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Lowenstein Sandler

# Trade Matters

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

February 2022

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### 1. Treasury Mandates Reporting of Foreign Securities Holdings of $200M or More

All U.S. persons (custodians and end investors) who manage $200 million or more in foreign securities for themselves or others must file a report by March 4, 2022. Information collected through the survey is confidential, and failure to report can result in civil and criminal penalties. The Treasury Department conducts this survey every five years.

### 2. Prepare Now for Potential Increased Sanctions on Russia

As the tension about Russia's potential invasion of Ukraine increases, companies can take steps now to prepare for possible increased sanctions on Russia. Specifically, companies should:

- Identify outstanding debts from Russian entities or individuals and promptly pursue collection activities.
- Check sanctions screening policies and procedures and screen customers and business partners in real time against global sanctions lists.
- Identify contracts with Russian entities or individuals and review them for compliance with law clauses, notice clauses, and termination provisions.
- Identify beneficial owners of Russian trading partners. If an entity is owned 50 percent or more by one or more SDNs, that entity is also treated as if it is on the SDN List and subject to blocking and asset freezes.
- Identify items or technology being exported to Russia and any transactions with Russian entities that have ongoing or continuing obligations. You may need a license for the export.

## Contact Us

for more information about any matters in this newsletter:


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- Consider alternative sources for any supplies or services being sourced from Russia.

## 3. Tighter Export Controls on Cybersecurity Items Delayed Until March

In a January 11 notice, the Bureau of Industry and Security (BIS) delayed the effective date of its new export controls over certain cybersecurity items after receiving comments from industry. The controls, which were scheduled to take effect January 19, were delayed for 45 days and will now take effect March 7. The controls impact hardware and software on command and delivery platforms for "intrusion software"; the technology for the "development," "production," or "use" of the command and delivery platforms; and the technology for the "development" of "intrusion software."

## 4. Burma Warning; Sanctions Enforcement Continues

**a. U.S. Government Warns About Conducting Business in Burma**

On January 26, multiple U.S. government agencies issued a joint business advisory to inform businesses of the heightened reputational, financial, and legal risks of doing business in Burma, including violations of U.S. anti-money laundering laws and sanctions as well as abetting human rights abuses. The specific entities and sectors of greatest concern include state-owned enterprises; gems and precious metals; real estate and construction projects; and arms, military equipment, and related activity. Companies and investors considering or already engaged in business in Burma need to review their compliance processes to ensure that they adequately address the risks involved.

**b. Hong Kong Company Hit With $5.2M OFAC Fine Over Iran Dealings**

On January 11, the Office of Foreign Assets Control (OFAC) announced a $5.2 million settlement with Hong Kong-based chemical company Sojitz (Hong Kong) Ltd. for its apparent violations of the Iranian Transactions and Sanctions Regulations. From 2016 to 2018, Sojitz HK made 60 U.S. dollar payments totaling $75,603,411 for 64,000 tons of Iranian-origin high density polyethylene resin (HDPE) from its bank in Hong Kong to the HDPE supplier's banks in Thailand. These U.S. dollar payments were processed through U.S. financial institutions, which facilitated prohibited transactions related to goods of Iranian origin. Certain noncompliant Sojitz HK employees concealed the Iranian country of origin on all relevant documentation. OFAC said the case shows the importance of risk-based internal controls to identify and prevent prohibited sanctions activities.

**c. TD Bank Fined for Sanctions Violations**

On December 23, 2021, OFAC announced a $115,000 settlement with TD Bank, N.A. (TD Bank) related to TD Bank's apparent violations of the North Korea Sanctions Regulations and the Foreign Narcotics Kingpin Sanctions Regulations. The apparent violations in both cases resulted from multiple sanctions compliance breakdowns, including screening deficiencies and human error such as dismissing a name and birth date screening result match of an individual on the List of Specially Designated Nationals and Blocked Persons (SDN). This enforcement action highlights the importance of maintaining and following proper escalation procedures and ensuring adequate employee training.

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## 5. CFIUS Updates List of Excepted Foreign States; New Zealand in the Mix

On January 5, the Treasury Department announced final regulations modifying the definitions of excepted foreign state and excepted real estate foreign state for the Committee on Foreign Investment in the United States (CFIUS). CFIUS also determined that Australia and Canada have met the criteria for permanent status as excepted foreign states. New Zealand has been added as an eligible foreign state, and it, along with the United Kingdom, has until Feb. 23, 2023, to meet the criteria of effectively analyzing foreign investments for national security risks and facilitating coordination with the United States on matters related to investment security.

## 6. Commerce Acts to Deter Misuse of Biotechnology, Adds 37 to Entity List

On December 16, 2021, the Bureau of Industry and Security (BIS implemented a rule to address threats to U.S. national security as a result of China's and Iran's misuse of biotechnology. BIS has added 37 entities in China, Georgia, Malaysia, and Turkey to the Entity List.

## 7. CFIUS Asks Ukrainian Tech Firm to Divest Its Stake in U.S. Space Company

CFIUS has requested that Ukrainian tech entrepreneur Max Polyakov sell his 50 percent stake in Texas-based rocket company Firefly Aerospace Inc. Government and aerospace industry officials have expressed objections to Polyakov's control of the company amid fears that valuable technology could make its way to Ukraine, Russia, or other nations trying to develop rocket programs. This sale request comes amid rising tensions with Ukraine and Russia.

**TRADE TIP OF THE MONTH: New Import Ban Means Companies Need to Trace and Document All Their Supply Chains**

On January 24, the Forced Labor Enforcement Task Force requested public comment on how the U.S. can best enforce the Uyghur Forced Labor Prevention Act. The act's importation ban on all goods with Xinjiang-origin inputs is set to take effect on June 21, and the government has until that date to release guidance on the compliance requirements importers will need to satisfy in order to enter goods into the United States. Importers should already be reviewing their supply chains to identify and replace Xinjiang inputs/suppliers and to compile documentation demonstrating that none of their products are linked to Xinjiang or forced labor. The trend toward requiring increased supply chain transparency and accountability continues to garner bipartisan support and growing consumer attention, so comprehensive supply chain tracing is becoming a compliance expectation.

## Additional Resources

- **Article:** "Risky Business: The Top Four Risks Companies Face When Doing Business With China and How to

Address Them"
January 31, 2022
*Law.com International*
Doreen M. Edelman, Abbey E. Baker

- **In the Media:** "Watch: The Future of the U.S. and EU's Trading Relationship"
  January 20, 2022
  *SupplyChainBrain*
  Laura Fraedrich
- **In the Media:** "'The U.S. Chamber's long trade to-do list"
  January 19, 2022
  *POLITICO*
  Doreen M. Edelman
- **Article:** "Is Your Startup Running Afoul of Domestic Trade Controls?"
  June 22, 2021
  *Built In*
  Doreen M. Edelman, Abbey E. Baker

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