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# Foreign Direct Investment Regimes 2021

A practical cross-border insight into FDI screening regimes

## Second Edition

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# Expert Chapters



# Q&A Chapters

# Why Deep Knowledge of U.S. Export Controls is Essential for Navigating CFIUS Requirements

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What do high-performance general-purpose integrated circuits, lentiviral VSV-G-containing plasmids for biomedical research, certain hardware and software with encryption functionality, many types of telecommunications equipment, and technology for hot isostatic pressing of superalloys all have in common?

Under recently expanded U.S. foreign investment controls, all these commodities and technologies constitute "critical technologies". As a result, foreign investment in any U.S. business that designs, develops, produces, fabricates, manufactures, or tests these (or many other) technologies will in many cases be subject to *mandatory* review by the Committee on Foreign Investment in the United States ("CFIUS" or "the Committee") – even if the investment is indirect and/or non-controlling. Indeed, a review may be required even for changes to the rights of *existing* foreign investors.

Failure to file with CFIUS when mandatory may result in fines up to $250,000 or the value of the transaction, whichever is greater, as well as imposition of postcompletion mitigation conditions that restrict or void problematic investor rights, or even an order mandating complete divestment. Accordingly, determining whether the target of foreign investment designs, develops, produces, fabricates, manufactures, or tests critical technologies ("a critical technologies business") is an essential step in pre-investment diligence.

The scope of "critical technologies" is in turn largely defined by U.S. export control regulations. As a result, CFIUS filing requirements hinge on identifying the U.S. export classification of the hardware, software, and technical information that the target (and any U.S. subsidiary) designs, develops, produces, fabricates, manufactures, or tests. Furthermore, effective October 15, 2020, whether a particular foreign investment in a critical technologies business is subject to mandatory filing depends on the rights the investor will gain *and* whether U.S. government authorization would be required for export of the target's critical technologies to the investor and certain parties in the investor's ownership and control structure.

In this new CFIUS landscape, for foreign investments that will confer CFIUS-relevant rights (e.g., control, board seat, observer seat, influence over substantive decision-making, access to non-public technical data),[i] it is impossible to determine whether CFIUS filing is mandatory, advisable, or a non-issue without a sophisticated understanding of U.S. export control laws. Foreign parties considering new investments into U.S. businesses, or a change of rights with respect to existing U.S. holdings, should not go shopping without experienced U.S. export controls counsel. In this chapter, we explain why.

## A. Why it is essential to know the export classification of a target's technology, and why figuring that out takes substantial practice.

CFIUS regulations define "critical technologies" as follows:

- items and services described on the United States Munitions List ("USML"), which is part of the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. 120 *et seq.*;
- a subset of items described on the Commerce Control List ("CCL"), which is part of the Export Administration Regulations ("EAR"), 15 C.F.R. 740 *et seq.*, including those items that are described in CCL entries that specify one or more of the following reasons for control: national security; chemical and biological weapons proliferation; nuclear nonproliferation; missile technology; regional stability; or surreptitious listening;
- specially designed and prepared nuclear equipment, parts and components, materials, software, and technology described in 10 C.F.R. 810;
- nuclear facilities, equipment, and material described in 10 C.F.R. part 110;
- select agents and toxins covered by 7 C.F.R. 331, 9 C.F.R. 121, or 42 C.F.R. 73; and
- emerging and foundational technologies controlled under section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).[ii]

This definition has two important consequences. First, the universe of affected technologies is broad: while some of the categories may sound narrow (munitions, nuclear equipment, toxins), the referenced regulations collectively capture a wide range of technologies used in many sectors of the economy. To take just a few examples, relevant entries on one of the referenced lists (the CCL) currently cover items including (but far from limited to):

- hardware or software that encrypts data for confidentiality (whether directly or through use of third party product cryptographic functionality), unless a product satisfies the criteria for treatment as a "mass market" product, including by being of broad interest to, and widely available at retail to, the general public;
- lentiviral packaging plasmids commonly used in biomedical research that contain the G gene from the Vesicular Stomatatis Virus ("VSV");
- medical, analytical, diagnostic, and food testing kits that contain specified amounts of certain controlled chemicals, and medical products containing certain toxins;
- gas masks and filter cartridges for protection against certain riot control agents;
- tools, dies, molds or fixtures for "superplastic forming" or "diffusion bonding" of titanium, aluminum or their alloys for manufacture of aircraft or aerospace engines;

- a variety of general-purpose integrated circuits;
- a variety of high-performance titanium and aluminum alloys;
- certain accelerometers, gyros, inertial measurement equipment, and global navigation satellite systems;
- a variety of telecommunications equipment;
- certain laser and radar systems;
- technology for superplastic forming, diffusion bonding, hot isostatic pressing or densification of titanium or aluminum or superalloys; and
- technology for application of certain inorganic coatings.

