



EIB World Trade Headlines

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May 1, 2018 - Volume 10, Issue 8

FLIR SYSTEMS PROPOSED CHARGING LETTER

Mr. James J. Cannon
Chief Executive Officer
FLIR Systems, Inc
27700 SW Parkway Avenue
Wilsonville, OR 97090

Re: Alleged Violations of the Arms Export Control Act and the International Traffic in arms Regulations by FLIR Systems, Inc.

Dear Mr, Cannon:

The Department of State (“Department”) charges FLIR Systems, Inc. (“Respondent” or “FLIR”) with violations of the Arms Export Control Act (AECA), 22 U.S.C. 2751 et seq., and the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130, in connection with the unauthorized export of defense articles;

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the unauthorized provision of defense services to various countries, including proscribed destinations; violations of the provisos, terms, and conditions of licenses; and failure to provide accurate and complete reporting on political contributions, commissions, and fees in connection with commercial sales of defense articles or defense services. A total of 347 violations are alleged at this time.

The essential facts constituting the alleged violations are described herein. The Department reserves the right to amend this proposed charging letter, including through a revision to incorporate additional charges stemming from the same misconduct of Respondent. Please be advised that this proposed charging letter, pursuant to 22 CFR 128.3, provides notice of our intent to impose civil penalties in accordance with 22 CFR 127.10.

When determining the charges to pursue in this matter, the Department considered a number of mitigating factors. Most notably, the Respondent: (a) submitted eighteen (180 voluntary disclosures pursuant to 22 CFR 127.12 that acknowledged a portion of the charged conduct and other potential ITAR violations; (b) entered into an agreement with the Department's Directorate of Defense Trade Controls ("DDTC") tolling the statutory period; and (c) instituted a number of self-initiated compliance program improvements during the course of DDTC's review.

The Department also considered countervailing factors, including: (a) significant compliance program and internal control deficiencies that directly contributed to the violations; (b) deficient ITAR expertise and senior leadership oversight during time periods covered by voluntary disclosures in this letter; (c) failure to effectively investigate, uncover, and disclose violations; (d) frequency and repetitive nature of the same violations; and (e) failure to implement remedial compliance measures represented to the Department.

JURISDICTION

Respondent is a corporation organized under the laws of the State of Oregon and a U.S. person within the meaning of 22 CFR 120.15. Respondent is subject to the jurisdiction of the United States.

Respondent was engaged in the manufacture and export of defense articles and was registered as a broker, manufacturer, and exporter with DDTC, in accordance with 22 U.S.C. 2778(b) and 22 CFR 122.1 during the period described herein.

FLIR Surveillance, Inc. is a U.S. subsidiary, and FLIR Systems AB ("FLIR AB") is a Swedish subsidiary of Respondent.

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The described violations relate to defense articles, including technical data, controlled under Categories VIII, XL, and XLL of the United States Munitions List (USML), 22 CFR 121.1, at the time the violations occurred. Some of the ("SME"), requiring a DSP-83 Nontransfer and Use Certificate.

BACKGROUND

Respondent manufactures and exports advanced sensors and integrated sensor systems for various military and commercial platforms used to protect borders, gather intelligence, and protect critical infrastructure. Respondent relies heavily on its international sales as explained in its U.S. Securities and Exchange Form 10-K, dated December 31, 2017, and requires regular interaction with the Department. Between January 1, 2012 and December 31, 2016, which is during the relevant period of this proposed charging letter, the Department approved 3,740 licenses, authorizing \$9.9 billion of exports.

VIOLATIONS

ITAR violations included in this proposed charging letter are derived from Respondent's voluntary disclosures and matters not voluntarily disclosed to DDTC in accordance with 22 CFR 127.12, to include violations DDTC uncovered. Due in part to the large number of violations over an extended period of time, the Department provides a summary of the violations. Many of the violations fall into three general categories: foreign-person employment, license management, and 22 CFR Part 130 payments. Also included in this proposed charging letter are additional charges for violations resulting from the Respondent's inadequate internal controls and commitment to compliance. The conduct is not localized to a specific facility, product line, sales territory, or authorization type.

Respondent repeatedly discovered and disclosed violations to DDTC, in some cases finding that previously reported assurances, to include remedial compliance measures were not implemented, and in one instance, the disclosed activity in violation of the ITAR continued. In other cases, Respondent's reported remedial measures failed to prevent or detect additional similar violations.

I. Unauthorized Exports to Foreign-Person Employees

Between April 3, 2008 and August 24, 2012, Respondent submitted four (4) voluntary disclosures describing the unauthorized export of technical data and defense articles;

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and unauthorized provision of defense services involving the design, manufacture, and sale of thermal imaging camera systems then controlled by USML Category XII to dual national/third country national (“DN/TCN”) employees from over 15 countries, including Iran, Iraq, and Lebanon, that were prohibited destinations pursuant to 22 CFR 126.1 at the relevant time. Violations were disclosed as having occurred at the company’s domestic and overseas locations. In reliance on the reported remedial measures to prevent recurrence, DDTC closed the voluntary disclosure cases without imposing a civil penalty.

