



EIB World Trade Headlines

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CELEBRATING OVER
30
YEARS

Changes to ITAR EXEMPTION UNDER 126.4

EFFECTIVE APRIL 19th

§ 126.4

Transfers by or for the United States Government.

(a) By a department or agency. A license is not required for the export, reexport, retransfer, or temporary import of a defense article or the performance of a defense service, when made by a department or agency of the U.S. Government:

(1) For official use by a department or agency of the U.S. Government, including:

(i) By employees of the U.S. Government acting within their official capacity; or

(ii) By persons or entities in a contractual relationship with the U.S. Government using the defense article or performing the defense service to conduct the contracted-for activities within the scope of the contractual relationship and:

(A) Within a U.S. Government-controlled facility;

(B) When an employee of the U.S. Government is empowered and responsible to ensure that the defense article is not diverted and is only used within the scope of the contractual relationship; or

(C) Use of the exemption in paragraph (a)(1)(ii) is authorized by the Deputy Assistant Secretary of State for Defense Trade Controls at the request of a department or agency of the U.S. Government.

(D) The provision in this paragraph (a)(1)(ii) may not be used to release technical data to a person or entity of a country identified in § 126.1.

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(2) For carrying out a cooperative project, program, or other activity in furtherance of an agreement or arrangement that provides for the export, reexport, retransfer, or temporary import of the defense article, or the performance of activities that constitute the defense service, and is one of the following:

(i) A binding international agreement to which the United States or any agency thereof is a party; or

(ii) An arrangement with international partners authorized by Title 10 or 22 of the United States Code or pertinent National Defense Authorization Act provisions.

(3) For carrying out any foreign assistance or sales program authorized by law and subject to control by the President by other means.

(4) For any other security cooperation programs and activities of the Department of Defense authorized by law and subject to control by the President by other means.

(i) For purposes of this paragraph (a)(4), “security cooperation programs and activities of the Department of Defense” means any program, activity, or interaction of the Department of Defense with the security establishment of a foreign country to:

(A) Build and develop allied and friendly security capabilities for self-defense and multinational operations;

(B) Provide the armed forces with access to the foreign country during peacetime or a contingency operation; or

(C) Build relationships that promote specific United States security interests.

(ii) The U.S. Government must obtain appropriate end-use and retransfer assurances from the foreign party and to ensure that the recipient is aware of and will comply with paragraph (f) of this section.

(5) Authorization under this section is for compliance with the ITAR only and does not constitute any other U.S. Government approval that may be required prior to the transfer of a defense article, and does not satisfy other obligations of U.S. law or regulation, or applicable Government process, procedure, or practice, including the requirement that any export of an item listed on the MTCR Annex receive the case-by-case review called for in the MTCR Guidelines.

(6) The exemption in this paragraph (a) does not apply when a U.S. Government department or agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements.

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(7) The authorization requirement expressed in paragraph (f) of this section does not apply to defense articles and services exported from the United States pursuant to paragraphs (a)(1) and (3) of this section, provided the defense articles and services are subject to the terms thereof.

(b) By a person on behalf of a department or agency. A license is not Start Printed Page 16402required for the export, reexport, retransfer, or temporary import of a defense article or the performance of a defense service, when made by another person for a department or agency of the U.S. Government:

(1) To a department or agency of the U.S. Government at its request; or

(2) To an entity other than the U.S. Government at the written direction of a department or agency of the U.S. Government or pursuant to an international agreement or arrangement, for an activity authorized for that department or agency in paragraphs (a)(1) through (4) of this section.

(c) Return to the United States. No license is required under this subchapter for the return to the United States of a defense article exported pursuant to this section and not subsequently reexported or retransferred other than pursuant to this section, to:

(1) A department or agency of the U.S. Government; or

(2) The person who exported the item.

(d) Prohibited activities and arms embargoes. This section does not authorize any department or agency of the U.S. Government to make or authorize any export that is otherwise prohibited by any other administrative provisions or by any statute or that is inconsistent with U.S. arms embargoes or United Nations Security Council Resolutions (see § 126.1).

