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CHAPTER 16

Sanctions, Export Controls, and Certain Other Restrictions

This chapter discusses selected developments during 2016 relating to sanctions, export controls, and certain other restrictions relating to travel or U.S. government assistance. It does not cover developments in many of the United States' longstanding financial sanctions regimes, which are discussed in detail at https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx. It also does not cover comprehensively developments relating to the export control programs administered by the Commerce Department or the defense trade control programs administered by the State Department. Detailed information on the Commerce Department's activities relating to export controls is provided in the U.S. Department of Commerce, Bureau of Industry and Security's Annual Report to the Congress for Fiscal Year 2016, available at http://www.bis.doc.gov/index.php/about-bis/newsroom/publications. Details on the State Department's defense trade control programs are available at http://www.pmddtc.state.gov.

A. IMPOSITION, IMPLEMENTATION, AND MODIFICATION OF SANCTIONS

1. Iran

a. The Joint Comprehensive Plan of Action ("JCPOA")

As discussed in *Digest 2015*, the P5+1 and Iran concluded the Joint Comprehensive Plan of Action ("JCPOA") to address the international community's concerns with Iran's nuclear program on July 14, 2015. Under the JCPOA, the U.S. committed to lift nuclear-related secondary sanctions, which are generally directed toward non-U.S. persons for specified conduct involving Iran that occurs entirely outside of U.S. jurisdiction and does not involve U.S. persons. Specifically, the United States committed to lift the following secondary sanctions: financial and banking-related sanctions; sanctions on the provision

of underwriting services, insurance, or reinsurance in connection with JCPOA-consistent activities; sanctions on Iran's energy and petrochemical sectors; sanctions on Iran's shipping and shipbuilding sectors and port operators; sanctions on Iran's trade in gold and other precious metals; sanctions on certain trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal and software for integrating industrial processes in connection with JCPOA-consistent activities; sanctions on the sale, supply, or transfer of goods and services used in connection with Iran's automotive sector; and sanctions on associated services for each of these categories. In addition, the United States committed to license on a case-by-case basis the export, reexport, sale, lease, or transfer to Iran of commercial passenger aircraft and related parts and services, to license the importation into the United States of Iranian-origin foodstuffs and carpets, and to license U.S.-owned or -controlled foreign entities to engage in certain activities involving Iran. Finally, the United States committed to remove the individuals and entities specified in Attachment 3 to Annex II of the JCPOA from the List of Specially Designated Nationals and Blocked Persons ("SDN List"), the Foreign Sanctions Evaders List ("FSE List"), and/or the Non-SDN Iran Sanctions Act List ("Non-SDN ISA List").

On January 16, 2016, Implementation Day under the JCPOA, the Secretary of State confirmed that Iran had implemented its nuclear-related commitments, as verified by the International Atomic Energy Agency, making the U.S. sanctions-related commitments described in Sections 17.1-17.5 of Annex V of the JCPOA effective. See the Secretary's confirmation of IAEA verification, available at https://www.state.gov/e/eb/rls/othr/2016/251284.htm. At this time, the contingent waivers and findings issued under the Iran Freedom and Counter-Proliferation Act of 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012, the National Defense Authorization Act for Fiscal Year 2012, and the Iran Sanctions Act of 1996 discussed in *Digest 2015* became effective. In addition, to give effect to the U.S. commitments under section 4.8.1 of Annex II and section 17.3 of Annex V of the JCPOA to remove the individuals and entities specified in Attachment 3 to Annex II of the JCPOA from the relevant sanctions lists, the Secretary took action to discontinue the imposition of sanctions under section 5(a) of the Iran Sanctions Act of 1996, as amended; under section 212 of the Iran Threat Reduction and Syria Human Rights Act of 2012; under E.O. 13622 (July 30, 2012), as amended; and to waive the imposition of sanctions under Section 1244(c)(1) of the Iran Freedom and Counter-Proliferation Act of 2012 with respect to the individuals and entities identified in the Federal Register notice. 81 Fed. Reg. 4082 (Jan. 25, 2016).

Also on Implementation Day, the President issued E.O. 13716. 81 Fed. Reg. 3693 (Jan. 21, 2016). The E.O. states:

> In order to give effect to the United States commitments with respect to sanctions described in section 4 of Annex II and section 17.4 of Annex V of the JCPOA, I am revoking Executive Orders 13574 of May 23, 2011, 13590 of November 20, 2011, 13622 of July 30, 2012, and 13645 of June 3, 2013, and amending Executive Order 13628 of October 9, 2012, by revoking sections 5

through 7 and section 15. In addition, in section 3 of this order, I am taking steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995, to provide implementation authorities for aspects of certain statutory sanctions that are outside the scope of the U.S. commitment to lift nuclear-related sanctions under the JCPOA.

On January 21, 2016, the Department of Treasury's Office of Foreign Assets Control ("OFAC") amended the Iranian Transactions and Sanctions Regulations ("ITSR") to implement U.S. commitments under the JCPOA. 81 Fed. Reg. 3330 (Jan. 21, 2016). The amendments add the general licenses to authorize the importation of, and dealings in, Iranian-origin carpets and foodstuffs and related transactions to implement the U.S. commitment specified in section 5.1.3 of Annex II and section 17.5 of Annex V of the JCPOA. *Id*. In addition, in accordance with the U.S. commitment in section 4 of Annex II and section 17.4 of Annex V of the JCPOA to terminate Executive Order 13622 of July 30, 2012, the amendments remove provisions that implemented the blocking sanctions in sections 5 and 6 of E.O. 13622. *Id*. OFAC also made certain technical and conforming changes to its regulations to reflect the implementation of the U.S. commitment in section 4.8.1 of Annex II and section 17.3 of Annex V of the JCPOA to remove individuals and entities from the SDN List, the FSE List, and/or the non-SDN ISA List if they were listed in Attachment 3 to Annex II of the JCPOA. *Id*.

In March, OFAC published the names of 59 individuals, 385 entities, 76 aircraft, and 227 vessels that were removed from the SDN list, the FSE List, or the Non-SDN ISA List on Implementation Day. 81 Fed. Reg. 13,561 (Mar. 14, 2016). In addition, OFAC issued amended SDN List entries for 14 persons previously blocked pursuant to E.O. 13224, E.O. 13382, E.O. 13438, and/or the Foreign Narcotics Kingpin Designation Act. *Id.* In addition, OFAC published the names of individuals, entities, and vessels that OFAC previously identified as meeting the definition of the term Government of Iran or the term Iranian financial institution and whose property and interests in property continue to be blocked following Implementation Day solely pursuant to E.O. 13599 and Section 560.211 of the Iranian Transactions and Sanctions Regulations, 31 CFR part 560.

b. Implementation of UN Security Council resolutions

As discussed in Digest 2015 at 636, the UN Security Council endorsed the JCPOA via Resolution 2231. Resolution 2231 terminated prior UN Security Council Resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1929 (2010), and 2224 (2015) based on receipt by the Security Council of the report from the IAEA verifying that Iran has taken the actions specified in paragraphs 15.1-15.11 of Annex V of the JCPOA.

On March 14, 2016, Ambassador Power delivered remarks after Security Council consultations that were called for by the United States to discuss recent ballistic missile launches by Iran. Ambassador Power's remarks are available at http://2009-2017-usun.state.gov/remarks/7187. She condemned the launches as defying Resolution 2231, which called upon Iran not to undertake any activity "related to ballistic missiles

designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology."

c. U.S. sanctions and other controls

Sanctions relating to Iran that are outside the scope of the JCPOA have remained in place and are being enforced following Implementation Day. Further information on Iran sanctions is available at https://www.state.gov/e/eb/tfs/spi/iran/index.htm and https://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx. On January 17, 2016, OFAC designated eight individuals and three entities pursuant to E.O. 13382 ("Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters"). 81 Fed. Reg. 4365 (Jan. 26, 2016). The individuals are: Sayyed Javad MUSAVI, Sayyad Medhi FARAHI, Seyed Mohammad HASHEMI, Seyed Mirahmad NOOSHIN, Mingfu CHEN, Rahimreza FARGHADANI, Hossein POURNAGHSHBAND, and Mehrdada Akhlaghi KETABACHI. The entities are ANHUI LAND GROUP CO., LIMITED, CANDID GENERAL TRADING LLC, and MABROOKA TRADING CO L.L.C.

(1) Iran Sanctions Act, as amended

The Iran Sanctions Act ("ISA"), as amended, was scheduled to expire, absent reauthorization, on December 31, 2016. Congress ultimately reauthorized ISA through December 31, 2026 by passing the Iran Sanctions Extension Act, P.L. 114-277. On December 15, 2016, Secretary Kerry issued a statement on renewing waivers related to the proposed extension of the ISA. See December 15, 2016 press statement, available at http://2009-2017.state.gov/secretary/remarks/2016/12/265652.htm. Excerpts follow from that statement, clarifying the status of ISA in light of the JCPOA.

* * * *

This administration has made it clear that an extension of the Iran Sanctions Act is not necessary either to address activity outside the scope of the JCPOA or to snap back sanctions in the event Iran should significantly fail to perform its nuclear commitments. Even if ISA were to have lapsed, we would continue to have all the authorities we need in place to address those issues. At the same time, we have also been clear that the extension of this law is entirely consistent with our commitments in the JCPOA. Extension of the Iran Sanctions Act does not affect in any way the scope of the sanctions relief Iran is receiving under the deal or the ability of companies to do business in Iran consistent with the JCPOA. The Iran Sanctions Act was in place at the time the JCPOA was negotiated and has remained so throughout the deal's implementation.

The administration continues to have all of the necessary authorities to waive the relevant sanctions, with or without the extension of ISA. I will continue to exercise those authorities, as we committed to do in the JCPOA and have done since Implementation Day almost one year ago. I have communicated to Iranian Foreign Minister Zarif and to our P5+1 counterparts that while the existing waivers are unaffected by the extension of ISA's sunset and do not need to be

renewed at this time, I have done so today to ensure maximum clarity and convey to all stakeholders that the United States will continue to uphold our commitments under the JCPOA.

As I have said before, we are committed to doing our part to ensure that the JCPOA is working for all participants and that the Iranian people feel the appropriate benefits of the deal in order to enhance its long-term viability. As long as Iran adheres to its commitments under the JCPOA, we remain steadfastly committed to maintaining ours as well.

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(2) Section 1245 of the 2012 National Defense Authorization Act

Section 1245(d) of the NDAA requires the U.S. Government to report to Congress on the availability of petroleum and petroleum products in countries other than Iran and determine whether price and supply permit purchasers of petroleum and petroleum products from Iran to "reduce significantly in volume their purchases from Iran." If there is an affirmative determination in this regard, the statute requires the imposition of sanctions on foreign financial institutions that conduct or facilitate significant financial transactions with the Central Bank of Iran or other designated Iranian banks. Sanctions do not apply to countries that have made significant reductions in purchases of Iranian oil. See *Digest 2012* at 506-7. Effective January 20, 2014, President Obama delegated to the Secretary of State, in consultation with the Secretary of the Treasury, the authority conferred upon the President by section 1245(d)(5) of the NDAA. 79 Fed. Reg. 6453 (Feb. 4, 2014).

In Presidential Determination No. 2016-06 of May 19, 2016, the President determined that the availability of petroleum and petroleum products was sufficient to permit purchasers to reduce their purchases from Iran. 81 Fed. Reg. 37,481 (June 9, 2016). The Presidential Determination includes this addition:

> However, consistent with U.S. commitments specified in the Joint Comprehensive Plan of Action (JCPOA), the United States is no longer pursuing efforts to reduce Iran's sales of crude oil. The United States action to fulfill these commitments became effective upon reaching Implementation Day under the JCPOA, which occurred once the International Atomic Energy Agency verified that Iran had implemented key nuclear-related steps specified in the JCPOA to ensure that its nuclear program is and will remain exclusively peaceful

2. Syria

On July 21, 2016, OFAC blocked the property and interests in property of twelve persons (seven individuals and five entities) pursuant to E.O. 13582, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria." 81 Fed. Reg. 48,887 (July 26, 2016). The seven individuals (Salah HABIB, LJonha ANG, Yusuf ARBASH, Nabil TIZINI, Aous ALI, Atiya KHOURI, and Imad Mtanyus KHURI) and five entities (T-RUBBER CO., LTD, YONA STAR INTERNATIONAL, MONETA TRANSFER AND

EXCHANGE, E.K.-ULTRA FINANCIAL GROUP LIMITED, and ARGUS CONSTRUCTION) are listed in the Federal Register notice with known aliases and identifying information. *Id*. Also on July 21, 2016, OFAC blocked the property and interests in property of three persons pursuant to E.O. 13572, ''Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria.'' *Id*. The two individuals (Aous ALI and Atiya KHOURI) and one entity (MONETA TRANSFER AND EXCHANGE) are listed in the Federal Register notice with known aliases and identifying information. *Id*. OFAC also designated at the same time one individual (Atiya KHOURI) and one entity (MONETA TRANSFER AND EXCHANGE) pursuant to E.O. 13573, ''Blocking Property of Senior Officials of the Government of Syria.'' And on July 21, 2016, OFAC designated three persons pursuant to E.O. 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'': Iyad Mohammad Esam MAHROUS, the MAHROUS GROUP, and MAHROUS TRADING FZE. *Id.*

On August 30, 2016, OFAC removed one entity (DK GROUP SARL) and one individual (Jad DAGHER) from the SDN list where they had been designated pursuant to E.O. 13582 ("Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria"). 81 Fed. Reg. 62,799 (Sep. 12, 2016).

On December 23, 2016, OFAC designated one individual (Adib Muhanna) and two entities (AL-HISN and AL-QASIUN) pursuant to E.O. 13572. Also on December 23, 2017, OFAC designated seven individuals as senior government officials under E.O. 13573: Ahmad AL–HAMO, Minister of Industry; Ali AL–ZAFIR, Minister of Communications and Technology; Dureid DURGHAM, Governor of the Central Bank; Ali GHANEM, Minister of Oil, Petroleum and Mineral Wealth and Mineral Resources; Mamun HAMDAN, Minister of Finance; Ali HAMMUD, Minister of Transport; and Muhammad Ramiz TURJUMAN, Minister of Information. 82 Fed. Reg. 8261 (Jan. 24, 2017). And on December 23, 2016, OFAC designated nine individuals and two entities under E.O. 13582: Nikolay AKHLOMOV, Elena APANASENKO, Andrey DUBINYAK, Vladimir GAGLOEV, Irina KOZHENKOVA, Dmitriy MITYAEV, Leonid RESHETNIKOV, Arkadiy VAINSHTEIN, Elena ZHIROVA; CHAM WINGS AIRLINES, and SYRISS. 82 Fed. Reg. 8261 (Jan. 24, 2017).

3. Cuba

Amendments to the Cuban Assets Control Regulations

On January 27, 2016, OFAC amended the Cuban Assets Control Regulations ("CACR") to further implement elements of the new policy on Cuba announced by the President on December 17, 2014. 81 Fed. Reg. 4583 (Jan. 27, 2016). See *Digest 2015* at 639-40 regarding previous amendments to the CACR in 2015. The 2016 amendments relate to several areas, including lifting payment and financing restrictions for authorized exports and reexports to Cuba of items other than agricultural items or commodities; facilitating travel to Cuba; allowing transactions related to professional meetings and other events; disaster preparedness and response projects; and information and informational

materials, including transactions incident to professional media or artistic productions in Cuba. See *Digest 2014* at 336 regarding the new Cuba policy.

On September 13, 2016, the President determined that the continuation of the exercise of certain authorities under the Trading with the Enemy Act for one year beyond the scheduled expiration was in the U.S. national interest. Presidential Determination No. 2016-11, 81 Fed. Reg. 64,047 (Sep. 16, 2016).

4. Sudan

On February 10, 2016, Ambassador Power provided the U.S. explanation of vote at the UN Security Council's adoption of Resolution 2265 on Sudan sanctions. Ambassador Power's statement is excerpted below and available at http://2009-2017-usun.state.gov/remarks/7131.

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…We welcome today's resolution to extend the mandate of the UN's Sudan sanctions Panel of Experts. Following a brief period of relative calm, the past few weeks have been marked by aerial bombardments and ground offensives carried out by the Government of Sudan in Jebel Mara. The United Nations has reported tens of thousands of civilians displaced and dire humanitarian conditions. Yet, the Security Council has been silent.

We have had a sanctions regime in place for 12 years—and yet we have not been able to muster consensus on a single designation since 2006.

We've had an arms embargo in place for 11 years, and year after year we receive report after report of arms flowing, illegally, into Darfur.

We have created a Panel of Experts to provide this kind of reporting. And, yet, when they do, a member of this Council blocks the report from being published because its findings are so disturbing.

Today's resolution is a technical rollover, not because the Panel of Experts did not provide findings on how to respond better to the situation. Indeed, this Panel has provided a critical flow of information on the implementation of sanctions in Darfur. Its report provided information that could have better informed our decision-making. For example, this report catalogued numerous violations of the sanctions regime, underscoring the need for greater enforcement by all Member States. It also took note of recurring violations of humanitarian and human rights law. Yes, today's resolution is a technical rollover because this Council could not agree on even modest attempts to address in this resolution this information on worrying developments in the Darfur region.

We are particularly concerned that the Council was unable to address the role of illicit trafficking in natural resources in fueling conflict. The nexus between gold trafficking and armed groups—as outlined by the Panel of Experts—is very well known. This Council has addressed, without controversy, the role of gold and natural resources in other conflicts, such as the Central African Republic, the Democratic Republic of Congo, and even terrorism by ISIL. Today, the

Council should have built upon the excellent international and regional initiatives underway in this field to tackle this problem in the Sudan context.

But because of the Panel's reporting on this issue, a Panel's report may never become public. And that is extremely concerning. We urge this Council, and those who value the integrity and transparency of the work of the Security Council and its committees, to allow for this report to be published as soon as possible. Some of the same Council members who speak in certain contexts of the need for transparency in sanctions regimes in theory—including in a forthcoming meeting of this Council—now seek to block publication of information related to a real sanctions regime in practice because they do not like its findings. We cannot make judgments about what should be transparent and what shouldn't be on the basis of whether the information is convenient or inconvenient.

Finally, please let me reiterate that as penholder of this annual renewal, we take seriously our responsibility to consider the Panel's findings and recommendations, and also the views of all of the members of this Council. Some of those views could not be reconciled with the facts, including the facts presented in the Panel of Experts report that is being blocked from publication. We look forward to continuing our discussion with colleagues on how best to increase transparency, reinforce compliance with Security Council resolutions, and respond to the findings of the Panel. Truly addressing the issues facing Darfur will require this Council to speak with one voice and to take meaningful steps to help advance peace. …

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On March 9, 2016, OFAC removed ATBARA CEMENT COMPANY LIMITED from the SDN list where it had been listed pursuant to E.O. 13067. 81 Fed. Reg. 13,449 (Mar. 14, 2016).

5. Democratic People's Republic of Korea

a. Human rights

On July 6, 2016, Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, delivered a statement on behalf of the United States regarding U.S. sanctions on North Korean officials for human rights abuses. Ambassador Power's statement is excerpted below and available at http://2009-2017-usun.state.gov/remarks/7368.

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The human rights situation in North Korea is one the UN's Commission of Inquiry has said "does not have any parallel in the contemporary world." The DPRK continues to commit extrajudicial killings, enforced disappearances, arbitrary arrests, beatings, forced starvation, sexual assault, forced labor, and torture. Many of these abuses are committed in the country's political prison camps, where an estimated 80,000 to 120,000 men, women and children are held.

At the UN, where the United States has worked with the Republic of Korea and other Member States to expose horrors that for decades got too little attention, we have heard the testimonies of incredibly brave survivors of the North Korean regime… In 2014 the UN Security Council for the first time took up the cause of human rights in North Korea, recognizing the repressive rule of the DPRK regime as the threat to international peace and security it is.

Today the United States took an important step for these and other victims of DPRK abuses, by sanctioning for the first time top leaders and entities associated with human rights abuses or censorship by the regime in North Korea. These efforts represent the start of what will be an ongoing process to identify and name persons responsible for serious human rights abuses.

Our actions are consistent with the North Korea Sanctions and Policy Enhancement Act of 2016 and are taken in the context of ongoing global efforts—including by the UN Commission of Inquiry, the UN High Commissioner for Human Rights, nongovernmental organizations, and individual states—to document the abuses by the DPRK regime. These efforts send a clear message—not just to the senior leaders, but also prison camp managers and guards, censors, secret police, interrogators, and persecutors of defectors—the world is documenting your abuses, and they will not be forgotten.

