

YEAR IN REVIEW

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# 2023 International Trade Developments

SUMMARY OF THE MOST SIGNIFICANT U.S. INTERNATIONAL TRADE ACTIONS AND KEY  
TAKEAWAYS FROM 2023, PLUS PREDICTIONS FOR 2024

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## PRESENTATION OVERVIEW

# Roadmap For Discussion

	SANCTIONS	NATIONAL SECURITY/ FOREIGN INVESTMENT REGULATIONS AND REVIEWS	EXPORT CONTROLS	U.S.-CHINA TRADE	ANTI-CORRUPTION
1	Iran, Syria, Cuba, And North Korea Updates	CFIUS Developments	EAR Developments	Setting Up The Board	Key Updates - FEPA
2	Russia & Venezuela Updates	Other Relevant National Security Developments	ITAR Developments	Preliminary Moves	FCPA Enforcement Trends
3	Other Sanctions Program Updates	CFIUS Enforcement	Notable U.S. Enforcement Actions	Predictions For 2024	Lessons Learned
4	OFAC Compliance & Enforcement Trends	Predictions For 2024	Predictions For 2024		Predictions for 2024
5	Predictions For 2024				

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# Sanctions

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# 2023 Updates to Comprehensive Sanctions Programs

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SANCTIONS UPDATES

# Iran, Syria, Cuba, and North Korea

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## IRAN

# Key Updates in 2023

- In 2023, OFAC issued:
  - Three Iran-related general licenses and
  - Two advisories on Iran's ballistic missile procurement networks and unmanned aerial vehicle (UAV) program



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# General Licenses Updates

**March 2023: GL O** “Authorizing Wind-Down and Limited Safety and Environmental Transactions Involving Certain Vessels” *\*Expired June 2023*

- Authorizing the wind-down of transactions involving certain blocked vessels, including the safe docking and anchoring of any of the blocked vessels in port, preservation of the health and safety of the crew, and emergency repairs.

**June 2023: GL P** “Authorizing the Wind Down of Transactions Involving Navyan Abr Arvan Private Limited Company or Arvancloud Global Technologies L.L.C.” *\*Expired July 2023*

- Authorizing the wind-down of transactions involving two technology companies that allegedly engaged in censorship and interception services on behalf of Iranian authorities online.

**June 2023: GL N-2** “Authorizing Certain Activities To Respond to the Coronavirus Disease 2019 (COVID-19)”

- Authorizing certain COVID-19-related transactions prohibited by the ITSR, including the exportation of goods or technology for use in connection with the prevention, diagnosis, or treatment of COVID-19 and dealings in Iranian-origin services related to COVID-19.



IRAN

# New Advisories

## OFAC ADVISORIES

### **June 2023:** [Guidance to Industry on Iran's UAV-Related Activities](#)

- The U.S. Departments of Commerce, Justice, State, and Treasury issued this advisory to urge U.S. entities to be vigilant against supporting Iran's unmanned aerial vehicle (UAV) program and emphasized the importance of complying with sanctions, export controls, and other legal obligations to prevent further proliferation of Iran's UAVs.

### **October 2023:** [Iran Ballistic Missile Procurement Advisory](#)

- The U.S. Departments of Commerce, Justice, State, and Treasury issued this advisory to alert U.S. entities about deceptive techniques used by Iranian ballistic missile procurement networks, key goods sought by Iran's missile program, and how to minimize sanctions and export control risk.

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# IRAN

## On the Horizon – More Iran Sanctions

Iran has been using proxies to attack:

- U.S. bases in Syria (71 since Oct) and Iraq
- Red Sea vessels – first Israeli-linked and now any vessels bound for Israel
  - Carriers moving vessels around Africa to avoid the Red Sea
- The U.S. Embassy in Iraq

and support the Hamas attacks on October 7

### Iran-backed militia vows more attacks after US Embassy in Iraq comes under fire

By Haley Britzky and Hamdi Alkhashali, CNN  
3 minute read

Nearly 60 US troops in Syria and Iraq have been injured by attacks from militant groups

CNN POLITICS SCOTUS Congress Facts First 2024 Elections

### Exclusive: Found document suggests Iran sought to help Hamas make its own weapons ahead of attack, sources say

By Jake Tapper and Katie Bo Lillis  
3 minute read · Published 6:00

AP WORLD U.S. POLITICS SPORTS ENTERTAINMENT BUSINESS SCIENCE FACT CHECK ODDITIES HEALTH VIDEO CLIMATE

Israel-Hamas war Alex Jones Golden Globes 2024 Philippines-South China Sea Ukraine's EU

### 3 commercial ships hit by missiles in Houthi attack in Red Sea, US warship downs 3 drones



## IRAN - COMPETING GOALS

# Humanitarian Banking Channels and Victims for Terrorism Master Fund

- USG agreed to release US\$6B to Iran for humanitarian purposes
- After the October 7 attacks in Israel, the funds are on hold
- Iran has responded by saying that the U.S. is involved in the war in Gaza because the U.S. has supplied Israel with munitions
- The U.S. House of Representatives is now seeking to block the transfer of the US\$6B
- The Department of Justice continues to pursue civil forfeiture of Iranian cargo aboard tankers located anywhere

### Justice Department Announces First Criminal Resolution Involving the Illicit Sale and Transport of Iranian Oil in Violation of U.S. Sanctions

Friday, September 8, 2023

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For Immediate Release  
Office of Public Affairs

#### The Government Also Seized Almost One Million Barrels of Iranian Crude Oil

The Justice Department announced today the successful disruption of a multimillion-dollar shipment of crude oil by the Islamic Revolutionary Guard Corps (IRGC), a designated foreign terrorist organization, that was bound for another country. This is the first-ever criminal resolution involving a company that violated sanctions by facilitating the illicit sale and transport of Iranian oil and comes in concert with a successful seizure of over 980,000 barrels of contraband crude oil.

According to court documents, on April 19, Suez Rajan Limited pleaded guilty to conspiring to violate the International Emergency Economic Powers Act (IEEPA). On that same date, the company was sentenced by U.S. District Court Judge Carl J. Nichols for the District of Columbia to three years of corporate probation and a fine of almost \$2.5 million. In addition, pursuant to a deferred prosecution agreement (DPA) and a seizure warrant issued by the U.S. District Court for the District of Columbia, Empire Navigation, the operating company of the vessel carrying the contraband cargo, agreed to cooperate and transport the Iranian oil to the United States—an operation which has now concluded. Empire Navigation incurred the significant expenses associated with the vessel's voyage to the United States.



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## SYRIA

# Key Updates in 2023

- In 2023, OFAC issued:
  - Two Syria-related general licenses
  - Guidance for the provision of humanitarian assistance to Syria and a Fact Sheet for the provision of humanitarian assistance and trade to combat COVID–19



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## SYRIA

# General Licenses Updates

- GL [21B](#): COVID-19
  - In June 2023, OFAC authorized the exportation of services to Syria that are related to the prevention, diagnosis, or treatment of COVID-19 and transactions involving the Government of Syria, Polymedics LLC, Letia Company (or any entity in which Polymedics LLC or Letia Company own a 50% or greater interest) that are related to the prevention, diagnosis, or treatment of COVID-19
- GL [23](#): Earthquake Relief
  - In February 2023, OFAC temporarily authorized all transactions related to earthquake relief efforts in Syria through August 2023. In a note to the GL, OFAC specified that the authorization of this GL includes the processing or transfer of funds on behalf of third-country persons to or from Syria in support of earthquake relief efforts.
  - BIS announced [expedited export license applications](#) for items needed to aid survivors

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## SYRIA

# Sanctions Compliance Guidance for the Provision of Humanitarian Assistance to Syria

- In August 2023, OFAC published a [Compliance Communiqué](#) in response to questions from the NGO community and the general public on how to provide humanitarian assistance to Syria while complying with OFAC sanctions
  - U.S. persons may donate funds to and raise funds on behalf of U.S. and third-country NGOs that provide authorized humanitarian assistance in Syria
  - The Syrian Sanctions Regulations do not impose restrictions on the amount of funds raised for humanitarian efforts in Syria
  - Most food and medicine do not require a BIS license for export to Syria
  - Certain transactions ordinarily incident and necessary to humanitarian efforts in Syria involving the Government of Syria, as defined in 31 C.F.R. § 542.305(a), are authorized by the Syria NGO general license

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## CUBA

# Key Updates in 2023

- No significant updates
  - However, OFAC enforced the Cuban Assets Control Regulations through three enforcement actions against digital financial platforms – discussed later under “Enforcement Actions”
  - Also, an American diplomat, Manuel Rocha, was charged with being a secret agent for Cuba – discussed later under “Predictions for 2024”
  - Expected relaxation of sanctions and new licenses for engagement with the private sector in Cuba on hold



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## NORTH KOREA

# Key Updates in 2023

- In 2023, OFAC added several individuals to the SDN List pursuant to various Executive Orders including [13810](#) and [13687](#) – Imposing Additional Sanctions with Respect to North Korea
- 2023 Designations:
  - DPRK actors illicitly generating revenue in support of the government abroad, facilitators of arms deals between the DPRK and Russia, and cyber actors supporting the DPRK’s malicious cyber activities



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SANCTIONS UPDATES

# Russia and Venezuela

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## RUSSIA

# Key Updates in 2023

- In 2023, OFAC issued:
  - Five determinations pursuant to E.O.s 14024, 14071, and 14068 and a directive prohibiting transactions involving certain sectors of the Russian economy
  - A price cap on Russian oil and petroleum products
  - Over 20 general licenses
  - Three advisories related to the price cap, sanctions evasion, and humanitarian assistance to Russia
- President Biden signed EO of 14114 of December 22, 2023, and OFAC issued a related Compliance Advisory



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## RUSSIA

# Regulatory Updates

- **Determinations pursuant to E.O. 14024, E.O. 14071, and E.O. 14068**
  - Imposing economic sanctions on any person to operate or have operated in certain sectors of the Russian economy:
    - February 2023: Metals and mining sector
    - May 2023: Architecture, engineering, construction, manufacturing, and transportation sectors
    - June 2023: Prohibiting the export or supply from the U.S., or by a U.S. person of architecture services or engineering services to any person located in Russia
  - Determination pursuant to Section 11(a)(ii) of EO 14024: Allows sanctions on a foreign financial institution upon determining that the foreign financial institution has conducted or facilitated any significant transaction or transactions, or provided any service, involving Russia's military-industrial base
  - Determination pursuant to Section 1(a)(i)(B) of EO 14068: Confirms prohibitions in section 1(a)(i)(B) of E.O. 14068 applies to certain categories of fish, seafood, and preparations thereof, notwithstanding whether incorporated or substantially transformed into another product outside of Russia
- **Directive 4 under E.O. 14024**: Prohibiting any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation

