

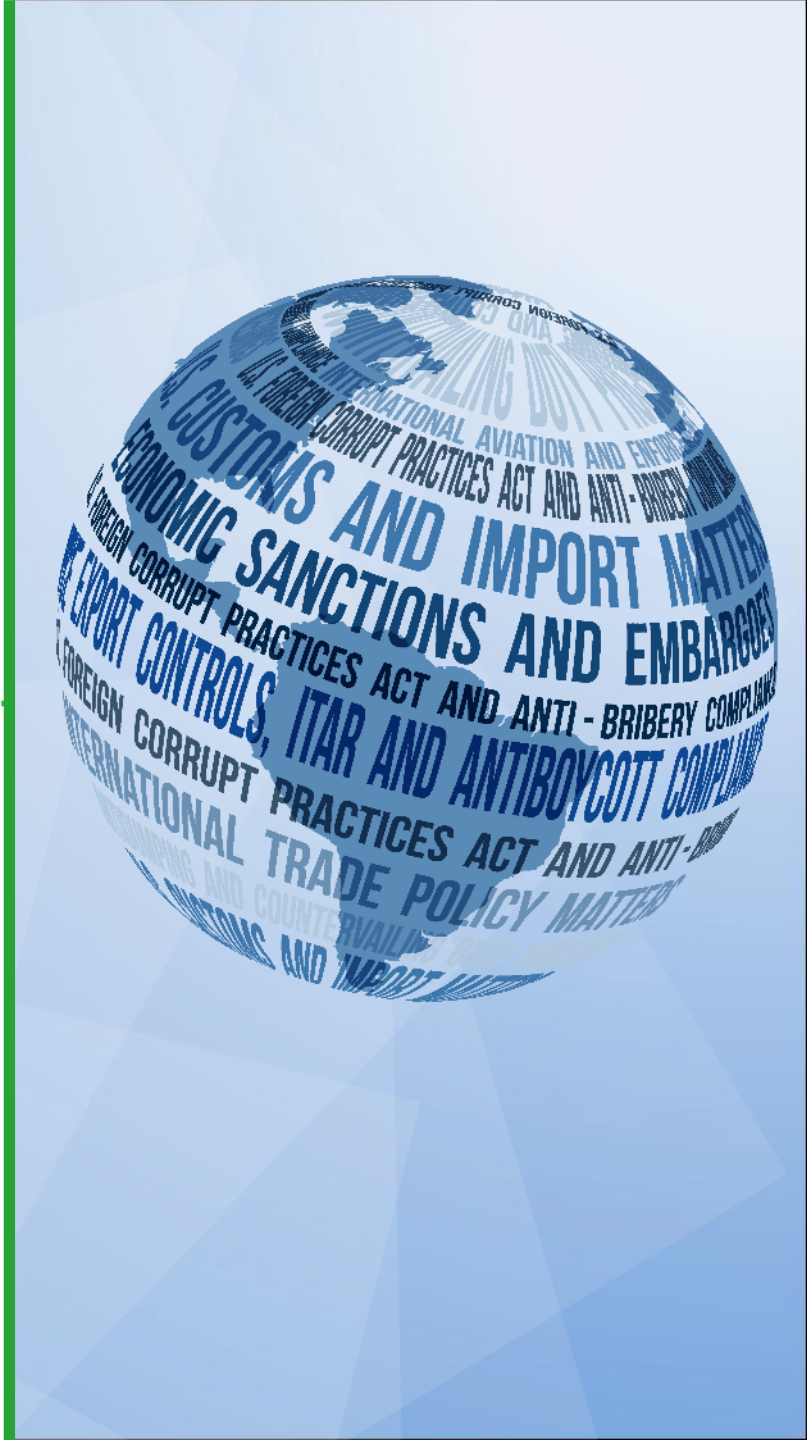
# OCR's Annual Conference

## Trade Never Stops

---

### US Export Controls – What Lies Ahead?

Douglas N. Jacobson, Esq.  
October 17, 2023



# Remember This?

## Export Control Reform: Control Lists "Tracker"



Category	Proposed Rules		Final Rules (Effective Date)
	USML Category and Rule	CCL 600 Series Entries and Rule	
I-Firearms			
II-Guns			
III-Ammunition			
IV-Missiles	<a href="#">Proposed Rule (3/18/13)</a> . <a href="#">Public Comments</a> .	604: <a href="#">Proposed Rule (3/18/13)</a> . <a href="#">Public Comments</a> .	1/2/14: <a href="#">State/Commerce (7/1/14)</a>
V-Explosives	<a href="#">Proposed Rule (6/18/2012)</a> . <a href="#">Public Comments</a> .	608: <a href="#">Proposed Rule (6/18/2012)</a> . <a href="#">Public Comments</a> .	1/2/14: <a href="#">State/Commerce (7/1/14)</a>
VI-Vessels	<a href="#">Proposed Rule (2/6/2012)</a> . <a href="#">Public Comments</a> .	609: <a href="#">Proposed Rule (2/6/2012)</a> . <a href="#">Public Comments</a> .	7/8/13: <a href="#">State/Commerce (1/6/14)</a>
VII-Vehicles	<a href="#">Proposed Rule (1/20/2012)</a> . <a href="#">Public Comments</a> .	606: <a href="#">Proposed Rule (1/20/2012)</a> . <a href="#">Public Comments</a> .	7/8/13: <a href="#">State/Commerce (1/6/14)</a>
VIII-Aircraft	<a href="#">Proposed Rule (12/22/2011)</a> . <a href="#">Public Comments</a> .	610: <a href="#">Proposed Rule (12/22/2011)</a> . <a href="#">Public Comments</a> .	4/16/13: <a href="#">State/Commerce (10/15/13)</a>
IX-Training Equipment	<a href="#">Proposed Rule (7/30/2012)</a> . <a href="#">Public Comments</a> .	614: <a href="#">Proposed Rule (7/30/2012)</a> . <a href="#">Public Comments</a> .	1/2/14: <a href="#">State/Commerce (7/1/14)</a>
X-Protective Equipment	<a href="#">Proposed Rule (7/23/2012)</a> . <a href="#">Public Comments</a> .	613: <a href="#">Proposed Rule (7/23/2012)</a> . <a href="#">Public Comments</a> .	1/2/14: <a href="#">State/Commerce (7/1/14)</a>
