



# EIB World Trade Headlines

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## EIB June 1st. Seminar Westford, Massachusetts

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## ENFORCEMENT INFORMATION FOR MARCH 16, 2016

Information concerning the civil penalties process is discussed in OFAC regulations governing the various sanctions programs and in 31 C.F.R. part 501. On November 9, 2009, OFAC published as Appendix A to part 501 Economic Sanctions Enforcement Guidelines. See 74 Fed. Reg. 57,593 (Nov. 9, 2009). The Economic Sanctions Enforcement Guidelines, as well as recent final civil penalties and enforcement information, can be found on OFAC's Web site at <http://www.treasury.gov/ofac/enforcement>.

### ENTITIES – 31 CFR 501.805(d)(1)(i)

MasterCard International Incorporated Receives a Finding of Violation Regarding Violations of the Reporting, Procedures and Penalties Regulations: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has issued a Finding of Violation to MasterCard International Incorporated ("MasterCard") for violations of the Reporting, Procedures and Penalties Regulations (RPPR), 31 C.F.R. part 501.

On October 25, 2007, OFAC designated Bank Melli pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," and Bank Saderat pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism," and added both parties to the List of Specially Designated Nationals and Blocked Persons (the "SDN List").<sup>1</sup> At the time OFAC designated Bank Melli and Bank Saderat, MasterCard held accounts in which Bank Melli or Bank Saderat had an interest.

MasterCard had previously taken steps to restrict the above-referenced accounts following the issuance of Executive Order 12959 of May 6, 1995, "Prohibiting Certain Transactions With Respect to Iran" ("E.O. 12959"), which prohibited the exportation of goods, services (including financial services), or technology from the United States to Iran. In the time between the issuance of E.O. 12959 and the above-referenced designations, the Bank Melli and Bank Saderat accounts became dormant on MasterCard's books, but the assets in the accounts nonetheless remained with MasterCard. MasterCard, however, failed to report the accounts to OFAC as blocked following OFAC's designation of the banks. By failing to properly report the above-referenced accounts in which Bank Melli and Bank Saderat had an interest, MasterCard violated § 501.603(b) of the RPPR.

<sup>1</sup> Pursuant to the Joint Comprehensive Plan of Action (JCPOA) of July 14, 2015, the United States committed to lift secondary sanctions with respect to activity with certain persons on Implementation Day. On January 16, 2016, OFAC removed Bank Melli from the SDN List and, as a result, non-U.S. persons will not be subject to secondary sanctions solely for engaging in activity that involves Bank Melli provided that the activity does not involve persons on the SDN List or conduct that remains sanctionable as described in Section VII of the Guidance Relating to the Lifting of Certain Sanctions Pursuant to the JCPOA on Implementation Day. The removal of Bank Melli from the SDN List does not impact the violations described in this enforcement action, however. In addition, it is important to note that Bank Melli is on the List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599, "Blocking Property of the Government of Iran and Iranian Financial Institutions." Any property or interests in property of Bank Melli that come within the United States or in the possession or control of a U.S. person must be blocked.

While no MasterCard personnel appear to have had actual knowledge of the conduct that led to the violations, MasterCard had reason to know that it maintained funds associated with two banks on the SDN List. As a large and commercially sophisticated company that deals primarily with banks and other financial institutions, MasterCard should have identified and reported accounts, funds, and property and interests in property belonging to banks identified on the SDN List (regardless of whether such accounts are dormant or active), consistent with its obligations under § 501.603(b) of the RPPR.

The determination to issue a Finding of Violation to MasterCard reflects OFAC's consideration of the following facts and circumstances, pursuant to the General Factors under OFAC's Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. A Finding of Violation is appropriate given that MasterCard is a large and commercially sophisticated financial services company; MasterCard's failure to properly block and report these accounts to OFAC resulted in OFAC's reports to Congress and responses to other inquiries related to blocked property being incomplete, which could have had a negative impact on U.S. government decision-making; MasterCard's failure to properly record interest on the accounts reduced the value of blocked assets available to the Congress and the President; and MasterCard's OFAC compliance program appears to have lacked internal controls that would have prevented, or later identified the oversight of, the violations. OFAC also considered that no MasterCard personnel, including managers or supervisors, appear to have had actual knowledge of the conduct that led to the violations; although MasterCard failed to report these funds to OFAC, the funds never reached the sanctioned parties;

