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## Export Controls and Economic Sanctions

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## Export Controls and Economic Sanctions

JOHN W. BOSCARIOL, J. PATRICK BRISCOE, GEOFFREY M. GOODALE,  
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### I. Introduction

Although some may have thought that President Obama's Export Control Reform (ECR) initiative never would come to fruition, after several years of public statements and proposed rules, some of the revisions under ECR took effect during 2013.<sup>2</sup> As the Obama Administration has indicated, ECR is a process that will take time and reforms are expected throughout 2014 and 2015. This article summarizes significant changes to U.S. export control and economic sanctions laws and regulations occurring over the last year.<sup>3</sup>

### II. Export Control Reform

#### A. OVERVIEW OF EXPORT CONTROL REFORM

Fundamentally, ECR is about jurisdictional issues—specifically about transferring from the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) to the Commerce Control List (CCL) of the Export Administration Regulations (EAR) those items that do not have a significant military or intelligence advantage to the United States such that control is warranted under the more restrictive ITAR.<sup>4</sup>

The revised control lists are built around a fundamental purpose that the USML should focus on those functional properties or performance capabilities that make the item sensitive for military and foreign policy purposes, rather than design intent or mere modification to a particular article's form or fit purposes.<sup>5</sup> In so enumerating or describing more clearly those items controlled on the USML, it will have the consequence of increasing

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2. Press Release, U.S. Dep't of State, Export Control Reform: First Final Rules Go Into Effect (Oct. 15, 2013), available at <http://www.state.gov/r/pa/prs/ps/2013/10/215428.htm>.

3. This article includes developments occurring between December 1, 2012, and November 30, 2013.

4. Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform, 78 Fed. Reg. 22,740, 22,745 (Oct. 15, 2013) (to be codified at 22 C.F.R. pts. 120, 121, 123).

5. *Id.* at 22,746.

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the size of the control list in comparison to the previous one, which generally defaulted to design intent.

ECR also carries another consequence by requiring a change in mindset by manufacturers and exporters—including their advisors—in determining whether an item is a defense article or a corresponding service is a defense service. Under the pre-ECR system, essentially any article that was designed or in some way modified for a defense article was itself a defense article. Additionally, as the key element of design intent was left undefined, it left great uncertainty to manufacturers whether even nominal consideration of potential military sales or Department of Defense funding or involvement were enough to trigger the design intent element.

Under the positive control list from ECR, while design intent may not necessarily serve as a consideration for all entries on the USML, an important result is that not every article used in a defense article is subject to the ITAR. For example, a manufacturer could specifically design a part for the F-22 stealth fighter aircraft. Here, the manufacturer had no intent to ever sell the part for anything other than the F-22, and, accordingly, due to form and fit modifications, this specific part will only go on the F-22. Under the old Category VIII, the analysis would end here, as the item is controlled on the USML. Under the revised Category VIII, however, the jurisdictional analysis continues because the application of specially designed may release this part if it has the same function and performance capabilities and the same or equivalent form and fit as an article that is or was in production and is not enumerated on the USML.<sup>6</sup>

Essentially, the revisions to the USML separate the issues of what the item was intended to do and whether the item meets the criteria for control on the USML or the CCL.

**B. INITIAL IMPLEMENTATION**

On October 15, 2013, the initial implementation of ECR took effect. This initial notice provided a six-month notice period between the initial notice and the effective date.<sup>7</sup> Additional changes under ECR will also provide a six-month transition period to enable exporters and manufacturers to prepare for the changes by re-classifying their items and services.<sup>8</sup>

The initial implementation rule involved changes to the USML involving Categories VIII, XVII, XIX, and XXI. The rule also changed the policy on designating and determining defense articles and defense services on the USML under ITAR Section 120.3. The revisions to the USML also resulted in conforming changes to the amplifying and explanatory terms within the ITAR, Part 121. For example, the definition of aircraft has been redefined in ITAR Section 121.3 and a definition of systems has been redefined in ITAR Section 121.8. These terms must be read with the control text on the USML.<sup>9</sup>

Additional changes were made to licensing requirements, and the USML will now feature a new paragraph (x) entry to export on a Department of State authorization those

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6. *See id.* at 22,744–45; 22 C.F.R. 120.41(b)(3).

7. Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform, 78 Fed. Reg. at 22,740.

8. *Id.* at 22,747.

9. 22 C.F.R. 121.2 (2013).

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items subject to the EAR that are used in or with a defense article.<sup>10</sup> The intent of this paragraph is to avoid dual licensing where an EAR part, component, accessory, attachment, or other item is used in or with an USML article. Due to the close connection between the two items, they may be shipped under a Department of State license.

Importantly, the implementation rule included a definition for “specially designed.”<sup>11</sup> This definition does not replace the previous “specifically designed, developed, modified, configured or adapted” standard, so there will be two standards until the entire USML is revised.<sup>12</sup> The changes to the USML will require conforming changes to the Destination Control Statement, as provided in ITAR Section 123.9.<sup>13</sup>

The Department of Commerce issued its initial implementation of ECR with the new corresponding 600 series of the CCL.<sup>14</sup> The new 600 series controls most items previously on the USML that move to the CCL under ECR.<sup>15</sup>

C. ADDITIONAL CHANGES

On July 8, 2013, the Commerce and State Departments issued another rule implementing further changes to the USML and CCL.<sup>16</sup> This rule revises Categories VI, VII, XIII, and XX and the amplifying and explanatory definitions of ground vehicles,<sup>17</sup> submersible vessels,<sup>18</sup> and surface vessels of war.<sup>19</sup> These terms must be read with the control text on the USML.<sup>20</sup> The corresponding entries on the CCL, under the new 600 series, were also added.<sup>21</sup> The effective date of these changes is January 6, 2014. In addition, a correc-

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10. See 22 C.F.R. 120.42 (2013); 22 C.F.R. 123.1(b)(2013); 22 C.F.R. 123.9(b)(2)(2013); Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform, 78 Fed. Reg. at 22,747, 22,749.

11. Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform, 78 Fed. Reg. at 22,749.

12. *Id.* at 22,745.

13. 22 C.F.R. 123.9(b)(2)(2013); Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform, 78 Fed. Reg. at 22,751.

14. Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform, 78 Fed. Reg. 22,660 (Oct. 15, 2013) (to be codified at 15 C.F.R. pts. 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 748, 750, 756, 758, 762, 764, 770, 772, 774).