Second, figuring out whether the hardware, software, or technical data that a target designs, develops, produces, fabricates, manufactures, or tests constitute "critical technologies" requires familiarity with multiple control lists embedded in half a dozen different parts of the Code of Federal Regulations ("C.F.R."). Experienced export controls counsel may be able to quickly identify product types that would not trip the critical technologies wire. But in other cases, careful review of the technology of a target and any U.S. subsidiaries against the relevant control lists will be necessary. Investors should be aware that accurate determination of whether a particular technology is subject to relevant export controls is often a time- and resource-intensive exercise, both because of the number of different regulatory sources, and because those sources describe the items subject to control in highly technical terms. By way of illustration, **Figure 1** represents just the first two subsections of one of the entries on the CCL covering electronics. The full entry has over three dozen subsections, with multiple sub-subsections – and this entry is just one of several complex CCL entries governing electronics, and one of dozens of CCL entries that describe other kinds of critical technologies, not to mention the USML and other control lists that must be considered.

At this point, readers may be wondering why investors cannot simply ask the target whether its products, data, or services constitute "critical technologies". Investors can and must ask that question but, for several reasons, doing so is no silver bullet.

First, many investment targets simply do not know the export classification of their technologies. This is common among, for example, targets that do not engage in export activity, including targets that simply test technologies on behalf of third-party manufacturers within the United States. Even targets that engage in a significant amount of export activity may only know the export classifications of the *exported* technologies, and may have other products that are never exported and therefore never classified, including those in the design or development stage. That matters because it can happen that all the technologies for which export classifications are known fall outside the definition of critical technologies, but one or more technologies not previously exportclassified turn out to be critical technologies and trigger mandatory CFIUS filing requirements.

Second, the complexity of the export regulations generates a lot of opportunity for error in export classifications, and a target's response about its products may simply be wrong. The export regulations authorize relevant agencies to provide official export classifications upon request: an official determination of whether an item is described on the USML is known as a "Commodity Jurisdiction" or "CJ", while an official determination of an item's classification on the CCL is known as a "CCATS". Where available, these are extremely helpful for the CFIUS analysis. But the regulations do not require companies to obtain such official rulings and, when unsupported by a CJ, CCATS, or the opinion of experienced outside export counsel relating to similar items, internal determinations regarding export classification are not infrequently incorrect. Two particularly frequent problems are: (1) underclassification in the form of incorrect claims that all of a target's technology is "EAR99" – a designation which means that the item is not described on the USML or the CCL, nor subject to the other provisions referenced in the definition of "critical technologies", and generally freely exportable except to embargoed countries; and (2) overclassification, where a party that performs some work for military customers assigns all of its technology USML classifications, ignoring the fact that many items designed or modified for military use have migrated from the USML to the CCL, including in some cases to "EAR99" status (which can be a game changer for CFIUS purposes). Foreign investors who operate in the same industry as a target and know the control status of similar products under their country's law may be able to sanity check some of a target's export-classification assertions. However, investors should be aware that the U.S. control lists are not identical to, and include items that are not covered by, non-U.S. control lists including the Wassenaar List of Dual-Use Goods and Technologies.

**Figure 1: Excerpt of a small portion of a CCL entry pertaining to electronics**

a. General purpose integrated circuits, as follows:

*NOTE 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.*

*NOTE 2: Integrated circuits include the following types:*

- *"Monolithic integrated circuits";*
- *"Hybrid integrated circuits";*
- *"Multichip integrated circuits";*
- *"Film type integrated circuits", including silicon-on-sapphire integrated circuits;*
- *"Optical integrated circuits";*
- *"Three dimensional integrated circuits"; and*
- *"Monolithic Microwave Integrated Circuits" ("MMICs").*

a.1. Integrated circuits designed or rated as radiation hardened to withstand any of the following:

a.1.a A total dose of 5 x $10^3$ Gy (Si), or higher;

a.1.b. A dose rate upset of of 5 x $10^6$ Gy (Si)/s, or higher; *or*

a.1.c A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5 x $10^{13}$ n/cm2 or higher on silicon, or its equivalent for other materials.

