

THE GLOBAL TRADE LAW JOURNAL

Volume 1, Number 5

September–October 2024

Editor's Note: Trade Tools

Victoria Prussen Spears

A New European Trade Tool: The First Investigation Under the International Procurement Instrument

James Killick and Jia Liu

Making EU Courts More Efficient for International Trade-Related Decisions

Vassilis Akritidis and Oleksii Yuzko

U.S., EU, and UK Strengthen Sanctions Laws

David R. Johnson, Louise Woods, Randall V. Johnston, Elizabeth Krabill McIntyre, Elena Guillet, and Alexander Sprenger

U.S. Protectionism in Health Data Flows

John L. Evans, Reed Abrahamson, and Peter A. Blenkinsop

National Security Program Seeks to Limit Access by “Countries of Concern” to Certain Bulk Sensitive Personal Data and U.S. Government-Related Data

Shawn Cooley, Nathan Cunningham, and Christina Carone

Trade Rules Are Playing a Larger Role for Manufacturers of Trucks and Truck Parts

David R. Hamill, Birgit Matthiesen, and Antonio J. Rivera

Agencies Caution Foreign-Based Persons on Extraterritorial Reach of U.S. Sanctions and Export Control Regulations

Neena Shenai, Zachary Goldman, Barry J. Hurewitz, Jason C. Chipman, Richard Burger, Michael Dawson, Aaron M. Zebley, Ronald I. Meltzer, and Monika R. Weisman

U.S. Significantly Increases Tariffs on Chinese Solar Cells, Batteries, Electric Vehicles, and Other Goods

Brad Thompson, Geoffrey M. Goodale, Thomas R. Schmuhl, Hope P. Krebs, and W. Patrick Dinnin

Treasury Proposes a “Sharper Scalpel” for CFIUS Enforcement

L. Rush Atkinson, Jessica S. Carey, John P. Carlin, Roberto J. Gonzalez, Peter Carey, Richard S. Elliott, Samuel Kleiner, and Nathan Mitchell

Aid Package for Ukraine, Israel, and the Indo-Pacific Incorporates Extensive Sanctions and Export Control Reforms

Francesca M.S. Guerrero, Samir D. Varma, Aaron C. Mandelbaum, and Scott E. Diamond

Three Takeaways from Recent Regulatory Actions Implementing AUKUS

Anthony Rapa, George T. Boggs, Justin A. Chiarodo, and Dimitri DeChurch-Silva

U.S. Restricts Exports to Nicaragua, Citing Human Rights Abuses

Lori E. Scheetz, John R. Shane and Patrick Griffo

THE GLOBAL TRADE LAW JOURNAL

Volume 1, No. 5

September–October 2024

- 309 Editor’s Note: Trade Tools**
Victoria Prussen Spears
- 313 A New European Trade Tool: The First Investigation Under the International Procurement Instrument**
James Killick and Jia Liu
- 317 Making EU Courts More Efficient for International Trade-Related Decisions**
Vassilis Akritidis and Oleksii Yuzko
- 323 U.S., EU, and UK Strengthen Sanctions Laws**
David R. Johnson, Louise Woods, Randall V. Johnston,
Elizabeth Krabill McIntyre, Elena Guillet, and Alexander Sprenger
- 329 U.S. Protectionism in Health Data Flows**
John L. Evans, Reed Abrahamson, and Peter A. Blenkinsop
- 333 National Security Program Seeks to Limit Access by “Countries of Concern” to Certain Bulk Sensitive Personal Data and U.S. Government-Related Data**
Shawn Cooley, Nathan Cunningham, and Christina Carone
- 347 Trade Rules Are Playing a Larger Role for Manufacturers of Trucks and Truck Parts**
David R. Hamill, Birgit Matthiesen, and Antonio J. Rivera
- 353 Agencies Caution Foreign-Based Persons on Extraterritorial Reach of U.S. Sanctions and Export Control Regulations**
Neena Shenai, Zachary Goldman, Barry J. Hurewitz, Jason C. Chipman,
Richard Burger, Michael Dawson, Aaron M. Zebley, Ronald I. Meltzer, and
Monika R. Weisman
- 361 U.S. Significantly Increases Tariffs on Chinese Solar Cells, Batteries, Electric Vehicles, and Other Goods**
Brad Thompson, Geoffrey M. Goodale, Thomas R. Schmuhl,
Hope P. Krebs, and W. Patrick Dinnin

