

Counsel, Washington, D.C.

International Trade; National Security; CFIUS



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Education

J.D., The George Washington
University Law School, 2000
B.A., Georgetown University, 1997

Bar Admissions

New York
District of Columbia
U.S. Court of International Trade
U.S. Court of Appeals for the
Federal Circuit

Dan Gerkin advises on issues involving the transnational flow of goods, software, technology and services, as well as investments in the United States and abroad. Specifically, Mr. Gerkin counsels a variety of U.S., international and multinational clients in matters concerning U.S. export controls, economic embargoes and sanctions, investment security reviews, customs, and trade remedies and other trade-related investigations, often in connection with mergers and acquisitions and other business transactions.

Mr. Gerkin represents clients regarding compliance with the Export Administration Regulations (EAR), including anti-boycott compliance, the International Traffic in Arms Regulations (ITAR), the embargoes and sanctions programs administered by the Office of Foreign Assets Control, and sanctions-related legislation. Additionally, he assists clients with commodity classification requests, commodity jurisdiction requests, advisory opinion requests, applications for licenses and other export authorizations, voluntary prior disclosures and responses to administrative subpoenas, and has created comprehensive export compliance policies and procedures manuals.

Mr. Gerkin has counseled clients in connection with matters implicating the Committee on Foreign Investment in the United States (CFIUS) and has successfully led a number of clients through the CFIUS clearance process. His experience includes transactions in the energy, telecommunications, financial services and industrial sectors, among others.

Additionally, Mr. Gerkin represents U.S. importers before U.S. Customs and Border Protection (CBP) and the U.S. Court of International Trade in connection with a wide variety of customs matters, including tariff classification, import valuation, country of origin, country of origin marking, preferential programs and free trade agreements, drawback, reconciliation, temporary importations under bond, Foreign Trade Zones, and textile quota and visa requirements. He also represents foreign manufacturers and exporters and U.S. importers in traditional and nonmarket anti-dumping and countervailing duty proceedings, as well as in Section 201, 232 and 301 proceedings.

Experience Highlights

- resolved voluntary prior disclosures at both the Bureau of Industry and Security (BIS) and the Office of Foreign Assets Control (OFAC) with no action for a multinational oilfield services company in connection with activities undertaken in Myanmar;
- advised a U.S. automotive components manufacturer regarding the wind-down of activities as a result of Russia/Ukraine sanctions designations;
- secured CFIUS clearance on behalf of a non-U.S.-based satellite equipment manufacturer in connection with its acquisition of a U.S. satellite imaging company, including handling the associated ITAR registration and license transfer requirements; and
- represented a U.S. solar company before the U.S. International Trade Commission and Office of the United States Trade Representative in connection with a solar-related Section 201 safeguard investigation, including by submitting request for exclusion of certain high-efficiency cells and modules from proclaimed tariffs.

Export Controls

- obtained favorable commodity jurisdiction determinations and commodity classification determinations from the Directorate of Defense Trade Controls (DDTC) and BIS for a U.S. manufacturer pertaining to items supplied to a U.S. defense contractor in connection with the operation of unmanned aerial vehicles, thereby eliminating any requirement to be registered in accordance with the ITAR;
- achieved favorable commodity classification determinations for a major American automotive manufacturer pertaining to data localization and machine learning/neural networking software for use in connection with autonomous vehicles, thereby permitting U.S. development work to be undertaken by foreign national employees;
- secured a warning letter for a U.S. manufacturer in connection with voluntary prior disclosure to BIS relating to unauthorized access to export-controlled technology by foreign national employees;
- prepared voluntary prior disclosure to BIS by a U.S. energy company in connection with the unauthorized export of hardware requiring a license, as well as a related request for authorization to engage in transactions involving such hardware;
- favorably resolved multiple ITAR-related voluntary prior disclosures for multiple divisions of a major American defense contractor;
- secured a favorable advisory opinion from BIS, multiple commodity classification determinations from BIS and favorable outcome of BIS voluntary prior disclosure for a U.S. spacecraft and space-related systems manufacturer;
- obtained encryption classification determinations on behalf of multiple software developers, including a non-U.S. financial institution relating to certain mobile banking software applications, provided advice regarding U.S. export control issues associated with U.S. and non-U.S. software development, including relating to foreign national developers, and revised U.S. export compliance language in an End User License Agreement; and
- enabled self-classification under the encryption regulations of a PC-based gaming console, as well as its associated proprietary operating system software, wireless controller, virtual reality headset and accompanying peripherals, and streaming hardware.

US Embargoes and Sanctions

- counseled a non-U.S. marine engine manufacturer in connection with Iran sanctions compliance matters;
- advised a U.S. professional services company in connection with sanctions compliance under various OFAC country-based programs;

- counseled a non-U.S. manufacturer of equipment for the oil and gas industry in connection with Russian and Iranian sanctions;
- provided Iranian sanctions guidance in connection with the acquisition by a U.S. private equity fund of non-U.S. entity engaging in Iran-related business;
- advised a U.S. mobile telecommunications provider in connection with its proposed entry into roaming services agreement with a Cuban state-owned telecommunications company; and
- counseled numerous pharmaceutical and medical device manufacturers and ingredient suppliers, in connection with commercial sales to customers in U.S. embargoed countries under the Trade Sanctions Reform and Export Enhancement Act of 2000.

Foreign Direct Investment and National Security Matters

- obtained clearance on behalf of a non-U.S. energy company in connection with the acquisition of a U.S. utility;
- advised a U.S. upstream oil producer and American private equity sponsor in connection with proposed sale of certain oil and gas producing leases; and
- counseled a U.S. midstream pipeline company in connection with the proposed sale of a limited liability company interest in an entity owning significant pipeline assets to a non-U.S. pension fund.

US Import Compliance

- counseled a U.S. electronics manufacturer and importer in connection with disclosure matters pertaining to the tariff classification of certain imported printed circuit board assemblies and related CBP disclosure audit; challenged customs interest penalty; and served as non-retained expert in connection with derivative litigation;
- advised a U.S. exporter of purified liquid propane in connection with verification undertaken by Korean customs authorities to determine whether the propane was considered to originate in the United States pursuant to the Korea-U.S. Free Trade Agreement;
- counseled a U.S. importer of crude oil from Canada in connection with a challenge to denial of NAFTA claim;
- advised a U.S. importer of virtual reality hardware on tariff classification and associated Federal Communications Commission requirements; and
- counseled a U.S. furniture importer in connection with pending CBP civil penalty and Civil False Claims Act investigations pertaining to the alleged misclassification of certain imported furniture and resulting avoidance of antidumping duty deposit requirements.

Trade Remedies and Other Import Trade Proceedings

- achieved separate rate treatment and a favorable scope determination on behalf of a U.S. importer and its Chinese supplier in connection with nonmarket economy antidumping and countervailing duty proceedings on crystalline silicon photovoltaic cells and certain crystalline silicon photovoltaic products from the People's Republic of China (PRC); secured similar treatment in connection with certain crystalline photovoltaic products from the PRC; challenged scope determination at the U.S. Court of International Trade in connection with certain crystalline photovoltaic products proceeding; coordinated communications with CBP regarding applicability of antidumping and countervailing duty investigations and orders to imported solar modules;
- achieved favorable specialty trailer tire scope exclusion language in connection with passenger vehicle and light truck tires from the PRC on behalf of membership of a U.S. trade association;
- counseled a U.S. importer of aluminum regarding implications of tariffs imposed in connection with Section 232 national security investigation; and
- advised a U.S. importer of chemicals regarding Section 301 tariff matters.