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b. Nonproliferation

(1) UN sanctions

On February 25, 2016, Ambassador Power delivered remarks at the Security Council after consultations in response to the DPRK's latest nuclear test and ballistic missile launch, in violation of past Security Council resolutions. Ambassador Power's remarks describe the draft UN Security Council resolution proposed by the United States that would impose new sanctions. Her remarks are excerpted below and available at http://2009-2017-usun.state.gov/remarks/7154.

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Let me explain some of the resolution's major provisions. For the first time in history, all cargo going in and out of the DPRK would be subjected to mandatory inspection. For the first time, all small arms and other conventional weapons would be prohibited from being sold to the DPRK. In addition, this resolution would impose financial sanctions targeting DPRK banks and assets, and ban all dual-use nuclear and missile-related items.

Also for the first time, the Security Council would impose sectoral sanctions on the DPRK—limiting, and in some instances banning outright, exports from the DPRK of coal, iron, gold, titanium, and rare earth minerals, and banning the supply to the DPRK of aviation fuel, including—notably—rocket fuel. These measures would also ground DPRK flights suspected of carrying contraband. Suspicious vessels carrying illicit items would be denied access to ports.

These sanctions—if adopted—would send an unambiguous and unyielding message to the DPRK regime: the world will not accept your proliferation; there will be consequences for your actions, and we will work relentlessly and collectively to stop your nuclear program.

If adopted and implemented fully, these sanctions would constitute a major increase in pressure compared to the Council's previous actions on DPRK. They have broader scope and target more of the DPRK's pressure points. They also have unprecedented interdiction provisions to make sure that the other provisions get enforced—most notable among them, this mandatory inspection of cargo to and from the DPRK.

In addition, these sanctions would make it much harder for the DPRK to raise the funds, import the technology, and acquire the know-how to advance its illicit nuclear and ballistic missile programs.

For more than a decade, in spite of the international community's efforts, DPRK has taken progressive steps toward its declared goal of developing nuclear-tipped intercontinental ballistic missiles. The international community cannot allow the DPRK regime to achieve that goal. The United States will not allow this to happen.

I want to be clear: this resolution is careful not to punish the North Korean people—the North Korean people have suffered so much already under one of the most brutal regimes the world has ever known. Rather this resolution focuses on a ruling elite that have inflicted so much of that suffering, always privileging the nuclear and ballistic missiles programs over the welfare of the North Korean people.

So long as North Korea continues to undermine international security through its dangerous pursuit of nuclear weapons, the United States and our partners will pursue rigorous and unyielding sanctions to impede their ability to endanger our shared security and to hold them accountable for their actions. We remain clear-eyed about the prospects of an immediate change in DPRK's behavior, but we have seen how robust sanctions can alter a government's dangerous nuclear ambitions in other contexts. The time to use this tool with the DPRK is now, and we look forward to working with the Council to put in place comprehensive, robust, and unprecedented sanctions against the DPRK regime.

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On March 2, 2016, the UN Security Council unanimously adopted the resolution on the DPRK sponsored by the United States, Resolution 2270. Ambassador Power, Ambassador Motohide Yoshikawa of Japan, and Ambassador Oh Joon of South Korea delivered remarks following the adoption of Resolution 2270. Their remarks are available at http://2009-2017-usun.state.gov/remarks/7164, and Ambassador Power's comments are excerpted below.

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… Today, as you know, the UN Security Council unanimously adopted a new resolution establishing the strongest sanctions the Security Council has imposed in more than two decades—including a variety of sanctions never applied before in the history of the United Nations.

This resolution represents a seismic shift in the way the Council approaches DPRK proliferation concerns. It recognizes, at its core, that in order to prevent the DPRK from continuing to advance its nuclear weapons program, the international community has to be prepared to sanction sectors beyond those directly related to the nuclear weapons program, or their ballistic missile program.

Let me be clear, though, as you all know, the true measure of Resolution 2270 will be whether the rigor with which states implement these sanctions matches the rigor we can anticipate the DPRK will apply to attempting to evade them—that's what they do. While this resolution adopted today is robust, comprehensive, and unyielding, to be effective it must be followed with robust, comprehensive, and unyielding enforcement. It will be up to all Member States—including my colleagues here, Japan and South Korea, but also importantly China and Russia, who agreed to the measures imposed today—to implement fully the provisions of this groundbreaking resolution.

I would note also the record number of cosponsors of today's resolution—50. That is more than three times more than any other resolution in response to DPRK's nuclear tests. This is a strong indicator of the international support for action of this robust kind, the action that the Council has taken today.

…[T]his resolution recognizes the chronic suffering of the North Korean people, and they recognize that that suffering is a direct result of the DPRK's prioritization of its nuclear weapons and ballistic missile programs over providing for the most basic needs of the North Korean people. And I credit Ambassador Oh for speaking so movingly to that in the end of his statement in the Council. It is noteworthy that the Council took in this resolution the unprecedented step of expressing deep concern at the "grave hardship that the DPRK people are subjected to." So this is the Council taking note of what the DPRK people are going through, in an unprecedented way. At the same time, in closing, this resolution is a powerful demonstration of the international community's commitment to end North Korea's nuclear program and advance our shared and fundamental objective of complete, verifiable, and irreversible denuclearization once and for all.

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… [We] fully anticipate that they will try to drive a truck through any loophole that they can find. But this resolution is so comprehensive, there are so many provisions that leave no gap, no window. The ban on aviation fuel is a ban on aviation fuel, which includes rocket fuel. The prevention of DPRK from setting up financial institutions and banks and other things in other countries and shutting down their banking operations, you can see whether it's done or it isn't done. The requirement that all cargo be inspected going in and out, there's no loophole in that, that's a requirement—land, sea, air.

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On March 2, 2016, Ambassador Power provided the U.S. explanation of vote at the adoption of UN Security Council Resolution 2270 on the DPRK. That explanation is excerpted below and available at http://2009-2017-usun.state.gov/remarks/7160.

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…The chronic suffering of the people of North Korea is the direct result of the choices made by the DPRK government, a government that has consistently prioritized its nuclear weapons and ballistic missile programs over providing for the most basic needs of its own people. As the resolution that we have adopted today underscores, virtually all of the DPRK's resources are channeled into its reckless and relentless pursuit of weapons of mass destruction. The North Korean government would rather grow its nuclear weapons program than grow its own children. That is the reality that we are facing.

Of course, the DPRK's obsessive pursuit of weapons of mass destruction not only causes profound suffering for the people of North Korea, but also poses an extraordinary and growing threat to peace and security in the peninsula, the region, and the world. With each nuclear test and launch using ballistic missile technology, the DPRK improves its capability to carry out a nuclear missile attack not only in the region, but also a continent away. That means having the ability to strike most of the countries sitting on this Council. Think about that. North Korea is the only country in the entire world that has conducted a nuclear test in the 21st century. In fact, it has conducted not one nuclear test, but four—in 2006, 2009, 2013, and now, 2016. It is also the only UN Member State that routinely threatens other countries with nuclear annihilation, including multiple members of this Council on different occasions.

Our collective security demands that we stop North Korea from continuing along this destructive and destabilizing course. Yet we've got to be honest that, while previous multilateral efforts, including the four previous sanctions resolutions adopted by this Council, have undoubtedly made it more difficult for North Korea to advance its weapons programs, the regime continues to plow ahead, as it demonstrated the last two months. That is why the resolution we have just adopted is so much tougher than any prior North Korea resolution, and why it goes further than any sanctions regime in two decades. We have studied the ways the DPRK has been able to exploit gaps and evade measures aimed at impeding its nuclear weapons and ballistic missile programs, and we've put in place new measures to fill those gaps, one by one. Let me give just a few of many examples of how the resolution adopted today does this.

North Korea generates a significant share of the money it uses to fuel its nuclear and ballistic missile programs by mining natural resources—often exploiting workers in slave-like conditions—and selling those resources abroad. For example, it is estimated that the DPRK brings in approximately a billion dollars a year in coal exports, roughly a third of the revenue it earns from exports, and it brings in at least 200 million dollars a year in iron ore exports. That is why the resolution we have adopted today limits, and in some instances bans outright, North Korea's exports of specific natural resources, making it tougher for the government to get the money it needs to keep funding its illicit weapons programs.

Until today, in many countries around the world, inspectors required information providing reasonable grounds to inspect cargo coming into and going out of North Korea. So the DPRK and its suppliers took the ballistic missile parts, nuclear technology, and other illicit items they needed to build weapons of mass destruction, and they buried them deep in otherwise unsuspicious loads on airplanes, ships, and trucks coming into the country. The DPRK used similar tactics to hide the illegal items it was exporting—such as weapons, drugs, and counterfeit goods—which it used to generate a significant amount of additional income. That is why, under this resolution, cargo going into and coming out of North Korea will be treated as suspicious, and countries will be required to inspect it, whether it goes by air, land, or sea. This is hugely significant.

North Korea used to be able to import aviation fuel, which included rocket fuel used to launch proscribed ballistic missiles. Not anymore. The resolution adopted today bans all imports of aviation fuel, including rocket fuel.

For years, the DPRK deployed arms dealers, smugglers, financiers, and other enablers of its illicit weapons programs and claimed that they were diplomats and government representatives around the world. Abusing diplomatic protections, these individuals cut illicit deals, set up shell companies, and procured banned items to aid North Korea's weapons program. The resolution adopted today obligates countries to expel any North Korean who carries out these acts, including DPRK diplomats.

Despite previous financial sanctions that constrained North Korea's access to the international financial system, North Korean banks were still able to do business on foreign territory, allowing the government to fund its illicit programs. Under the resolution adopted today, states around the world will have to shut down DPRK financial institutions in their territory.

North Korean scientists have used specialized trainings at academic institutions and international research centers to obtain technical expertise that they then put to use to advance the DPRK government's nuclear weapons and ballistic missile programs. The resolution adopted today prohibits specialized training of any DPRK national in fields that could be used to advance these programs, including nuclear and space-related technical exchanges.

Now, as these measures make abundantly clear, the purpose of this resolution is not to inflict greater hardship on the people of North Korea, who endure immeasurable suffering under one of the most repressive governments the modern world has ever seen. The United States has repeatedly urged this Council to address the human rights violations committed by the DPRK, which the UN Commission of Inquiry concluded in its comprehensive 2014 report were widespread and systematic, and "have been committed…pursuant to policies established at the highest level of the State." These violations include detaining between 80 and 120 thousand people in prison camps where, according to the commission's report, they have for generations been "gradually eliminated through deliberate starvation, forced labor, executions, torture, rape, and the denial of reproductive rights"; and the government has carried out enforced disappearances for decades with no accountability, including of citizens from neighboring countries, whose families continue to suffer from not knowing the fate of their loved ones.

The scale and gravity of such abuses is what led us to push, along with our partners, to make the human rights situation in North Korea a permanent item on the Security Council's agenda, as it now is. North Korea continues to show what we have repeatedly said in the Council—that governments that flagrantly violate the human rights in their own people almost always show similar disdain for the international norms that help ensure our shared security. The DPRK's abysmal human rights record is another reason we have taken steps to ensure the sanctions contained in this resolution specifically target the government, which carries out these grave abuses with impunity.

It is deeply important that today's resolution, and all the tough measures it includes, has been adopted with the support of all 15 members of the Security Council. In particular, the United States would like to recognize the leadership of China, which has worked closely with us in negotiating this extremely rigorous resolution. Beyond the Council, it is worth noting the unanimity among, and leadership by, the countries in the region—China, Japan, and the Republic of Korea—who understand so clearly the threat to our shared security posed by the DPRK's actions. The fact that this resolution has been co-sponsored by 50 Member States drawn from

every region in the world, demonstrates both the recognition of the global threat posed by North Korea, and the international community's commitment to working together to address that threat.

We are clear-eyed about the nature of this regime. We are under no illusions that, following the adoption of this resolution, the DPRK government will abruptly abandon its prohibited weapons programs due to a sudden realization that the international community is united in its determination to stop North Korea's dangerous pursuit of nuclear weapons. Were that to be the case, North Korea would have given up their nuclear weapons and ballistic missile programs long ago. On the contrary, the North Korean government has shown that it is determined to evade every obstacle put in the way of its singular pursuit of weapons of mass destruction—no matter the consequences for its people.

Yet at the same time, we have seen how the strategy of increasing multilateral pressure can be effective. And that is what we are doing here. Even as we find new ways to impede North Korea's efforts to advance its nuclear weapons and ballistic missile programs—as our collective security and the DPRK's track record demand that we do—we must not lose sight of the ultimate goal of bringing North Korea back to the table for serious and credible diplomatic negotiations on denuclearization. Achieving that goal will require sustained unity on the part of this Council, and an unwavering commitment by all Members States to implement—in full—the comprehensive, robust, and unprecedented sanctions that we have put in place today.

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Also on March 2, 2016, Secretary Kerry issued a press statement welcoming the adoption of Resolution 2270, and echoing the characterization by the United States at the UN of the sanctions as the toughest to date. Secretary Kerry's press statement is available at http://2009-2017.state.gov/secretary/remarks/2016/03/253877.htm.

And on March 2, 2016, the U.S. Mission to the UN provided a fact sheet on Resolution 2270, available at http://2009-2017-usun.state.gov/remarks/7161, and excerpted below.

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The UN Security Council unanimously adopted Resolution 2270 (2016) to impose additional legally binding sanctions on North Korea (DPRK) in response to its fourth prohibited nuclear test on January 6, 2016, and its prohibited launch, using ballistic missile technology, on February 7, 2016. The goal of these groundbreaking sanctions is to convince Pyongyang to return to the negotiating table and agree to complete, verifiable, and irreversible denuclearization. Today's unanimous adoption shows that the Security Council—and the entire international community—is united against the threat posed by the DPRK's nuclear and ballistic missile programs.

These sanctions significantly build on the Council's previous actions aimed at the DPRK's illicit programs. They have broader scope, target more DPRK pressure points, and have unprecedented inspection and financial provisions, including mandatory inspections of cargo to and from the DPRK and a requirement to terminate banking relationships with DPRK financial institutions.

These sanctions make it much harder for the DPRK to raise funds, import technology, and acquire the know-how to continue its illicit nuclear and ballistic missile programs.

Resolution 2270 (2016):

- Condemns the DPRK's January 6 nuclear test and February 7 launch;
- Reaffirms the DPRK's obligations not to conduct any further launches using ballistic missile technology or nuclear tests, and abandon all nuclear weapons, suspend all activities related to its ballistic missile program, and abandon all other WMD programs;
- Clarifies a ban on technical cooperation with the DPRK on **launches using ballistic missile technology, even if characterized as a satellite or space launch**;
- Imposes measures to constrain the DPRK's **conventional arms capabilities**:
- Tightens the arms embargo to prohibit the transfer of small arms and light weapons to the DPRK;
- Closes a loophole that could have allowed the temporary transfer of arms for "repair";
- Creates a new conventional arms "catch-all" provision to ban the transfer of *any item*—even if not covered by the arms embargo—except food or medicine that could directly contribute to the operational capabilities of the DPRK's armed forces or the transfer by the DPRK of *any item* that directly contributes to operational capabilities of the armed forces of another Member State outside the DPRK;
- Clarifies that existing UN Security Council resolutions ban hosting of DPRK trainers or advisors, or other officials for military, paramilitary, or police training;
- Affirms that existing UN asset freezes apply to vessels;
- Targets the DPRK's **proliferation networks** to limit the DPRK's ability to smuggle and evade sanctions:
    - Requires states to expel DPRK diplomats engaged in activities prohibited by UN Security Council resolutions;
    - Requires states to expel foreign nationals involved in DPRK-related, UN-prohibited activities;
    - Requires states to close offices of designated entities and expel their representatives;
    - Highlights for states the risk of DPRK front companies;
- Bans **specialized teaching or training** for DPRK nationals in fields, such as advanced physics, aerospace engineering, and advanced computer simulation, that could contribute to the DPRK's proliferation-sensitive activities;
- Imposes new **cargo inspection and maritime** procedures to limit the DPRK's ability to transfer UN-prohibited items:
    - Requires States to inspect cargo to/from the DPRK or brokered by the DPRK that is within or transiting their territories (i.e., a mandatory cargo inspection regime);
    - Requires States to ban DPRK chartering of vessels or aircraft (with an exemption if States notify the DPRK Sanctions Committee in advance that such activities are exclusively for livelihood purposes that will not generate revenue for DPRK individuals or entities);
    - Requires States to prohibit their nationals from operating DPRK vessels or using DPRK flags (with an exemption if States notify the DPRK Sanctions Committee in advance that such activities are for exclusively for livelihood purposes that will not generate revenue for DPRK individuals or entities);
    - Bans flights of any plane suspected of carrying prohibited items;

    - Prohibits port calls by any vessel controlled by a designated entity or suspected of engaging in activity prohibited by UN Security Council resolutions on the DPRK;
- Obligates the DPRK to act in accordance with its obligations as a State Party to the **Convention on Biological Weapons** and calls upon the DPRK to accede to the **Chemical Weapons Convention**;
- Updates the current list of **chemical- and biological-warfare item**s banned for transfer to/from the DPRK (with annual updates) and calls for the list to be further updated annually;
- Directs the Security Council's DPRK Sanctions Committee to update within fifteen days an additional list of prohibited **nuclear/missile/chem-bio items** banned for transfer to/from the DPRK;
- Prohibits the transfer of dual-use nuclear/missile items through a binding **Weapons of Mass Destruction "catch-all"** provision and updates previous "seize and dispose" obligations;
- Imposes **sectoral sanctions** targeting the DPRK's trade in resources:
    - Bans exports from the DPRK of coal, iron, and iron ore, unless such transactions are determined to be exclusively for livelihood purposes and unrelated to generating revenue for the DPRK's nuclear/missile programs or other activities that constitute UN Security Council resolution violations;
    - Bans exports from the DPRK of gold, titanium ore, vanadium ore, and rare earth minerals;
    - Bans transfers of aviation fuel, including rocket fuel, to the DPRK;
- Imposes new **financial sanctions** targeting DPRK banks and assets.
    - Requires States to freeze the assets of entities of the Government of the DPRK or Worker's Party of Korea determined to be associated with the DPRK's nuclear or missile programs or other activities that constitute violations of UN Security Council resolutions;
    - Requires States to prohibit DPRK banks from opening branches in their territory or engaging in certain correspondent relationships with these banks;
    - Requires States to prohibit their financial institutions from opening new representative offices or subsidiaries, branches, or banking accounts in the DPRK;
    - Requires States to close existing representative offices or subsidiaries, branches, or banking accounts in the DPRK if reasonable grounds exist to believe such financial services could contribute to the DPRK's nuclear or missile programs or UNSCR violations;
    - Prohibits all public or private financial support for trade with the DPRK, including export credits, guarantees, and insurance, if such support could contribute reasonable grounds to believe there is a link to the DPRK's nuclear or ballistic missile programs or other activities that constitute UNSCR violations;
    - Highlights the risk that the DPRK can use gold to evade sanctions;
    - Urges states to apply Financial Action Task Force (FATF) recommendations to effectively implement targeted financial sanctions related to proliferation;
- Provides an illustrative list of specific luxury goods that are banned for transfer to the DPRK.

- Provides new **sanctions implementation tools,** including new requirements for the DPRK Sanctions Committee to improve enforcement, such as regularly updating the names of front companies and aliases on the Committee's sanctions list.
- Underlines that these measures are not intended to have adverse humanitarian consequences;
- Reiterates the importance of peace and stability on the Korean Peninsula and in Northeast Asia; reaffirms support to the Six-Party Talks and calls for their resumption; and reiterates support for the 2005 Joint- Statement commitments; and
- Expresses the Council's determination to take further significant measures in the event of further DPRK nuclear tests or launches.

The UNSCR also includes sanctions annexes that:

1. Identify **16 individuals** designated for targeted sanctions (asset freeze/travel ban);
2. Identify **12 entities** (including government agencies and banks) designated for an asset freeze;
3. Specify **31 vessels** controlled by UN-designated Ocean Maritime Management (i.e., vessels that must be impounded); and
4. Provide **4 illustrative categories of luxury goods** for the purposes of implementing the UNSCR 1718 luxury goods ban.

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On June 30, 2016, Ambassador Power delivered remarks at a UN briefing on implementing Resolution 2270. Her remarks are excerpted below and available at https://2009-2017-usun.state.gov/remarks/7362.

