a significant amount of working group activity and interagency review in 2017. While these efforts resulted in some finalized regulatory revisions, they largely set the stage for important revisions to both the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) in 2018.

*USML Revisions and Category Transitions.* DDTC made progress with amendments to the ITAR in 2017, including revisions to U.S. Munitions List (USML) Category XV (Spacecraft and Related Articles) and amendments to the ITAR to facilitate U.S. Customs and Border Protection (CBP)'s final efforts to launch the new Automated Commercial Environment Portal (ACE Portal). Most notably, the highly-anticipated transition of USML Category I (Firearms, Close Assault Weapons, and Combat Shotguns), Category II (Guns and Armament), and Category III (Ammunition/Ordnance) to the Commerce Control List (CCL) remained

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Venezuela," 82 Fed. Reg. 35,870-72 (Aug. 1, 2017) (adding thirteen current or former Venezuelan government senior officials to SDN list on July 26, 2017); Sanctions Actions Pursuant to Executive Order of March 8, 2015, "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela," 82 Fed. Reg. 23,982 (May 24, 2017); Sanctions Actions Pursuant to the Foreign Narcotics Kingpin Designation Act, 82 Fed. Reg. 11,101-02 (Feb. 17, 2017) (designating Venezuelan narcotics traffickers as SDNs and blocking property owned entities controlled by these SDNs); *Treasury Sanctions Ten Venezuelan Government Officials*, U.S. DEP'T OF TREASURY (Nov. 9, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0214.aspx>.

46. See Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Eight Individuals Involved in Venezuela's Illegitimate Constituent Assembly (Aug. 9, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0145.aspx>; see also Notice of OFAC Sanctions Actions, 82 Fed. Reg. 37,985-86 (Aug. 14, 2017) (adding members of Venezuelan Constituent Assembly to SDN List); Sanctions Actions Pursuant to Executive Order of March 8, 2015, "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela," 82 Fed. Reg. 37,290 (Aug. 9, 2017) (designating Venezuelan president Nicolás Maduro as SDN).

47. Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Eight Members of Venezuela's Supreme Court of Justice (May 18, 2017), <https://www.treasury.gov/press-center/press-releases/Pages/sm0090.aspx>; see also Sanctions Actions Pursuant to Executive Order of March 8, 2015, "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela," 82 Fed. Reg. 23,982 (May 24, 2017).

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

36 THE YEAR IN REVIEW

[VOL. 52]

delayed because, unlike DDTC, BIS is not exempt from Executive Order 13771 of January 30, 2017, which mandates the elimination of two existing regulations for every new regulation published. That said, DDTC and BIS submitted for final White House interagency review proposed rules for eventual publication.<sup>48</sup>

*Manufacturing and ITAR Registration.* At its Plenary Meeting of September 8, 2017, the DDTC-sponsored Defense Trade Advisory Group (DTAG) received a report from its Manufacturing Definition Working Group (MDWG), a group of industry and U.S. Government representatives undertaking a reconsideration of the ITAR definition of “manufacturing.” The MDWG’s mandate from DDTC included consideration of how to accurately and effectively define manufacturing under the ITAR, which currently lacks a definition of the term. The MDWG’s September 2017 presentation to DTAG suggested consideration of the policy implications of a broad definition of manufacturing, and whether it is in DDTC’s interest that certain low-level manufacturing activities, such as those that fall below certain dollar thresholds, that do not involve substantial transformation of defense articles, or that only involve manufacturing of components, trigger the ITAR requirements for registration.<sup>49</sup> Such conversations suggest the potential for a definition of manufacturing, and related changes to registration requirements, may be on the horizon in 2018.

*Deemed Exports and Defense Services.* The DTAG Plenary Meeting also suggested that DDTC may be considering revisions to the definitions that drive the deemed export rules in 2018. In September 2017, DTAG’s Exports, Re-export, and Foreign Citizenship/Permanent Residence Working Group noted the compliance challenges associated with current restrictions on the release of technical data to foreign nationals working in U.S. companies, and suggested that DDTC consider regulatory revisions of the concepts of citizenship, nationality, and permanent residence when those terms are not all clearly defined in the regulations or uniformly defined and applied internationally.<sup>50</sup> Privacy and anti-discrimination concerns related to the deemed export rules likewise appears to be under DDTC consideration. The debate over redefinition of ITAR-controlled “defense services” also continued in 2017, with a large DTAG working group considering the significance of the use of ITAR-controlled data in an activity, actions involving primarily commercial products with military

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48. See *International Traffic in Arms Regulations: Categories I, II, and III*, OFFICE INFO. & REG. AFF. (2017), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1400-AE30>; *Revisions to the Export Administration Regulations: Control of Firearms and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List*, OFFICE INFO. & REG. AFF. (2017), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=0694-AF47>.

