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Top News

Commerce’s Military End-User Restrictions Could Create Significant Due Diligence Burdens, Law Firms Say

The Commerce Department’s new export restrictions on military end-users may significantly raise due diligence requirements for industry, leading to licensing delays and a burdensome vetting process for technology companies, law firms said. If Commerce’s Bureau of Industry and Security does not clarify the scope of the rule to limit its impact, the rules are likely to damage the semiconductor, telecommunications and aircraft sectors, the law firms said. “This could have a detrimental impact on a broad swath of U.S. industry,” Baker McKenzie [said](#) in an April 30 blog post. “A universe of transactions triggering license requirements could significantly increase.”

The rules, announced last month, included an amendment to the Export Administration Regulations that broadened licensing requirements for exports, re-exports and transfers of items intended for military uses and users in China, Russia and Venezuela (see [2004270027](#)). After industry voiced concerns about the rule, Commerce said it planned to issue guidance to help companies comply with the new requirements (see [2004280052](#)). But if the guidance does not adequately clarify definitions in the rule and address industry’s responsibility for vetting whether a customer qualifies as a military end-user, it could significantly disrupt trade, according to Squire Patton Boggs. “Without any clarifications or limitations on this definition,” the firm [said](#) May 1, “the rule could [extend] deep into the supply chain to items that are steps away from a military item, but that could indirectly support or contribute to an ultimate military item.”

U.S. companies that supply the covered items to a Chinese business that conducts “any ... degree of business in support of military end uses” could trigger a license requirement, Baker McKenzie said. The law firm said Chinese semiconductor foundries can now be considered military end-users “if even a small volume of semiconductor wafers they produce is used for integrated circuits for incorporation into defense articles.” The rule would also apply to Chinese aircraft organizations that supply maintenance services for both commercial and military planes, the law firm said.

And because Commerce plans to review license applications under a presumption of denial, some U.S. companies may see their business with China restricted. “Should the U.S. Government adopt a broad interpretation of these terms,” Baker McKenzie said, “U.S. companies supplying non-sensitive, broadly available items to Chinese companies for civilian applications ... may need BIS licenses.”

Once the rule takes effect June 29, companies will need to impose “significant additional due diligence” measures on their customers, Fried Frank [said](#) in an April 30 alert. The law firm said it is advising clients to update their compliance policies and sales agreements to “include the necessary compliance procedures ... to account for these export restrictions.” The new restrictions will likely require suppliers of the designated exports to “go through a rigorous vetting process,” Baker McKenzie said.

And while the rule also restricts exports to Russia and Venezuela, it will “have an especially acute effect on transactions with China,” according to a May 1 [post](#) from Kelley Drye. Companies doing business in China may need “additional certification from their business partners” that their exports will not violate the end-use and end-user requirements, the law firm said. The additional due diligence requirements and the increased uncertainty may lead to delays during the licensing process, the firm said.



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“These significant new restrictions are primarily aimed at and will especially impact trade with China,” according to the post. “Companies exporting covered items to China ... should immediately begin preparation to comply with these rules.” — *Ian Cohen*

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Top ECD Articles You May Have Missed From Last Week

Export Compliance Daily is providing readers with some of the top stories for April 27 - May 1 in case you missed them.

You can find any article by searching on the title or by clicking on the hyperlinked reference number.

Article	Reference #
Impacts of Export Controls, Trade Restrictions in US-China Competition Unclear Despite Increasing Use, Experts Say	2004240025
DDTC Announces Suspension of Certain Fees, Extensions of Registrations, Licenses	2004240017
Commerce Expands Licensing Requirements for Certain Exports to China, Russia, Venezuela	2004270027
Commerce Considering Removing Authorized Countries Under License Exception APR	2004270025
BIS to Issue Guidance on Expanded Licensing Requirements for Exports to China, Commerce Official Says	2004280052
Treasury Sets CFIUS Filing Fees for Certain Transactions	2004280027
Commerce Drafts Rule to Address US Participation in Standards Setting Bodies	2004290047
Wassenaar Disrupted by COVID-19 Pandemic, Commerce Officials Say	2004290044
American Express' Faulty Screening System Led to Sanctions Violations, OFAC Says	2004300030
Commerce Official Urges Patience Amid Export Licensing Delays	2004300031

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Sanctions

EC Sanctions Six Nicaraguan Officials

The European Council sanctioned six people responsible for human rights violations in Nicaragua, according to a May 4 [press release](#). The EU [sanctioned](#) Ramon Antonio Avellan Medal, Sonia Castro Gonzalez, Francisco Javier Diaz Madriz, Nestor Moncada Lau, Luis Perez Olivas and Justo Pastor Urbina. All six people are officials working for Nicaragua's National Police or the government.

