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This article discusses the significant legal developments that occurred in the area of export controls and economic sanctions in 2015.

I. Export Control Reform Initiative

A. INTRODUCTION

October 2015 marked the two-year anniversary of initial implementation of the President's Export Control Reform initiative (ECR).¹ With ECR well underway, the Obama Administration has now revised fifteen of the twenty-one United States Munitions List (USML) categories.² Another three USML categories have been released for public comment,³ and are expected to be implemented as final rules in 2016.

In particular, the State Department has reported a significant reduction in overall license volume from 78,387 (in 2013) to 59,527 (in 2014).⁴ The number of commodity jurisdiction requests also has decreased dramatically, from a high of 1,348 (in 2012) to 1,045 (in 2013).⁵ Although commodity jurisdiction numbers since 2013 have not been officially reported, the numbers reported by the State Department's website have remained around 1,000 since 2013, which demonstrate a thirty percent reduction.⁶

* Contributing authors include John Boscariol, McCarthy Tétrault LLP; J. Patrick Briscoe, University of Minnesota; Geoffrey Goodale, Trade Law Advisors, PLLC; Jahna Hartwig, Sikorsky Aircraft; Jonathan Meyer; Christopher Stagg, Noonan LLP; and Lawrence Ward, Dorsey & Whitney LLP. Mr. Stagg and Mr. Ward served as editors of this article. This article includes developments occurring between December 1, 2014, and November 30, 2015.

1. Press Release, U.S. Dep't of State, Export Control Reform Marks One Year of Progress (Nov. 3, 2014), <http://www.state.gov/r/pa/prs/ps/2014/11/233659.htm>.

2. *Id.*

3. *Export Control Reform: Control List "Tracker"*, U.S. DEP'T OF COMMERCE (July 2015), http://build.export.gov/build/idcplg?IdcService=DOWNLOAD_PUBLIC_FILE&RevisionSelectionMethod=latest&dDocName=EG_main_048264.

4. Tony Dearth, Sarah Heidema, & Sue Gainor, *Directorate of Defense Trade Controls BIS Update 2015*, U.S. DEP'T OF STATE (2015), http://bis.doc.gov/index.php/forms-documents/doc_download/1345-state-ddtc-bis-update-2015.

5. *Id.*

6. *Id.*

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B. PROPOSED USML AND COMMERCE CONTROL LIST (CCL) REVISIONS

This year began with a proposed rule for USML Category XII (Fire Control, Range Finder, and Optical, Guidance, and Control Equipment).⁷ A proposed concurrent rule was published by the Department of Commerce's Bureau of Industry and Security (BIS).⁸ The Government received a significant number of public comments on this proposed rule.⁹ It is anticipated that a final rule will take effect in 2016.

On June 17, 2015, the State Department released a proposed rule for USML Category XIV (Toxicological Agents, including Chemical Agents, Biological Agents, and Associated Equipment) and USML Category XVIII (Directed Energy Weapons).¹⁰ A proposed concurrent rule was published by the BIS.¹¹ The Government did not receive many public comments for these categories.¹²

C. REVISED CATEGORY REVIEWS

One concern that industry voiced with the movement to positive control criteria was how the revised lists would be changed to account for civilian developments and technologies.¹³ The State Department responded with a policy to periodically review every USML category through Notice of Inquiries within the *Federal Register*.¹⁴ Although it is not clear whether every USML category will receive an annual review, the State Department started with USML Categories VIII (Aircraft and Related Articles) and XIX (Gas Turbine Engines and Associated Equipment) on March 2, 2015.¹⁵ The Commerce Department also released its companion inquiry for associated items on the Commerce

7. Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XII, 80 Fed. Reg. 25,821, 25,825 (proposed May 5, 2015) (to be codified at 22 C.F.R. pt. 121), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-05-05/pdf/2015-09673.pdf>.

8. Revisions to the Export Administration Regulations (EAR): Control of Fire Control, Ranger Finder, Optical, and Guidance and Control Equipment the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 80 Fed. Reg. 25,798, 25,798 (proposed May 5, 2015) (to be codified at 15 C.F.R. pts. 134, 740, 742, 744, 772, and 774), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-05-05/pdf/2015-10353.pdf>.

9. The Department of Commerce Public Comments, U.S. DEP'T OF COMMERCE (2015), <http://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents>; The State Department Public Comments, U.S. DEP'T OF STATE (2015), http://www.pmddtc.state.gov/regulations_laws/documents/proposed_rules/CategoryXII_Comments.pdf.

10. Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories XIV and XVIII, 80 Fed. Reg. 34,572, 34,572 (proposed June 17, 2015) (to be codified at 22 C.F.R. pt. 121).

11. Commerce Control List: Addition of Items Determined to No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons), 80 Fed. Reg. 34,562, 34,562 (proposed June 17, 2015) (to be codified at 15 C.F.R. pt. 774).

12. Public Comments Regarding Category XIV and XVIII Proposed Amendments, U.S. DEP'T OF STATE (2015), https://www.pmddtc.state.gov/regulations_laws/documents/proposed_rules/CategoryXIVandXVIII_Comments.pdf.

13. See e.g., *id.*

14. Request for Comments Regarding Review of United States Munitions List Categories VIII and XIX, 80 Fed. Reg. 11,314, 11,314 (Mar. 2, 2015) (notice of inquiry).

