Trade Law Update

August 2024

IN THIS ISSUE

HIGHLIGHTS FROM AUGUST

BIS Issues New Guidance to Combat Russia Diversion Risks and Highlights Recent Enforcement Actions

Recently, the Commerce's Bureau of Industry and Security ("BIS") issued new guidance to exporters intended to further assist BIS in its efforts to crack down on third-party diversion to Russia.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Brass Rod From Israel: On August 5, 2024, Commerce issued its Final Affirmative Countervailing Duty Determination.
- Brass Rod From Israel: On August 5, 2024, Commerce issued its Final Affirmative Determination of Sales at Less Than Fair Value.
- Mattresses From Italy: On August 7, 2024, Commerce issued its Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances; Correction.
- Mattresses From Mexico: On August 8, 2024, Commerce issued its Final Affirmative Determination of Sales at Less-Than-Fair Value; Correction.
- Certain Glass Wine Bottles From Chile: On August 9, 2024, Commerce issued its Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Glass Wine Bottles From Mexico: On August 9, 2024, Commerce issued its Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Glass Wine Bottles From the People's Republic of China: On August 9, 2024, Commerce issued its Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination and Extension of Provisional Measures.
- Certain Tungsten Shot From the People's Republic of China: On August 13, 2024, Commerce issued its Initiation of Less-Than-Fair-Value Investigation.
- Certain Tungsten Shot From the People's Republic of China: On August 13, 2024, Commerce issued its Initiation of Countervailing Duty Investigation.
- Certain Glass Wine Bottles From the People's Republic of China: On August 26, 2024, Commerce issued its Final Affirmative Countervailing Duy Determination and Final Affirmative Determination of Critical Circumstances.
- Alloy and Certain Carbon Steel Threaded Rod From the People's Republic of China; Carbon and Alloy Steel Threaded Rod From the People's Republic of China: On August 27, 2024, Commerce issued its Final Affirmative Determination of Circumvention of the Antidumping and Countervailing Duty Orders.

Administrative Reviews

- Certain Uncoated Paper From Portugal: On August 5, 2024, Commerce issued its Final Results of the Administrative Review of the Antidumping Duty Order; 2022–2023.
- Forged Steel Fluid End Blocks From Germany: On August 8, 2024, Commerce issued its Final Results of the Countervailing Duty Administrative Review; 2022.

- Stainless Steel Sheet and Strip in Coils From the Republic of Korea: On August 12, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2022–2023.
- Utility Scale Wind Towers From Malaysia: On August 13, 2024, Commerce issued its Amended Final Results of Antidumping Duty Administrative Review; 2021–2022.
- Pentafluoroethane (R–125) From the People's Republic of China: On August 14, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2021–2023.
- Certain Uncoated Paper From Brazil: On August 16, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2022–2023.
- Forged Steel Fluid End Blocks From Italy: On August 16, 2024, Commerce issued its Final Results of the Antidumping Duty Administrative Review; 2022.
- Forged Steel Fluid End Blocks From Italy: On August 16, 2024, Commerce issued its Final Results of Countervailing Duty Administrative Review; 2022.
- Certain Softwood Lumber Products From Canada: On August 19, 2024, Commerce issued its Final Results of the Countervailing Duty Administrative Review; 2022.
- Forged Steel Fluid End Blocks From Germany: On August 19, 2024, Commerce issued its Final Results of the Antidumping Duty Administrative Review; 2022.
- Large Diameter Welded Pipe From the Republic of Türkiye: On August 20, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2022–2023.
- Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: On August 20, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Results of Countervailing Duty Administrative Review; Notice of Amended Final Results.
- Xanthan Gum From the People's Republic of China: On August 21, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results.
- Certain Passenger Vehicles and Light Truck Tires From the People's Republic of China: On August 22, 2024, Commerce issued its Final Results of Countervailing Duty Administrative Review; 2022.
- Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: On August 27, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Results of Countervailing Duty Administrative Review; Notice of Amended Final Results.
- Certain Carbon and Alloy Steel Cut-to- Length Plate From France: On August 28, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2022–2023.
- Wood Mouldings and Millwork Products From the People's Republic of China: On August 28, 2024, Commerce issued its Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2022.