XI-Electronics	<a href="#">Proposed Rule (11/28/12)</a> . <a href="#">Public Comments</a> . <a href="#">Proposed Rule 2 (7/25/13)</a> . <a href="#">Public Comments</a> .	611: <a href="#">Proposed Rule (11/28/12)</a> . <a href="#">Public Comments</a> . <a href="#">Proposed Rule 2 (7/25/13)</a> . <a href="#">Public Comments</a> .	7/1/14: <a href="#">State/Commerce (12/30/14)</a>
XII-Sensors	<a href="#">Proposed Rule (5/5/2015)</a> . <a href="#">Public Comments</a> .	615; 611: <a href="#">Proposed Rule (5/5/15)</a> . <a href="#">Public Comments</a> .	
XIII-Aux. Military Equip.	<a href="#">Proposed Rule (7/2/2012)</a> . <a href="#">Public Comments</a> .	617: <a href="#">Proposed Rule (7/2/2012)</a> . <a href="#">Public Comments</a> .	7/8/13: <a href="#">State/Commerce (1/6/14)</a>
XIV-Chem/Bio	<a href="#">Proposed Rule (6/17/2015)</a> .	607: <a href="#">Proposed Rule (6/17/15)</a> .	
XV-Satellites	<a href="#">Proposed Rule (7/8/13)</a> . <a href="#">Public Comments</a> .	515: <a href="#">Proposed Rule (7/8/13)</a> . <a href="#">Public Comments</a> .	5/13/14: <a href="#">State/Commerce (6/27/14)</a>
XVI-Nuclear	<a href="#">Proposed Rule (3/18/13)</a> . <a href="#">Public Comments</a> .	No Corresponding	1/2/14: <a href="#">State (7/1/14)</a>
XVIII-Directed Energy	<a href="#">Proposed Rule (6/17/15)</a> .	619: <a href="#">Proposed Rule (6/17/15)</a> .	
XIX-Gas Turbine Engines	<a href="#">Proposed Rule (1/20/2012)</a> . <a href="#">Public Comments</a> .	619: <a href="#">Proposed Rule (1/20/2012)</a> . <a href="#">Public Comments</a> .	4/16/13: <a href="#">State/Commerce (10/15/13)</a>
XX-Submersibles	<a href="#">Proposed Rule (2/6/2012)</a> . <a href="#">Public Comments</a> .	620: <a href="#">Proposed Rule (2/6/2012)</a> . <a href="#">Public Comments</a> .	7/8/13: <a href="#">State/Commerce (1/6/14)</a>
"Specially Designed"	<a href="#">Proposed Rule (8/3/2012)</a> . <a href="#">Public Comments</a> .	<a href="#">Proposed Rule (8/3/2012)</a> <a href="#">Public Comments</a> .	4/16/13: <a href="#">State/Commerce (10/15/13)</a>
Transition	<a href="#">Proposed Rule (8/6/2012)</a> . <a href="#">Public Comments</a> .	<a href="#">Proposed Rule (8/6/2012)</a> . <a href="#">Public Comments</a> .	4/16/13: <a href="#">State/Commerce (10/15/13)</a>