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## RUSSIA

# Russian Price Cap Updates

- **Price Cap on Petroleum Products of Russian Origin**
  - **February 2023**: OFAC determined that the price cap on Discount to Crude petroleum products of Russian Federation origin shall be \$45 per barrel, and the price cap on Premium to Crude petroleum products of Russian Federation origin shall be \$100 per barrel
  - **OFAC Guidance** on Implementation of the Price Cap Policy for Crude Oil and Petroleum Products of Russian Federation Origin –
    - Authorized U.S. persons to provide certain services as they relate to the maritime transport of Russian oil and Russian petroleum products (i.e., shipping, financing, and flagging, among others), as long as such crude oil or petroleum products are purchased at or below a certain price
  - **April 2023**: OFAC Alert warning U.S. persons about possible evasion of the Russian oil price cap and recommending certain measures to ensure price cap compliance
    - Example: The failure to itemize shipping, freight, customs, and insurance costs can be used to obfuscate the fact that Russian oil was purchased above the price cap
    - Recommendation: Retain invoices, contracts, and receipts showing that Russian oil or Russian petroleum products were purchased at or below the relevant price cap

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RUSSIA

# December Updated Price Cap Guidance

**Updated Date:** December 20, 2023

**Implementation Date:** February 19, 2024

- Implementation of a Safe Harbor Provision for U.S. service providers acting in good faith
- Tier I: Traders/Commodities Brokers – Terms for Safe Harbor
  - Must collect price information OR signed attestation
  - Attestations are needed for each sailing/lifting (30 days)
    - Reporting obligation for failure to collect attestation
    - Must cease business with party refusing to remit attestation

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## RUSSIA

# December Updated Price Cap Guidance CONTINUED

- Tier II Safe Harbor Conditions
  - Collection price information OR signed Attestation. Refusal of attestation triggers report and cessation of business
  - **Financial Institutions:** Must have risk-based policies and procedures to confirm the Price Cap requirements
  - **Ship/vessel agents:** If the price information is available in the ordinary course, must collect. If not, signed attestation each time the vessel lifts or loads (within 30 days)
  - **Customs Brokers:** If the price information is available in the ordinary course, must collect. If not, signed attestation each time the vessel lifts or loads (within 30 days)

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## RUSSIA

# December Updated Price Cap Guidance CONTINUED

- Tier III Safe Harbor Conditions
  - **Shipowners/carriers:** Must collect signed attestations *prior* to each loading/lifting of the cargo. Must require their Tier I counterparties to share information upon request
  - **Insurers/P&I Clubs:** Must collect signed attestations within 30 days of each lifting or loading of the Russian product. Must require counterparties (like the shipowner/manager) to collect and provide additional information that could include freight, insurance, and other ancillary costs. It should be noted that the insurance providers typically include sanctions exclusions clauses. These are noted as a trigger for the Safe Harbor for Reinsurers but not specifically called out for this group.
  - **Reinsurers:** Continue to use sanctions exclusions clauses to mitigate against sanctions risk. OFAC provides reinsurers Safe Harbor for utilizing these clauses in policies or contracts. OFAC also offers the Safe Harbor for Price Cap-specific language or for the use of signed attestations
  - **Flagging Registries:** Must collect signed attestation within 30 days of a vessel's lifting or loading of Russian product. Where no such attestation is provided, OFAC encourages the flagging registries to request one. Where no such attestation is provided, report must be filed with OFAC and registry must de-register the vessel

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## RUSSIA

# General License Updates

- General Licenses Authorizing Transactions Involving:
  - **Public interest**
    - January 2023: [GL 6C](#) “Transactions Related to Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates, the Coronavirus Disease 2019 (COVID-19) Pandemic”
    - February 2023: [GL 57A](#) “Services Related to Vessel Emergencies”
    - May 19, 2023: [GL 68](#) “Wind Down of Transactions Involving Certain Universities and Institutes”
    - October, November, and December 2023: [GL 73](#), [GL 77](#), [GL 78](#), respectively, “Limited Safety and Environmental Transactions Involving Certain Persons or Vessels”
  - **Energy**
    - February 2023: [GL 56A](#) authorizing transactions related to the importation of crude oil or petroleum products to Bulgaria, Croatia, or landlocked European Union Member States
    - October 25, 2023: [GL 8H](#) authorizing transactions related to energy involving certain entities, including Sovcombank, Sberbank of Russia, and VTB Bank, among others

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## RUSSIA

# General License Updates CONTINUED

- General Licenses Authorizing Transactions Involving:
  - **Telecommunication services companies**
    - [GL 54A](#): Purchase or receipt of any debt or equity securities of VEON Ltd. or VEON Holdings B.V.
    - [GL 62](#): Wind-down of any transaction involving Megafon PAO (Megafon) and Limited Liability Company USM Telecom (USM Telecom)
    - [GL 65](#): Telecommunications and certain internet-based communications involving Megafon or Digital Invest Limited Liability Company
  - **Oil and gas developments**
    - [GL 55A](#): The maritime transport of crude oil originating from the Sakhalin-2 project
  - **Mining and construction companies**
    - [GL 63](#): The divestment or transfer of debt or equity of Holdingovaya Kompaniya Metalloinvest AO (Metalloinvest), a Russian mining and metallurgy company
    - [GL 66](#) and [67](#): Transactions involving Public Joint Stock Company Polyus, a Russian gold mining company

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## RUSSIA

# General License Updates CONTINUED

- General Licenses Authorizing Transactions Involving:
  - **Media**
    - [GL 64](#): Joint-stock company Kommersant, a nationally distributed newspaper in Russia
  - **Financial Institutions**
    - [GL 13G](#): The payment of taxes, fees, or import duties to the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation, provided such transactions are necessary to the day-to-day operations of U.S. persons in Russia
    - [GL 69](#): Processing of interest or principal payments on debt securities issued by International Investment Bank
    - [GL 71](#): Wind-down of Petersburg Social Commercial Bank, Locko Bank, Bank JSC, Commercial Bank Solidarnost, and Tinkoff Bank
    - [GL 74](#): Wind-down of East-West United Bank

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RUSSIA

# General License Updates CONTINUED

- **December 22, 2023 Updates:**
- GL 83, Authorizing Certain Transactions Related to Imports of Certain Categories of Fish, Seafood, and Preparations Thereof Prohibited by Executive Order 14068
- GL 84, Authorizing Transactions Related to Closing a Correspondent or Payable-Through Account
- GL 85, Authorizing the Wind Down of Transactions and the Closure of Accounts Involving Expobank Joint Stock Company

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## RUSSIA

# Advisories and Guidance

- **March 2023:** Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls

Common red flags can indicate that a third-party intermediary may be engaged in efforts to evade sanctions or export controls, including the following:

- Use of corporate vehicles (*i.e.*, legal entities, such as shell companies, and legal arrangements) to obscure (i) ownership, (ii) source of funds, or (iii) countries involved, particularly sanctioned jurisdictions;
- A customer's reluctance to share information about the end use of a product, including reluctance to complete an end-user form;
- Use of shell companies to conduct international wire transfers, often involving financial institutions in jurisdictions distinct from company registration;
- Declining customary installation, training, or maintenance of the purchased item(s);
- IP addresses that do not correspond to a customer's reported location data;
- Last-minute changes to shipping instructions that appear contrary to customer history or business practices;
- Payment coming from a third-party country or business not listed on the End-User Statement<sup>3</sup> or other applicable end-user form;
- Use of personal email accounts instead of company email addresses;
- Operation of complex and/or international businesses using residential addresses or addresses common to multiple closely-held corporate entities;
- Changes to standard letters of engagement that obscure the ultimate customer;
- Transactions involving a change in shipments or payments that were previously scheduled for Russia or Belarus;
- Transactions involving entities with little or no web presence; or
- Routing purchases through certain transshipment points commonly used to illegally redirect restricted items to Russia or Belarus. Such locations may include China (including Hong Kong and Macau) and jurisdictions close to Russia, including Armenia, Turkey, and Uzbekistan.<sup>4</sup>

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## RUSSIA

# Advisories and Guidance CONTINUED

- [June 2023](#): Humanitarian Assistance and Food Security Fact Sheet: Understanding UK and U.S. Sanctions and their Interconnection with Russia
  - Russia-related [GL 27](#), “Certain Transactions in Support of Nongovernmental Organizations’ Activities,” authorizes transactions ordinarily incident and necessary to five categories of humanitarian activities by NGOs, provided that the only involvement of blocked persons is the processing of funds by financial institutions blocked pursuant to E.O. 14024.
- The Crimea region of Ukraine and the so-called Donetsk People’s Republic (DNR) and Luhansk People’s Republic (LNR) regions of Ukraine
  - Targeted by sanctions pursuant to E.O.s. 13685 and 14065, but OFAC has issued numerous GLs under the Ukraine-/Russia-related sanctions program ([31 C.F.R. Part 589](#)) to authorize humanitarian assistance, agricultural and medical trade, and other support to people in these regions impacted by Russia’s malign activities.

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## RUSSIA

# Advisories and Guidance CONTINUED

- October 2023: Advisory for the Maritime Oil Industry and Related Sectors
  - The Price Cap Coalition issued this advisory to provide recommendations concerning specific best practices in the maritime oil industry. For example:
    - Require that vessels have continuous and appropriate maritime insurance coverage for the entirety of their voyages;
    - Receive classification from an International Association of Classification Societies member society; and
    - Promote the continuous broadcasting of Automatic Identification Systems (AIS) throughout the lifetime of a voyage.
- December 2023: Guidance for Foreign Financial Institutions on OFAC Sanctions Authorities Targeting Support to Russia's Military-Industrial Base.