*NOTE: 3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).*

a.2. "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, integrated circuits that contain analog-to-digital converters and store or process the digitized data, digital-to-analog converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform ("FFT") processors, Static Random-Access Memories ("SRAMs"), or 'non-volatile memories,' having any of the following:

*TECHNICAL NOTE: 'Non-volatile memories' are memories with data retention over a period of time after a power shutdown.*

a.2.a. Rated for operation at an ambient temperature above 398 K (+125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (-55 °C); or

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (-55 °C) to 398 K (125 °C);

Finally, investors should be aware that the U.S. Department of Commerce ("DOC") is in the early stages of an effort to identify items that warrant more stringent levels of export control (including those currently classified as EAR99 or on the CCL solely for anti-terrorism reasons, which generally are freely exportable to almost all countries), and to change the control status of those items. These items are included in the definition of "critical technologies" under the subcategory of "emerging and foundational technologies". To date, DOC has identified only a few items as "emerging technologies" but is continuing to review the following general areas for items that warrant new

or increased control as "critical technologies": biotechnology; artificial intelligence ("AI") and machine learning ("ML"); position, navigation and timing ("PNT"); microprocessor technology; advanced computing; data analytics; quantum information and sensing; logistics technology; additive manufacturing; robotics; brain-computer interfaces; hypersonics; advanced materials; and advanced surveillance.[iii] With respect to "foundational technologies", DOC has similarly indicated interest in reviewing items that are not generally considered sensitive, but that may be "utilized or required for innovation in developing conventional weapons, enabling foreign intelligence collection activities, or weapons of mass destruction applications".[iv] This includes "items that are currently subject to control for military end use or military end user reasons under Supplement No. 2 to part 744 of the EAR" – a list that includes many types of semi-conductor manufacturing equipment and associated software tools, general purpose electronic equipment, commercial aircraft parts and components, and numerous other items. As new "emerging and foundational" technologies are identified and subjected to increased export controls, mandatory CFIUS filing requirements may attach to new or existing investments in businesses whose technology historically was not treated as sensitive. Investors in the above-referenced areas should therefore consider the possibility that the export control status of a target's technology may change in a manner that could cause a CFIUS review to be necessary for the initial investment or for subsequent changes in the investor's rights, and plan accordingly.

### B. How export authorization requirements affect which investments are subject to mandatory filings, and why principal place of business and citizenship matter.

The fact that a U.S. investment target designs, develops, produces, fabricates, manufactures, or tests critical technologies does not by itself trigger mandatory CFIUS filing requirements. Rather, mandatory filing requirements attach if a foreign investor will acquire CFIUS-relevant rights, *and* one of the following sets of conditions applies:

(1) the investment involves a substantial interest of a foreign state – i.e., it will result in an interest of 25% or more being held by a foreign party in which a foreign government has 49% or greater interest (in such cases, it does not matter whether the target is involved with critical technologies);[v]

(2) certain actions related to the investment occurred *before* October 15, 2020,[vi] *and* the target designs, develops, produces, fabricates, manufactures, or tests critical technologies, *and* the target specifically designed the critical technologies for, or uses them in connection with, one of 27 specified industry segments;[vii] *or*

(3) the target designs, develops, produces, fabricates, manufactures, or tests critical technologies *and* the critical technologies in question would require U.S. government authorization for export to (i) the foreign investor, and/or (ii) any foreign party that individually holds, or is part of a group of foreign persons that in the aggregate holds, a direct or indirect voting interest of 25% or more in the foreign investor ("25% party").[viii]

The third set of conditions reflect a recent rule that became final on September 15, 2020, and effective October 15, 2020. Under the new rule, any critical technology business may be subject to mandatory CFIUS review irrespective of the sector of the economy in which it operates, if the target's critical technologies would require U.S. government authorization for export to the foreign investor and 25% parties (as defined above). This shift in focus expands the range of critical technology businesses that raise mandatory CFIUS filing concerns and redoubles the importance of reliable export-related advice early in the investment planning process.