Changed Circumstances Reviews

- Raw Honey From the Socialist Republic of Vietnam: On August 7, 2024, Commerce issued its Final Results of Antidumping Duty Changed Circumstances Review.

Sunset Reviews

- Cast Iron Soil Pipe From the People's Republic of China: On August 8, 2024, Commerce issued its Final Results of the Expedited First Sunset Review of the Antidumping Duty Order.
- Cast Iron Soil Pipe From the People's Republic of China: On August 8, 2024, Commerce issued its Final Results of the Expedited First Sunset Review of the Countervailing Duty Order.
- Certain Steel Wheels From the People's Republic of China: On August 9, 2024, Commerce issued its Final Results of Expedited Sunset Review of the Antidumping Duty Order.
- Certain Steel Wheels From the People's Republic of China: On August 9, 2024, Commerce issued its Final Results of the Expedited First Sunset Review of the Countervailing Duty Order.
- Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: On August 12, 2024, Commerce issued its Final Results of Expedited Second Sunset Review of Antidumping Duty Orders.
- Silicomanganese From India, Kazakhstan, and Venezuela: On August 19, 2024, Commerce issued its Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders.

Scope Ruling

- Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: On July 17, 2024, Commerce issued its Final Scope Determination, Certification Requirements, and Recission of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders.

Circumvention

- Aluminum Wire and Cable From the People's Republic of China: On August 7, 2024, Commerce issued its Preliminary Negative Scope Determinations With Respect to Cambodia, Korea, and Vietnam; Preliminary Affirmative Determinations of Circumvention With Respect to Korea and Vietnam; Preliminary Negative Determination of Circumvention With Respect to Cambodia.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Brake Drums From China and Turkey: On August 9, 2024, the ITC issued its affirmative determination of less-than-fair-value investigations.
- Low Speed Personal Transportation Vehicles From China Determinations: On August 9, 2024, the ITC issued its affirmative determination of less-than-fair-value investigations.
- Certain Pea Protein From China: On August 21, 2024, the ITC issued its affirmative determination of less-than-fair-value investigations.
- Tungsten Shot From China: On August 30, 2024, the ITC issued it affirmative determination of less-than-fair-value investigations.

U.S. CUSTOMS & BORDER PROTECTION

EAPA Case 7969: Thompson Aluminum Casting Company, Inc.

CBP issued its notification of initiation and interim measures as to evasion by Thomspon Aluminum Casting Company Inc. ("Importer") in EAPA investigation 7969, examining the evasion of AD order A-570-896 on magnesium metal from China. CBP found there was a reasonable suspicion that the Importer had been entering covered merchandise from China that was transshipped through Turkey.

EAPA Case 7899: Highland USA International, Inc.

CBP issued its Notice of Initiation of Investigation and Interim Measures as to evasion by Highland USA International, Inc. ("Highland") in EAPA investigation. This investigation is examining the evasion of AD and CVD orders A-570-836 and C-570-081 glycine from China. CBP found there was a reasonable suspicion that Highland has entered glycine from China by transshipment through Malaysia.

EAPA Case 7838: Musa Stone and KMGK

CBP issued the notice of determination as to evasion for EAPA case 7838 filed by Cambria Company LLC, against U.S. importers Musa Stone Import, Inc. and KMGK, LLC dba KMG Marble and Granite (KMGK), for evasion of AD/CVD orders A-570-084 and C-570-085 on quartz surface products from China. Specifically, evidence on the record indicates that Musa Stone Import, Inc. and KMGK transshipped Chinese-origin quartz surface products through Thailand and the Philippines. CBP has determined that there is substantial evidence of evasion of AD/CVD duties by Musa Stone Import, Inc. and KMGK and, therefore, CBP issued a formal notice of determination as to evasion and has taken enforcement actions.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

