

Legal Implications of US- China National Security Policy – How Companies Can Prepare

October 22, 2020

Agenda



Abbey E. Baker

Moderator

Counsel
Lowenstein Sandler
Global Trade & Policy

- Welcome
- Current U.S. Foreign Policy towards China
- US Technologies & Foreign Direct Investments (FDI)
- Military End-Use and End-User Prohibition

US-China Regulatory Challenges

- The practical regulatory implications of US-China national security tensions include regulatory challenges related to CFIUS, export controls, sanctions, and import tariffs.



Examples of Regulatory Challenges

- Designation of Chinese individuals and entities pursuant to [Executive Order 13936](#) for undermining Hong Kong's autonomy.
- Designation of individuals and entities for human rights abuses under [Executive Order 13818](#) to deter human rights abuses in the Xinjiang region.
- Addressing the potential threat posed by mobile applications developed and owned by companies in China such as TikTok under [Executive Order 13942](#).
- Further action to address the potential threat WeChat poses to US national security, foreign policy, and the economy under [Executive Order 13943](#).



■ Department of Commerce & Proposed Regulations

- Proposed regulations relevant to export classification and foreign ownership of American technologies.
- Military end-use regulations which are relevant to export classification and specifically Chinese ownership of dual-use items and technology.

Resource: ["Compliance Program 'Must Haves' for Doing Business Abroad."](#)



Global Trade & Policy

July 30, 2020

Compliance Program "Must Haves" for Doing Business Abroad

By **Doreen M. Edelman**

With "compliance" being the buzzword for corporate executives and legal counsel, there is renewed focus on reducing legal risks when

A Must Have Element for Success- "Buy In" by Senior Management

■ Foreign Ownership of US Technologies/Data

- Even if they cannot officially say it, CFIUS is focused on Chinese investments.
- Know your export classifications, because you will need to determine if you have critical technology, or if you hold sensitive personal data.
- New Executive Orders re: WeChat and TikTok
 - Is Chinese investment still flowing?
 - How should companies approach accepting these funds?
 - Should they accept, and require certain mitigation measures?



■ Military End-Use and End-User Prohibition

- What does it mean for exporters?
- New prohibitions and big grey areas
- Exporters must ask questions about
 - Where their products are going?
 - Who is using them?
 - What else specific end-users are involved in?



Additional Resources

Additional Resources

- US Strategic Approach to the People's Republic of China (PRC)
 - To respond to Beijing's economic and national security threat, the Trump Administration has adopted a competitive approach to the PRC
- FBI Director Wray's Speech at the Hudson Institute, July 7, 2020
 - The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the US
- TikTok was just the beginning: Trump administration is stepping up scrutiny of past Chinese tech investments, *Washington Post*, September 29, 2020
- US blocked Chinese purchase of San Diego fertility clinic over medical data security concerns, *CNBC*, October 16, 2020



Thank You!



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Speaker Biographies

Abbey E. Baker

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Abbey works with businesses and entrepreneurs seeking to expand their market position in the global economy while considering national security, trade regulation, and foreign policy concerns.

She advises domestic and foreign companies on:

- advises domestic and foreign companies on:
- remaining compliant with U.S. and foreign export, sanctions, import and anti-bribery regulatory requirements
- addressing Committee on Foreign Investment in the U.S. (CFIUS) and Foreign Investment Risk Review Modernization Act (FIRRMA) requirements and risk
- managing liabilities in cross-border M&A and private equity investment transactions
- navigating dynamic trade policies

Her experience analyzing, identifying, and leveraging opportunities for doing business worldwide while avoiding the pitfalls associated with global trade has allowed her to guide clients through obstacles in regions around the world.