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Just last week, the DPRK launched two more of its new, mobile, intermediate-range ballistic missiles and flaunted the rapid progress it has made in recent months. As to what this capability means for our planet? You do not need to take my word for it. You can hear it directly from North Korean leader Kim Jong-un, who said last week that the DPRK has "the sure capability to attack . . . the Americans in the Pacific operation theater." And we know his nuclear and ballistic missile ambitions do not stop there.

North Korea is the only country that has conducted a nuclear test in the 21st century. In fact, it has conducted not one nuclear test, but four—as we saw in 2006, 2009, 2013, and earlier this year. The latest of these tests did lead the Security Council to adopt Resolution 2270, which we are here to discuss.

The true measure of Resolution 2270 will be whether the rigor with which Member States implement these sanctions matches or exceeds the rigor that the DPRK will apply in attempting to evade these sanctions. We studied the ways the DPRK has exploited gaps and evaded sanctions over the years, and we drafted Resolution 2270 to seal those cracks.

We also know that a multilateral sanctions regime in today's globalized world is only as strong as its weakest link. Resolution 2270 can only succeed if all of us fully implement its

measures in a sustained and comprehensive manner, leaving no safe havens or gaps in regulation across jurisdictions that the DPRK could exploit to proliferate. And so it's great to see so many countries represented here because each of us has to invest in this enforcement, or all of us will suffer the consequences, in terms of the development of this program.

I'm going to focus on four of the most important measures that all of us must take to fully implement Resolution 2270. …

So, first, we all … must put in place catch-all export controls for any item destined for a proscribed purpose or entity so that the DPRK cannot continue to procure the items it needs to develop nuclear weapons and ballistic missiles. Despite the fact that many states have strengthened their export control systems, we discovered that the DPRK began hiring middlemen and establishing front companies in third countries to procure goods, thus masking the transactions and hiding their ultimate destination. The DPRK has also developed ways to use commercially available technology to build specialized and threatening military systems, such as ballistic missiles and unmanned aerial vehicles, or UAVs.

Resolution 2270 requires states to institute catch-all export controls. Simple controls—which only restrict items on sanctions lists—do not satisfy the resolution's requirements and will not be sufficient to halt the DPRK's illicit programs. Catch-all controls, by contrast, apply to any item destined for a proscribed purpose. And these broader controls are essential because unlisted items that appear benign, such as industrial-grade machinery and materials, may in fact be destined for the DPRK's prohibited nuclear or ballistic missiles program, or for its military. In practice, this means that if any of us know that any item in our territory is destined—directly or indirectly—for the regime's proscribed programs or its military, Resolution 2270 requires us to stop it and to seize it.

Now, it is also the case that, even with strong, catch-all export controls along the lines I've described, it will not be enough to curb the regime's nuclear efforts. Member States need to make sure that unreported or illicit transfers to the DPRK do not actually occur. And this requires the second key action I'd like to touch upon, which is inspection of all cargo going in or out of the DPRK. This is an extremely significant innovation and requirement in Resolution 2270. Before 2270, the Security Council only called for inspections of DPRK-related cargo if a state had "reasonable grounds" to believe the cargo contained prohibited items. But the DPRK and its suppliers were one step ahead: they would conceal the ballistic missile parts, nuclear technology, and other illicit items by burying them deep …in otherwise unsuspicious loads on planes, ships, and trucks coming into the country. We all saw a vivid example of this back in 2013, when Panama inspected a ship named the Chong Chon Gang en route from Cuba to the DPRK and discovered fighter jet and anti-aircraft missile parts buried beneath thousands of tons of sugar. The DPRK has used similar tactics to hide the illegal items it exports—such as weapons, drugs, and counterfeit goods—to generate revenue.

For this reason, critically, under Resolution 2270, any cargo that has a link to the DPRK now must be inspected—that means cargo going into and/or out of North Korea by air, land, or sea; cargo brokered or facilitated by DPRK nationals; and cargo being transported on DPRK-flagged aircraft or maritime vessels. But the obligation goes further than cargo in state airports, seaports, and free trade zones; it applies to cargo being transported by rail or by road, including by individuals. So, if a lone traveler is heading to, or leaving from, the DPRK, his or her baggage must be inspected, consistent with the privileges and immunities accorded under international law, which, unfortunately, DPRK—as a general rule—continues to flout. These checks are

hugely significant and critically needed to protect against the DPRK's record of sanctions evasions.

Unfortunately, we know the DPRK generates a significant share of the money it uses to fuel its nefarious programs by mining natural resources—often exploiting workers in slave-like conditions—and selling those resources abroad. For example, it is estimated that the DPRK brings in around $1 billion a year in coal exports, roughly a third of the revenue it earns from exports. It also brings in at least $200 million a year in iron ore exports. That is why Resolution 2270 limits, and in some cases bans outright, the DPRK's exports of specific natural resources, particularly coal, iron ore, and iron, making it tougher for the government to get the money it needs to keep funding its illicit weapons programs. Member States, therefore, must take a third critical step, faithfully and fully implementing sectoral sanctions on the DPRK's export of coal, iron ore, and iron.

Now, let me be clear that these sectoral sanctions, and Resolution 2270 more generally, are not targeted at the long-suffering North Korean people, who are enduring immeasurable harms at the hands of one of the modern era's most repressive regimes. To the contrary, these sanctions are directed at North Korea's prohibited programs and the revenue necessary to pursue those programs. For that reason, multiple provisions of the resolution allow otherwise prohibited transactions when a state determines, *ex ante*, that those transactions are conducted for "livelihood purposes," and that the transaction will not be used to generate revenue for banned regime activities. These exemptions exist to ensure that these efforts do not inadvertently target the very people that they are meant to help.

This leads me to my fourth and final point: all Member States must sever banking ties with the DPRK's financial institutions unless they have express approval from the DPRK sanctions committee. In order to truly curtail the DPRK's illicit activities, states need to shut down the regime's ability to move funds freely around the world through the international financial system. Despite previous financial sanctions that constrained North Korea's access to the international financial system, North Korean banks were still able to do business on foreign territory. This allowed the government to launder proceeds from illicit transactions and generate hard currency, which it has used—and continues to use—to support its nuclear and ballistic missile programs. Resolution 2270 aims to close this gap by requiring states to shut down all DPRK financial institutions in their territory, cease their financial activities in the DPRK, and cut off all correspondent banking accounts between their banks and DPRK banks unless approved by the DPRK sanctions committee.

This means that the only correspondent banking account relationships allowed between DPRK banks and outside banks are those expressly approved by the sanctions committee on a case-by-case basis. But I want to stress something very important here. …[C]orrespondent account relationships may be established or maintained—but to be clear, only if they are reviewed and approved by the committee. …

In imposing these and other sanctions measures on the DPRK, the intention is not to create adverse humanitarian consequences for the North Korean people. In fact, these financial sanctions explicitly contain exemptions that permit the sanctions committee to allow humanitarian aid agencies to continue operating in the DPRK. And we have been working tirelessly to assist the United Nations in securing a reliable banking channel to transfer vitally needed funds to deliver aid. Resolution 2270 calls on all of us to implement these robust sanctions in an unyielding manner, which requires actively sharing information and coordinating

with neighbors and the committee while also making sure to avoid and mitigate any humanitarian ramifications for the people of DPRK. They have endured, again, so much already.

In sum, it is these four key actions—implementing catch-all export controls, inspecting all cargo going in and out of the DPRK, enforcing sectoral sanctions, and severing banking ties with DPRK financial institutions unless approved by the sanctions committee—that are the backbone of Resolution 2270. We adopted these sweeping sanctions with unanimity, and now we urge all Member States to implement the resolution with the same unity of purpose and commitment. That's the only way to truly ensure the DPRK's sophisticated and global procurement supply chain is disrupted, and ultimately, eliminated. It's also our best chance of achieving our ultimate goal of bringing North Korea back to the table for serious and credible diplomatic negotiations on denuclearization, and to ending the heart-wrenching suffering of the people of North Korea.

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On November 30, 2016, the UN Security Council unanimously adopted another resolution imposing new sanctions on the DPRK in response to its ongoing flagrant violations of past resolutions, including by conducting a second nuclear test in 2016, continuing production of fissile material, and conducting ballistic missile launches. At the adoption of Resolution 2321, Ambassador Power delivered the U.S. explanation of vote, which is excerpted below and available at https://2009-2017-usun.state.gov/remarks/7575.

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… The DPRK is determined to refine its nuclear and ballistic missile technology to pose an even more potent threat to UN Member States, and—more broadly—to international peace and security.

Consider what DPRK leader Kim Jong-Un said after testing an engine for a long-range missile in April, that North Korea "can tip new-type intercontinental ballistic rockets with more powerful nuclear warheads and keep any cesspool of evils in the earth, including the U.S. mainland, within our striking range."

The United States recognizes China for working closely with us in negotiating this extremely rigorous and important resolution. We are also grateful for the critically important contributions made by Japan and the Republic of Korea, who face a grave threat that one Korean official likened to "living with the Cuban missile crisis every day."

Lately, this Council has been divided on many issues. But the unanimous adoption of new sanctions shows that as long as the DPRK pursues this dangerous and destabilizing path, this Council will impose ever harsher consequences on those responsible. In March, this Council passed what were then the toughest sanctions to date on the DPRK. But the DPRK remained as determined as ever to continue advancing its nuclear technology. The DPRK found ways to continue diverting revenue from exports to fund its research, it tried to cover up its business dealings abroad, and it looked for openings to smuggle illicit materials by land, sea, and air.

Today's resolution systematically goes after each of these illicit schemes.

Let me highlight three ways that this resolution breaks new and important ground. First, the resolution imposes major new restrictions on the sources of hard currency—in particular coal exports—that the DPRK is using to pay for its nuclear weapons and its ballistic missiles. Of course, Resolution 2270 banned coal exports not exclusively used for what this Council called "livelihood purposes." But the DPRK's coal revenues have remained high—about one third of the DPRK's entire export revenue. And, contrary to the letter and spirit of Resolution 2270, this coal export revenue has not been used to help the people of North Korea; it has been used to further build up the regime's illegal weapons programs. So this resolution imposes a new binding cap on how much coal the DPRK can ship out of the country, cutting what the DPRK earns by approximately $700 million per year from its 2015 total, or more than 60 percent of its coal export revenue. Much of this coal trade involves DPRK companies with links to the regime and its prohibited nuclear and ballistic missiles programs.

In addition, this resolution imposes a new ban on the export of copper, nickel, silver, and zinc, which will eliminate another $100 million or more in annual hard currency revenue for the regime. So, in total, this resolution will slash by at least $800 million per year the hard currency that the DPRK has to fund its prohibited weapons programs, which constitutes a full 25 percent of the DPRK's entire export revenues.

But we knew going into this negotiation that the DPRK has found itself masterful at using non-traditional means to stash currency. And the resolution goes after some of the less obvious ways that the DPRK makes money. We have banned the export of monuments. Now, you might ask why on earth would we ban the export of monuments. Well it turns out that such exports—like a statue of Laurent Kabila standing in Kinshasa today, two statues that Robert Mugabe paid $5 million to be stood up in Zimbabwe upon his passing, or countless others found around the world—generate tens of millions of dollars for the regime. And we have called out countries that host DPRK laborers by urging these countries to take steps to ensure that wages are not supporting the DPRK regime's prohibited programs.

Second, the resolution makes it much harder for the DPRK to use diplomats to advance its prohibited programs. In the past, the DPRK has tried to enable nuclear and ballistic missile officials to travel by giving them phony diplomatic titles. Meanwhile DPRK officials posted in embassies abroad have spent their time running businesses and brokering arms sales to fund the regime's military. But an arms dealer with a diplomatic passport is still an arms dealer. So from now on, states must restrict the travel of those affiliated with the DPRK's nuclear and ballistic missile programs or other prohibited activities, diplomatic passports or not.

Third, the resolution imposes unprecedented measures to restrict the flow of illicit materials into the DPRK. On land, the resolution emphasizes that cargo heading into and out of the DPRK by road or rail must be inspected. At sea, the DPRK will no longer be allowed to mask its ships and evade scrutiny by flying the flags of other countries or controlling other vessels with their crews. And by air, Member States should inspect the baggage of anyone flying into and out of the DPRK.

In the next 15 days, this Council's DPRK Sanctions Committee will make another important determination—publishing for the first time a list of "conventional arms dual use" items that will no longer be allowed to enter the DPRK. These are commercially available components that have civilian uses, like sophisticated electronic sensors, but that the DPRK can use to build advanced military equipment like radar systems, night vision, and stealth technology.

I began by talking about the fact that DPRK made the choice to pursue nuclear weapons. But I want to, before closing, discuss another choice the DPRK regime has made—the choice to systematically violate the human rights of its people. As the UN Commission of Inquiry found in its 2014 report, the DPRK arbitrarily detains between 80,000 and 120,000 political prisoners in its gulags, where they are subjected to deliberate starvation, forced labor, executions, torture, and rape, among other abuses. The DPRK seeks nothing less than, as it was put into the report, "total control of organized social life," through tactics ranging from summary executions, to forced indoctrination, to the methodical repression of freedom of expression. Even though we have heard it before—and many of us have repeated it—it is worth underscoring the Commission's finding that "the gravity, scale, and nature of these violations reveal a State that does not have any parallel in the contemporary world." The situation in the DPRK reaffirms what we have said elsewhere—that when governments flagrantly violate the human rights of their own people, they almost always show similar disdain for the international norms that help ensure our shared security.

So this resolution enshrines for the first time that the DPRK must respect and ensure the "welfare and inherent dignity" of people in its territory. That includes the North Korean people, of course, but also those of other nationalities in its territory, including unjustly detained Americans and those abducted from countries like Japan and the Republic of Korea, whose families in some cases have endured decades of suffering from not knowing the fate of their loved ones. The defense of human dignity is a basic demand, and it is long overdue coming from this Council. The same clique of leaders responsible for the DPRK's pursuit of nuclear weapons is the one responsible for systematically abusing their people at home. This resolution also recalls for the first time that, in keeping with Article 5 of the UN Charter, if DPRK continues on its current path, systematically and flagrantly violating its Charter obligations, it could see some or all of its rights and privileges here at the UN suspended.

The United States is realistic about what this resolution will achieve. No resolution in New York will likely, tomorrow, persuade Pyongyang to cease its relentless pursuit of nuclear weapons.

But this resolution imposes unprecedented costs on the DPRK regime for defying this Council's demands. The door remains open for the DPRK to choose a different path. To choose the path of negotiations toward complete, verifiable, and irreversible denuclearization. When the DPRK makes this choice, the United States, and I know this Council, will be ready to engage. And with sustained international pressure, it is possible to change the DPRK's calculus. To do that, the members of this Council and all Member States of this United Nations must fully implement the sanctions that we have adopted today. The strength of this resolution—and our ability to change the DPRK's threatening, belligerent behavior—depends on Member States exercising maximum vigilance to enforce each and every one of the provisions in today's resolution. We call on all Member States to remain united in imposing consequences on the DPRK for its many dangerous choices. …

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On November 30, 2016, the U.S. Mission to the United Nation issued a fact sheet on Resolution 2321, available at https://2009-2017-usun.state.gov/remarks/7578, and excerpted below.

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Resolution 2321 (2016), adopted unanimously by the UN Security Council on November 30, 2016, strengthens the binding UN sanctions on North Korea (DPRK) in response to its fifth nuclear test conducted on September 9, 2016. This resolution sends a clear message to North Korea that the Security Council is united in imposing stronger sanctions on North Korea's international trade, financial transactions, and weapons-related programs in response to the DPRK continuing its nuclear- and ballistic missile-related programs in violation of multiple Security Council resolutions. In particular, this resolution imposes a hard, binding cap on the DPRK's coal exports—the DPRK's largest source of external revenue.

Resolution 2321 (2016):

- Condemns the DPRK's September 9 nuclear test, and reaffirms the DPRK's obligations not to conduct any further nuclear tests or launches that use ballistic missile technology, to abandon all nuclear weapons and existing nuclear programs in a complete, verifiable and irreversible manner, to suspend all activities related to its ballistic missile program, and to abandon all other WMD programs.
- Strengthens and expands **sectoral sanctions** on exports the DPRK can use to raise hard currency that can be used to fund its nuclear and ballistic missile programs. The resolution slashes the DPRK's exports by:
    - Imposing a binding cap cutting the DPRK's largest export, coal, by approximately $700 million per year from 2015 (more than 60%);
    - Tightening the conditions on coal exports under that cap, including by establishing that coal exports may not involve any individuals or entities associated with the DPRK's nuclear, ballistic missile, or other prohibited programs and activities;
    - Banning the DPRK's export of monuments, which the DPRK has used to generate tens of millions of dollars through contracts around the world; and
    - Banning the DPRK's exports of non-ferrous metals—copper, nickel, silver, and zinc—that provide approximately $100 million in hard currency to the regime annually.
- Imposes additional **restrictions on the DPRK's ability to generate revenue and access the international financial system**, by:
    - Banning the DPRK from generating revenue by using its property abroad;
    - Prohibiting public and private support for trade with the DPRK, such as export credits, guarantees and insurance;
    - Requiring the closure of foreign bank offices, accounts, and subsidiaries in the DPRK within 90 days, except as approved by the sanctions committee;
    - Requiring the expulsion of DPRK banking and financial officials located outside the DPRK; and
    - Calling out countries hosting DPRK laborers, and urging those countries to take steps to ensure that their wages are not supporting the regime's prohibited programs.
- **Counters the DPRK's proliferation activities,** by:
    - Designating for targeted sanctions 11 DPRK officials and 10 entities involved in the development, production, and financing of the DPRK's nuclear weapons and ballistic missile programs, as well as the DPRK coal and conventional arms trade;
    - Expanding the list of prohibited dual-use items that have WMD-related applications; to include an additional 18 items;

  - Creating a list of additional dual-use items that have conventional arms-related applications, to be prohibited for transfer to the DPRK;
  - Expanding the number of advanced proliferation-sensitive disciplines in which specialized teaching and training of DPRK citizens is prohibited; and
  - Restricting scientific and technical cooperation involving the DPRK in certain sensitive fields: nuclear science and technology, aerospace and aeronautical engineering and technology, and advanced manufacturing and production techniques and methods.
- Imposes strict new sanctions on the DPRK's **illicit transportation activities**, including:
  - Prohibiting the sale of new vessels and helicopters to the DPRK;
  - Authorizing the sanctions committee to designate vessels of DPRK proliferation concern for de-flagging, direction to a specific port for inspection, a port entry ban, and/or impoundment;
  - Requiring States to prohibit the flagging of vessels in the DPRK, as well as owning, operating, insuring, or providing any services to DPRK-flagged vessels;
  - Prohibiting the provision of insurance services to any vessels owned, controlled, or operated, including through illicit means, by the DPRK;
  - Prohibiting the procurement of vessel or aircraft crewing services from the DPRK; and
  - Requiring all states to de-flag any vessel that is owned, controlled, or operated by the DPRK, and requiring other states not to re-flag any such vessel.
- Strengthens **expansive cargo inspection obligations** imposed in resolution 2270 (2016), by:
  - Requiring that personal luggage and checked baggage going to and coming from the DPRK must be inspected;
  - Reminding states of their obligation to inspect all DPRK-flagged aircraft when they land in or take off from their territory, and calling on states to exercise vigilance to ensure that no more fuel is provided to DPRK-flagged aircraft than is necessary for the relevant flight;
  - Underscoring the need for all states to inspect cargo transiting to and from the DPRK by rail and road; and
  - Applying travel-related restrictions even when individuals are transiting through an international airport terminal en route to another destination.
- Targets the DPRK's use of its **diplomats and diplomatic missions** to smuggle illicit items, sell arms, and raise revenues for the DPRK regime, by:
  - Restricting DPRK government and military officials from entering or transiting other states if they are determined to be associated with the DPRK's nuclear or ballistic missile programs or other prohibited activities;
  - Limiting all DPRK diplomatic missions and consular posts, as well as all accredited DPRK diplomats and consular officers, to one bank account each;
  - Calling upon all states to reduce the number of staff at DPRK diplomatic missions and consular posts; and
  - Emphasizing that DPRK diplomats are prohibited from engaging in commercial or other professional activities and roles outside of their diplomatic responsibilities.
- Includes new **tools to improve sanctions enforcement**, including moving its Panel of Experts to a six-month reporting cycle from the current annual cycle to more quickly address violations and evasions by identifying sanctions gaps and loopholes.