49. *Defense Trade Advisory Group (DTAG) Public Plenary*, U.S. DEP’T OF STATE (Sept. 8, 2017), <https://www.pmdtc.state.gov/DTAG/documents/Combined%20Final%20-%20Sep%202017.pdf>.

50. *Id.*

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EXPORT CONTROLS &amp; ECONOMIC SANCTIONS 37

systems installed in them, and when maintenance rises to a level that it implicates U.S. national security concerns.<sup>51</sup>

*EAR Policy Updates.* Revisions to the EAR were limited in 2017 due to Executive Order 13771's mandate to remove two regulations for each new regulation published. BIS did, however, implement several notable policy changes, including changes with regard to licensing policy for exports and re-exports to Sudan, India, and Cuba. On January 17, 2017, BIS published a final rule establishing a new, favorable licensing policy for certain exports of items intended to improve the safety of civil aviation and modernize Sudanese railways.<sup>52</sup> On January 19, 2017, BIS amended the EAR to implement an additional phase of export control cooperation with India.<sup>53</sup> This cooperation included establishment of a new BIS licensing policy of general approval for certain categories of exports, re-exports, and transfers for items subject to the EAR, including for some military items previously controlled under the ITAR, and for some exports to the Government of India.<sup>54</sup> On November 9, 2017, BIS adopted a stricter licensing policy of denial for three license exceptions specific to exports to Cuba, namely Gift Parcels and Humanitarian Donations, Consumer Communications Devices, and Support for the Cuban People.<sup>55</sup> Throughout 2017, BIS also frequently revised its Entity List, adding a number of Russian entities, and making changes in conjunction with the historic, multi-agency enforcement action against ZTE Corporation.

### III. Enforcement Developments

#### A. SIGNIFICANT ITAR ENFORCEMENT ACTIVITY

Bright Lights USA, Inc. (BLU) agreed to pay a fine of \$400,000 as part of a civil consent agreement with DDTC concluded on September 11, 2017.<sup>56</sup> The eleven alleged ITAR violations fell into three categories.<sup>57</sup> First, DDTC stated that BLU, a manufacturer and supplier primarily of minor spare parts (*e.g.*, robber stoppers, seals, and grommets), exported ITAR-controlled technical drawings and related data that had been "redacted" to

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51. *Id.*

52. Revisions to Sudan Licensing Policy, 82 Fed. Reg. 4781 (Jan.17, 2017).

53. Amendments to the Export Administration Regulations Implementing an Additional Phase of India-U.S. Export Control Cooperation, 82 Fed. Reg. 6218 (Jan.19, 2019).

54. *Id.*

55. Amendments to Implement United States Policy Toward Cuba, 82 Fed. Reg. 51,983 (Nov. 9, 2017).

56. Bright Lights USA, Inc. (U.S. Dep't State, Bureau of Pol.-Mil. Aff. Sept. 11, 2017), [https://www.pmdtcc.state.gov/compliance/consent\\_agreements/pdf/BLU\\_Consent%20Agreement.pdf](https://www.pmdtcc.state.gov/compliance/consent_agreements/pdf/BLU_Consent%20Agreement.pdf).

57. Letter from Arthur Shulman, Acting Director, Off. of Def. Trade Controls Compliance U.S. Dep't State, Bureau of Pol.-Mil. Aff., to Daniel A. Farber, President, Bright Lights USA, Inc. (2017), [https://www.pmdtcc.state.gov/compliance/consent\\_agreements/pdf/BLU\\_Proposed%20Charging%20Letter.pdf](https://www.pmdtcc.state.gov/compliance/consent_agreements/pdf/BLU_Proposed%20Charging%20Letter.pdf).