Abbey counsels both large industry players and small tech start-ups on a broad array of trade compliance issues, including the Bureau of Industry and Security's (BIS) export controls for commercial goods; the Department of State's Directorate of Defense Trade Controls (DDTC) registration and compliance requirements related to the manufacture, brokering, or export of Defense Products and Services; Office of Foreign Assets Control (OFAC) economic sanctions considerations and prohibitions (including those on Iran, Cuba, North Korea, Syria, and Russia/Crimea); anti-bribery compliance; U.S. Customs and Border Protection (CBP) procedures and obligations; and Bureau of Economic Analysis (BEA) inbound and outbound foreign investment filings. She assist clients in completing import and export classifications, country of origin determinations, voluntary disclosures, and licensing requests, as well as responding to BIS, DDTC, OFAC, and CBP inquiries, import seizures, and other trade enforcement matters. Notably, she delivers honed skill in the following industries: aerospace and aviation, night vision and thermal imaging, software as a service (SAAS), biotech, fintech, and other new and emerging technology spaces.

See her recent publications, [here](#).



Education

- American University Washington College of Law (J.D. 2011)
- University of Massachusetts Boston (2008), summa cum laude

Bar Admissions

- District of Columbia
- Massachusetts

Christian C. Contardo

Associate, Global Trade & Policy

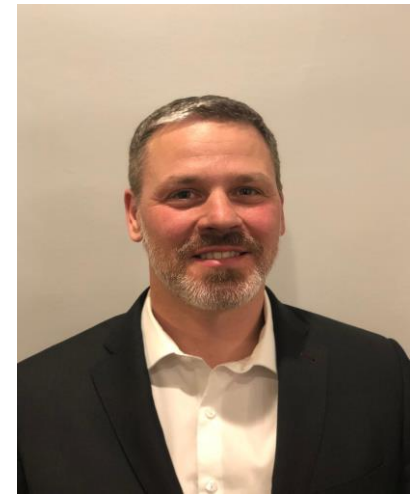
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Christian advises clients on a variety of national security, global trade and government contracting matters. He also advises on Committee on Foreign Investment in the United States (CFIUS) reviews, import and export control, and economic sanctions. Specifically, Christian also represents clients in federal government contract matters regarding agreements for foreign military sales under the Arms Export Control Act, and advises defense contractors and subcontractors on related issues, including Foreign Corrupt Practices Act compliance, export controls, foreign ownership and control, and facility clearance.

Christian has over a decade of experience serving in federal agencies, including the Department of the Treasury, Department of Justice, Department of Homeland Security (DHS), and Immigration and Customs Enforcement (ICE). His deep knowledge of government policies concerning data privacy, financial intelligence, and economic sanctions enhance his ability to effectively counsel businesses on investigations, compliance programs, and potential risks to global transactions.

His prior experience in private practice includes three years with the international arbitration and litigation group at an Am Law 10 firm, where he represented clients in complex bilateral investment treaty disputes before the World Bank's International Centre for Settlement of Investment Disputes and commercial arbitrations before the International Chamber of Commerce International Court of Arbitration.

See his recent publications, [here](#).



Education

- National Intelligence University (M.S. 2015), strategic intelligence
- American University Washington College of Law (J.D. 2005); senior staff, *American University Law Review*
- Lewis and Clark College (B.A. 2000)

Bar Admissions

- District of Columbia
- New York

Chazmon Q. Gates TEXAS INSTRUMENTS

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Chaz currently serves as Legal Counsel at Texas Instruments (TI) where his practice focuses on data privacy, cybersecurity, e-commerce law, advertising law, digital marketing and issues related to the global expansion of TI's online catalog business. He is a proud 2013 graduate of American University Washington College of Law where he served as a Senator in the Student Bar Association and wrote for the National Security Law Brief.

Chaz started his legal career at White & Case in NYC where he worked in the Banking and Finance Group and focused on syndicated finance. Prior to his legal career, Chaz worked in Congress as a policy advisor where he focused on trade, defense/homeland security and foreign affairs (Asia). During that time, he also attended night classes as a graduate student at Johns Hopkins University where he received a Master's Degree in Government and his thesis focused on the U.S.-China trade relationship. His experience in Congress and at Johns Hopkins led him to an opportunity to work in Shanghai, China as a Lecturer at Shanghai University of Finance and Economics.

Chaz currently lives in Dallas, TX with his wife Whitney Gates and French bulldog – Prince.