- 365 Treasury Proposes a “Sharper Scalpel” for CFIUS Enforcement**
L. Rush Atkinson, Jessica S. Carey, John P. Carlin, Roberto J. Gonzalez,
Peter Carey, Richard S. Elliott, Samuel Kleiner, and Nathan Mitchell
- 371 Aid Package for Ukraine, Israel, and the Indo-Pacific Incorporates
Extensive Sanctions and Export Control Reforms**
Francesca M.S. Guerrero, Samir D. Varma, Aaron C. Mandelbaum, and
Scott E. Diamond
- 379 Three Takeaways from Recent Regulatory Actions Implementing
AUKUS**
Anthony Rapa, George T. Boggs, Justin A. Chiarodo, and
Dimitri DeChurch-Silva
- 383 U.S. Restricts Exports to Nicaragua, Citing Human Rights Abuses**
Lori E. Scheetz, John R. Shane and Patrick Griffo

EDITOR-IN-CHIEF

Steven A. Meyerowitz

President, Meyerowitz Communications Inc.

EDITOR

Victoria Prussen Spears

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

Jen Fernandez

Partner

Sidley Austin LLP

Robert A. Friedman

Partner

Holland & Knight LLP

Geoffrey M. Goodale

Partner

Duane Morris LLP

Renée Latour

Partner

Clifford Chance

Britt Mosman

Partner

Willkie Farr & Gallagher LLP

Anthony Rapa

Partner

Blank Rome LLP

Brooke M. Ringel

Partner

Kelley Drye & Warren LLP

Samir D. Varma

Partner

Thompson Hine LLP

Timothy C. Welch

Partner

Weil, Gotshal & Manges LLP

THE GLOBAL TRADE LAW JOURNAL (ISSN 2995-1089) at \$495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint. Copyright 2024 Fastcase, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner.

For customer support, please contact Fastcase, Inc., 729 15th Street, NW, Suite 500, Washington, D.C. 20005, 202.999.4777 (phone), or email customer service at support@fastcase.com.

Publishing Staff

Publisher: Leanne Battle

Production Editor: Sharon D. Ray

Cover Art Design: Morgan Morrisette Wright and Sharon D. Ray

This journal's cover features a 1855 depiction of the American clipper ship *Red Jacket* on her journey from Melbourne, Australia, to Liverpool, England. The artwork was originally created by Charles Parsons and Joseph B. Smith, and later lithographed and published by Nathaniel Currier. It is reproduced courtesy of The Met Museum's public domain library.

Cite this publication as:

The Global Trade Law Journal (Fastcase)

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2024 Full Court Press, an imprint of Fastcase, Inc.

All Rights Reserved.

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE GLOBAL TRADE LAW JOURNAL, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

Material for publication is welcomed—articles, decisions, or other items of interest to international attorneys and law firms, in-house counsel, corporate compliance officers, government agencies and their counsel, senior business executives, and others interested in global trade law.

This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the Editorial Content appearing in these volumes or reprint permission, please contact:

Leanne Battle, Publisher, Full Court Press at leanne.battle@vlex.com or at
202.999.4777

For questions or Sales and Customer Service:

Customer Service
Available 8 a.m.–8 p.m. Eastern Time
866.773.2782 (phone)
support@fastcase.com (email)

Sales
202.999.4777 (phone)
sales@fastcase.com (email)

ISSN 2995-1089

Three Takeaways from Recent Regulatory Actions Implementing AUKUS

Anthony Rapa, George T. Boggs, Justin A. Chiarodo, and Dimitri DeChurch-Silva*

In this article, the authors offer three takeaways from measures taken recently by the U.S. government to implement the trilateral AUKUS security pact with Australia and the United Kingdom.

As a next step in the U.S. government's implementation of the trilateral AUKUS security pact with Australia and the United Kingdom, the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) recently took measures to further ease export controls among the member countries. Reducing export control restrictions is the linchpin to implementing the AUKUS pact, which aims to bolster security cooperation and defense trade between Australia, the United Kingdom, and the United States.

While DDTC stopped short of concretely scaling back export controls under the International Traffic in Arms Regulations (ITAR), it proposed a framework to do so in the coming year (likely to turn on Australia and the United Kingdom completing the adoption of ITAR-equivalent export controls and exemptions). Meanwhile, BIS lifted a range of controls under the Export Administration Regulations (EAR), placing Australia and the United Kingdom on nearly equal footing with Canada.