- Recalls that states subject to UN sanctions, like the DPRK, may be **suspended from their UN rights and privileges**.
- Condemns the DPRK regime's pursuit of nuclear weapons and ballistic missiles while people in the DPRK have great unmet needs.
- Emphasizes, for the first time, the need for the DPRK to **respect and ensure the inherent dignity of people** in its territory. The reference to the dignity of "people in the DPRK" implicitly recognizes that the DPRK is responsible for respecting the human rights not only of its own citizens but also of people of other nationalities in its territory—such as unjustly detained citizens of various nationalities, including Americans, and those it has abducted from other countries, including Japan.
- Reaffirms the Council's support for the Six Party Talks, calls for their resumption, reiterates its support for commitments made by the Six Parties, and reiterates the importance of maintaining peace and stability on the Korean Peninsula and in Northeast Asia.
- Expresses the Council's determination to take further significant measures if the DPRK conducts another nuclear test or ballistic missile launch.

This resolution has several annexes. These are:

1. An annex of 11 DPRK individuals designated for targeted sanctions (asset freeze and travel ban);
2. Another annex of 10 DPRK entities designated for an asset freeze;
3. 18 dual-use items that have WMD-related applications that are now banned for transfer to the DPRK; and
4. 2 additional types of luxury goods banned for transfer to the DPRK.
5. Standard form for monthly coal import reporting to the sanctions committee to be used by all states importing DPRK coal.

* * * *

Ambassador Power also discussed Resolution 2321 alongside her counterparts, Ambassador Koro Bessho, Permanent Representative of Japan to the United Nations, and Ambassador Oh Joon, Permanent Representative of the Republic of Korea to the United Nations, on November 30, 2016. Those remarks are available at https://2009-2017-usun.state.gov/remarks/7580.

(2) U.S. sanctions

(a) E.O. 13687

As discussed in *Digest 2015* President Obama issued Executive Order 13687, "Imposing Additional Sanctions With Respect To North Korea." On December 2, 2016, OFAC blocked the property and interests in property of four individuals and one entity pursuant to E.O. 13687. 81 Fed. Reg. 88,323 (Dec. 7, 2016).

(b) E.O. 13722

On March 15, 2016, the President issued Executive Order 13722, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea." 81 Fed. Reg. 14,943 (Mar. 18, 2016). E.O. 13722 was issued in accordance with IEEPA, the NEA, the UN Participation Act, the INA, the North Korea Sanctions and Policy Enhancement Act of 2016 (Public Law 114–122), and UN Security Council Resolution 2270 (2016). The introductory paragraph of the E.O. explains that it was prompted by the DPRK's January 6, 2016 nuclear test and February 7, 2016 missile launch, which violated UN Security Council resolutions and the DPRK's commitments in the Six-Party Talks. Section 1 of E.O. 13722 blocks property and interests in property of the Government of North Korea and the Workers' Party of Korea. Section 2 authorizes the Secretary of the Treasury, in consultation with the Secretary of State to designate any other person to be subject to blocking based on a determination that the person (i) operates in transportation, mining, energy, or financial services; (ii) has engaged in certain transactions with the Government of North Korea or the Workers' Party of Korea; (iii) has engaged in human rights abuses by the Government or Workers' Party; (iv) has exported workers from North Korea; (v) has engaged in undermining cybersecurity on behalf of the Government or Workers' Party; (vi) has engaged in censorship by the Government or Workers' Party; (vii) has provided material assistance or support for others blocked pursuant to the order; (viii) is owned or controlled by others blocked pursuant to the order; (ix) has attempted to engage in the activities described in (i)-(viii). Section 3 prohibits new investment or financing in North Korea by U.S. persons. And Section 4 suspends entry into the United States of designated persons.

On December 2, 2016, OFAC blocked the property and interests in property of 14 entities pursuant to E.O. 13722. 81 Fed. Reg. 88,323 (Dec. 7, 2016). OFAC also identified 16 aircraft as blocked pursuant to E.O. 13722. *Id.*

(c) E.O. 12938, E.O. 13382, and Missile Proliferation Sanctions

On the same day the UN Security Council adopted Resolution 2270 on the DPRK, the United States announced new designations pursuant to E.O. 13382 ("Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters") of entities and individuals linked to North Korean WMD programs that would help implement the resolution. See March 2, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/03/253882.htm. The State Department designated North Korea's Ministry of Atomic Energy Industry ("MAEI"), the Academy of National Defense Science ("ANDS"), and the National Aerospace Development Administration ("NADA"), and two individuals, Choe Chun Sik and Kang Mun-Kil, for their contribution to North Korea's WMD-related activities. The Department also designating the

Namhung Trading Corporation as an alias of the UN- and U.S.-designated Namchongang Trading Corporation ("NCG"). As summarized in the media note, these entities and individuals are tied to North Korea's nuclear and WMD delivery programs:

> MAEI oversees North Korea's nuclear program. MAEI consists of a number of nuclear-related organizations and research centers and committees, and directs a nuclear research center at Yongbyon, the site of North Korea's known plutonium facilities. ANDS contributes to the further development of North Korea's ballistic and nuclear programs. NADA oversees the development of North Korea's space science and technology, including satellite launches and carrier rockets.
>
> Choe Chun Sik was the president of the UN- and U.S.-designated Second Academy of Natural Sciences, and played a prominent role in the launch of the Unha-3 rocket in December 2012.
>
> Namhung Trading Corporation is an alias of NCG. NCG is a North Korean nuclear-related company in Pyongyang that has been involved in the purchase of aluminum tubes and other equipment specifically suitable for a uranium enrichment program since the late 1990s. Namhung Trading Corporation has conducted procurement activities associated with North Korea's nuclear program. Kang Mun-Kil has conducted nuclear procurement activities as a representative of Namhung Trading Corporation.

See also 81 Fed. Reg. 13,872 (Mar. 15, 2016).

Also on March 2, 2016, OFAC designated three additional individuals pursuant to E.O. 13382 and seven individuals and two entities pursuant to E.O. 13687, "Imposing Additional Sanctions With Respect To North Korea." 81 Fed. Reg. 15,607 (Mar. 23, 2016). The three individuals designated pursuant to E.O. 13382 are Gwang Il HYON, Song Chol KIM, and Jong Hyok SON. The sanctions pursuant to E.O. 13687 were imposed on individuals Man Gon RI, Chol U YU, Pyong So HWANG, Kuk Ryol O, Yong Sik PAK, Yong Mu RI, and Chun Il PAK, and entities NATIONAL DEFENSE COMMISSION, and WORKERS' PARTY OF KOREA CENTRAL MILITARY COMMISSION.

On December 2, 2016, OFAC blocked the property and interests in property of three individuals and one entity pursuant to E.O. 13382: Chol Nam KIM, Han Se PAK, Se Gon KIM, and KOREA KUMSAN TRADING CORPORATION. 81 Fed. Reg. 88,323 (Dec. 7, 2016). On December 23, 2016, OFAC identified one individual and one entity pursuant to E.O. 13382: Aziz ALLOUCH and TECHNOLAB. 82 Fed. Reg. 8261 (Jan. 24, 2017).

c. Iran, North Korea, and Syria Nonproliferation Act

The Department of State imposed sanctions pursuant to the Iran, North Korea, and Syria Nonproliferation Act ("INKSNA") on June 28, 2016 based on a determination on June 22, 2016 that Rosoboronexport ("ROE") of Russia had engaged in transfers or acquisitions to or from Iran, North Korea, or Syria of goods, services, or technology controlled under

multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction ("WMD") or cruise or ballistic missile systems. 81 Fed. Reg. 43,696 (July 5, 2016). The measures imposed on ROE include a procurement ban,[*] a ban on government assistance, a prohibition on government sales of U.S. munitions list items and the termination of sales of defense items under the AECA, and a ban on licenses for items under the Export Administration Act or Export Administration Regulations. Also on June 28, 2016, INKSNA sanctions were imposed on 37 other persons based on a determination on June 22, 2016 that they had engaged in sanctionable activities. 81 Fed. Reg. 43,694 (July 5, 2016). The 37 individuals and entities listed in the Federal Register notice are subject to the same measures imposed on ROE, listed above.

6. Terrorism

a. UN and other coordinated multilateral action

In large part, the United States implements its counterterrorism obligations under UN Security Council resolutions concerning ISIL, al-Qaida and Afghanistan sanctions, as well as its obligations under UN Security Council resolutions concerning counterterrorism, through Executive Order 13224 of September 24, 2001. Among the resolutions with which the United States has addressed domestic compliance through E.O. 13224 designations are Resolutions 1267 (1999), 1373 (2001), 1988 (2011), 1989 (2011), 2253 (2015), and 2255 (2015). Executive Order 13224 imposes financial sanctions on persons who have been designated in the annex to the order; persons designated by the Secretary of State for having committed or for posing a significant risk of committing acts of terrorism; and persons designated by the Secretary of the Treasury for working for or on behalf of, providing support to, or having other links to, persons designated under the order. See 66 Fed. Reg. 49,079 (Sept. 25, 2001); see also *Digest 2001* at 881–93 and *Digest 2007* at 155–58.

b. U.S. targeted financial sanctions

(1) Department of State

In 2016, the Department of State announced the Secretary of State's designation of numerous entities and individuals (including their known aliases) pursuant to E.O. 13224.

[*] Editor's note: An exception on the procurement ban for ROE was provided for goods, technology, and services for the maintenance, repair, overhaul, or sustainment of Mi-17 helicopters for the purpose of providing assistance to the security forces of Afghanistan, as well as for the purpose of combating terrorism and violent extremism globally.

On March 4, 2016, the State Department designated Abdullah Nowbahar pursuant to E.O. 13224. 81 Fed. Reg. 13,443 (Mar. 14, 2016). Also on March 4, Abdul Saboor was designated. 81 Fed. Reg. 13,441 (Mar. 14, 2016). A March 10, 2016 media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/03/254146.htm, describes Nowbahar and Saboor's activities:

> Abdullah Nowbahar and Abdul Saboor are explosive experts for Hezb-e-Islami Gulbuddin (HIG). Both Nowbahar and Saboor participated in the September 18, 2012 attack on a bus carrying foreign employees of Kabul International Airport that killed 12 people. Saboor is also responsible for a May 2013 suicide attack in Kabul that destroyed a U.S. armored vehicle, killing two soldiers and four U.S. civilian contractors; eight Afghans—including two children—were also killed and another 37 were wounded.

On March 22, 2016, the Department of State announced the March 7 designation under E.O. 13224 of Indonesian citizen Santoso, leader of the Mujahidin Indonesia Timur ("MIT"). 81 Fed. Reg. 15,776 (Mar. 24, 2016); see also March 22, 2016 media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/03/254921.htm. In addition to overseeing attacks carried out by MIT, Santoso also proclaimed allegiance to ISIL/Daesh in 2014. On March 24, 2016, ISIL-Yemen was designated. 81 Fed. Reg. 32,001 (May 20, 2016). ISIL-Saudi Arabia was also designated. 81 Fed. Reg. 32,002 (May 20, 2016).

On April 5, 2016, the State Department announced the designation of Salah Abdeslam under E.O. 13224. 81 Fed. Reg. 19,700 (Apr. 5, 2016); see also April 5, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/04/255500.htm. The media note explains:

> Belgian-born French citizen Salah Abdeslam is an operative for the Islamic State of Iraq and the Levant (ISIL), a U.S. Department of State designated Foreign Terrorist Organization (FTO) and SDGT. Abdeslam was captured on March 18, 2016 in a police raid in Molenbeek, Belgium, and charged with 'terrorist murder' for his role in the November 13, 2015 Paris attacks that killed 130 people, including an American college student, and injured over 350. Witnesses identified Abdeslam as the driver of a car full of gunmen that killed patrons at numerous restaurants in Paris. Authorities found his DNA both on a discarded suicide belt and along with traces of explosives in a Brussels apartment. Abdeslam stated after his arrest that he planned on conducting a suicide bombing outside of the Paris soccer stadium, but had 'backed out.'

On May 19, 2016, the Department of State announced that it had designated ISIL branches in Libya, Yemen, and Saudi Arabia pursuant to E.O. 13224. 81 Fed. Reg. 32,002, 32,003 (May 20, 2016); see also May 19, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/05/257388.htm. The media note

explains:

> ISIL-Yemen, ISIL-Saudi Arabia, and ISIL-Libya all emerged as official ISIL branches in November 2014 when … ISIL leader Abu Bakr al-Baghdadi announced that he had accepted the oaths of allegiance from fighters in Yemen, Saudi Arabia, and Libya, and was thereby creating ISIL "branches" in those countries.
>
> While ISIL's presence is limited to specific geographic locations in each country, all three ISIL branches have carried out numerous deadly attacks since their formation. Among ISIL-Yemen's attacks, the group claimed responsibility for a pair of March 2015 suicide bombings targeting two separate mosques in Sana'a, Yemen, that killed more than 120 and wounded over 300. Separately, ISIL-Saudi Arabia has carried out numerous attacks targeting Shia mosques in both Saudi Arabia and Kuwait, leaving over 50 people dead. Finally, ISIL-Libya's attacks have included the kidnapping and execution of 21 Egyptian Coptic Christians, as well as numerous attacks targeting both government and civilian targets that have killed scores of people.
>
> After today's action, the U.S. Department of State has now sanctioned eight ISIL branches, having previously designated ISIL-Khorasan, ISIL-Sinai, Jund al-Khilafah in Algeria, Boko Haram, and ISIL-North Caucasus.

On April 27, 2016, the Department designated Samir Kuntar. 81 Fed. Reg. 32,004 (May 20, 2016).

On May 9, 2016, the Secretary of State's determination that Moussa Abu Dawud meets the criteria for designation under E.O. 13224 was published in the Federal Register. 81 Fed. Reg. 28,113 (May 9, 2016). The Department released a media note on May 5, 2016 announcing the designation of Dawud, which is available at http://2009-2017.state.gov/r/pa/prs/ps/2016/05/256921.htm. The media note elaborates on the designation as follows:

> Musa Abu Dawud began engaging in terrorist activity as early as 1992. He was a senior member of the Algerian Salafist Group for Call and Combat (GSPC), now known as al-Qaida in the Islamic Maghreb (AQIM), a designated Foreign Terrorist Organization, and participated in multiple terrorist attacks in that capacity. In 2012, Dawud was appointed commander of the southern zone for AQIM. As a senior leader for AQIM, Dawud is responsible for multiple terrorist attacks, including the February 4–5, 2013, attack on the military barracks in Khenchela, Algeria, that injured multiple soldiers and a July 2013 attack on a Tunisian military patrol in the Mount Chaambi area that killed nine soldiers. Dawud is also in charge of the training and recruitment of new members for AQIM. In February 2013, he was put in charge of a mission in Tunisia tasked with recruiting and training new members from across North Africa on the use of weapons.

On May 6, 2016, the State Department designated Jama'at ul Dawa al-Qu'ran ("JDQ") pursuant to E.O. 13224. 81 Fed. Reg. 35,435 (June 2, 2016). On May 10, 2016, the Department designated the Tariq Gidar Group ("TGG"). 81 Fed. Reg. 35,436 (June 2, 2016). A May 25, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/05/257712.htm, describes the two groups as follows:

> The TGG is a Pakistani Taliban (TTP) linked group based in Darra Adam Khel, Pakistan. The TGG is responsible for multiple large-scale, fatal attacks, including the December 16, 2014, massacre at the Army Public School in Peshawar, Pakistan, that left 132 schoolchildren and nine staffers dead—the deadliest terrorist attack in Pakistan's history. The group's leader, Umar Mansoor, is also known as the mastermind of the January 2016 attack on Bacha Khan University in Charsadda, Pakistan, that killed 20 and wounded between 50 and 60 others. In addition to these devastating attacks, the TGG is responsible for the 2010 kidnapping of a British journalist traveling to North Waziristan, Pakistan, and the 2008 kidnapping and beheading of Polish geologist Piotr Stanczak in Attock, Pakistan.
>
> JDQ is a terrorist group, based in Peshawar, Pakistan, and eastern Afghanistan, which pledged allegiance in 2010 to now-deceased Taliban emir Mullah Omar, and has long-standing ties to al-Qaida and Lashkar e-Tayyiba. JDQ has been responsible for various attacks, including the infamous 2010 kidnapping and death of British aid worker Linda Norgrove in Kunar Province, Afghanistan.

On May 16, Aslan Avgazarovich Byutukaev was designated. 81 Fed. Reg. 45,593 (July 14, 2016). The Yarmouk Martyrs Brigade was designated on May 31, 2016. 81 Fed. Reg. 37,660 (June 10, 2016).

On June 10, 2016, the State Department designated al-Qa'ida in the Indian Subcontinent ("AQIS") pursuant to E.O. 13224. 81 Fed. Reg. 43,334 (July 1, 2016). On June 24, 2016, the entity known as Asim Umar was designated. 81 Fed. Reg. 43,693 (July 5, 2016). The State Department issued a media note on June 30, 2016, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/06/259219.htm, describing the designations of AQIS and Umar:

> Al-Qa'ida leader Ayman al-Zawahiri announced the formation of AQIS in a video address in September 2014. The group is led by Asim Umar, a former member of U.S. designated Foreign Terrorist Organization Harakat ul-Mujahidin. AQIS claimed responsibility for the September 6, 2014 attack on a naval dockyard in Karachi, in which militants attempted to hijack a Pakistani Navy frigate. AQIS has also claimed responsibility for the murders of activists and writers in Bangladesh, including that of U.S. citizen Avijit Roy, U.S. Embassy local employee Xulhaz Mannan, and of Bangladeshi nationals Oyasiqur Rahman Babu, Ahmed Rajib Haideer, and A.K.M. Shafiul Islam.

On June 29, 2016, the Department designated Ayrat Nasimovich Vakhitov. 81 Fed. Reg. 45,594 (July 14, 2016).

On July 12, 2016, the Department designated Mohamed Abrini pursuant to E.O. 13224. 81 Fed. Reg. 51,959 (Aug. 5, 2016). On July 14, 2016, Jamaat-ul-Ahrar was designated. 81 Fed. Reg. 51,958 (Aug. 5, 2016).

On August 3, 2016, the State Department announced the designations of Jamaat-ul-Ahrar and Mohamed Abrini under E.O. 13224. 81 Fed. Reg. 51,958-59 (Aug. 5, 2016); see also August 3, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/08/260790.htm. The media note provides background on the designees:

> Jamaat-ul-Ahrar (JuA) is a splinter group of the Tehrik-e Taliban Pakistan (TTP) based in the Afghanistan-Pakistan border region. The group, founded by a former TTP leader in August 2014, has staged multiple attacks in the region targeting civilians, religious minorities, military personnel, and law enforcement, and was responsible for the killing of two Pakistani employees of the U.S. Consulate in Peshawar in early March 2016. In late March 2016, JuA carried out the suicide assault at the Gulshan-e-Iqbal amusement park in Lahore, Pakistan that killed more than 70 people—nearly half of them women and children—and injured hundreds more. The Easter Sunday attack was the deadliest terror attack in Pakistan since December 2014.
>
> Mohamed Abrini is a member of the Europe-based Islamic State of Iraq and the Levant (ISIL) cell responsible for the November 2015 Paris attacks and March 2016 Brussels attacks. Since his arrest on April 8, 2016 by Belgian authorities, Abrini has been identified as being "the man in white"—also known as "the man in the hat"—seen with two identified suicide bombers at Brussel's Zaventem airport on March 22, just minutes before the attack that killed 16 people. Abrini is also believed to have taken part in the pre-attack surveillance for the November 2015 Paris attacks and to have assisted in planning attacks in the UK and Germany.

On August 12, 2016, the Department designated Fathi Ahmad Mohammad Hammad pursuant to E.O. 13224. 81 Fed. Reg. 64,256 (Sep. 19, 2016). Hammad is a senior official of Hamas, serving as its interior minister and coordinating terrorist cells. He also founded Al-Aqsa TV, primary media outlet for Hamas, used in recruiting. See September 16, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/09/262004.htm. On August 31, 2016, the State Department issued a media note announcing the designation of Abdiqadir Mumin under E.O. 13224. 81 Fed. Reg. 69,400 (Sep. 1, 2016). The media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/08/261409.htm, summarizes the basis for the designation:

> Abdiqadir Mumin is the head of a group of ISIL-linked individuals in East Africa. Mumin, a former al-Shabaab recruiter and spokesman, pledged allegiance to ISIL, along with around 20 of his followers, in October 2015, and has set up a base in Puntland, Somalia. Since then, Mumin has expanded his cell of ISIL supporters by kidnapping young boys aged 10 to 15, indoctrinating them, and forcing them to take up militant activity.

