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Top News

Companies Turn to End-Use Statements, Frequent Screening to Comply With Russia Sanctions, Lawyers Say	1
Conference on China Bills Faces Procedural Hurdles in Senate.....	3
EU Carbon Border Adjustment Has Difficult Political Fight, Likely to Hit US Exports.....	3

Sanctions

OFAC Sanctions Illicit Gold Traffickers	6
US Launches Multilateral Russian Oligarch Task Force.....	6

Export Filing and PGAs

Census Issues Guidance for New AES License Code	6
---	---

Tariffs and Trade Negotiations

Australia, UAE to Pursue Trade Deal.....	7
--	---

Other U.S.

China Updates Imports Covered Under Decree 248	7
--	---

Asia Pacific

Singapore Customs Arrests Malaysian National, Seizes 1,000 Cartons of Duty-Unpaid Cigarettes	7
--	---

Europe

Turkey Suspends Certain Ag Exports.....	8
---	---

Trade Calendar.....	8
---------------------	---

Top News

Companies Turn to End-Use Statements, Frequent Screening to Comply With Russia Sanctions, Lawyers Say

As the U.S. continues to tighten Russia export controls (see [2203110056](#)), more companies may ask customers to sign end-use statements as a way to document their due diligence, said Marwa Hassoun, a trade lawyer with ArentFox Schiff. Businesses must also make sure they are taking certain minimum compliance steps to comply with U.S. sanctions, said ArentFox Schiff sanctions lawyer Matthew Tuchband, including more regular screening of restricted party lists.

Hassoun, speaking during a March 16 event hosted by the Massachusetts Export Center, said more of the firm's clients are turning to end-use statements "even when they never have before" or doubling down on those statements if they have already incorporated them into contracts. Hassoun said the statements don't have to be as "formal" as the Bureau of Industry and Security's 711 form to show effective due diligence.

"They don't have to go into doom and gloom," Hassoun said. Companies can simply insert statements into contracts that state what the product shouldn't be used for, she said, and can specifically mention Russia if the other party has business ties in the country. "I think there are a lot of ways to get at the end-use statement," Hassoun said, "which is really a very nice piece of diligence and tells a good part of your narrative should something go wrong."

She also said some companies that have never used end-use statements may be hesitant to do so because they don't want to alienate their customers. "The real issue here is if the customer is going to get annoyed and not sign an end-use statement," Hassoun said. "That's a red flag in itself."

Although Hassoun recommends that companies check their contract terms and conditions to ensure there's "some export controls and sanctions language," she stressed that contract language alone doesn't offer full protection. "It shows an extra level of diligence," she said, "but it doesn't absolve you from export control violations."

Similarly, companies looking to comply with Russia sanctions administered by the Office of Foreign Assets Control may also want to increase their due diligence, Tuchband said, specifically surrounding OFAC's 50% rule. Because the rule imposes prohibitions on any companies owned 50% or more by a sanctioned party, the current Russian designations extend further than they appear.

"That means that there are hundreds, probably thousands of entities around the world in a broad array of commercial sectors that are now off limits for U.S. persons and off limits for U.S.-dollar denominated funds transfers," Tuchband said. "It may be obvious for some, but many" are probably unsure if "they have any Russian or Belarus exposure because of the expansion of the [Specially Designated Nationals] List."

Tuchband, a former OFAC deputy chief counsel, said the agency is expecting companies to, at the minimum, search for any publicly available information on customers before doing business with them. For clients that a company is "doing a lot of business with," he suggested hiring an "investigatory firm" to make sure they aren't subject to U.S. sanctions against Russia, including the 50% rule.

But he also said that extreme level of due diligence likely isn't necessary for most customers. "You should be looking for what's publicly available," Tuchband said. "But hiring another entity for every possible client, especially if you have many clients coming through on a regular basis for just short-term things, I don't think OFAC's looking for that level of due diligence all the time."

Companies should frequently screen customers against OFAC's SDN List, Tuchband added, which is becoming more important as more sanctions are rolled out. "Since OFAC is adding new individuals and entities to the SDN list every week, sometimes several times a week," he said, "this screening really needs to be continuous and evergreen to stay updated." — *Ian Cohen*

Conference on China Bills Faces Procedural Hurdles in Senate

The Senate will need to amend the House China package with upper chamber language and send it back to the lower chamber in order to begin conferencing the two measures, Senate Majority Leader Chuck Schumer, D-N.Y., said March 17. Calling it a procedural step, he noted a “small band of Republicans” is standing in the way of “quick action.”