15. *Id.*

16. Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform, 78 Fed. Reg. 40,922 (Jan. 6, 2014) (to be codified at 22 C.F.R. pts. 120, 121, 123, 124, 125); Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items that the President Determines No Longer Warrant Control Under the United States Munitions List, 78 Fed. Reg. 40,892 (Jan. 6, 2014) (to be codified at 15 C.F.R. pts. 740, 742, 770, 772, 774).

17. Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform, 78 Fed. Reg. at 40,922; 22 C.F.R. 121.4 (2014).

18. *Id.*

19. Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform, 78 Fed. Reg. at 40,922; 22 C.F.R. 121.15 (2014).

20. Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform, 78 Fed. Reg. at 40,922; 22 C.F.R. 121.2 (2013).

21. Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items that the President Determines No Longer Warrant Control Under the United States Munitions List, 78 Fed. Reg. at 40,892.

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tion rule was issued on October 3 that made minor corrections to the ITAR and EAR, as well as a change to the definition of “specially designed.”<sup>22</sup>

The State Department has also issued proposed rules for Categories XI and XV. Category XI is one of the more difficult areas on the USML and went out for a second public period to solicit industry views.<sup>23</sup> Proposed revised controls for Categories XII, XIV, and XVIII have yet to be issued.

### III. Non-ECR, EAR, and ITAR Developments

#### A. ITAR DEVELOPMENTS

##### 1. *Interim Final Rule Regarding Brokering Provisions*

On August 26, 2013, the State Department’s Directorate of Defense Trade Controls (DDTC) published an interim final rule making certain amendments to the brokering provisions enumerated under the ITAR.<sup>24</sup> The interim final rule, which became effective on October 25, 2013, amended the definition of “broker” to include only (1) U.S. persons, wherever located; (2) foreign persons located in the United States; and (3) foreign persons located outside of the United States where the foreign person is owned or controlled by a U.S. person.<sup>25</sup> The interim final rule also revised the definition of “brokering activities” to mean “any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, re-export, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin.”<sup>26</sup> In addition, the interim final rule makes changes to registration requirements, prior notification requirements, prior approval requirements, and reporting requirements.<sup>27</sup>

Although the interim final rule contained numerous improvements over a prior proposed rule that the DDTC published in December 2011, commenters believed that there were still a number of issues of concern. For example, in the comments that it submitted,

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22. Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform; Correction, 78 Fed. Reg. 61,750 (Oct. 15, 2013) (to be codified at 22 C.F.R. pts. 120, 121, 123, 126); Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform; Correction, 78 Fed. Reg. 61,744 (Oct. 15, 2013) (to be codified at 15 C.F.R. pts. 730, 732, 734, et al.).

23. Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XI, 78 Fed. Reg. 45,018 (July 25, 2013) (to be codified at 22 C.F.R. pt. 121).

24. Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions, 78 Fed. Reg. 52,680 (Aug. 26, 2013) (to be codified at 22 C.F.R. pts. 120, 122, 126, 127, 128, 129).

25. *Id.* at 52,690. For brokering purposes, “owned by a U.S. person” means more than 50 percent of the outstanding voting securities of the firm are owned by a U.S. person, and “controlled by a U.S. person” means one or more U.S. persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. In addition, a rebuttable presumption of U.S. control is established where U.S. persons own 25 percent or more of the outstanding voting securities, unless one foreign person controls an equal or larger percentage.

26. *Id.* at 52,690. Under the Interim Final Rule, “brokering activities” include, but are not limited to, “[f]inancing, insuring, transporting, or freight forwarding defense articles and defense services; or soliciting, promoting, negotiating, contracting for, arranging, or otherwise assisting in the purchase, sale, transfer, loan, or lease of a defense article or defense service.” Significantly, the Interim Final Rule identifies numerous actions that would not be considered brokering activities.

27. *Id.* at 52,690–94.

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the ABA Section of International Law raised concerns about (1) extraterritoriality issues relating to foreign subsidiaries of U.S. companies, (2) issues relating to the phrase “any action on behalf of another,” (3) application of Part 129 to legal assistance provided by attorneys, (4) registration requirements for certain foreign persons with no U.S. nexus, (5) problematic limitations on foreign embassies in the United States, (6) difficulties in complying with the duty to report indictments, (7) overly broad coverage of foreign defense articles and defense services, (8) problematic prior approval requirements, and (9) overbreadth relating to Part 129 reporting requirements.<sup>28</sup>

2. *United Nations Arms Trade Treaty*

On April 2, 2013, the United Nations General Assembly adopted the Arms Trade Treaty (ATT),<sup>29</sup> which requires adherents to establish a number of export, import, and brokering controls to help “[p]revent and eradicate the illicit trade in conventional arms and prevent their diversion . . . .”<sup>30</sup> In signing the ATT, Secretary of State John Kerry noted that the treaty “requires other countries to create and enforce the kind of export controls that the United States already has in place.”<sup>31</sup> As of November 21, 2013, 114 governments had signed the ATT and eight had ratified.<sup>32</sup> The treaty will enter into force ninety days after the fiftieth signatory files the appropriate instrument of ratification, acceptance, or approval.<sup>33</sup>

B. EAR DEVELOPMENTS

The Commerce Department’s Bureau of Industry and Security (BIS) took steps to revise the EAR to reflect developments among various groups, arrangements, and regimes of which the United States is a member. For example, on June 5, 2013, the BIS amended the EAR to implement understandings reached at the Australia Group (AG) plenary meeting held in Paris in June 2012 and the recommendations presented at the AG intersessional implementation meeting in Ottawa in February 2012.<sup>34</sup> Under those amendments, the BIS made various amendments to ECCNs 1C351, 1C352, 1C353, 1C354, 1C360, 1C991, 1E001, 1E351, and 2B352.<sup>35</sup> On June 20, 2013, the BIS issued a rule that harmonized the CCL with the Wassenaar Arrangement (WA) List of Dual-Use Goods and Technologies by revising ECCNs controlled for national security reasons in each category, except Category 8, and that amended the General Software Note, WA reporting

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28. Letter from Gabrielle M. Buckley, Chair, ABA Section Int’l Law, to Ed Peartee, Dir. Office of Def. Trade Control Policy U.S. Dep’t of State (Oct. 10, 2013) (on file with the ABA Section of Int’l Law), *available at* [https://docs.google.com/file/d/0B13KRJfr\\_V8uY0FVU2U0akgwUDA/edit](https://docs.google.com/file/d/0B13KRJfr_V8uY0FVU2U0akgwUDA/edit).