Slip Op. 24-88: BlueScope Steel, Ltd. v. United States

The Court upheld the International Trade Commission's ("ITC") decision not to revoke the AD order on hot-rolled steel from Australia. The plaintiff, an Australian exporter-producer of steel, challenged the finding asserting that (1) the ITC's decision to cumulate Australian imports of hot-rolled steel with other subject imports was an unlawful departure from the ITC's established practice of considering U.S. investments by foreign producers, and (2) the decision was unsupported by substantial evidence. The Court disagreed, finding that the past three ITC determinations that plaintiff cited did not amount to an established practice, because they all involved a different set of facts. Second, the Court found that the decision was supported by substantial evidence because, contrary to plaintiff' claims, the ITC rightfully found that plaintiff's capacity limits and contractual obligations would not disincentivize future imports of hot-rolled steel. Accordingly, the Court upheld the ITC's findings.

Slip Op. 24-89: Yama Ribbons and Bows Co. v. United States

The Court sustained Commerce's second remand redetermination in a case challenging the agency's final results in the administrative review of the CVD order on narrow woven ribbons with woven selvedge from China. On remand, Commerce selected a new subsidy rate for the Export Buyer's Credit Program of 0.87%, and accordingly, recalculated a new rate for plaintiff Yama Ribbons and Bows, Co., Ltd. No party objected, and the Court determined that the second remand redetermination complied with its prior opinion and order.

Slip Op. 24-90: Kaptan Demir Celik Endustrisi ve Ticaret A.S. v. United States

The Court denied Plaintiff's motion to intervene and motion for statutory injunction for entries that have liquidated, and which Plaintiff planned to challenge, despite having been liquidated, because Plaintiff did not present an unusual set of facts as required under U.S.C. § 1516a.

Slip Op. 24-91: International Rights Advocates v. United States

The Court dismissed plaintiff's action to compel CBP to issue a decision on allegations of cocoa imported through forced child labor from the Ivory Coast. Plaintiffs, a consortium of human right advocacy groups, filed a petition under section 706 of the APA seeking to compel CBP to exclude cocoa produced by means of forced labor in the Ivory Coast. The Court, however, dismissed the case for lack of standing. Specifically, the Court held that plaintiffs' expenses incurred from trying to persuade CBP to act in accordance with its wishes did not qualify as injury in fact as required by Article III of the Constitution. Accordingly, since plaintiff could not show injury to their core business or any diminished asset, the Court dismissed the case.

Slip Op. 24-92: Yama Ribbons and Bows Co. v. United States

The Court sustained Commerce's decision in its eighth administrative review of the CVD order on narrow woven ribbons from China. Plaintiff, Yama Ribbons and Bows, Co., Ltd. ("Yama") maintained that Commerce erred in using facts otherwise available and an adverse inference to conclude that Yama's privately owned suppliers are "authorities" within the meaning of the Tariff Act. Similarly, Yama contended that Commerce impermissibly found that the Chinese market for two inputs was distorted by the presence of government ownership or control in the industry sectors of synthetic yarn and caustic soda. Finally, Yama argued that Commerce erred in concluding that the alleged subsidies were *de facto* specific. With regards to the first and second point, the Court found that the Chinese government's non-cooperation created a gap in the record and that Commerce was statutorily allowed to apply adverse inferences. Concerning with Yama's third argument, the Court explained that Commerce reasonably concluded that caustic soda subsidies were *de facto* specific because the Chinese government did not specifically deny the allegations when it answered Commerce's questionnaire. Accordingly, the Court sustained the redetermination results.

Slip Op. 24-93 Ad Hoc Shrimp Trade Action Comm. v. United States

The Court remand Commerce's final results in the seventeenth administrative review of the AD order on frozen warmwater shrimp from India, in an action consolidating two challenges to the final results: (1) one action filed by Ad Hoc Shrimp Trade Action Committee ("AHSTAC") and American Shrimp Processors Association and ("ASPA") challenging Commerce's inclusion of certain sales in its determination of the normal value of respondent Megaa Moda Private Limited's ("Megaa Moda") sales that were allegedly not made for consumption in the home market; and (2) a second action filed by Megaa Moda contesting Commerce's refusal to offset its financial expenses with its short term capital

