



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

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1. Expansion of CFIUS Enforcement Authorities and Higher Penalties Proposed

On April 15, the U.S. Department of the Treasury published a [proposed rule](#) that would enhance certain Committee on Foreign Investment in the United States (CFIUS or the Committee) procedures and increase CFIUS penalty and enforcement authorities. This is the first substantive update to CFIUS since the implementation of the Foreign Investment Risk Review Modernization Act of 2018. The key changes involve CFIUS' authority to request information, time frames for responding to proposed mitigation terms, and civil monetary penalties.

- The rule would expand CFIUS' access to information by empowering the Committee to request information from transaction parties and other persons regarding non-notified transactions. The information will assist the Committee with compliance monitoring, determining whether a violation occurred, and reviewing whether a transaction is a covered transaction, presents national security risks, or is subject to a declaration requirement.
- The rule also broadens CFIUS' subpoena authority, allowing it to issue subpoenas "if deemed appropriate." Penalties for noncompliance would substantially increase under the proposed rule, with penalties for material misstatements or omissions in a declaration or notice, failure to file a mandatory filing, or material violations of a mitigation agreement increasing from \$250,000 to \$5 million.
- The third major change establishes a three-business-day deadline for responses to proposed mitigation terms unless an extension is requested and accepted by the staff chairperson. The establishment of a deadline will allow CFIUS to better meet its statutory obligation to complete an investigation in 45 days. Written comments on all of these proposed changes are being accepted via the [eRulemaking portal](#) until May 15.

2. United States and United Kingdom Issue Prohibitions on Russian-Origin Metals

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In coordination with the United Kingdom, the U.S. Department of the Treasury has **issued two new prohibitions** to further disrupt the Russian revenue streams from the export of Russian-origin aluminum, copper, and nickel. The first determination prohibits the importation into the United States of aluminum, copper, and nickel of Russian origin produced on or after April 13, 2024. The second determination prohibits certain services related to the acquisition of Russian-origin aluminum, copper, or nickel—warranting services on a global metal exchange and services to acquire the Russian-origin metals as part of a physical settlement of a derivative contract. Banks are still permitted to act as intermediaries for payments related to Russian metals, and the prohibitions do not apply to aluminum, copper, and nickel incorporated into other products outside Russia.

3. American-Made¹ May Include Foreign Parts, 10th Circ. Says

On April 12, the **U.S. Court of Appeals for the Tenth Circuit** (Law360 subscription required to view) found that companies can advertise products with foreign-made components as “American-made.” Creager Services filed suit against its competitor I Dig Texas for their advertising campaign wherein I Dig Texas encouraged consumers to buy their American-made products rather than Creager’s products that were made in China. Creager claimed I Dig Texas misrepresented the origin of its own products and engaged in copyright infringement by using photographs of Creager products in the ad. However, the Tenth Circuit ruled I Dig Texas advertisements were not false, as the term “made” is too ambiguous to be false because it could refer to either the origin of the components or the assembly of the final product. The court did acknowledge the Federal Trade Commission’s Made In the USA policy, but explained in its decision that the policy also contains ambiguity and considers multiple factors in determining whether something is of U.S. origin.

4. Reduction of Licensing Requirements for EAR and ITAR Under AUKUS Pact

As part of the National Defense Authorization Act for Fiscal Year 2024, President Biden enacted a provision to streamline defense trade between the United States, the United Kingdom, and Australia, the partners in the AUKUS trilateral security partnership. AUKUS was implemented in 2021 to promote and streamline information and technology sharing, especially in the security and defense sectors. As part of this effort, **effective April 19**, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to remove license requirements, expand license exceptions, and reduce the scope of end-use- and end-user-based license requirements for exports, reexports, and in-country transfers to or within Australia and the United Kingdom. With this change, Australia and the United Kingdom will have similar licensing treatment under the EAR as does Canada. On April 30, the U.S. Department of State issued a **proposed rule** to amend the International Traffic in Arms Regulations (ITAR) to permit with no license or approval required the export, reexport, retransfer, or temporary import of defense articles, the performance of defense services, and engagement in brokering activities between or among certain users within Australia, the UK, and the U.S. The proposed rule includes a list of excluded defense articles and defense services not eligible for the exemption, and the authorized users would have to undergo a user enrollment process with the State Department’s Directorate of Defense

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Trade Controls. While the amendment to the ITAR is only a proposed rule, the Biden administration is committed to supporting the goals of the AUKUS partnership, so it is likely to go into effect.

5. DHS Announces Textile Enforcement Action Plan

The Department of Homeland Security (DHS) has announced an **enhanced strategy** aimed at combatting illegal imports related to the textile industry. As part of the new initiative, two DHS agencies, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), will work together to conduct physical inspections, country-of-origin reviews, and in-depth reviews of entry documentation. CBP and ICE will increase screenings of packages claiming the Section 321 de minimis exemption and reviews of supply chains to address Uyghur Forced Labor Prevention Act (UFLPA) violations. DHS personnel will also conduct comprehensive audits to ensure that textiles qualify under the U.S.-Mexico-Canada Agreement (USMCA). CBP will issue civil penalties when violations are discovered and work with Homeland Security Investigations to initiate criminal investigations as appropriate.

TRADE TIP OF THE MONTH:

The recent supplemental emergency appropriations bill includes a provision that extends the current five-year statute of limitations for sanctions and other International Emergency Economic Powers Act (IEEPA) programs to 10 years. This change impacts almost all U.S. economic sanctions programs. Companies should update their compliance materials to reflect this change. The agencies charged with enforcing sanctions and export compliance are reviewing the legislation. While their focus generally prioritizes timely enforcement, we believe they will not hesitate to use this extension of authority when they deem necessary, particularly in criminal violations.



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