



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

July 2022

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1. Congress Plans To Control Outbound Investments

On June 13, legislators released a new proposed version of the National Critical Capabilities Defense Act, which would establish an outbound investment review mechanism to protect U.S. technologies against adversaries like China and Russia. The legislation would establish an interagency panel to review and block U.S. investments in foreign countries on national security grounds, essentially acting as a reverse version of the Committee on Foreign Investment in the United States (CFIUS). U.S. entities and their affiliates would be required to notify the federal government 45 days prior to closing if the investment involves sectors previously specified by the Biden administration as crucial to supply chains or **critical and emerging technologies** identified by the National Science and Technology Council and the Office of the Director of National Intelligence as vital to maintaining the U.S. position as the world's leading superpower. Relevant industries and technologies include semiconductors, large-capacity batteries, pharmaceuticals, rare-earth elements, biotechnology, artificial intelligence, quantum computing, hypersonics, financial technologies, and autonomous systems. Companies considering overseas investment in these industries should consider the possibility of new restrictions in their planning processes

2. DOJ To Require Companies To Certify Compliance Programs Are Designed To Avoid Violations

On June 22, Lauren Kootman, a senior official in the Department of Justice's Fraud Section, confirmed that companies can expect a new policy requiring chief compliance officer (CCO) certifications as part of every corporate resolution

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with the department going forward. CCOs and CEOs will be required to certify that compliance programs have been “reasonability designed” to prevent future violations, with the idea that this will empower compliance officers by ensuring they have access to information about violations and business decisions. However, it also raises concerns about potential liability for CCOs. The DOJ implemented this new policy in a [recent plea agreement](#) in *United States v. Glencore International A.G.*

3. CIT Grants USTR Extension To Explain Imposition of China Duties

Responding to the government’s request to grant the U.S. Trade Representative (USTR) a 60-day extension to further elaborate on and reconsider its List 3 and 4A tariff decisions, the Court of International Trade (CIT) granted the USTR a shorter 32-day extension, until Aug. 1. Based on the updated timeline, the CIT likely will rule in the fall, after which there almost certainly will be an appeal to the U.S. Court of Appeals for the Federal Circuit, with a final verdict not expected from that court for at least another year.

4. UK Crypto Platform Exits Venezuela Over U.S. Sanctions Risk

Uphold, a UK-based cryptocurrency platform, [has announced](#) that it is exiting Venezuela due to the increasing complexity of complying with U.S. sanctions. Office of Foreign Assets Control sanctions compliance obligations apply equally to transactions involving virtual currencies and those involving traditional currencies. The U.S. Treasury Department has warned the cryptocurrency industry about sanctions compliance and has put several enforcement actions on the books. Accordingly, companies operating in the virtual currency industry should evaluate sanctions-related risks and build risk-based sanctions compliance programs.

5. Bipartisan Bill Could Impose New Export Controls To Limit Sale of Personal Data

On June 23, a bipartisan group of senators [introduced a bill](#) that could place new controls on certain exports of U.S. personal data to foreign companies and governments. The Protecting Americans’ Data From Foreign Surveillance Act would require the U.S. Commerce Department, along with other agencies, to identify “categories of personal data” that could harm national security if they were exported and to place export restrictions on those items. Under the bill, Commerce would need to impose export license requirements for certain “bulk exports of the identified categories of personal data” to certain high-risk countries, while other “low risk” nations would not be subject to the controls. While CFIUS can prevent the sale of American companies with such sensitive data to foreign firms, it currently does not have jurisdiction to stop the sale of the data. This new bill would address that security gap.

6. Quantum Tech Export Controls Under Debate in Congress

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Various industry groups and U.S. companies are urging Commerce to avoid broad, unilateral export controls on quantum technologies, arguing they would stifle U.S. competitiveness and innovation. On **June 22**, an executive at IBM testified before a House subcommittee and encouraged the “tailoring of export controls to keep sensitive technologies out of the hands of nefarious actors.” The recommendation comes amid the Bureau of Industry and Security’s (BIS) emerging technology control effort, which could place restrictions on certain slices of quantum technology, initially **listed** by BIS in 2018 as a candidate for export restrictions. Quantum technology is an emerging field of physics and engineering that relies on the properties of quantum mechanics, especially quantum entanglement and quantum superposition, to solve problems too complex for classic computers.

TRADE TIP OF THE MONTH: [New SEC Guidance for Public Companies Regarding Disclosures Pertaining to Russia's Invasion of Ukraine](#)

As public companies prepare their Q2 filings for 2022, they should consider recent Securities and Exchange Commission (SEC) guidance that requires reporting on:

- Direct or indirect exposure to Russia, Belarus, or Ukraine, including:
 - Direct or indirect reliance on goods or services sourced in those countries
 - Operations and employees in those countries
 - Investments and securities traded in those countries
 - Dealings with sanctioned parties
 - Legal or regulatory uncertainties resulting from recent events, such as patent maintenance or other issues associated with operating in or exiting those countries
- Actual or potential disruptions in the company’s supply chain
- Other business relationships, connections to, or assets in Russia, Belarus, or Ukraine

Additional Resources

- **Article:** ["The New Reality for U.S. Business Growth—Supply Chain Transparency"](#)
June 29, 2022
CEOWORLD Magazine
[Andrew Bisbas](#)
- **Firm News:** ["34 Lowenstein Sandler Attorneys and 12 Practice Groups Recognized by Chambers USA 2022"](#)
June 1, 2022
[Marie T. DeFalco](#), [Robert G. Minion](#), [Scott H. Moss](#), [Jonathan C. Wishnia](#), [Doreen M. Edelman](#), [Andrew Reidy](#), [Ed Zimmerman](#), [Mark S. Heinzelmann](#)

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