



# Trade Matters

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

March 2023

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### 1. BIS, DOJ Technology Strike Force to Investigate Disruptive Technologies

On February 16, the Department of Justice (DOJ) and the Department of Commerce's Bureau of Industry and Security (BIS) announced the creation of the **Disruptive Technology Strike Force** to protect critical technologies from foreign adversaries such as China, Iran, Russia, and North Korea. The Strike Force will investigate and prosecute criminal violations of export laws, enhance administrative enforcement of U.S. export controls, foster partnerships with the private sector, leverage international partnerships to coordinate law enforcement actions and disruption strategies, use advanced data analytics to develop and build investigations, conduct trainings, and strengthen connectivity between the Strike Force and the intelligence community. The Strike Force likely will also play a role in any future outbound foreign investment mechanism, as evidenced by Deputy Attorney General Lisa O. Monaco's **recent speech on disruptive technologies**. Organizations in advanced technology fields should assess whether and to what extent export controls apply to their technologies and ensure that they have the proper procedures and internal operations in place to prevent unauthorized releases of any controlled goods or technology.

### 2. US-Made Materials Rule May Create New Trade Friction

Following President Joe Biden's State of the Union speech, the Office of Management and Budget released **proposed guidance** on standards to determine whether construction materials for federally funded infrastructure projects are U.S.-origin goods. The proposed guidance supports implementation of the Build America, Buy America Act provisions of the Infrastructure Investment and Jobs Act and clarifies existing requirements

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regarding the iron, steel, manufactured products, and construction materials used in any federal infrastructure project. More specifically, the new guidance defines the phrase “cost of components”; sets manufacturing standards for certain construction materials, including nonferrous metals, plastic- and polymer-based products, composite building materials, glass, fiber optic cable, optical fiber, lumber, and drywall; and distinguishes “manufactured products” from “construction materials.” The infrastructure law is one of several measures enacted since Biden took office that prioritizes domestic manufacturing.

### 3. Limited Huawei Export Licenses May Be Ending

According to [Bloomberg News](#), the Biden administration has recently refused to renew licenses to export, reexport, or transfer items to Huawei. While the Biden administration has not issued a formal policy or guidance, multiple sources within the administration have confirmed the change in policy. BIS originally added Huawei to the Entity List in 2019, which required companies to obtain a license prior to exporting, reexporting, or completing an in-country transfer to Huawei of any items subject to the Export Administration Regulations. With the change in policy, U.S. suppliers can expect that BIS will deny most, if not all, license applications for goods to Huawei.

### 4. New Zealand, UK Qualify for CFIUS Exceptions

On February 10, the Department of the Treasury announced that both [New Zealand](#) and [the United Kingdom](#) have met the excepted foreign states determination requirements under the Committee on Foreign Investment in the United States (CFIUS) regulations. This will ensure both countries’ continued status as excepted foreign states. The exceptions are for certain nonpassive minority investments, real estate transactions, and mandatory CFIUS filings; the countries are still subject to CFIUS jurisdiction for investments that would result in foreign control of a U.S. business.

### 5. US Customs Releases Guidance on Best Practices for UFLPA Applicability Reviews

On February 23, Customs and Border Protection (CBP) released [additional guidance](#) for importers regarding best practices related to detention of merchandise at the border pursuant to the Uyghur Forced Labor Prevention Act (UFLPA). CBP concurrently released [updated FAQs](#) and [directions](#) about how to prepare an applicability review submission and get a detained shipment released. The new guidance sets out the requirements for importers to demonstrate that their merchandise is not subject to the UFLPA because it was not produced in whole or in part in the Xinjiang Uyghur Autonomous Region of China or by an entity on the UFLPA Entity List; it outlines best practices for importers to trace and document their supply chains, as well as instructions on how to navigate the review process once a CBP detention notice is received. As CBP ramps up UFLPA enforcement, importers must assess forced labor risk and implement supply chain tracing procedures for their high-risk supply chains to ensure they are able to put together a successful applicability review submission in the event of a UFLPA detention.

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## TRADE TIP OF THE MONTH: Why Digital Asset Companies Need Effective Compliance Programs

In the past few years, U.S. enforcement authorities have increasingly been targeting the digital asset market to prevent criminals and other malicious cyber actors from laundering and accessing funds. To mitigate the risk of facilitating transactions to sanctioned parties and money-laundering violations, virtual asset service providers need to ensure they have a robust compliance program that not only screens customers and blocks users in sanctioned locations, but also takes into consideration the counterparties receiving the funds. To avoid facilitating prohibited transactions, companies must collect information about not only their own customers but also the counterparty in the transaction. This is a common blind spot in virtual asset service providers' compliance procedures, which leaves them open to potential enforcement action.

### Additional Resources

- **Upcoming Webinar:** "G-BRIDGE Lunch & Learn Series - Session 3: Intellectual Property Laws and Their Intersection With Government Contracting"  
March 15, 2023  
*Lowenstein Sandler LLP*  
Lesley P. Adamo, Jeffrey B. Jones, Melissa D. Libutti  
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