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## RUSSIA

# EO 14114 of December 22, 2023

- **EO 14114 (Amends to EO 14024)** allows OFAC to sanction foreign financial institutions that have:
  - (i) conducted or facilitated a significant transaction or transactions for any persons designated pursuant to E.O. 14024 for operating or having operated in the technology, defense and related materiel, construction, aerospace, or manufacturing sectors of the Russian Federation economy (“the specific sectors”);<sup>1</sup> or
  - (ii) conducted or facilitated any significant transaction or transactions, or provided any service, involving Russia’s military industrial base, including the sale, supply, or transfer, directly or indirectly, to the Russian Federation, of any item or class of items as may be determined by the Secretary of the Treasury, in consultation with the The Secretary of the Treasury.
- *OFAC can impose full blocking sanctions on, or prohibit or restrict the maintenance of correspondent accounts in the United States for, foreign financial institutions subject to these sanctions*

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## VENEZUELA

# Key Updates in 2023

- In 2023, OFAC eased sanctions on Venezuela based on political developments towards the restoration of democracy
- Issued:
  - Three new general licenses and five amendments
  - Frequently Asked Questions Related to the Suspension of Certain U.S. Sanctions with Respect to Venezuela



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## VENEZUELA

# Key Updates in 2023 CONTINUED

- Easing Sanctions on Venezuela – **the Barbados Agreement** (October 17, 2023):
  - October 2023: Representatives of Maduro and the Unitary Platform reached an agreement on electoral guarantees for an internationally monitored vote in the second half of 2024.
  - In response, the U.S. eased select sanctions related to Venezuela’s oil sector, the gold sector of the Venezuelan economy, and U.S. person purchases in the secondary market of certain Venezuela sovereign bonds and equity.
  - Treasury, however, is prepared to amend or revoke authorizations at any time, if Maduro’s government fails to follow through on its commitments.

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## VENEZUELA

# General License Updates

- General Licenses:
  - **IV National Assembly**
    - **May 2023:** [GL 42](#) authorized certain transactions related to the negotiation of certain settlement agreements with the IV Venezuelan National Assembly
  - **Mining and Gold**
    - **October 2023:** [GL 43](#) authorized transactions involving CVG Compañía General de Minería de Venezuela CA, a Venezuelan state-owned mining company designated pursuant to E.O. 13850. Treasury also issued guidance clarifying that the U.S. government does not intend to sanction any person solely for operating in the gold sector of the Venezuelan economy
  - **Repatriation of Venezuelan nationals**
    - **November 2023:** [GL 45A](#) authorized transactions involving Venezuelan airline, Consorcio Venezolano de Industrias Aeronáuticas y Servicios Aéreos, S.A., necessary to the repatriation of Venezuelan nationals from non-U.S. jurisdictions in the Western Hemisphere to Venezuela

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# General License Updates CONTINUED

- **Oil and Gas Sector Operations**

- **October 2023:** [GL 44](#) authorized certain transactions through April 17, 2024 involving the oil and gas sector in Venezuela. The U.S. government intends to renew GL 44 only if the representatives of Maduro follow through with their commitments and take continued concrete steps toward a democratic election by the end of 2024. A non-exhaustive list of transactions covered by GL 44 include:
  - The production, lifting, sale, and exports of oil or gas from Venezuela, and provision of related goods and services;
  - The payment of invoices for goods or services related to oil or gas sector operations in Venezuela;
  - New investment in oil or gas sector operations in Venezuela;
  - The delivery of oil and gas from Venezuela to creditors of the Government of Venezuela (GoV), including creditors of PdVSA entities, for the purposes of debt repayment; and
  - Ordinarily incident and necessary financial transactions with certain blocked Venezuelan banks (Banco Central de Venezuela or Banco de Venezuela SA Banco Universal) related to the oil and gas sector.

# General License Updates CONTINUED

- **Transactions Involving Petróleos de Venezuela, S.A. (PdVSA)**
  - In **October 2023**, OFAC amended three relevant licenses to remove the secondary trading ban on certain Venezuelan sovereign bonds and PdVSA debt and equity.
    - [GL 3I](#) authorized dealings in specified bonds;
    - [GL 9H](#) authorized transactions that are ordinarily incident to dealings in any debt or equity in PdVSA; and
    - [GL 5M](#) authorized transactions related to the financing for PdVSA 2020 8.5 Percent Bond.
  - **November 2023:** OFAC issued [GL 8M](#) authorizing the limited maintenance of essential operations, contracts, or other agreements with four select entities, that: (i) are for safety or the preservation of assets in Venezuela; (ii) involve PdVSA; and (iii) were in effect prior to July 26, 2019.
    - The “Covered Entities:” Halliburton, Schlumberger Limited, Baker Hughes Holdings LLC, and Weatherford International

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## VENEZUELA

# Other Restrictions

- All other restrictions imposed by the U.S. on Venezuela remain in place. These include, among others:
  - Drug trafficking-related sanctions under the Foreign Narcotics Kingpin Designation Act;
  - Transactions in Venezuela involving persons located in Russia or any entity owned or controlled by a person located in Russia;
  - Payments in the GoV's Petro cryptocurrency;
  - Transactions involving GoV persons blocked pursuant to E.O. 13884; and
  - Terrorism-related sanctions, such as those under E.O. 13224.
- OFAC guidance:
  - [“Frequently Asked Questions Related to the Suspension of Certain U.S. Sanctions with Respect to Venezuela”](#)

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## VENEZUELA

# On the Horizon for Venezuela

- Further erosion of the Barbados Agreement
- No clear path for legalizing opposition parties' participation in elections
- Current boundaries between Guyana and Venezuela date to 1899
- December 3, 2023: Maduro held a referendum to claim sovereignty over Essequibo
  - The territory is about two-thirds of the territory of Guyana and roughly the size of Greece
- December 10, 2023 – Guyana agrees to talks with Venezuela under pressure from Brazil and the Caribbean trading bloc



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SANCTIONS UPDATES

# Other Programs

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# Publication of Mali Sanctions Regulations

- August 2023: Regulatory Amendment
  - OFAC amended the Mali Sanctions Regulations and reissued them in their entirety
  - In E.O. 13882, the President determined that the situation in Mali, including repeated violations of ceasefire arrangements made pursuant to the 2015 Agreement on Peace and Reconciliation in Mali; the expansion of terrorist activities into southern and central Mali; and the intensification of drug trafficking and trafficking in persons, human rights abuses, and hostage-taking constituted an unusual and extraordinary threat to the national security and foreign policy of the U.S.
    - § 555.201 Prohibited transactions
      - The making or receipt of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked
  - General Licenses
    - § 555.506 U.S. financial institutions are authorized to invest and reinvest blocked assets
    - § 555.507 Provision of certain legal services to or on behalf of blocked persons
    - § 555.509 Emergency medical services

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# Sanctions Compliance Guidance for the Provision of Humanitarian Assistance to the Palestinian People

- **November 2023:** OFAC Compliance Communiqué
  - Global Terrorism Sanctions Regulations, 31 C.F.R. Part 594 (GTSR), or the Foreign Terrorist Organization Sanctions Regulations, 31 C.F.R. Part 597 (FTOSR)
    - U.S. persons are generally prohibited from engaging in transactions with blocked persons and groups which includes Hamas and Palestinian Islamic Jihad (PIJ), but Treasury remains committed to ensuring legitimate humanitarian aid can continue to flow to the Palestinian people in Gaza
  - NGO Activities
    - Sections 594.520 and 597.516 authorize certain NGO non-commercial, humanitarian-related activities necessary for the provision of aid to the Palestinian people
  - Provision of Agricultural Commodities, Medicine, and Medical Devices
    - Generally not prohibited under U.S. sanctions to provide goods to Gaza or the West Bank. Sections 594.521 and 597.517 also authorize the provision of such goods to blocked persons
  - International Organizations
    - Sections 594.519 and 597.515 authorize the official business of certain international organizations

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# Provision of Humanitarian Assistance and Trade to Combat COVID–19

- In June 2023, OFAC updated a fact sheet explaining the exemptions, exceptions, and authorizations pertaining to humanitarian assistance and trade available in many U.S. sanctions programs

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# NDAA 2024 – Highlights

- Nuclear Fuel Security Act – establishes a Nuclear Fuel Security Program to boost domestic uranium mining, production, enrichment
- Restrictions on DoD purchases of EV batteries from certain Chinese battery tech companies
- Minerals, natural resources – mandate to develop a strategy to achieve a “critical mineral independence” from China, Russia, Iran, and North Korea
- Counters CCP Aggression – funds the Pacific Deterrence Initiative; builds more military construction projects; funds innovative new technologies; requires military to protect domestic military installations from CCP encroachment; reaffirms support for Taiwan
- Anti-Corruption focus – reporting and investigating
- Foreign Extortion Prevention Act
  - Makes it illegal for foreign official to seek a bribe (section 5101)
- Global Magnitsky Sanctions determinations
- Focusing on supply chain and human rights for sourcing critical minerals
- AUKUS – trilateral defense agreement between Australia, the UK, and the United States

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SANCTIONS UPDATES

# OFAC Compliance and Enforcement Trends in 2023

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# Tri-Seal Compliance Note: Voluntary Self-Disclosure of Potential Violations

- In July 2023, the Departments of Treasury, Justice, and Commerce issued a Tri-Seal Compliance Note to summarize procedures for voluntarily self-disclosing violations of U.S. sanctions and export control laws
  - Self-disclosing potential violations can provide significant mitigation of civil or criminal liability, the extent of which depends on the agency, but may extend so far as a nonprosecution agreement or a reduction of 50 percent in the base penalty amount for civil or criminal penalties
- OFAC
  - In cases where a civil monetary penalty is warranted, a qualifying self-disclosure can result in a 50 percent reduction in the base amount of a proposed civil penalty
  - Qualifying self-disclosures must occur prior to, or simultaneous with, the discovery by OFAC or another government agency of the apparent violation or a substantially similar apparent violation

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# Enforcement Actions 2023

- **Traditional Financial Institutions**

- March 2023: [settlement](#) with **Wells Fargo Bank, N.A.**
  - Wells Fargo agreed to remit US\$30M to settle its potential civil liability for apparent violations of sanctions against Iran, Syria, and Sudan
  - Wells Fargo and its predecessor provided a foreign bank located in Europe with software that the foreign bank then used to process trade finance transactions with U.S.-sanctioned jurisdictions and persons
- June 2023: [settlement](#) with **Swedbank AS**
  - Swedbank Latvia has agreed to remit \$3,430,900 to settle its potential civil liability for 386 apparent violations of OFAC's Crimea sanctions
  - A customer of Swedbank Latvia used Swedbank Latvia's e-banking platform from an internet protocol address in Crimea to send payments to persons in Crimea through U.S. correspondent banks
- September 2023: [settlement](#) with **Emigrant Bank**
  - Emigrant agreed to remit \$31,867.90 to settle its potential civil liability for apparent violations of sanctions against Iran.
  - Emigrant maintained a Certificate of Deposit account on behalf of two individuals ordinarily resident and located in Iran, despite having actual knowledge of their Iranian address and location, and processed 30 transactions totaling \$91,051.13

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# Enforcement Actions 2023 CONTINUED