On September 8, 2016, the Department designated Omar Diaby pursuant to E.O. 13224. 81 Fed. Reg. 64,256 (Sep. 19, 2016). A September 16, 2016 media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/09/262006.htm, sets forth the basis for the designation:

> Omar Diaby leads a group of French foreign terrorist fighters in Syria. The group of approximately 50 fighters has participated in terrorist operations alongside the … al-Nusrah Front. Although assumed killed in August 2015, Diaby re-emerged in May 2016, claiming his death was a ploy to allow him to travel to Turkey for an operation. Diaby came to the attention of French intelligence due to his involvement with a French extremist group and his online propaganda video series. Diaby's videos have been credited as the chief reason behind why so many French nationals have joined militant groups in Syria and Iraq.

Anas El Abboubi (an individual) was also designated on September 8, 2016. 81 Fed. Reg. 67,415 (Sep. 30, 2016). Abboubi's designation was announced and explained in a September 28, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/09/262527.htm, which includes the following:

> Anas El Abboubi has been fighting in Syria for …ISIL since September 2013. He is one of approximately 50 foreign terrorist fighters of Italian origins fighting in Syria. Abboubi began to radicalize in 2012 after being relatively well known on the Italian hip hop scene as rapper McKhalif. In August 2012, he established the Italian branch of an extremist organization. In June 2013, Abboubi was arrested by the Brescia Police General Investigations and Special Operations Division and anti-terrorism forces for plotting a terrorist attack in Northern Italy and recruiting individuals for militant activity in Syria. He was released after two weeks in custody and fled to Syria shortly after.

The State Department designated Abu Ali Tabatabai on September 12, 2016. 81 Fed. Reg. 76,685 (Nov. 3, 2016). The entity known as Jund al-Aqsa ("JAA") was designated on September 16, 2016. 81 Fed. Reg. 66,118 (Sep. 26, 2016).

On October 20, 2016, the Department of State announced it had designated Haytham 'Ali Tabataba'i also known as Abu 'Ali Al-Tabataba'i, under E.O. 13224 in a media note available at http://2009-2017.state.gov/r/pa/prs/ps/2016/10/263346.htm. The media note provides the following information regarding the designated individual:

> Haytham 'Ali Tabataba'i aka Abu 'Ali Al-Tabataba'i is a Hizballah commander from Beirut, Lebanon who has commanded Hizballah's special forces, has operated in Syria, and has been reported to be in Yemen. Tabataba'i's actions in Syria and Yemen are part of a larger Hizballah effort to provide training, materiel, and personnel in support of its destabilizing regional activities. In addition to the sanctions issued against Tabataba'i, today the Treasury Department designated four individuals and one entity working on behalf of or supporting Hizballah.

On October 6, 2016, the Department designated Basil Hassan pursuant to E.O. 13224. 81 Fed. Reg. 85,302 (Nov. 25, 2016). On October 21, 2016, Abdullah Ahmed al-Meshedani was designated. 81 Fed. Reg. 85,667 (Nov. 28, 2016). On October 31, 2016, Victor Quispe Palomino was designated. 81 Fed. Reg. 85,303 (Nov. 25, 2016). Jorge Quispe Palomino and Tarcela Loya Vilchez were also designated on October 31, 2016. 81 Fed. Reg. 85,668 (Nov. 28, 2016). On November 22, 2016, a State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/11/264500.htm, announced the designations of Victor Quispe Palomino, Jorge Quispe Palomino and Tarcela Loya Vilchez under E.O. 13224. Victor Quispe Palomino leads the Shining Path with his brother Jorge Quispe Palomino. Tarcela Loya Vilchez is "a Shining Path leader in charge of the military and ideological training of children." *Id*.

Abdelilah Himich was designated on November 4, 2016. 81 Fed. Reg. 85,302 (Nov. 25, 2016).

On December 8, 2016, the State Department designated Hamza bin Laden under E.O. 13224. 82 Fed. Reg. 3070 (Jan. 10, 2017). Also on December 8, 2016, Jamaah Ansharut Daulah was designated. 82 Fed. Reg. 4449 (Jan. 13, 2017). On December 15, 2016, Ibrahim al-Banna was designated pursuant to E.O. 13224. *Id.* Ali Damush was designated on December 20, 2016. 82 Fed. Reg. 3382 (Jan. 11, 2017). And Mustafa Mughniyeh was also designated on December 20, 2016. 82 Fed. Reg. 3840 (Jan. 12, 2017). On December 21, 2016 the Department of State announced the designation of Saleck Ould Cheikh Mohamedou under E.O. 13224. 81 Fed. Reg. 95,264 (Dec. 27, 2016); see also December 21, 2016 State Department media note, available at https://2009-2017.state.gov/r/pa/prs/ps/2016/12/265897.htm, which includes the following about Mohamedou:

> Mohamedou, an al-Qa'ida in the Islamic Maghreb (AQIM) operative, was sentenced to death in Mauritania in 2011 after his conviction for attempting to assassinate the Mauritanian head-of-state Mohamed Ould Abdel Aziz. The plot, which was foiled by the Mauritanian Army, included attacks on the French Embassy and the Mauritanian Ministry of National Defense. Mohamedou is also regarded as the mastermind of the terrorist attack that resulted in the killing of four French tourists in Mauritania in 2007. Mohamedou escaped from prison in 2015, but was captured in January 2016 and is currently incarcerated in Mauritania.

On December 27, 2016, the State Department made the determination pursuant to E.O. 13224 to designate Alexanda Amon Kotey. 82 Fed. Reg. 3841 (Jan. 12, 2017).

The State Department also continued to amend and review designations under E.O. 13224. On October 19, 2016, the Department amended the designation of Al-Nusrah Front (and other aliases), to add the alias Jabhat Fath al Sham and other aliases. 81 Fed. Reg. 79,554 (Nov. 14, 2016). On December 28, 2016, the Department announced it was amending the designation of Lashkar e-Tayyiba to add the alias Al-Muhammadia Students ("AMS"). 82 Fed. Reg. 175 (Jan. 3, 2017). See also December 28, 2016 State Department media note, available at https://2009-2017.state.gov/r/pa/prs/ps/2016/12/266105.htm.

(2) OFAC

(a) OFAC designations

OFAC designated numerous individuals (including their known aliases) and entities pursuant to Executive Order 13224 during 2016. The designated individuals and entities typically are owned or controlled by, act for or on behalf of, or provide support for or services to, individuals or entities the United States has designated as terrorist organizations pursuant to the order. See 81 Fed. Reg. 5520 (Feb. 2, 2016); (one individual—Ali Youssef CHARARA—and one entity—SPECTRUM INVESTMENT GROUP HOLDING SAL); 81 Fed. Reg. 6105 (Feb. 4, 2016) (two individuals—Mohamad NOUREDDINE, and Hamdi ZAHER EL DINE—and one entity—TRADE POINT INTERNATIONAL S.A.R.L.); 81 Fed. Reg. 7891 (Feb. 16, 2016) (one individual—Nayf Salam Muhammad Ujaym AL-HABABI); 81 Fed. Reg. 7891 (Feb. 16, 2016) (three individuals—Husayn JUAYTHINI, Turki Mubarak Abdullah Ahmad AL-BINALI, and Faysal Ahmad 'Ali AL-ZAHRANI); 81 Fed. Reg. 19,712 (Apr. 5, 2016) (four individuals—James Alexander MCLINTOCK, Muhammad Ijaz SAFARASH, Abdul Aziz NURISTANI, and Naveed QAMAR—and two entities—AL RAHMAH WELFARE ORGANIZATION and JAMIA ASARIYA MADRASSA); 81 Fed. Reg. 64,576 (Sep. 20, 2016) (two individuals—Hussam JAMOUS and Mohamad Alsaied ALHMIDAN); 81 Fed. Reg. 66,121 (Sep. 26, 2016) (six individuals—'Abdallah Hadi 'Abd al-Rahman Fayhan Sharban AL-'ANIZI, Ghalib Abdullah AL-ZAIDI, Salmi Salama Salim Sulayman 'AMMAR, Abd al-Muhsin Zabin Mutib Naif AL-MUTAYRI, Nayif Salih Salim AL-QAYSI, and Mostafa MAHAMED); 81 Fed. Reg. 73,474 (Oct. 25, 2016) (four individuals— Muhammad Al-Mukhtar KALLAS, Muhammad Ghaleb HAMDAR, Yosef AYAD, and Hasan JAMAL–AL–DIN—and one entity—GLOBAL CLEANERS S.A.R.L.); 81 Fed. Reg. 77,002 (Nov. 4, 2016) (two individuals—Said Salih Abd-Rabbuh AL-OMGY and Muhammad Salih Abd-Rabbuh AL-OMGY—and one entity— AL–OMGY AND BROTHERS MONEY EXCHANGE); 81 Fed. Reg. 90,409 (Dec. 14, 2016) (two individuals—Abdallah Faysal SADIQ AL-AHDAL and Al-Hasan ALI ALI ABKAR–and one entity—RAMAH CHARITABLE ORGANIZATION); 81 Fed. Reg. 92,000 (Dec. 19, 2016) (one individual—Fawaz Muhammad JUBAYR AL-RAWI and two entities—HANIFA MONEY EXCHANGE OFFICE and SELSELAT AL THAHAB); 82 Fed. Reg. 176 (Jan. 3, 2016) (two individuals—Shahid MAHMOOD and Muhammad SARWAR).

(b) OFAC de-listings

In 2016, OFAC determined that 12 persons previously designated pursuant to E.O. 13224 should be removed from the Treasury Department's list of Specially Designated Nationals and Blocked Persons. On June 30, 2016, OFAC removed three individuals from the SDN List (Ahmed Nur Ali Jim'ale; Mohamed Daki; Ali Ghaleb Himmat). 81 Fed. Reg. 66,120 (Sep. 26, 2016). Effective July 27, 2016, OFAC delisted one individual (Abdulbasit ABDULRAHIM). 81 Fed. Reg. 67,431 (Sep. 30, 2016). Effective August 16, 2016, OFAC delisted two entities (INTERNATIONAL ISLAMIC RELIEF ORGANIZATION INDONESIA BRANCH OFFICE and INTERNATIONAL ISLAMIC RELIEF ORGANIZATION PHILIPPINES BRANCH OFFICE). 81 Fed. Reg. 67,431 (Sep. 30, 2016). Effective September 16, 2016, OFAC delisted one entity (the U.S. branch of Al-Haramain). 81 Fed. Reg. 66,120 (Sep. 26, 2016). Effective October 27, 2016, OFAC delisted five individuals (Anas AL-LIBY, Al-Sayyid Ahmad Fathi HUSAYN ALAYWAH, Yasser Abu SHAWEESH, Farid AIDER, and Abd Al Wahab ABD AL HAFIZ), 81 Fed. Reg. 75,921 (Nov. 1, 2016).

c. Annual certification regarding cooperation in U.S. antiterrorism efforts

See Chapter 3 for discussion of the Secretary of State's 2016 determination regarding countries not cooperating fully with U.S. antiterrorism efforts.

7. Russia and Ukraine

a. Sanctions in response to Russia's actions in Ukraine

On September 8, 2016, OFAC identified 133 persons whose property and interests in property are blocked pursuant to E.O. 13660, E.O. 13661, and E.O. 13685, or who are subject to the prohibitions of one or more directives under E.O. 13662. 81 Fed. Reg. 62,245 (Sep. 8, 2016). On October 5, 2016, OFAC published the names of 121 persons whose property and interests in property are blocked pursuant to E.O. 13660, E.O. 13661, and E.O. 13685, or who are subject to the prohibitions of one or more directives under E.O. 13662. On December 20, 2016, OFAC blocked the property and interests in property of seven individuals pursuant to E.O. 13661. 81 Fed. Reg. 95,303 (Dec. 27, 2016). Also on December 20, 2016, OFAC designated eight entities and identified two vessels pursuant to E.O. 13685. *Id*. In addition, on December 20, 2016, OFAC determined, pursuant to Directive 1 of E.O. 13662, that Russian Agricultural Bank owns, directly or indirectly, a 50 percent or greater interest in 14 entities identified in the Federal Register notice. *Id.* And OFAC identified 12 entities in which OAO Novatek owns a 50 percent or greater interest, subjecting them to the prohibitions of Directive 2 pursuant to E.O. 13662. *Id.*

For background on E.O. 13660, "Blocking Property of Certain Persons Contributing to the Situation in Ukraine," see *Digest 2014* at 646. For background on E.O. 13662 and Directives 1, 2, and 4, see *Digest 2014* at 647-49. For background on E.O.

13685, "Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine," see *Digest 2014* at 651-52. For background on E.O. 13661, "Blocking Property of Additional Persons Contributing to the Situation in Ukraine," see *Digest 2014* at 646-47.

b. Magnitsky Act

For background on the Sergei Magnitsky Rule of Law Accountability Act of 2012 ("Magnistky Act"), see *Digest 2013* at 505-06. On February 1, 2016, the State Department submitted to Congress the third annual report on implementation of the Magnitsky Act. See State Department press statement, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/02/251969.htm. Along with the report, the State Department and Treasury Department identified a list of persons meeting the criteria for designation under the Act, either by being involved in the criminal conspiracy uncovered by deceased Russian lawyer Sergei Magintsky, or by being responsible for or profiting from Magnitsky's detention, abuse, and death, or by covering up the legal liability for it. The Act also authorizes sanctions on persons responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights against individuals seeking to expose illegal activity by Russian officials or individuals attempting to exercise, defend, or promote their internationally recognized human rights and freedoms in the Russian Federation. With the addition of the February 1, 2016 designations, the list numbered 36 persons.

Also on February 1, 2016, a senior State Department official held a special briefing on implementing the Magnitsky Act, a record of which is available at http://2009-2017.state.gov/r/pa/prs/ps/2016/02/251989.htm.

On February 1, 2016, OFAC blocked the property of the five individuals identified by the Department of State and Treasury Department pursuant to the Magnitsky Act. 81 Fed. Reg. 6933 (Feb. 9, 2016). The Federal Register notice provides short descriptions of the actions taken by the sanctioned individuals:

> Aleksey Vasilyevich Anichin participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky.
>
> Yevgeni Yuvenalievich Antonov is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against an individual seeking to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections, in Russia.
>
> Boris Borisovich Kibis participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky.
>
> Pavel Vladimirovich Lapshov participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky.
>
> Oleg Vyacheslavovich Urzhumtsev participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky.

8. Iraq

On August 8, 2016, OFAC published notification in the Federal Register of the removal of an individual from the SDN list who had been designated pursuant to E.O. 13315 ("Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Other Actions"), as amended by E.O. 13350. 81 Fed. Reg. 52,526 (Aug. 8, 2016). The individual identified for delisting is Nabil Abdullah AL-JANABI.

9. Targeted Sanctions Relating to Threats to Democratic Process and Restoration of Peace, Security, and Stability

a. Burundi

On June 2, 2016 OFAC blocked the property and interests in property of three individuals pursuant to E.O. 13712, ''Blocking Property of Certain Persons Contributing to the Situation in Burundi'': Marius NGENDABANKA, (the commander of the First Military Region, deputy chief of land forces, and Burundian National Defense Forces deputy commander of operations); Ignace SIBOMANA (Burundian Army colonel and chief of military intelligence); and Edouard NSHIMIRIMANA (former lieutenant colonel). 81 Fed. Reg. 36,988 (June 8, 2016).

b. Democratic Republic of Congo

On June 23, 2016, OFAC blocked the property and interests in property of one individual—Celestin Kanyama—pursuant to E.O. 13413, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo." 81 Fed. Reg. 42,060 (June 28, 2016). On September 28, 2016 OFAC blocked the property and interests in property of two individuals—Gabriel Amisi Kumba and John Numbi—pursuant to E.O. 13413. 81 Fed Reg. 68,106 (Oct. 3, 2016). On December 12, 2016, OFAC blocked the property and interests in property of two individuals pursuant to E.O. 13413: Kalev Mutondo and Evariste Boshab. 81 Fed. Reg. 90,921 (Dec. 15, 2016).

c. Burma

In 2016, the United States terminated the national emergency with respect to Burma that provided the foundation for the Burma sanctions program. On May 17, 2016 OFAC identified six entities under E.O. 13448 of October 18, 2007, ''Blocking Property and Prohibiting Certain Transactions Related to Burma'' and also removed ten entities previously included on the SDN List pursuant to E.O. 13310 of July 28, 2003, ''Blocking Property of the Government of Burma and Prohibiting Certain Transactions" or E.O. 13464 of April 30, 2008, ''Blocking Property and Prohibiting Certain Transactions Related to Burma.'' 81 Fed. Reg. 32,384 (May 23, 2016). The six entities added to the SDN list are: 1. SHWE NAR WAH COMPANY LIMITED; 2. GREEN ASIA SERVICES CO., LTD.; 3.

GLOBAL WORLD INSURANCE COMPANY LIMITED; 4. ASIA MEGA LINK CO., LTD.; 5. ASIA MEGA LINK SERVICES CO., LTD.; and 6. PIONEER AERODROME SERVICES CO., LTD. The entities removed are: 1. MYANMA FOREIGN TRADE BANK; 2. MYANMA INVESTMENT AND COMMERCIAL BANK; 3. MYANMA ECONOMIC BANK; 4. MYANMAR TIMBER ENTERPRISE; 5. MYANMAR GEM ENTERPRISE; 6. MYANMAR PEARL ENTERPRISE; 7. CO-OPERATIVE EXPORT-IMPORT ENTERPRISE; 8. NO. 1 MINING ENTERPRISE; 9. NO. 2 MINING ENTERPRISE; 10. NO. 3 MINING ENTERPRISE. *Id.*

On September 14, 2016, the State Department issued a fact sheet on the President's announced intention to terminate the national emergency for Burma. The fact sheet, which is available at http://2009-2017.state.gov/r/pa/prs/ps/2016/09/261917.htm, explains that the announcement followed the first visit to the United States of Aung San Suu Kyi in her new capacity as Burma's State Counselor. The fact sheet includes the following:

> … Burma now has democratically-elected civilian leadership for the first time in over half a century, and is focused on bringing peace and national reconciliation, economic prosperity and social welfare, and respect for human rights to its people.
>
> …
>
> President Obama announced his intention to take action to lift Executive Order-based economic and financial sanctions on Burma. In particular, he intends to terminate the national emergency with respect to Burma, which has been in place since 1997, an action that reflects Burma's progress on democratization and human rights. …
>
> …[S]everal restrictions remain in place. JADE Act visa ineligibilities remain in effect, including with respect to military leaders and those who provide substantial political and economic support to the Burmese military. Remaining restrictions on foreign assistance to Burma include limitations on assistance to Burma's military.

On October 7, 2016, the President issued E.O. 13742, "Termination of Emergency With Respect to the Actions and Policies of the Government of Burma." 81 Fed. Reg. 70,593 (Oct. 12, 2016). The preamble to the Order explains:

> I…find that the situation that gave rise to the declaration of a national emergency in Executive Order 13047 of May 20, 1997, with respect to the actions and policies of the Government of Burma, in particular a deepening pattern of severe repression by the State Law and Order Restoration Council, the then-governing regime in Burma, as modified in scope by Executive Order 13448 of October 18, 2007, and Executive Order 13619 of July 11, 2012, has been significantly altered by Burma's substantial advances to promote democracy, including historic elections in November 2015 that resulted in the former opposition party, the National League for Democracy, winning a majority of seats in the national parliament and the formation of a democratically elected, civilian-

> led government; the release of many political prisoners; and greater enjoyment of human rights and fundamental freedoms, including freedom of expression and freedom of association and peaceful assembly. Accordingly, I hereby terminate the national emergency declared in Executive Order 13047, and revoke that order, Executive Order 13310 of July 28, 2003, Executive Order 13448, Executive Order 13464 of April 30, 2008, Executive Order 13619, and Executive Order 13651 of August 6, 2013…

Effective October 7, 2016, OFAC removed from the SDN List the names of 111 persons (listed in the Federal Register notice) whose property and interests in property had been blocked pursuant to E.O. 13310 (Blocking Property of the Government of Burma and Prohibiting Certain Transactions), E.O. 13448 (Blocking Property and Prohibiting Certain Transactions Related to Burma), E.O. 13464 (Blocking Property and Prohibiting Certain Transactions Related To Burma), and E.O. 13619 (Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma). 81 Fed. Reg. 75,488 (Oct. 31, 2016).

d. Zimbabwe

On February 3, 2016, OFAC designated five individuals and three entities pursuant to Executive Order 13288 of March 6, 2003, "Blocking Property of Persons Undermining Democratic Institutions in Zimbabwe," as amended by Executive Order 13391, "Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe," and Executive Order 13469 of July 25, 2008, "Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe." OFAC added two entities to the list of persons sanctioned pursuant to the Zimbabwe Sanctions Regulations on March 8, 2016. 81 Fed. Reg. 13,037 (Mar. 11, 2016). On August 15, 2016, OFAC removed the name of one person designated previously pursuant to E.O. 13288, as amended. 81 Fed. Reg. 55,522 (Aug. 19, 2016). On October 4, 2016, OFAC removed nine individuals and eleven entities from the SDN list previously designated pursuant to E.O. 13288 as amended. 81 Fed. Reg. 70,274 (Oct. 11, 2016). On November 18, 2016, OFAC removed Sylvester Robert Nguni from the SDN List, where he had been designated pursuant to E.O. 13391. 81 Fed. Reg. 84,693 (Nov. 23, 2016).

e. Liberia

In 2016, the UN Security Council terminated international sanctions relating to Liberia. Ambassador David Pressman, Alternate U.S. Representative to the UN for Political Affairs, delivered the explanation of vote on May 25, 2016 at the adoption of Resolution 2288, terminating Liberia sanctions. His statement is excerpted below and available at http://2009-2017-usun.state.gov/remarks/7298. See *Digest 2015* at 674 regarding the U.S. determination in November 2015 that Liberia's significant advances in promoting democracy warranted termination of the U.S. sanctions program for Liberia. On

November 4, 2016, OFAC amended its regulations to remove the Liberia sanctions provisions. 81 Fed Reg. 76,861 (Nov. 4, 2016).