Schumer filed cloture on the motion to proceed to the House-passed America Competes Act in order to take the next procedural step in moving to conference. Schumer’s office said it’s negotiating to begin conferencing this work period.

The Senate plans to amend the House bill next week “as quickly as we can,” Schumer said from the Senate floor: “Despite filing cloture, it’s far better for Democrats and Republicans to reach an agreement to vote on this bill quickly, and we’ll keep working on that over the next few days. It’s regrettable that a small band of Republicans are determined to stand in the way of quick action.”

Offices for Senate Minority Leader Mitch McConnell, R-Ky., and lead sponsor Sen. Todd Young, R-Ind., didn’t comment. “Creating jobs, lowering costs, fixing supply chains shouldn’t be partisan, and I hope to see an agreement to expedite this process soon,” Schumer said.

Senate Commerce Committee Chair Maria Cantwell, D-Wash., is looking ahead to a [hearing](#) next week on chips legislation with Intel CEO Pat Gelsinger, Micron CEO Sanjay Mehrotra, Lam Research CEO Tim Archer and Paccar CEO Preston Feight.

It’s “encouraging” Schumer’s office said it wants to begin conferencing this work period, ranking member Roger Wicker, R-Miss., said before Schumer filed cloture. “I’ve been ready for six weeks or more, so I’m eager to get started,” he said. “I have not been notified by anyone that I’m officially on the conference committee, but I hope to be, expect to be.”

“If we want this to pass, it’s going to have to resemble the Senate bill,” Young said Thursday during an event with the Information Technology and Innovation Foundation. “This is what so many Republicans are supportive of on this side of the Capitol, and I think many of the stakeholders understand that.” He believes conferencing will happen in the coming weeks and that passage, if it occurs, will happen in the summer. If Congress fails, it will send a bad message to U.S. investors, allies and adversaries, he said. — *Karl Herchenroeder*

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EU Carbon Border Adjustment Has Difficult Political Fight, Likely to Hit US Exports

Even as the European Council agreed on the approach to a carbon border adjustment mechanism, a lawmaker in the EU Parliament said that the fact that CBAM did not make it out of the trade committee showed how thorny it will be to get a law passed to hike tariffs on imports that do not come from countries that are fighting climate change as strongly as the EU.

On March 15, France’s Finance Minister Bruno Le Maire [said](#), “The agreement in the Council on the Carbon Border Adjustment Mechanism is a victory for European climate policy. It will give us a tool to

speed up the decarbonisation of our industry, while protecting it from companies from countries with less ambitious climate goals. It will also incentivize other countries to become more sustainable and emit less."

The Council's proposal sets a 150-euro de minimis for carbon border adjustment. "This measure would reduce administrative complexity, as around one third of consignments to the Union would fall under that category, and their aggregate value and quantity represents a negligible part of greenhouse gas emissions of total imports of such products into the Union," the EU said.

But the Council's agreement did not cover the phase-out of free allowances in Europe's cap-and-trade system to high-carbon sectors, such as steel, "and appropriate solutions on the issue of limiting potential carbon leakage from exports, so that economic efficiency, environmental integrity and WTO compatibility of the CBAM are ensured."

On March 16, Karin Karlsbro, the European parliament's rapporteur, or legislator responsible for getting the CBAM proposal through the committee of international trade, said the bill failed in her committee by one vote because of disagreements over free allowances, export rebates of the cost of carbon for European producers and what would be done with the revenue raised by a CBAM.

The initial proposal only charges exporters of steel, aluminum, fertilizers, electricity and cement a border adjustment for lower climate ambition.

Karlsbro, who spoke on a Peterson Institute for International Economics [program](#) March 16, said, "the principles are quite simple, but also politically complicated." She said that including export rebates would not be compatible with World Trade Organization rules, and she said the EU cannot do that.

Karlsbro said it also doesn't make sense from a policy perspective. If European countries get "a rebate of their carbon emissions, why should we ask others to pay [for carbon emissions]? That's the whole point."