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MasterCard has not received a penalty notice or Finding of Violation from OFAC relating to substantially similar violations in the five years preceding the date of the conduct giving rise to the violations; and MasterCard substantially cooperated with OFAC's investigation, including by voluntarily self-disclosing the violations to OFAC and by executing a statute of limitations tolling agreement and an extension to the agreement. OFAC also considered that a Finding of Violation is the most appropriate response to promote compliance with OFAC reporting obligations by institutions such as MasterCard.

For more information regarding OFAC regulations, please visit: <http://www.treasury.gov/ofac>.

## ISIL Guidance

BIS prohibits the shipment of items subject to the Export Administration Regulations (EAR) to the Islamic State of Iraq and the Levant (ISIL) absent a license in conjunction with regulations administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC). OFAC has designated ISIL as a Specially Designated Global Terrorist (SDGT) and the Department of State has designated ISIL as a Foreign Terrorist Organization (FTO).

As part of its efforts against ISIL, the U.S. Government is targeting not only ISIL's abilities to raise revenue but also its purchase and use of U.S.-origin items. BIS is committed to preventing ISIL from procuring U.S.-origin items, like oilfield equipment, that generate wealth as well as components useful for improvised explosive devices to support terrorist activities. Our goal is to provide industry with information on potential diversion risks to safeguard the export, reexport, and transfer (in-country) of U.S.-origin items and protect national security.

ISIL controls facilities located in the areas which it controls and uses the facilities to generate revenue; some of these facilities require U.S.-origin parts and accessories to operate. A list of ISIL-controlled facilities in Iraq and the addresses thereof is incorporated into Attachment A of this notice (see below). BIS advises persons exporting or reexporting U.S.-origin items to Iraq to review Attachment A on a regular basis; it will be updated as necessary. BIS also reminds persons exporting or reexporting U.S.-origin items to Syria of the existing license requirements for all items subject to the EAR, other than food or medicine classified as EAR99. The full text of BIS's licensing requirements and policy specific to Syria is found [here](#). Exporters/reexporters are advised that sanctions administered by other agencies, including those administered by OFAC, may also impact transactions in the region. Exporters/reexporters should note that U.S. entities/persons are generally prohibited from engaging in activities with any entities/persons who are on the OFAC administered Specially Designated Nationals and Blocked Persons List.

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Pursuant to Section [744.12](#) of the EAR, BIS requires a license for the export or reexport to an SDGT of any item subject to the EAR. However, to avoid duplication, U.S. persons are not required to seek authorization for an export or reexport to an SDGT of an item that is subject to both the EAR and OFAC's regulatory authority from both OFAC and BIS. Rather, if OFAC authorizes an export from the United States or an export or reexport by a U.S. person to an SDGT, no separate authorization from BIS is necessary. However, U.S. persons must seek authorization from BIS for the export or reexport to an SDGT of any item subject to the EAR that is not subject to OFAC's jurisdiction and non-U.S. persons must seek authorization from BIS for any export from abroad or reexport of any item subject to the EAR to an SDGT. BIS will generally review license applications for exports or reexports to SDGTs under a policy of denial. No license exceptions or other BIS authorizations are available for the export or reexport to an SDGT of an item subject to the EAR. Additionally, the EAR does not make contract sanctity available for export or reexport license applications to SDGTs.

BIS's license requirements for shipments of items subject to the EAR to FTOs are found in Section [744.14](#) of the EAR. Note especially the guidance in Section 744.14(e), which is specific to FTOs that are also designated as Specially Designated Terrorists (SDTs) or SDGTs, and directs that the guidance specific to SDTs or SDGTs, as applicable, will apply instead. BIS also notes that an export, reexport, or transfer (in-country) to geographic areas controlled by ISIL carries a "red flag" and suggests that you exercise caution and strong oversight if you opt to engage in an EAR transaction within these areas. A list of geographic areas known to be under ISIL control is contained in Attachment B (see below).