interest received. As for AHSTAC's and ASPA's challenge, the Court agreed with plaintiffs, noting that while it will uphold a decision of less-than-ideal clarity, the record in this case was inconclusive as to whether the contested sales were properly considered part of normal value. As to Megaa Moda's challenge, the Court held that Commerce reasonably excluded Megaa Moda's claimed "interest on FD with FBL" interest income offset because it could not discern that "FD" means fixed deposit and that repeated references to "FBL" was shorthand for the banking institution holding that deposit. Nonetheless, the Court noted that because this matter is being remanded for reconsideration of AHSTAC's and ASPA's claim with respect to Megaa Moda's normal value, Commerce retains the authority to revisit Megaa Moda's short-term interest claim of "FD with FBL" on remand, should it choose to do so.

Slip Op. 24-94: Risen Energy Co. v. United States

The Court remanded Commerce's final results in its administrative review of the CVD order on solar cells from China, finding that it was unreasonable for Commerce not to at least attempt verification of plaintiff Risen Energy's ("Risen") exporter certificates of non-use of China's Export Buyer's Credit Program ("EBCP"). In the underlying administrative review, Risen had submitted non-use certificates for over 98% of its sales, but it did not submit one certification for a single U.S. customer. Commerce initially resorted to adverse facts available and applied AFA to all of Risen's sales. The Court took issue with this draconian approach, stating that it was unreasonable to use AFA for 100 percent of Risen's sales based upon the respondent's "inability to account for a sliver of them." Focusing on the nuanced approach that is required for the use of AFA in the context of analyzing the EBCP program, the Court explained that AFA is not meant to "punish non-cooperative parties." The failure of the Chinese government to proffer information about the EBCP program, including a list of the banks that utilize the program, has been an ongoing point of contention in many administrative reviews, in which Commerce repeatedly claims that a "gap" in the record exists and resorts to AFA. While the Court relied on a previous decision finding that Commerce can reasonably posit that a gap exists in the absence of a list of "partner banks participating in the EBCP," it also found that Risen could not remedy the deficiency because it did not have the missing certificate of non-use. The Court remanded the case for Commerce to attempt verification, ordering Commerce to "determine more accurately what proportion of the sales Risen is able to account for" or to "remove at least the portion of the EBCP rate attributable to the customers demonstrating non-use from the calculation of Risen's overall CVD rate."

Slip Op. 24- 95: Resolute FP Canada Inc. v. United States

The Court sustained Commerce's decision to report an AD margin greater than the de minimis threshold for exporter Resolute FP Canada ("Resolute") in its sunset review of the AD order on softwood lumber from Canada, and its decision not to revoke the order as to Resolute as a result. As part of the underlying sunset review, Commerce used the Cohen's d test to assess whether Resolute's AD margins would lead to the likelihood of the resumption of dumping. Resolute challenged the use of the Cohen's d test, but the Court stated that neither the CIT nor the Federal Circuit had invalidated the test. Because the Cohen's d test is still a valid methodological tool for the calculation of the AD margins, the Court found that the agency can therefore continue to rely on the test, and that Commerce's determination not to revoke the order with respect to Resolute was not arbitrary and capricious.

Slip Op. 24-96: Trina Solar Co. v. United States

The Court remanded Commerce's final results in its administrative review of the AD and CVD orders on certain crystalline silicon photovoltaic products from China. The question at issue was when Commerce, in calculating a respondent's AD rate, should increase the export price by the amount of any CVD imposed to offset an export subsidy and avoid an inequitable double application of duties. Here, Commerce had found in a prior CVD administrative review that certain programs were countervailable based on adverse facts available ("AFA"). However, in the challenged administrative review, Commerce did not offset the U.S. sales price by the amount of CVD imposed, on the basis that it never determined that the programs in question were export contingent as required to offset pursuant to 19 U.S.C. § 1677a(c)(1)(C), because the export subsidy rate was based on AFA. The Court disagreed with Commerce, finding that reasonably available information, specifically an "Initiation Checklist" from the prior CVD administrative review, indicated that the programs constituted a financial contribution and were specific. As a result, the Court remanded Commerce's refusal to offset respondent's sales price for further explanation or consideration consistent with the Court's opinion.