\*Only minor revisions were made to Categories XVII and XXI; the final State and Commerce rules for these categories were included with the final rules for Categories VIII and XIX.

\*\*The final rules are being published in groups, so each final rule link will contain multiple USML categories.

# Remember This?

## 10-Year Anniversary of ECR

### Export Control Reform: Control Lists "Tracker"

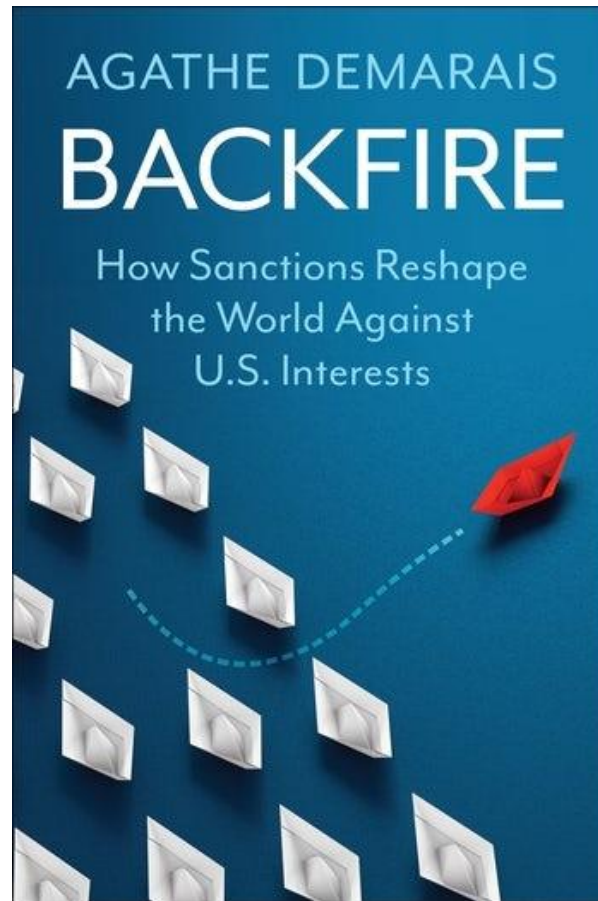


Category	Proposed Rules		Final Rules (Effective Date)
	USML Category and Rule	CCL 600 Series Entries and Rule	
I-Firearms			
II-Guns			
III-Ammunition			
IV-Missiles	<a href="#">Proposed Rule (3/18/13)</a> . <a href="#">Public Comments</a> .	604: <a href="#">Proposed Rule (3/18/13)</a> . <a href="#">Public Comments</a> .	1/2/14: <a href="#">State/Commerce (7/1/14)</a>
V-Explosives	<a href="#">Proposed Rule (6/18/2012)</a> . <a href="#">Public Comments</a> .	608: <a href="#">Proposed Rule (6/18/2012)</a> . <a href="#">Public Comments</a> .	1/2/14: <a href="#">State/Commerce (7/1/14)</a>
VI-Vessels	<a href="#">Proposed Rule (2/6/2012)</a> . <a href="#">Public Comments</a> .	609: <a href="#">Proposed Rule (2/6/2012)</a> . <a href="#">Public Comments</a> .	7/8/13: <del><a href="#">State/Commerce (1/6/14)</a></del>
VII-Vehicles	<a href="#">Proposed Rule (1/20/2012)</a> . <a href="#">Public Comments</a> .	606: <a href="#">Proposed Rule (1/20/2012)</a> . <a href="#">Public Comments</a> .	7/8/13: <del><a href="#">State/Commerce (1/6/14)</a></del>
VIII-Aircraft	<a href="#">Proposed Rule (12/22/2011)</a> . <a href="#">Public Comments</a> .	610: <a href="#">Proposed Rule (12/22/2011)</a> . <a href="#">Public Comments</a> .	4/16/13: <a href="#">State/Commerce (10/15/13)</a>
IX-Training Equipment	<a href="#">Proposed Rule (7/30/2012)</a> . <a href="#">Public Comments</a> .	614: <a href="#">Proposed Rule (7/30/2012)</a> . <a href="#">Public Comments</a> .	1/2/14: <a href="#">State/Commerce (7/1/14)</a>
X-Protective Equipment	<a href="#">Proposed Rule (7/23/2012)</a> . <a href="#">Public Comments</a> .	613: <a href="#">Proposed Rule (7/23/2012)</a> . <a href="#">Public Comments</a> .	1/2/14: <a href="#">State/Commerce (7/1/14)</a>