15. *Id.*

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Control List.¹⁶ The Government released the public comments it has received and expects to revise these USML categories shortly.¹⁷

The State Department also released another Notice of Inquiry for USML Categories IV (Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines), VII (Ground Vehicles), XIII (Materials and Miscellaneous Articles), and XX (Submersible Vessels and Related Articles), on October 9, 2015.¹⁸ These notices will have a sixty-day window for commenting.¹⁹ In particular, the State Department requested public comments for identifying (1) emerging and new technologies, (2) items that are controlled on the USML or 600 series but have entered into normal commercial use, (3) items where commercial use is anticipated within the next five years, and (4) drafting or technical issues with the control text.²⁰

II. Other Developments in International Traffic in Arms Regulations (ITAR)

A. HARMONIZATION OF DEFINITIONS

The State Department published a proposed rule on June 3, 2015, to amend or create definitions in ITAR Part 120, primarily for the purpose of harmonizing the definitions between the ITAR and Export Administration Regulations (EAR) “to the extent appropriate.”²¹ The State Department proposed updates to the definitions of “defense article,” “defense services,” “technical data,” “public domain,” “export,” and “reexport or retransfer,” and proposed to create definitions for “required,” “technical data that arises during, or results from, fundamental research,” “release,” “retransfer,” and “activities that are not exports, reexports, or retransfers.”²² The State Department also proposed significant changes to address electronic transmission and storage of “unclassified technical data via foreign communications infrastructure.”²³ If adopted, the proposed revision would allow for such electronic transmission or storage if the data is sufficiently secured to prevent access by foreign persons.²⁴

16. Request for Comments Regarding Controls on Military Aircraft and Military Gas Turbine Engines on the Commerce Control List, 80 Fed. Reg. 11,315, 11,315 (Dep’t of Commerce Mar. 2, 2015) (notice of inquiry).

17. AIA, Public Comments Regarding USML Category VIII & CCL Category 9 Proposed Amendments, U.S. DEPT OF STATE (2015), https://www.pnddte.state.gov/regulations_laws/documents/proposed_rules/Categories_VIII_and_XIX_Comments.pdf.

18. Request for Comments Regarding Review of United States Munitions List Categories VI, VII, XIII, and XX, 80 Fed. Reg. 61,138, 61,138 (Dep’t of State Oct. 9, 2015) (notice of inquiry).

19. Request for Comments Regarding Review of United States Munitions List Categories VIII and XIX, 80 Fed. Reg. at 11,314, 11,314 (Dep’t of Commerce Mar. 2, 2015) (notice of inquiry).

20. *Id.*

21. International Traffic in Arms Regulations: Revisions to Definitions of Defense Services, Technical Data, and Public Domain; Definition of Product of Fundamental Research; Electronic Transmission and Storage of Technical Data; and Related Definitions, 80 Fed. Reg. 31,525, 31,526 (proposed June 3, 2015) (to be codified at 22 C.F.R. pt. 120, 123, 125, and 127).

22. *Id.*

23. *Id.*

24. *Id.*

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The State Department reportedly received thousands of public comments on the proposed rule, many of which focused on the proposed revision to the definition of public domain. In fact, the ABA Section of International Law's Export Controls and Economic Sanctions Committee formed a Task Force that prepared comments on many aspects of the proposed rule that were ultimately filed by the Ad Hoc Coalition for Effective Export Control Reform.²⁵ Moreover, as described below, at least one person has filed suit against the State Department, claiming that the definition of public domain as proposed would be an unconstitutional prior restraint on speech.²⁶

B. REGISTRATION AND LICENSING OF U.S. PERSONS EMPLOYED BY FOREIGN PERSONS

On May 26, 2015, the State Department published a proposed rule to clarify when an individual U.S. person, who is employed by a foreign person, is considered to be “engaged in the business of furnishing defense services to their foreign person employers,” and therefore may be required to register as an exporter and obtain authorization from the State Department.²⁷ The proposed rule is intended to impact both U.S. persons working for foreign subsidiaries or affiliates of U.S. companies, and U.S. persons employed by foreign companies with no U.S. affiliation.²⁸ The specific proposed changes include a revision to section 122.1 to “clarify the *existing* requirement that U.S. persons performing defense services abroad are required to be registered pursuant to 22 CFR 122.2,”²⁹ a new provision at section 124.17 to add “[a]n exemption for natural U.S. persons employed by foreign persons located in NATO countries and other specified nations,”³⁰ and a revision to section 124.1(a) to “*clarify* that defense services performed by natural U.S. persons may be authorized via a DSP-5 [license].”³¹

C. OTHER ITAR DEVELOPMENTS

On May 22, 2015, the State Department proposed changes to various ITAR provisions, including:

- Revision of various ITAR provisions relating to the process for obtaining State Department authorization to export EAR-controlled items;
- Clarification of the ITAR exemption in Section 126.4 for exports by or for an agency of the U.S. Government, particularly regarding use of the exemption for items sent to contractor support personnel;

25. Comments on Proposed Revisions to Certain EAR and ITAR Definitions, AD HOC COALITION (2015), <http://www.regulations.gov/#!documentDetail;D=DOS-2015-0023-7826>.

26. Memorandum of Points and Authorities in Support of Plaintiff's Motion for a Preliminary Injunction, Stagg P.C. v. U.S. Dep't of State, Civ. No. 15-cv-08468-SAS (S.D.N.Y. Nov. 2, 2015).

27. Amendment to the International Traffic in Arms Regulations: Registration and Licensing of U.S. Persons Employed by Foreign Persons, and Other Changes, 80 Fed. Reg. 30,001, 30,001 (proposed May 26, 2015) (to be codified at 22 C.F.R. pts. 120, 122, 124, 125, and 126).

28. *Id.*

29. *Id.* at 30,002 (emphasis added).

30. *Id.*

31. *Id.* (emphasis added).

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- Harmonization of the Destination Control Statement (DCS) in Section 123.9 with that in the EAR (15 C.F.R. § 758.6); and
- Minor edits to address erroneous or outdated reporting requirements.³²

The public comments on the proposed rule included both positive comments and requests for further modification.³³

On May 29, 2015, the State Department rescinded its long-standing policy of denying exports of defense articles and defense services to Fiji.³⁴ This change in policy was a result of the democratic elections held in Fiji in September 2014, which were determined to be credible by the Multinational Observer Group.³⁵

D. RELATED CASES

Four suits were filed against the State Department in 2015. Each of these cases is currently pending before the court in which it was filed. Defense Distributed, a non-profit organization known for publishing on its website CAD files to enable 3D printing of a plastic gun,³⁶ and the Second Amendment Foundation filed a complaint in March 2015 asserting that the State Department's imposition of a pre-publication approval requirement for technical data related to defense articles is unconstitutional.³⁷

Similarly, the law firm Stagg P.C. requested a preliminary injunction in November to prohibit the State Department from imposing the pre-publication review requirement announced in its June 3, 2015, proposed rulemaking.³⁸