Education

- American University Washington College of Law (J.D. 2013); Senator of Student Bar Association, writer for the *National Security Law Brief*
- Johns Hopkins University (M.A. 2008) Government
- University of Arkansas – Pine Bluff (B.A. 2005)

Bar Admissions

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Jen Maki is the Director of Global Trade Compliance at Micron. Prior to joining Micron, Jen has lead trade compliance teams at Tyco Electronics and United Technologies and worked at Am-Law 100 law firm and Magic Circle law firms in DC.

Her responsibilities include driving compliance program initiatives and counseling the business on regulatory compliance with export controls, sanctions, and customs compliance. She oversees program development, manages a global team of trade compliance professionals, and advises on emerging market strategy.

Jen graduated from William & Mary School of Law. In her free time she is actively engaged as Board President in nonprofit work for a large animal rescue organization and serves as the lead admin for her children's social calendars and head chauffeur.



Education

- The College of William and Mary – Marshall Wythe Law School (J.D. 2005), Moot Court Team, National Trial Team, Bill of Rights Editor
- University of North Florida – College of Business Administration (B.B.A. 2001)

Bar Admissions

- District of Columbia



Global Trade & Policy

Lowenstein Sandler's Global Trade & Policy Practice Team

Lowenstein's Global Trade & Policy team helps U.S. and foreign companies manage trade risks, ensure regulatory compliance, and effectively communicate their positions to legislators and regulators. Our lawyers help clients ensure compliance with OFAC directives, Executive Orders, and sanctions regimes, including full and partial embargoes, that prevent entities from exporting, importing, financing, or otherwise facilitating transactions involving countries, individuals, and organizations designated as hostile actors by the U.S. and other governments.

We have decades of experience in areas of antitrust, global trade, privacy and cybersecurity, FCPA and white collar crime, and securities regulation. And many of our practitioners have significant federal and/or state government experience, which helps us anticipate and, in turn, assist our clients, including funds, VCs, start-ups and growth companies, with mitigating regulatory risk.



Doreen M. Edelman, Partner & Chair, Global Trade & Policy

- Advises on worldwide import / export matters, foreign investment, and global business expansion.
- Prepares business agreements for suppliers and purchasers of local and foreign materials as well as teaming, and other joint venture agreements.
- Deep knowledge of the Committee on Foreign Investment in the United States (CFIUS) and the new requirements under the Foreign Investment Risk Review Modernization Act (FIRRMA), OFAC, FCPA & FARA.



Zarema A. Jaramillo, Partner, Global Trade & Policy

- Advises clients on compliance with U.S. and foreign anti-bribery and anti-corruption regulations, U.S. sanctions and export controls, and foreign investment reporting requirements.
- Served as Acting Director of the U.S. Department of Commerce Good Governance Program and International Trade Specialist in the Office of China.
- Fluent in Russian.

Lowenstein Sandler's Global Trade & Policy Practice Team



Abbey E. Baker, Counsel, Global Trade & Policy

- Advises domestic and foreign companies on navigating dynamic trade policies, remaining compliant with U.S. and foreign regulatory requirements, and managing and reducing liabilities in cross-border M&A and investment transactions, agreements, and distribution contracts for foreign sales.
- Experience analyzing, identifying, and leveraging opportunities for doing business worldwide while avoiding the pitfalls associated with global trade has allowed her to guide clients through obstacles in regions around the world.



Christian C. Contardo, Associate, Global Trade & Policy

- Has over a decade of experience serving in federal agencies, including the Department of the Treasury, Department of Justice, Department of Homeland Security (DHS), and Immigration and Customs Enforcement (ICE).
- Has deep knowledge of government policies concerning data privacy, financial intelligence, and economic sanctions, enhancing his ability to effectively counsel businesses on investigations, compliance programs, and potential risks to global transactions.



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- Counsels domestic and foreign clients on a broad array of trade issues, including import and export controls, economic sanctions on foreign countries, secondary sanctions on third-country entities, anti-boycott compliance, anti-bribery and FCPA compliance, CFIUS and FIRIMA reviews and filings, U.S. CBP seizures and disclosures, USCIS Form I-129 Part 6 certifications, and sanctions issues pertaining to EB-5 and E-2 immigration matters.

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