XI-Electronics	<a href="#">Proposed Rule (11/28/12)</a> . <a href="#">Public Comments</a> . <a href="#">Proposed Rule 2 (7/25/13)</a> . <a href="#">Public Comments</a> .	611: <a href="#">Proposed Rule (11/28/12)</a> . <a href="#">Public Comments</a> . <a href="#">Proposed Rule 2 (7/25/13)</a> . <a href="#">Public Comments</a> .	7/1/14: <a href="#">State/Commerce (12/30/14)</a>
XII-Sensors	<a href="#">Proposed Rule (5/5/2015)</a> . <a href="#">Public Comments</a> .	615, 611: <a href="#">Proposed Rule (5/5/15)</a> . <a href="#">Public Comments</a> .	
XIII-Aux. Military Equip.	<a href="#">Proposed Rule (7/2/2012)</a> . <a href="#">Public Comments</a> .	617: <a href="#">Proposed Rule (7/2/2012)</a> . <a href="#">Public Comments</a> .	7/8/13: <a href="#">State/Commerce (1/6/14)</a>
XIV-Chem/Bio	<a href="#">Proposed Rule (6/17/2015)</a> .	607: <a href="#">Proposed Rule (6/17/15)</a> .	
XV-Satellites	<a href="#">Proposed Rule (7/8/13)</a> . <a href="#">Public Comments</a> .	515: <a href="#">Proposed Rule (7/8/13)</a> . <a href="#">Public Comments</a> .	5/13/14: <a href="#">State/Commerce (6/27/14)</a>
XVI-Nuclear	<a href="#">Proposed Rule (3/18/13)</a> . <a href="#">Public Comments</a> .	No Corresponding	1/2/14: <a href="#">State (7/1/14)</a>
XVIII-Directed Energy	<a href="#">Proposed Rule (6/17/15)</a> .	619: <a href="#">Proposed Rule (6/17/15)</a> .	
XIX-Gas Turbine Engines	<a href="#">Proposed Rule (1/20/2012)</a> . <a href="#">Public Comments</a> .	619: <a href="#">Proposed Rule (1/20/2012)</a> . <a href="#">Public Comments</a> .	4/16/13: <a href="#">State/Commerce (10/15/13)</a>
XX-Submersibles	<a href="#">Proposed Rule (2/6/2012)</a> . <a href="#">Public Comments</a> .	620: <a href="#">Proposed Rule (2/6/2012)</a> . <a href="#">Public Comments</a> .	7/8/13: <del><a href="#">State/Commerce (1/6/14)</a></del>
"Specially Designed"	<a href="#">Proposed Rule (8/3/2012)</a> . <a href="#">Public Comments</a> .	<a href="#">Proposed Rule (8/3/2012)</a> <a href="#">Public Comments</a> .	4/16/13: <a href="#">State/Commerce (10/15/13)</a>
Transition	<a href="#">Proposed Rule (8/6/2012)</a> . <a href="#">Public Comments</a> .	<a href="#">Proposed Rule (8/6/2012)</a> . <a href="#">Public Comments</a> .	4/16/13: <a href="#">State/Commerce (10/15/13)</a>