A U.S. manufacturer of firearms accessories, Leo Combat LLC, filed a complaint in October 2015, challenging the imposition of a registration requirement and registration fees as unconstitutional when applied to domestic manufacturers who do not export.³⁹

Goldstein PLLC, a U.S.-based law firm, filed a complaint in March 2015, challenging the U.S. State Department's apparent regulation under the ITAR brokering rules of the provision of legal advice regarding U.S. international trade laws.⁴⁰ The State Department filed a motion to dismiss the complaint based on its May 2015 letter to the plaintiff noting

32. Amendment to the International Traffic in Arms Regulations: Exports and Temporary Imports Made to or on Behalf of a Department or Agency of the U.S. Government; Procedures for Obtaining State Department Authorization to Export Items Subject to the Export Administration Regulations; Revision to the Destination Control Statement; and Other Changes, 80 Fed. Reg. 29,565, 29,565 (proposed May 22, 2015) (to be codified at 22 C.F.R. pts. 120, 123, 124, 125, and 126).

33. Public Comments regarding ITAR and EAR proposed amendments, U.S. DEP'T OF STATE (2015), http://www.pmdetc.state.gov/regulations_laws/documents/proposed_rules/BehalfofGovt_Comments.pdf.

34. Amendment to the International Traffic in Arms Regulations: Policy on exports to the Republic of Fiji, 80 Fed. Reg. 30,614, 30,614 (May 29, 2015) (to be codified at 22 C.F.R. pt. 126).

35. *Id.*

36. See DEFENSE DISTRIBUTED, <https://defdist.org> (last visited Feb. 6, 2016).

37. See *Def. Distributed v. U.S. Dep't of State*, No. 1:15-cv-00372-RP (W.D. Tex. Apr. 29, 2015).

38. See Memorandum of Points and Authorities in Support of Plaintiff's Motion for a Preliminary Injunction at 1, *Stagg P.C. v. U.S. Dep't of State*, Civ. No. 15-cv-08468-SAS (S.D.N.Y. Nov. 2, 2015).

39. See Complaint for Declaratory and Injunctive Relief at 7, *Leo Combat LLC v. U.S. Dep't of State*, Civ. No. 1:15-cv-2323 (D. Colo. filed Oct. 20, 2015).

40. See Complaint for Declaratory and Injunctive Relief at 2, *Matthew A. Goldstein PLLC v. U.S. Dep't of State*, Civ. No. 1:15-cv-311 (D.D.C. filed Mar. 3, 2015).

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that the activities described in the complaint would not fall within the scope of regulated brokering activities.⁴¹

III. EAR Developments: Restrictions, Liberalizations, and Key Proposed Rules

Effective January 29, 2015, the BIS published a final rule that imposed licensing requirements for all items subject to the EAR, except food and medicine designated as EAR99 for export or reexport to the Crimea region of Ukraine, and for which there would be a general presumption of denial for all such exports and reexports.⁴² Subsequently, however, the BIS published a final rule on May 22, 2015, allowing exports:

without a license to the Crimea region of Ukraine of software that is necessary to enable the exchange of personal communications over the Internet, provided that such software is designated EAR99, or is classified as mass market software under . . .ECCN 5D992.c of the [CCL], and provided further that such software is widely available to the public at no cost to the user.⁴³

In addition to the export controls imposed on the Crimea region of Ukraine, the BIS also sought to further the Obama Administration's targeted Ukrainian-related sanctions by adding a number of Russian entities to the Entity List in 2015.⁴⁴

The BIS issued several final rules in 2015 that were designed to liberalize certain export controls that had been imposed against Cuban entities. To begin with, on January 16, 2015, the BIS promulgated a final rule that: (1) amended License Exception Gift Parcels and Humanitarian Donations (GFT) to remove the license requirement for consolidated shipments of gift parcels that would not require a license if shipped separately; (2) revised License Exception Consumer Communications Devices (CCD) to remove the donation requirement and update the list of eligible items; and (3) created a new License Exception—Support for the Cuban People (SCP) that authorizes certain exports and reexports to improve living conditions, promote independent economic activity, strengthen civil society and “improve the free flow of information to, from, and among the Cuban people.”⁴⁵ Subsequently, on July 22, 2015, the BIS published a notice pursuant to which Cuba was removed from Country Group E:1 (terrorist-supporting countries),

41. See Defendants' Memorandum in Support of their Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) at 6, *Matthew A. Goldstein PLLC v. U.S. Dep't of State*, Civ. No. 1:15-cv-311 (D.D.C. filed May 18, 2015).

42. Russian Sanctions: Licensing Policy for the Crimea Region of Ukraine, 80 Fed. Reg. 4,776, 4,779 (Jan. 29, 2015) (to be codified at 15 C.F.R. pts. 738, 740, 746, and 772).

43. Russian Sanctions: Revisions and Clarifications for Licensing Policy for the Crimea Region of Ukraine, 80 Fed. Reg. 29,530 (May 22, 2015) (to be codified at 15 C.F.R. pts. 738, 740, and 746).

44. See, e.g., Russian Sanctions: Additions to the Entity List to Prevent Violations of Russian Industry Sector Sanctions, 80 Fed. Reg. 47,402, 47,402 (Aug., 7, 2015) (to be codified at 15 C.F.R. pts. 744 and 746); Addition of Certain Persons to the Entity List, 80 Fed. Reg. 52,963, 52,963 (Sept. 2, 2015) (to be codified at 15 C.F.R. pt. 744).

45. Cuba: Providing Support for the Cuban People, 80 Fed. Reg. 2,286, 2,286 (Jan. 16, 2015) (to be codified at 15 C.F.R. pts. 736, 740, 746, and 748).

