

HOW WILL THE BIDEN ADMINISTRATION'S TRADE POLICY IMPACT EXPORTS OF STRATEGIC IMPORTANCE? TIPS FOR NAVIGATING THE WATERS

With administration change comes policy change. As the Biden administration continues to implement its policies, we are seeing a changing view on sales of U.S. strategic goods to foreign entities.

7 Questions to Ask

- 1 Who is your customer? Is it a business that is owned by a government entity?
- 2 Is the customer subject to sanctions or barred from receiving U.S. origin technology?
- 3 Is an export license required for the commodity?
- 4 Is an export license required due to the end user or other parties involved in the transaction?
- 5 Is an export license required due to the destination of the items?
- 6 Which U.S. government agency is responsible for licensing the commodity?
- 7 Is there a presumption of approval or denial of an export license for the commodity, end user and/or destination?

Specifically, as reported by [Reuters](#), the Biden administration will "...'reprioritize' other factors including U.S. national security, human rights and nonproliferation....," in addition to economic security with relation to exports of weapons and strategic goods. In addition, the administration will look more favorably at strategic goods exports that are defensive versus offensive in nature. "Biden's posture towards arms exports - specifically around reducing weapons used to attack others ... means fewer bullets, bombs and missiles, while security products like radars, surveillance equipment and defenses against attacks get the green light."

With relation to the export of controlled commodities, the administration has tightened controls on these exports to China. As reported in [The Washington Post](#), "The Biden administration placed seven Chinese firms and government labs under U.S. export controls Thursday for their involvement in China's effort to build supercomputers that help develop nuclear and other advanced military weapons. The listing of the firms and labs means they may not use U.S.-origin

technology without a Commerce Department license, which is very difficult to obtain. 'These are parties that are acting in ways that are contrary to our national security interests,' said a senior agency official, speaking on the condition of anonymity because of the matter's sensitivity. 'This is really about not having U.S. items contribute to China's advancement of its military capabilities.'"

As part of the administration's effort the White House issued a 100 Day Reviews report titled [Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Base Growth, 100-Day Reviews under Executive Order 14017](#). The report calls for "...establishment of a U.S. Trade Representative-led trade strike force to identify unfair foreign trade practices that have eroded U.S. critical supply chains and to recommend trade actions to address such practices." The trade strike force approach would "...be incorporated into the U.S. trade policy approach towards China."

The administration's position will lead to heightened scrutiny by U.S. government agencies of munitions and technology exports, especially where China is involved. One goal of the task force should be assuring appropriate classification and export licensing requirements are employed and enforced on all potential exports of strategic importance. To measure the success in meeting the goal, the administration must prevent a repeat of the mid 1990s incidents during which Hughes, Loral and Lockheed Martin provided controlled technology, specifically related to satellite and payload launch vehicles to China contrary to US export controls.

Navigating the waters to lawfully export strategic goods can be a cumbersome process. For those engaging or considering engaging in the export of items of strategic importance, there are a number of questions that should be proactively addressed by your general counsel or compliance officer. In certain cases, it may make sense to engage outside [export compliance consultants](#).



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