\* Only minor revisions were made to Categories XVII and XXI; the final State and Commerce rules for these categories were included with the final rules for Categories VIII and XIX.

\*\*The final rules are being published in groups, so each final rule link will contain multiple USML categories.

# Are Export Controls the Sanctions of Tomorrow?



# Sanctions and Export Controls

## Differences and Similarities

- While both are foreign policy tools, export controls are more focused on national security considerations
- Unlike economic sanctions, export controls do not cover financial transactions (\$)
- Export controls are targeted at exports/reexports of certain goods, technology, and software
- Export controls do not generally apply to imports or services (except temporary imports/defense services under the ITAR).
- Different restricted party lists (SDN List versus BIS and DDTC lists)

- Current US Export Control Policy was announced by National Security Advisor Jake Sullivan on September 16, 2022
- “On export controls, we have to revisit the longstanding premise of maintaining “relative” advantages over competitors in certain key technologies. We previously maintained a “sliding scale” approach that said we need to stay only a couple of generations ahead.”
- “That is not the strategic environment we are in today.”

- “Given the foundational nature of certain technologies, such as **advanced logic and memory chips**, **we must maintain as large of a lead as possible.**”
- “This has demonstrated that technology export controls can be more than just a preventative tool. If implemented in a way that is robust, durable, and comprehensive, they can be a **new strategic asset** in the U.S. and allied toolkit to impose costs on adversaries, and even over time degrade their battlefield capabilities.”

# So What Lies Ahead?

- Continued focus on export controls on exports/reexports to China and Russia
- Continued use of BIS Entity List for various national security and foreign policy reasons, including human rights violations
- Enhanced enforcement focus on exports, reexports, and diversion of items to China and Russia
- AUKUS
- Possible new export control regime to replace the Wassenaar Arrangement?
- U.S. focus on outbound investment controls



# Additional Export Controls on Semiconductors and Related Items to China

- October 7, 2022 BIS final rule (published Oct. 13, 2022):
  - Imposed new license requirements on exports/reexports of advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items (new ECCNs 3A090/4A090);
  - Expanded controls on certain items for supercomputer and semiconductor manufacturing end-uses and end-users;
  - Two new FDPRs:
    - Advanced Computing FDPR
    - Supercomputer End-Use FDPR
  - Revised Entity List FDPR (footnote 4)
  - License requirement for specific activities of “U.S. persons” that support the development or production of certain ICs in China that require a license.