(e) Export clearance. For exports shipped other than by a U.S. diplomatic pouch or a U.S. Government aircraft, vehicle, or vessel, an Electronic Export Information (EEI) filing must be submitted to U.S. Customs and Border Protection using its electronic system(s) at the time of export, unless electronic submission of such information is unavailable, in which case U.S. Customs and Border Protection or the Department of Defense transmittal authority will issue instructions.

(f) Change in end-use or end-user. Any change in end-use or end-user of a defense article, to any party or use not authorized by this section, requires approval of the Directorate of Defense Trade Controls through a license or other approval.

Andrea Thompson,

Under Secretary for Arms Control and International Security,
U.S. Department of State.

CFIUS Imposes 'Historic' \$1M Penalty for Breach of Mitigation Agreement

ALM Media

April 12, 2019

By Mario Mancuso

The Committee on Foreign Investment in the United States has imposed an unprecedented \$1 million civil penalty for repeated breaches of a 2016 CFIUS mitigation agreement, according to a notice on the U.S. Treasury Department's website.

The penalty was imposed in 2018 without fanfare but was recently published on its resource page along with annual reports to Congress. The penalty was also imposed for "failure to establish requisite security policies and failure to provide adequate reports to CFIUS," according to the notice.

CFIUS is an interagency committee that reviews mergers and acquisitions of U.S. companies by foreign investors for potential risks to U.S. national security.

No further information about the parties or the specific transaction involved was disclosed by the committee, whose actions normally are confidential.

Asked for comment, a Treasury Department representative said: "The Committee on Foreign Investment in the United States (CFIUS) takes very seriously the negotiation and enforcement of agreements that mitigate national security risk. As the Treasury Department, which chairs CFIUS, recently posted on its website, in 2018 CFIUS imposed a \$1 million penalty for violation of a CFIUS mitigation agreement. The penalty related to repeated breaches of a 2016 mitigation agreement, including failure to establish requisite security policies and failure to provide adequate reports to CFIUS. This action demonstrates CFIUS's commitment to enforcement. The Committee relies on negotiated mitigation agreements in order to resolve national security concerns, and we expect companies to adhere to them."

The representative did not provide further details about the parties involved or the transaction in response to a request for more information. In recent years, however, CFIUS has been increasingly focused on the security of personally identifiable information, and it has been requiring companies to spin off or otherwise segregate units with personal data on Americans as a condition of approving transactions. Other CFIUS concerns that have resulted in mitigation requirements or even rejections lately include high-technology transfers and location of facilities near military bases or other strategic locations.

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Mancuso added, "Mitigation agreements should not be seen as boilerplate. They are not paper agreements. There is also a sense in which it is signaling to the market that CFIUS is focused on enforcement broadly."

Usually CFIUS's internal workings occur in a "black box" because of confidentiality rules, but its actions have come to light more often in recent years. For instance, Toshiba announced on Thursday that China's ENN Ecological Holdings Co. had withdrawn its offer for Toshiba's U.S. liquified natural gas business because of failure to win approval from CFIUS and shareholders by a closing date.

An overhaul of CFIUS legislation enacted by Congress last year expanded the scope of transactions that are subject to mandatory rather than voluntary review by the committee and imposed new penalties for noncompliance. On Oct. 10, the U.S. Treasury Department published new pilot program regulations in its first step toward implementing the just-passed Foreign Investment Risk Review Modernization Act, or FIRRMA.

In 2016, when the sanctioned transaction occurred, CFIUS had received 172 notices and conducted 79 investigations, with one presidential rejection: In December of that year, on the committee's recommendation, President Barack Obama blocked the acquisition of Aixtron, a technology company with U.S. facilities, by Chinese-controlled Fujian Grand Chip Investment Fund. A total of 27 CFIUS notices were withdrawn, 15 notices were withdrawn-and-refiled and five were withdrawn and abandoned that year because of national security concerns. Seven notices were withdrawn for other reasons, according to the Treasury Department.