29. U.N. Arms Trade Treaty, Apr. 2, 2013, *available at* [http://treaties.un.org/doc/Treaties/2013/04/20130410%2012-01%20PM/Ch\\_XXVI\\_08.pdf](http://treaties.un.org/doc/Treaties/2013/04/20130410%2012-01%20PM/Ch_XXVI_08.pdf).

30. *Id.* art. 1.

31. John Kerry, U.S. Sec’y of State, Remarks at the Arms Trade Treaty Signing Ceremony (Sept. 25, 2013), *available at* <http://www.state.gov/secretary/remarks/2013/09/214717.htm>.

32. U.N. Arms Trade Treaty, *supra* note 29.

33. *Id.* art. 22.

34. Implementation of the Understandings Reached at the 2012 Australia Group (AG) Plenary Meeting and the 2012 AG Intersessional Decisions; Changes to Select Agent Controls, 78 Fed. Reg. 33,692 (June 5, 2013) (to be codified at 15 C.F.R. pts.740, 742, 774).

35. *Id.*

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requirements and certain definitions in the EAR.<sup>36</sup> The BIS also added unilateral controls to the CCL for specific software and technology for aviation control systems, which the WA agreements removed from the WA List. In July, the BIS amended the EAR to reflect changes to the Missile Technology Control Regime (MTCR) Annex that had been agreed upon at the October 2012 Plenary in Berlin and at the MTCR Reinforced Point of Contact meeting in Paris in December 2011.<sup>37</sup> Through the rule, the BIS revised ECCNs 1C011, 1C111, 1C116, 9A101, 9B105, 9E101, and the definition of the term “payload” to implement changes at those MTCR meetings, and it revised ECCNs 7E004 and 9D004 to better align the CCL with the MTCR Annex and past MTCR agreements.<sup>38</sup>

The BIS amended its Syria licensing policy under the EAR in order to implement a limited waiver, published by Secretary of State Kerry on June 12, 2013, of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003.<sup>39</sup> Under the waiver, the BIS is authorized to issue licenses for the export and re-export of certain items necessary for the support of the Syrian people.<sup>40</sup>

In order to be better able to resolve administrative enforcement proceedings in a timely manner and provide more efficient notice of administrative charging letters, on August 9, 2013, the BIS issued a final rule requiring that the final, comprehensive narrative account required in voluntary self-disclosures (VSD) of violations of the EAR be received by the Office of Export Enforcement within 180 days of receipt of the initial VSD notification.<sup>41</sup>

Finally, on September 11, 2013, the BIS announced proposed changes regarding the Unverified List (UVL).<sup>42</sup> If enacted as published, among other things, the BIS would revise the EAR to require exporters to file an Automated Export System record for all exports subject to the EAR involving a party on the UVL, to suspend the availability of license exceptions to parties on the UVL, and to require exporters to obtain a UVL statement from a party listed on the UVL before proceeding with an export, re-export, or transfer.<sup>43</sup>

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36. Wassenaar Arrangement 2012 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports, 78 Fed. Reg. 37, 372 (June 20, 2013) (to be codified at 15 C.F.R. pts. 738, 740, 742, et al.).

37. Revisions to the Export Administration Regulations Based on the 2012 Missile Technology Control Regime Plenary Agreements, 78 Fed. Reg. 42, 430 (July 16, 2013) (to be codified at 15 C.F.R. pts. 740, 772, 774).

38. *Id.*

39. Agreements to the Export Administration Regulations: Implementation of Limited Syria Waiver for Reconstruction Assistance, 78 Fed. Reg. 43, 972 (July 23, 2013) (to be codified at 15 C.F.R. pts. 736, 746).

40. *Id.* Although the amendments do not limit the items qualifying for such a license, the waiver was intended to allow the BIS to authorize the export of items related to water supply and sanitation, agricultural production and food processing, power generation, and oil.

41. Time Limit for Completion of Voluntary Self-Disclosures and Revised Notice of the Institution of Administrative Enforcement Proceedings, 78 Fed. Reg. 48,601 (Sept. 9, 2013) (to be codified at 15 C.F.R. pts. 764, 766).

42. Revisions to the Export Administration Regulations (EAR): Unverified List (UVL), 78 Fed. Reg. 55,664 (Sept. 11, 2013) (to be codified at 15 C.F.R. pts. 730, 740, 744, et al.). Comments on the proposed changes were due to the BIS on October 11, 2013.

43. *Id.*

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**III. EAR and ITAR Related Enforcement Actions**

**A. ITAR RELATED ENFORCEMENT ACTIONS**

*1. Raytheon Accepts \$8 Million Settlement*

In a consent agreement effective April 30, 2013, Raytheon Company accepted a civil penalty of \$8 million and agreed to take a variety of corrective measures in connection with 125 alleged ITAR violations.<sup>44</sup> The DDTC asserted that Raytheon experienced longstanding and repeated failures to properly administer approved agreements and temporary export and import authorizations.<sup>45</sup> The violations were revealed over multiple voluntary disclosures, were numerous and widespread across business units, and, on occasion, interfered with the DDTC's obligation to report ITAR export information to Congress.<sup>46</sup>

*2. Aeroflex Enters into \$8 Million Settlement*

Aeroflex Incorporated agreed to a civil penalty of \$8 million and to take remedial actions in a consent agreement effective August 6, 2013.<sup>47</sup> The DDTC alleged 158 ITAR violations in connection with unauthorized exports of satellite electronics components and technical data.<sup>48</sup> Due to systemic and corporation-wide failures in export jurisdiction determination processes, Aeroflex and its subsidiaries had improperly concluded that these items were not subject to the ITAR.<sup>49</sup> As a result, Aeroflex and several customers that relied on its determinations did not obtain necessary DDTC authorization before export in multiple instances.<sup>50</sup> ITAR-controlled satellite items were sent unlawfully to more than a dozen countries, including China and Russia.<sup>51</sup>

*3. Meggitt Fined \$25 Million*

Meggitt-USA, Inc. accepted a \$25 million civil penalty and undertook to make a variety of improvements in its compliance processes in a consent agreement effective August 23,

