



# Trade Matters

## Lowenstein Sandler's Global Trade & Policy Newsletter

July 2021

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### 1. Chinese Trade Tensions Ramp Up

On June 3, President Joe Biden signed Executive Order 14032, replacing and superseding previous EOs that banned U.S. persons from purchasing and selling public securities of Chinese companies and entities identified as Communist Chinese military companies (CCMCs). This new EO shifts authority from the Defense Department to Treasury to designate CCMCs, and has broadened the scope of companies potentially subject to designation to include not just Chinese companies linked to the “military industrial complex” in China, but also those in the “surveillance technology sector.” The Office of Foreign Assets Control (OFAC) updated [the government list](#) of Chinese companies and entities subject to a U.S. investment ban (and renamed it the list of Chinese Military-Industrial Complex Companies (CMICs)). Trading in these securities generally must stop by August 2; however, divestiture trades can continue through June 2, 2022. Companies will need to evaluate their direct and indirect holdings of CMICs, ensure proper controls are in place, and monitor OFAC’s CMIC List moving forward.

China responded on June 10 with the passage and promulgation of the PRC Law on Countering Foreign Sanctions. The Chinese law will be triggered when an action to comply with sanctions laws injures a Chinese party; the law provides legal backing for sweeping retaliation against any individuals and their families as well as organizations responsible for enforcing foreign sanctions. Thus, entities doing business in both jurisdictions will have to navigate potentially competing legal obligations under U.S. sanctions and Chinese anti-sanctions regulations.

### 2. Recent Crackdown on Forced Labor in China Impacts Imports of Multiple Industries

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In the face of the Biden administration's continuing crackdown, companies need to know how to show that their imported goods were not manufactured with forced labor. Customs and Border Protection (CBP) provided guidance in two recent rulings regarding the documentation that importers must submit to demonstrate that merchandise detained by CBP pursuant to a withhold release order, or WRO, was not made with forced labor. According to these recent rulings, necessary documents include production or processing records, descriptions for each entity and production step of an item's supply chain, transportation documents, and properly dated and descriptive certificates of origin. However, CBP has since removed these rulings from its public website and said they were posted in error, creating some uncertainty as to the accuracy of the guidance therein.

- **Solar Sector Latest Target of Import Ban Due to Forced Labor in Xinjiang**

Materials such as polysilicon, used in solar energy production, join other sector-specific products previously banned for import to the U.S. from the Xinjiang province. Xinjiang producer [Hoshine Silicon Industry Co. Ltd.](#) reportedly uses forced labor in the production of its polysilicon. CBP has issued a WRO on the silica-based products made by Hoshine and its subsidiaries, resulting in shipments being detained at U.S. ports. Importers of these products should be aware of this new ban and be prepared to provide CBP with relevant documentation showing the goods were not produced in Xinjiang if a shipment is held at the port.

- **Fishing Industry Targeted For Use of Forced Labor**

Further demonstrating a no-tolerance policy toward businesses that use forced labor, CBP has issued a WRO against [Dalian Ocean Fishing Co., Ltd.](#) As a result of this action, all tuna, swordfish and other seafood originating from fishing vessels owned or operated by Dalian will be blocked from entry into the U.S. and detained at the port. This is the first such action against an entire fleet and not just a vessel.

### 3. Deadline Looming for Licenses for Exports to Russia Related to Commercial Space Launches

As announced in March, the U.S. Departments of Commerce and State added Russia to the list of countries subject to a policy of denial for exports of Defense Articles and Defense Services. There are current exceptions, and the State Department may issue a license for government space cooperation and commercial space launch activities until September 1. The Commerce Department is similarly approving such licenses on a case-by-case basis. Those in the commercial space industry should review their ITAR and EAR license needs and submit any license applications as soon as possible so they can receive approval before these exceptions expire on September 1.

### 4. Waivers for "Made in America" Requirement Will Be Limited

On June 11, the White House's Office of Management and Budget issued a [memorandum](#) directed to federal agency heads with further guidance on waivers to President Biden's March "[Made in America](#)" executive order. EO 14005 aims to increase domestic content requirements for federal contracts and to close loopholes for determining country of origin. The

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recent memo lays out initial steps on how to minimize waivers to all Made in America laws. There will be a phased implementation, but foreign-owned entities will need to focus on the details when contracting with the government.

## 5. Foreign Entrepreneurs Can Remain in U.S. Under Rebooted International Entrepreneur Rule

The Biden administration announced that it is restoring the [International Entrepreneur Rule and its Parole Program](#), which allows foreign entrepreneurs to stay in the United States temporarily to grow and oversee their startup businesses. The program was created under the Obama administration and was previously slated for removal by the Trump administration. To qualify, entrepreneurs must have at least a 10 percent stake in a recently formed business, demonstrate the startup has substantial potential for growth and job creation, have received a capital investment of at least \$250,000 from qualified U.S. investors or at least \$100,000 in grants or awards from government entities, and play a critical role in the operation of the startup.

## 6. Anti-Corruption Established as Core National Security Interest by Biden

In a [June 3 National Security Memorandum](#), the Biden administration committed to tackling corruption as an economic and national security priority. There will be a 200-day interagency review, which will lead to policy recommendations on how to better fight corruption. While it will take time for any shift in enforcement or policy to be implemented, companies should take this time to do a review of their compliance programs to protect themselves and their employees from potential liability.

**Trade tip of the month:** Aluminum importers and brokers should be aware of new license requirements from the Department of Commerce for imports of [most aluminum products](#) beginning June 28. Licenses can be obtained up to 60 days prior to the expected date of entry and should be filled out prior to completion of the CBP entry summary documentation (CF-7501). The Aluminum Import Monitoring and Analysis system is modeled after the Steel Import Monitoring and Analysis system and uses the same license application platform.

## Additional Resources

- **Article:** "[Is Your Startup Running Afoul of Domestic Trade Controls?](#)"  
June 22, 2021  
*Built In*  
Doreen M. Edelman and Abbey E. Baker
- **Article:** "[US Customs Rulings Highlight Importance of Arm's Length Valuation Requirement](#)"  
June 18, 2021  
*Global Trade and Customs Journal*  
Laura Fraedrich and Andrew Bisbas
- **Firm News:** "[Lowenstein Sandler Represents Longtime Client Indorama Ventures in Completed Acquisition of CarbonLite's Texas PET Recycling Facility](#)"  
June 16, 2021

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