



TRADE MATTERS

Lowenstein Sandler's Global Trade & National Security Newsletter

September 2024

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1. Effective Immediately: New Technology Export Controls on GAAFET, Quantum Computing, Aerospace Coating, and Advanced Semiconductor Manufacturing and Additive Manufacturing Equipment

The Department of Commerce's Bureau of Industry and Security (BIS) recently issued an interim final rule implementing licensing requirements for these emerging technology products for export to all foreign countries. See the full list [here](#). The controls apply to products in the U.S.; products of U.S. origin, wherever located; non-U.S. products with more than a "de minimis" amount of controlled U.S. content; and non-U.S. origin items that are the "direct product" of U.S. technology/software. BIS also issued a new license exception that allows a restricted export in these categories to be sent without a license to countries that have instituted export controls comparable to those of the United States. The controls went into effect September 6, except that some controls on quantum computing items are effective on November 5, 2024. Comments are accepted on the interim final rule until November 5, 2024.

2. Treasury Announces Updated CFIUS Enforcement and Monitoring Resources

The U.S. Department of the Treasury (Treasury) updated the Committee on Foreign Investment in the United States (CFIUS) website to list extensive details about penalties and enforcement actions in an unprecedented act of transparency. While maintaining compliance with its confidentiality requirements, CFIUS is providing details about enforcement decisions, including descriptions of the conduct that gave rise to penalty actions, as well as associated mitigating and aggravating factors. This information can help CFIUS practitioners and companies make informed decisions, especially with CFIUS enforcement skyrocketing in recent years. In the past two years alone, CFIUS has issued three times more penalties than in the previous 50.

3. State Dept. Publishes AUKUS Rule Ahead of 'License Free' Defense Trade

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The U.S. State Department published an [interim final rule](#), effective September 1, revising the International Traffic in Arms Regulations (ITAR) to facilitate defense trade and cooperation between the AUKUS partners after the State Department's Directorate of Defense Trade Controls (DDTC) certified to Congress that the export control systems of the UK and Australia are comparable to those of the United States. The UK and Australian governments have implemented reciprocal exemptions for U.S. exports, and updated their export controls consistent with U.S. controls. Interested parties have until November 18 to provide DDTC with comments. BIS published a similar rule amending the Export Administration Regulations (EAR) to reduce license requirements on an estimated \$7.5 billion in trade with Australia and the UK per year that went into [effect April 19](#).

4. DDTC Issues Final Rule Amending the Definition of Activities That Are Not Exports, Reexports, Retransfers, or Temporary Imports

In a long-awaited [final rule](#), DDTC expanded the ITAR's definition of "activities that are not exports, reexports, retransfers, or temporary imports" to incorporate long-standing policy that activities related to taking defense articles on deployment or training exercises outside a previously approved country and transferring foreign defense articles that had been imported into the United States and later exported are not activities controlled by the ITAR, provided they meet certain requirements.

5. New Russia and Belarus Export Controls and Sanctions Issued

In late August, BIS issued new [export controls](#) on Belarus and Russia. BIS expanded the scope of the Russia/Belarus-Military End User (MEU) Foreign-Direct Product (FDP) rule to apply to transactions involving procurement networks supporting the Russian and Belarusian defense industries or intelligence services. Additionally, BIS expanded controls on the export, reexport, or transfer (in-country) to or within Russia or Belarus of software for the operation of CNC machine tools. BIS also added 123 entities to the Entity List. Further, [OFAC](#) and the [U.S. Department of State](#) added nearly 400 individuals and entities to the Specially Designated Nationals and Blocked Persons List whose products and services facilitate Russian sanctions evasion and sustain the Russian war effort.

6. RTX To Pay Record \$200 Million To Settle Alleged Defense Export Control Violations

On August 30, RTX Corporation entered into a [36-month consent agreement](#) with the U.S. Department of State that includes a \$200 million penalty for 750 violations of the Arms Export Control Act (AECA) and ITAR, at least one audit of the company's compliance program, the engagement of a special compliance officer for at least 24 months, and other additional compliance measures. The settlement addressed violations of both RTX and its subsidiaries in the aerospace and defense industries for unauthorized exports of defense articles related to: (1) failure to establish proper jurisdiction and classification of exports; (2) the inadvertent export of classified missile components to and technical data to Australia, Germany, Norway, and the United Arab Emirates; (3) hand-carrying controlled technical data on a laptop to Iran, Lebanon, and

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Russia; and (4) violations of terms, conditions, and provisos of DDTC authorizations. DDTC found that since 2019, all of RTX's subsidiaries sent exported unclassified defense articles without authorization. RTX submitted 113 voluntary disclosures related to these violations, cooperated with the State Department's requests for information, and entered into multiple agreements with the State Department, including future audits and engagement of an outside special compliance officer. The State Department agreed to suspend \$100 million of the penalty on the condition that RTX use those funds to implement remedial measures to improve its compliance program. Many of the violations were related to the activities of RTX's subsidiary, Collins Aerospace, which it acquired in a merger with Rockwell Collins Inc., highlighting the importance of diligence, disclosures, and proper risk management and pricing negotiation in corporate transactions.

TRADE TIP OF THE MONTH: New Guidelines for Sharing Controlled Information and Source Codes With Foreign Employees, Students, and Others

BIS released an [8-page guidance](#) document for drafting license applications to share controlled technical information and source codes with foreign persons in the United States and abroad. The guidance covers deemed exports and deemed reexports. This is a good reminder to review whether these controls apply to you, especially now that there are new controls on certain emerging technologies.

Additional Resources

- **Client Alert:** "[New Prohibitions on Providing SaaS Services to Russia](#)"
August 2, 2024
Global Trade & National Security Client Alert
[Abbey E. Baker](#), [Christian C. Contardo](#)
- **Article:** "[Whistleblower Protection and Compliance: A Comparative Study of the United States and Japan](#)"
July 31, 2024
The Anti-Corruption Report
[Robert A. Johnston Jr.](#), [Kei Komuro](#)

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