## BIS / EAR

- Proposed enhancements and simplification of License Exception Strategic Trade Authorization (STA)
- Proposed revisions to License Exception Additional Permissive Reexports (APR) for allied governments
- Future changes to CCL for foundational and emerging technologies

## DDTC / ITAR

- Various regulations making changes to USML (removals + additions to critical and emerging technologies) (plus related CCL changes)
- Continued reorganization & changes to the ITAR, including moving much of the Agreements Guidelines to the ITAR

# Additional Export Controls on Semiconductors and Related Items to China

- BIS received 43 public comments
- BIS will soon be issuing final rules making changes to the Oct. 7 rule and implementing additional controls on certain advanced computing items, such as certain AI-related ICs used in datacenters

# Enhanced Enforcement of Export Controls



## Department of Commerce, Department of the Treasury, and Department of Justice Tri-Seal Compliance Note:

*Cracking Down on Third-Party Intermediaries Used to Evade  
Russia-Related Sanctions and Export Controls*



## Department of Commerce, Department of the Treasury, and Department of Justice Tri-Seal Compliance Note:

*Voluntary Self-Disclosure of Potential Violations*

# BIS Guidance on Russia Diversion “Quint-Seal Guidance” and EUCs



Australian Government



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada



HM Revenue  
& Customs



Te Kāwanatanga  
o Aotearoa  
New Zealand Government

## Exporting Commercial Goods

### Guidance for Industry and Academia

#### Russia Sanctions – Common High Priority Items List

Australia, Canada, New Zealand, the United Kingdom, and the United States (collectively referred to as “the Export Enforcement Five” or “E5”) have put in place unprecedented packages of sanctions and export controls aimed at imposing economic costs against Russia, degrading its war machine, and showing solidarity with and support for Ukraine. The E5 packages are being administered in coordination with the sanctions and export controls specific to Russia implemented by all 39-members of the Global Export Control Coalition (GECC)<sup>1</sup> partnership.

Includes “High  
Priority List” of list  
of 45 HS codes

#### Attachment: Sample Certification to Prevent Diversion to Russia of Highest Priority Items

Highest Priority Items Covered by the Export Transaction (i.e., HS Codes 8542.31, 8542.32, 8542.33, 8542.39, 8517.62, 8526.91, 8532.21, 8532.24, 8548.00)

Item Name	Item Quantity	Item Description

#### 1. Information Regarding Parties to the Export Transaction

##### Customer (located outside of a GECC country)

Full Company Name	
Company Address	
Company Website	
Company POC and Title	
Email Address	
Line of Business	
Role of customer (purchaser, intermediate consignee, ultimate consignee)	
Activity to be performed (e.g., consumed, transformed, maintained for stock, resold, other)	

*For new customers, please attach a copy of the business license with translations in both English and the native language.*

##### End User (if the customer is not the end user)

Full Company Name	
Company Address	
Company Website	
Company POC and Title	
Email Address	
Line of Business	

