

**Vol. 42, No. 37****September 19, 2022**

## Biden Orders CFIUS Enhancements

President Biden yesterday ordered government officials reviewing foreign investments to put more focus on national security risks. The executive order is the first-ever presidential directive to the inter-agency Committee on Foreign Investment in the United States.

The aim of the order is to provide more direction on national security risks that must be considered in assessing foreign investments. These include supply chain resilience, protecting sensitive data and maintaining US technological leadership, according to senior Administration officials briefing reporters.

“The administration also knows that some countries exploit our open investment ecosystem to further their own national security priorities in ways that are directly contradictory to our values and interests,” one official said. “And this new executive order is a key part of our administration’s broader effort to maintain US economic and technological leadership to protect our national security.”

The executive order expands the factors CFIUS considers to include priority emerging and critical technologies, like semiconductors, quantum technologies, biotechnology, and artificial intelligence, as well as the resilience of key supply chains, both inside and outside of the defense industrial base.

The order also identifies three additional factors for the committee to consider – aggregate industry investment trends, cybersecurity capabilities of the foreign investor and domestic entity and risks relating to American sensitive data.

White House [Fact Sheet](#) [Transcript](#) Treasury [Statement](#)

© Copyright 2022 Gilston-Kalin Communications LLC P.O. Box 7592 Arlington, VA 22207  
All rights reserved. Subscription and corporate site license information 301.460.3060  
[www.wttonline.com](http://www.wttonline.com)

*Editor: Frank Ruffing +1.703.283.5220. [fruffing@traderegs.com](mailto:fruffing@traderegs.com)*

## BIS Calls for 1758 Controls on Bio Engineering Tools

Certain instruments for the automated synthesis of peptides have been identified by BIS for evaluation according to the criteria in section 1758 of the Export Control Reform Act of 2018 (ECRA) pertaining to emerging and foundational technologies. BIS is seeking public comments on the potential uses of this technology, particularly with respect to its impact on U.S. national security.

This advance notice of proposed rulemaking [[87 FR 55930](#)] also requests public comments on how to ensure that the scope of any controls that may be imposed on this technology would be effective (in terms of protecting U.S. national security interests) and appropriate (with respect to minimizing their potential impact on legitimate commercial or scientific applications).

The subject technology can be used to produce controlled toxins for biological weapons purposes, as well as to design novel enzymes, drugs and vaccines. [Transformational Synthetic Biology for Military Environments](#) initiatives by the Army Research Laboratory are applying peptide engineering to microorganisms that exhibit desirable traits, such as binding to target materials of interest, with applications in microelectronics.

Most protein toxins that are controlled under Export Control Classification Number (ECCN) 1C351 on the Commerce Control List (CCL) are over 100 amino acids in length and have an average length of 300 amino acids. Absent the imposition of additional controls on certain peptide synthesis technology and instrumentation (e.g., automated peptide synthesizers), there would be an increased risk that such technology and instrumentation could be used to produce controlled toxins for biological weapons purposes.

## BIS Expands Export Controls on Russia & Belarus

The September 15<sup>th</sup> [rule](#) imposes further export controls on industrial and commercial items that can support Russian and Belarusian military aggression against Ukraine. Specifically, the rule:

- Expands the scope of the Russian industry sector sanctions to add items potentially useful for Russia's chemical and biological weapons production capabilities and items needed for advanced production and development capabilities that enable advanced manufacturing across a number of industries.
- Imposes controls on quantum computing-related hardware, software, and technology, which complement an action taken by the Department of the Treasury to prohibit quantum computing services to Russia, as well as sanctions imposed by the Department of State on Russian companies supporting its quantum computing capabilities.
- Adds Belarus to the scope of industry sector sanctions that currently apply only to Russia.
- Expands the 'military end user' and 'military-intelligence end user' controls. Specifically, this applies the Russian/Belarusian-Military End User Foreign Direct Product (FDP) rule to entities

located outside of Russia and Belarus that were previously added to the Entity List for having continued to supply Russian entities on the Entity List or are under sanctions since Russia's further invasion of Ukraine (BIS June 28, 2022 announcement here). Labeling these six entities as Russian 'military end users' and having the Russia/Belarus-Military End User FDP rule apply to them will degrade Russia's war efforts in Ukraine, as these entities produce items needed by the Russian and Belarusian military and industrial sectors.