"From my perspective, it's not possible to have free allowances and CBAM," she said, referring to the timing of phasing down those free allowances. She said that the carbon border tax must be designed only to cut carbon emissions, not to put EU industry at an advantage compared to all foreign competitors.



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Moderator Cecilia Malmstrom, who used to be the European commissioner for trade, said it's quite rare for a report to be rejected by the trade committee. "This is an indication that it will be quite difficult to agree," she said. Now, the parliament's environment committee is grappling with the bill, and they are considering a shorter transition period and whether more sectors should be targeted, Malmstrom said.

That could include basic chemicals, plastics and hydrogen.

Karlsbro said a vote is planned in June. She said the extremely high prices of energy in Europe, partly as a result of the war in Ukraine, "also make this even more sensitive." She said it's one of the most complicated and controversial measures in the parliament now. If it passes, it will be reconciled in a compromise with what the Council passes.

The Council said it's important to convince other countries to establish similar carbon pricing policies, to create a "climate club." Jeff Schott, a PIIIE senior fellow, said that the U.S. wants to be in that climate club, even though it does not have a national cap and trade program or carbon tax.

He said that producers do face costs from regulations on electricity generation, renewable fuel standards in electricity generation, and fuel efficiency standards. But how do you estimate what the cost of those policies are, he asked. Should the cost estimates be across an industry, or applied to an individual production site?

The rapporteur on the environment committee said explicitly that only countries with a price on carbon can be spared CBAM, that environmental regulations such as those in the U.S. do not count.

But the U.S. and the EU are negotiating now on a common standard on carbon intensity in steel, with an eye to lowering barriers to trade in that sector between the EU and the U.S. and raising barriers for steel imports that are not as clean. Schott said that could be constructive, or it could end up protectionist. "I'm not sure if the protectionists have more firepower than the environmentalists," he said.

Karlsbro echoed him. "There are strong forces to design these different measures in a more protectionist way and I think that would be very dangerous," she said. Schott said, "The concern is, as you increase your ambitions in terms of decarbonization, that you maintain political support at home for sustaining the policy and that isn't so simple, because there are going to be costs. Some things will become more expensive."

Malmstrom said the original list of products would only affect \$1 billion of U.S. exports to the EU, out of \$260 billion in annual goods. But the CBAM will expand to more sectors over time, she said.

Karlsbro said, "I think it's so important to stay strong in the principle that trade is something good. We should not punish our trading partners. Our fight is against the emissions, not against any countries, not against any special industry." — *Mara Lee*

Sanctions

OFAC Sanctions Illicit Gold Traffickers

The Office of Foreign Assets Control [designated](#) one individual and nine entities as part of its efforts to combat illicit gold trade. On March 17, OFAC sanctioned Alain Goetz, a Belgian businessman who operates the African Gold Refinery in Uganda as well as companies in the UAE that receive illicit gold from mines in regions of the Democratic Republic of the Congo that are controlled by armed groups involved in destabilizing activities in the Congo. Under Secretary of the Treasury for Terrorism and Financial Intelligence Brian Nelson said that “[c]onflict gold provides the largest source of revenue to armed groups in eastern DRC where they control mines and exploit miners,” in a [press statement](#).

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US Launches Multilateral Russian Oligarch Task Force

The U.S., in combination with Australia, Canada, Germany, France, Italy, Japan, the U.K. and the European Commission, launched the Russian Elites, Proxies, and Oligarchs (REPO) multilateral task force. In a March 16 [press release](#), the Treasury Department said that the members are committed to taking concrete actions, including sanctions, asset freezing, and civil and criminal asset seizure, and criminal prosecution. The task force was first announced during the [Joint Statement](#) on Further Restrictive Economic Measures on Feb. 26. Treasury Secretary Janet Yellen said the task force will “galvanize coordinated efforts to freeze and seize assets of these individuals in jurisdictions around the world and deny safe haven for their ill-gotten gains.”