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* * * *

Thank you, Mr. President. As we terminate these sanctions today, it is worth recalling how far Liberia has come. Today is the first day that Liberia is not subject to United Nations sanctions since 1992. The current sanctions date from 2003, shortly after Charles Taylor had gone into exile and a comprehensive peace agreement had been signed. At that time, this Council took swift and effective action to establish a strong sanctions regime aimed at supporting Liberia's peace agreement. The sanctions first included an arms embargo, a targeted travel ban, and import bans on the principal natural resources that were funding the conflict: round logs and timber products originating in Liberia, and rough diamonds from Liberia. These innovative natural resource sanctions, which were carefully tailored to the specific context in Liberia, made a powerful contribution to Liberia's peace and security. The Council adjusted the sanctions as the situation on the ground changed, adding a targeted asset freeze.

Importantly, the Council clearly articulated the objectives of these measures and, therefore, when it would be prepared to terminate them. The arms and travel sanctions were aimed to support the ceasefire, disarmament, demobilization and reintegration, implementation of the peace agreement, and establishing and maintaining stability in Liberia and the sub-region more generally. The diamond sanctions were aimed to prevent diamonds from fueling the conflict and to support the establishment of a certificate of origin regime. The timber sanctions were geared towards ensuring that revenues from the timber industry were not used to fuel conflict. And over time, as the situation in Liberia stabilized and these criteria were progressively met, the Security Council responded by gradually terminating the natural resource sanctions, scaling back the arms embargo, and finally, last year, terminating the targeted sanctions measures. Today, more than 12 years after the end of Liberia's brutal civil war and the Council's imposition of sanctions, Liberia continues to consolidate its progress and the Security Council has determined that the criteria for lifting the sanctions have been met, allowing us to fully terminate the regime.

What lessons can we learn from this history that may be applicable to the threats to international peace and security that we face today?

One is that the Security Council must be creative and courageous in its sanctions design. The Liberia natural resources sanctions were well-tailored to the context and demonstrated this Council's determination to address unconventional sources of conflict financing. We would do well to consider similar measures targeting the funding and fueling of conflict in other situations we are facing today. This is neither unprecedented nor is it novel. It is effective, and one need look no further than Liberia.

A second lesson is that effective monitoring and enforcement of sanctions is imperative. The Liberia Panel of Experts, and the Panel of Experts on Sierra Leone before it, reported on many issues that states saw as sensitive: organized smuggling networks, trafficking of diamonds, control over and use of revenues of the timber industry. …

A third lesson is that the effective collaboration of international partners and mechanisms is a key part of making sanctions work effectively. We saw that in Liberia with productive

cooperation between the sanctions committee, the Panel of Experts, the UN Mission in Liberia, and the Liberian government. This was a testament to what can be achieved when sanctions are deployed with purpose, grounded within a clear strategy for promoting international peace and security, and coupled with the necessary political progress from governments.

The fourth, and last, is less a lesson than a reminder: that sanctions, even the sanctions that last the longest, do not last forever. Sanctions end. We saw another example of this earlier this year with the termination of the Côte d'Ivoire sanctions regime. Just as we must never hesitate to strengthen sanctions and their enforcement if necessary to address threats to international peace and security, we must move expeditiously to wind down and end sanctions when they are no longer serving the purpose or when they have achieved what was sought.

That is not to say that Liberia's work to improve its internal security is finished. In order for Liberia to safeguard the gains achieved over the past 12 years, we encourage the government to prioritize further capacity building of its security sector by ensuring that it has the necessary legal framework in place, and by continuing to strengthen the capacity of its security agencies to better monitor arms flows, mark weapons, and patrol its borders. We encourage the legislature to take the remaining steps to finalize the Firearms and Ammunition Control Act, which is an important piece of legislation, in order to address gaps in Liberia's legal framework for arms and ammunition management. …

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f. South Sudan

On March 2, 2016, Ambassador Pressman provided the U.S. explanation of vote on Resolution 2271 on South Sudan. Ambassador Pressman's remarks are excerpted below and available at http://2009-2017-usun.state.gov/remarks/7163.

* * * *

This Council and the United Nations remain steadfast in their commitment to support the people of South Sudan in their quest for stability, peace, and good governance. Unfortunately, we have a long way to go and much work remains. As such, we must work together to send the right signals to South Sudan's leaders. The Secretary-General perhaps put it best last week when he told the leaders bluntly: "Put peace above politics. Pursue compromise. Overcome obstacles. Establish the Transitional Government of National Unity. And do not delay it."

This Security Council has repeatedly shown its willingness to use targeted sanctions to marginalize spoilers, target those who commit violations and abuses, and impose accountability for atrocities. This Council should consider carefully new proposals to use sanctions to better stabilize the situation, limit the unrestricted flow of arms, and incentivize the parties towards compromise.

Rather than rush this deliberative process, the United States supports the Security Council's decision today to renew the current sanctions measures until April 15th and the mandate of the Panel of Experts for just a few more weeks, until May 15th. This period of time will allow the Council to fully discuss proposals that have been put forward by delegations

around this table and will allow us time to measure the progress made by the parties on implementing the peace agreement and forming the transitional government.

We fully agree that this is a delicate moment in this peace process, but it is also a critical moment where humanitarian needs are greater than ever, human rights violations persist, and the people of South Sudan continue to suffer. Parties to this conflict need to show progress on the peace agreement signed last year…. We urge South Sudanese parties to take the key steps that are necessary for full implementation of the peace agreement.

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On May 31, 2016, Ambassador Pressman provided the U.S. explanation of vote on resolution 2290 on South Sudan. Ambassador Pressman's remarks are excerpted below and available at http://2009-2017-usun.state.gov/remarks/7310.

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… The Security Council has watched the situation in South Sudan particularly closely over these last three months. In early March, as the targeted sanctions established by Resolution 2206 were due to be renewed, the Council extended them for 45 days. We proposed this somewhat unconventional approach because we wanted to keep the fluid situation on the ground under continuous review. In early April, seeing some tentative signs of progress but still no national unity government, the Council extended the sanctions for another short period, and simultaneously adopted a presidential statement reinforcing the steps the Security Council expected the parties to take. We expressed our intention to review progress on those benchmarks before the Security Council considered next steps on the sanctions regime. Finally, just over a month ago, the Transitional Government of National Unity was formed, fulfilling a key provision of the Agreement on the Resolution of the Conflict in South Sudan. Obviously, however, much, much more remains to be done.

While we have now adopted a resolution extending the sanctions framework for a year, we will be no less vigilant or focused on South Sudan as we have been for the last 90 days, and we will be no less prepared to augment or modify the sanctions regime as the situation on the ground demands and the conduct of the parties necessitates. We have all watched too much bloodshed in South Sudan. We have watched leaders prioritize power over peace and we have watched the very real human consequences of their craven policies. As the Secretary-General stated, the people of South Sudan have "been betrayed by those who put power and profit over people." He went on to refer to "epic corruption."

There is no time to delay tackling these challenges. Now is the time to fully implement the peace agreement, which, as the Security Council has emphasized today, includes establishing the hybrid court and the mechanisms outlined in Chapter 5 of the agreement in order to hold accountable those whose actions have cost so many—too many—lives needlessly. Today's resolution should remind South Sudan's leaders that there is no other path and no other choice but full and expeditious implementation of the peace agreement.

The return of Riek Machar, his appointment as the First Vice President, and the subsequent formation of the Transitional Government of National Unity are indeed significant

steps forward, but they are only the beginning of a long path towards peace and healing and a long path towards justice. So long as there continues to be no meaningful progress on the other core elements of the peace agreement—which includes upholding the ceasefire, improving humanitarian access, and ending attacks on humanitarians—the severe suffering of the millions of South Sudanese impacted by this conflict continues. To convey a sense of the scale of this suffering, a report from the United Nations Deputy Humanitarian Coordinator in South Sudan stated that in just five counties in South Sudan's Unity state, there were over 7,000 violent deaths in a single year. In just five counties, in just one state of South Sudan, in just one year, there were as many violent deaths as there have been in all of Yemen since March of 2015. A survey by UNDP also found that the levels of post-traumatic stress disorder are on par with some of the worst conflict zones in modern history.

The leaders of South Sudan must redouble their efforts to build a better future for their people by fully implementing the peace agreement, including the four reform pillars: drafting and adopting a permanent constitution, restructuring the security sector, establishing transparent management of public finances, and advancing transitional justice, including meaningful reconciliation and accountability.

At the same time, we, as members of the Security Council, must renew our commitment to carefully monitor the situation in South Sudan, including information we receive from the Panel of Experts about the arms flow that pose such a serious threat to the success of the peace agreement and the stability of South Sudan and the region. In light of the Panel of Experts reporting that the parties were continuing to acquire arms even after they signed the peace agreement, the Security Council today—significantly, in this resolution—has asked for a special report from the Panel of Experts on arms procurement since the formation of the Transitional Government of National Unity. We must continue to watch this closely and we must continue to uphold our responsibility to use the full range of tools available to us when such action is necessary for the maintenance of international peace and security.

* * * *

On April 4, 2016, OFAC amended the designation of Gabriel Jok Riak pursuant to E.O. 13664, "Blocking Property of Certain Persons With Respect to South Sudan." 81 Fed. Reg. 20,444 (Apr. 7, 2016).

g. Central African Republic

As discussed in *Digest 2014* at 663-64, the President issued E.O. 13667, "Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic," in 2014. Effective March 8, 2016, OFAC designated Joseph Kony and the Lord's Resistance Army pursuant to E.O. 13667. 81 Fed. Reg. 13,036 (Mar. 11, 2016). On August 23, 2016, OFAC added Ali Kony and Salim Kony to the list of designated persons under E.O. 13667. 81 Fed. Reg. 59,270 (Aug. 29, 2016).

h. Côte d'Ivoire

On September 14, 2016, the President terminated the national emergency declared with respect to Côte d'Ivoire in E.O. 13396, "Blocking Property of Certain Persons Contributing to the Conflict in Côte d'Ivoire. See Executive Order 13739 of September 14, 2016, 81 Fed. Reg. 63,673 (Sep. 16, 2016); see also State Department press statement, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/09/261867.htm, which explains:

> The President determined that Côte d'Ivoire's advances in restoring peace and democracy and developing its political, administrative, and economic institutions represent significant improvements since President Bush declared the national emergency in 2006. The President's action today highlights the great progress that Côte d'Ivoire has made since the crisis in 2010-11.

The UN Security Council had previously voted to terminate sanctions on Côte d'Ivoire on April 28, 2016. Ambassador Michele J. Sison, U.S. Deputy Representative to the UN, delivered the explanation of vote for the United States at the adoption of resolutions 2283 and 2284, which is excerpted below and available at http://2009-2017-usun.state.gov/remarks/7249.

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Mister President, today, as a reflection of the significant progress towards restoring peace and security in Côte d'Ivoire, the Security Council has taken the important decision to terminate the UN sanctions regime and to lay out a timeline for the full withdrawal of UNOCI. These resolutions are notable examples of how multilateral tools, thoughtfully conceived and managed, can serve our shared peace and security interests.

In 2004, Côte d'Ivoire was plagued with political turmoil and violence that threatened its own stability, as well as that of the region. The Council responded, establishing an arms embargo designed to prevent an influx of weapons from worsening the conflict.

Over time, the Council added targeted financial sanctions and travel bans, including against those individuals threatening the peace and national reconciliation process in Côte d'Ivoire, as well as an embargo on Côte d'Ivoire's diamond trade, one of the principal sources of funding for those fueling the violence. These measures were carefully designed to deter those who were undermining Côte d'Ivoire's peace and stability, prevent their access to financial resources and weapons, and promote Côte d'Ivoire's return to the path of peace, stability, and greater prosperity for its people. Indeed, after the electoral crisis in late 2010, we saw the important effect of international diplomatic pressure and the arms embargo in preventing greater violence and arriving at a peaceful resolution by April 2011.

In Côte d'Ivoire, sanctions worked because of the effective collaboration of international partners and mechanisms, including the sanctions committee and expert group, UNOCI, and significantly, the Ivoirian government.

Today's decision to terminate the sanctions on Côte d'Ivoire is a testament to what can be achieved when sanctions are targeted, deployed with purpose, and grounded within a clear strategy for promoting international peace and security.

We also welcome the steps taken today toward transition and closure of UNOCI. The transition must be done in a responsible manner that allows for proper planning and coordination with the UN country team.

* * * *

i. Libya

On April 19, 2016, the President issued a new executive order relating to Libya, E.O. 13726, ''Blocking Property and Suspending Entry into the United States of Persons Contributing to the Situation in Libya.'' On April 19, 2016, OFAC blocked the property and interests in property of Khalifa Mohamed Ahmed Ghawil pursuant to E.O. 13726. Effective May 13, 2016, OFAC imposed sanctions pursuant to E.O. 13726 (Blocking Property and Suspending Entry into the United States of Persons Contributing to the Situation in Libya) on one individual (Agila Saleh Essa). 81 Fed. Reg. 31,298 (May 18, 2016).

j. Balkans

Effective June 11, 2015, OFAC unblocked the property and interests in property of one individual (Milenko VRACAR) and one entity (PRIVREDNA BANKA SARAJEVO AD) designated under E.O. 13219, "Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans," as amended by E.O. 13304 "Termination of Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001." 80 Fed. Reg. 33,338 (Jun. 11, 2015).

10. Transnational Crime

On February 16, 2016, OFAC designated two individuals pursuant to Executive Order 13581, "Blocking Property of Transnational Criminal Organizations." 81 Fed. Reg. 8819 (Feb. 22, 2016). On September 22, 2016, OFAC designated twelve individuals, 25 entities, and one blocked property pursuant to E.O. 13581. 81 Fed. Reg. 66,326 (Sep. 27, 2016). On October 11, 2016, OFAC designated four individuals and nine entities pursuant to E.O. 13581. 81 Fed. Reg. 71,199 (Oct. 14, 2016). On December 30, 2016, OFAC designated three individuals and two entities. 82 Fed. Reg. 1783 (Jan. 6, 2017). For background on E.O. 13581, see *Digest 2011* at 518-19.

11. Malicious Activities in Cyberspace

On December 28, 2016, President Obama issued Executive Order 13757, "Taking Additional Steps to Address the National Emergency With Respect to Significant

Malicious Cyber-Enabled Activities." 82 Fed. Reg. 1 (Jan. 3, 2017). E.O. 13757 amends E.O. 13694 of 2015, discussed in *Digest 2015* at 677-78. E.O. 13757 adds an annex listing the following entities and individuals subject to blocking:

Entities

1. Main Intelligence Directorate (a.k.a. Glavnoe Razvedyvatel'noe Upravlenie) (a.k.a. GRU); Moscow, Russia
2. Federal Security Service (a.k.a. Federalnaya Sluzhba Bezopasnosti) (a.k.a FSB); Moscow, Russia
3. Special Technology Center (a.k.a. STLC, Ltd. Special Technology Center St. Petersburg); St. Petersburg, Russia
4. Zorsecurity (a.k.a. Esage Lab); Moscow, ..Russia
5. Autonomous Noncommercial Organization "Professional Association of Designers of Data Processing Systems" (a.k.a. ANO PO KSI); Moscow, Russia

Individuals

1. Igor Valentinovich Korobov; DOB Aug 3, 1956; nationality, Russian
2. Sergey Aleksandrovich Gizunov; DOB Oct 18, 1956; nationality, Russian
3. Igor Olegovich Kostyukov; DOB Feb 21, 1961; nationality, Russian
4. Vladimir Stepanovich Alexseyev; DOB Apr 24, 1961; nationality, Russian

On December 29, 2016, OFAC blocked the property and interests in property of two additional individuals pursuant to E.O. 13694, as amended by E.O. 13757: Evgeniy Mikhaylovich BOGACHEV and Aleksey Alekseyevich BELAN. 82 Fed. Reg. 1424 (Jan. 5, 2017).

On December 29, 2016, the President modified E.O. 13694 to "allow for the imposition of sanctions on individuals and entities determined to be responsible for tampering, altering, or causing the misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions." In conjunction with this amendment to E.O. 13694, five entities and four individuals were added to OFAC's SDN List. See Chapter 10 for a discussion of additional measures taken by the United States in response to Russia's interference in the U.S. election and to a pattern of harassment of U.S. diplomats overseas.

B. EXPORT CONTROLS

1. Export Control Litigation

a. Goldstein v. Dept. of State

On January 26, 2016, the U.S. District Court for the District of Columbia granted the State Department's motion to dismiss a challenge to amendments to the International Traffic in Arms Regulations ("ITAR") regarding what constitutes "brokering activities" under the Arms Export Control Act ("AECA"). *Goldstein v. Department of State*, No. 15-0311. Plaintiff claimed that the definition and guidance regarding brokering activities

might require him as an attorney providing legal services to clients engaged in transactions involving regulated items to register as a broker or be found in violation of the regulations. The district court held that plaintiff lacked standing because "whether a particular transaction crosses into 'brokering activity' is an inherently fact-bound determination dependent on the nature of the transaction and the parties." The court also found that the claim was not ripe for adjudication. The opinion explains:

> …[F]urther factual development here "would 'significantly advance [the court's] ability to deal with the legal issues presented.'" *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 812 (2003) (quoting *Duke Power Co. v. Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59, 82 (1978)). Mr. Goldstein's request for guidance was phrased in the most general way. As Defendants aptly point out, "[g]iven the complete lack of specific factual information about the proposed transactions . . . [the Directorate] could hardly be expected to provide a response that discussed whether a particular service is a brokering activity in every possible circumstance." Defs.' Reply at 5. Whether any particular activity an attorney engages in shades into "brokering activity" will presumably depend on the contours of the particular transaction or activity. And the Court would necessarily have to consider those factual questions to assess Mr. Goldstein's constitutional vagueness, federalism, and APA claims—all of which require some understanding of whether, and to what extent, State's definition of "brokering activities" will capture attorneys' legal services. Unmoored from a fleshed-out factual setting, the Court is hindered in its ability to assess Plaintiff's claims. Thus, for "many of the same reasons that standing is absent, the Court finds that further factual development is necessary (or at the very least, desirable) here." *Delta Air Lines*, 85 F. Supp. 3d at 270.
>
> The Court shares Plaintiff's concern that some uncertainty persists in State's definition of "brokering activities." Yet, Plaintiff is not without recourse. If Plaintiff desires concrete guidance before it faces the threat of an enforcement action, nothing precludes it from seeking guidance—and a binding State Department determination—that its proposed activity does not constitute a "brokering activity" by submitting a more detailed request that provides as much information as Plaintiff is able to without disclosing confidential attorney-client information. *See* 22 C.F.R. § 129.9(a). Even the government acknowledges that, had Plaintiff submitted a request for binding guidance under § 129.9(a) and had been "dissatisfied with the result," an action challenging State's response "may have been ripe." Defs.' Mem. Supp. at 19. For now, however, Plaintiff has not shown that it is injured by Part 129's hypothetical application to the legal services it provides and, in any event, its claims are not ripe.

b. Defense Distributed v. U.S. Dept. of State

On February 11, 2016, the United States filed its brief on appeal in the U.S. Court of Appeals for the Fifth Circuit in *Defense Distributed et al. v. U.S. Dept. of State et al.*, No.