In June 2014, Respondent disclosed that it had not previously reported the full scope of violations related to foreign-person employees and that Respondent did not implement certain corrective actions that it had previously represented to DDTC that it already had implemented, to include terminating unauthorized access and confirming U.S. person status of its existing employees accessing defense articles. Respondent identified violations pertaining to the activities of foreign-person employees from additional countries not previously disclosed, to include 22 CFR 126.1 countries of Cuba and Vietnam. The scope of activities in violation of the ITAR involved the design, manufacture, repair, and sale of thermal imaging camera systems, including camera cores and gimbals, and radar systems for purpose of ground and airborne intelligence, surveillance, and reconnaissance generally controlled under USML Category XII, and as applicable, further designated as SME, at the time.

Respondent disclosed that it did not collect citizenship information necessary to determine licensing requirements for its foreign-person employees and that one subsidiary, FLIR AB Sweden, did not effectively manage evidence of foreign-person employees holding nationality from more than one country, to include 22 CFR 126.1 countries, for purposes of ITAR compliance.

Respondent disclosed that the manner in which it granted employees permissions to the information technology (IT) system resulted in unauthorized access by DN/TCNs to ITAR-controlled technical data. These foreign-person employees had access to technical data at their assigned worksite and at Respondent’s worksites located in foreign countries. Approximately 1,350 foreign-person employees had access to all ITAR-controlled technical data (over 1,400 files) located on Respondent’s servers in 22 non-U.S. facilities.

II. Failure by Respondent to Properly Apply for and Manage Department of State Licenses and Exemptions

Respondent submitted to DDTC multiple voluntary disclosures describing its poor management of export authorizations and exemptions.

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The types of violations include unauthorized exports; failure to comply with the terms and conditions of authorizations; misuse of exemptions; inaccurate or incomplete shipping documents; and failure to obtain proper license endorsement involving defense articles generally controlled under USML Category XII, and certain articles further defined as SME, at the time: thermal imaging systems, lenses, and integrated dewar cooler assemblies.

In the context of international trade shows, Respondent also disclosed the loss or theft of defense articles because of inadequate safeguards, such as displaying a defense article outside of Respondent’s field of view and unsecured to the display. In one instance, Respondent’s Events Coordinator secured the camera, USML XII©, SME in an exhibitor cabinet; all exhibitor cabinets were accessible with the same key. In more than one instance, Respondent failed to notify DDTC of the loss/theft of defense articles within a certain timeframe, in violation of the relevant license proviso. Respondent also disclosed that it has historically failed to obtain authorization for foreign vendors and contractors who store, forward, modify, or incorporate Respondent’s ITAR-controlled defense articles into other end items.

Respondent’s internal review of some of its temporary export authorizations from August 2007 to June 2013 concluded that one or more violations occurred in all 32 licenses reviewed. The violations included failure to decrement or inaccurately report quantities of item shipped; failure to record shipments properly or at all; failure to return items to the U.S. prior to the license expiration; and destruction or retransfer of defense articles without authorization. In several instances, Respondent failed to comply with the requirement of ITAR 123.9(b) to inform end-users and foreign consignees that the defense articles being exported are subject to U.S. export laws and regulations. A foreign consignee confirmed this when it notified DDTC that it did not know the end-use requirements applicable to the Respondent’s products.

Respondent disclosed conducting fourteen (14) shipments of radars controlled under USML Category XI(a)(3)(i), SME, without obtaining Nontransfer and Use Certificates (DSP-83), contrary to the condition of the Canadian exemption, 22 CFR 126.5(b). Three of the fourteen non-compliant shipments occurred after Respondent uncovered the earlier violations and had implemented measures that were supposed to prevent future, similar violations.

Respondent’s license submission practices presented a challenge for DDTC to assess the proposed transactions described in license applications. In particular, it posed a challenge for DDTC to confirm the bona fides of parties and perform end-use monitoring. Respondent repeatedly submitted inconsistent information on its agreement applications and relevant attachments (e.e., failed to

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identify destinations proscribed under 22 CFR 126.1), further complicating DDTC's review of proposed transactions.

DDTC's review of Respondent's license submissions reflect deficiencies in at least three (3) areas: 1) failure to comply with and/or implement license provisos or conditions directed at subsequent license submissions; 2) failure to submit required information in accordance with the ITAR; and 3) misrepresentation and/or omission of material fact in violation of the ITAR. In addition, Respondent submitted six (6) license applications with an ineligible entity per 22 CFR 120.1©(2). Respondent informed DdtC that it was aware that the entity was ineligible prior to submitting the license applications but still included it because the entity was selected as the exclusive freight forwarder and on-site handling agent for a major defense trade show.

Respondent also disclosed that it failed to reflect a corporate reorganization, effective January 1, 2015, which created a new subsidiary, FLIR Surveillance, in new license submissions and amend existing licenses and agreements. FLIR Surveillance produces the majority of the Respondent's ITAR-controlled products. As a result, from January 1, 2015 to mid-2016, Respondent exported defense articles and provided defense services on both licenses and agreements that did not reflect FLIR Surveillance's role in violation of the ITAR. Respondent's error occurred in part from its failure to contact the Office of Defense Trade Controls Licensing to address licensing issues stemming from reorganization.

III. Undisclosed Payments under Part 130

In 2011, Respondent disclosed violations related to the failure to report payments of political contributions, fees, and commissions as required by 22 CFR Part 130. This disclosure related only to exports pursuant to DSP-5 Licenses for permanent export. In that disclosure, Respondent described implementing corrective actions applicable to DSP-5 licenses to reduce future violations.