Each of the relevant regulatory schemes has different rules defining when exports require U.S. government authorization. A complete discussion is beyond the scope of this chapter, but the following discussion of the basic levers that come into play for critical technologies described on the USML *versus* those described on the CCL should be illustrative.

As a preliminary matter, for the purposes of determining whether authorization would be required to export a target's critical technologies to a foreign investor and 25% parties, the new rule establishes the following ground rules: (1) almost all license exceptions/exemptions (i.e., standing authorizations applicable to anyone who can meet the specified conditions, similar to U.K. open general licenses or E.U. general export authorizations) must be ignored; (2) the foreign investor and other relevant parties should be treated as end users of the technology; and (3) the requirements should be assessed based on the country in which the investor and each 25% party has its principal place of business (for entities), and/or the investor's and each 25% party's "nationality or nationalities…under the relevant U.S. regulatory authorization" (for individuals).[ix] The regulations do not define the term "nationality". However, the instruction to consider "nationality or nationalities…under the relevant U.S. regulatory authorization" likely means that, for investments in businesses with USML technology, one must apply the ITAR rule under which an export of technical data to an individual constitutes an export to "all countries in which the [relevant] foreign person *has held or holds* citizenship or holds permanent residency",[x] while for investments in businesses with CCL technology, the EAR require consideration only of the person's "most recent country of citizenship or permanent residency".[xi]

For investments that confer a CFIUS-relevant right in U.S. businesses that design, develop, produce, fabricate, manufacture, or test USML technologies, the determination of whether mandatory filing requirements apply is straightforward: mandatory disclosure is *always* required, no matter where the investor has its principal place of business or citizenship. This is because exports of USML technologies require authorization to *all* non-U.S. destinations. However, transaction parties should understand that the sensitivity with which the U.S. government views exports of USML technology – and consequently foreign investment in USML businesses – varies significantly with the foreign country(ies) involved. Investors should also be aware that the ITAR generally prohibit exports of USML technologies to countries that are subject to U.S. arms embargoes – currently Afghanistan, Belarus, Burma, Central African Republic, China, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Haiti, Iran, Iraq, Lebanon, Libya, North Korea, Somalia, South Sudan, Sudan, Syria, Venezuela, and Zimbabwe.[xii] Relatedly, because the ITAR require consideration of all countries in which that individual holds or has ever held citizenship, the Committee's analysis of investment in a USML businesses may (notwithstanding the sensitivity of requesting such information under the laws of many countries outside the United States) require identification of, and be influenced by, all current and former citizenships of individual foreign investors and 25% parties.[xiii]

For investments in targets whose technologies are not described on the USML, but are described on the CCL, the determination of whether CFIUS filing is mandatory is significantly more complex. This is because, under the EAR, whether an export requires authorization depends on: (i) the reasons for control applicable to CCL entry that describes the technology; (ii) the country or countries of destination; and (iii) the end user and end use. For example, some items do not require

authorization for export to Spain, but do require authorization for export to Russia, and some items that generally do not require authorization for export to Canada do require authorization if exported to Canada for restricted end users or end uses.

At a high level, determining whether a particular critical technology described on the CCL requires authorization for export to proposed foreign investors involves the following steps: (1) identify the entry on the CCL where the technology is described; (2) consult the table at the top of the relevant CCL entry to see which reason or reasons for control apply; (3) identify the countries in which each foreign investor and 25% party has its principal place of business (for entities) and/or holds citizenship or permanent residency (considering only the most recent country in each case); (4) review the Commerce Country Chart to see whether export authorization is required for the relevant combination of countries and reasons for control, as illustrated in **Figure 2**;[xiv] and (5) review Part 744 of the EAR to determine whether any end user restrictions impose a requirement for authorization independent of the conclusion produced by the Country Chart.[xv]

The definition of "critical technologies" only encompasses a subset of all CCL technologies, including those that are controlled for national security, chemical and biological weapons proliferation, nuclear nonproliferation, missile technology, regional stability, or surreptitious listening. Under most of these reasons for control, authorization is required for export to all countries except Canada (for items subject to chemical and biological weapons-related controls, even exports to Canada require authorization). However, as **Figure 2** illustrates, some of the reasons for control are divided into two or even three subcategories, e.g.: NS1 and NS2 for national security controls; and CB1, CB2, and CB3 for chemical and biological weapons controls. Items to which the second and/or third subdivisions of these reasons for control apply generally may be exported without authorization to certain countries that are U.S. allies and/or parties to certain multilateral agreements, e.g., the Wassenaar Arrangement, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers Group.[xvi] For example, as illustrated in **Figure 2**, 3A002 technology is primarily controlled for NS2, with MT applying only to items in 3A002.h that satisfy parameters specified in 3A101.a.2.b. Items controlled for NS2 require authorization for export to Russia in all cases, but do not require authorization for export to Poland, unless an end user control applies. However, if MT applies, then authorization is required for both Poland and Russia.