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which thereby made Cuba eligible for a general 25% *de minimis* level.⁴⁶ Further, it authorized Cuba under portions of four license exceptions, and removed anti-terrorism (AT) license requirements from Cuba.⁴⁷ References to Cuba as a State Sponsor of Terrorism were eliminated, although pre-existing license requirements were maintained for all items subject to the EAR unless authorized by a license exception.⁴⁸ Most recently, on September 21, 2015, the BIS published a final rule that expanded License Exception SCP to facilitate engagement between U.S. and Cuban people, made temporary sojourns of most vessels to Cuba eligible for License Exception Aircraft, Vessels, and Spacecraft (AVS), and created a case-by-case review policy of license applications to export and reexport to Cuba items to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.⁴⁹

In addition to the country-specific amendments discussed above, the BIS also implemented several regime-specific amendments in 2015. On April 7, 2015, the BIS published a final rule to amend the EAR to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the September and October 2014 Plenary in Oslo, Norway, and pursuant to the 2014 Technical Experts Meeting in Prague, Czech Republic.⁵⁰ Subsequently, on May 21, 2015, the BIS published a final rule that implemented Wassenaar Arrangement 2014 Plenary Agreements and certain Country Policy Amendments, which collectively resulted in revisions to 42 ECCNs, the addition of one ECCN, and the removal of another ECCN.⁵¹ In addition, on June 6, 2015, the BIS published a final rule to implement the recommendations presented at the Australia Group (AG) Intersessional Meeting that was held in Budapest, Hungary, on November 18 – 22, 2013, and adopted under the AG silent approval procedure in January/February 2014.⁵²

The BIS also published a final rule that amended certain support document requirements for license applications on March 13.⁵³ In addition to clarifying and streamlining the support document requirements for license applications in EAR Part 748, this final rule removed the requirement to obtain an International Import Certificate or Delivery Verification in connection with a license application and limited the requirement to obtain a Statement by Ultimate Consignee and Purchaser to exports, reexports, and transfers (in-country) of 600 Series Major Defense Equipment.⁵⁴

46. Cuba: Implementing Rescission of State Sponsor of Terrorism Designation, 80 Fed. Reg. 43,314, 43,314 (July 22, 2015) (to be codified at 15 C.F.R. pts. 734, 736, 740, 742, 746, 748, 750, 758, 772, and 774).

47. *Id.*

48. *Id.*

49. Enhancing Support for the Cuban People, 80 Fed. Reg. 56,898, 56898 (Sept. 21, 2015) (to be codified at 15 C.F.R. pts. 740, 746, and 772).

50. Revisions to the Export Administration Regulations Based on the 2014 Missile Technology Control Regime Plenary Agreements, 80 Fed. Reg. 18,522, 18,522 (Apr. 7, 2015) (to be codified at 15 C.F.R. pt. 774).

51. Wassenaar Arrangement 2014 Plenary Agreements Implementation and Country Policy Amendments, 80 Fed. Reg. 29,432, 29,432 (May 21, 2015) (to be codified at 15 C.F.R. pts. 738, 740, 742, 743, 772, and 774).

52. Implementation of the Australia Group (AG) Nov. 2013 Intersessional Decisions, 80 Fed. Reg. 34,266, 34,267 (June 16, 2016) (to be codified at 15 C.F.R. pts. 740, 742, 752, and 774).

53. Revisions to Support Document Requirements for License Applications under the Export Administration Regulations, 80 Fed. Reg. 13,210, 13,210 (March 13, 2015) (to be codified at 15 C.F.R. pts. 742, 748, and 762).

54. *Id.* at 13,212.

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On August 26, 2015, the BIS published a final rule that served to remove the Special Comprehensive License (SCL) provisions from the EAR.⁵⁵ In the preamble to the final rule, the BIS stated that it had concluded that “SCL has outlived its usefulness to the exporting public because recent changes to the EAR permit exporters to accomplish similar results using individual licenses and without undertaking the more onerous SCL application.”⁵⁶ The rule took effect on September 25, 2016.⁵⁷

On May 20, 2015, the BIS published a proposed rule relating to the implementation of:

agreements by the Wassenaar Arrangement at the Plenary Meeting in December 2013 with regard to systems, equipment or components specially designed for the generation, operation or delivery of, or communication with, intrusion software; software specially designed or modified for the development or production of such systems, equipment or components; software specially designed for the generation, operation or delivery of, or communication with, intrusion software; technology required for the development of intrusion software; Internet Protocol (IP) network communications surveillance systems or equipment and test, inspection, production equipment, specially designed components therefor, and development and production software and technology therefor.⁵⁸

On June 3, 2015, the BIS published a proposed rule that would serve to create new definitions in the EAR for numerous terms (*e.g.*, “technology,” “required,” “peculiarly responsible,” “proscribed person,” “published,” results of “fundamental research,” “export,” “reexport,” “release,” “transfer,” and “transfer (in-country)”) to enhance clarity and consistency with terms also found in the ITAR.⁵⁹

IV. OFAC Sanctions Developments and Enforcement Actions

A. MAJOR REGULATORY AND POLICY DEVELOPMENTS

1. Cuba

President Obama announced plans to normalize relations with Cuba on December 17, 2014.⁶⁰ Since then, the Office of Foreign Assets Control (OFAC) has twice made substantial changes to the Cuban Assets Control Regulations (CACR).⁶¹ The first set of amendments, effective January 16, 2015: (1) expanded the scope of existing authorizations for twelve travel categories (while comports with the unchanged statutory prohibition

55. Export Administration Regulations: Removal of Special Comprehensive License Provisions, 80 Fed. Reg. 51,725, 51,725 (Aug. 26, 2015) (to be codified at 15 C.F.R. pts. 730, 732, 738, 743, 748, 752, 762, 772, and 774).

56. *Id.*

57. *Id.*

58. Wassenaar Arrangement 2013 Plenary Agreements Implementation: Intrusion and Surveillance Items, 80 Fed. Reg. 28,853, 28,853 (May 20, 2015) (to be codified at 15 C.F.R. pts. 740, 742, 748, 772, and 774).

59. Revisions to Definitions in the Export Administration Regulations, 80 Fed. Reg. 31,505, 31,505 (June 3, 2015) (to be codified at 15 C.F.R. 734, 740, 750, 764, and 772).

60. Press Release, White House, Statement by the President on Cuba Policy Changes (Dec. 17, 2014), <https://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes>.