Several existing programs will assist the REPO task force, including DOJ’s Task Force KleptoCapture (see [2203020044](#)). Treasury’s Financial Crimes Enforcement Network also [announced](#) efforts to support the task force. It will join the financial intelligence units of Australia, Canada, France, Germany, Italy, Japan, New Zealand, the U.K. and the Netherlands to form an FIU Working Group on Russia-Related Illicit Finance and Sanctions. FinCEN also issued an [alert](#) to financial institutions on identifying and reporting transactions involving real estate, luxury goods, and other high-value assets of sanctioned Russian elites and their proxies. Treasury is also launching the Kleptocracy Asset Recovery Rewards [Program](#), which offers reward payments for information leading to seizure, restraint or forfeiture of assets linked to corrupt foreign governments. Treasury also released a [list](#) of 50 individuals who are a “priority for the U.S.”

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Export Filing and PGAs

Census Issues Guidance for New AES License Code

The Census Bureau issued March 15 [guidance](#) on recent changes to the Automated Export System that accommodate new export controls on cybersecurity items (see [2110200036](#)). AES now includes license code 64 for newly created License Exception Authorized Cybersecurity Exports, which authorizes exports

of certain cybersecurity items. The guidance includes information on how to use the new license code and which Export Control Classification Numbers, modes of transportation and Export Information Codes are eligible. The license exception, which the Bureau of Industry and Security announced in October along with new export controls for certain cybersecurity items, took effect March 7 (see [2201110025](#)).

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Tariffs and Trade Negotiations

Australia, UAE to Pursue Trade Deal

Australia and the United Arab Emirates plan to negotiate a free trade agreement, Australia's trade ministry [said](#) March 17. The deal would be the first bilateral trade agreement between Australia and a Middle Eastern country, Australia said, and would create new "opportunities" for Australian exporters. The country also hopes the deal will represent an "important building block" toward a free trade deal with the Gulf Cooperation Council, whose members are the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait. Australia and the UAE plan to begin negotiations "in the near future."

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Other U.S.

China Updates Imports Covered Under Decree 248

China recently updated the list of products whose foreign production facilities are required to register under Decree 248, the USDA Foreign Agricultural Service [said](#) in a March 15 report. The list's 42 new products include meat, seafood and certain beverages. China also removed eight products from the list. Under Decree 248, certain U.S. production facilities may be subject to revised customs and registration procedures before their products can enter China (see [2111040018](#) and [2110130022](#)).

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Asia Pacific

Singapore Customs Arrests Malaysian National, Seizes 1,000 Cartons of Duty-Unpaid Cigarettes

Singapore arrested a Malaysian national and seized over 1,000 cartons of cigarettes for which duties had not been paid, Singapore Customs [announced](#) March 15. The man was arrested during a March 12 operation during which Singapore Customs officers saw a Malaysia-registered vehicle and a Singapore-registered truck parked on the side of the road. The officers checked the vehicles and found 1,020 cartons of cigarettes, arresting the Malaysian man. The total duty and Goods and Services tax allegedly evaded totaled \$87,100 and \$6,930, respectively (in Singapore dollars), and court proceedings are ongoing, Singapore Customs said.

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Europe

Turkey Suspends Certain Ag Exports

Turkey recently imposed temporary export bans on certain agricultural products to “stabilize” domestic market prices, the USDA Foreign Agricultural Service said in a March 15 [report](#). The ban affects shipments of grains, oilseeds, cooking oil and other agricultural goods sourced from third countries being held at bonded warehouses at the country’s seaports, USDA said. Turkey also suspended direct exports of cooking oil, bulk olive oil shipments, margarine, red lentils and dry beans, the agency said, and could block other agricultural exports “at any time.”

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Trade Calendar

- Mar 21** WTO Global Supply Chains Forum ([here](#))
- Mar 30–31** Department of Commerce ACE/AES Export Compliance Virtual Seminar, noon - 4:15 p.m. ([here](#))
- Mar 31** Commercial Customs Operations Advisory Committee Meeting 1-5 p.m. ([here](#))
- May 1–4** National Customs Brokers and Forwarders Association of America Annual Conference, Tucson, Arizona ([here](#))
- May 3–4** 2022 Annual University Export Controls Conference ([here](#))
- Jun 13–15** American Association of Exporters and Importers Conference, Fort Lauderdale, Florida ([here](#))
- Jun 29–Jul 1** BIS 2022 Update Conference on Export Controls and Policy, Washington, D.C. ([here](#))
- Sep 11–14** National Association of Foreign Trade Zones Annual Conference, Miami, Florida ([here](#))

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