- Refines existing controls on Russia and Belarus to more closely align with requirements implemented by allies by adding additional dollar value exclusion thresholds for 'luxury goods.'
- Makes twelve additional corrections and clarifications to existing controls on Russia and Belarus.

## State & Treasury Pile On

Along with Commerce, State and Treasury issued new restrictions on trade with Russian entities and persons. Recent actions named grain thieves, collaborationist academics, kidnappers, space science centers and other advanced technology operations. Highlights include:

- Five persons identified as supporting or enabling the theft of Ukraine's grain.
- **Tetyana Tumulina**, the Russian-appointed rector of Kherson State University
- **Maria Lvova-Belova**, Russia's Presidential Commissioner for Children's Rights who has led Russia's efforts to deport thousands of Ukrainian children to Russia.
- **Ramzan Kadyrov**, the leader of Russia's Republic of Chechnya, along with three wives and several daughters.
- **Burkini Buyers Bummed.** OFAC also took action against Limited Liability Company Firdaws, which describes itself as the first "[national fashion brand](#)" of Chechnya.
- **The Main Intelligence Unit (GRU)**, a military intelligence agency of the General Staff of the Russian Armed Forces. The GRU is being designated by the Department of State pursuant to E.O. 14024 Section 1(a)(i) for operating or having operated in the defense and related materiel sector of the Russian Federation economy. The GRU was previously designated pursuant to E.O. 13694, as amended, in 2016; pursuant to Section 224 of the Countering America's Adversaries Through Sanctions Act in 2018; and pursuant to E.O. 13382 in 2021.
- **Three leading Russian military space entities** that play central roles in strengthening Russia's defense capabilities.
- **Advanced Technology Entities** involved in semiconductors, additive manufacturing, quantum computing and physics institutes.

State [Release](#), [Factsheet](#)

OFAC Links: [Announcement: Determination Pursuant to Section 1\(a\)\(i\) of Executive Order 14024, a Determination Pursuant to Section 1\(a\)\(ii\) of Executive Order 14071, four related Frequently Asked Questions \(FAQs\) \(1083-1086\), and five amended FAQs \(1033, 1034, 1059, 1061, 1062\)](#)

## Axelrod to Asian Forum: Be Like BIS

Assistant Secretary for Export Enforcement Matt Axelrod opened the Southeast Asia Forum on Export Controls in Singapore September 15 with a recap of BIS operations and encouraged his counterparts to collaborate multi-laterally. His remarks have been edited for brevity; full Transcript [here](#).

“At the U.S. Department of Commerce we have a dedicated team of analysts and agents focused on a singularly important mission: keeping the most sensitive technologies out of the most dangerous hands. We will work tirelessly to enforce our restrictions and hold accountable those who violate them.

“My hope is that as partners in the region, we can build a collective capacity for effective enforcement to deliver this same message multilaterally. So how can we work together, both to maintain a level global playing field for industry and to ensure a safe and secure world? From my perspective, it’s through three sets of critical partnerships.

**“First and foremost are partnerships with industry and academia.** Industry is often our primary line of defense. After all, they’re the ones who receive the sales order. They’re the ones who evaluate whether the item, end user, and end use are appropriate.

“For our part, we have been actively working with U.S. and global industry to educate companies on compliance with our export controls and inform them of potential diversion attempts. [...] We’ve also partnered with Singapore, Malaysia, and Japan to host the JIO, which last year alone trained 1,400 exporters in the Asia-Pacific region on strategic trade controls more broadly.

“Another way we partner with industry is by helping companies that trade in U.S. items screen their end users. We also warn companies of specific diversion attempts when we receive tips through intelligence, partner, or industry channels.

**“As for academia, we just launched an Academic Outreach Initiative** to partner with research universities, a crucial engine of U.S. and global innovation, in order to help them better understand and comply with export controls. We are initially focusing on those universities that are involved in research and development for our Department of Defense, are researching emerging and foundational technologies, or have affiliations with parties on our Entity List.

“Our research universities are busy developing the latest and greatest technologies. But the same open and collaborative research environment that sparks such innovation can also create vulnerabilities for unauthorized technology transfer. That is why it is critical that we partner with academia to minimize risk.

**“Our second critical set of partnerships involves cooperation across our domestic law enforcement agencies.** The U.S. Commerce Department, like our Singaporean colleagues, is rare among strategic trade controllers because we have both export licensing and enforcement under one roof. That co-location helps us link customs and licensing data to identify non-compliant strategic goods shipments. But even in a system such as ours, where the licensing and enforcement functions have connectivity in

a single government agency, we have found that working closely with law enforcement partners across the U.S. government helps maximize the effectiveness of our enforcement efforts.