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44. Raytheon Co., (Consent Agreement, U.S. Dep't of State Apr. 30, 2013), *available at* [http://www.pmdtc.state.gov/compliance/consent\\_agreements/pdf/Raytheon\\_ConsentAgreement\\_13.pdf](http://www.pmdtc.state.gov/compliance/consent_agreements/pdf/Raytheon_ConsentAgreement_13.pdf); Letter from Lisa V. Aguirre, Dir., Office of Def. Trade Controls Compliance, to William H. Swanson, Chairman & Chief Exec. Officer, Raytheon Co. (Mar. 21, 2013) (on file with author), *available at* [http://www.pmdtc.state.gov/compliance/consent\\_agreements/pdf/Raytheon\\_PCL\\_13.pdf](http://www.pmdtc.state.gov/compliance/consent_agreements/pdf/Raytheon_PCL_13.pdf).

45. Letter from Lisa V. Aguirre, Dir., Office of Def. Trade Controls Compliance, to William H. Swanson, Chairman & Chief Exec. Officer, Raytheon Co. (Mar. 21, 2013) (on file with author), *available at* [http://www.pmdtc.state.gov/compliance/consent\\_agreements/pdf/Raytheon\\_PCL\\_13.pdf](http://www.pmdtc.state.gov/compliance/consent_agreements/pdf/Raytheon_PCL_13.pdf).

46. *Id.*

47. Aeroflex Inc., (Consent Agreement, U.S. Dep't of State Aug. 6, 2013), *available at* [http://www.pmdtc.state.gov/compliance/consent\\_agreements/pdf/Aeroflex%20Executed%20CA.pdf](http://www.pmdtc.state.gov/compliance/consent_agreements/pdf/Aeroflex%20Executed%20CA.pdf).

48. Letter from Daniel J. Buzby, Acting Dir., Office of Def. Trade Controls Compliance, to Leonard Borow, Chief Exec. Officer, Aeroflex, Inc. (July 25, 2013) (on file with author), *available at* [http://www.pmdtc.state.gov/compliance/consent\\_agreements/pdf/AM%20-%20Aeroflex%20Admin%20Settlement%20-%20Tab%204%20Proposed%20Charging%20Letter.pdf](http://www.pmdtc.state.gov/compliance/consent_agreements/pdf/AM%20-%20Aeroflex%20Admin%20Settlement%20-%20Tab%204%20Proposed%20Charging%20Letter.pdf).

49. *Id.* at 3.

50. *Id.* at 4.

51. *Id.* at 8.

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2013.<sup>52</sup> The DDTC alleged that Meggitt and several acquired subsidiaries committed sixty-seven ITAR violations.<sup>53</sup> The alleged violations were widespread and systemic, and they included unauthorized exports, re-exports, and retransfers of defense articles and services, as well as failures to manage ITAR licenses and agreements properly.<sup>54</sup> Destination countries included China, India, and others.<sup>55</sup>

4. *Former Honeywell Empowered Official Debarred*

On November 25, 2013, the DDTC administratively debarred LeAnne Lesmeister, a former export compliance officer and empowered official of Honeywell International, Inc. (Honeywell).<sup>56</sup> Lesmeister was charged with repeatedly counterfeiting DDTC authorizations she furnished to other Honeywell personnel, who relied on them when exporting ITAR-controlled defense articles and defense services over a period of years.<sup>57</sup> As of November 30, 2013, authorities have not announced whether she will face criminal prosecution.

5. *DDTC Warning Letter Regarding 3D Printable Firearm Data Published Online*

By letter dated May 8, 2013, the DDTC instructed Defense Distributed to remove potentially ITAR-controlled technical information about 3D printable hardware, including a handgun and several firearms accessories, from a public server to which non-U.S. and U.S. persons had access.<sup>58</sup> The DDTC further advised Defense Distributed to submit commodity jurisdiction requests for the information, to assist in the government's evaluation of whether any of it is ITAR-controlled.<sup>59</sup> Defense Distributed complied. The regulatory and First Amendment free speech implications of the DDTC's letter have not been adjudicated.<sup>60</sup>

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52. Meggitt-USA, Inc. (Consent Agreement, U.S. Dep't of State Aug. 23, 2013), *available at* [http://www.pmdtcc.state.gov/compliance/consent\\_agreements/pdf/Meggitt\\_CA.pdf](http://www.pmdtcc.state.gov/compliance/consent_agreements/pdf/Meggitt_CA.pdf).

53. Letter from Daniel J. Buzby, Acting Dir., Office of Def. Trade Controls Compliance, to Eric G. Lardiere, Senior Vice President, Sec'y, & Gen. Counsel, Meggitt-USA, Inc. (Aug. 19, 2013) (on file with author), *available at* [http://www.pmdtcc.state.gov/compliance/consent\\_agreements/pdf/Meggitt\\_PCL.pdf](http://www.pmdtcc.state.gov/compliance/consent_agreements/pdf/Meggitt_PCL.pdf).

54. *Id.* at 4.

55. *Id.* at 6–7.

56. LeAnne Lesmeister, (Order, U.S. Dep't of State Nov. 25, 2013), *available at* <http://www.pmdtcc.state.gov/compliance/documents/AD-Lesmeister-Order.pdf>.

57. Letter from Beth M. McCormick, Deputy Assistant Sec'y, U.S. Dep't of State, to LeAnne Lesmeister (July 11, 2013) (on file with author), *available at* <http://www.pmdtcc.state.gov/compliance/documents/AD-Lesmeister-CL2.pdf>.

58. Letter from Glenn Smith, Chief of Enforcement Division, U.S. Dep't of State, to Cody Wilson, Defense Distributed (May 8, 2013) (on file with author), *available at* <http://www.scribd.com/doc/140471313/Letter-from-Department-of-State-to-Defense-Distributed>.

59. *Id.* at 3.

60. See Brian Doherty, *The Unstoppable Plastic Gun*, REASON.COM (Nov. 12, 2013, 7:00 AM) <http://reason.com/archives/2013/11/12/the-unstoppable-plastic-gun/print>.