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

38 THE YEAR IN REVIEW

[VOL. 52]

eliminate military end-use details to vendors in China and India.<sup>58</sup> Second, BLU allegedly assigned the incorrect export jurisdiction (EAR) to certain ITAR-controlled Phalanx missile system spare parts, which it then exported to entities in the U.K., the U.A.E., Turkey, Spain, and Portugal without DDTC authorization.<sup>59</sup> And third, DDTC faulted BLU for failing to keep and provide records in accordance with the ITAR.<sup>60</sup>

**B. SIGNIFICANT EAR ENFORCEMENT CASES**

On January 19, 2017, Milwaukee Electric Tool Corporation (MET) agreed to a civil fine of \$301,000 to settle charges that it committed twenty-five violations of the EAR.<sup>61</sup> BIS alleged that MET unlawfully shipped EAR-controlled thermal imaging cameras to several foreign destinations, such as Hong Kong, Columbia, Ecuador, El Salvador, and Mexico, from April 2012 to May 2014.<sup>62</sup>

BIS imposed a \$27 million penalty on Access USA Shipping, LLC (Access) on February 9, 2017, in connection with an agreement to settle charges that Access committed 150 violations of the EAR.<sup>63</sup> Access was alleged to have operated as a sort of front for foreign buyers wishing to conceal information about the actual end-use, end-user, or destination from U.S. sellers; crafted and manipulated shipping documentation to avoid scrutiny from federal authorities; failed to retain required documents; unlawfully exported items subject to Crime Control restrictions to Argentina, Austria, Hong Kong, Indonesia, Libya, South Africa, and Sweden; and exported items subject to the EAR to a Finnish company identified on the restricted Entity List without the required BIS authorization.<sup>64</sup>

On March 7, 2017, following an extensive, five-year investigation, the U.S. government announced settlement and plea agreements with the China-based Zhongxing Telecommunications Equipment (ZTE) organization for both civil and criminal violations of U.S. export control and economic sanctions laws, occurring from 2010 to 2016.<sup>65</sup> As part of the multi-agency arrangement, ZTE agreed to pay civil fines of \$661 million to

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<sup>58.</sup> *Id.* at 4.

<sup>59.</sup> *Id.* at 5.

<sup>60.</sup> *Id.* at 4.

<sup>61.</sup> Milwaukee Elec. Tool Corp. (U.S. Dep't of Commerce, Bureau of Indus. and Sec. Jan. 19, 2017), <https://efoia.bis.doc.gov/index.php/documents/export-violations/1099-e2489/file>.

<sup>62.</sup> *Id.* at 2.

<sup>63.</sup> Access USA Shipping, LLC (U.S. Dep't of Commerce, Bureau of Indus. and Sec. Feb. 9, 2017), <https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2015/1102-e2490/file>.

<sup>64.</sup> *Id.* at 2-6.

<sup>65.</sup> Press Release, U.S. Dep't of Justice, ZTE Corporation Agrees to Plead Guilty and Pay over \$430.4 Million for Violating U.S. Sanctions by Sending U.S.-Origin Items to Iran (Mar. 7, 2017), <https://www.justice.gov/opa/pr/zte-corporation-agrees-plead-guilty-and-pay-over-4304-million-violating-us-sanctions-sending>.

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EXPORT CONTROLS &amp; ECONOMIC SANCTIONS 39

BIS (with \$300 million of that suspended)<sup>66</sup> and \$101 million to OFAC,<sup>67</sup> a criminal fine of \$287 million, and a criminal forfeiture of \$143 million.<sup>68</sup> Authorities accused ZTE of operating and attempting to conceal a vast, intricate scheme to supply customers in Iran with telecommunications networking equipment and infrastructure—the backbone of which was U.S.-origin commodities and software subject to the EAR—without the necessary licenses from BIS or OFAC.<sup>69</sup> Moreover, ZTE was charged with incorporating U.S.-origin parts and components into telecommunications end-items in China that were destined for North Korea.<sup>70</sup>

Axis Communications, Inc. (Axis) and BIS concluded a civil settlement agreement involving a \$700,000 fine on June 9, 2017.<sup>71</sup> BIS alleged that Axis exported EAR-controlled thermal imaging cameras to Mexico thirteen times from March 2011 to July 2013 without the necessary authorization, and that Axis failed to comply with regulatory recordkeeping requirements.<sup>72</sup>

As part of a settlement agreement announced on September 25, 2017, BIS issued a civil penalty of \$230,000 to Millitech, Inc.<sup>73</sup> The company was charged with eighteen violations of the EAR for exporting from October 2011 through July 2014 controlled active multiplier chains—components often used in communication and radar systems—without authorization to consignees in China and Russia.<sup>74</sup>

### C. SIGNIFICANT OFAC ENFORCEMENT CASES

OFAC announced on January 13, 2017, that Canada-based Toronto-Dominion Bank (TD) agreed to pay \$516,105 to settle allegations that it and its subsidiaries committed 3,491 apparent violations of the Cuban Assets Control Regulations (CACR)<sup>75</sup> and Iranian Transactions and Sanctions

66. Zhongxing Telecomm. Equip. Corp. (U.S. Dep't of Commerce, Bureau of Indus. and Sec. Mar. 23, 2017), <https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2015/1105-e2492/file>.