In 2016, with respect to 19 technical assistance agreements involving the maintenance or installation of Respondent's thermal imaging systems or a component thereof on primarily military platforms (generally controlled under USML Category XII, SME), Respondent disclosed its failure to submit required 22 CFR Part 130 reports concerning obligations to pay commissions. Respondent also neglected to update DDTC concerning the payment of commissions under 22 CFR 130.10 and report over \$8 million of actual fees or commissions paid pertaining to 10 of the 19 agreements. Respondent acknowledged that the company did not extend the same corrective actions identified in its 2011 voluntary disclosure to agreements.

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RELEVANT ITAR REQUIREMENTS

The relevant period for the alleged conduct is June 17, 2010, through April 26, 2017. The regulations effective as of June 17, 2010, are described below. Any amendments to the regulations during the relevant period are identified in a footnote.

22 CFR 121.1 for the entire period of the alleged conduct identified the items that are defense articles, technical data, and defense services pursuant to Section 38 of the AECA.

22 CFR 120.7 for the entire period of the alleged conduct described significant military equipment for which special export controls are warranted because of their capacity for substantial military utility or capability.

22 CFR 122.4(a) for the entire period of the alleged conduct described that a registrant must, within five days of the event, provide to DDTC a written notification if there is a change in certain information contained in its Statement of Registration.

22 CFR 122.5(a) described that a person who is required to register must maintain records concerning the manufacture, acquisition and disposition, of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by 22 CFR Part 130. All records must be maintained for a period of five (5) years from the expiration of the authorization or from the date of the transaction.

22 CFR 123.5 for the entire period of the alleged conduct described the requirements for temporary exports.

22 CFR 123.9(b) described that the exporter shall incorporate the following statement as an intergral part of the bill of lading, and the invoice whenever defense articles on the U.S. Munitions List are to be exported: These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.

22 CFR 126.1(a) for the entire period of the alleged conduct described that it is the policy of the U.S. to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating in certain countries, including those prohibited by United Nations Security Council embargoes.

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22 CFR 126.1(e) for the entire period of the alleged conduct described that anyone that knows or has reason to know of a proposed or actual sale, or transfer, of a defense article, defense service or technical data to a prohibited country must immediately inform DDTC.

22 CFR 127.1(a) described that is unlawful to export, import, re-export or re-transfer any defense article or technical data to furnish any defense service for which a license or written approval from DDTC; to violate any of the terms or conditions of licenses or approvals granted pursuant to the ITAR; or to engage in the business of manufacturing, exporting, or brokering without complying with the registration requirements.

22 CFR 127.1(b) described that any person who is granted a license or other approval under the ITAR is responsible for the acts of employees, agents, and all authorized persons whom possession of the licensed defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary custody of a defense article exported from the United State or produced under an agreement described in part 124 of the ITAR, and irrespective of the number of intermediate transfers, are bound by the regulations of the ITAR in the same manner and to the same extent as the original owner or transferer.

22 CFR 127.1(d) described that no person may knowingly or willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

22 CFR 127.2(a) described that it is unlawful to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by the ITAR.

22 CFR 127.2(b) described export and temporary import control documents for the purposes of 22 CFR 127.2(a)

22 CFR 130.9 described that applicants must inform DDTC as to whether the applicant or its vendors have paid or offered or agreed to pay fees or commissions in respect of any sale for which a license or approval is requested.

22 CFR 130.10 for the entire period of the alleged conduct described that persons required under 22 CFR 130.9 to furnish information must furnish the information described in 22 CFR 130.10 to DDTC.

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22 CFR 130.14 for the entire period of the alleged conduct described that each applicant must maintain a record of any information it was required to furnish or obtain under Part 130 and all records upon which its reports are based for a period of not less than five years following the date of the report to which they pertain.

CHARGES

Charges 1-219: Unauthorized Exports to Foreign-Person Employees at 22 of Respondent's Non-U.S. Facilities

Respondent violated 22 CFR 127.1(a)(2) and 127.1(b)(1) one-hundred and forty (140) times when without authorization Respondent, to include FLIR AB, Sweden, caused to be reexported ITAR-controlled defense articles or technical data, to include electronic data on its IT system, and provided defense services to foreign-person employees with citizenship or permanent residency not authorized under agreements in violation of the terms and conditions or proviso of Respondent's agreements.

Respondent, to include FLIR AB, Sweden, violated 22 CFR 126.1(e)(2) eleven (11) times when it failed to inform DDTC of the reexport of defense articles and technical data that it had had reason to know had been reexported to dual national foreign-person employees who held citizenship or permanent residency of a country prohibited by 22 CFR 126.1(a)

Respondent violated 22 CFR 127.1(e) twenty-three (23) times when Respondent, to include FLIR AB, Sweden, continued to allow unauthorized reexports of ITAR-controlled defense articles and technical data (including derivative technical data) to foreign-person employees. Seven (7) of the 23 charges are pursuant to foreign-persons from 22 CFR 126.1 destinations.

Respondent violated 22 CFR 127.1(a)(1) one (1) time when without authorization it exported defense articles to foreign-person employees who held citizenship or permanent residency of a country prohibited by 22 CFR 126.1(a).