Slip Op. 24-97: United States vv. Koehler Oberkirch GmbH

The Court granted plaintiff's motion for alternative service on defendants, in a case brought by the United States to recover from two German manufacturers (collectively "Koehler") approximately $200 million in unpaid AD duties and interest. The Government requested that the Court order service through Koehler's U.S.-located counsel, arguing that this method of service constitutes "means not prohibited by international agreement" and was in accordance with federal law, as required under USCIT Rule 4(e)(3). Koehler opposed the request, arguing that the Government should instead affect service through the issuance of diplomatic letters rogatory to the government of Germany. The Court sided with the Government, holding that even though USCIT Rule 4(e) refers to "Serving an Individual in a Foreign Country," service

through U.S. counsel is not service on U.S. counsel, and the defendant still receives the summons and complaint wherever it is located. The Court also concluded that under the circumstances of the present case, international comity and due process considerations did not preclude service through Koehler's U.S.-located counsel.

Slip Op. 24-98: HyAxiom, Inc. v. United States

The Court denied cross-motions for summary judgment in an action brought to contest CBP's tariff classification of imported "PC50 supermodules," a component of a stationary hydrogen fuel cell generator. Plaintiff HyAxiom, Inc. ("HyAxiom") claimed that its products should be classified as "producer or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers; parts thereof: producer gas or water gas," which is a duty free provision, while CBP asserted that they were "parts suitable for use solely or principally with the machines of heading 8501 or 8502: Other: Other," dutiable at 3 percent at valorem. The Court held that HyAxiom's classification was unconvincing because the PC50 does not produce a gas conforming to common definitions of the term "water gas," as the term is defined in the HTSUS. Likewise, the Court denied CBP's motion because it relied on an overly narrow interpretation of the scope of the HTSUS that is contrary to the intent of the drafters, as expressed in the explanatory notes. The Court noted that the real classification issue presented by this case was whether the principal function of the PC50 is, or is not, the gas generation function. The Court determined that genuine disputes as to the nature of the imported merchandise remained, and it denied both parties' motions for summary judgment.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Summary of Decisions

Appeal No. 22-2128: Primesource Building Products, Inc. v. U.S.

The Federal Circuit upheld the CIT's decision sustaining Commerce's final results in the fourth administrative review of the AD order on certain steel nails from Thailand. Non-selected respondents challenged Commerce's use of the expected method to calculate an all-others rate equal to the adverse facts available ("AFA") rate applied to all mandatory respondents, arguing that the rate was unreasonable and not supported by substantial evidence. The majority of the Federal Circuit panel disagreed, explaining that when all mandatory respondents receive an AFA rate, application of that rate to the non-selected respondents is "expected," and the burden is on Commerce to justify a departure from the expected method, not to justify its use. The majority agreed with the CIT that "the non-selected respondents bear the burden of providing evidence that the results of the expected method would not reasonably reflect the potential dumping margins of the non-selected respondents." While one non-selected respondent offered to submit questionnaire responses, it only did so after the deadline for the mandatory respondents had passed, and it never followed up to submit questionnaire responses. Commerce therefore reasonably determined that "there is no record evidence substantiating [that respondent's] claim that it would have received the same result in this review as it did in a previous review, had it been selected for individual examination." Circuit Judge Dyk dissented from the majority's conclusion that an AFA rate is presumptively reasonable, because a 2015 amendment removed the requirement of commercial reasonableness for AFA rates. Here, just because applying the AFA rates was "expected" did not render it "reasonable," the dissenting opinion stated, especially since it was significantly higher than the rates calculated in previous administrative reviews.

Appeal No. 22-1392: Solar Energy Industries Association v. U.S.