This article offers three takeaways regarding these developments.

DDTC Issued a Proposed Rule to Provide Broad ITAR Exemptions for Exports to “Authorized Users” in Australia and the United Kingdom

DDTC's May 1, 2024, proposed rule¹ would amend the ITAR to exempt from a licensing requirement most exports, reexports,

transfers, and temporary imports of defense articles, provision of defense services, and brokering activities between and among specified “authorized users” in Australia, the United Kingdom, and the United States.

The key aspects of the proposed rule are:

- The transfer must take place to or within the physical territory of Australia, the United Kingdom, or the United States.
- Participants in Australia and the United Kingdom would be limited to specified “authorized users” that undergo an enrollment process and are listed on the DDTC website. U.S. participants must be registered with the DDTC.
- Certain defense articles identified in the Excluded Technology List in Part 126 of the ITAR would be ineligible for the exemption.
- Transactions subject to ITAR congressional notification requirements would be ineligible for the exemption.
- Classified defense articles and defense services are authorized under the exemption provided the relevant authorized users meet their respective industrial security requirements.
- License applications for certain exports of “commercial, advanced-technology defense articles and defense services” to or between Australia, Canada, or the United Kingdom would be eligible for expedited consideration.

DDTC Will Only Implement the ITAR Exemption When the U.S. Department of State Certifies That Australia and/or the United Kingdom Have Instituted Comparable Export Controls

Section 1343 of the National Defense Authorization Act for Fiscal Year 2024² requires the president to determine and certify in writing to Congress whether Australia or the United Kingdom has (1) implemented a system of export controls comparable to those of the United States, and (2) implemented comparable exemptions from its export controls for the United States. If the president determines that the standard is not met, he must reassess the requirements every 120 days.

The U.S. Department of State recently declined to make this certification for Australia and the United Kingdom, but in an April 19, 2024, press release,³ noted significant progress along these lines.

The State Department went on to explain that “[w]e fully expect to finalize the new trade exemptions—based on stakeholder input—over the course of the next 120 days.”

BIS Relaxed Most EAR Controls for Australia and the United Kingdom, Putting Them on Nearly Equal Footing with Canada

BIS recently issued an Interim Final Rule (IFR)⁴ amending the EAR to implement AUKUS. The IFR amends the EAR to remove license requirements, expand the availability of license exceptions, and reduce the scope of end-use and end-user-based license requirements for exports, reexports, and transfers (in-country) to or within Australia and the United Kingdom.

The IFR makes the following changes:

- Removal of list-based license requirements for national security column 1 (NS1), regional stability column 1 (RS1), and missile technology column 1 (MT1) for most items, but some items will still require a license, such as firearms and certain satellites and spacecraft. (As a result of these changes, “600 series” items will no longer require a license for export to Australia or the United Kingdom.)
- Removal of license requirements for ECCN 0A919 items.
- Removal of military end-use and end-user-based license requirements for exports, reexports, and transfers (in-country) of certain cameras, systems, or related components.
- Revision of treatment of significant items (Sis) (i.e., hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems) controlled under ECCN 9E003.a.1 through a.6, a.8, .h, .i, and .l, and related controls, to allow these items to be exported, reexported, or transferred (in-country) to or within Australia and the United Kingdom without a license.

Conclusion

The DDTC and BIS measures mark significant milestones on the way to implementation of AUKUS. Easing of ITAR controls, if

and when implemented, will be a watershed moment in Australia-UK-U.S. defense trade and will present significant opportunities for exporters. It will be important to monitor developments relating to a possible certification of the Australian and UK export control regimes, as well as possible DDTC revisions to the proposed exemption in response to comments received from the public.

Notes

* The authors, attorneys with Blank Rome LLP, may be contacted at anthony.rapa@blankrome.com, george.boggs@blankrome.com, justin.chiarodo@blankrome.com, and dimitri.dechurchsilva@blankrome.com, respectively.

1. <https://www.federalregister.gov/documents/2024/05/01/2024-08829/international-traffic-in-arms-regulations-exemption-for-defense-trade-and-cooperation-among>.

2. <https://www.congress.gov/118/plaws/publ31/PLAW-118publ31.pdf>.

3. <https://www.state.gov/continued-progress-on-aucus-defense-trade-integration/>.

4. <https://www.federalregister.gov/documents/2024/04/19/2024-08446/export-control-revisions-for-australia-united-kingdom-united-states-aucus-enhanced-trilateral>.