Respondent violated 22 CFR 127.2(a) twenty-one (21) times when it misrepresented and/or omitted material facts in license applications pursuant to 22 CFR 127.2(b)(1) when it failed to disclose to the Department the citizenship or permanent residency of the Respondent's foreign person employees participating in the regulated activities described in license applications.

Charges 220-326: Failure to Export Defense Article in accordance with the ITAR

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Respondent violated 22 CFR 127.1(a)(1) one (1) time when it without authorization exported five (5) THV-3000 thermal imaging systems controlled at the time of export under USML Category XII(c), SME

Respondent violated 22 CFR 127.1(a)(2) three (3) times when without authorization reexported or changed the end use of defense articles involving two (2) integrated dewar assemblies and thirteen (13) lenses controlled under USML Category XII(c), SME, and USML Category XII(e) at the time of reexport, respectively.

Respondent violated 22CFR 127.1(b)(1) thirty-eight (38) times when it violated the terms or conditions of a license or approval granted to Respondent or conditions of an exemption.

Respondent violated 22 CFR 123.5 thirty-two (32) times when it failed to retain records or obtain endorsements by the U.S. Customs and Border Protection on thirty-two (32) temporary exports licenses in accordance with 22 CFR 123.5.

Respondent violated 22 CFR 127.1(a)(4) four (4) times when Respondent failed to ensure its freight forwarder correctly identified the defense articles, radars, as SME in the Electronic Export Information filing.

Respondent violated 22 CFR 122.5(a) one (1) time when it failed to maintain complete or legible export control records related to shipping.

Respondent violated 22 CFR 123.9(b)(1) on (1) time when Respondent failed to incorporate the export control statement specified in 22 CFR 123.9(b)(1) as an integral part of the bill of lading, air waybill, or other shipping document.

Respondent violated 22 CFR 127.1(e) one (1) time, when Respondent from August 11, 2015 to June 5, 2016 continued to permit the use of a defense article, one (1) thermal imaging camera core controlled at the time under USML Category XII(c), SME by foreign end user in violation of the terms or conditions of a license.

Respondent violated 22 CFR 127.2(a) two (2) times when respondent's export documents as described in 127.2(b)(14) contained statements misrepresenting that the ITAR shipment was subject to the Export Administration Regulations.

Respondent violated 22 CFR 127.2(a) twenty (20) times when it misrepresented or omitted material facts in 20 license applications for permanent exports, temporary exports, reexports, and transfer.

Respondent violated 22 CFR Section 127.2(a) two (2) times when it exported defense articles, to include technical data against licenses and agreements that did not represent FLIR Surveillance, Inc.'s participation.

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Charges 327-347: Failure to Disclose Payments under Part 130

Respondent violated 22 CFR 130.9(a)(1) nineteen (19) times when it failed to disclose it had paid or agreed to pay fees, or commissions in respect of a sale for which a license or other approval was required.

Respondent violated 22 CFR 130.9(d) one (1) time when it failed to update DDTC concerning the payment of commissions reportable under 130.10.

Respondent violated 22 CFR 130.14 one (1) time when it failed to maintain Part 130 records.

ADMINISTRATIVE PROCEEDINGS

Pursuant to 22 CFR 128.3(a), administrative proceedings against a respondent are instituted by means of a charging letter for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three (3) years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed \$1,134,602, per violation, may be imposed as well, in accordance with 22 U.S.C. 2778(e) and 22 CFR 127.10.

A respondent has certain rights in such proceedings as described in 22 CFR Part 128. This is a proposed charging letter. In the event, however, that the Department serves Respondent with a charging letter, the company is advised of the following:

You are required to answer a charging letter within 30 days after service. If you fail to answer the charging letter, your failure to answer will be taken as an admission of the truth of the charges and you may be held in default. You are entitled to an oral hearing, if a written demand for one is filed with the answer, or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing.

Additionally, in the event that the company is served with a charging letter, its answer, written demand for oral hearing (if any) and supporting evidence required by 22 CFR 128.5(b), shall be in duplicate and mailed to the administrative law judge designated by the Department to hear the case at the following address:

USCG, Office of Administrative Law Judges G-CJ,
2100 Second Street, SW
Room 6302
Washington, DC 20593

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If a respondent does not demand an oral hearing, it must transmit within seven (7) days after the service of its answer, the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matter in issue.

Please be advised also that charging letters may be amended upon reasonable notice. Furthermore, pursuant to 22 CFR 128.11, cases may be settled through consent agreements, including after service of a proposed charging letter.

The U.S. government is free to pursue civil, administrative, and/or criminal enforcement for AECA and ITAR violations. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,
Michael F. Miller
Acting Deputy Assistant Secretary

Mexico Signs Pact with EU; Still Talking with US, Canada

Bloomberg) -- Senior trade officials from the U.S., Canada and Mexico will meet again in Washington in an intensified push to reach a Nafta agreement in the next few weeks.

Talks will pick up on Tuesday, after cabinet-level members vowed on Friday to keep up the momentum following consultations with their technical teams over the weekend. Mexican Economy Minister Ildefonso Guajardo said last week that after seven months of discussions, the three sides have entered a concentrated phase where "my negotiating team is practically living in Washington." Still, major differences remain over key U.S. demands.

Mexico scored a separate commercial victory over the weekend with a deal in principle to update a 17-year-old free-trade agreement with the European Union. Guajardo jetted to Brussels to help close the deal.