- **Digital Assets Firms**

- **December 2023:** OFAC settled with **CoinList Markets LLC** (CLM), a virtual currency exchange, for \$1,207,830, for processing transactions on behalf of users ordinarily resident in Crimea. CLM's screening procedures "failed to capture users who represented themselves as resident of a non-embargoed country but who nevertheless provided an address within Crimea"
- **November 2023:** OFAC settled with **Binance Holdings, Ltd.**, a virtual currency exchange, for \$968,618,825 related to apparent violations of Iranian, Syrian, North Korean, and Cuban sanctions. Binance also agreed to retain an independent compliance monitor for five years
- **May 2023:** OFAC settles with **Poloniex, LLC**, an online digital assets trading and settlement platform, for \$7,591,630 related to apparent violations of multiple sanctions programs. Poloniex authorized customers who self-identified as residing in sanctioned countries to continue using Poloniex's platform and did not begin implementing a block on IP addresses and logins from sanctioned jurisdictions until three years after beginning operations
- **March 2023:** OFAC settled with **Uphold HQ Inc.**, a U.S. digital trading platform, for \$72,230.32 related to apparent violations of multiple sanctions programs. Uphold maintained accounts for several customers who provided information during the account onboarding process indicating their location in sanctioned countries

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# Enforcement Actions 2023 CONTINUED

- **Other Enforcement Actions**

- December 8, 2023: OFAC settled with [Nasdaq](#) for \$4,040,923 for a former wholly owned foreign subsidiary's apparent violations of sanctions on Iran. Nasdaq OMX Armenia OJSC, the former owner and operator of the Armenian Stock Exchange, processed trades and settled payments through the ASE platform involving a subsidiary of Bank Mellat
- December 21, 2023: OFAC settled with Privilege Underwriters Reciprocal Exchange ([PURE](#)) for \$466,20039 for apparent violations of Ukraine-/Russia-related sanctions by engaging in transactions related to four insurance policies involving a blocked Panama-based company owned by SDN Viktor Vekselberg

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SANCTIONS UPDATES

# Predictions for 2024

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# Potential Sanctions on China

- In 2023, we saw Chinese evasion trends related to Russia, Iran, and North Korea, and heightened export control issues, including semiconductor export controls.
- In 2024, we can continue to expect increased scrutiny of China from an international trade perspective. That may include the imposition of sanctions in the event of an invasion of Taiwan.
- **China x Russia Model**
  - Should further sanctions be imposed, we could expect that the U.S. and allies would model coalition sanctions after Russia's invasion of Ukraine in February 2022.
  - Perhaps focused on specific persons and sectors in the PRC, potentially including certain political persons, persons trying to undermine democracy, and/or human rights abusers, the defense and military sector, and perhaps the financial sector.
- **Wind-Down Periods**
  - That said, as in the case with the 2022 Russia sanctions, we would expect OFAC to authorize short wind-down periods for U.S. Persons to wind down operations and business with targeted persons.

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# LATAM Predictions

- **Changing U.S. sanctions and export controls laws and regulations**
  - Complex political landscape in Latin America with a growing divide in left- and right-wing politics. Return of government-driven economies increasing potential risks for new sanctions.
  - Newly issued Venezuelan sanctions that are temporary and susceptible to change following Maduro's actions, including Maduro's recent referendum on Guyana.
  - Expected Cuban sanctions relaxations.
- **AML and FCPA concerns in the region**
  - Illicit activities linked to political corruption, human rights sanctions under the Global Magnitsky Human Rights Accountability Act (the Magnitsky Act), counter-narcotics, and the need to launder the proceeds of those activities.
- **Panama, Mexico, Colombia, El Salvador, Paraguay**
  - Countries with high SDN counts and newly designated politicians or ex-politicians that own big conglomerates with complex ownership structures.
  - 2024 presidential elections in Mexico, Venezuela, and El Salvador, among others.

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# Middle East Predictions

- In 2023, we saw increased focus on evasion trends in the Middle East and increased trade with Russia.
- **Iran-Related Sanctions:** targeted sanctions against UAE-based entities due to their involvement in evading Iran-related sanctions.
  - September 2023: OFAC designated UAE-based **Farhad Ghaedi Goods Wholesalers LLC**, a wholesaler of used cars and car parts, for facilitating the shipment of servomotors through Dubai for onward delivery to an Iran-based company, Pishgam Electronic Safeh Company (PESC).
- **Russia-Related Sanctions:**
  - Targeted sanctions against UAE-based entities for providing assistance to the Russian mercenary group, Wagner Group, engaged in the conflict in Ukraine.
  - FinCEN report identified 49 Turkish entities that were trading with Russia or acquiring U.S. goods on behalf of Russian entities.
- **Terrorism Funding:**
  - May 2023: OFAC designated an Omani national, **Abdulwahab Noor Abdi**, connected with the terrorist group al-Shabaab for illegal charcoal smuggling from Somalia.

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# Middle East Predictions CONTINUED

- **U.S.-Iran Tensions**

- In 2024, it is doubtful that the U.S. will want to make new deals with Iran, especially during an election year. Because many measures were already used against Iran from 2018 to 2020 during the Trump administration, there are not many options left for increasing punishments. Iran might test U.S. limits without crossing them, so occasional threats to infrastructure and shipping routes could continue.

- **Saudi Arabia, the UAE, and Oman**

- Governments and sovereign wealth funds in the region are increasingly focusing on the commercial sector. While the Saudi government's statement about not doing business with any international company without a regional headquarters in the kingdom after January 1, 2024, will likely change, it shows the importance placed on this. The growing concern of sanctions evasion by Iran, Russia, and terrorist organizations in the region could persist.

- **Israel/Palestine/Terrorism Designations**

In December 2023, the U.S. announced visa bans for Israeli settlers and Palestinians engaged in violence in the West Bank. We will likely see additional sanctions imposed as a result of the Israel/Gaza/Hamas conflict as well.

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# National Security/Foreign Investment Regulations and Reviews

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NATIONAL SECURITY/FOREIGN INVESTMENT  
REGULATIONS AND REVIEWS

# Notable Highlights Involving CFIUS

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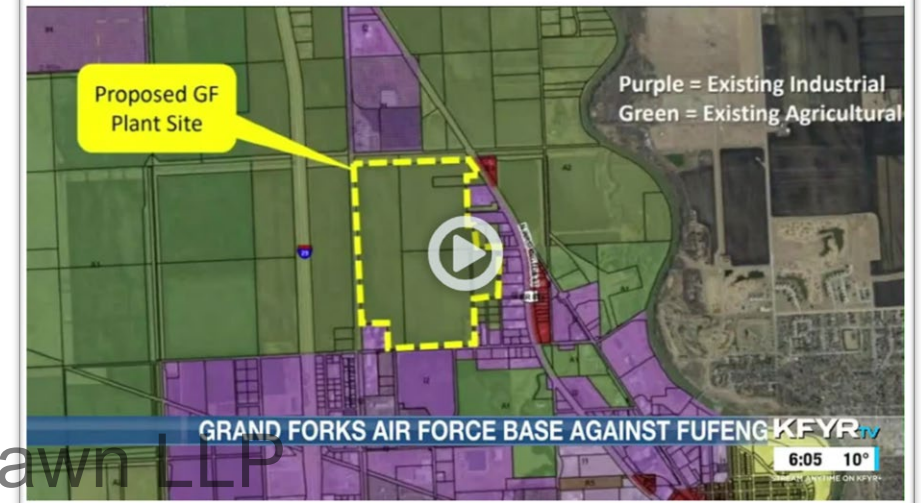
# Notable Highlights Involving the Committee on Foreign Investment in the United States (CFIUS)

- **Grand Forks City Council Blocks Fufeng Project**

On February 6, 2023, the Grand Forks City Council voted unanimously to cancel Fufeng USA's proposed plan to build a new corn mill processing plant outside Grand Forks, North Dakota.

- Fufeng USA planned to purchase approximately 300 acres of land in North Dakota to build a corn mill processing plant, approximately 12 miles from Grand Forks Air Force Base.
- In late 2022, CFIUS determined it does not have jurisdiction over the transaction. Grand Forks Air Force Base was not listed in Appendix 2 to Part 802 (the regulations have since been updated).
- Nevertheless, the Grand Forks City Council took matters into its own hands and voted to block the project.

## Fufeng corn milling plant project to be terminated; Air Force cites national security concerns



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# Notable Highlights Involving the Committee on Foreign Investment in the United States (CFIUS) CONT.

- **Eight Military Bases Added to CFIUS's Jurisdiction**

Following the Fufeng transaction, Treasury amended CFIUS regulations to add eight new bases to the list of highly sensitive military bases, Appendix A to Part 802.

- CFIUS now has jurisdiction over any transactions where a foreign person acquires real estate within 99 miles of the following bases:
  - Air Force Plant 42, located in Palmdale, California
  - Dyess Air Force Based, located in Abilene, Texas
  - Ellsworth Air Force Base, located in Bod Elder, South Dakota
  - Grand Forks Air Force Base, located in Grand Forks, North Dakota
  - Iowa National Guard Joint Force Headquarters, located in Des Moines, Iowa
  - Lackland Air Force Base, located in San Antonio, Texas
  - Laughlin Air Force Base, located in Del Rio, Texas
  - Luke Air Force Base, located in Glendale, Arizona

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# Notable Highlights Involving the Committee on Foreign Investment in the United States (CFIUS) CONT.

- **CFIUS Published Two FAQs**

- Regarding timing for mandatory filings:
  - Parties are required to submit a mandatory CFIUS filing at least 30 days before closing, even if the transaction parties have deliberately structured the transaction to delay the transfer of certain rights until after CFIUS approval.
- Regarding ownership disclosure requirements for investment funds:
  - CFIUS has the right to request information about all foreign investors that are involved in a transaction, directly or indirectly, including limited partners (LPs) in an investment fund.

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# Notable Highlights Involving the Committee on Foreign Investment in the United States (CFIUS) CONT.

- **Gotion Says CFIUS Has No Jurisdiction Over Proposed Battery Plant**

- Gotion, Inc., a subsidiary of a Chinese electric vehicle manufacturer, announced that it had submitted its plans to build a US\$2.4B electric vehicle battery plant in Mecosta County, Michigan.
- In November 2023, the board members of a Big Rapids-area township were recalled for their support for the Gotion battery plant.
- At a meeting in December 2023, a newly elected township board changed the township's position on the project, voting to officially rescind support for the project.

## Green Charter Twp rescinds resolution approving water extension to Gotion site

Cathie Crew, Staff writer

Dec. 6, 2023



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# Notable Highlights Involving the Committee on Foreign Investment in the United States (CFIUS) CONT.

