



# The Bottom Line

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## EXPORTS OF TECHNOLOGY LEAD TO PENALTIES

### Summary

Honeywell and SAP have recently settled with the Department of State, Department of Justice, Treasury Department, and the Office of Foreign Assets Control over violations of export regulations regarding technical data and technology services.

### Background

The United States imposes export controls to protect national security interests and promote foreign policy objectives. The U.S. also participates in various multilateral export control regimes to prevent the proliferation of weapons of mass destruction and prevent destabilizing accumulations of conventional weapons and related material.

Technical Data (aka technology) is defined as information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of an item. This includes information in the form of blueprints, drawings, photographs, plans, instructions, or documentation (as well as many other forms). Providing controlled technology (or software source code) to a foreign national in the United States or abroad is deemed to be an export of that technology to the country of citizenship or residence said foreign national. An export occurs when there is a "release of controlled technology (or software source code) to a foreign national.

### Current Status

The U.S. State Department announced it reached a \$13 million settlement with American defense firm Honeywell over allegations it exported technical drawings of parts for the F-35 fighters and other weapons platforms to China and other foreign countries. The Charlotte, North Carolina-based company faced 34 charges involving drawings it shared with China, Taiwan, Canada, and Ireland, according to the Bureau of Political-Military Affairs' charging document. The State Department alleged some of the transmissions harmed national security, which Honeywell acknowledges with the caveat that the technology involved "is commercially available throughout the world. No detailed manufacturing or engineering expertise was shared." The State Department said it would not debar Honeywell because it voluntarily disclosed its alleged violations in compliance with the Arms Export Control Act and the International Traffic in Arms Regulations. Also, \$5 million of the fine is suspended so Honeywell can apply it to compliance costs and remedial measures.

SAP SE ("SAP"), a software company headquartered in Walldorf, Germany that provides enterprise application software, cloud-based services, and associated maintenance and support, has agreed to pay combined penalties of more than \$8 million to settle its potential civil liability for 190 apparent violations involving the export of software and related services from the United States to Iran. These violations arose from SAP's exportation of software and related services from the United States to companies in third countries with knowledge or reason to know the software or services were intended specifically for Iran, as well as from the sale of cloud-based software subscription services accessed remotely through SAP's cloud businesses in the United States to customers that made the services available to their employees in Iran. The settlement amount reflects OFAC's determination that SAP's conduct was non-egregious and voluntarily self-disclosed, and accounts for SAP's remedial response.

### Impact

On August 13, 2018, President Donald Trump signed into law the John S. McCain National Defense Authorization Act (NDAA) for fiscal year 2019. A key focus of legislation contained in the NDAA is to protect U.S. technological advances through closer scrutiny of technology transfer to foreign persons and its implications on U.S. national security and foreign policy.

Both these recent actions demonstrate the administration's focus on tightening export controls.

### RESOURCES

[Honeywell Gets Hit With \\$13M Fine for Defense Export Violations](#) (Defense News)

[SAP Admits to Thousands of Illegal Exports of its Software Products to Iran and Enters into Non-Prosecution Agreement with DOJ](#) (Department of Justice)

[OFAC Settles with SAP SE for Its Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations](#) (Department of the Treasury)

[Exporting Technology and Software](#) (Duke University)

[Tightened Restrictions on Technology Transfer Under the Export Control Reform Act](#) (Skadden)