
Hughes Hubbard & Reed

DOJ and Commerce Announce New Disruptive Technology Strike Force to Enhance U.S. Export Control Regime

Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Attorney advertising. Readers are advised that prior results do not guarantee a similar outcome. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. For information regarding the selection process of awards, please visit <https://www.hugheshubbard.com/legal-notice-methodologies>.

February 27, 2023 – In a February 16, 2023 press release, the U.S. Department of Justice (“DOJ”) [announced the launch](#) of a joint “Disruptive Technology Strike Force” with the Department of Commerce (“Commerce”). The strike force will convene experts from across the government to promote enforcement of export controls protecting sensitive, advanced technologies from illegal transfer abroad, as well as to strengthen cooperation with the private sector, among U.S. government agencies, and with foreign allies. While the strike force’s efforts may lead to an uptick in the number of export control enforcement actions, they appear to be equally intended to focus enforcement actions on advanced digital technologies and to harmonize behind-the-scenes regulatory policy.

Background

Responsibility for implementing and enforcing U.S. export controls on “[dual use](#)” items under the Export Control Reform Act of 2018 (“ECRA”) and the Export Administration Regulations (“EAR”) is spread across the U.S. government. ECRA assigns the primary role for administering the EAR to the Bureau for Industry and Security (“BIS”) within the U.S. Department of Commerce, which has responsibility for, among other things, investigating and prosecuting civil violations of export controls. But other government agencies also play vital roles in the export control regime. For example, authority and responsibility for prosecuting criminal violations of the EAR lies with DOJ, while agencies including the Departments of Defense, Energy, and State participate in important regulatory decisions such as listings on the Entity List (i.e., the list of persons prohibited from receiving some or all items subject to the EAR without a license).

The U.S. export control regime in its current form [dates back decades](#), but recent trends and events have made new and unprecedented demands on the system. The U.S. government is placing ever more reliance on [export controls as a strategic tool](#) in numerous areas, from countering the Russian war effort in Ukraine to competing against China in fields including semiconductor production. Yet efforts to implement and enforce more robust export controls have run into numerous challenges in recent years, including with respect to [policing technology transfers to China while respecting civil rights](#); developing supply chain resiliency; enforcing human rights; defining [“emerging and foundational technologies”](#) as mandated by ECRA; and [muster international support](#) for U.S. policy priorities.

Strike Force Composition and Priorities

According to the DOJ press release, the strike force will be co-led by the head of DOJ’s National Security Division and by the Assistant Secretary for Export Enforcement within Commerce. The strike force will also include representatives of officials from select U.S. Attorneys’ Offices across the country, the FBI, and the Department of Homeland Security. Its work will include a focus on investigating and prosecuting criminal and administrative violations of export controls, improving partnerships with the private sector, coordinating law enforcement actions and strategies with international allies, conducting trainings for enforcement officials in the field, and strengthening connectivity with the intelligence community.

In [remarks](#) prepared for delivery on February 16, 2023, Deputy Attorney General (“DAG”) Lisa Monaco offered commentary on “disruptive technologies” that indicate likely enforcement directions for the strike force. DAG Monaco stated that DOJ is paying particular attention to threats including cyberattacks on critical infrastructure by hostile governments and criminal networks; acquisition and weaponization of personal and business data by foreign adversaries, particularly China; and the acquisition of advanced digital technology by autocratic governments, both via foreign investment in U.S. companies and by directing private investment to local companies.

Key Takeaways

Technologies and Industries of Focus

DAG Monaco’s remarks and the DOJ press release make clear that one main focus of the strike force’s efforts will be industries involved with advanced digital technologies, particularly those where cross-border data transfers and semiconductor design and manufacturing are involved. Notably, the term “disruptive technologies” has not been used formally in the U.S. export controls context previously. Its use here indicates the strike force’s efforts may not overlap precisely with Commerce’s jurisdiction or traditional areas of focus. The strike force’s efforts will also be independent of Commerce’s ongoing efforts to define “emerging and foundational” technologies.

Implications for Enforcement Efforts

The strike force’s activities will support enforcement efforts by DOJ and BIS in several ways. First, the strike force will integrate prosecutors from regional U.S. Attorney’s offices and train law enforcement agents across the country; these efforts will presumably lead to more coordinated engagement nationwide with investigation and criminal prosecution of export control violations. The strike force’s multi-agency membership will likely improve information sharing

between federal law enforcement agencies and the intelligence community. The strike force will likely contribute to greater focus by DOJ and BIS on enforcement actions related to the technologies and industries identified above, regardless of whether the number of actions increases.

DAG Monaco's reference to the risks posed by overseas investment in companies that could develop advanced technology for autocratic governments seems to indicate that the strike force may also have a role in implementing the outward-bound investment control mechanism that is reportedly under development by the Biden Administration.

Implications for Companies

Companies and institutions whose activities relate to advanced digital technologies should actively prepare for a higher level of enforcement activity by DOJ, BIS, and related law enforcement agencies. Those companies and institutions should consider establishing a procedure for responding swiftly to subpoenas, information requests, and other actions by law enforcement. Companies operating in this area should also consider conducting a risk assessment to evaluate their compliance with applicable export controls, particularly including the rapidly-evolving controls targeting Russia and the complex semiconductor rules targeting China, and consider how best to mitigate identified concerns.

Related People



Ryan Fayhee



Tyler Grove



Roy (Ruoweng) Liu

Justin Campbell

Anna Hamati

John Hannon



Marcus Yu

Related Areas of Focus

Sanctions, Export Controls & Anti-Money Laundering