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B. EAR-RELATED ENFORCEMENT ACTIONS

1. *Largest BIS Civil Penalty Ever Levied*

On November 26, 2013, the BIS announced its largest civil penalty ever levied—\$50 million—against Weatherford International Ltd. and four subsidiaries (collectively, Weatherford) following allegations that Weatherford exported oil and gas equipment to Cuba, Iran, and Syria, in violation of the EAR and the Iranian Transactions and Sanctions Regulations (ITSR).<sup>61</sup> Among other things, the BIS charged that, between 2004 and 2007, Weatherford transferred equipment from the United States to Iran, via Weatherford's Dubai-based subsidiary, with knowledge that a violation would occur. As another example, the BIS charged that Weatherford transferred oil and gas equipment from the United States to Cuba via Canada with knowledge that a violation would occur.<sup>62</sup> In a related action, the Justice Department imposed a \$48 million penalty on Weatherford under a deferred-prosecution agreement and imposed a \$2 million criminal penalty under guilty pleas by Weatherford.<sup>63</sup>

2. *Going After the Bad Actor*

In public comments, Assistant Secretary for Export Enforcement David Mills reiterated that the Office of Export Enforcement seeks to punish the willful actor and that “a company’s commitment to an Internal Compliance Program . . . can be an important factor differentiating a crime of complicity between an individual and his employer, from that of a sole rogue employee.”<sup>64</sup> On January 17, 2013, Timothy Gormley was sentenced to forty-two months in prison, three years of supervised release, and a \$1,000 fine for five counts of violating the International Emergency Economic Powers Act (IEEPA).<sup>65</sup> Gormley had been the export control manager of a company in Pennsylvania that manufactures and supplies microwave amplifiers, many of which have application in military systems, including radar jamming and weapons guidance systems.<sup>66</sup> Gormley earlier pled guilty in connection with the illegal export of over fifty-seven microwave amplifiers. Amplifier Research, the company where Gormley worked, filed a voluntary self-disclosure with the BIS in November 2011. Between 2006 and 2011, Gormley altered invoices and

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61. Press Release, U.S. Dep’t of Commerce, Texas Company to Pay \$100 Million for Export Violations to Iran, Syria, Cuba, and Other Countries: Fine Is Largest Ever by the Bureau of Industry and Security (Nov. 26, 2013) (on file with author), *available at* <http://www.bis.doc.gov/index.php/about-bis/newsroom/press-releases/102-about-bis/newsroom/press-releases/press-releases-2013/603-texas-company-to-pay-100-million-for-export-violations-to-iran-syria-cuba-and-other-countries>.

62. *Id.*

63. Press Release, U.S. Dep’t of Justice, Three Subsidiaries of Weatherford International Limited Agree to Plead Guilty to FCPA and Export Control Violations (Nov. 26, 2013) (on file with author), *available at* <http://www.justice.gov/opa/pr/2013/November/13-crm-1260.html>.

64. David W. Mills, Assistant Sec’y for Exp. Enforcement, Remarks at the 8th Annual Export Control Forum (Feb. 26, 2013) (on file with author) *available at* <https://www.bis.doc.gov/index.php/about-bis/newsroom/speeches/103-about-bis/newsroom/speeches/speeches-2013/520-remarks-of-assistant-secretary-david-mills-at-the-8th-annual-export-control-forum>.

65. Press Release, U.S. Dep’t of Justice, North Wales Man Sentenced for Illegally Exporting Goods (Jan. 17, 2013) (on file with author), *available at* [http://www.justice.gov/usao/pae/News/2013/Jan/gormley\\_release.htm](http://www.justice.gov/usao/pae/News/2013/Jan/gormley_release.htm).

66. *Id.*

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shipping documents to conceal the correct classification of amplifiers, listed false license numbers on export paperwork, and lied to fellow employees about the status and existence of export licenses. His actions resulted in over fifty unlicensed exports to destinations including China, India, and Russia. In admitting his conduct, Gormley stated that he was “too busy” to obtain the licenses and was overwhelmed at work.<sup>67</sup>

3. *Carbon Fiber Cases*

Interest in obtaining carbon fiber useful in aerospace and nuclear engineering continues to exist in China and Taiwan. For example, on May 30, 2013, Lisong Ma, a Chinese citizen, pleaded guilty to an information charging him with attempting to illegally export to China weapons-grade Toray type T-800 carbon fiber without a BIS export license.<sup>68</sup> Ma attempted to negotiate the purchase of five tons of the fiber, controlled under ECCN 1C010.b., through an undercover website maintained by federal agents. Ma traveled to the United States and met with undercover agents to purchase a sample of the fiber.<sup>69</sup> Ma then attempted to export it to China in a plain brown box with a waybill and invoice indicating the package contained clothing. Federal agents intercepted the package before it was exported.<sup>70</sup>

4. *Other EAR Related Enforcement Cases*

On December 20, 2012, Xun Wang, a former Managing Director of PPG Paints Trading (Shanghai) Co., Ltd., a wholly-owned Chinese subsidiary of U.S.-based PPG Industries, Inc., was sentenced to a year in prison for conspiring to violate IEEPA and ordered to pay a \$100,000 fine and perform 500 hours of community service.<sup>71</sup> Wang’s plea led to

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67. *Id.*

68. Press Release, U.S. Dep’t of Justice, Cyber-Sting Nets Chinese National in Attempt to Export Sensitive Defense Technology: Defendant Pleads Guilty After Evidence Reveals that He Attempted to Enlist Undercover Agents in Illegal Export Deal Involving Weapons-Grade Carbon Fiber (May 30, 2013), *available at* <http://www.justice.gov/usao/nye/pr/2013/2013may30.html>.