- **CFIUS's Annual Report Shows Troubling Signs for Dealmakers**
  - On July 31, 2023, CFIUS published its annual report providing statistics for calendar year 2022 and the statistics are not good for dealmakers.
    - New record for the highest number of withdraw-refiles.
    - New record for the highest number of mitigation agreements in a single year.
    - New record for the highest number of Notices requested for transactions that were originally filed as Declarations.
    - Chinese companies are filing fewer transactions with the Committee.
    - The CFIUS process is becoming more difficult to negotiate in a timely and predictable manner.

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# Notable Highlights Involving the Committee on Foreign Investment in the United States (CFIUS) CONT.

- ***The Wall Street Journal Reveals Details of Internal CFIUS Deliberations***
  - On August 12, 2023, *The Wall Street Journal* published an article revealing information about CFIUS's confidential deliberations relating to a transaction where the U.S. chemical company, DuPont, sold its sustainable-materials business to a Chinese entity.
  - The article is noteworthy because CFIUS is a confidential process. There are rarely articles like this that identify transactions undergoing CFIUS review and give an overview of how CFIUS dealt with a particular case.



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NATIONAL SECURITY/FOREIGN INVESTMENT  
REGULATIONS AND REVIEWS

# Other Relevant National Security Developments

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# Other Relevant National Security Developments

- **U.S. Announces New Restrictions on Outbound Investment to China**

- On August 9, 2023, the Biden administration issued an Executive Order (E.O.) announcing new restrictions on the ability of U.S. investors to invest in Chinese companies developing certain types of sensitive technologies and products.
- The E.O. is titled “Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern.” The only “country of concern” identified in the E.O. is the People’s Republic of China (including the Special Administrative Regions of Hong Kong and Macau).
- The E.O. directs Treasury to identify sensitive technologies and products within the following three industry sectors:
  - (1) semiconductors and microelectronics;
  - (2) quantum information technologies; and
  - (3) artificial intelligence.

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# Other Relevant National Security Developments CONTINUED

- **Treasury Publishes Advance Notice of Proposed Rulemaking (ANPRM) for the “outbound investment program”**
  - Treasury’s proposed rule was published the same day as President Biden’s E.O. on outbound investments in Chinese companies.
  - Unlike CFIUS, the outbound investment program will not review transactions on a case-by-case basis. Investors would be responsible for making their own determination on whether an investment is prohibited, requires notification, or can be made without notification.
  - The ANPRM also notes the outbound investment program is not intended to prohibit all investments in China. Nor is it intended to create sector-wide bans on all investments in (1) semiconductors and microelectronics, (2) quantum information technologies, and (3) artificial intelligence.
  - Instead, the program will be designed to prohibit or require notification of investments in Chinese companies working on a narrow, targeted set of technologies and products within those three industry sectors.

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# Other Relevant National Security Developments

CONTINUED

- **President Biden Releases Executive Order on Artificial Intelligence**

- On October 30, 2023, President Biden issued a major, sweeping E.O. on Artificial Intelligence (AI). Given the potential risks posed by AI, the E.O. attempts to create the framework for a coordinated, Federal Government-wide approach to developing AI in a safe, secure, and trustworthy manner.
- The E.O. directs several federal agencies to perform certain tasks relating to AI. A few highlights include:

**National Institute of Standards and Technology (NIST):**

- Directed to develop industry standards for the safe development of AI systems, including generative AI and dual-use foundation models.
- Required to establish guidelines for AI developers to conduct AI red-teaming tests.

**Department of Commerce:**

- Tasked with requiring companies to submit reports to the federal government whenever they intend to develop dual-use foundation models or acquire a large-scale computing cluster.
- Required to propose regulations that would require IaaS providers to report to the federal government whenever a foreign person trains AI models on the servers in their data centers that could be used in malicious cyber-enabled activity.

**Department of Homeland Security:**

- Required to submit a report to POTUS on AI models that may present a CBRN threat.

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# Other Relevant National Security Developments CONTINUED

- **DOE Publishes Guidance on “Foreign Entities of Concern” (FEOCs)**
  - On December 4, 2023, the U.S. Department of Energy (DOE) published its proposed interpretation of the statutory definition of “foreign entity of concern” (FEOC) in the Infrastructure Investment and Jobs Act of 2021, commonly known as the Bipartisan Infrastructure Law (BIL).
  - The BIL and the Inflation Reduction Act of 2022 provide significant government subsidies for companies operating in the advanced battery supply chain in the United States. The government subsidies are **not available** for companies that have FEOCs in their supply chains.
    - According to their guidance, an FEOC is a foreign entity that is subject to the jurisdiction of a covered nation government (namely, China).
    - An entity is subject to the jurisdiction of the Chinese government if the company is incorporated in China, has its principal place of business in China, or is a non-Chinese company that processes or manufactures battery components and materials in China.

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# Other Relevant National Security Developments CONTINUED

- **House Selection Committee on China Releases Year-End Report**
  - On December 12, 2023, the Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party (the China Select Committee) issued a major new report calling for a new strategy for America's economic and technological competition with the People's Republic of China (PRC).
  - The report contains a list of policy recommendations for how the United States can:
    - (1) reset the terms of its economic relationship with the PRC;
    - (2) stem the flow of U.S. capital and technology fueling the PRC's military modernization and human rights abuses; and
    - (3) invest in technological leadership and build collective economic resilience in concert with allies.

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NATIONAL SECURITY/FOREIGN INVESTMENT  
REGULATIONS AND REVIEWS

# CFIUS Enforcement

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# CFIUS Enforcement

- CFIUS did not publish any enforcement actions on its website in 2023.
- However, during this year's CFIUS annual conference, Treasury stated it had issued some penalties and was delaying publicizing them.
- We expect those penalties to be publicized by Treasury in 2024.

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NATIONAL SECURITY/FOREIGN INVESTMENT  
REGULATIONS AND REVIEWS

# Predictions for 2024

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# Predictions for 2024

- Dealmakers will continue to have trouble negotiating the CFIUS process in a predictable and timely manner.
- CFIUS will issue new regulations updating FIRRMA.
- CFIUS will publicize enforcement actions.
- Treasury will continue to advance new regulations for outbound investment programs.
- DOE will issue final rules on its interpretation of FEOC.

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# U.S. Export Controls

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U.S. EXPORT CONTROL DEVELOPMENTS

# Export Administration Regulations Developments

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# Export Administration Regulations (EAR) Developments – Semiconductors

In 2023, BIS updated the novel 2022 U.S. export controls on semiconductors, semiconductor manufacturing equipment, and related software and technology.

- **Macau.** On January 17, BIS added the Macau Special Administrative Region to the controls and imposed Nuclear Nonproliferation (NP) Column 2 controls on China and Macau
- **October 2.0.** On October 17, BIS released significant updates to the semiconductor-related controls. In particular, BIS:
  - **Expanded controls to all U.S. arms-embargoed countries and Macau.**
  - **Created a semiconductor manufacturing “back-end” exception.** There are two iterations applicable to both semiconductor manufacturing equipment and “advanced-node” semiconductors that will go to facility in China producing or developing semiconductors, depending on the facility circumstances and “knowledge” of the exporter/reexporter.
  - **Redefined the controls with ECCN 3A090 as the anchor.** Any hardware, software, or technology that is a semiconductor meet the ECCN 3A090 parameters or that is related to the production or development of semiconductors meeting the ECCN 3A090 parameters generally falls under a new “.z” paragraph and is subject to special licensing requirements for many Country Group D countries and potentially eligible for a new License Exception Notified Advanced Computing (NAC).

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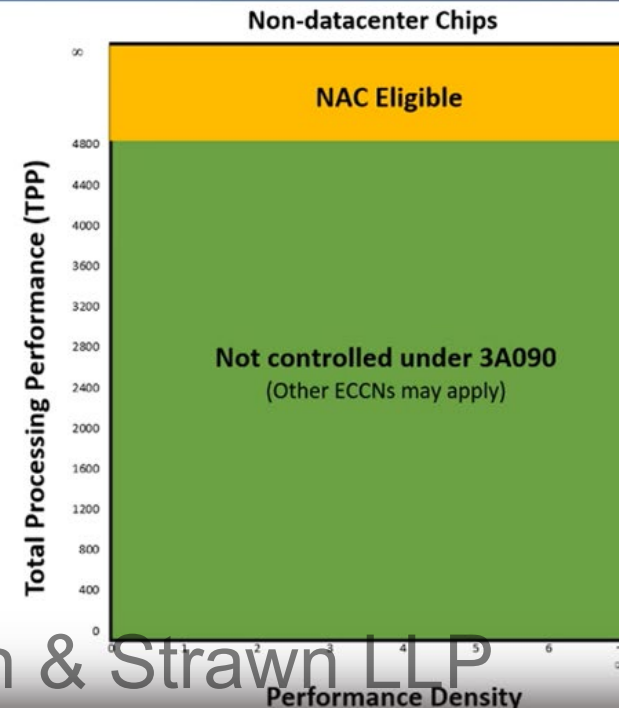
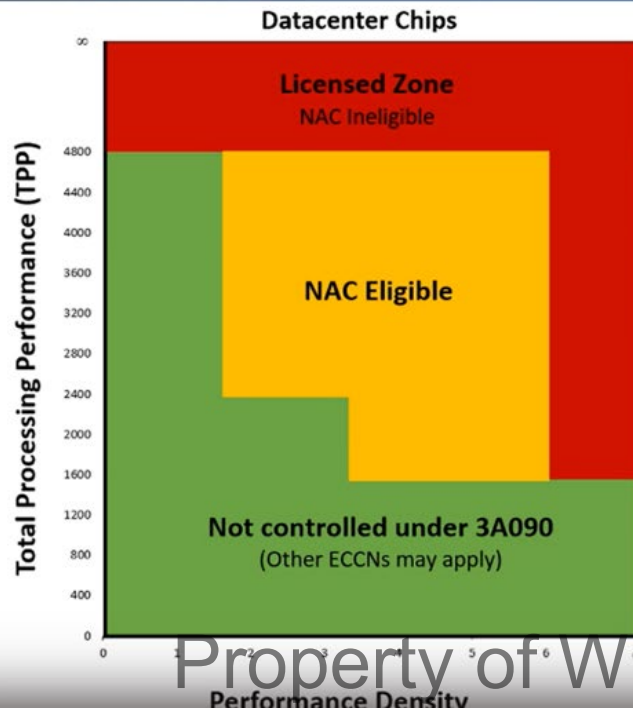

# Export Administration Regulations (EAR) Developments – Semiconductors CONTINUED

- **Issued a Temporary General License.** Provides certain U.S. and allied companies with operations in China the ability to engage in certain license required activities until the expiration of the TGL (Dec. 31, 2025).
- **Created a zero (0) percent *de minimis* rule for certain lithography equipment not controlled by exporting country.**

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# Export Administration Regulations (EAR) Developments – Semiconductors CONTINUED

Key Updates: Understanding 3A090



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# Export Administration Regulations (EAR) Developments – Russia

Periodic BIS escalations of export controls against Russia (and Belarus) continued in 2023, albeit at a more moderate pace than in 2022.