For additional information on this FAQ or attachments, please contact the Office of Enforcement Analysis at the following: [EEinquiry@BIS.DOC.GOV](mailto:EEinquiry@BIS.DOC.GOV) or 202-482-1881.

[Attachment A: ISIL-Controlled Facilities](#)

[Attachment B: ISIL-Controlled Territories](#)

ISIL is also known as THE MONOTHEISM AND JIHAD GROUP, AL-ZARQAWI NETWORK, AL-TAWHID, TANZIM QA'IDAT AL-JIHAD FI BILAD AL-RAFIDAYN, THE ORGANIZATION OF AL-JIHAD'S BASE IN IRAQ, THE ORGANIZATION OF AL-JIHAD'S BASE OF OPERATIONS IN IRAQ, AL-QAIDA OF JIHAD IN IRAQ, AL-QAIDA IN IRAQ, AL-QAIDA IN MESOPOTAMIA, AL-QAIDA IN THE LAND OF THE TWO RIVERS, AL-QAIDA OF THE JIHAD IN THE LAND OF THE TWO RIVERS, AL-QAIDA OF JIHAD ORGANIZATION IN THE LAND OF THE TWO RIVERS, AL-QAIDA GROUP OF JIHAD IN IRAQ, AL-QAIDA GROUP OF JIHAD IN THE LAND OF THE TWO RIVERS, THE ORGANIZATION OF JIHAD'S BASE IN THE COUNTRY OF THE TWO RIVERS, THE ORGANIZATION BASE OF JIHAD/COUNTRY OF THE TWO RIVERS, THE ORGANIZATION OF AL-JIHAD'S BASE IN THE LAND OF THE TWO RIVERS, THE ORGANIZATION BASE OF JIHAD/MESOPOTAMIA, THE ORGANIZATION OF AL-JIHAD'S BASE OF OPERATIONS IN THE LAND OF THE TWO RIVERS, TANZEEM QA'IDAT AL JIHAD/BILAD AL RAAFIIDAINI, ISLAMIC STATE OF IRAQ, JAM'AT AL TAWHID WA'AL-JIHAD, ISLAMIC STATE OF IRAQ AND AL-SHAM, ISLAMIC STATE OF IRAQ AND SYRIA, AD-DAWLA AL-ISLAMIYYA FI AL-'IRAQ WA-SH-SHAM, DAESH, DAWLA AL ISLAMIYA, AL-FURQAN ESTABLISHMENT FOR MEDIA PRODUCTION, ISLAMIC STATE, ISIL, ISIS

## Temporary General License

This final rule amends the Export Administration Regulations (EAR) by adding Supplement No. 7 to Part 744 to the EAR to create a temporary general license to specify that “notwithstanding the requirements and other provisions of Supplement No. 4 to part 744, which became effective on March 8, 2016, the licensing and other requirements in the EAR as of March 7, 2016, pertaining to exports, reexports, and transfers (in-country) of items “subject to the EAR” to Zhongxing Telecommunications Equipment (ZTE) Corporation, ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, China, and ZTE Kangxun Telecommunications Ltd., 2/3 Floor, Suite A, ZTE Communication Mansion Keji (S) Road, Hi-New Shenzhen, 518057 China, are restored as of March 24, 2016 and through June 30, 2016. Thus, for example, the authority of NLR or a License Exception that was available as of March 7, 2016, may be used as per this temporary general license. The temporary general license is renewable if the U.S. Government determines, in its sole discretion, that ZTE Corporation and ZTE Kangxun are timely performing their undertakings to the U.S. Government and otherwise cooperating with the U.S. Government in resolving the matter.”

## Addition of Certain Persons and Modification of Certain Entries to the Entity List; and Removal of Certain Persons from the Entity List

This rule amends the Export Administration Regulations (EAR) by adding forty-four persons under forty-nine entries to the Entity List. The forty-four persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These forty-four persons will be listed on the Entity List under the destinations of China, Germany, Hong Kong, India, Iran, Malaysia, the Netherlands, Singapore, Switzerland, and the United Arab Emirates (U.A.E.). This final rule also removes five entities from the Entity List under the destinations of Ukraine and the U.A.E., as the result of requests for removal received by BIS, a review of information provided in the removal requests in accordance with the procedure for requesting removal or modification of an Entity List entity and further review conducted by the End-User Review Committee (ERC). Finally, this final rule modifies two existing entries in the Entity List, both under the destination of China. These entries are being modified to reflect additional aliases and addresses for these persons. BIS implements this rule to protect U.S. national security or foreign policy interests and to ensure entries on the Entity List are accurate and up-to-date.