The Federal Circuit issued a supplemental opinion, supporting its original opinion with additional reasoning, in response to a petition for rehearing filed by plaintiffs-appellees Solar Energy Industries Association, Nextera Energy Inc., Invenergy Renewables LLC, and EDF Renewables, Inc. (collectively, "Solar"). The petition sought rehearing of a panel opinion reversing the CIT's decision to enjoin the President from enforcing Proclamation 10101, which (among other things) removed the exclusion of bifacial solar panels from certain safeguard duties previously imposed. The original opinion relied on Federal Circuit precedent, *Maple Leaf Fish Co. v. United States*, 762 F.2d 86 (Fed. Cir. 1985), which establishes that presidential actions may only be set aside where there is "a clear misconstruction of the governing statute, a significant procedural violation, or action outside delegated authority." Solar argued that *Maple Leaf* has been overturned by the Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244 (2024). Solar argued that instead of *Maple Leaf's* deferential standard of review for presidential actions, the Court must instead review issues of statutory construction *de novo*, even when considering presidential interpretation of a statute. In its supplemental opinion, the Federal Circuit reviewed its original decision under the *de novo* standard of review. At issue was whether Section 204 of the Trade Act of 1974, which authorizes the President to grant a "reduction, modification, or termination" of an existing safeguard, includes authorization to "modify" the safeguard to make it more trade restrictive. The Court found that the statute's plain text, the overall structure of the Trade Act and its legislative history supported the conclusion that "modify" in this statutory provision includes trade-restrictive changes. Because the outcome was the same

under the *Maple Leaf* and *de novo* standards of review, the Court also concluded that the case did not present an appropriate vehicle for deciding whether the *Maple Leaf* standard should be retained.

Appeal No. 22-2241: Pro-Team Coil Nail Enterprise Inc. v. U.S.

The Federal Circuit upheld the CIT's decision affirming Commerce's final determination in the first administrative review of the AD order on certain steel nails from Taiwan. Unicatch Industrial Co., Ltd., a Taiwanese producer of subject merchandise, and TC International, Inc., its affiliated U.S. reseller (collectively, "Unicatch") challenged (1) Commerce's use of adverse facts available ("AFA") to determine Unicatch's dumping margin and (2) Commerce's selection of the investigation petition rate, 78.17%, as the AFA rate for Unicatch. The Court found that Commerce's use of AFA was supported by substantial evidence, because information provided by Unicatch was incomplete and lacking in reliable cost of production information, and Unicatch had not acted to the best of its ability to comply with Commerce's requests. As to the second issue, the Court determined that Commerce's use of the petition rate was supported by substantial evidence, because it corroborated the rate to with two sales transactions.

EXPORT CONTROLS AND SANCTIONS

BIS issues proposed new rules governing US person's activities in relation to military end users

At the end of July, BIS issued two new rules (here and here) to expand the controls over the activities of US persons as well as expand the scope of goods, software, and technology for which a license is required before export, re-export, or transfer to certain end users. If implemented in current state, these rules will make the following changes:

- Expanding items requiring a license for military end users to all items subject to the EAR, which will include EAR99 items;
- Creating "military-support end user," "foreign-security end user" and "intelligence end user"; and
- Imposing controls on US persons' activities in certain circumstances when those activities are in "in support" of "military end users," "military-support end users," "military production activities," "intelligence end users" or "foreign-security end users."

The rules also proposed a list-based control for facial recognition systems and related software and technology.

BIS is accepting comments on these new rules until September 27.

BIS issues compliance note detailing export violations seen by universities

Building on its Academic Outreach Initiative, BIS recently issued a Compliance Note detailing the types of export violations most commonly disclosed by universities, common missteps leading to the violations, and remedial steps universities have taken to ensure future compliance. BIS also recently published a list of Export Compliance Resources for Academic Institutions, which includes vetting resources universities can use to conduct due diligence on potential partners in addition to more detailed examples of recent enforcement actions targeting academia.

The most common types of export violations disclosed by universities involved the unauthorized export of biohazards, the unauthorized release of controlled technology to foreign nationals, and exports to parties identified on the BIS Entity List, among others. In addition to monetary penalties, BIS reported that universities also agreed to implement a variety of remedial measures, including mandatory training programs for staff and researchers, new internal working groups and other organizational changes, internal systems to monitor access to controlled technology, and the use of software programs for restricted party screening.