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Lowenstein Sandler

Trade Matters

Lowenstein Sandler's Global Trade & Policy Newsletter

May 2021

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1. BIS Eliminates Reporting Requirements for Certain Encryption Items

Effective March 29, 2021, BIS eliminated or reduced reporting requirements for certain encryption items. For encryption source code and beta test software that is made publicly available, companies will no longer have to notify BIS unless the cryptography used is “non-standard.” Only source code that implements proprietary or unpublished encryption must be reported to the U.S. government before release from control under the Export Administration regulations. Additionally, most “mass market” encryption products will no longer be subject to annual reporting requirements. Certain mass-market items that previously required a formal classification request to BIS before they could be exported now can be exported after self-classification but remain subject to annual reporting requirements. This action may significantly reduce the reporting obligation for software companies that produce and export these encryption items.

2. April 15, 2021 Executive Order Broadens Authority for Russia Sanctions

President Biden’s recent Executive Order (EO) increases the economic sanctions risks of U.S. businesses operating in Russia. The EO expands the U.S. government’s authority to designate for sanctions individuals and entities operating in Russia’s defense and technology sectors. There are also provisions that may effectively shut down the Russian government’s ability to raise funds from U.S. financial institutions. Because sanctions designations generally require that U.S. persons immediately cease transactions with designated parties, U.S. companies should be mindful of their operations in Russia and have contingency plans to address potential sanctions.

Contact Us

for more information about any matters in this newsletter:

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3. Proposed Legislation Could Impact FDI Reviews

A trio of proposed bills could impact future foreign direct investment reviews:

- The "Protecting Military Installations and Ranges Act of 2021" would restrict any effort by Russia, China, Iran, or North Korea to buy U.S. land within 100 miles of a U.S. military installation or 50 miles of military areas.
- The "U.S. Pharmaceutical Supply Chain Review Act" would require CFIUS to conduct a study on the United States' "overreliance on foreign countries and the impact of foreign direct investment in the U.S. pharmaceutical industry and DNA analysis industries."
- The "Protecting Americans' Data from Foreign Surveillance Act" contains provisions for regulating the export in U.S. citizens' personal data to foreign countries.

We'll monitor these bills and report on future developments.

4. Senators Propose Allocation of $3 Billion for Chinese Tech Alternatives in 2022 Budget

In early April, a bipartisan group of 15 senators submitted a letter to the Biden administration asking its members to allocate at least $3 billion toward developing domestic alternatives for Chinese-made technology. The senators' proposal would have the government allocate $1.5 billion each to the Public Wireless Supply Chain Innovation Fund and the Multilateral Telecommunications Security Fund. Both of these funds were created by the 2020 National Defense Authorization Act, with a goal of increasing U.S. technological competitiveness and national security. The funds would aid development of an open radio access network (RAN) and could provide alternatives to the technology produced by Chinese companies such as Huawei and ZTE, which have been under scrutiny and subject to sanctions by the U.S. government for several years. As the 2022 budget proposal process continues, telecom companies should take note if this goal is included.

Trade tip of the month: There has been a technical correction related to China 301 duties. The China 301 List 3 tariff assessment increased from 10 percent to 25 percent, effective May 10, 2019. While the USTR had created an "on the water" grace period such that the 10 percent rate would apply to goods exported from China before May 10, 2019, that entered the United States before June 15, 2019, in establishing the exclusions, the USTR did not make explicit reference to the Chapter 99 provision on the water grace period. Now, goods entered into the United States on or after May 10, 2019, and before June 15, 2019, and eligible for an exclusion can receive a duty refund if the entries have not liquidated. Additionally, a bipartisan group of 40 senators has also asked the USTR to open another exclusion process for the China Section 301 duties. We'll provide more developments on that as they become available.

Additional Resources

- **Client Alert:** "FTC Publishes Blog Outlining Corporate Board Guidance for Data Security"

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April 29, 2021
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- **Client Alert:** "States' Safe Harbor Defense for Data Security Breaches Signals Possible Trend"
  April 9, 2021
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