- **Expansion of Luxury Goods Sanctions.** On February 24, the first anniversary of Russia's further invasion of Ukraine, BIS expanded its luxury goods sanctions by adding 276 six-digit Harmonized Tariff Schedule (HTS) codes.
- **Expansion of Russian and Belarusian Industry Sector Sanctions (RBISS).** On February 24, BIS added various chemical and biological weapons precursors as well as 322 HTS codes for industrial items, imposed a policy of denial for licenses to export, reexport, or in-country transfer of items used for deepwater, Arctic offshore, or shale projects in Russia or Belarus.
- **Targeted Iran's Unmanned Aerial Vehicle (UAV) Industry.** On February 24, BIS imposed license requirements for certain EAR99 items destined to Iran identified by HTS codes and added a new Iran-specific FDP rule.

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# Export Administration Regulations (EAR) Developments – Russia CONTINUED

- **Expanded Russia/Belarus FDP Rule.** On February 24 and May 19, BIS revised the rule to reference EAR99-designated items and to apply to the “temporarily occupied” Crimea Region of Ukraine, respectively.
- **Second Expansion of RBISS.** On May 19, BIS further expanded export controls on Russia and Belarus by, *inter alia*, adding 1,224 HTS codes (including the entirety of Chapters 84, 85, and 90), six chemicals, and other items to the RBISS.

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# Export Administration Regulations (EAR) Developments CONTINUED

- Entity List
  - The End-User Review Committee added over 465 entities to the Entity List.
- U.S. cooperation with allies on export controls policy continues to grow.
  - **Five Eyes Partners (Australia, Canada, New Zealand, U.K., and U.S.)**
    - Agree increase information exchange and cooperation on export enforcement.
  - **Relaxed Controls to the Global Export Controls Coalition (GECC):**
    - Removed license requirements for certain pathogens, toxins, and related technologies to certain allies.
    - Increased license exception availability for GECC countries for certain missile technology items.
    - Requested comments on revisions to License Exception STA to enhance cooperation.

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U.S. EXPORT CONTROL DEVELOPMENTS

# International Traffic in Arms Regulations

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# International Traffic in Arms Regulations (ITAR) Developments

2023 was not a highly active year in ITAR-related regulatory changes. However, the growing demand for a “free (arms) trade” mentality with close (e.g., Australia) and strategic (e.g., Ukraine, Taiwan) allies is likely to lead to a higher rate of regulatory change in 2024.

- **Canada-Australia-UK Excluded Items List Amended**
  - Effective May 12, Supplement No. 1 to part 126 was amended to expand the types of defense articles that may be exported and defense services that may be furnished pursuant to the Canadian exemption and the bilateral treaties between the U.S. and Australia and the U.K., respectively, pertaining to defense trade cooperation.
- **U.S. Munitions List Amendments**
  - Effective May 21, removed certain high-energy storage capacitors from Category XI and identified the high-energy storage capacitors that remain in Category XI.

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# International Traffic in Arms Regulations (ITAR) Developments CONTINUED

- **Open General License Pilot Program Extended**
  - OGLs originally launched in 2022 were extended through July 31, 2026 to facilitate certain reexports and in-country retransfers to the Australian, Canadian, and United Kingdom governments and to certain persons within those countries.
- **Temporary Suspension of Cyprus' ITAR Section 126.1 Proscribed Destination Status Extended**
  - Effective October 1, State extended its temporary suspension of Cyprus' ITAR § 126.1 proscribed destination status through September 30, 2024.

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U.S. EXPORT CONTROL DEVELOPMENTS

# Notable Export Controls Enforcement Actions

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# BIS Enforcement Policy Memos

- **April 18 policy memo announces significant changes to EAR civil enforcement**
  - **Decision Not to Disclose an Aggravating Factor.** If a company knows of a “significant” potential violation and “affirmatively” decides against disclosure to BIS, that decision will be an aggravating factor in any penalty calculation if BIS later discovers the violation.
  - **Informant Credit.** Parties that inform BIS of information leading to a BIS enforcement action will receive credit for “extraordinary cooperation” in any future enforcement action against the informant.
- **July 26 policy memo announces amendment to Boycott Reporting Form**
  - **Requires Disclosure of Party Making Boycott Request.** According to the memo, “[i]dentification of the specific party that made the boycott request will enable [the Office of Antiboycott Compliance] to more easily investigate and hold accountable – whether under the antiboycott regulations, through diplomatic engagement, or both . . . .”

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# Interagency Enforcement Cooperation

**Disruptive Technology Strike Force.** On February 16, DOJ and the Department of Commerce launched the Strike Force. On May 16, Justice announced its first enforcement actions since the establishment of the Strike Force in a series of five Russia-related cases and four arrests from five different U.S. Attorney's offices. BIS issued Temporary Denial Orders against several companies and individuals in connection with the cases. Later in the year, BIS issued a series of temporary denial orders in support of the Strike Force in cases involving Russia.

## **Joint Compliance Notices:**

- **March 2 (BIS, DOJ, OFAC)** – Third-party intermediaries used to evade export controls
- **May 19 (BIS, FinCEN)** – Suspicious Activity Report (SAR) update for Russia export control evasion
- **July 26 (BIS, DOJ, OFAC)** – Voluntary self-disclosure of potential violations
- **November 6 (BIS, FinCEN)** – SAR key term for global export evasion and red flags
- **December 12 (BIS, DDTO, DHS, DOJ, OFAC)** – Maritime and transportation industries

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# Select EAR Enforcement Actions

2023 included the announcement of perhaps BIS' most complicated enforcement action ever involving violations of the foreign direct product rule relating to sales to Huawei of hard disks made outside the U.S.

- **Seagate Technology LLC (Seagate)**
  - On April 19, BIS announced its largest-ever standalone administrative penalty in BIS history in an enforcement action against Seagate Technology LLC. BIS imposed the penalty to resolve alleged violations of the EAR's foreign direct product rule related to selling hard disk drives to Huawei Technologies Co. Ltd. (Huawei). The BIS resolution also included a multi-year audit requirement and a five-year suspended Denial Order. The penalty was imposed for Seagate's continued business with Huawei after BIS's August 2020 controls over certain foreign-produced items to Huawei. Seagate had continued to do business with Huawei despite the fact that its only two competitors had stopped selling the hard disk drives to Huawei, resulting in Seagate becoming Huawei's sole source provider.

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# Select EAR Enforcement Actions CONTINUED

- **3D Systems Corporation**

- The BIS settlement resolved 19 violations by 3D Systems of the EAR by exporting controlled aerospace technology and metal alloy powder to China and export-controlled technology to Germany without the required licenses.

- **Microsoft Corporation**

- On April 6, BIS announced imposition of a combined US\$3.3M in civil penalties against Microsoft Corporation for alleged and apparent violations of U.S. export controls and sanctions laws. The joint BIS/OFAC action involved violations by Microsoft's Russian subsidiary involving Ukraine/Russia, Cuba, Iran, and Syria.

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# Select BIS Antiboycott Enforcement Actions

- **Regal Beloit FZE (Dubai)**
  - On May 18, BIS announced imposition of a \$283,500 penalty against Regal Beloit FZE (Dubai), a controlled-in-fact foreign subsidiary of Regal Beloit America, Inc. That BIS action resolved 84 violations of the EAR's antiboycott provisions and was the first major administrative action reached under the Enhanced Enforcement of Antiboycott Rules.
- **Pratt & Whitney Component Solutions, Inc.**
  - On September 7, BIS announced a \$48,750 penalty against PWCS for failing to report the receipt of requests from Qatar Airways to refrain from importing Israeli-origin goods into Qatar in fulfillment of purchase orders from Qatar Airways.

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# Select ITAR Enforcement Actions

ITAR enforcement in 2023 included a somewhat rare foreign defense articles “brokering activities” enforcement case (Island Pyrochemical Industries Corp.), a violation over export of an electro-optical imaging video tracker, hobby rocket motors, and a gas turbine engine (VTA Telecom Corp.), and a significant civil penalty (US\$20M) for ITAR technical data and recordkeeping violations (3D Systems Corp.) – all reminding industry that the ITAR is about much more than shipping U.S.-origin guns and ammunition.

- **Island Pyrochemical Industries Corp.**

- On August 25, DDTC concluded an administrative settlement with IPI. DDTC alleged IPI and its affiliates engaged in ITAR-controlled brokering activities by facilitating the transfer of foreign origin chemical defense articles from China to Brazil without authorization. DDTC further alleged IPI falsely listing itself as a manufacturer, seller, and/or source of defense articles on DSP-5 license applications.
- DDTC directed IPI to pay a civil penalty of **\$850,000**, half of which was suspended on the condition that IPI use the suspended funds for remedial compliance costs.
- Aggravating Factors: IPI’s failure to voluntarily disclose its alleged unauthorized activities, the alleged violations involved a state-owned corporation of ITAR § 126.1 proscribed destination (China), and certain alleged violations involved false statements, misrepresentations, or omissions of material fact.

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# Select ITAR Enforcement Actions CONTINUED

- **VTA Telecom Corporation**

- On April 20, DDTC concluded administrative proceedings against VTA. VTA allegedly exported or attempted to export ITAR-controlled defense articles without authorization to Vietnam. The articles included an electro-optical imaging (EO Imaging) video tracker and related technical data, hobby rocket motors, and a gas turbine engine. VTA also allegedly made knowingly false statements on shipping documentation.
- VTA agreed to a **three-year debarment**.
- Aggravating Factors: VTA's alleged exports and attempted exports to an ITAR § 126.1 proscribed destination at the time of the alleged violations (Vietnam), and VTA's failure to voluntarily disclose the alleged violations as aggravating factors. Under a consent agreement.

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# Select ITAR Enforcement Actions CONTINUED

- **3D Systems Corporation**

- On February 24, DDTC concluded an administrative settlement with 3D Systems. In the proposed charging letter, DDTC alleged 3D Systems and its subsidiaries engaged in three categories of ITAR violations.

DDTC alleged:

1. 3D Systems without authorization to or within China, Germany, and Taiwan **exported, reexported, and retransferred (in-country) technical data.**
  2. 3D Systems provided **unauthorized access to ITAR-controlled data in the United States** (i.e., a deemed export) to two non-U.S. person employees from India and the United Kingdom, respectively.
  3. 3D Systems **failed to maintain adequate records.**
- Under a consent agreement, 3D Systems agreed to a civil penalty of US\$20M, half of which was suspended on the condition that 3D Systems apply this amount to remedial compliance costs.
  - Aggravating Factors: 3D Systems' failure to voluntarily disclose its alleged unauthorized activities, 3D Systems' disregard for export control compliance requirements and lack of a formal compliance program, and the violations involving exports and retransfers to China, an ITAR § 126.1 proscribed destination.