**“Our domestic collaboration starts with U.S. Customs and Border Protection (CBP),** which is housed in a different cabinet agency. We share strategic trade licensing information and work cooperatively with officials at CBP to identify, detain, and seize unauthorized shipments at U.S. ports and borders. Our ability to focus attention on Russia in this way simply would not be possible without our powerful partnership with our customs agency.

“We also have crucial investigative partnerships with a variety of other U.S. law enforcement agencies, like FBI, HSI, ATF, and Department of Defense investigators. It’s rare that we work a case alone. We rely on these domestic partnerships to enhance our capacity to enforce our controls. This type of partnership among domestic enforcers is a practice we believe can prove successful across the globe.

**“Which brings me to the third set of partnerships** – our partnerships with all of you, both bilaterally and multilaterally. We live in a world where the manufacture and distribution of advanced technologies often spans multiple countries. For all of us who work to establish and enforce strategic trade controls, that deep interconnectedness of the global supply chain means we must be deeply interconnected as well.

“A key part of that interconnection is the sharing of information and best practices. Earlier this summer, we announced the establishment of enhanced enforcement coordination efforts with both Canada and the European Commission. One foundational element of our coordination is the sharing of information to increase each other’s capability to enforce strategic controls. By combining our efforts through coordinated enforcement, we believe we expand our joint capacity to safeguard technologies from misuse and misappropriation – and help keep all of our countries safe and secure.

**“There’s an old saying: “If you want to go fast, go alone. But if you want to go far, go together.”** The challenges we collectively face require us to do both – to go fast and far at the same time. To me, that means we all have lots of work to do individually, within our own agencies and countries, to design, implement, and enforce effective strategic trade controls. But it also means that we have lots of work to do together, in partnership with one another.

## **Brazilian Airline to Pay US \$41 Million in FCPA Settlement**

GOL Linhas Aéreas Inteligentes S.A. (GOL), an airline headquartered in São Paulo, Brazil, will pay more than \$41 million to resolve parallel bribery investigations by criminal and civil authorities in the United States and Brazil. According to court documents, GOL entered into a three-year deferred prosecution agreement (DPA) with the Department of Justice in connection with a criminal information filed in the District of Maryland charging the company with conspiracy to violate the anti-bribery and books and records provisions of the Foreign Corrupt Practices Act (FCPA).

Between 2012 and 2013, GOL conspired to offer and pay approximately \$3.8 million in bribes to foreign officials in Brazil. Specifically, GOL caused multiple bribe payments to be made to various

officials in Brazil to secure the passage of two pieces of legislation favorable to GOL. The legislation involved certain payroll tax and fuel tax reductions that financially benefitted GOL, along with other Brazilian airlines.

Pursuant to the DPA, GOL will pay a criminal penalty of \$17 million. The department has agreed to credit up to \$1.7 million of that criminal penalty against an approximately \$3.4 million fine the company has agreed to pay to authorities in Brazil in connection with related proceedings to resolve an investigation by the Controladoria-Geral da União (CGU) and the Advocacia-Geral de União (Attorney General's Office). In addition, GOL will give up approximately \$24.5 million over two years as part of the resolution of a parallel investigation by the U.S. Securities and Exchange Commission (SEC).

## **McKinsey Helping WTO to “Launch Key Initiatives and Capture Quick Wins.”**

The continuing reform of the World Trade Organization Secretariat based on the recommendations of an outside management consulting firm is creating a culture of fear and resentment among the staff members, kept in the dark about the process, according to reporting by our friends at the Washington Trade Daily.

McKinsey & Company's recommendations have not been shared with either WTO staff or members, although WTO Director-General Ngozi Okonjo-Iweala appears determined to press ahead with the reform recommendations.

The firm's recommendations include the likely creation of new units such as a “Planning & Strategy Unit” or a possible “Regional & Country Support Unit” to service the needs of the DG whenever she travels to countries, said people familiar with the developments. Staffers also are concerned about the allegedly opaque processes being adopted to give the DG the autonomy to appoint people she prefers, WTD was told.

Included in reforms will be “launching new or re-designed non-monetary rewards to recognize teamwork, innovation, and excellence in management” and “full cycle of testing and refinement completed, including a review by the Steering Committee.” The report says that “plans for implementation being developed.”