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UN Issues North Korea Sanctions Exemption for South Korean NGO

The United Nations issued a sanctions exemption to allow a South Korean non-governmental organization to ship goods into North Korea, according to an April 30 UN [letter](#). The organization, Greentree International, will import a range of construction materials into North Korea for an “agricultural rehabilitation

project” to assist people with disabilities. The items will be shipped together in a “consolidated manner” to increase “efficiency of shipping and custom clearance.”

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Tariffs and Trade Negotiations

NOTE: The following report appears in both International Trade Today and Export Compliance Daily.

US, UK Officially Launch Negotiations for 'Ambitious' FTA

The U.S. officially [announced](#) the launch of the first round of trade negotiations with the United Kingdom (see [2005040034](#)) on May 5, saying nearly 30 negotiating groups will discuss trade terms over the next two weeks. The first round of virtual talks will be followed by more rounds every six weeks until international travel is safe, the U.K.’s Department for International Trade [said](#). Both sides said they are seeking an “ambitious agreement” and plan to negotiate quickly. “We will undertake negotiations at an accelerated pace,” U.S. Trade Representative Robert Lighthizer said in a statement.

Lighthizer also said the deal “will strengthen our economies, support good-paying jobs and substantially improve opportunities for trade and investment between our two countries.” U.K. Trade Secretary Elizabeth Truss said the U.K. “will drive a hard bargain to secure a deal that benefits individuals and businesses in every region and nation of the UK.” The U.K. said it will publish a summary of the first round of negotiations after they end.

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Congress

Grassley Hopes UK FTA Accepts GMOs, Jettisons GI Rules

Senate Finance Committee Chairman Chuck Grassley, R-Iowa, hopes that a free trade agreement with the United Kingdom—for which negotiations started May 5—would be more favorable to American agriculture than European Union policies have been. Grassley, who was speaking to reporters on a conference call May 5, said the EU restrictions that irritate him the most are on the use of feed additives for cattle, geographical indications, and “that we can’t get [genetically modified organisms] into Europe.”

He expressed hope that the U.K. would be less wedded to rules on cheese names than Italy and other southern European countries have been. However, the U.K. government [says](#) Stilton cheese, for instance, is a GI brand, and [says](#) it intends to continue protecting GIs after Brexit.

Grassley thinks if the U.K. agrees to an FTA that is more favorable to American agriculture, that would embarrass Europe into being more receptive. “It may be naive for me to believe that’s possible,” he said, given how little indication he’s gotten of that openness when he talks agricultural trade with European politicians who visit him. However, he said he still wants advances in agriculture in any FTA with Europe. “I believe you’d find [U.S. Trade Representative Robert] Lighthizer being of the same frame of mind,” he said. —*ML*

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Other U.S.

USDA Increases Available Credit Guarantees for Agricultural Exports

The U.S. Department of Agriculture on May 4 [announced](#) “increased availability” of credit guarantees for agricultural exports for 2020. The credit is available under the Commodity Credit Corporation’s Export Credit Guarantee Program, and [includes](#) export credit for Africa, the Middle East, Turkey, the Caucasus region, Central Asia, Asia and Latin America.

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Asia Pacific

Myanmar Announces Temporary National Application of Online Customs Clearance Service

Importers in Myanmar will be able to temporarily receive online customs clearance for their goods on a “national basis,” according to a May 5 [report](#) from the Hong Kong Trade Development Council. Previously, importers could only secure customs clearance at “specified customs entry points” in the country’s capital of Yangon. The expanded use of the Myanmar Automated Cargo Clearance System will allow importers to claim import duty benefits under the Association of Southeast Asian Nations Trade in Goods Agreement through May 31, the report said. The temporary basis is in support of businesses during the COVID-19 outbreak.

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Middle East and Africa

Kenya Reimposes Verification Fees on Container Imports

Kenya recently reintroduced “verification charges” on traders importing container cargoes, according to a May 5 [report](#) from the Hong Kong Trade Development Council. The measure, which took effect April 21, will establish fees ranging from \$80 to \$120 for verifications of 20-foot to 40-foot containers, respectively. The fees have met “stiff opposition” from industry, the report said, who say it will increase logistics costs during a time when companies are already struggling due to the COVID-19 pandemic.

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Nigeria Eliminates VATs, Customs Duties for Medical Imports

Nigeria announced tax and tariff exemptions for certain medical imports due to the COVID-19 pandemic, according to a May 4 KPMG [post](#). The measures, which took effect May 1, exempt medical supply imports from value-added taxes and customs duties for six months, the post said.

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