67. Zhongxing Telecomm. Equipment Corp. (U.S. Dep't of Treasury, Office of Foreign Assets Control Mar 7, 2017), [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170307\\_zte\\_settlement.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170307_zte_settlement.pdf).

68. *Id.* The financial penalties totaled about \$1.2 billion.

69. *Id.*

70. Zhongxing Telecomm. Equipment Corp. (U.S. Dep't of Com., Bureau of Indus. & Sec. Mar. 23, 2017), <https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2015/1105-e2492/file>.

71. Axis Comm., Inc. (U.S. Dep't of Commerce, Bureau of Indus. and Sec. June 9, 2017), <https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2015/1113-e2500/file>.

72. *Id.* at 2.

73. Millitech, Inc. (U.S. Dep't of Commerce, Bureau of Indus. and Sec. Sep. 25, 2017), <https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2015/1135-e2520/file>.

74. *Id.* at 2.

75. 31 C.F.R. pt. 515 (2018).

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

40 THE YEAR IN REVIEW

[VOL. 52]

Regulations<sup>76</sup> (ITSR).<sup>77</sup> The TD group of companies was alleged to have held accounts, processed money transfers, and engaged in securities-related transactions involving the U.S. financial system for the benefit of persons in Cuba and Iran, without the required OFAC authorization.<sup>78</sup>

On February 28, 2017, OFAC stated that United Medical Instruments Inc. (UMI) was settling its potential liability arising from fifty-six alleged violations of the ITSR, with a civil penalty of \$515,400 (most of which was suspended on the condition that UMI comply with the terms of a 2013 agreement with BIS).<sup>79</sup> The exports in question consisted of unlicensed shipments of medical imaging equipment to countries from December 2007 to April 2009 that UMI knew or should have known were destined ultimately for Iran.<sup>80</sup>

As noted previously, OFAC was one of the agencies involved in the global settlement with ZTE announced on March 7, 2017. ZTE agreed to pay \$101 million to OFAC in connection with 251 violations of the ITSR arising from its scheme to “surreptitiously supply Iran with a substantial volume of U.S.-origin goods” without the appropriate licenses.<sup>81</sup>

On July 20, 2017, OFAC stated it was assessing a penalty of \$2,000,000 against ExxonMobil Corporation.<sup>82</sup> Officers of ExxonMobil subsidiaries were alleged to have violated OFAC’s Ukraine-Related Sanctions Regulations<sup>83</sup> by executing legal documents relating to oil and gas projects in Russia with Igor Sechin, the president of Rosneft OAO and an individual identified on OFAC’s List of Specially Designated Nationals and Blocked Persons.<sup>84</sup> OFAC took the position that countersigning the documents constituted unlawful “deal[ing] in services” for the benefit of a sanctioned person, and demonstrated a “reckless disregard” of the relevant U.S. sanctions laws and policy objectives.<sup>85</sup> In response, ExxonMobil filed a lawsuit in the U.S. District Court for the Northern District of Texas challenging OFAC’s penalty.<sup>86</sup>

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76. 31 C.F.R. pt. 560 (2018).

77. *Enforcement Information for January 13, 2017*, U.S. DEP’T OF TREASURY (Jan. 13, 2017), [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170113\\_td\\_bank.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170113_td_bank.pdf).

78. *Id.*

79. *Enforcement Information for February 28, 2017*, U.S. DEP’T OF TREASURY (Feb. 28, 2017), [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170228\\_united\\_medical\\_technologies.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170228_united_medical_technologies.pdf).

80. *Id.*

81. *Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Zhongxing Telecomm. Equipment Corp.*, U.S. DEP’T OF TREASURY (Mar. 7, 2017), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20170307.aspx>.

82. *Enforcement Information for July 20, 2017*, U.S. DEP’T OF TREASURY (July 20, 2017), [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170720\\_exxonmobil.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170720_exxonmobil.pdf).

83. 31 C.F.R. pt. 589 (2018).

84. *Enforcement Information for July 20, 2017*, *supra* note 81.