15-50759. The district court had rejected plaintiffs' challenge to export controls imposed by the State Department on the intended distribution of computer files through an Internet site that would enable production of undetectable firearms using 3-D printers or related devices. See *Digest 2015* at 680-84 for discussion of the district court decision. The U.S. brief on appeal, excerpted below, explains why the court should affirm.

* * * *

I. Government officials did not act ultra vires.

Plaintiffs argue that the Department of State acted ultra vires when it required Defense Distributed to obtain a license before uploading to an unrestricted Internet site computer files that allow export-controlled firearm components to be created at the touch of a button. As the district court explained, to establish that the government was acting ultra vires, plaintiffs must "establish that the officer was acting 'without any authority whatever,' or without any 'colorable basis for the exercise of authority.'" Order 8 [ROA.686] (quoting *Danos v. Jones*, 652 F.3d 577, 583 (5th Cir. 2011)). Plaintiffs cannot come close to meeting this standard.

The Arms Export Control Act authorizes the President, "[i]n furtherance of world peace and the security and foreign policy of the United States," to "control the import and the export of defense articles and defense services." 22 U.S.C. § 2778(a)(1). As particularly relevant here, the statute contemplates the promulgation of regulations designating particular items as "defense articles and defense services," *id.*, and prohibits the exportation of such articles and services without a license or other authorization, *id.* § 2778(b)(2). These powers have been delegated, as relevant here, to the Department of State. *See* Administration of Reformed Export Controls, Exec. Order No. 13,637, § 1(n), 3 C.F.R. 223-224 (2014).

The computer files at issue fall squarely within controlling regulations that have been duly promulgated under that authority. The files, which provide the data necessary for a 3-D printer or related device to produce a firearm or firearm component, relate to the creation of firearms that appear on the U.S. Munitions List. *See* 22 C.F.R. § 121.1, Category I, item (a). Items on the U.S. Munitions List are defined by the regulations to be "defense articles." *Id.* § 120.6. And in addition to including the firearms and firearm components themselves as "defense articles," the Munitions List explicitly includes "[t]echnical data" relating to items on the list. *Id.*§ 121.1, Category I, item (i). Plaintiffs properly concede that the statute authorizes the regulations to extend not only to the export of physical firearms, but also to "the export of certain technical data." Appellants' Br. 38.

* * * *

Because the computer files at issue here constitute "defense articles" under governing regulations, the statute states that they may not be "exported . . . without a license for such export." 22 U.S.C. § 2778(b)(2). The agency reasonably concluded that sharing files with foreign nationals over the Internet constituted an "export." …

* * * *

Plaintiffs do not seriously suggest that the statute and regulations permit them to transfer technical data to foreign nationals. Instead, they focus on their asserted desire to share the files with fellow Americans. But the regulations at issue do not prohibit Defense Distributed from sharing technical data with fellow U.S. citizens on American soil. So far as the State Department is concerned, Defense Distributed may transfer such files, including by making the files available for U.S. citizens to download on the Internet. This may be accomplished by verifying the citizenship status of those interested in the files, or by any other means adequate to ensure that the files are not disseminated to foreign nationals.

What Defense Distributed may not do is make defense articles available to foreign nationals. Placing technical data on an unrestricted Internet site makes the data available for download around the world, and the State Department therefore warned Defense Distributed that the company could be liable under the regulations if it maintained the technical data on such a site. The possibility that an Internet site could also be used to distribute the technical data domestically does not alter the analysis, any more than an email to a foreign national would become immune from export regulations if U.S. citizens were also copied on the email.

II. The application of the regulations in this case is fully consistent with the Constitution.

A. The regulations permissibly address the distribution and production of firearms, and any effect on protected speech is fully justified.

As discussed above, this case concerns a set of regulations designed to address the exportation of weapons. Most directly, the regulations prohibit the exportation of firearms without obtaining a license or other authorization. But technological advances permit firearms to be disseminated by distributing computer files that direct 3-D printers or related devices to produce firearm components. Imposing a licensing requirement on the dissemination of firearms to foreign nationals by this mechanism does not violate the First Amendment. The regulations at issue here address the exportation and overseas production of firearms, and do not constitute an effort to regulate the marketplace of ideas.

1. The regulations serve the government's legitimate interest in regulating the dissemination of arms and technical data.

Plaintiffs contend that "[c]omputer code conveying information is 'speech' within the meaning of the First Amendment." Appellants' Br. 43 (quoting *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 449-50 (2d Cir. 2001)). Even if plaintiffs are correct that computer code can serve as "an expressive means for the exchange of information and ideas about computer programming," *Junger v. Daley*, 209 F.3d 481, 485 (6th Cir. 2000), that potential exchange of ideas is not the basis for the government regulation here. While computer programs can in some cases be read by human beings (such as other computer programmers) and thus convey information, the computer files at issue are subject to regulation because they facilitate automated manufacture of a defense article. The State Department is concerned here with the use of the data files at issue by machines, not with their ability to express a message to humans. Although a person must direct a machine to read the files, "this momentary intercession of human action does not diminish the nonspeech component of [computer] code." *Corley*, 273 F.3d at 450.

The Supreme "Court has held that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *United*

States v. O'Brien, 391 U.S. 367, 376 (1968). Here, there can be no serious dispute that the government has an important interest in preventing regulated entities from evading the prohibition on exporting firearms by providing the means for the same firearms to be produced abroad.

"The United States and other countries rely on international arms embargoes, export controls, and other measures to restrict the availability of defense articles sought by terrorist organizations." Aguirre Decl. ¶ 35(b) [ROA.571]. The availability on the Internet of the computer files at issue here would "provide any such organization with defense articles, including firearms, at its convenience, subject only to its access to a 3D printer, an item that is widely commercially available." *Id.* 22 [ROA.571]. Providing "unrestricted access" to the computer files at issue here "would likewise provide access to the firearms components and replacement parts to armed insurgent groups, transnational organized criminal organizations, and states subject to U.S. or UN arms embargoes." *Id.* ¶ 35(c) [ROA.571]. In addition, "[m]any countries, including important U.S. allies, have more restrictive firearms laws than the United States and have identified [the files at issue here] as a threat to domestic firearms laws." *Id.* ¶ 35(d) [ROA.572]. The exports at issue here "would undercut the domestic laws of these nations…and thereby damage U.S. foreign relations with those countries and foreign policy interests." *Id.* [ROA.572].

The firearms that would be produced by the files at issue here are of particular concern because they "can be produced in a way as to be both fully operable and virtually undetectable by conventional security measures such as metal detectors." Aguirre Decl. ¶ 35(a) [ROA.570]. If such a firearm were produced and "then used to commit an act of terrorism, piracy, assassination, or other serious crime," the United States could be held accountable, causing "serious and long-lasting harm to the foreign policy and national security interests of the United States." *Id.* [ROA.571].

Congress and the Executive Branch thus have ample justification for imposing controls on exports of defense articles in general and the computer files at issue here in particular. These interests are more than sufficient to justify any incidental effects the regulations may have on the expression of ideas.

The government's interests here would suffice to justify the regulations even if a more demanding standard were thought to apply. …

* * * *

Here, Congress and the Executive Branch have concluded that restrictions on the export of arms are essential to the promotion of "world peace and the security and foreign policy of the United States." 22 U.S.C. § 2778(a)(1). In longstanding regulations, the Department of State has consistently and reasonably concluded that the overseas dissemination of arms cannot meaningfully be curtailed if unfettered access to technical data essential to the production of arms is not similarly subject to the export licensing scheme. *See* 22 C.F.R. §§ 120.6, 120.10. Plaintiffs provide no basis for this Court to disturb those conclusions in these sensitive areas.

* * * *

2. Plaintiffs' position cannot be reconciled with the approach taken by other courts of appeals.

The Ninth Circuit has "repeatedly upheld the constitutionality of the [Arms Export Control Act], and its predecessor, the Mutual Security Act (MSA), under the First Amendment." *United States v. Mak*, 683 F.3d 1126, 1135 (9th Cir. 2012). That court has properly recognized "the Government's strong interest in controlling 'the conduct of assisting foreign enterprises to obtain military equipment and related technical expertise.'" *Id.* at 1135-36 (quoting *United States v. Edler Indus., Inc.*, 579 F.2d 516, 520-21 (9th Cir. 1978)). "[E]ven assuming that the First Amendment offers some protection to the dissemination of technical data," the Ninth Circuit recognized that "the government has a strong interest in regulating the export of military information." *United States v. Posey*, 864 F.2d 1487, 1496 (9th Cir. 1989). "Technical data that is relatively harmless and even socially valuable when available domestically may, when sent abroad, pose unique threats to national security." *Id.* at 1497.

* * * *

3. Plaintiffs' contrary arguments fail to address the basis for applying the regulations in this case.

Unable to seriously dispute the government's legitimate interest in preventing the dissemination of firearms overseas, plaintiffs seek to characterize their conduct in different terms. Plaintiffs assert that they seek to communicate "information regarding simple arms of the kind in common use for traditional lawful purposes." Appellants' Br. 48. Much "information regarding simple arms" would fall within the regulations' exception for "information in the public domain." 22 C.F.R. §§ 120.10(b), 120.11(a). The files at issue here, however, have novel functionality: they enable a 3-D printer or related device, at the push of a button, to create an article that appears on the U.S. Munitions List. *See* Aguirre Decl. ¶ 29 [ROA.567-68].

* * * *

C. The regulations provide clear definitions and are not impermissibly subjective.

Plaintiffs mistakenly suggest that the regulations are void for vagueness under the Fifth Amendment's Due Process Clause, Appellants' Br. 60-62, or that they confer inordinate discretion on government officials, *id.* at 50-52. The regulations contain precise and specific definitions. *See generally United States v. Wu*, 711 F.3d 1, 13 (1st Cir. 2013) ("To be within the reach of the Munitions List at all, an item must qualify as a 'defense article,' a term defined by the [regulations] with considerable specificity."). Those definitions are designed not to provide authority to exercise subjective judgments about political or scientific speech, but rather to limit the foreign dissemination of firearms and other weapons of war.

As relevant here, the regulations apply specifically to firearms up to .50 caliber, 22 C.F.R. § 121.1, Category I, item (a), and to "[i]nformation . . . which is required for the . . . production . . . of" such firearms, *id.* § 120.10(a)(1). The regulations contain an exemption for information that is in the "[p]ublic domain," as that term is defined in the regulations. *Id.* § 120.11. And the regulations define "export" to include "[d]isclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad." *Id.* § 120.17(a)(4).

These regulations are clear and specific, and do not provide an open-ended invitation to make subjective judgments about the value of speech or to censor based on disagreement with a message. Plaintiffs identify no statutory or regulatory terms applicable here that give rise to subjective judgments. *See* Order 23 [ROA.701] (noting that plaintiffs "have not made precisely clear which portion of the [regulatory] language they believe is unconstitutionally vague"). Instead, they point to terms with no evident bearing on this case, asserting that "[r]easonable persons must guess at what 'specially designed' or 'military application' truly mean," and alluding to "Category XXI" of the U.S. Munitions List. Appellants' Br. 51. Although plaintiffs provide no explanation of why those terms, in context, are vague, for present purposes it suffices to point out that none of these regulatory terms or categories is relevant here. The Supreme Court has made clear that "a plaintiff whose speech is clearly proscribed cannot raise a successful vagueness claim under the Due Process Clause of the Fifth Amendment for lack of notice." *Humanitarian Law Project*, 561 U.S. at 20. And as discussed above, plaintiffs have not come close to establishing that any applications of disparate parts of the regulations call for the "strong medicine" of overbreadth under the First Amendment. …

Plaintiffs' argument that the regulations were unclear as applied in this case arises from their observation that it took two years to process Defense Distributed's commodity-jurisdiction requests. The fact that it took time to analyze the appropriate application of the regulations in a new factual scenario does not render the regulations vague. Even if Defense Distributed's request presented a close case under the regulations, that would still not pose a constitutional problem. To the contrary, the Supreme Court has made clear that although "[c]lose cases can be imagined under virtually any statute," "[w]hat renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is." *Williams*, 553 U.S. at 306. The Court has thus "struck down statutes that tied criminal culpability to whether the defendant's conduct was 'annoying' or 'indecent'—wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings." *Id.* at 306. The regulations here contain no such terms. *See also Humanitarian Law Project*, 561 U.S. at 20-21 (upholding statute that "does not require . . . untethered, subjective judgments").

Plaintiffs' suggestion that the regulatory scheme is impermissibly underinclusive is also wide of the mark. Plaintiffs contend that Defense Distributed was singled out by the Department of State because plaintiffs are unaware of similar actions taken against other entities. Appellants' Br. 59. Plaintiffs offer no authority in support of their apparent view that a regulatory scheme is unconstitutional unless enforcement action is taken in every case. A claim that the regulations were inadequately enforced would amount, at most, to a selective-prosecution claim (though Defense Distributed has not been prosecuted), and plaintiffs make no effort to satisfy the standard applicable to such claims, which the Supreme Court has "taken great pains to explain . . . is a demanding one." *United States v. Armstrong*, 517 U.S. 456, 463 (1996); *see also id.* at 464 ("In the ordinary case, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute . . . generally rests entirely in his discretion." (internal quotation marks omitted)).

D. The regulations do not violate the Second Amendment.

Plaintiffs' argument that the regulations violate the Second Amendment is without merit. The regulations at issue here do not meaningfully burden anyone's Second Amendment rights. Law-abiding, responsible American citizens can "acquir[e] the computer files at issue directly from Defense Distributed" and make firearms using a 3-D printer, and the regulations place no

limitation whatsoever on the ability to obtain firearms from other sources or to possess them, in the home or anywhere else. Order 22 [ROA.700]. While plaintiffs' declarants state that they would like to access Defense Distributed's files on the Internet, they do not allege that the regulations prevent them from exercising their right to keep or bear arms. *See generally* Gottlieb Decl. [ROA.658]; Williamson Decl. [ROA.661]; Versnel Decl. [ROA.664]. The district court properly explained that "[t]he burden imposed here falls well short of that generally at issue in Second Amendment cases." *Id.* at 21 [ROA.699].

There is thus no basis for plaintiffs' assertion that anyone's Second Amendment rights are affected by the regulations at issue here. But at an absolute minimum, the regulations survive any plausibly relevant standard of Second Amendment scrutiny.

* * * *

On September 20, 2016, the United States Court of Appeals for the Fifth Circuit affirmed the district court's denial of plaintiff's motion for preliminary injunction. *Defense Distributed v. United States Dep't of State*, 838 F.3d 451, 454 (5th Cir. 2016). The Circuit Court's opinion, excerpted below, explains why the district court did not abuse its discretion in denying the preliminary injunction.

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* * * *

The district court denied the preliminary injunction based on its finding that Plaintiffs-Appellants failed to meet the two non-merits requirements by showing that (a) the threatened injury to them outweighs the threatened harm to the State Department, and (b) granting the preliminary injunction will not disserve the public interest. … The crux of the district court's decision is essentially its finding that the government's exceptionally strong interest in national defense and national security outweighs Plaintiffs-Appellants' very strong constitutional rights under these circumstances. Before the district court, as on appeal, Plaintiffs-Appellants failed to give *any* weight to the public interest in national defense and national security…

Ordinarily, of course, the protection of constitutional rights *would* be the highest public interest at issue in a case. That is not necessarily true here, however, because the State Department has asserted a very strong public interest in national defense and national security. Indeed, the State Department's stated interest in preventing foreign nationals—including all manner of enemies of this country—from obtaining technical data on how to produce weapons and weapon parts is not merely tangentially related to national defense and national security; it lies squarely within that interest.

In the State Department's interpretation, its ITAR regulations directly flow from the AECA and are the only thing preventing Defense Distributed from "exporting" to foreign nationals (by posting online) prohibited technical data pertaining to items on the USML. Plaintiffs-Appellants disagree with the State Department's interpretation, but that question goes to the merits.

* * * *

If we reverse the district court's denial and instead grant the preliminary injunction, Plaintiffs-Appellants would legally be permitted to post on the internet as many 3D printing and CNC milling files as they wish, including the Ghost Gunner CNC milling files for producing AR-15 lower receivers and additional 3D-printed weapons and weapon parts. Even if Plaintiffs-Appellants eventually fail to obtain a permanent injunction, the files posted in the interim would remain online essentially forever, hosted by foreign websites such as the Pirate Bay and freely available worldwide. That is not a far-fetched hypothetical: the initial Published Files are still available on such sites, and Plaintiffs-Appellants have indicated they will share additional, previously unreleased files as soon as they are permitted to do so. Because those files would never go away, a preliminary injunction would function, in effect, as a permanent injunction as to all files released in the interim. Thus, the national defense and national security interest would be harmed forever. The fact that national security might be permanently harmed while Plaintiffs-Appellants' constitutional rights might be temporarily harmed strongly supports our conclusion that the district court did not abuse its discretion in weighing the balance in favor of national defense and national security.

* * * *

c. Leo Combat, LLC v. U.S. Dept. of State

On August 29, 2016, the United States District Court for the District of Colorado granted the government's motion to dismiss plaintiff's complaint challenging the Arms Export Control Act by asserting that (1) "the registration fee imposed on manufacturers of 'defense articles' is facially void because it constitutes excessive delegation of the legislative power"; (2) "that the registration requirement promulgated pursuant to the Foreign Commerce Clause is invalid as applied to non-exporting manufacturers given the lack of any foreign commerce"; and (3) the amount of the registration fee [i]s an undue burden on the exercise of its Second Amendment rights." *Leo Combat, LLC v. United States Dep't of State*, No. 15-CV-02323-NYW, 2016 WL 6436653, at *2 (D. Colo. Aug. 29, 2016). The district court's opinion, excerpted below, did not reach the merits of plaintiff's arguments, because it concluded plaintiff did not have standing to pursue the claims.

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* * * *

1. Count I: Standing to Bring a Claim Alleging Unconstitutionally Excessive Delegation of the Legislative Power in Mandatory Fees Charged Under the AECA

Defendants' first argument regarding lack of jurisdiction attacks Plaintiff's non-delegation claim in Count 1. Defendants argue that Plaintiff has not satisfied the injury-in-fact prong of standing because it does not establish an imminent injury. . . . Plaintiff acknowledges that it has not, as of the filing of the Complaint, manufactured any firearms, either as prototypes or for sale. Nevertheless, Plaintiff seeks to challenge the constitutionality of the AECA's delegation of legislative power in the mandatory registration fees charged by Defendants for manufacturers of "defense articles." Plaintiff states that the AECA does not offer appropriate guidance on the level

of the registration fee charged or its relationship to expenditures by any executive agency. According to Plaintiff, Defendants have taken advantage of this lack of guidance by raising the fee from $400 in 2004 to $2,250 in 2008. Plaintiff further asserts that "[t]here is nothing in the AECA to prevent the Defendants from doubling the fee annually, or imposing whatever arbitrarily high fee might be desired."

* * * *

Plaintiff concedes it had not yet "manufactured any firearms, either as prototypes or for sale." The Complaint does not contain any averment that Leo Combat has taken any other steps to facilitate the manufacturing the subject handgun, including but not limited to identifying potential customers, entering contracts to develop a prototype, or securing funding for the manufacturing operation. Nor does the allegation that Leo Combat's manufacture of "non-firearm products for use by law enforcement officers and private citizens" suggest that the manufacture of the subject handgun is a simple extension of an existing line of business. Counsel for Leo Combat conceded at oral argument that it did not know, and had no way of knowing, how long it might take to reach a point of actual manufacturing. Given these facts as alleged in the Complaint, this court finds that any threat of prosecution is simply too attenuated to rise to the level of a credible threat of prosecution. …

* * * *

2. Count II: Standing to Bring a Claim Alleging Unconstitutional Regulation of Domestic Activity Under the Foreign Commerce Power

Defendants next argue that Plaintiff has not demonstrated an injury that would confer standing for Count 2, Plaintiff's claim that Congress has exceeded its constitutional authority under the Foreign Commerce Clause with respect to the AECA registration and fee requirement as applied to Plaintiff's purely domestic activities. . . . Consistent with the court's holding as set forth above, this court finds that Leo Combat's alleged injury-in-fact is too speculative to confer standing for its second claim for relief. . . . .

3. Count III: Standing to Bring a Claim Alleging Violation of Second Amendment Rights

…Plaintiff avers that "[t]he AECA's imposition of a registration fee on firearm manufacturers singles out companies engaged in protected conduct, i.e. manufacture of products whose possession and use is constitutionally protected." In other words, Leo Combat is asserting that it has cognizable Second Amendment rights as a corporation in manufacturing, and presumably selling, the subject handgun.