69. *Id.*

70. *Id.* In a similar but unrelated case, on August 19, 2013, Ming Suan Zhang, a Chinese citizen, pleaded guilty in federal court for attempting to export massive quantities of aerospace grade Toray M60JB-3000-50B carbon fiber to China without a BIS export license. *See* Press Release, U.S. Dep’t of Justice, Chinese National Pleads Guilty to Attempting to Illegally Export Aerospace-Grade Carbon Fiber to China: Defendant Sought Massive Quantities of High-Tech Material for Use by Chinese Military (Aug. 19, 2013), *available at* <http://www.justice.gov/usao/nye/pr/2013/2013aug19.html>; *see also* Press Release, U.S. Dep’t of Commerce, Taiwanese National Pleads Guilty to Attempting to Illegally Export Aerospace-Grade Carbon Fiber, *available at* [http://www.bis.doc.gov/index.php?option=com\\_content&view=article&id=478:taiwanese-national-pleads-guilty-to-attempting-to-illegally-export-aerospace-grade-carbon-fiber&catid=98:press-releases-2012](http://www.bis.doc.gov/index.php?option=com_content&view=article&id=478:taiwanese-national-pleads-guilty-to-attempting-to-illegally-export-aerospace-grade-carbon-fiber&catid=98:press-releases-2012) (last visited Dec. 11, 2012) (discussing sentencing of Yen Ling Chen, a Taiwanese citizen, to nine months in prison for violating IEEPA by attempting to export weapons-grade carbon fiber from the United States to Taiwan. Chen attempted to negotiate a long-term contract for the acquisition of five to ten tons of carbon fiber while evading applicable export controls and was arrested in July 2012 after traveling to the United States to meet with an undercover agent in an effort to obtain a sample of the fiber).

71. Press Release, U.S. Dep’t of Commerce, Former Managing Director of PPG Paints Trading (Shanghai) Co., Ltd., Sentenced to a Year in Prison for Conspiring to Illegally Export High-Performance Coatings to Nuclear Reactor in Pakistan (Dec. 20, 2012), *available at* <http://www.bis.doc.gov/index.php/other-areas/additional-protocol-ap/press-releases/98-about-bis/newsroom/press-releases/press-releases-2012/483-ppg-paints-trading-shanghai-co-ltd-sentenced-to-a-year-in-prison-export-to-pakistan>.

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the December 3, 2012, guilty plea by the China Nuclear Industry Huaxing Construction Co., Ltd.; that plea is believed to have marked the first time that a People's Republic of China corporate entity has entered a plea of guilty in a U.S. criminal export matter. As part of its plea agreement, Huaxing agreed to the maximum criminal fine of \$2 million, \$1 million of which will be stayed pending its successful completion of five years of corporate probation. Wang was accused of conspiring to export, re-export, and transship high-performance epoxy coatings to the Chashma II Nuclear Power Plant (Chashma II) in Pakistan, a nuclear reactor owned by an entity on the Commerce Department's Entity List.

On April 25, 2013, Computerlinks FZCO of Dubai agreed to pay a statutory maximum \$2.8 million civil penalty to the BIS in connection with allegations that it committed three violations of the EAR by transferring devices designed to monitor and control Internet traffic to Syria.<sup>72</sup> On three occasions in 2010 and 2011, Computerlinks, an authorized distributor in the Middle East for Blue Coat Systems, Inc. of Sunnyvale, California, obtained equipment and software from Blue Coat and re-exported the items to Syria.<sup>73</sup> As an authorized Blue Coat distributor, Computerlinks was to comply with U.S. export-control regulations and was also to specify the end-user of all ordered items. Computerlinks provided Blue Coat with false information concerning the end-user and ultimate destination of the items that were ultimately delivered to Syria without the required BIS licenses.<sup>74</sup>

#### **IV. OFAC Developments and Enforcement Actions**

##### **A. OFAC DEVELOPMENTS**

On December 26, 2012,<sup>75</sup> OFAC formally amended the ITSR to implement section 218 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHA) and sections of Executive Orders 13622 of July 30, 2012, and 13628 of October 9, 2012.<sup>76</sup> The amendments (1) prohibit certain transactions by foreign subsidiaries, (2) provide for civil penalties for foreign subsidiaries that violate this new prohibition (unless the U.S. person divests or terminates its business with the subsidiary by February 6, 2013), (3) add two general licenses to the ITSR and amend several existing licenses to address activities by foreign subsidiaries, (4) expand the categories of persons whose property and interests in property are blocked to include any person determined by the Treasury Secretary to have materially assisted or provided other support for certain entities related to the Govern-

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<sup>72</sup> Order Related to Computerlinks FZCO; *see also* Press Release, U.S. Dep't of Commerce, Bureau of Industry & Security, Bureau of Industry and Security Announces \$2.8 Million Civil Settlement with Computerlinks FZCO for Charges Related to Unlawful Exporting of Technology to Syria (Apr. 25, 2013), *available at* <https://www.bis.doc.gov/index.php/about-bis/newsroom/102-about-bis/newsroom/press-releases/press-releases-2013/524-bureau-of-industry-and-security-announces-2-8-million-civil-settlement-with-computerlinks-fzco-for-charges-related-to-unlawful-exporting-of-technology-to-syria>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Because of publication deadlines, the 2012 *Year in Review* article only discussed actions before December 1, 2012.

<sup>76</sup> OFAC, Iranian Transactions and Sanctions Regulations, 77 Fed. Reg. 75845 (to be codified at 31 C.F.R. pt. 560).

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ment of Iran or certain activities by the Government of Iran.<sup>77</sup> OFAC also amended the Iranian Financial Sanctions Regulations to implement ITRSHA Sections 503 and 504.

Soon after, on January 10, 2013, OFAC published an advisory on the use of exchange houses and trading companies to evade sanctions against Iran.<sup>78</sup> On February 6, 2013, OFAC updated its clarifying guidance on providing humanitarian assistance and related exports to Iranians.<sup>79</sup> OFAC also issued several General Licenses with respect to Iran. On May 30, 2013, OFAC issued General License D with respect to the exportation and re-exportation of certain services, software, and hardware incident to the exchange of personal communications with persons in Iran.<sup>80</sup> The license allows the export or re-export to persons in Iran (1) of fee-based services incident to the exchange of personal communications over the Internet, (2) of fee-based software subject to the EAR that is necessary to enable such services, and (3) of consumer-grade Internet connectivity services and the provision, sale, or leasing of capacity on telecommunications transmission facilities incident to such personal communications.<sup>81</sup> OFAC updated its list of basic medical supplies authorized for export and re-export to Iran.<sup>82</sup> OFAC also issued General Licenses authorizing certain services in support of nongovernmental organizations' activities in Iran and authorizing certain services in support of professional and amateur sports activities and exchanges involving the United States and Iran.<sup>83</sup>

OFAC issued a General License authorizing certain transactions with the National Coalition of Syrian Revolutionary and Opposition Forces.<sup>84</sup> OFAC authorized certain academic and professional exchanges with Sudan.<sup>85</sup> OFAC also issued a General License authorizing all transactions with the Palestinian Authority otherwise prohibited by various sanctions regulations.<sup>86</sup>

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77. *Id.*

78. OFFICE OF FOREIGN ASSETS CONTROL, ADVISORY: THE USE OF EXCHANGE HOUSES AND TRADING COMPANIES TO EVADE U.S. ECONOMIC SANCTIONS AGAINST IRAN (Jan. 10, 2013), *available at* [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/20130110\\_iran\\_advisory\\_exchange\\_house.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/20130110_iran_advisory_exchange_house.pdf).