85. *Id.*

86. Complaint, *Exxon Mobil v. Mnuchin*, 3:17-cv-1930 (N.D. Tex. July 20, 2017).

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**



**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EXPORT CONTROLS &amp; ECONOMIC SANCTIONS 41

Singapore-based telecommunications companies CSE Global Limited and CSE TransTel Pte. Ltd. (collectively, CSE) agreed to pay a \$12 million penalty in a civil settlement announced on July 27, 2017.<sup>87</sup> OFAC stated that CSE committed 104 apparent violations of the ITSR by “willfully and recklessly” initiating U.S. dollar-denominated banking transactions directly relating to multiple business relationships with Iranian entities, even after assuring CSE’s Singaporean bank in writing that such transactions would not occur.<sup>88</sup>

On August 17, 2017, OFAC announced a \$518,063 civil penalty for Blue Sky Blue Sea, Inc., doing business as American Export Lines and International Shipping Company (USA) (collectively, AEL), which apparently committed 140 violations of the ITSR.<sup>89</sup> AEL allegedly shipped used and junked cars and parts via Iran to ultimate end-users in Afghanistan from April 2010 to June 2012, with “reckless disregard” of U.S. sanctions requirements.<sup>90</sup>

#### IV. CANADIAN DEVELOPMENTS

During 2017, Canada made significant changes to its export control and economic sanctions regimes. The most important of these are summarized below.

*Canada Adopts Magnitsky Law and Promises to Improve its Sanctions Regime.* On October 18, 2017, Canada adopted the Justice for Victims of Corrupt Foreign Officials Act (JVCFOA), which, along with amendments to the Special Economic Measures Act (SEMA), expands the scope under which sanctions can be enacted against states, entities, or individuals, including in cases of gross human rights violations and significant corruption.<sup>91</sup> This legislation is known as Canada’s “Magnitsky Law,” named after anti-corruption lawyer, Sergei Magnitsky, who discovered Russian officials’ embezzlement of state funds amounting to \$230 million USD and soon after was arrested, tortured, and died in a Russian prison.

Adoption of the JVCFOA was one of the recommendations in the report of the Standing Committee on Foreign Affairs and International Development (the Committee), entitled “A Coherent and Effective Approach to Canada’s Sanctions Regimes: Sergei Magnitsky and Beyond”

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87. *Enforcement Information for July 27, 2017*, U.S. DEP’T OF TREASURY (July 27, 2017), [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170727\\_transtel.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170727_transtel.pdf).

88. *Id.*

89. *Enforcement Information for August 17, 2017*, U.S. DEP’T OF TREASURY (Aug. 17, 2017), [https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170817\\_ael.pdf](https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20170817_ael.pdf).

90. *Id.*

91. Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), S.C. 2017, c 21 (Can.), <http://laws.justice.gc.ca/PDF/J-2.3.pdf>; Special Economic Measures Act, S.C. 1992, c 17 (Can.), <http://laws-lois.justice.gc.ca/PDF/S-14.5.pdf>.

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

42 THE YEAR IN REVIEW

[VOL. 52]

dated April 6, 2017 (the Report).<sup>92</sup> The Report is a result of a year-long comprehensive parliamentary review of Canada's sanctions legislation, required under the Freezing Assets of Corrupt Foreign Officials Act (FACFOA).<sup>93</sup> The Report's other core recommendations include that the Government of Canada should (i) ensure coherence across Canada's sanctions legislation; (ii) narrow the scope of restrictions to avoid the need for over-compliance; (iii) allow targeted persons to defend themselves against imposed measures on procedural fairness grounds; (iv) provide comprehensive, publicly available, written guidance to the public and private sectors regarding interpretation of sanctions; and (v) provide clear rationale for listing and delisting of persons under SEMA.<sup>94</sup> The JVCFOA now allows Canadian officials to deny visas for and freeze assets of foreign nationals that are involved in gross violations of internationally recognized human rights or are public officials or associates who are responsible for or complicit in acts of significant corruption. The federal government has already adopted regulations under the JVCFOA to place asset freezes on fifty-two officials from Russia, Venezuela, and South Sudan, including Venezuelan President Nicolás Maduro Moros.

*Canada Publishes Consolidated SEMA Sanctions List.* Following another recommendation of the Committee, on October 13, 2017, Global Affairs Canada published an online tool, known as the "Consolidated SEMA Sanctions List," which can be used by members of the public to search for individuals and entities named in the schedules of sanctions regulations made under SEMA.<sup>95</sup> The recommendation for Canada to maintain a Consolidated SEMA Sanctions List was primarily driven by the Committee's desire to make Canada's sanction regime more streamlined and accessible. The Committee found that vagueness as to the scope of the restrictions and their exemptions has led to over-compliance, which not only increases the cost of regulatory compliance, but also can have the effect of a quasi-blanket embargo for certain regions and entities. The Committee suggested that a consolidated list would lessen compliance costs and reduce over-compliance.