61. Cuban Assets Control Regulations, 80 Fed. Reg. 2,291, 2,291 (Jan. 16, 2015) (to be codified at 31 C.F.R. pt. 515).

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on tourism and leisure transactions); (2) eliminated the requirement that travel service providers and airlines be licensed by OFAC when facilitating or furnishing travel to Cuba, and raised the quarterly remittance limit from \$500 to \$2,000 (among other remittance-related adjustments); (3) authorized the use of debit and credit cards in Cuba; (4) eased restrictions on transactions relating to telecommunications and the support of independent Cuban entrepreneurs, and permitted banks to open correspondent accounts at Cuban financial institutions to facilitate lawful transactions; and (5) authorized U.S.-owned or -controlled entities in third countries to furnish goods and services to Cuban nationals located in those countries.⁶² Moreover, U.S. travelers returning from Cuba may now bring back Cuban-origin merchandise, provided the goods are for personal use and do not exceed a value of \$400 per person (\$100 of which may consist of alcohol or tobacco products).⁶³

The second set of amendments, published on September 21, 2015, continued in the same vein, further relaxing the requirements applicable to various non-tourist transactions.⁶⁴ Cuba-related activities benefitting from the new rules include ocean-going vessel travel; the provision of telecommunications services; the establishment of physical, in-country operations for certain purposes; the opening of bank accounts; accompanied family travel; and educational travel and services.⁶⁵

2. *Iran*

On July 14, 2015, the United States, Iran, and five other countries concluded a Joint Comprehensive Plan of Action (JCPOA), an arrangement under which Iran has committed not to seek, develop, or acquire nuclear weapons in exchange for the lifting of economic sanctions.⁶⁶ OFAC sanctions relief is to be phased in as Iran meets specified milestones over a period of several years.⁶⁷ As of the end of 2015, a set of modest, interim measures first enacted in 2014 remain in effect.⁶⁸

While U.S. persons and U.S.-owned or controlled entities are still prohibited from engaging in Iran-related transactions without authorization from OFAC, the agency is applying a favorable licensing policy to activities relating to the safety of Iranian civil aviation, as well as, humanitarian exports to Iran.⁶⁹ Moreover, OFAC has eased certain banking-related restrictions with the intent of making it easier for non-U.S. persons and

62. *Id.*

63. *Id.* (stating new 31 C.F.R. § 515.560(c)(3)).

64. Cuban Assets Control Regulations, 80 Fed. Reg. 56,915, 56,915 (Sep. 21, 2015) (to be codified at 31 C.F.R. pt. 515).

65. *Id.* at 56915-16.

66. Joint Comprehensive Plan of Action, July 14, 2015, http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf.

67. *Id.* at 16.

68. U.S. DEP'T OF THE TREASURY, GUIDANCE RELATING TO THE CONTINUATION OF CERTAIN TEMPORARY SANCTIONS RELIEF PURSUANT TO THE JPOA PRIOR TO IMPLEMENTATION OF THE JCPOA (Aug. 7, 2015), http://www.treasury.gov/resource-center/sanctions/Programs/Documents/guidance_ext_20150807.pdf (last visited Nov. 24, 2015).

69. U.S. DEP'T OF THE TREASURY, FREQUENTLY ASKED QUESTIONS RELATING TO THE CONTINUATION OF CERTAIN TEMPORARY SANCTIONS RELIEF PURSUANT TO THE JPOA PRIOR TO IMPLEMENTATION OF THE JCPOA at 2 (Aug. 7, 2015), http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_20150807.pdf (last visited Nov. 24, 2015).

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entities to conduct business with Iran in the petrochemical, crude oil, precious metals, and automotive sectors.⁷⁰

3. *Crimea Region*

President Obama issued Executive Order 13685, Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine, on December 19, 2014.⁷¹ The order freezes the assets of certain persons involved in the conflict in the Crimea region, and imposes comprehensive investment, export, import, and financial restrictions.⁷²

OFAC issued a series of general licenses authorizing various activities relating to the Crimea region that would otherwise be prohibited. General License No. 4 permits the export of specified agricultural commodities, medical supplies, and replacement parts.⁷³ General License No. 5 authorizes certain financial transactions necessary to wind up or divest from business operations in the region.⁷⁴ General License No. 6 allows for the transfer of noncommercial, personal remittances to the Crimea region.⁷⁵ General License No. 7 authorizes the operation of personal bank accounts for individuals ordinarily resident in the Crimea region whose assets are not blocked.⁷⁶ Finally, General Licenses 8 and 9 authorize the provision of postal and telecommunications services, as well as, certain Internet-related software, to Crimean recipients.⁷⁷

4. *Miscellaneous*

Following reports of an organized, foreign-origin cyber-attack directed at Sony Pictures Entertainment Inc., President Obama issued Executive Order No. 13687, Imposing

70. *Id.* at 3-7.

71. Exec. Order No. 13685, 79 Fed. Reg. 77357 (Dec. 19, 2014).

72. *Id.* at 77359.

73. U.S. DEP'T OF THE TREASURY, GENERAL LICENSE NO. 4, AUTHORIZING THE EXPORTATION OR REEXPORTATION OF AGRICULTURAL COMMODITIES, MEDICINE, MEDICAL SUPPLIES, AND REPLACEMENT PARTS (Dec. 19, 2014) https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl4.pdf.

74. U.S. DEP'T OF THE TREASURY, GENERAL LICENSE NO. 5, AUTHORIZING CERTAIN ACTIVITIES PROHIBITED BY EXECUTIVE ORDER 13685 OF DECEMBER 19, 2014 NECESSARY TO WIND DOWN OPERATIONS INVOLVING THE CRIMEA REGION OF UKRAINE (Dec. 30, 2014), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl5.pdf.

75. U.S. DEP'T OF THE TREASURY, GENERAL LICENSE NO. 6, NONCOMMERCIAL, PERSONAL REMITTANCES AUTHORIZED (Jan. 30, 2015), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13685_gl_6.pdf.

76. U.S. DEP'T OF THE TREASURY, GENERAL LICENSE NO. 7, OPERATION OF ACCOUNTS AUTHORIZED (Jan. 30, 2015), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13685_gl_7.pdf.

77. U.S. DEP'T OF THE TREASURY, GENERAL LICENSE NO. 8, TRANSACTIONS RELATED TO TELECOMMUNICATIONS AND MAIL AUTHORIZED (Jan. 30, 2015), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13685_gl_8.pdf; GENERAL LICENSE NO. 9, EXPORTATION OF CERTAIN SERVICES AND SOFTWARE INCIDENT TO INTERNET-BASED COMMUNICATIONS AUTHORIZED (May 22, 2015), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl_9.pdf.