79. OFFICE OF FOREIGN ASSETS CONTROL, CLARIFYING GUIDANCE: HUMANITARIAN ASSISTANCE AND RELATED EXPORTS TO THE IRANIAN PEOPLE (Feb. 6, 2013).

80. OFAC General License D (Iran), 78 Fed. Reg. 43278 (to be codified at 31 C.F.R. pt. 560).

81. *Id.*

82. 31 C.F.R. § 560.530(a)(3) (2013).

83. See U.S. Dep't of the Treasury, Office of Foreign Assets Control, Iranian Transactions and Sanctions Regulations, General License E Authorizing Certain Services in Support of Nongovernmental Organizations' Activities in Iran (Sept. 10, 2013).

84. U.S. Dep't of the Treasury, Office of Foreign Assets Control, Syrian Sanctions Regulations, General License No. 16 Authorizing Certain Services to the National Coalition of Syrian Revolutionary and Opposition Forces (Mar. 14, 2013).

85. U.S. Dep't of the Treasury, Office of Foreign Assets Control, Sudanese Sanctions Regulations, General License No. 1 Certain Academic and Professional Exchanges Authorized (Apr. 15, 2013).

86. U.S. Dep't of the Treasury, Office of Foreign Assets Control, Global Terrorism Sanction Regulations, General License No. 7a Transactions with the Palestinian Authority Authorized (May 14, 2013).

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**B. OFAC ENFORCEMENT ACTIONS**

Three of the four largest OFAC enforcement cases from 2012 occurred in December.<sup>87</sup> Two of those were part of separate global settlements with the Justice Department, the New York County District Attorney's Office, and the Federal Reserve Board of Governors. On December 10, 2012, OFAC announced that Standard Chartered Bank agreed to a \$132,000,000 settlement for apparent violations of sanctions against Burma, Iran, Libya, Sudan, and narcotics kingpins.<sup>88</sup> OFAC determined that most of Standard Chartered's actions were egregious and that several employees, including senior management, were aware of the conduct.<sup>89</sup> On December 11, 2012, OFAC announced that HSBC Holdings agreed to a \$375,000,000 settlement for apparent violations of sanctions against Burma, Cuba, Iran, Libya, and Sudan.<sup>90</sup> OFAC determined that HSBC's actions were egregious, that several employees, including senior management, were aware of the conduct, and that HSBC failed to exercise a minimal degree of caution or care in avoiding conduct that led to the violations.<sup>91</sup>

On December 12, 2012, OFAC announced that the Bank of Tokyo-Mitsubishi UFJ, Ltd. agreed to an \$8,571,634 settlement for apparent violations of various sanctions regulations including those against Burma, Cuba, Iran, and Sudan.<sup>92</sup> OFAC determined that the bank's actions were egregious and that the Bank's conduct concealed involvement of U.S. sanctions targets.<sup>93</sup>

As of December 31, 2013, OFAC had entered into twenty-seven announced settlements totaling \$137,075,560. The largest of these settlements was with Weatherford for \$91,026,450 to settle potential civil liability for apparent violations of sanctions against Cuba, Iran, and Sudan.<sup>94</sup> Weatherford's settlement was part of a global settlement with the BIS and the U.S. Attorney's Office for the Southern District of Texas. OFAC determined that Weatherford's actions were egregious and its conduct was willful.

OFAC's second-largest settlement was with Royal Bank of Scotland (RBS) for \$33,122,307 to settle potential civil liability for apparent violations of the Cuban, Burmese, Sudanese, and Iranian sanctions.<sup>95</sup> This was one part of a global settlement between

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87. Because of publication deadlines, the 2013 *Year in Review* article only discussed enforcement actions before December 1, 2013.

88. Office of Foreign Assets Control, *Enforcement Information for December 10, 2012*, U.S. DEP'T OF THE TREASURY (Dec. 10, 2012), [http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/12102012\\_scb.pdf](http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/12102012_scb.pdf).

89. *Id.*

90. Office of Foreign Assets Control, *Enforcement Information for December 11, 2012*, U.S. DEP'T OF THE TREASURY (Dec. 11, 2012), [http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/121211\\_HSBC\\_posting.pdf](http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/121211_HSBC_posting.pdf).

91. *Id.*

92. Office of Foreign Assets Control, *Enforcement Information for December 12, 2012*, U.S. DEP'T OF THE TREASURY (Dec. 12, 2012), [http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20121212\\_btmmu.pdf](http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20121212_btmmu.pdf).

93. *Id.*

94. Office of Foreign Assets Control, *Enforcement Information for November 26, 2013*, U.S. DEP'T OF THE TREASURY (Nov. 26, 2013), [http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20131126\\_weatherford.pdf](http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20131126_weatherford.pdf).

95. Office of Foreign Assets Control, *Enforcement Information for December 11, 2013*, U.S. DEP'T OF THE TREASURY (Dec. 11, 2013), <http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/12112013.pdf>.

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RBS, OFAC, the Federal Reserve Board of Governors, and the Department of Financial Services of the State of New York. OFAC determined that RBS's violations were egregious, but it mitigated the penalty because RBS was willing to settle, had not received penalty notice, had provided substantial cooperation to OFAC, and took remedial action.

On July 22, 2013, OFAC announced that American Express Travel Related Services (TRS) agreed to a \$5,226,120 settlement for apparent violations of the Cuban Assets Control Regulations when its foreign branch offices and subsidiaries booked travel between Cuba and countries other than the United States.<sup>96</sup> In reaching the settlement, OFAC increased the base penalty amount in part because TRS demonstrated reckless disregard because of prior agency notice and because TRS failed to implement remedial measures that it had earlier represented to OFAC it would.