Mancuso, who authored the recently published "A Dealmaker's Guide to CFIUS," said he believed CFIUS' imposition of penalties would have been more effective had it been formally publicized. "A million dollars is a lot of money. To many parties I suspect it will get their attention. But monetary plus being publicly identified would have gotten more. They chose to make it public but not to publicize it."

He added, "I suspect the next shoe to drop will be a transaction that should have been filed under the pilot program for which one wasn't submitted and CFIUS will double down on this enforcement theme by imposing a penalty for not submitting a mandatory declaration."

Chinese foreign direct investment in the United States tumbled to \$4.8 billion last year, down from \$29 billion in 2017 and \$46 billion in 2016, according to Rhodium Group research.

Huawei Founder: Daughter's U.S. Arrest Will Be Good for Her

The founder of the Chinese telecom colossus Huawei says the arrest of his daughter on fraud charges brought by the U.S. will be good for her because she hasn't faced enough hardship in life. "These difficulties will make her stronger and prepare her for even greater things ahead. So I'll let her face what she is facing," Ren Zhengfei told CNBC. Meng Wanzhou, who is chief financial officer of Huawei, is under house arrest in Canada, awaiting likely extradition to the U.S. on charges she helped evade sanctions on Iran—allegations she denies. "I think my children have grown up without experiencing much hardship. Struggling a bit can be good for them," her father said. "Cuts and bruises toughen her up, and even since ancient times, heroes were born of hardship. I think this challenge will be good for my daughter."

Thai Man Sentenced for Weapons Exports

By Associated Press
April 15 at 5:00 AM

BALTIMORE — A 34-year-old man from Thailand has been sentenced to just over two years in federal prison for a scheme to export firearm parts from the U.S. to his native country.

Federal prosecutors say Thai national Apichart Srivaranon admitted that he conspired with people in both countries to export gun parts without first obtaining the legal authorization. Charges were filed against him in Maryland and Washington D.C. He pleaded guilty earlier this year after getting arrested in Las Vegas.

In a plea agreement, he acknowledged falsely labeling packages stuffed with gun parts to avoid detection. Prosecutors say he used fake names for return addresses and shipped the packages via private shipping companies and the U.S. Postal Service.

Srivaranon was sentenced to 26 months. He was also ordered to forfeit \$10,000.

U.S. prepares to end Iran oil waivers; Asian buyers to be hardest hit

WASHINGTON/SINGAPORE (Reuters) - The United States is expected to announce on Monday that buyers of Iranian oil need to end imports soon or face sanctions, a source familiar with the situation told Reuters, triggering a 3 percent jump in crude prices to their highest for 2019 so far.

Officials in Asia opposed the expected move, pointing to tight market conditions and high fuel prices that were harming industry.

The source confirmed a report by the Washington Post that the administration will terminate the sanctions waivers it granted to some importers of Iranian oil late last year.

Benchmark Brent crude oil futures rose by as much as 3.2 percent to \$74.31 a barrel, the highest since Nov. 1, in early trading on Monday in reaction to expectations of tightening supply. U.S. West Texas Intermediate (WTI) futures climbed as much as 3 percent to \$65.87 a barrel, its highest since Oct. 30.

U.S. President Donald Trump wants to end the waivers to exert "maximum economic pressure" on Iran by cutting off its oil exports and reducing its main revenue source to zero.

Saudi Arabia, the world's top oil exporter, was willing to compensate the potential supply loss, but it would first need to assess the impact before boosting its own production, a source familiar with Saudi thinking told Reuters.

In November, the U.S. reimposed sanctions on exports of Iranian oil after President Trump unilaterally pulled out of a 2015 nuclear accord between Iran and six world powers.

Washington, however, granted waivers to Iran's eight main buyers - China, India, Japan, South Korea, Taiwan, Turkey, Italy and Greece - that allowed them limited purchases for six months.

On Monday, Secretary of State Mike Pompeo will announce "that, as of May 2, the State Department will no longer grant sanctions waivers to any country that is currently importing Iranian crude or condensate," the Post's columnist Josh Rogin said in his report, citing two State Department officials that he did not name.

Oil markets have tightened this year because of supply cuts led by the Organization of the Petroleum Exporting Countries (OPEC).

