



# Trade Matters

## Lowenstein Sandler's Global Trade & Policy Newsletter

October 2021

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### 1. Expanded Export Controls on Certain Biological Equipment Software Are Coming

As part of the Bureau of Industry and Security's emerging and foundational technology control effort, **new export controls** are forthcoming for certain software that can be exploited to develop biological weapons. A final rule sent to the Office of Information and Regulatory Affairs on September 13 for interagency review would add a new Export Control Classification Number to control software "for the operation of automated nucleic acid assemblers and synthesizers" that are "capable of designing and building functional genetic elements from digital sequence data."

### 2. Department of Commerce Establishes National Artificial Intelligence Advisory Committee

On September 8, the Department of Commerce announced the creation of a high-level committee to advise the President and various federal agencies on issues relating to artificial intelligence (AI); Commerce is **seeking nominations** for individuals to serve as members. The deadline to apply is October 25. This committee is a great opportunity for technology companies to work directly with the federal government and provide direct input regarding AI.

### 3. Recommended Changes to Business Contracts With Chinese Parties

China's recent enactment of June's Anti-Foreign Sanctions Law has forced multinational businesses to consider compliance measures. While there is little formal guidance on the enforcement of these laws, companies doing business in

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China can obtain a measure of protection through various contract provisions. For example, companies will want to ensure that U.S. law governs the contract and require that arbitration subject to international laws and international tribunals' jurisdiction is the sole remedy for disputes. Any contractual provisions that permit non-performance by Chinese counterparties based on the U.S. company's inclusion on the Counter-Control List Companies should not be accepted. Finally, companies will want to include penalties for breach of contract obligations by Chinese counterparties, even where the failure to fulfill the contract obligations purportedly is caused by the Blocking Laws.

#### 4. New Sanctions Impact Business In Russia and Ethiopia

##### Russia

A second round of sanctions on Russia went into effect on [September 7](#), expanding the sanctions imposed in March. License applications for the exports and reexports of the following items will now be reviewed with a presumption of denial: goods or technology controlled for CB (Chemical and Biological Weapons), MT (Missile Technology), and NP (Nuclear Proliferation) reasons; goods or technology to commercial end users for civil end-uses in Russia; goods or technology to Russian state-owned or state-funded enterprises; and items in support of commercial space launch application. Exports and reexports of certain goods and services including those in support of government space cooperation will continue to be reviewed on a case-by-case basis. U.S. banks continue to be prohibited from participating in the primary market for non-ruble denominated bonds issued by the Russian Federation and from providing non-ruble denominated loans to the Russian Federation.

##### Ethiopia

In an [executive order](#) issued on September 17, President Biden authorized sanctions and export restrictions in response to the Tigray conflict in Ethiopia. While no specific designations have yet been made under the program, Treasury has broad authority to target individuals and entities, including the Ethiopian and Eritrean governments, as well as to deny export licenses for certain goods and technology. The Office of Foreign Assets Control issued three general licenses authorizing certain transactions in Ethiopia, primarily aimed to allow for and assist humanitarian aid in the region. Similar to the Myanmar sanctions program, the Biden Administration appears to be approaching designations under this new sanctions program gradually and cautiously, but those doing business in the region should look out for future designations.

#### 5. Texas Technology Company Fined for Iran Sanctions Violations

[NewTek, Inc.](#), a Texas company that develops 3D animation hardware and software, agreed to pay \$189,000 to settle violations of Iran sanctions. Between 2013 and 2018, NewTek exported its products to two third-country distributors that NewTek knew were supplying companies and individuals in Iran. The company also knowingly provided support, software updates, and reseller training to customers in Iran. The statutory maximum for the violations was \$15 million, but the settlement reflected several mitigating factors, including the low overall value of the transactions, the company's willingness to establish export control and sanctions compliance policies and procedures, and the company's

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cooperation with OFAC during the investigation. This enforcement action highlights that even small companies need to have and follow compliance procedures or risk sanctions violations.

## 6. Commercial Space Company Finalizes National Security Agreement With CFIUS

The details of the national security agreement (NSA) between Momentus Inc. and CFIUS to obtain approval of its transaction with Stable Road Acquisition, Corp., were released in a September 15 [SEC filing](#). The commercial space company must hire several key employees to provide oversight and monitor compliance with the NSA. The company must also create a plan to “safeguard protected technical information, systems and facilities,” among other conditions. The fines for violating the terms and conditions of the NSA are as high as \$100,000 per day or \$1 million “per breach.”

## 7. New 232 Case: Biden Launches Security Probe of Crucial Magnet Imports

The Biden administration launched its [first Section 232 investigation](#) to determine the effects on U.S. national security of imports of neodymium-iron-boron (NdFeB) permanent magnets (sometimes referred to as neodymium magnets, neo magnets, or rare earth magnets). NdFeB magnets are used in a wide variety of industries and products, including jet aircraft, missile systems, critical infrastructure, electronic components, and vehicles. BIS has requested comments on the investigation, which must be submitted no later than November 12, 2021.

**Trade tip of the month:** In lieu of our usual trade tip, we asked our TerraLex partner firm in Canada to provide an update related to the recent consultations regarding how to calculate value for duty. Jonathan O’Hara, Peter Jarosz, and Chris Scheitterlein of McMillan LLP in Ottawa provided the following:

Canada’s customs agency, the Canada Border Services Agency (CBSA) is proposing changes that could have far-reaching consequences on the valuation of goods imported into Canada. As part of these regulatory changes, the CBSA intends to revise the definitions of “sold for export to Canada” and “purchaser in Canada.” The new definition of “sold for export to Canada” would ensure that the value of imported goods determined under the transaction value method is based on the last transaction in the commercial chain that causes the goods to be exported to Canada. The new definition of “purchaser in Canada” will remove any ambiguity on how to qualify as a “permanent establishment,” which has caused disagreements between CBSA and importers in the past.

## Additional Resources

- **Webinar:** ["International Commerce in the Age of Covid"](#)  
October 13, 2021  
*New Jersey District Export Council*  
[Doreen M. Edelman](#)
- **Article:** ["Section 301 Case Offers Importers a Chance at](#)

Refunds as Administration Contemplates Further Tariff Action"

October 3, 2021

*Global Trade*

Andrew Bisbas

- **In the Media:** "Biden's approach to China: Where are we, and where are we headed?"

October 1, 2021

*Foreign Investment Watch*

Doreen M. Edelman

- **In the Media:** "Watch: What Global Traders Need to Know About Biden's 'Buy American' Policy"

September 21, 2021

*SupplyChainBrain*

Doreen M. Edelman

- **In the Media:** "Congressional Report: Cos. should disclose adversarial foreign capital"

July 24, 2021

*Foreign Investment Watch*

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