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Additional Sanctions with Respect to North Korea, on January 2, 2015.⁷⁸ The order blocks the assets of designated North Korean Government organizations and personnel.⁷⁹

On February 18, 2015, OFAC amended the Sudanese Sanctions Regulations to add a general license for the export of certain communications-related software, hardware, and services.⁸⁰

Primarily in response to reports about hackers abroad penetrating U.S. Government computer systems, on April 1, 2015, President Obama issued Executive Order 13694, Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities.⁸¹ This order authorizes OFAC to block the property of persons determined to be “responsible for or complicit in . . . cyber-enabled activities” posing a “threat to the national security, foreign policy, or economic health or financial stability of” the U.S., as well as, persons involved in related misuses of hacked trade secrets.⁸² As of November 24, 2015, OFAC had not yet designated any persons subject to this order.

OFAC amended the Syrian Sanctions Regulations on April 13, 2015, to include a general license for certain transactions relating to the creation, publishing, and marketing of manuscripts, books, journals, and newspapers.⁸³

On June 24, 2015, the U.S. Department of Justice published a statement explaining that it does not intend to pursue criminal charges against any persons who may violate U.S. counterterrorism sanctions laws by paying ransoms for the release of family members held hostage abroad.⁸⁴ OFAC did not issue a corresponding assurance regarding civil enforcement.

OFAC promulgated the new Venezuela Sanctions Regulations on July 10, 2015.⁸⁵ These regulations implement the Venezuela Defense of Human Rights and Civil Society Act of 2014, which directs the President to impose sanctions targeting persons responsible for significant acts of political violence and violations of human rights in Venezuela.⁸⁶ To date, the President has designated seven Venezuelan Government officials now subject to asset freezes.⁸⁷

On October 29, 2015, OFAC issued a general license under the Belarusian Sanctions Regulations that permits certain transactions with nine entities whose assets had been blocked in an earlier executive order.⁸⁸

78. Exec. Order No. 13687, 80 Fed. Reg. 819 (Jan. 6, 2015).

79. *Id.*

80. Sudanese Sanctions Regulations, 80 Fed. Reg. 8531, 8532 (Feb. 18, 2015) (to be consolidated at 31 C.F.R. 538).

81. Exec. Order No. 13964, 80 Fed. Reg. 18,077 (Apr. 2, 2015).

82. *Id.*

83. Syrian Sanctions Regulations, 80 Fed. Reg. 19,532, 19,532 (Apr. 13, 2015) (to be codified at 31 C.F.R. pt. 542).

84. Press Release, U.S. Dep’t of Justice, Statement on U.S. Citizens Taken Hostage Abroad (June 24, 2015), <http://www.justice.gov/opa/pr/department-justice-statement-us-citizens-taken-hostage-abroad>.

85. Venezuela Sanctions Regulations, 80 Fed. Reg. 39,676 (July 10, 2015) (to be codified at 31 C.F.R. pt. 591).

86. Venezuela Defense of Human Rights and Civil Society Act of 2014, Pub. L. No. 113-278, § 5(a), 128 Stat. 3011, 3013 (2014).

87. *See* Venezuela Sanctions Regulations, 80 Fed. Reg. at 3,9683.

88. U.S. DEP’T OF THE TREASURY, GENERAL LICENSE NO. 2, GENERAL LICENSE WITH RESPECT TO ENTITIES BLOCKED PURSUANT TO EXECUTIVE ORDER 13405 (Oct. 29, 2015), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/belarus_gl2.pdf.

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On November 12, 2015, President Obama signed an executive order effectively ending the sanctions program targeting former Liberian President Charles Taylor (and associated persons).⁸⁹

Finally, an executive order issued on November 22, 2015, blocked the assets of designated persons responsible for violence and repression in Burundi.⁹⁰

B. MAJOR SANCTIONS ENFORCEMENT ACTIONS

On March 12, 2015, the U.S. Department of Justice announced that Commerzbank AG, headquartered in Germany, agreed to parallel civil and criminal settlement agreements with multiple federal and New York state agencies.⁹¹ The bank's misconduct included processing (and often concealing) 1,596 transactions involving specially designated persons and countries subject to comprehensive trade embargoes (Burma, Cuba, Iran, and Sudan), in violation of OFAC regulations.⁹² The total civil and criminal fines and forfeitures reached \$1.45 billion.⁹³

In an agreement made public on March 25, 2015, PayPal, Inc. settled charges that it processed 486 transactions involving countries subject to comprehensive trade restrictions (Cuba, Iran, and Sudan), as well as, specially designated persons.⁹⁴ PayPal agreed to remit \$7,658,300 in civil fines to OFAC, which noted that the violations were systemic and reflected a reckless disregard for U.S. economic sanctions laws.⁹⁵

On March 25, 2015, Schlumberger Oilfield Holdings Ltd. (SOHL), a multinational company having key operations in Sugar Land, Texas, agreed to plead guilty to one criminal count of conspiring to violate U.S. sanctions regulations by "willfully facilitating transactions and engaging in trade with Iran and Sudan."⁹⁶ The monetary penalty totaled \$232,708,356; SOHL and its parent company, Schlumberger Ltd., also committed to a plan of continued cooperation and remediation.⁹⁷ The underlying criminal conduct consisted of furnishing (and sometimes disguising) financial, business, and technical support for certain oilfield operations in Iran and Sudan.⁹⁸

Crédit Agricole Corporate and Investment Bank, headquartered in France, agreed to a civil liability of \$329,593,585 in a settlement with OFAC announced on October 20,

89. Exec. Order No. 13710, 80 Fed. Reg. 71,679 (Nov. 16, 2015).

90. Exec. Order No. 13712, 80 Fed. Reg. 73633 (Nov. 22, 2015).

91. Press Release, U.S. Dep't of Justice, Commerzbank AG Admits to Sanctions and Bank Secrecy Violations, Agrees to Forfeit \$563 Million and Pay \$79 Million Fine (Mar. 12, 2015), <http://www.justice.gov/opa/pr/commerzbank-ag-admits-sanctions-and-bank-secrecy-violations-agrees-forfeit-563-million-and>.