Settlement Agreements between the U.S. Department of the Treasury's Office of Foreign Assets Control and UniCredit Group Banks

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) today announced three separate settlements totaling \$611 million with the following UniCredit Group banks: UniCredit Bank AG in Germany, UniCredit Bank Austria AG in Austria, and UniCredit S.p.A. in Italy. The settlements resolve OFAC's investigations into apparent violations of a number of U.S. sanctions programs, including those related to weapons of mass destruction proliferation, global terrorism, and the following countries: Burma, Cuba, Iran, Libya, Sudan, and Syria.

Between January 2007 and December 2011, UniCredit Bank AG processed over 2,000 payments totaling over \$500 million through financial institutions in the United States in apparent violation of multiple U.S. sanctions programs. During this time period, UniCredit operated U.S. dollar accounts on behalf of the Islamic Republic of Iran Shipping Lines (IRISL) and several companies owned by or otherwise affiliated with IRISL, and managed the accounts of those companies in a manner that obscured the interest or involvement of IRISL in transactions sent to or through U.S. intermediaries. For a number of years up to and including 2011 (UniCredit Bank AG) and 2012 (UniCredit Bank Austria AG and UniCredit S.p.A.), all three banks processed payments to or through the United States in a manner that did not disclose underlying sanctioned persons or countries to U.S. financial institutions which were acting as financial intermediaries.

OFAC determined that the apparent violations largely constituted egregious cases and that the banks did not voluntarily self-disclose the apparent violations.



Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and Haverly Systems, Inc.

Haverly Systems, Inc. ("Haverly"), a New Jersey corporation with offices in Texas and California, has agreed to pay \$75,375 to settle its potential civil liability for two apparent violations of the Ukraine Related Sanctions Regulations, 31 C.F.R. part 589 (URSR). Specifically, from on or about May 31, 2016 to on or about January 11, 2017, Haverly apparently violated Directive 2 under Executive Order 13662, "Blocking Property of Additional Persons Contributing to the Situation in Ukraine" ("Directive 2"), and § 589.201 of the URSR, when it transacted or otherwise dealt in new debt of greater than 90 days maturity of JSC Rosneft ("Rosneft"), an entity identified by OFAC on the Sectoral Sanctions Identification List as subject to Directive 2. OFAC determined that Haverly did not voluntarily self-disclose the apparent violations to OFAC, and the apparent violations constitute a non-egregious case.

https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190425_haverly.pdf

U.S. charges American engineer, Chinese businessman with stealing GE's trade secrets

U.S. authorities have charged an American engineer and a Chinese businessman with economic espionage and conspiring to steal sophisticated turbine designs to benefit the government of China and their personal business interests.

The 14-count indictment, unsealed Tuesday, alleges Xiaqing Zheng of Niskayuna, N.Y., and Zhaoxi Zhang of China's Liaoning province teamed up to filch millions of dollars' worth of General Electric's trade secrets.

"This is one of the most significant indictments involving China's alleged theft of technology," said Michael Wessel, a member of the U.S.-China Economic and Security Review Commission. "The technologies involved in the indictment go to the heart of China's deficit in turbine technology."

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Zheng, who has pleaded not guilty, was arraigned Tuesday in Albany, N.Y., and released pending trial. Attempts to reach him were unsuccessful.

The Chinese Embassy in Washington did not immediately respond to a request for comment, though the Chinese government has consistently denied that it engages in economic espionage.

China has identified aerospace technology as vital to its economic and military objectives. The Justice Department in its indictment tied the trade-secret theft to China's "Made in 2025" initiative, aimed at vaulting China's economy into higher-value areas in competition with the United States, including in aviation equipment and power generation.

"The indictment alleges a textbook example of the Chinese government's strategy to rob American companies of their intellectual property and to replicate their products in Chinese factories, enabling Chinese companies to replace the American company first in the Chinese market and later worldwide," said Assistant Attorney General John Demers.

GE, with approval from the U.S. government, has pursued legitimate business opportunities with China. In 2011, for instance, in a move unrelated to the case brought by the Justice Department, the company entered into a joint venture with AVIC, a Chinese state-owned aerospace company, to share technology for aviation software packages.