OFAC's fourth largest settlement was with Itesa Sanpaolo S.p.A. for \$2,949,030 to settle potential civil liability for apparent violations of the Cuban, Iranian, and Sudanese sanctions.<sup>97</sup>

**V. Significant Developments in Canadian Export Controls and Economic Sanctions During 2013**

**A. FURTHER LIBERALIZATION OF ENCRYPTION CONTROLS**

On January 14, 2013, the Canadian Government issued a General Export Permit, GEP No. 46 (Cryptography for Use by Certain Consignees), which allows for the transfer of finished products containing controlled cryptography to affiliates without having to apply for an individual export permit.<sup>98</sup> Under this GEP, transfers may be made to a consignee in another country if the consignee is (1) controlled by a resident of Canada or (2) controlled by an entity that has its head office in one of twenty-nine designated countries and controls the resident of Canada who is making the transfer. The exporter must notify Foreign Affairs, Trade and Development, Canada's Export Controls Division (ECD) before the first transfer in each calendar year and then report on transfers made during the previous calendar year by January 31. Transferors must respond to ECD information requests within fifteen days. In the case of physical exports, "GEP-46" must be specified on the export report filed with the Canada Border Services Agency.

**B. UPDATE OF EXPORT CONTROL LIST**

On February 13, 2013, the Canadian Government announced a number of changes to Canada's Export Control List (ECL).<sup>99</sup> Additions and removals of controls and clarifications to existing controls were made to reflect Canada's obligations and commitments under international control regimes—in this case, the WA, the MTCR, the AG, and the

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<sup>96</sup> Office of Foreign Assets Control, *Enforcement Information for July 22, 2013*, U.S. DEP'T OF THE TREASURY (July 22, 2013), [http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20130722\\_american\\_express\\_trs.pdf](http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20130722_american_express_trs.pdf).

<sup>97</sup> Office of Foreign Assets Control, *Enforcement Information for June 28, 2013*, U.S. DEP'T OF THE TREASURY (June 28, 2013), [http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20130628\\_intesa.pdf](http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20130628_intesa.pdf).

<sup>98</sup> General Export Permit No. 46—Cryptography for Use by Certain Consignees, SOR/2013-1 (Can.).

<sup>99</sup> Order Amending the Export Control List, SOR/2013-12 (Can.).

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*Nuclear Suppliers Group.* The amendments brought Canada up to date with its commitments under these international arrangements, as of April 2011. The changes impact goods, software, and technology that are dual-use commercial items in ECL Group 1, military items in Group 2, missile control-related items in Group 6, and chemical and biological items in Group 7. The new *Guide to Canada's Export Controls* (April 2011) reflecting these changes became effective on March 15, 2013.

C. COMPREHENSIVE ECONOMIC SANCTIONS AGAINST IRAN

Effective May 29, 2013, Canada expanded its existing economic sanctions measures against Iran under the Special Economic Measures (Iran) Regulations (the Iran Regulations).<sup>100</sup> Until then, Canada's sanctions against Iran had been restricted to nuclear and military activities, financial services, and activities in certain sectors of the Iranian economy, including oil and gas, mining, telecommunications, and shipping.

These are the most significant changes to Canada's economic sanctions against Iran since a financial services ban was imposed on November 22, 2011. The amendments include three key measures that apply to persons in Canada and Canadians outside of Canada:

- (i) a prohibition against exporting, selling, supplying, or shipping goods, wherever situated, to Iran, to a person in Iran, or to a person for the purposes of a business carried on in or operated from Iran;
- (ii) a prohibition against importing, purchasing, acquiring, shipping, or transshipping any goods that are exported, supplied, or shipped from Iran, whether the goods originated in Iran or elsewhere; and
- (iii) a prohibition against making an investment in an entity in Iran.

Goods that are sourced or supplied under a contract entered into before May 29, 2013, are exempted, provided that they were not already banned under the pre-existing measures and other conditions are satisfied. There are some other limited exceptions, including for informational materials and exemptions.

There are now over 600 entities and individuals that have been designated under Canada's Iran Regulations. Companies and individuals are prohibited from engaging in a wide range of dealings with such designated persons. Canadians are also subject to reporting requirements regarding property owned or controlled by designated persons and related proposed or actual transactions. Financial institutions, including federally regulated banks and provincial trust and loan companies and securities dealers, are required to monitor and determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a designated person.

On November 23, 2013, an agreement between Iran and the P5+1 (the United States, United Kingdom, Germany, France, Russia, and China, facilitated by the European Union) was announced and provides for the halting of Iran's nuclear program in return for the relaxation of certain sanctions measures. But the Canadian Government has been clear that it is skeptical of Iran's commitments and that comprehensive sanctions will re-

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100. Regulations Amending the Special Economic Measures (Iran) Regulations, SOR/2013-108 (Can.).

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main in force while it reviews the deal and Iran's progress in implementation and in granting access to its nuclear facilities.<sup>101</sup>

D. MAJOR CHANGES COMING TO THE DEFENCE PRODUCTION ACT AND  
CONTROLLED GOODS PROGRAM

On November 19, 2013, Public Works and Government Services Canada launched consultations on proposed amendments to the *Defence Production Act* (DPA) that will have a significant impact on Canadian companies in the defense, aerospace, security, and satellite sectors.<sup>102</sup> Companies that are subject to the DPA and its *Controlled Goods Regulations* must comply with significant registration, screening, and security obligations in their dealings with controlled goods and technology within Canada. The proposed amendments to the Schedule to the DPA will significantly change the scope of products and technology subject to the Controlled Goods Program (CGP), including by removing just over half of the current entries. These latest amendments have been proposed in response to complaints that CGP requirements are overly burdensome and there have been problems specifically with the intersection of the Canadian and U.S. regimes. This has included instances in which items that were no longer controlled under the ITAR are still being controlled under the CGP, a challenge that would become more difficult as ECR moves forward.

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101. Press Release, Foreign Affairs & Int'l Trade Can., Foreign Affairs Minister John Baird Statement on Iran's Nuclear Program (Nov. 24, 2013), available at <http://www.international.gc.ca/media/aff/news-communiques/2013/11/24a.aspx?lang=eng>.

102. Consultations for Amendments to the Schedule to the Defence Production Act, Public Works and Government Services Canada (November 19, 2013), <http://ssi-iss.tpsgc-pwgsc.gc.ca/dmc-cgd/consultations/modifications-amendments-eng.html>.