The planning documents call for initiatives as “define Secretariat values, vision, and strategic direction;” “optimize Secretariat organizational structure to make it fit for purpose” and “continue implementing phase one,” while no benchmarking or progress report is included.

In addition, it says that “work may be launched in parallel in other areas e.g., putting in place a possible Planning & Strategy Unit or a possible Regional & Country Support Unit based in the Secretariat in Geneva.”

## RAPTAC: EU Compliance, Confidential Comments

The Regulations and Procedures Technical Advisory Committee held their quarterly meeting Tuesday featuring a discussion with Carlo Giacomini, Director General of The European Institute for Export Compliance. The customary leadership did not take place due to travel.

EIFEC is the International Standards organization for Compliance in areas that are a threat to international security and stability, such as: Nuclear, biological and chemical armaments proliferation (dual-use) implementation of the specialized compliance management framework based on International Export Compliance Standards (EIFEC EC1001 series). To process any certification or receive any assistance you must be [registered at the ECR - Export Compliance Register](#) in Brussels and approved.

Giacomini discussed the challenges of coordinating a common approach to compliance in an environment governed by multiple customs and export control regimes, with an EU overlay. To aid exporters, EIFEC has developed the [EIFEC Dual Use Index](#) which connects words with controlling codes and helps to navigate the complexity of the technical world with the controlling regulations (including where possible the National List). A group of EU national experts is reviewing the versions in German, French, Italian and Spanish.

Hilliary Hess of BIS briefed participants on regulatory developments since the last meeting, reminding us that comments on proposed rulemaking can be submitted as “business confidential,” meaning firms should not withhold valuable input for fear of exposing proprietary data.

Hess also noted the impetus for the recent “Standards Rule” [\[87 FR 55241\]](#) included addressing participants in standards-setting bodies “fear of running afoul of Export Controls, and the chilling effect.”

The meeting concluded with a brief presentation by CBP on Electronic Export Manifests and the status of [enhancements](#) made.

## ExIm Advisory Subcommittees Named

The US Export-Import Bank [announced](#) the rosters of its Advisory Committee’s four subcommittees that deal with climate, China, women in business and small businesses.

- The Council on China Competition provides guidance on advancing comparative leadership of the United States with respect to China and supporting US innovation and employment through competitive export finance.
- The Council on Climate fulfills the mandate from Congress for ExIm to promote and support environmentally beneficial, renewable-energy, energy-efficiency, and energy-storage exports from the United States.
- The recently-established Council on Advancing Women in Business will provide recommendations on ways the Bank can reach more women in business and better consider equity goals set in the agency’s strategy.

- The Council on Small Business – also newly established, will provide recommendations on ways ExIm can help more US small business exporters find new markets, achieve more sales and lower the risk of selling internationally.

### \*\*\* Briefs \*\*\*

**USTR Meets Talks EVs with EC VP.** European Commission Vice President Valdis Dombrovskis and US Trade Representative Katherine Tai met on the sidelines of a Group of Seven (G7) trade ministers meeting in Germany Wednesday to discuss various issues, including ongoing Electric Vehicle Subsidies and U.S.-EU negotiations on steel and aluminum, USTR said. "Both ministers agreed to continue discussions on the electric vehicle tax credits in the Inflation Reduction Act," the USTR said in a statement, referring to the controversial exclusion of foreign content vehicles from the generous tax credits in the legislation.

**China Chip Rules on Tap** The Commerce Department intends to publish new regulations based on restrictions communicated in letters earlier this year to three U.S. companies – KLA Corp, Lam Research Corp and Applied Materials Inc, which forbade them from exporting chipmaking equipment to Chinese factories that produce advanced semiconductors, according to [Reuters](#). The rules would also codify restrictions in Commerce Department letters sent to Nvidia Corp and Advanced Micro Devices last month instructing them to halt shipments of several artificial intelligence computing chips to China unless they obtain licenses.

**State / DDTC Seeks Comments on Form DS-4076, Commodity Jurisdiction Determination** Pursuant to ITAR § 120.4, a person, may request a written determination from the Department of State stating whether a particular article or defense service is covered by the United States Munitions List (USML). Form DS-4076 is used to submit this request. Information submitted via DS-4076 will be shared with the Department of Defense, Department of Commerce, and other USG agencies, as needed, during the commodity jurisdiction process. Determinations will be made on a case-by-case basis based on the commodity's form, fit, function, and performance capability. Comment via [www.Regulations.gov](http://www.Regulations.gov). Docket number, DOS-2022-0029.