92. ENFORCEMENT INFORMATION FOR MARCH 12, 2015, U.S. DEP'T OF THE TREASURY, (Mar. 12, 2015), http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150312_commerzbank.pdf (last visited Nov. 24, 2015).

93. Press Release, *supra* note 92.

94. ENFORCEMENT INFORMATION FOR MARCH 25, 2015, U.S. DEP'T OF THE TREASURY, (Mar. 25, 2015), http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150325_paypal.pdf.

95. *Id.*

96. Press Release, U.S. Dep't of Justice, Schlumberger Oilfield Holdings Ltd. Agrees to Plead Guilty and Pay Over \$232.7 Million for Violating U.S. Sanctions by Facilitating Trade with Iran and Sudan (Mar. 25, 2015), <http://www.justice.gov/opa/pr/schlumberger-oilfield-holdings-ltd-agrees-plead-guilty-and-pay-over-2327-million-violating-us>.

97. *Id.*

98. *Id.*

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2015.⁹⁹ OFAC alleged that Crédit Agricole (including certain subsidiaries and acquisitions) committed 4,297 violations of federal sanctions laws by processing transactions involving embargoed countries (Sudan, Cuba, Burma, and Iran) to or through U.S. financial institutions.¹⁰⁰ Rather than requiring payment of the \$329,593,585, however, OFAC stated that the obligation would be “deemed satisfied by payment of an equal or greater amount to U.S. federal, state, or county officials arising out of the same pattern of conduct.”¹⁰¹ This concession was an acknowledgement of a parallel enforcement effort led by New York state financial authorities, which resulted in a separate \$787 million fine for Crédit Agricole.¹⁰²

C. OFAC LITIGATION

In *OKKO Business PE v. Lew*, the U.S. District Court for the District of Columbia declined to instruct OFAC to license the release of blocked wire transfer of funds originally—but no longer—intended for UE Belarusian Oil Trading House (UEB), a sanctioned entity since 2008.¹⁰³ In April 2012, plaintiff OKKO Business PE (OKKO), a Ukrainian company, had attempted to wire a returnable deposit of 200,000_ to UEB in order to participate as a bidder in an online oil product auction.¹⁰⁴ The transfer was routed through a U.K. affiliate of Citibank, which blocked the transaction in accordance with OFAC’s Belarus Sanctions Regulations.¹⁰⁵

At issue in the litigation was OFAC’s refusal to issue a license allowing Citibank to return the blocked 200,000_ to OKKO after the auction, when OKKO had cancelled its arrangements with UEB and taken the position that UEB no longer had any actual or potential financial interest in the funds.¹⁰⁶ Required by precedent to take an “‘extremely deferential’” approach in reviewing OFAC’s decisions,¹⁰⁷ the court ruled that while UEB might not possess a “legally enforceable ownership interest” in the money, it had, at the time the wire transfer was stopped, a contingent interest sufficient for purposes of the sanctions regulations—specifically, 31 C.F.R. § 548.305, which expansively contemplates “an interest of any nature whatsoever, direct or indirect.”¹⁰⁸

Moreover, the court stated that U.S. law vests authority to determine whether and when such an interest comes to an end in OFAC, and not the regulated parties.¹⁰⁹

99. ENFORCEMENT INFORMATION FOR OCTOBER 20, 2015, U.S. DEP’T OF THE TREASURY, (October 20, 2015), http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20151020_cacib.pdf.

100. *Id.*

101. *Id.*

102. Press Release, New York Dep’t of Financial Services, NYDFS Announces Crédit Agricole to Pay \$787 Million, Install Independent Consultant, Terminate Employee for Transactions on Behalf of Sudan, Iran, Other Sanctioned Entities (Oct. 20, 2015), <http://www.dfs.ny.gov/about/press/pr1510201.htm>.

103. *OKKO Business PE v. Lew*, No. 1:14-cv-925 (CKK), slip op. at 3 (D.D.C. Sept. 28, 2015), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2014cv0925-18.

104. *Id.* at 4.

105. *Id.*

106. *Id.* at 5.

107. *Id.* at 7 (quoting *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 734 (D.C. Cir. 2007)).

108. *Id.* at 8-10 (citing 31 C.F.R. pt. 548).

109. See *OKKO Business PE v. Lew*, No. 1:14-cv-925 (CKK), slip op. at 14—15 (D.D.C. Sept. 28, 2015), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2014cv0925-18.

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V. Key Developments in Canadian Export Controls and Economic Sanctions

A record-setting government settlement at the beginning of 2015 started the year off with a stark reminder of the severe reputational impact of export control non-compliance, whether actual or alleged.¹¹⁰ The case involved a Canada Border Services Agency (CBSA) investigation against two Vancouver business people, Stephen and Perienne de Jaray.¹¹¹ In 2010, they were criminally charged for failure to obtain export permits for the shipment of 5,100 dual-use electronic chips and circuit boards to Hong Kong.¹¹² Those charges were later withdrawn after it was agreed the items were not controlled, but with their reputations and business destroyed as a result of the accusations, the de Jarays sued the Canadian government for \$17 million.¹¹³ In January, it was reported that their claim was settled for more than \$10 million, the second-largest payout of its kind in Canadian history.¹¹⁴

A. SANCTIONS AGAINST RUSSIA AND THE CRIMEA REGION OF UKRAINE

During 2015, Canada continued to add parties to its lists of designated persons under the Russia and Ukraine sanctions regulations.¹¹⁵ On February 17, 2015,¹¹⁶ and on June 29, 2015,¹¹⁷ Canada added seventy-one entities and individuals, bringing the total number of Russia/Ukraine designated persons to 290.¹¹⁸ These included designations of United Aircraft Corporation and the CEO of Rostec for purposes of the broad prohibitions against property dealings and facilitation, as well as Gazprom, Rosneft, and others that are the target of prohibitions against dealings in debt and/or equity financing.¹¹⁹