*Changes to Canada's Sanctions Lists.* On April 14, 2017, Canada's Minister of Foreign Affairs, Chrystia Freeland, announced amendments to the *Special Economic Measures (Syria) Regulations* to list twenty-seven additional

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92. *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond*, GOVERNMENT OF CANADA PUBLICATIONS (April 2017), [http://publications.gc.ca/collections/collection\\_2017/parl/xc11-1/XC11-1-1-421-7-eng.pdf](http://publications.gc.ca/collections/collection_2017/parl/xc11-1/XC11-1-1-421-7-eng.pdf).

93. Freezing Assets of Corrupt Foreign Officials Act, S.C. 2011, c 10 (Can.), <http://laws.justice.gc.ca/PDF/F-31.6.pdf>.

94. *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond*, *supra* note 92.

95. *Consolidated Special Economic Measures Act Sanctions List*, GLOBAL AFFAIRS CANADA, <http://www.international.gc.ca/sanctions/consolidated-recapitulative.aspx?lang=eng> (last updated Oct. 19, 2017).

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EXPORT CONTROLS &amp; ECONOMIC SANCTIONS 43

individuals who are now subject to an asset freeze and dealings prohibition.<sup>96</sup> The persons listed are high-ranking officials in the Assad regime. On September 22, 2017, Minister Freeland announced sanctions against forty Venezuelan officials and individuals who have played a key role in undermining the security, stability, and integrity of democratic institutions of Venezuela in the Special Economic Measures (Venezuela) Regulations<sup>97</sup> (Venezuela Regulations), enacted under SEMA. The Venezuela Regulations impose asset freezes and dealings prohibitions with or for the benefit of listed persons, although certain exemptions apply.

*Canada Prepares to Join Arms Trade Treaty.* On April 13, 2017, the Canadian government announced its commitment to accede to the Arms Trade Treaty and introduced Bill C-47, an Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments (Bill C-47)).<sup>98</sup> The Arms Trade Treaty is a multilateral treaty that regulates the international trade in conventional weapons that entered into force on December 24, 2014. Most significantly, Bill C-47 proposes the creation of a Brokering Control List (BCL) comprised of Export Control List goods and technology the brokering of which is prohibited unless authorized by a permit.

*Updated Guide to Canada's Export Controls.* On August 11, 2017, a new version of the Guide to Canada's Export Control List (the Guide) came into effect.<sup>99</sup> The new version of the Guide, still referred to as the "December 2015 version," brings Canada's export control regime into compliance with its international obligations as of December 31, 2015.<sup>100</sup> The Guide lists the goods and technology subject to export and technology transfer controls and reflects many new additions, deletions, and clarifications.

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96. Special Economic Measures (Syria) Regulations, SOR/2011-114 (Can.), <http://laws-lois.justice.gc.ca/PDF/SOR-2011-114.pdf>.

97. Special Economic Measures (Venezuela) Regulations, SOR/2017-204 (Can.), <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2017-204/FullText.html>.

98. An Act to Amend the Export and Import Permits Act and the Criminal Code (Amendments Permitting the Accession to the Arms Trade Treaty and Other Amendments), 2017, House of Commons of Canada, Bill C-47, <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-47/first-reading>.

99. *A Guide to Canada's Export Controls: December 2015 version*, GLOBAL AFFAIRS CANADA, [http://www.international.gc.ca/controls-controles/about-a\\_propos/expor/guide-2015\\_toc-tdm.aspx?lang=eng](http://www.international.gc.ca/controls-controles/about-a_propos/expor/guide-2015_toc-tdm.aspx?lang=eng) (last updated Aug. 11, 2017).

100. John W. Boscariol, et al., *Major Changes to Canada's Export and Technology Transfer Controls Coming into Force Shortly*, MCCARTHY TERTRAULT (Aug. 4, 2017), [http://mccarthy.ca/article\\_detail.aspx?id=7370](http://mccarthy.ca/article_detail.aspx?id=7370).

**PUBLISHED IN COOPERATION WITH  
 SMU DEDMAN SCHOOL OF LAW**

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

**PUBLISHED IN COOPERATION WITH**  
**SMU DEDMAN SCHOOL OF LAW**