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U.S. EXPORT CONTROL DEVELOPMENTS

# Predictions for 2024

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# Predictions – China

- **Congressionally-Driven Changes.** In December 2023, the Foreign Affairs Committee released a scathing report describing fifteen (15) specific China-focused problems with BIS operations and recommendations for resolving each of them, including aggressive policies such as implementation of a 50 percent ownership rule for the Entity List. It is unclear what recommendations BIS will take up and at what pace but expect some movement on the regulatory calendar by the end of 2024 responding to the report.
- **Semiconductors:** Expect continued adjustment, update, and refinement of U.S. export controls on semiconductors, semiconductor manufacturing equipment, and related software/technology driven by China's ability to evade U.S. controls.
- **Contingent on Chinese Action Against Taiwan:** In the event of a China-imposed invasion or siege of Taiwan, expect the U.S. export controls response to resemble measures taken against Russia, with (i) extensive lists of EAR99-designated items made unavailable for export to China, (ii) frequent use of the Entity List, and (iii) the creation of new foreign-produced direct product rules implemented in coordination with U.S. allies in the Indo-Pacific region.

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# Predictions – Other Regions

- **Russia/Ukraine**

- U.S. export controls against Russia have room to expand. As the war in Ukraine drags on, BIS may continue to add EAR99-designated items to the Industry Sector Sanctions.
- U.S. domestic arms supply politics may determine the outcome of the war. Inability to provide timely funding and authorizations for the heavy artillery munitions needed for the Ukrainian defense could alter the course of the war.

- **Middle East**

- Possible increased enforcement of BIS anti-foreign boycott regulations due to conflict in Israel/Palestine.
- Increased public scrutiny of U.S. arms transfer policies and procedures as opposition to U.S. support for Israeli actions in Gaza grows.

- **LATAM**

- Possible easing of Cuba export controls in line with overall Cuba sanctions policy.
- Possible increase in Venezuela export controls *if* Venezuela moves to annex Guyanese territory.

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# Predictions – Thematic

- **Financial Institutions**

- Expect continued angst among financial institutions about the applicability of U.S. export controls—particularly General Prohibition Ten—to their trade finance operations leading to higher compliance burdens within financial institutions and to de-risking affecting trade participants.
- Zealous enforcement agents may seek to penetrate deeper into the role of financial institutions in alleged violations, particularly relating to Russia or China.

- **Human Rights-Based Export Controls**

- Following the creation of the Export Controls and Human Rights Initiative in 2021 among the U.S. and key allies in the Summit for Democracy, the Subscribing States endorsed a Code of Conduct. Expect an increasing prominence of the prevention of human rights abuses in U.S. and allied export controls.

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# Predictions – Thematic CONTINUED

- **Information and Communications Technology and Services**
  - BIS will likely publish additional information on the ICTS rules established in EO 13873 of May 17, 2019—specifically, defining the types of controlled ICTS transactions, the end users and end uses that are prohibited, and procedures for obtaining an authorization.
- **Brain-Computer Interface Proposed Rules**
  - Expect BIS to release a notice of proposed rulemaking on brain-computer interface technology after it held a conference on the issue in February 2023.

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# Predictions – ITAR

- **Remote Work**

- Expect publication of a “regular employee” definition more closely aligned to the modern reality of remote work.

- **Consolidation, Restructuring, and Modernization**

- Expect DDTC to remodel the U.S. Munitions List (USML), consolidate license exemptions into one location, and to further restructure several parts in Title 22 of the CFR.

- **Semiconductors**

- Expect further clarity on the types of semiconductors and circuit boards that warrant control on the USML rather than the already aggressive controls under the EAR.

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# U.S. – China Trade

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U.S.-CHINA TRADE REVIEW

# Setting up the Board

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# 2021 – China Establishes Counter-Sanction Regime

- Provisions on the Unreliable Entity List (MOFCOM) (**UEL**)
- PRC Export Control Law
- Measures on Obstructing the Unjustified Applications of Foreign Laws and Measures (MOFCOM) (**Blocking Measures**)
- Anti-Foreign Sanctions Law (**AFSL**)

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# 2022 – Zero-COVID

- April to June, Shanghai was in full lockdown
  - Economic slowdown
- Zero-Covid lifted in December 2022
  - Business is slow to return
  - U.S.-China flights still limited

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# 2023 Chinese Legislative Activity of Note

- Anti-Espionage Law (April 2023)
- Measures for the Standard Contract for Outbound Cross-Border Transfer of Personal Information (February 2023)
- Regulations to Standardize and Promote Cross-Border Data Flows (Draft for Comments) (October 2023)

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# 2023 US Legislative Activity of Note

- UFLPA in full force
- CHIPS Act
- President Biden's Executive Order *Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern*
  - Semiconductors and microelectronics;
  - Quantum information technologies; and
  - Certain artificial intelligence systems.
- BIS Rules tightening export restrictions on advanced computing semiconductors

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U.S.-CHINA TRADE REVIEW

# Preliminary Moves

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# 2023 Summary of Events

- China allows U.S. regulators to review audit documents of U.S.-listed Chinese companies
- Congressional select committee formed
  - <https://selectcommitteeontheccp.house.gov/>
- China adds U.S. defense companies to Unreliable Entity List
- China bars critical information infrastructure operators from purchasing certain chips from Micron
- China places export controls on key metals for chip manufacturing
- China expands prohibitions and restriction on export of certain technologies such as laser radars, drones, and biotech products, as well as technology for extraction, processing, refining, and use of rare earths

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# 2023 Summary of Events

 **Jacob Harding** • You  
Counsel at Winston & Strawn  
10mo • 

Expect investigations, enforcement and counter-sanctions to increase as China fully restarts its economy after zero-Covid.

[...see more](#)



**GLOBAL TRADE & FOREIGN POLICY INSIGHTS**

**China Adds Lockheed Martin and Raytheon Missiles & Defense to the Unreliable Entity List**

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# 2023 Summary of Events

BUSINESS | ASIA

## Bain's Staff in Shanghai Questioned as China Targets Foreign Businesses

American businesses face increasingly risky environment in China

By [Dan Strumpf](#) [Follow](#)

Updated April 27, 2023 11:19 am ET

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BUSINESS | ASIA

## China Detains Japanese Employee From Drugmaker Astellas

Arrest on suspicion of spying follows Beijing's raid on Mintz Group

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March 27, 2023 6:01 am ET

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WORLD | ASIA | CHINA

## Chinese Authorities Raid Office of U.S. Investigations Firm Mintz Group

Company says staff members in Beijing were detained days before multinational executives gather for economic conference in the Chinese capital

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March 24, 2023 3:33 am ET

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◆ WSJ NEWS EXCLUSIVE | CHINA

## China Blocks Executive at U.S. Firm Kroll From Leaving the Mainland

Move highlights an increasing risk facing foreign companies in China—getting their employees out

By [Rebecca Teng](#) [Follow](#) and [Chun Han Wong](#) [Follow](#)

Updated Sept. 29, 2023 7:31 am ET

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# 2023 Summary of Events

## Chinese business & finance

### Global law firm Dentons' retreat exposes China risks

Pivot highlights dilemma sector faces as Beijing tightens anti-spying rules



Months before global law firm Dentons decided to decouple from its Chinese affiliate Dacheng, its staff in western nations were advised against travel to the country.

Some professionals who had visited China were “delayed by many weeks” when they attempted to leave, a person close to the firm said, prompting a policy change. Chinese authorities also made multiple “visits” to Dacheng sites, two people familiar with Dentons’ decision this week added.

Dentons had merged with Chinese firm Dacheng in 2015, and ever added Chinese characters to its logo © Andrew Kelly/Reuters

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U.S.-CHINA TRADE REVIEW

# Predictions for 2024

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KEY POLICY PLAYER

# Sheffield Hallam University



**Laura Murphy**  
Policy Advisor to the Under  
Secretary in the Office of  
Strategy, Policy, and Plans,  
U.S. Department of  
Homeland Security



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<https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/forced-labour-lab>

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# Predictions

- Due diligence on Chinese companies changes drastically
- Tit-for-tat chips competition continues
- Competition expands to advanced batteries
- Raw materials competition continues and new sources required
- Businesses, including Chinese businesses, continue to de-risk China
- Chinese companies continue to move international capacity to Southeast Asia and South America
- U.S. makes regulatory changes that affect e-commerce platforms

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# Anti-Corruption

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# 2023 Key Updates – FEPA

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# Foreign Extortion Prevention Act (FEPA)

- Section 5105 of the National Defense Authorization Act (NDAA)
  - Signed into law on December 22, 2023
- New law targeting the “demand” side of bribery
  - While FCPA targets the *supply* side of bribery, i.e., offering or paying a bribe, FEPA targets the *demand* side, i.e., requesting or receiving.
- FEPA will be added to the domestic bribery statute (18 U.S.C. § 201)
- Foreign officials were previously held accountable for bribery and corruption issues under other fraud-related statutes
  - E.g., money laundering, RICO, etc.
- Catching up with other international anti-bribery and anti-corruption statutes (such as the UK Bribery Act)

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# Foreign Extortion Prevention Act (FEPA)

CONTINUED

## Elements of a FEPA offense:

1. A foreign official or person selected to be a foreign official;
2. Corruptly demanding/receiving or agreeing to accept;
3. Anything of value personally, for other person or non-government entity;
4. By making use of mails or any means or instrumentality of interstate commerce;
5. From: Any person while in the territory of the United States; issuer; or domestic concern;
6. In return for: being influenced in the performance of any official act; being induced to do or omit to do any act in violation of the official duty of such foreign official or person; or conferring any improper advantage, in connection with obtaining or retaining business for or with, or directing business to, any person.

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# Foreign Extortion Prevention Act (FEPA)

CONTINUED

- Similarities with the FCPA
  - Jurisdictional hook:
    - Domestic concerns (any individual who is a citizen, national, or resident of the United States, or any corporation or business entity that has its principal place of business in the United States, or is organized under the laws of a state or territory of the United States)
    - Issuers (as defined in section 3(a) of the Securities Exchange Act)
    - Person in the territory of the United States
- Broad Foreign Official Definition
  - FEPA, however, also covers individuals acting in an “unofficial capacity” for government agencies.
  - FEPA does not explicitly apply to candidates for political office, but it adds to the definition “senior officials of foreign political parties.”