On June 29, 2015, Canada also imposed broad sanctions against the Crimea region of Ukraine, defined as “the Autonomous Republic of Crimea and the city of Sevastopol and includes their land areas and territorial sea.”¹²⁰ These sanctions include prohibitions against: making investments and providing or acquiring financial or other related services for such investments; importing, purchasing, acquiring, shipping, or otherwise dealing in goods exported from the region; exporting, selling, supplying, shipping, or otherwise dealing in goods destined for the region; transferring, providing, or communicating technical data or services to, from, or for the benefit of or on the direction of any person in the region; providing or acquiring financial or other services related to tourism to,

110. John W. Boscarriol, Robert A. Glasgow, and Simon V. Potter, *Key Developments in Export Controls and Economic Sanctions During 2015 and What to Expect in 2016*, MCCARTHY TERTRAULT (Jan. 15, 2016), https://www.mccarthy.ca/article_detail.aspx?id=7194.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. Regulations Amending the Special Economic Measures (Russia) Regulations (Special Economic Measures Act), SOR/2015-39 (Can.).

117. Regulations Amending the Special Economic (Ukraine) Regulations (Special Economic Measures Act) SOR/2015-179 (Can.).

118. Boscarriol, *supra* note 110.

119. *Id.*

120. *Id.*

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from, or for the benefit of or on the direction of any person in the region; and docking cruise ships in the region.¹²¹

If a contract for a prohibited activity described above was entered into before June 29, 2015, there is an exemption from the particular prohibition.¹²² Because the Crimea region is not a recognized country (and may not commonly appear in address or location information), companies may encounter significant challenges in monitoring their international activities to ensure compliance with these new restrictions.¹²³

B. NEW DUAL-USE GENERAL EXPORT PERMIT

On August 12, 2015, Canada issued a new dual-use general permit, *General Export Permit No. 41 – Dual-use Goods and Technology to Certain Destinations* (GEP 41), allowing for the transfer of certain goods and technology to thirty-two friendly countries without having to apply for an individual export permit.¹²⁴ Dual-use goods and technology covered by GEP 41 include a broad range of items in Group 1 of the *Export Control List* (“ECL”), such as certain types of aircraft, computers and chips, sensors, protective equipment, information security items, various industrial components, and radar assemblies.¹²⁵ GEP 41 also applies to certain Group 5 strategic goods and technology associated with satellite systems and spacecraft.¹²⁶

While GEP 41 provides a streamlined export process for transfers to eligible destinations, exporters must be diligent and confirm that the goods and technology will be used in those recipient countries and not be re-exported or used in non-listed destination countries.¹²⁷ GEP 41 explicitly provides that transfers of goods or technology to be used in non-eligible destinations is not authorized.¹²⁸ If it is known that the goods will eventually be re-exported to or used in a non-eligible destination, exporters cannot take advantage of GEP 41.¹²⁹

C. CHANGES COMING TO THE CONTROLLED GOODS PROGRAM

On May 2, 2015, Canada published proposed amendments to its domestic security regime for defense and space goods and technologies, the *Controlled Goods Regulations* under the *Defence Production Act*.¹³⁰ The proposed amendments clarify current practices under the Controlled Goods Program and introduce new changes regarding high-risk employee screening; the visitor exemption process; reporting on security-assessed individuals; and revocations, suspensions, and reinstatements of CGP registrations.¹³¹

121. *Id.*

122. *Id.*

123. *Id.*

124. General Export Permit No. 41—Dual-use Goods and Technology to Certain Destinations (Export and Import Permits Act), SOR/2015-200 (Can).

125. *Boscariol, supra* note 110.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Boscariol, supra* note 110.

131. *Id.*

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Of particular note are the proposed timelines for reporting requirements under the regulations, including the reporting of security breaches within three days and changes in registrant information within five days.¹³² Although the consultation period expired on June 1, 2015, the amendments have yet to come into force.¹³³

D. CBSA INITIATING NEW EXPORTER AUDITS

On November 16, 2015, CBSA issued a Customs Notice¹³⁴ advising that it is aware of a large number of businesses that have been exporting goods through the United States to Mexico and other countries without making proper export declarations.¹³⁵ Shipments to the United States are exempt from export reporting.¹³⁶ But if the ultimate destination is a country other than the United States, such exports must be reported if their value is \$2,000 or more.¹³⁷ In the case of such goods that are controlled and do not fall under a General Export Permit, the appropriate permit, license, or certificate, and an export declaration must be presented to CBSA prior to export, regardless of the value of the goods.¹³⁸

According to the Notice, CBSA is commencing compliance verification activities on June 1, 2016, to determine whether exporters have complied with these reporting requirements.¹³⁹ There will be a six-month grace period starting December 1, 2015, during which exporters may come forward to CBSA to disclose export reporting violations in order to avoid penalties.¹⁴⁰

E. CHARGES LAID FOR RE-EXPORT OF U.S.-ORIGIN ITEMS TO IRAN

On October 13, 2015, the Royal Canadian Mounted Police laid charges against two Quebec businessmen regarding the export of U.S.-manufactured rail equipment from Canada to Iran.¹⁴¹

All U.S.-origin goods and technology are listed in item 5400 of the ECL and thereby controlled for transfer from Canada.¹⁴² But Canada has issued a General Export Permit that allows for such transfers to any destination other than Belarus, Syria, North Korea, Cuba, or Iran.¹⁴³ In this case, the businessmen are accused of committing indictable offenses under both the *Customs Act* and the *Export and Import Permits Act* by misrepresenting the origin of U.S. railway equipment when exporting it to Iran, and also

132. *Id.*

133. *Id.*

134. CANADA BORDER SERVICES AGENCY, CUSTOMS NOTICE 15-035, VOLUNTARY DISCLOSURE OF UNREPORTED GOODS TRANSITING THROUGH THE UNITED STATES TO A SUBSEQUENT COUNTRY (November 16, 2015).

135. *Boscariol, supra* note 110.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Boscariol, supra* note 110.

142. *Id.*

143. *Id.*

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by shipping the equipment through other countries in order to get it to Iran.¹⁴⁴ Conviction under these offences attracts penalties of up to 10 years imprisonment and/or fines in an amount that is in the discretion of the Court.¹⁴⁵

144. *Id.*

145. *Id.*

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