## Cuba Licensing Policy Revisions

This rule revises the EAR to allow cargo on a vessel that is on temporary sojourn to Cuba to transit Cuba on that vessel under a license exception. It also allows license exception shipment of EAR99 items and items controlled for antiterrorism reasons only to persons authorized by the Office of Foreign Assets Control to establish and maintain a physical or business presence in Cuba. Finally, it adopts a policy of case-by-case review for items that would enable or facilitate exports from Cuba of items produced by the private sector. This rule was published simultaneously with a Department of the Treasury, Office of Foreign Assets Control rule that amended the Cuban Assets Control Regulations.

## Additions to the Entity List (Final Rule)

This final rule amends the Export Administration Regulations (EAR) by adding four entities to the Entity List. The U.S. Government has determined that the four entities are acting contrary to the national security or foreign policy interests of the United States. The four entities will be listed on the Entity List under the destinations of People’s Republic of China (China) and Iran.

## Federal Register Notice: Public Comments for USML Categories VIII and XIX

Public comments received on the review of United States Munitions List Categories VIII and XIX are now available. (03.28.16)

[http://www.pmdtc.state.gov/regulations\\_laws/documents/proposed\\_rules/CategoryVIIIandXIX\\_Comments.pdf](http://www.pmdtc.state.gov/regulations_laws/documents/proposed_rules/CategoryVIIIandXIX_Comments.pdf)

## Industry Notice: DDTTC Agreement Guidelines

Revision 4.3 of the "Guidelines for Preparing Agreements" has been posted. (03.28.16)

[http://www.pmdtc.state.gov/licensing/documents/AG\\_Rev%204.3.pdf](http://www.pmdtc.state.gov/licensing/documents/AG_Rev%204.3.pdf)

Response to Industry Comments on Agreement Guidelines. (03.28.16)

<http://www.pmdtc.state.gov/licensing/documents/IndustryComments.pdf>

## Industry Notice: IT Modernization Webinar for Industry

The webinar on IT modernization of the DTrade application is scheduled for **March 25, 2016 from 10:00 a.m. (EST) to 11:00 a.m. (EST)**. [Click here to view the invitation.](#) (03.16.16)

To join the webinar go to <https://irmedip.adobeconnect.com/chatwsme/>.

Note: The webinar will allow for 100 participants. If you are unable to join the webinar session but would like to join via the conference line: Toll Free Number: 877-336-1829; Access Code: 730 766

## Federal Registration Notice: Proposed Rule

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XII (2.19.16)  
<http://www.pmdtc.state.gov/FR/2016/81FR8438.pdf>

## President Obama's 2016 Trade Policy Agenda: Trade that Serves the American People

*Trade Agenda highlights the economic benefits of the landmark TPP agreement, including the more than 18,000 tax cuts on Made-in-America exports*

Washington, D.C. – Today, the Office of the U.S. Trade Representative released President Obama's 2016 Trade Policy Agenda. Throughout this Administration, we have sought to level the playing field for American workers, raise global trade standards, and enforce U.S. trade rights to promote economic growth, strengthen the American middle class, and support well-paying jobs at home.

**"The President's trade agenda is focused on supporting U.S. jobs and raising wages,"** said U.S. Trade Representative Michael Froman. **"Over the past seven years, the Administration has fought hard to open the largest and fastest-growing markets to U.S. exports, most notably in the Asia-Pacific. Our efforts have helped position more Americans to compete—and win—in tomorrow's global economy."**

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The 2016 Trade Agenda outlines key priorities in the United States bilateral and multilateral trade and investment relationships, including the Trans-Pacific Partnership, which will cut over 18,000 taxes on Made-in-America exports, support more high-paying U.S. jobs, and promote both our interests and our values. It also highlights our efforts to conclude the Transatlantic Trade and Investment Partnership, the Environmental Goods Agreement, the Trade in Services Agreement, and work to strengthen our trade and investment ties with countries and regional partners around the world.