By tying mandatory filing requirements to export authorization requirements, the September 2020 revisions to the CFIUS regime expose more investments to potential mandatory filing (i.e., all critical technology businesses, not just those that operate in certain industries). However, the revisions should also reduce the number of mandatory reviews for investments from countries that generally benefit from favorable export control treatment under U.S. regulations. Of particular note, the new approach will create a substantial exemption for investors that have their principal place of business in, or are nationals of, Canada, because Canada is generally exempt from export authorization requirements for many items falling within the definition of critical technologies – including items controlled for NS, NP, MT, and RS reasons.[xvii] In addition, the new rules provide an exemption to the mandatory filing requirement for situations in which the technology and the relevant foreign parties would be eligible for export authorization under subsection (c)(1) of License Exception STA, which permits exports of certain (but not all) CCL critical technologies to most Wassenaar Arrangement states (excluding Malta, Mexico, Russia, South Africa, and Ukraine) upon satisfaction of certain conditions (including execution by the foreign party of a statement acknowledging the export control status and regulatory requirements of the technologies).[xviii] Conversely, investors from countries that are generally subject to tighter U.S. export restrictions may find that more of their proposed investments trigger mandatory CFIUS filing requirements.

**Figure 2: Using the Country Chart to determine whether authorization is required to export CCL items**

**3A002 General Purpose "Electronic Assemblies," Modules and Equipment, as Follows (See List of Items Controlled).**

*LICENSE REQUIREMENTS*

*Reason for Control: NS, MT, AT*

| Control(s) | Country Chart (see Supp. No.1 to part 738) |
|---|---|
| *NS applies to entire entry* | *NS Column 2* |
| *MT applies to 3A002.h when the parameters in 3A101.a.2.b are met or exceeded* | *MT Column 1* |
| *AT applies to entire entry* | *AT Column 1* |

*SUPPLEMENT NO. 1 TO PART 738 – COMMERCE COUNTRY CHART*

*(Reason for Control)*

| Countries | Chemical and biological weapons | | | Nuclear nonprolif-eration | | National security | | Missile tech | Regional stability | | Firearms conven-tion | Crime control | | | Anti-terrorism | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | CB 1 | CB 2 | CB 3 | NP 1 | NP 2 | NS 1 | NS 1 | MT 1 | RS 1 | RS 2 | FC 1 | CC 1 | CC 2 | CC 3 | AT 1 | AT 2 |
| *Poland*[5] | X | | | | | X | | X | X | | | | | | | |
| *Portugal*[5] | X | | | | | X | | X | X | | | | | | | |
| *Qatar* | X | X | X | X | | X | X | X | X | X | | X | | X | | |
| *Romania*[5] | X | | | | | X | | X | X | | | | | | | |
| *Russia*[6] | X | X | X | X | | X | X | X | X | X | | X | X | | | |

*An "X" in the relevant box indicates that export authorization is required. Thus, 3A002 technology requires authorization for Russia in all cases, but only requires authorization for Poland if it is described in 3A002.h and satisfies parameters specified in 3A101.a.2.b (or if an end user control applies).*

## C. Conclusion

Notification to CFIUS is mandatory for many foreign investments in U.S. businesses that design, develop, produce, fabricate, manufacture, or test "critical technologies". Under CFIUS rules updated in September 2020, the questions of which technologies are "critical" and which "critical technologies" trigger mandatory filing requirements are both defined by U.S. export control regulations: the former by U.S. export control lists; and the latter by rules defining which exports require authorization to which countries. Both inquiries are highly specialized and deep knowledge of the complex body of U.S. export law is therefore crucial for accurate determination of CFIUS obligations.