Aviation software and turbine technology are the two critical areas China faces challenges in developing its own world-class commercial and military aircraft, experts say. "The technologies involved in this indictment could very well advance their capabilities to help them overcome this remaining critical deficit in the aerospace field," Wessel said.

The case is unusual for the apparent direct interaction the defendants, who are not accused of being government spies or officials, are alleged to have had with Communist Party officials to discuss a "strategic partnership" with the research organizations to develop aircraft engine technology.

According to prosecutors, Zheng, 56, worked as an engineer at GE Power and Water in Schenectady, N.Y. While there, he allegedly exploited his access to the company's files, stealing proprietary design models, engineering drawings and specifications dealing with components and testing systems for GE gas and steam turbines, the indictment contends

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He is accused of emailing and transferring many of the files to his business partner, Zhang, 47, in China. The indictment alleges that they used GE's trade secrets to advance their business interests in two Chinese companies that make turbine parts — Liaoning Tianyi Aviation Technology and Nanjing Tianyi Avi Tech.

In a statement, a GE spokesperson said the company was cooperating with federal authorities. "We aggressively protect and defend our intellectual property and have strict processes in place for identifying these issues and partnering with law enforcement," the statement says.

The indictment also alleges that from March 2016 through August 2018, Zheng and Zhang conspired to commit economic espionage to benefit the Chinese government and related entities, including Shenyang Aerospace University, the Shenyang Aeroengine Research Institute and the Huaihai Institute of Technology.

U.S. officials alleged that, through the two Chinese companies, Zheng and Zhang received financial support from the Chinese government and coordinated with Chinese government officials to enter into research agreements with state-owned institutions to develop turbine technologies.

Officials valued the secrets at "millions of dollars."

China's economic espionage is estimated to cost U.S. businesses tens if not hundreds of billions of dollars a year. "Chinese spying has surpassed Cold War levels," said James Lewis, a cyber-policy expert at the Center for Strategic and International Studies.

Authorities say that to conceal his alleged activities, Zheng used encryption and a technique called "steganography" to hide secret material in otherwise ordinary files or messages — in one instance in a digital photograph of a sunset, the indictment says.

Zheng also is accused of lying to FBI agents about emailing GE's confidential material to contacts in China, according to the indictment.

The link between the alleged theft of trade secrets and China's economic program illustrates why the Justice Department sees this as a national security priority, said John Carlin, an assistant attorney general in the Obama administration. "It is to counter what they lay out as a Chinese state plan to steal from, replicate and replace U.S. companies in both their domestic market and worldwide," he said.

This post has been updated to include a statement from General Electric.

Steven Rich contributed to this report.

Training

The Bureau of Industry and Security invites you to register for one of these upcoming seminars on the Export Administration Regulations (EAR), and on how to build your own export compliance program.

<https://www.bis.doc.gov/index.php/compliance-a-training/current-seminar-schedule>

- Complying with U.S. Export Controls
June 5-6, 2019, Seattle, Washington
Registration: \$550
- Complying with U.S. Export Controls
June 11-12, 2019, Detroit, Michigan
Registration: \$580
- How to Build an Export Compliance Program
June 13, 2019, Detroit, Michigan
Registration: \$290
- Complying with U.S. Export Controls
July 24-25, 2019, St. Louis, MO
Registration: \$575

*“Pleasure in the job puts
perfection in the work.”*

Ukraine Won't Appeal Landmark WTO National Security Ruling

The Ukrainian government said it will not appeal the World Trade Organization's landmark decision upholding Russia's right to impose trade restrictions in the name of national security and welcomed the panel's measured analysis in uncharted legal territory.

Web Notice: The Directorate of Defense Trade Controls (DDTC) is currently in the process of modernizing its IT systems. During this time period, we anticipate there may be delays in response times and time to resolve IT related incidents and requests. We apologize for any inconvenience, and appreciate your patience while we work to improve DDTC services. If you need assistance, please contact the DDTC Service Desk at (202) 663-2838, or email at DtradeHelpDesk@state.gov (06.28.16)

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