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# Foreign Extortion Prevention Act (FEPA)

## CONTINUED

- Key Differences from the FCPA
  - Official Act Requirement
    - Being part of the domestic bribery statute, FEPA continues to refer to an “official act”
  - Penalties
    - Penalties for violating FEPA will include imprisonment of up to 15 years and a fine of up to \$250,000, or three times the value of the bribe (whichever is greater).
  - Offenses subject to extraterritorial federal jurisdiction
    - Legislative intent and presumption that FEPA should overcome the general presumption against extraterritorial application
    - Challenges to come in the extraterritorial application (diplomacy, persons beyond territorial reach, lack of assets in the U.S., etc.)

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# 2023 FCPA Enforcement Trends

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# U.S. Strategy on Countering Corruption

## March 29, 2023 Commitment

- Reaffirming commitments from the first Strategy issued in 2021
- 5 pillars to fight corruption:
  1. Modernizing, coordinating and resourcing
    - Specific positions created or enhanced, USAID policies and guidance, DOJ strategic plan prioritizing anti-corruption
  2. Curbing illicit finance
    - Efforts to implement the new CTA, FinCEN advisories, cross-border partnerships
  3. Accountability
    - OFAC designations, DOJ and SEC actions, coordination and tasks forces, asset recovery
  4. Multilateral anti-corruption architecture
    - Hosting international conferences and participation in international efforts
  5. Diplomatic engagement and foreign assistance
    - Working with foreign government through innovative solutions, specific programs, etc.

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# U.S. Strategy on Countering Corruption CONTINUED

## December 11, 2023 Commitment

- 5 pillars to fight corruption
  1. Modernizing, coordinating and resourcing
    - USAID established an anti-corruption center, FBI regional anti-corruption advisors to strategic locations
  2. Curbing illicit finance
    - The new CTA, proposed rule-making targeting the real estate sector, additional funding for enforcement
  3. Accountability
    - Proclamation regarding suspension of entry, US\$500M on FCPA penalties, OFAC sanctions on 130 persons, increased role of non-government actors
  4. Multilateral anti-corruption architecture
    - UNCAC COSP role, hosting international conferences and participation in international efforts
  5. Diplomatic engagement and foreign assistance
    - Working with foreign governments through innovative solutions, specific programs, etc.

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# U.S. Strategy on Countering Corruption CONTINUED

## DOJ Pilot Program regarding Compensation and Clawbacks

- Effective March 15, 2023 for three years
- When entering into criminal resolutions, companies will be required to implement compliance-related criteria in their compensation and bonus system and to report to DOJ Criminal Division about such implementation during the term of such resolutions
- Compliance criteria
  - Prohibition on bonuses if compliance criteria are not satisfied
  - Disciplinary measures for employees violating applicable law when they have supervisory authority and knew or should have known about the conduct
  - Incentives for those employees fully compliant
- Deferred fine reduction
  - When full cooperation, timely remediation, and recouped compensation from relevant employees (up to 100% of the compensation recouped)
    - And up to 25% reduction of the compensation amount if not possible to recoup in good faith

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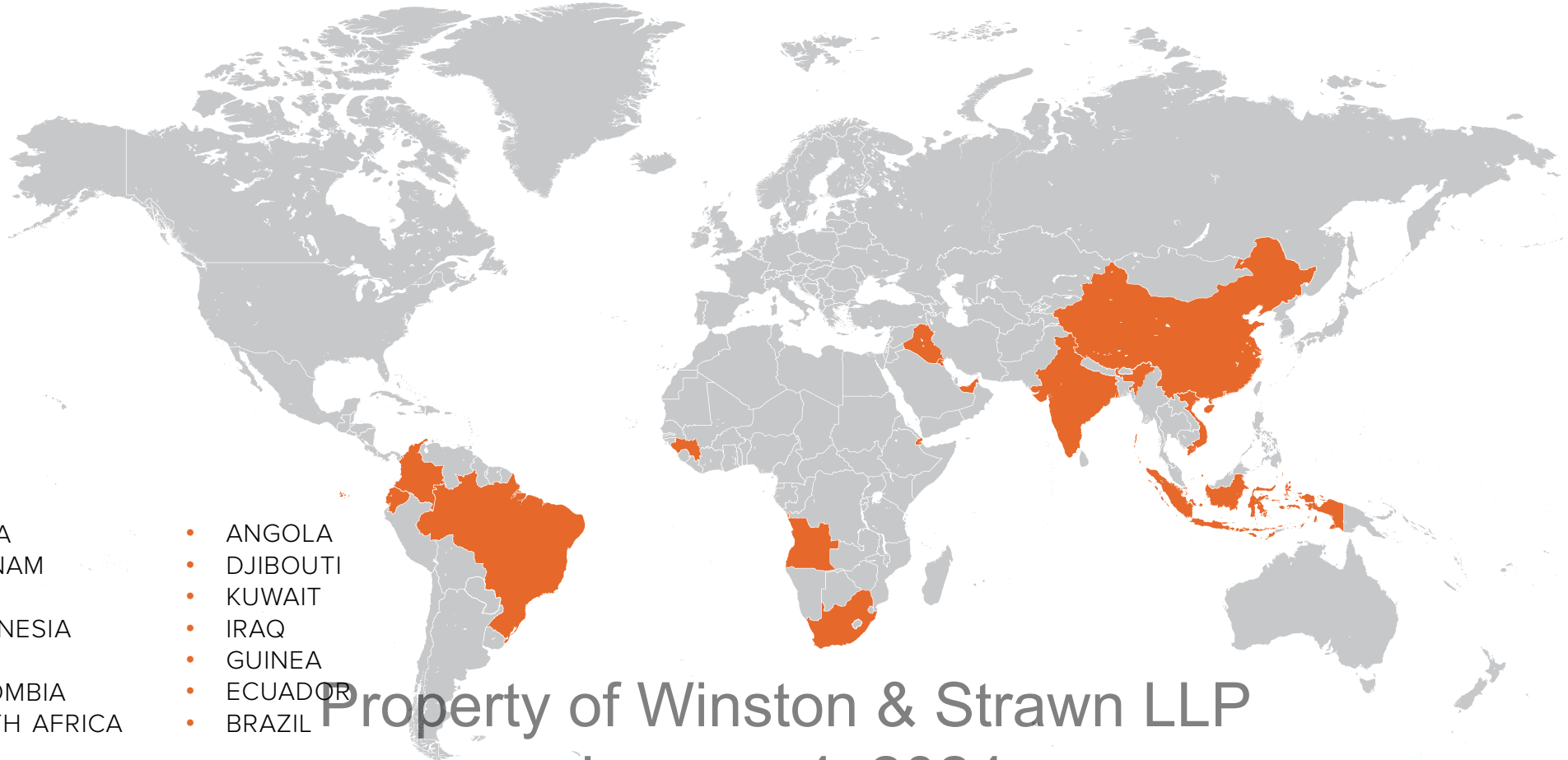
# 2023 Enforcement Trends

## Key Figures and Facts of 2023 Enforcement Actions

- DOJ and SEC brought 13 enforcement actions totaling US\$776M in penalties
  - 13 DOJ; 9 SEC
  - Vs. 8 enforcement actions totaling US\$1.5B in penalties in 2022
- Biggest 2023 case amounted to US\$218M (Albemarle Corporation)
  - No change in the top 10 biggest FCPA cases in 2023
- 3 declinations in 2023
- No individuals convicted, but six indicted or charged

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# 2023 Enforcement Trends CONTINUED



- CHINA
- VIETNAM
- INDIA
- INDONESIA
- UAE
- COLOMBIA
- SOUTH AFRICA

- ANGOLA
- DJIBOUTI
- KUWAIT
- IRAQ
- GUINEA
- ECUADOR
- BRAZIL

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# 2023 Enforcement Trends CONTINUED

1. Albemarle Corporation – US\$218 M
  - Disgorgement, FCPA anti-bribery, recordkeeping and accounting controls
  - Vietnam, India, Indonesia, China and UAE
2. Clear Channel Outdoor Holdings, Inc. – US\$26.1M
  - Disgorgement and prejudgment interest, FCPA anti-bribery, recordkeeping and accounting controls
  - China
3. 3M Company – US\$6.5M
  - Books and records provision and internal controls provision
  - China

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# 2023 Enforcement Trends CONTINUED

4. Grupo Aval and its sub Corporacion Financiera Colombiana – US\$80.8M
  - Books and records provision and internal controls provision
  - Colombia
5. Gartner Inc. – US\$2.45M
  - Anti-bribery, books and records, and internal accounting control provisions
  - South Africa
6. Koninklijke Philips N.V. – US\$62M
  - Books and records and internal accounting controls provisions
  - China
7. Frank's International N.V. – US\$8M
  - Anti-bribery, books and records, and internal accounting controls
  - Angola

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# 2023 Enforcement Trends CONTINUED

8. Flutter Entertainment plc, (successor-in-interest to The Stars Group, Inc.) – US\$4M
  - Books and records and internal accounting control provisions
  - Russia
9. Rio Tinto PLC – US\$15M
  - Books and records and internal accounting control provisions
  - Guinea
10. Telefonaktiebolaget LM Ericsson – additional penalty US\$206,000
  - Breach of DPA signed in 2019
  - Djibouti, China, Vietnam, Indonesia, Kuwait and Iraq

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# 2023 Enforcement Trends CONTINUED

11. Tysers Insurance Brokers Limited – US\$36M
  - Anti-bribery provisions only
  - Ecuador
12. H.W. Wood Limited – US\$508K
  - Charging eight individuals
13. Freepoint Commodities LLC – \$98M and 7.6M disgorgement
  - Anti-bribery provisions only
  - Brazil

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ANTI-CORRUPTION

# Lessons Learned

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# Lessons Learned and Recommendations

- U.S. strategy to become a leading party in anti-corruption efforts
  - FEPA will change the bribery enforcement landscape—recommending updating policies and procedures to address (e.g., updating elements of bribery violations, keeping records against foreign official requesting bribe, etc.)
  - International negotiations and cooperation are key for U.S. enforcement efforts
  - While lowest fines in 2023, FCPA enforcement continued to be a priority and resources continue to be dedicated to enforcement
- Continued focus on enforcement against individuals (since 2019)
- Continued danger on third-party reliance to secure contracts
  - Importance of auditing and testing compliance program to detect fraud on use of compliance programs/due diligence
- Importance of implementation of remedial measures (Ericsson and Philips)

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ANTI-CORRUPTION

# Predictions for 2024

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# Predictions for 2024

- Geographic focus
- Individual targets
- More FEPA details
- Continued international cooperation

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