Chrystia Freeland, Canada's minister for foreign affairs, said Friday that North American Free Trade Agreement negotiators have been making good progress on updated rules for cars, which she said will be at the heart of any eventual updated Nafta.

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"We have had some very energetic and productive conversations," Freeland told reporters on the steps of the U.S. Trade Representative's office following meetings with her counterparts. "We are certainly in a more intense period of negotiations, and we are making good progress."

Immigration Controls

U.S. President Donald Trump on Monday said again that he could make Mexican-immigration curbs a condition of a new Nafta deal, highlighting that a deal is still far from certain. Trump in a Twitter post said Mexico "must stop people from going through Mexico and into the U.S.," adding "We may make this a condition of the new NAFTA Agreement. Our Country cannot accept what is happening!"

Foreign Minister Luis Videgaray responded it's unacceptable to demand that Mexico tie changes to its "sovereign" immigration policy to an updated trade pact.

"Mexico decides its immigration policy in a sovereign manner, and the migration cooperation with the U.S. takes place in such a way that Mexico agrees," Videgaray said on Twitter.

Cars, Agriculture

This week's talks are set to be the broadest and biggest since the final official negotiating round in Mexico City in early March, according to a preliminary agenda obtained by Bloomberg. Topics include automotive rules, agriculture, and legal and institutional matters such as dispute settlement mechanisms.

Mexican President Enrique Pena Nieto traveled to Germany over the weekend to meet with Chancellor Angela Merkel at the Hannover Messe, a huge industry show where Mexico is the chosen partner country this year. Deepening ties with the EU is part of Mexico's push to diversify beyond the U.S., the destination for 72 percent of the nation's \$435 billion in exports last year. Pena Nieto said he's optimistic he'll have good news to announce from the Nafta talks.

The EU is an attractive target for export expansion for Mexico, in part because many countries in the bloc have consumers with comparable wealth and spending habits to those of the U.S. The EU in recent years also inked a free-trade agreement with Canada, which was implemented in 2017.

Mexico's negotiations with the EU began almost two years ago, and technical teams will continue to iron out the details, both sides said Saturday. Analysts have speculated that something similar could happen on Nafta, with an agreement in principle coming in the next few weeks while technical teams continue to work on the fine print.

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Trump's negotiators, led by U.S. Trade Representative Robert Lighthizer, have been pushing for a deal by early May. That would meet U.S. timelines for having an agreement approved, at the latest, by the lame-duck session that will follow mid-term congressional elections in November, said two people familiar with the negotiations. Guajardo this month said he sees an 80 percent chance of an agreement by the first week of May. Negotiators are also rushing for a deal as Mexico approaches elections on July 1.

Canadian Prime Minister Justin Trudeau is keeping expectations modest, warning that recent signs of progress don't mean a deal is imminent.

"There's positive advances that have been made, but it's not over 'til it's over," Trudeau told reporters in Halifax, Nova Scotia, on Saturday.

U.S. DEPARTMENT OF STATE Bureau of Political Military Affairs U.S. Conventional Arms Transfer Policy

The President has issued a National Security Presidential Memorandum (NSPM) approving a new and updated U.S. Conventional Arms Transfer (CAT) Policy to support Allies and partners, expand opportunities for American industry and create American jobs, and maintain U.S. national security while thoroughly reviewing arms transfers to ensure that they are in the U.S. interest.

This policy provides a framework under which U.S. Government agencies review and evaluate proposed arms transfers. This new policy reflects the priorities of the President's National Security Strategy to 1) preserve peace through strength by reforming regulations to facilitate exports of U.S. military equipment; 2) strengthen partners and allies, 3) facilitate U.S. economic security and innovation; while 4) upholding respect for human rights and U.S. nonproliferation objectives.

The updated CAT Policy also increases focus on the appropriate use of U.S. arms and military training, and directs that the United States offer support to allies and partners to reduce the chances national and coalition operations, or activities of civilian security forces and police, will cause civilian harm.

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Specifically, we will increase opportunities for pre-deployment training and simulations of complex operational environments to help partners avoid civilian casualties. We will also encourage acquisitions of U.S. technology and training to enable more accurate battlespace awareness and more accurate targeting. We will also continue training to assist security forces in carrying out operations in a manner that respects human rights.

This NSPM is the first step in a series of very practical, results-focused initiatives to transform the way the United States Government works to support and grow our defense industrial base. It directs a government-wide initiative to better align our conventional arms transfers with our national security and economic interests. It requires the United State Government to develop, and ultimately implement, a work plan to improve transfers in the most beneficial manner to national security and foreign policy interests, to include maintaining our technological edge, providing capabilities to meet shared objectives, and preventing the proliferation that may be destabilizing and dangerous to international peace and security.

In the coming weeks, we will be engaging with stakeholders to gain their perspectives on this initiative. We encourage submission of comments via email to <http://ArmsTransferProcess@state.gov>.

ZTE: Commerce ban could 'severely impact the survival and development' of company

April 23, 2018

ZTE on April 20 finally issued a formal response to the April 16 ruling by the Department of Commerce that the Chinese communications technology vendor had failed to meet the terms of a disciplinary agreement and therefore would be subject to a seven-year ban on access to U.S. produced communications components and technology (see """). The company said it has significantly enhanced its compliance capabilities, suggested that the decision to implement the ban was hasty, and said the action "will not only severely impact the survival and development of ZTE, but will also cause damages to all partners of ZTE including a large number of U.S. companies."

