



TRADE MATTERS

Lowenstein Sandler's Global Trade & National Security Newsletter

August 2024

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1. Action Required: BIS Unveils New Guidelines to Combat Export Diversion Risks

The Bureau of Industry and Security (BIS) issued new guidance to prevent the diversion of controlled items to Russia. This guidance recommends the use of the Trade Integrity Project (TIP) database, which tracks suppliers with histories of exporting sensitive items to Russia. Businesses are advised to screen transactions against the TIP list, conduct thorough due diligence, and maintain detailed compliance records. Check and see whether this new list is already incorporated into your existing diligence software. Companies will receive “red flag” letters if their customers are suspected of violating export controls and “is informed” letters for additional licensing requirements on specific transactions. Failure to comply with these requirements can result in administrative or criminal penalties.

2. Intelligence Community Issues Warning to Technology Startups

On July 24, the Office of the Director of National Intelligence's National Counterintelligence and Security Center (NCSC) issued a critical bulletin concerning threats to U.S. technology startups from foreign investments. This warning underscores a heightened focus on the vulnerabilities of emerging tech companies, including:

- Illicit acquisition and transfer of sensitive U.S. data and technology during the due diligence process, which could lead to the loss of market share and further the development of U.S. adversaries' capabilities.
- Undue foreign influence over the U.S. business.
- Denial of government funding and contracts.
- Foreign parties may obscure their identities and the source of funds by structuring investments to avoid Committee on Foreign Investments in the United States (CFIUS), using complex ownership structures, intermediaries, or minority and limited partner investments.

To protect against this threat, companies should implement controls to protect key technologies and intellectual property;

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know the beneficial ownership of their potential investors; and restrict data sharing, including during the due diligence process.

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3. More Foreign-Made Products Subject to US Export Controls

BIS issued a **final rule** effective July 23 revising the Export Administration Regulations (EAR) to expand U.S. jurisdiction over foreign-produced items to Iran to include items from product groups in categories 6, 8, and 9 of the Commerce Control List (CCL). The scope of this rule has now expanded to cover products in categories 3 through 9 of the CCL. If you are exporting any foreign direct products of U.S. origin technology or software to Iran, you should determine if the prohibitions of the Iran foreign direct products rule apply.

4. CFIUS 2023 Report: Increased Enforcement of Foreign Investments With National Security Concerns

CFIUS released its **2023 annual report** on July 23. The report underscores CFIUS' increased focus on compliance and enforcement, as can be seen from the following highlights:

- CFIUS imposed mitigation measures in 35 cases.
- For the first time, CFIUS issued a formal finding of a violation for failing to comply with mandatory filing requirements.
- CFIUS intensified its monitoring of non-notified transactions, reviewing thousands and opening 60 inquiries, which resulted in 13 formal requests to companies for additional information and three voluntary filings.
- CFIUS conducted site visits to 43 locations to verify compliance with mitigation agreements.

Early review of potential CFIUS risks and a proactive approach to addressing potential national security concerns are crucial. Understanding the expanding scope of CFIUS' authority will help mitigate risks and facilitate smoother transactions.

5. Strengthened CFIUS Scrutiny in Real Estate Transactions

CFIUS has **proposed expanding** its jurisdiction over real estate transactions, particularly near sensitive military sites. The U.S. Department of the Treasury proposed adding 59 military installations to the review list, including 40 new sites within 1 mile and 19 sites within 100 miles of these installations. **This expansion** aims to address potential national security concerns related to intelligence collection and surveillance risks posed by foreign ownership of property near military bases. Interested parties may submit written comments through Aug. 19.

6. BIS, DDTC Propose Expanded US Persons Controls, Defense Services Restrictions

BIS and the Directorate of Defense Trade Controls (DDTC) issued proposed rules that would lead to a range of new restrictions on U.S. support for certain foreign military

intelligence and security services, increasing export licensing requirements for activities that could give U.S. adversaries a “critical military or intelligence advantage.”

- **One BIS rule** would establish new controls for U.S. persons’ “support” for certain military end users, military support end users, “military production activities,” and intelligence end users.
- **Another BIS rule** would create a license requirement for “foreign-security end users” (defined as persons or entities with the authority to arrest, detain, monitor, search, or use force in the furtherance of their official duties, including police and security services).
- **DDTC’s proposed rule** would revise its definition of defense services and expand the scope of related controls in the International Traffic in Arms Regulations (ITAR) to cover “assistance, including training or consulting, to foreign persons in the development (including, e.g., design), production (including, e.g., engineering and manufacture), assembly, testing, repair, maintenance, modification, disabling, degradation, destruction, operation, processing, use, or demilitarization of a defense article.”

These proposed rules would affect the analysis of certain transactions and activities involving foreign entities and increase the due diligence burden on U.S. companies. Companies can comment on the proposed rules until Sept. 27.

7. New OFAC Compliance Hotline Webpage

OFAC announced updates regarding [their licensing portal](#) and the [Licensing Division hotline](#). OFAC’s licensing portal now will indicate the status of an application with one of 10 case status categories to better identify where the application is in the review process. OFAC also launched the new Compliance Hotline online platform to field queries from the public. The current Compliance Hotline email address (OFAC_Feedback@treasury.gov) will be retired on Aug. 16, and the Compliance Hotline telephone (1-800-540-6322 and 202-622-2490) will be available until Dec. 31. As of Jan. 1, 2025, OFAC will require that any questions be submitted through its [OFAC Compliance Hotline page](#).

TRADE TIP OF THE MONTH:

Given the recent administrative updates and proposed rules on export requirements, companies should review their internal processes and policies to ensure they are up to date and be prepared to address the proposed new rules when they are implemented.

Additional Resources

- **Client Alert:** "[New Prohibitions on Providing SaaS Services to Russia](#)"
August 2, 2024
Global Trade & National Security Client Alert
Abbey E. Baker, Christian C. Contardo
- **Article:** "[Whistleblower Protection and Compliance: A Comparative Study of the United States and Japan](#)"
July 31, 2024
The Anti-Corruption Report
Robert A. Johnston Jr., Kei Komuro

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