



# TRADE MATTERS

## Lowenstein Sandler's Global Trade & National Security Newsletter

November 2024

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### 1. Enhanced Export Compliance Guidance for Financial Firms, Including Hedge Funds and Private Equity Funds

The Commerce Department issued new guidance for financial institutions on best practices for compliance with the Export Administration Regulations (EAR). Available [here](#), the guidance emphasizes enhanced due diligence, ongoing transaction reviews, and real-time screening for cross-border payments. It recommends screening against restricted-party lists and refraining from transactions with unresolved red flags, and it encourages voluntary self-disclosures for suspected violations. This guidance aims to help financial firms minimize the risk of violating the EAR's General Prohibition 10, which restricts financing or servicing items when an EAR violation is known or suspected.

### 2. Committee on Foreign Investment in the U.S. Outbound Investment Restrictions Released

The Department of the Treasury issued [a final rule](#) implementing a U.S. outbound investment security program. Effective January 2, 2025, this final rule prohibits certain U.S. investments in China and requires U.S. persons to notify Treasury of certain transactions that directly or indirectly involve investments in China, Hong Kong, or Macau and the semiconductor and microelectronic, quantum information technology, or artificial intelligence sectors. Corporate transaction lawyers will need to consider these new regulations governing outbound investments and determine if potential investments are related to activity that is prohibited or carries a notification requirement under this new rule.

### 3. Department of Defense Announces Loan Program Providing Funding for Certain Covered Technology Equipment to Secure the U.S. Industrial Base

The Office of Strategic Capital (OSC) in the Department of Defense (DOD) recently announced its first [Notice of Funding Availability](#), offering direct loans of \$10 million to \$150 million for equipment financing for covered technology categories. The OSC was created in 2022 with the goal to attract and scale

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private capital for national security priorities, and it has the funds to loan up to \$984 million to eligible companies. The list of eligible technologies can be found [here](#). The application process involves two stages. Applicants with a successful Part 1 submission will be invited to complete the full application. Interested companies can find Part 1 of the application on [the OSC website](#), and [the form](#) must be submitted by 4:59 p.m. Eastern time on February 3, 2025.

communications, please [click here](#).

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#### 4. DOJ Files Suit for \$1.1 Million in Unpaid Duties and Penalties on Imported Chinese Solar Panels

The Department of Justice (DOJ) has filed a [civil lawsuit](#) against Paul Bakhoun, the former vice president for operations for Ecosolargy Inc, a California importer of Chinese-manufactured solar panels. The suit alleges that Bakhoun made false statements to customs officials by falsely classifying imported solar panels as LED lights to avoid paying harmonized tariff schedule, antidumping, and countervailing duties. The complaint seeks to recover \$300,000 in import duties and to impose an \$800,000 penalty. Customs and Border Protection investigated this case and worked with the DOJ's Trade Task Force.

#### 5. Space-Related Export Controls Are Changing

- The Commerce Department issued an [interim final rule](#) on October 23 to reduce license requirements on some less-sensitive space-related items for more than 40 countries and to broaden license exceptions that support NASA programs.
- Both the Commerce and State departments have issued [proposed rules](#) to refine, add to, and shift items no longer warranting International Trafficking in Arms Regulations (ITAR) control from U.S. Munitions List Categories IV and XV; proposes a new EAR license exception for certain commercial space activities; and introduces three new license exemptions for the ITAR. Comments on all three proposed rules are welcome through November 22.
- The Commerce and State departments recently [removed](#) controls on some spacecraft, including those with remote sensing or [space-based logistics](#), assembly, or servicing for export and reexport to Australia, Canada, and the UK.

#### 6. Company Paid \$860,000 Penalty in Undisclosed Successor Liability Case

Vietnam Beverage Co. Ltd. (VBCL), a Vietnamese holding company, has agreed to pay \$860,000 to [settle violations](#) of North Korean sanctions by two of its subsidiaries. Between April 2016 and October 2018, VBCL's subsidiaries sought and received approximately \$1.1 million in payments through U.S. financial institutions for the sale of alcohol to North Korea. VBCL acquired a majority ownership interest in the subsidiaries in late 2017 but did not discover the subsidiaries' past sales to North Korea until organizational changes in December 2019. When the violations occurred, neither VBCL nor its subsidiaries had sanctions compliance programs that addressed U.S. sanctions. Additionally, VBCL chose not to file a voluntary self-disclosure report with the Office of Foreign Assets Control. This case further highlights the importance of diligence, disclosures, and proper risk management in corporate transactions as well

as how non-U.S. persons in foreign jurisdictions may face sanctions liability.

## TRADE TIP OF THE MONTH: Don't Miss BIS' IEC Exception Chart

When completing export licensing determinations regarding semiconductor, quantum, and additive manufacturing items, ensure you review the new Implemented Export Controls (IEC) license exception, which authorizes certain exports and reexports to and by countries that have implemented equivalent technical controls on covered items. To assist exporters in making licensing determinations, BIS has published a useful IEC chart listing eligible items and destinations [here](#).

### Additional Resources

- **Article:** "What To Make Of Dueling Corporate Transparency Act Rulings"  
October 16, 2024  
*Investment Management Article*  
Robert A. Johnston Jr., Melissa L. Wiley, and Ryan E. Fennell
- **Client Alert:** "District of Oregon Holds Corporate Transparency Act Likely Constitutional; Denies Preliminary Injunction"  
September 23, 2024  
*Investment Management Client Alert*  
Robert A. Johnston Jr., Melissa L. Wiley, Paula A. Ladd, Ryan E. Fennell, Samantha Sigelakis-Minski
- **Client Alert:** "USTR Finalizes Section 301 Tariff Modifications Following Four-Year Review"  
September 20, 2024  
*Global Trade & National Security Client Alert*  
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