* * * *

In the District of Colorado, Chief Judge Krieger recently touched upon the issue of whether a corporation has Second Amendment rights in *Colorado Outfitters Ass'n v. Hickenlooper* ("*Colorado Outfitters I*"), 24 F. Supp. 3d 1050, 1064 (D. Colo. 2014), *vacated & remanded on other grounds*, 823 F.3d 537 (10th Cir. 2016). In passing on whether the plaintiff associations in that case had independent Second Amendment rights, Chief Judge Krieger observed that the historic purpose of the Second Amendment right to "keep and bear arms" was the ability to acquire, use, possess, or carry lawful firearms *for the purpose of self-defense*. *Colorado Outfitters I*, 24 F. Supp. 3d at 1064; *see, e.g.*, *Heller*, 554 U.S. at 599 ("Self-defense

…was the *central component* of the right itself.") (emphasis in original)…. Chief Judge Krieger expressed "some doubt" that entities in their corporate form had standing to bring a Second Amendment challenge, and engaged in a rigorous analysis of the history and analytic framework for Second Amendment challenges, but ultimately, did not decide that precise issue. *See Colorado Outfitters I*, 24 F. Supp. 3d at 1062.

* * * *

This court recognizes that corporations are in certain instances characterized as "individuals" and have been found to have certain constitutional rights, including rights under the contracts clause, equal protection clause, due process clause, free speech clause, double jeopardy clause, takings clause, and search and seizure clause. Even then, however, the rights afforded to corporations are not necessarily identical or co-extensive with the rights of natural persons. While courts in other circuits have addressed a variety of issues regarding the scope of the Second Amendment, this court is not aware of any decisions directly addressing a corporation's standing to assert a claim that it, in its corporate form, possesses Second Amendment rights to manufacture firearms.

* * * *

In the absence of binding authority holding otherwise, this court is persuaded that the text and historical context of the Second Amendment shows that it confers individual rights, and that any rights extended to a corporation under the Second Amendment are dependent upon the entity's ability to assert individual rights of third-parties on their behalf.

* * * *

d. Stagg P.C. v. U.S. Dept. of State

On December 16, 2016, the United States Court of Appeals for the Second Circuit affirmed the district court's denial of plaintiff's motion for preliminary injunction, which would have broadly enjoined the government from "'enforcing *any* licensing or other approval requirements for putting privately generated unclassified information *into* the public domain.'" *Stagg P.C. v. United States Dep't of State*, No. 16-315-CV (2d Cir. Dec. 16, 2016). Plaintiff challenged the licensing scheme in the International Traffic in Arms Regulations ("ITAR") as "(1) an unconstitutional prior restraint under the First Amendment and (2) impermissibly vague under the Fifth Amendment." *Id.* The district court's opinion, excerpted below, concluded without reaching the merits of the case that plaintiff had "not met its burden of showing either that the balance of equities tips in its favor or that an injunction is in the public interest." *Stagg P.C. v. U.S. Dep't of State*, 158 F. Supp. 3d 203, 211 (S.D.N.Y. 2016), *aff'd sub nom*. *Stagg P.C. v. United States Dep't of State*, No. 16-315-CV (2d Cir. Dec. 16, 2016).

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Plaintiff has demonstrated irreparable harm. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Plaintiff also raises several arguments regarding its likelihood of success on the merits that the Government would be wise to note. I also recognize the Second Circuit's recent determination, in the context of campaign finance restrictions, that "[c]onsideration of the merits is virtually indispensable in the First Amendment context, where the likelihood of success on the merits is the dominant, if not dispositive factor." In this case, however, that determination must be considered together with the Second Circuit's (and the Supreme Court's) designation of national security as a "public interest of the highest order," and the Supreme Court's admonition to district courts to consider carefully an injunction's adverse impact on the public interest in national defense. Indeed, even in a case where "appellants [showed] a likelihood—*indeed, a certainty*—of success on the merits" of certain claims, the Second Circuit found that "[i]n light of the asserted national security interests at stake, we deem it prudent" to deny a preliminary injunction suspending a metadata collection program intruding on citizens' rights to privacy. Even assuming for the purposes of this motion that Stagg P.C. has shown a substantial likelihood of success on the merits of its First and Fifth Amendment and APA claims, the balance of the equities and the public interest both require the denial of this preliminary injunction.

Stagg P.C. does not seek an injunction cabined to its contemplated republication of protected technical data at a bar association event in February; rather, it seeks an expansive injunction barring the enforcement of "any licensing or other approval requirements for putting privately generated unclassified [technical] information into the public domain" under the relevant sections of the ITAR. This would enjoin the application of the ITAR's approval mechanism not only to situations where an individual or organization wishes to republish previously disclosed technical data, but to all situations where individuals wished to disclose technical data generately privately but covered by the ITAR.

Granting this injunction would have very serious adverse impacts on the national security of the United States. The "privately generated unclassified information" described by Stagg P.C. in this case is a slideshow containing examples of technical data covered by ITAR, not approved for public release, but still available in the public domain. This Court is left to speculate as to the specific technical data that may be in Stagg P.C.'s possession, but can in fact identify other technical data that might be freely republished if Stagg P.C.'s injunction was granted. Examples include: digital plans for 3D-printable plastic firearms, undetectable by metal detectors and untraceable without registration and serial number, privately generated technical data for delivery systems for weapons of mass destruction, such as rockets and missiles, created by defense contractors, and technical data related to chemical and biological agents that could be adapted for use as weapons. This parade of horribles is not an idle fancy. Indeed, without the licensing and approval mechanisms set forth in the AECA and ITAR, *any* unclassified technical data leaked to the Internet would be fair game to republish in any forum without regard to consequences—and in an era where national security information has been successfully leaked, this is not a specious threat. The balance of the equities and the public interest both firmly weigh in favor of the Government, and against the plaintiff.

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The Fifth Circuit Court of Appeals agreed with the district court's determination that the balance of equities and that public interest required denial of the preliminary injuction "to avoid 'very serious adverse impacts' to national security." *Stagg P.C. v. United States Dep't of State*, No. 16-315-CV (2d Cir. Dec. 16, 2016). The court recognized that "national security concerns raised by a preliminary injunction that barred the government from licensing, and thereby controlling, the dissemination of such sensitive information are obvious and significant," *id.* at 2, and that the government "articulated specific, concrete damage to national security that could result if the district court entered [plaintiff's] broad proposed injunction." *Id.* at 3. Because the balance-of-equities and public interest factors weighed so heavily against a preliminary injunction, the court did not decide whether plaintiff was likely to succeed on the merits or to suffer irreparable harm.

The court also noted with concern the government's representation that the ITAR "applies to *republication* of information already in the public domain" because "it is unclear where in the *current* ITAR such a prohibition can be located." *Id.* The court, consequently, affirmed the preliminary injunction order without prejudice to the pursuit of narrower relief in the district court." *Id.*

e. Rocky Mountain Instrument Co.

On May 9, 2016, the State Department announced that it had entered into an agreement with Rocky Mountain Instrument Company ("RMI") of Lafayette, Colorado, modifying its debarment pursuant to the International Traffic in Arms Regulations ("ITAR") for violating the Arms Export Control Act ("AECA"). See May 9, 2016 media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/05/257045.htm. Details of the limited ITAR-related activity allowed by RMI pursuant to the agreement are contained in the Federal Register notice of the agreement, 81 Fed. Reg. 28,113 (May 9, 2016), and in the oversight agreement available at https://www.pmddtc.state.gov/compliance/poa/rmi.html. As explained in the media note:

> RMI has satisfied the requirements of its plea agreement with the Department of Justice, cooperated with the Department of State, and implemented or will implement extensive remedial compliance measures. In response to a request from RMI for a reinstatement of export privileges and revocation of the statutory debarment, the Department's Office of Defense Trade Controls Compliance (DTCC) in the Bureau of Political-Military Affairs consulted with the appropriate U.S. agencies regarding mitigation of law enforcement concerns and decided to address RMI's AECA and ITAR violations through an Agreement. Under the terms of the two-year Agreement, RMI will appoint a Responsible Official to oversee the Agreement, RMI's compliance program, and ITAR training regimen, and conduct an external audit of its compliance program and additional required compliance measures.

f. Microwave Engineering Co.

On June 20, 2016, the State Department entered into a consent agreement with Microwave Engineering Corporation of North Andover, Massachusetts. The proposed charging letter, available at https://www.pmddtc.state.gov/compliance/consent_agreements/mec.html, alleges that Microwave Engineering exported without authorization controlled technical data to a foreign person from the People's Republic of China, a proscribed destination in the ITAR, who was employed as a Research Scientist. Pursuant to the consent agreement, available at https://www.pmddtc.state.gov/compliance/consent_agreements/mec.html, Microwave Engineering, without admitting or denying the allegations, agreed to pay a civil penalty of $100,000 in complete settlement of the alleged civil violations. The Department of State, considering that Microwave Engineering cooperated with the review, expressed regret for the activities, and took steps to improve its compliance program, determined not to impose an administrative debarment based on the allegations in the proposed charging letter.

g. Turi

On October 5, 2016, the State Department announced that it had concluded an administrative settlement with Marc Turi and Turi Defense Group, Inc. ("TDG") of Las Vegas, Nevada. The media note announcing the settlement, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/10/262826.htm, includes the following background on the case.

> Following a compliance review by the Department's Office of Defense Trade Controls Compliance (DTCC) in the Bureau of Political-Military Affairs, Mr. Turi and TDG agreed to enter into a Consent Agreement to resolve two alleged civil violations of the …AECA and …ITAR…
>
> … DDTC alleged that Mr. Turi, as president of TDG, engaged in brokering activities for the proposed transfer of defense articles to Libya, a proscribed destination under the ITAR, despite the Department's denial of TDG requests for the required prior approval of such activities. The proposal did not result in an actual transfer of defense articles to Libya. Mr. Turi cooperated with DTCC in its review and proposed administrative settlement of the alleged violations.
>
> Under the terms of the Consent Agreement with the Department, Turi will refrain from participating in activities subject to the ITAR for a four-year term. The Department also assessed a $200,000 penalty, which will be suspended unless Turi and TDG materially violate the Consent Agreement. Based on Turi's cooperation, the Department determined that administrative debarment was not appropriate at this time.

2. Export Control Reform

On February 10, 2016, the State Department issued a fact sheet providing an update on export control reform based on the President's Export Control Reform Initiative, which began in 2009. The reforms are intended to enhance U.S. national security by streamlining defense transfers to U.S. allies and partners and also to reduce unnecessary barriers to the purchase of U.S.-origin parts and components. The fact sheet, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/02/252355.htm, lists key accomplishments:

- The move of less sensitive equipment, parts, and components from the regulatory jurisdiction of the Department of State's U.S. Munitions List (USML) to the Department of Commerce's Commerce Control List (CCL), following comprehensive technical and policy reviews conducted by an interagency team of experts representing all relevant U.S. Government departments and agencies. These reforms were also developed in close consultation with Congress and the private sector, which provided extensive public review and comment on the proposed changes.
- The revision of 18 of 21 categories of the U.S. Munitions List. Fifteen of these categories have been implemented, and the remaining three have been published for public comment. The Department is committed to finalizing the initial review of the entire USML in 2016.
- A more flexible licensing process under the CCL for the export of less sensitive defense products and services to allies and partners, benefitting U.S. manufacturers.
- A 56 percent reduction in license volume in the 15 implemented USML categories for the Department of State's Directorate of Defense Trade Controls, allowing it to enhance efforts to safeguard against illicit attempts to procure sensitive defense technologies.
- The creation of an ongoing transparent periodic interagency review process to continually improve export control regulations, and to engage with industry and the defense export community to solicit public comment on proposed updates to the USML and CCL.

On February 11, 2016, Brian Nilsson, Deputy Assistant Secretary of State for Defense Trade Controls for the Bureau of Political-Military Affairs, testified before the Small Business Committee of the U.S. House of Representatives at a hearing on export control reform. Mr. Nilsson's testimony is excerpted below and available at http://2009-2017.state.gov/t/pm/rls/rm/2016/252401.htm.

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…I welcome the opportunity to speak with you today about the Administration's Export Control Reform (ECR) initiative. Export controls are a key tool in our national security and foreign policy toolkit yet they historically have not received the attention that they deserve largely because of their detailed, technical nature. The Administration's early and regular engagement with the Congress, and in particular this committee, since the beginning of the reform initiative helped us administer a transparent reform effort in which many companies, large and small, actively participated. This committee in particular helped us develop the partnership with the Small Business Administration that Assistant Secretary Wolf mentioned, so again let me thank you for your continued interest and support.

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We have been engaged in a multi-year, labor-intensive technical review led by the Department of Defense to open each category of the USML and to enumerate those items that provide the United States with a critical military or intelligence advantage. Those less sensitive military items that do not meet this standard are being systemically moved to the Department of Commerce's jurisdiction to allow them to be exported to our allies under less rigorous requirements. This prioritization allows us to better focus our limited resources on the items, destinations, end-users, and end-uses of greatest concern, while improving interoperability with allies and bolstering our defense industrial base by allowing our parts and components manufacturers—many small- and medium-sized businesses—to more easily support systems we have already entrusted to our allies and partners.

In my aircraft example, I can report that since our new controls went into effect for this category and the gas turbine engine category in October 2013, we have seen an 83 percent reduction in license applications for parts, components, accessories, attachments, and associated equipment. That means that most of those companies making or supplying those items, may no longer need to register, pay annual registration fees of at least $2,250, pay per-license application fees as may be required, no per-purchase order licensing requirements, no agreements licenses, and generally no "see through" rule that requires subsequent Department of State licenses for exports, re-exports, or re-transfers for their items incorporated into other items, until those other items' permanent importation into the United States or their ultimate destruction.

These reforms are only effective if we keep them current. Prior to ECR, the Department of State's control list was largely static. As a result of ECR and as part of our business practices going forward, the Department of State has fundamentally changed how we do business.

First, we can best keep our list current in partnership with all involved in the system—our interagency partners, the Congress, our allies, and industry. It is our companies, large and small, that are our front line of defense. They must be able to clearly understand and implement our rules, if they are to be effective, to provide for our collective security. We have put in place a process so they can advise us on proposed changes that we are contemplating, to tell us if we got it right and equally important, if we got it wrong. They can also advise us as technology evolves in their sectors, so we can make continuous improvements to our list.

Thus far, we have published proposed rules for 18 of our 21 categories. We received significant public input on which we relied in part to publish final rules revising 15 categories that have now gone into effect. As a result, the Department has seen a 56 percent reduction in licenses for these categories. By our most recent tally, based on the volume of license applications received, the largest categories are categories I (Firearms), XII (night vision equipment), XI (Military Electronics) and VIII (Aircraft)/XIX (Space and Missile), with

approximately 10,000; 8,000; 8,000 and 7,000 licenses respectively. Of these, Categories I and XII have not yet been published in final form. The revised categories with the largest volumes are Military Electronics and Aircraft.

Of the remaining six categories, we have published three for public comment. Two of these three, for Category XII (night vision equipment) and for Category XIV (toxicological agents), are our most complicated, and for the night vision equipment category, we are finalizing a second proposed rule to publish for public comment, to ensure that we get it right. We will then turn to preparing final rules for the other two. This leaves three categories that cover firearms, large guns, and ammunition to publish for public comment. We plan to turn to these categories once we complete our work on the current three that are in process. The Department is working towards reviewing the remaining USML categories, and is committed to finalizing an initial review of the entire USML in 2016.

Going forward, we will routinely solicit public input on a category-by-category basis and, drawing upon our own interagency expertise and the public comments, will publish proposed rules to update each category. Earlier this week, on February 9, the Departments of State and Commerce published proposed rules of updated controls for the aircraft and gas turbine engine categories, with public comments due by March 25, 2016, and the public input period for four more categories concluded on December 6th, 2015.

We will continue this transparent process going forward. The Arms Export Control Act requires the President to conduct a periodic review of the list and to remove those items that no longer warrant control. This requirement is fully consistent with regulatory reform, one of this committee's top priorities. The President has also provided further guidance in Executive Order 13563 of 2011 on requirements for improving regulations and the regulatory review process.

Second, we are committed to continued enhanced engagement with the exporting community. All our notices, proposed rules, final rules, decision trees, and fact sheets are published on our website, as well as the Administration's central ECR site. We have also expanded our outreach efforts. In Fiscal Year 2015, we organized or participated in over 700 events, ranging from conferences and webinars to end-use monitoring checks and individual company visits. Our response team fielded over 19,000 phone calls and 22,000 e-mail inquiries. These actions were all done in addition to frequent meetings we hold with industry.

Third, we are changing how we manage our controls. Prior to ECR, each of the licensing agencies and the departments and agencies participating in the license application review process were all on independent information technology (IT) systems, or had no IT system at all. A key decision in phase one of the reform initiative was the selection of the secure Department of Defense internal licensing database, called "USXPORTS," as the single licensing database. Moving to this system would ensure that each licensing agency has full information on what the United States Government has collectively approved or denied for export to ensure that current and future licensing decisions are fully informed ones. The Department of State moved to USXPORTS for processing munitions export license applications in July 2013 and for considering Department of Commerce export license applications in October 2015.

To aid industry, particularly small- and medium-sized companies, in compliance efforts, the Departments of State, Commerce, and the Treasury deployed a consolidated screening list comprised of all three departments' various public screening lists that can be downloaded by exporters to self-screen parties to proposed transactions to facilitate compliance. When the initial list was deployed in December 2010, it contained over 24,000 line items of names, including variant spellings and pseudonyms, and was downloaded on average about 32,000 times per

month. Since that time the Administration has deployed incremental improvements to this tool, including automated updates any time a department makes a change to one of its lists, a "fuzzy logic" search function, and new options for downloading for use with existing screening programs. The list is now being used to conduct more than 100,000 screens per day.

These improvements were prerequisites to building a single portal through which exporters can submit requests and receive licenses and other guidance documents. Preliminary work on a single portal in 2010 was placed on hold pending completion of the licensing agencies' transition to USXPORTS. The development of the single portal has now resumed, with the goal of deploying a smart single interface through which exporters can submit all requests and the system will guide them through the process to correctly route the request to the appropriate licensing authority. This should be of particularly benefit to small- and medium-sized companies.

To support these significant changes, the Department of State last year created and filled a new Chief Information Officer position within the Directorate of Defense Trade Controls to oversee the Department of State's collaboration with these IT projects and to undertake a comprehensive review to modernization all aspects of the organization's work. This effort is underway and, when completed, the core aspects of our business will be fully automated. Implementing these modern business tools and practices is anticipated to significantly improve our administration of the munitions export controls.

Fourth, the Department of State will continue to provide foreign policy oversight of our export control system for all controlled items whether administered by the Department of State or Commerce. The export of less sensitive military items moved to Commerce jurisdiction will continue to be guided by all aspects of the Conventional Arms Transfer policy including human rights reviews. These changes will also not diminish the key role that the Department of Defense plays in considering exports to ensure they are consistent with our national security interests. ECR is not a decontrol of these less sensitive military items but a prioritization of how the Executive Branch mitigates risks. Export controls are about risk mitigation.

Export Control Reform has improved how the export control community inside and outside the government interact, allows us to prioritize our controls to better focus our resources of the threats that matter most, improve interoperability with allies, and bolster the health and competitiveness of the U.S. defense industrial base, particularly small- and medium-sized companies. ECR began as an initiative and is now a process. That process could best be administered going forward by the eventual consolidation into a single export control agency with a single control list. This is the logical conclusion of the initiative.

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Over the course of 2016, the Department of State, through the Directorate of Defense Trade Controls ("DDTC"), implemented the final surge of regulatory reforms pursuant to Export Control Reform. This effort included revisions to six categories of the United States Munitions List, updates to the definitions in part 120 of the ITAR, and other rules to harmonize the ITAR with other agencies' regulations.

Cross References

Foreign terrorist organizations, **Chapter 3.B.1.**
Organized crime, **Chapter 3.B.6.**
Relations with Burma, **Chapter 9.A.1.**
Ukraine, **Chapter 9.B.1.**
JASTA, **Chapter 10.A.1.**
Attachment of blocked assets, **Chapter 10.B.6.a.**
Burundi, **Chapter 17.A.3.**
Application of international law in cyberspace, **Chapter 18.A.3.d.**
North Korea, **Chapter 19.B.6.a.**
Iran, **Chapter 19.B.6.b.**