The statement details the actions ZTE has taken to improve its compliance procedures. They include:

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- established a CEO-led Compliance Committee
- developed a team of "experienced export control compliance experts"
- hired consultants to advise the company on compliance issues
- introduced and implemented the SAP Global Trade System (GTS)
- "organized" compliance training for more than 65,000 employees
- cooperated with the independent monitor the Commerce Dept. designated to oversee ZTE's compliance with the disciplinary ruling
- provided over 132,000 pages of documents
- spent in excess of \$17 million in 2017 on compliance-related issues.

However, the company did not offer an explanation for the bonuses paid executives named as complicit in the original export violations nor for the lack of timeliness in delivering letters of reprimand to all employees considered active in the violations. However, it asserted, "It is unacceptable that BIS [Bureau of Industry and Security, the Commerce Dept. unit overseeing the issue] insists on unfairly imposing the most severe penalty on ZTE even before the completion of investigation of facts, ignoring the continuous diligent work of ZTE and the progress we have made on export compliance and disregarding the fact that (1) ZTE self-identified the issues in the correspondence and self-reported by ZTE immediately; (2) the Company has taken measures against the employees who might have been responsible for this incident; (3) corrective measures has been taken immediately; and (4) a prestigious U.S. law firm has been engaged to conduct independent investigation."

In its order imposing the ban, the BIS and the Commerce Dept. said that several of the letters of reprimand that ZTE said in letters dated November 30, 2016 or July 20, 2017 had either already been delivered or would soon be delivered were not sent until a month after the BIS sent a letter of inquiry on February 2, 2018.

"These false statements were not corrected by ZTE even in part until March 2018, more than 15 months from ZTE's November 30, 2016 letter, approximately a year from the Settlement Agreement (which ZTE executed on March 2, 2017) and the March 23, 2017 Order, and nearly eight months from the July 20, 2017 letter. During a conference call on March 6, 2018, ZTE indicated, via outside counsel, that it had made false statements in the November 30, 2016 and the July 20, 2017 letters," wrote Richard R. Majauskas, acting assistant secretary of commerce for export enforcement, in the order that placed the ban in effect.

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After citing the damage the ban might have on the company and its U.S. supplier base, ZTE stated that it hopes the issues with the Commerce Dept. can be settled "through communication." The company said it was willing to resort to less friendly means as well.

"In any case, ZTE will not give up its efforts to resolve the issue through communication, and we are also determined, if necessary, to take judicial measures to protect the legal rights and interests of our Company, our employees, and our shareholders, and to fulfill obligations and take responsibilities to our global customers, end-users, partners, and suppliers."

North Korean leader Kim Jong-un says he has suspended all missile tests and will shut down a nuclear test site.

"From 21 April, North Korea will stop nuclear tests and launches of intercontinental ballistic missiles," the country's state news agency said.

Mr Kim said further tests were unnecessary because Pyongyang's nuclear capabilities had been "verified".

The surprise announcement comes as North Korea prepares for historic talks with South Korea and the US.

Mr Kim is due to meet his South Korean counterpart Moon Jae-in next week for the first inter-Korean summit in over a decade, and US President Donald Trump by June.

Both countries have been pushing Pyongyang to denuclearise and they reacted positively to the latest development.

"This is very good news for North Korea and the World - big progress!" Mr Trump tweeted after the announcement.

On Thursday, the US leader said there was a "bright path available to North Korea when it achieves denuclearisation".

A spokesperson for the South Korean president called the North's move "meaningful progress".

"It will also contribute to creating a very positive environment for the success of the upcoming South-North summit and North-United States summit," a statement from Mr Moon's office said.

(*Continued On The Following Page)

- North Korea crisis in 300 words
- North Korea's nuclear programme explained
- Did sanctions push N Korea into US talks?

China, North Korea's main ally, also welcomed the move, saying it would "help ameliorate the situation on the peninsula".

Why has Pyongyang halted tests?

The decision to suspend missile launches was made during a meeting of the ruling party's central committee on Friday, the Korean Central News Agency (KCNA) said.

In a statement quoted by the agency, Mr Kim said it was no longer necessary to conduct missile tests because "nuclear weaponisation" had been achieved.

"The northern nuclear test site has completed its mission," he said.

This echoes a previous statement made during a New Year address in which Mr Kim declared his nuclear and ballistic missile programmes completed.

After six nuclear tests North Korea may feel it does not need to upgrade its existing designs, says the BBC's Laura Bicker in Seoul.

Although Pyongyang said it would abolish its nuclear test site, there is no indication it is planning to get rid of its existing weapons.

The decision to halt missile tests is also aimed at pursuing economic growth, according to KCNA. Mr Kim reportedly pledged to "concentrate all efforts" on developing a socialist economy during Friday's meeting.

When and where might a Trump-Kim summit take place?

Mr Trump surprised the international community last month by accepting Pyongyang's suggestion for direct talks. It would be unprecedented for a sitting US president to meet a North Korean leader. He has said the summit will take place either in early June or "a little before that" and that several sites are under consideration.

Where could the summit take place?