i. *See* 31 C.F.R. 800.210, 800.211.
ii. *See* 31 C.F.R. 800.215.
iii. *See* Bureau of Industry and Security, Advance Notice of Proposed Rulemaking, 83 Fed. Reg. 58201 (11/19/2018).
iv. *See* Bureau of Industry and Security, Advance Notice of Proposed Rulemaking, 85 Fed. Reg. 52934 (8/27/2020).

v. *See* 31. C.F.R. 800.401(b). There is a limited exemption for controlling investments that involve a substantial interest of an Excepted Foreign State – currently the U.K., Australia, and Canada. *See* 800.401(e) (exemption from mandatory filing for control transactions by Excepted Investors), 800.218 & 800.219 (defining Excepted Investor and Excepted Foreign State).

vi. Relevant actions are: (i) completion; (ii) execution of a binding document establishing the material terms; (iii) a public offer to buy shares; (iv) solicitation of proxies in connection with a board election; and (v) request for conversion of a contingent equity interest. *See* 31 C.F.R. 800.104.

vii. *See* 31 C.F.R. 800.401(c) and Appendix B, List of Industries.

viii. *See* 85 Fed. Reg. 57124, 57128–29 (09/15/20) (amending 31 C.F.R. 800.401(c)(1)(5), 800.401(c)(2), and 800.256). For purposes of identifying 25% parties, any interest of a parent company is deemed a 100% interest. Where the foreign investor is a fund or other entity whose activities are primarily directed, controlled, or coordinated by or on behalf of a general partner, managing member, or equivalent, 25% parties are only those that (individually or as part of a group) hold a direct or indirect voting interest of 25% or more *in the general partner, managing member, or equivalent. See id.*

ix. 85 Fed. Reg. 57124, 57129 (09/15/20) (amending 31 C.F.R. 800.401(c)(2)).

x. *See* 22 C.F.R. 120.17(b).

xi. *See* 15 C.F.R. 734.13(b).

xii. *See* 22 C.F.R. 126.1.

xiii. Parties evaluating potential foreign investment in USML businesses should be aware that, separate from CFIUS requirements, the ITAR require prior State Department authorization for transactions that will result in foreign acquisition or control of a U.S. business engaged in manufacturing, exporting, temporarily importing, or providing certain services related to USML technologies. *See* 22 C.F.R. 122.1, 122.4(b). The ITAR would also require Department of State authorization for any arrangement under which ITAR-controlled technical data would be released to a foreign investor – since this would constitute an export.

xiv. The Commerce Country Chart is found at 15 C.F.R. 738, Supplement 1.

xv. Among other restrictions, Part 744 generally prohibits the export without a license of any item subject to the EAR to parties who are enumerated on the "Entity List", which is set forth at 15 C.F.R. 744, Supplement 4 (and license requests for exports to such parties are subject to a policy of denial). As an example, technology with reason for control NS1 can be exported to Canada without a license, so investment in a target that produces NS1 technology by an investor with a principal place of business in Canada ordinarily would not trigger mandatory CFIUS review (unless there is a substantial interest of a foreign state other than Canada). However, investment by Canada Lab Instruments or an entity in which it holds a direct or indirect voting interest of 25% or more would trigger mandatory CFIUS review, because Canada Lab Instruments is on the Entity List.

xvi. Russia, China, Malta, and Ukraine participate in one or more of these arrangements but do not receive corresponding beneficial treatment under U.S. export control regulations.

xvii. Investors from Canada, as well as the U.K. and Australia, already benefited from an exemption to mandatory filing requirements set forth in 31 C.F.R. 800.401(e)(1). However, that exemption only applies to transactions in which the relevant foreign investor would obtain *control* of the target, and depends on satisfaction of a complex set of nationality-related conditions. *See* 31 C.F.R. 800.401(e)(1) and 800.219(a)(1), (a)(3).

xviii. *See* 85 Fed. Reg. 57124, 57129 (09/15/20) (amending 31 C.F.R. 800.401(e)(6)) and 15 C.F.R. 740.20. Limited exemptions from mandatory filing are also provided in certain circumstances where the only critical technologies at issue fall within the definitions of certain encryption technology, sales and operation technology and software, and "mass market" software in 15 C.F.R. 740.17(b) and 15 C.F.R. 740.13, and the parties satisfy certain other requirements of those license exceptions.

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Franchise
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International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
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Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
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