



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

October 2022

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1. New CFIUS E.O. Requires Attention of Foreign Investors

On September 15, President Biden issued the first ever **executive order** (E.O.) regarding the Committee on Foreign Investment in the United States (CFIUS). While the E.O. does not change the law or regulations related to CFIUS reviews, the E.O. notifies the public that CFIUS will review transactions more broadly than in the past. Parties to covered transactions can no longer rely on prior CFIUS decisions to predict future actions. Because CFIUS exercises broad authority to determine national security vulnerabilities, businesses will need to consider how a particular transaction impacts supply chain security, taking into account the characteristics of the specific industry and previous foreign investment in that industry. Given the increase in CFIUS investigations of transactions where the parties did not notify the Committee, we expect more voluntary filings as a result of the E.O. Analyzing the national security risks in transactions is now much more complex, and parties should conduct a holistic analysis of their proposed transaction; if in doubt about any national security risks, consider filing with CFIUS.

2. New Data Demonstrates Enforcement Priority of Forced-Labor Import Ban

Customs and Border Protection (CBP) **released data** on import seizures for August 2022, which reflects the Biden administration's priority to stop imports made with forced labor. The agency targeted 838 entries valued at more than \$266.5 million for suspected use of forced labor in the production of imported goods, including goods subject to the Uyghur Forced Labor Prevention Act (UFLPA) and withhold release orders. This update was the first time CBP has published such numbers since the UFLPA's effective date, June 21, 2022.

Contact Us

for more information about any matters in this newsletter:

Doreen M. Edelman

Partner
Chair, Global Trade & National Security
202.753.3808
dedelman@lowenstein.com

Laura Fraedrich

Senior Counsel
202.753.3659
lfraedrich@lowenstein.com

Abbey E. Baker

Counsel
202.753.3806
abaker@lowenstein.com

Andrew Bisbas

Counsel
202.753.3807
abisbas@lowenstein.com

Jeffrey B. Jones

Counsel
202.753.3769
jejones@lowenstein.com

3. New Sanctions and Export Controls on Russia and Belarus

In September, the U.S. Departments of [State](#), [Commerce](#), and the [Treasury](#) issued new sanctions and export controls on Russia and Belarus in response to Russia's continued aggression toward Ukraine. The Office of Foreign Assets Control (OFAC) prohibited the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of quantum computing services to any person located in the Russian Federation, effective October 15, 2022. The sanctions complement additional actions taken by Commerce's Bureau of Industry and Security (BIS), which imposed additional export controls on quantum computing hardware, software, and technology to Russia and Belarus. BIS also placed license requirements on the export of certain EAR99 items potentially useful for Russia's chemical and biological weapons capabilities. These items include certain chemicals and biologics, fentanyl and its precursors, and related equipment. Finally, BIS expanded the scope of its Russian industry sector sanctions to apply to Belarus. Senior Department of Justice officials emphasized that sanctions enforcement will be a priority. Other U.S. government agencies have signaled they intend to take a more aggressive approach to enforcement as well.

4. Suspension of F-35 Delivery Due to Prohibited China-origin Alloy Use

The U.S. Department of Defense (DOD) [ban on acquiring tantalum](#) from North Korea, China, Russia, or Iran that went into effect in August is already causing issues for government contractors. Tantalum is a metal used in the production of semiconductors and jet engine coatings. The Pentagon temporarily halted delivery of F-35 fighters following the discovery that the raw materials used for a magnet in the plane included tantalum produced in China. The Biden administration is serious about enforcing these bans, and businesses should be evaluating their supply chain as appropriate.

5. Treasury Dept. Issues Update to Cybersecurity Regulations

On [September 6](#), OFAC amended and reissued Cyber-Related Sanctions Regulations. These new rules lay out sanctions for foreign cybercriminals, describing the penalties that will be issued against entities violating the regulations or transacting with prohibited parties who are deemed to be a security threat to the United States. Civil fines will be the greater of up to \$311,000 or twice the value of the violating transaction(s). Upon criminal conviction, the sanctions allow for a fine of up to \$1 million and a 20-year prison sentence.

6. BIS Detaining Record Number of Russia Exports, Official Says

Matthew Axelrod, BIS's top enforcement official, announced that BIS is on pace to detain almost as many exports to Russia this year as the agency detained worldwide in 2021. BIS has been working closely with CBP, as well as authorities in Canada and the European Union, to maximize the effectiveness of their enforcement efforts.

Christian C. Contardo

Associate

202.753.3804

ccontardo@lowenstein.com

Megan C. Bodie

Administrative Coordinator

202.753.3809

mbodie@lowenstein.com

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TRADE TIP OF THE MONTH: Opportunities to Comment on Emerging Technology Reviews

As the Department of Commerce grapples with how best to control emerging technologies, it has been seeking input from industry. Most recently, BIS has [requested comments](#) on the potential uses of certain instruments for the automated synthesis of peptides (automated peptide synthesizers). The comments will help BIS understand the uses of this technology, especially in respect to its impact on U.S. national security. Stakeholders can provide general comments or answer one of the specific questions in the advance notice of proposed rulemaking, such as how to ensure that any controls imposed are effective in protecting U.S. national security interests while minimizing the impact on legitimate commercial or scientific applications. Comments must be submitted by October 28 via the [Regulations.gov](#) portal or by email to PublicComments@bis.doc.gov with "RIN 0694-A184" in the subject line of the message.

Additional Resources

- **Article:** "New CFIUS Order Will Prompt Broader Investment Scrutiny"
September 16, 2022
Law360
Laura Fraedrich
- **Article:** "Crypto for foreign trade: What we know about Iran's new strategy"
September 15, 2022
Cointelegraph
Christian C. Contardo
- **Article:** "Biden's latest Executive Order on CFIUS: What will it mean for filers?"
September 15, 2022
Foreign Investment Watch
Laura Fraedrich
- **Client Alert:** "Strengthened SEC Enforcement Activity is a Reminder that Investment Advisers Must Ensure their Practices and Procedures are Current and Compliant"
September 30, 2022
Lowenstein Sandler LLP
Scott H. Moss, Michael G. Gordon



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+1 973.597.2500

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