Experts have speculated that a location for talks could be the Demilitarised Zone between North and South Korea, another Asian country, or a neutral European country.

(*Continued On The Following Column)

Speaking on Thursday, President Trump said that if he did not think the meeting would be successful he would not go, and if the meeting went ahead but was not productive, he would walk out.

Major North Korean missile tests

North Korea has carried out numerous missile tests. Some of these exploded shortly after launch, but others travelled for hundreds of miles before landing in the sea. Here are some of the major tests reported so far:

12 February 2017 - A medium-range ballistic missile launched from Banghyon air base near the west coast. It flew east towards the Sea of Japan for about 500km.

4 July 2017 - Pyongyang claimed to have successfully tested an intercontinental ballistic missile for the first time. Officials said it reached an altitude of 2,802km and flew for 39 minutes.

29 August 2017 - North Korea fired what is thought to be its first nuclear-weapon capable ballistic missile over Japan. It was launched from near Pyongyang and reached a height of about 550km.

15 September 2017 - A ballistic missile was fired across Japan for the second time and landed in the sea off Hokkaido. It reached an altitude of about 770km and travelled 3,700km.

29 November 2017 - North Korea said it had successfully tested a new type of intercontinental ballistic missile that could reach the whole of the continental US. The Hwasong-15 missile landed in Japanese waters but flew higher than any other missile the North had previously tested.



**OFFICE OF FOREIGN ASSETS CONTROL
Ukraine Related Sanctions Regulations
31 C.F.R. Part 589
General License No. 12A**

(a) Except as provided in paragraph (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 C.F.R. part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving one or more of the following blocked persons and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern daylight time, June 5, 2018:

- AgroHolding Kuban
- Basic Element Limited
- B-Finance Ltd.
- EN+ Group PLC
- JSC EuroSibEnerg
- GAZ Group
- Gazprom Burenie, OOO
- Ladoga Menedzhment, OOO
- NPV Engineering Open Joint Stock Company
- Renova Group
- Russian Machines
- United Company RUSAL PLC
- Any other entity in which one or more of the above persons own, directly or indirectly, a 50 percent or greater interest

(b) Any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 C.F.R. § 589.203, except as authorized by Ukraine Related General License 14.

(c) This general license does not authorize:

(1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons listed above;

(2) Any transactions or dealings otherwise prohibited by any other part of 31 C.F.R. chapter V, or any transactions or dealings with any blocked person other than the blocked persons listed in paragraph (a) of this general license;

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(3) The unblocking of any property blocked pursuant to any part of 31 C.F.R. chapter V, except as authorized by paragraph (a); or

(4) The exportation of goods from the United States.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue N.W., Freedman's Bank Building, Washington, DC 20220, Or via email to

OFACReport@treasury.gov

(e) Effective April 23, 2018, General License No. 12, dated April 6, 2018, is replaced and superseded in its entirety by this General License No. 12A

**DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
OFFICE OF FOREIGN ASSETS CONTROL
Ukraine Related Sanctions Regulations
31 C.F.R. Part 589
GENERAL LICENSE NO. 14**

Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with United Company RUSAL PLC

(a) Except as provided in paragraphs (b) and (c) of this general license, all transactions and activities otherwise prohibited by the Ukraine Related Sanctions Regulations, 31 C.F.R. part 589, that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States, involving United Company RUSAL PLC or any other entity in which United Company RUSAL PLC owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to April 6, 2018, are authorized through 12:01 a.m. eastern daylight time, October 23, 2018.

(b) All funds in accounts of blocked persons identified in paragraph (a) that were blocked as of 12:01 a.m. eastern daylight time, April 23, 2018 remain blocked, except that such funds may be used for maintenance or wind-down activities authorized by this general license.

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(c) This general license does not authorize:

- (1) The divestiture or transfer of debt, equity, or other holdings in, to, or for the benefit of the blocked persons described above;
- (2) Any transactions or dealings otherwise prohibited by any other part of 31 C.F.R. chapter V, or any transactions or dealings with any blocked person other than the blocked persons described in paragraph (a) of this general license; or
- (3) The unblocking of any property blocked pursuant to any part of C.F.R. chapter V, except as authorized by paragraphs (a) or (b).

U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the expiration date of this general license, to file a comprehensive, detailed report of each transaction, including the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred, with the Office of Foreign Assets Control, office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue N.W., Freedman's Bank Building, Washington, DC 20220, Or via email to OFACReport@treasury.gov

Upgrade of OFAC's FTP Server

On May 5, 2018 from 12PM to 3PM EDT, OFAC will be upgrading its FTP server (located at <ftp://ofacftp.treas.gov>). The domain name, folder structure, file locations, and IP address for this server will remain unchanged. However, service on this server will temporarily interrupted during this upgrade. If you have any difficulty accessing this server or the files contained on the server after the upgrade, please contact OFAC technical support at 1-800-540-6322 menu option 8 or e-mail us at O F A C@treasury.gov.

Senate Confirms C.I.A. Chief Mike Pompeo to Be Secretary of State

WASHINGTON — The Senate on Thursday easily confirmed Mike Pompeo as the nation's 70th secretary of state, elevating the current C.I.A. director and an outspoken foreign policy hawk to be the nation's top diplomat.