Finally, the report provides an overview of major trade accomplishments under President Obama's leadership, including:

- Improving and securing passage of the Korea, Colombia, and Panama FTAs;
- Bringing 20 enforcement cases at the WTO, more than any other country;
- Working with Congress to update and renew bipartisan Trade Promotion Authority, and extending and improving Trade Adjustment Assistance;
- Renewing the Generalized System of Preferences (GSP) program and the African Growth and Opportunity Act (AGOA) to promote developing in Africa and elsewhere;
- And expanding the Information Technology Agreement, concluding the Trade Facilitation Agreement and rejuvenating the WTO negotiating process.

The Office of the United States Trade Representative is the lead agency responsible for the development and implementation of the President's Trade Policy Agenda, which it sends in conjunction with the Annual Report on trade developments over the past year.

<https://ustr.gov/sites/default/files/2016-Trade-Policy-Agenda.pdf>

## United States and Honduras Achieve Breakthrough on Intellectual Property Protection and Enforcement

*New 2016 Work Plan will benefit American agriculture, creative industries, telecommunications, textiles and apparel and other exports that support high-paying jobs here at home by preventing piracy and intellectual property theft*

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Washington, D.C. – The Office of the United States Trade Representative (USTR) announced today that the Government of Honduras (GOH) has committed to undertake a series of actions to strengthen the protection and enforcement of intellectual property in Honduras after the United States took special measures last year to increase engagement on intellectual property enforcement there.

This breakthrough was reached after the United States carried out an Out-Of-Cycle Review of intellectual property protection in Honduras in order to determine if that country should be placed on USTR's Special 301 intellectual property Watch List.

These new GOH commitments in the [2016 Work Plan](#) will address concerns raised by the United States in the Out-Of-Cycle Review and will strengthen implementation of the CAFTA-DR commitments relating to intellectual property.

**“Today’s agreement is an important success for the fair treatment of American businesses and workers, including in the dairy, creative industries, telecommunications textiles and apparel and industries,”** said U.S. Trade Representative Michael Froman. **“Honduras is to be commended for the new commitments it has made to advancing intellectual property protection and enforcement, and for the collaborative approach it has taken to resolving these issues with us.”**

Intellectual property rights (IPR) enforcement is the principal focus of the commitments by the Honduran government. To bolster criminal enforcement, the GOH will substantially increase the number of prosecutors specializing in criminal IPR enforcement by the end of this March. The GOH has also committed to publish quarterly reports on prosecution case activity, in order to promote transparency and accountability as this plan is implemented.

Additionally, the Work Plan addresses signal piracy in cable and satellite transmissions. Prosecutors will work to efficiently resolve pending criminal investigations associated with this problem and GOH authorities will engage with rights holders to promote expanded use of administrative enforcement options. The GOH’s cable regulatory authorities have committed to accept right holder identification of authorized cable licensees, and to take appropriate administrative enforcement actions, including the imposition of fines and suspension of business licenses in appropriate cases. These regulatory authorities also committed to publish quarterly reports on administrative enforcement activity.

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The Work Plan also addresses the need for greater clarity in the scope of protection for geographical indications (GIs). GOH authorities have committed to clarify how an interested party may seek clarification as to whether individual components of a compound geographical indication are generic and therefore not entitled to GI protection when used in isolation. The GOH has also made key commitments to clarify the possible generic status of individual terms in future cases, via public notices. For greater clarity as to the scope of GIs already granted, Honduran authorities have posted clarifying information on a GOH official webpage. Among the terms clarified as being generic in that information are “parmesano” (the Spanish language term for “parmesan”), “provolone,” and “bologna.” These commitments will assist U.S. food and agricultural producers, such as dairy farmers, to increase trade in cheese and meat products with Honduras.

Other commitments provide cross-cutting benefit. GOH authorities have committed to review draft measures to improve border enforcement through implementation of a customs trademark registry. The GOH also committed to reactivate the Interagency Commission to Combat Piracy and Counterfeiting in order to strengthen interagency coordination and cooperation in the protection of intellectual property rights in Honduras.

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