**Assistant Secretary of Commerce for Export Administration Thea D. Rozman Kender** addressed the Women in Strategic Trade Conference in Singapore September 14: "Many of us who work in the strategic trade field are drawn to it because of a deep-seated interest in global security and counterproliferation. We may come from backgrounds in science, technology, engineering, and math (STEM), national security or economics. All of these fields are critically relevant to strategic trade and are historically male-dominated." Full Transcript [here](#).

**DoD / Space Law:** Deputy Secretary of Defense Kathleen Hicks indicated the Department is considering indemnifying commercial space firms should their assets become targets in military conflicts. [Breaking Defense](#) notes. Precedent for the concept of indemnifying commercial providers actively contributing to military missions, the Air Force's Civil Reserve Air Fleet (CRAF) and the



Maritime Administration's National Defense Reserve Fleet provide for reimbursement if a plane or ship is damaged or destroyed *after being nationalized and deployed*.

**OFAC / Cyber Related FAQs Published.** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing new [Cyber-related Frequently Asked Questions \(1076-1079\)](#).

### \*\*\* Calendar \*\*\*

**Sept 22<sup>nd</sup> OTEXA - Modernized Trade Data Tools.** Thanks to new and upgraded trade data tools from the Office of Textiles and Apparel (OTEXA), it's now easier than ever to view and analyze regularly published import and export trade data. OTEXA's economists will host a tutorial of all the new features and functions in the modernized OTEXA trade data platform on September 22 at 2:00 PM EST. [Register](#)

**Sept 28<sup>th</sup> UKCA Marking – How to Comply Webinar** The UKCA (UK Conformity Assessed) marking is a new UK product marking that is used for goods being placed on the market in Great Britain (England, Wales and Scotland). It covers most goods which previously required the CE mark. UKCA marking became part of UK law on exit day, 31 January 2020 and will be mandatory as of January 1, 2023. The UKCA mark applies to most goods previously subject to the CE marking.

You'll hear from private sector and Commercial Service experts about the new certification requirement, when and how to use the UKCA mark, rules for usage, technical documentation and record keeping, alternative options, and compliance mechanisms. The program will also include a Q&A session with speakers from: *U.S. Embassy in London - Make UK - UK Department for Business, Energy & Industrial Strategy - BSI Group – United Kingdom Accreditation Service (UKAS) – U.S. Commercial Service*

**September 28, 2022 11:00 am EDT/8:00 am PDT. Registration [here](#).** For questions, contact: Anastasia Xenias - [Anastasia.Xenias@trade.gov](mailto:Anastasia.Xenias@trade.gov), or Robert Straetz - [Robert.Straetz@trade.gov](mailto:Robert.Straetz@trade.gov)

### **September 29<sup>th</sup> Protecting Your Business Interests: Corporate Espionage, Global Security & Compliance**

Learn the ways to mitigate your company's overall risk, comply with U.S. Export Control Laws, travel safely abroad, and carefully evaluate international business partners. This webinar is for US companies to hear from Senior Level Speakers from the Commerce and State Departments, Secret Service and FBI.

- Latest Trends in Corporate Espionage with an Intelligence Update & Industry Developments. An Overview of How to Protect Your Products, Equipment and Company.
- Hot Topics including protecting Your Computers and portable devices overseas, and vetting your overseas partners and
- How To Assure Your Company that Recent Foreign Nationals Being Hired Do Not Work For the Competition

**The webinar will take place on September 29, 12:30pm - 1:30pm EDT. [Register](#)**

### **October 5<sup>th</sup> – 6<sup>th</sup> ACE/AES Export Compliance Seminar**

It's critical to provide accurate data in your export filing using the Automated Commercial Environment (ACE) to avoid costly penalties. This 2-day virtual program features experts from the U.S. Census Bureau, Bureau of Industry and Security, and U.S. Customs & Border Protection to provide you with important training on these requirements.

[Register \(\\$95\)](#)

Dear Reader,

[The Washington Tariff & Trade Letter](#) and sister publication [The Export Practitioner](#) are being re-imagined for their second four decades, graphically and editorially

This is your journal. Please take a moment to share with us your thoughts.

What can we improve?  
What must we keep the same?

Sam, Meredith, Marty and I will be grateful. Thank you.

*Frank Ruffing, Editor +1.703.283.5220. [fruffing@traderegs.com](mailto:fruffing@traderegs.com)*