In the end, the 57-to-42 tally lacked the drama of other nail-biting confirmation votes in the Trump era. Earlier this week, Senator Rand Paul of Kentucky, the nominee's main Republican antagonist, bowed to pressure from President Trump to drop his objections. Ultimately, seven members of

Mr. Pompeo was expected to be sworn in almost immediately after the vote, after which he planned to dash to Joint Base Andrews, where a plane was waiting to fly him to Brussels on his first trip abroad as secretary of state for a meeting of NATO allies.

His agenda is already packed, with crucial deadlines in the coming weeks involving Russia, North Korea, Syria and Venezuela. And he must face these challenges while trying to repair a State Department damaged under the tenure of Rex W. Tillerson, his predecessor, and with crucial alliances frayed during the Trump presidency.

Senators were mindful of the need to get Mr. Pompeo in place, given the crush of work facing him. His confirmation seemed all but assured after Senator Heidi Heitkamp of North Dakota, a Democrat who is running for re-election in a state that Mr. Trump won by a wide margin, said last week that she would support him.

Four other Democrats who are also running for re-election in states won by Mr. Trump — Senators Joe Donnelly of Indiana, Joe Manchin III of West Virginia, Claire McCaskill of Missouri and Bill Nelson of Florida — also voted to confirm Mr. Pompeo.

For Democrats who will be on the ballot in Trump states, a vote against Mr. Pompeo could have exposed them to attacks from the Republicans, including Mr. Trump, eager to label them obstructionists.

Mr. Pompeo also managed to avoid what would have been an embarrassing rebuke on his way into the new post, as the Senate Foreign Relations Committee had seemed likely to not recommend his confirmation. But Mr. Paul, an outspoken foe of interventionist foreign policy, relented just before the committee's vote on Monday.

As secretary of state, Mr. Pompeo will also have to navigate the rivalries within the Trump administration. At the White House, John R. Bolton, the administration's third national security adviser in a little over a year, is presiding over another purge of top assistants. Mr. Pompeo must forge a working relationship with Mr. Bolton as he creates alliances with the White House chief of staff, John F. Kelly, Defense Secretary Jim Mattis, and the president's son-in-law and top adviser Jared Kushner.

Mr. Pompeo's early military career — he attended West Point and became a tank commander before leaving for Harvard Law School — could endear him to Mr. Kelly and Mr. Mattis, both former four-star generals.

Canada sees progress on NAFTA auto rules; steel tariffs loom

WASHINGTON (Reuters) - Canadian Foreign Minister Chrystia Freeland said on Wednesday that good progress has been made at the NAFTA trade talks on the key issue of auto rules, though the threat of proposed U.S. steel and aluminum tariffs coming into force next week clouded the mood.

Freeland, U.S. Trade Representative Robert Lighthizer and Mexican Economy Minister Ildefonso Guajardo met for a second straight day in a push to seal a quick deal on revamping the North American Free Trade Agreement.

"There is a very strong, very committed, good-faith effort for all three parties to work 24/7 on this and to try and reach an agreement," Freeland told reporters after talks with Lighthizer.

The bulk of talks focused on rules of origin governing what percentage of a car needs to be built in the NAFTA region in order to be sold tariff-free within North America, she said.

"I think we made some good progress. We're very much working on a set of proposals based on the creative ideas the U.S. came up with in March and I think there was good constructive progress," she added.

The ministers are expected to meet again on Thursday. U.S. President Donald Trump's negotiators initially demanded that North American-built vehicles contain 85 percent content made in NAFTA countries by value, up from 62.5 percent now. But industry officials say that has been cut to 75 percent, with certain components coming from areas that pay higher wages.

The U.S. trade representative was still pushing its proposal for wage standards for certain auto parts, a person briefed on the talks told Reuters.

This plan would set the overall regional content requirement for autos at 75 percent, but would provide more credit toward reaching that goal for final assembly and manufacturing of certain high value parts like engines in higher wage areas paying around \$15 an hour, the source said.

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"Who you are tomorrow begins with what you do today."

Some lower-value parts and materials would qualify for 70 percent and 65 percent regional thresholds, the source added.

The plan aims to preserve high-value production in the United States and Canada and put upward pressure on auto industry wages in Mexico.

TARIFF, SUNSET OBSTACLES

Freeland said Canada remained opposed to the U.S. idea of introducing a "sunset clause" that would allow one of the three NAFTA members to quit the pact after five years.

"Our view is that this is absolutely unnecessary," she said, noting that NAFTA already contained a withdrawal mechanism.

Stakeholders argue that putting such a clause in place would create uncertainty for investments.

Mexico's negotiators are also unhappy about having to deal with the steel tariff threat in parallel with the NAFTA negotiations, a Mexican source said. The sunset clause likewise remained a sticking point, the source added.

Freeland reiterated Canada's opposition to the proposed U.S. steel and aluminum duties. Trump unveiled the tariffs in March but suspended them for Canada and Mexico until May 1, citing the wish to see progress at the NAFTA talks.

"Canada's position has been clear from the outset and that is that Canada expects to have a full and permanent exemption from any quotas or tariffs," Freeland said.

Separately, Canadian Prime Minister Justin Trudeau's chief of staff, Katie Telford, who attended some of the most recent NAFTA talks, said late on Wednesday that she would "probably" be flying back to Washington on Thursday.

Although the Trump administration has been pressing for a quick deal, several major topics remain to be settled.

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