Federal Register  
Vol. 88, No. 154  
Friday, August 11, 2023

## Presidential Documents

Title 3—

Executive Order 14105 of August 9, 2023

The President

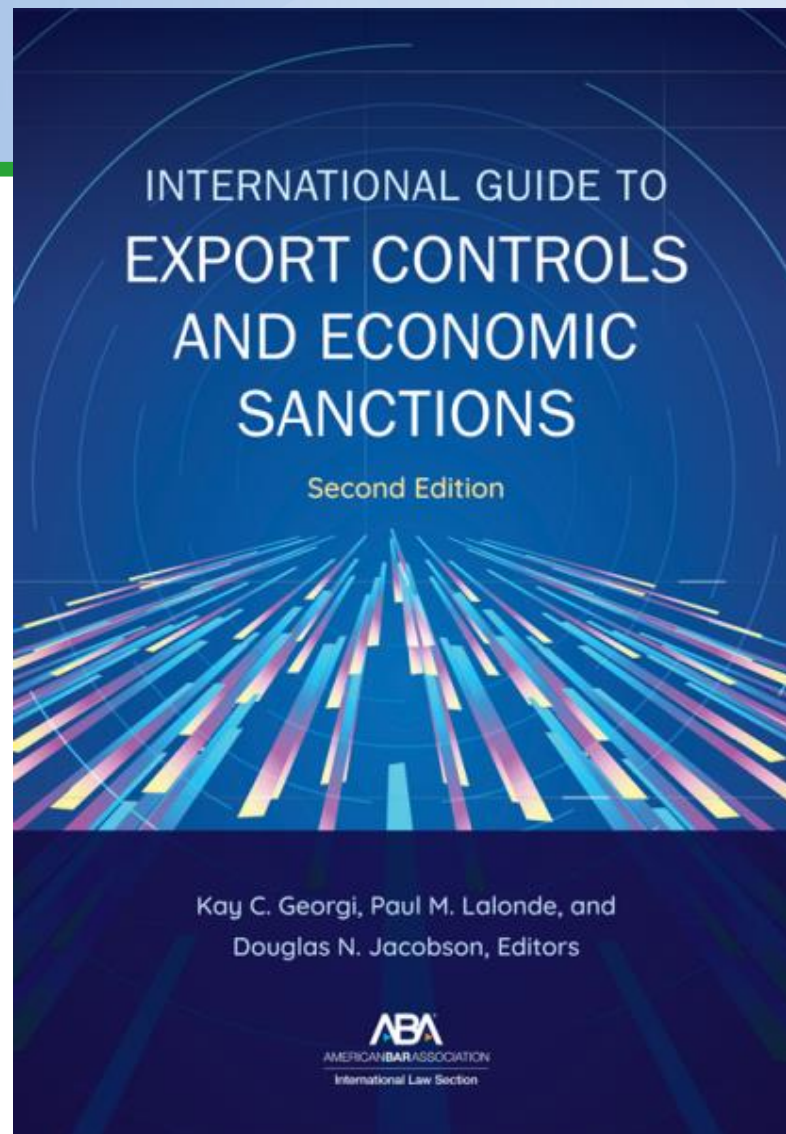
### Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

**Section 1. *Notifiable and Prohibited Transactions.*** (a) To assist in addressing the national emergency declared in this order, the Secretary of the Treasury (Secretary), in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant executive departments and agencies (agencies), shall issue, subject to public notice and comment, regulations that require United States persons to provide notification of information relative to certain transactions involving covered foreign persons (notifiable transactions) and that prohibit United States persons from engaging in certain other transactions involving covered foreign persons (prohibited transactions).

(b) The regulations issued under this section shall identify categories of notifiable transactions that involve covered national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines may contribute to the threat to the national security of the United States identified in this order. The regulations shall require United States persons to notify the Department of the Treasury of each such transaction and include relevant information on the transaction in each such notification.

See ANPRM issued by Treasury’s Office of Investment Security  
on August 14, 2023



<https://www.americanbar.org/products/inv/book/431116696/>

# Ask Me Anything



**Douglas N. Jacobson, Esq.**  
**Jacobson Burton Kelley PLLC**  
**Washington, DC**

**Tel: 202.431.2407**

**[djacobson@jacobsonburton.com](mailto:djacobson@jacobsonburton.com)**

**<https://www.linkedin.com/in/douglasjacobson>**

**Twitter: @Tradelawnews**

**Doug Jacobson** has more than 30 years of experience representing U.S. and non-U.S. companies on a wide range of sanctions and export control matters, including licensing and enforcement matters involving OFAC, BIS, DDTC, CBP, and other US Government agencies. Doug is ranked by the *Chambers and Partners* as a leading US export controls and sanctions attorney.