



Akin Quarterly Seminar

Sanctions & Export Controls Update

Thursday, October 19, 2023 | 9:00 a.m. BST (10:00 a.m. CEST; 12 noon GST; 4:00 p.m. HKT) (Non-U.S. Companies)

Thursday, October 19, 2023 | 5:00 p.m. BST (9:00 a.m. PDT; 12 noon EDT) (U.S. Companies)

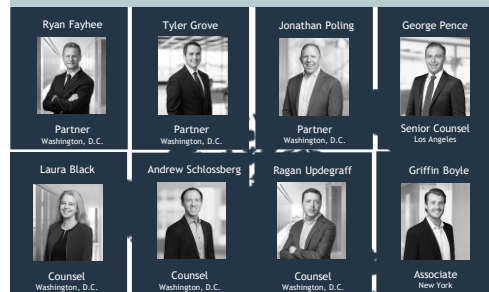
Presented by: Akin's Global International Trade Team

Topics: U.S. Sanctions Update, U.S. Export Controls, U.S. Sanctions and Export Controls Enforcement, EU and U.K. Sanctions and Export Controls, Outbound Investment Update, Legal Intelligence on Government Compliance Priorities, Interview with Ryan Fayhee by Jon Poling

Global Sanctions & Export Controls Team

U.S. Team

We have a team of more than 100 trade practitioners in Washington, D.C., Los Angeles, Dallas, Philadelphia and Houston, including today's speakers:

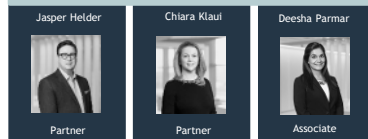


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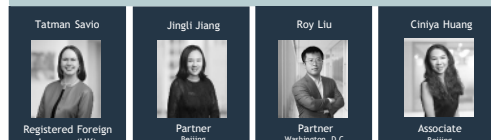
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London Team - EU/U.K. Trade Controls



Asia Team - U.S. Trade Controls



Alasdair Kan



Associate
London

Bodi Jia



Associate
Singapore

Marcus Yu



Associate
Washington, D.C.



Akin Quarterly Webinar Sanctions & Export Controls Update October 2023

Overruled/Russia Trade Controls Resource Center

Winner
CIO 100 Awards 2023

Tech Innovation Award
Winner
IFLR Middle East Awards 2023

Innovation Through Technology
Winner
The Middle East Legal Awards 2022

Innovation in Digitising Legal Services
Standout
FT Innovative Lawyers Awards 2022

Export Controls / Sanctions
Law Firm of the Year
Rest of the World
WorldECR Awards 2021

Practice Group of the Year
Finalist
Law360 2021
Law360 2022

Agenda

1. U.S. Sanctions Update
2. U.S. Export Controls Update
3. U.S. Sanctions and Export Controls Enforcement
4. EU and U.K. Sanctions and Export Controls Developments
5. Outbound Investment Update
6. Legal Intelligence on Government Compliance Priorities
7. Interview with Ryan Fayhee by Jon Poling
8. Live Q&A

U.S. Sanctions Update

Tyler Grove

Russia/Belarus Update

New designations

- Belarus:
 - On August 9, 2023, the Office of Foreign Assets Control (OFAC) designated **eight individuals**, **five entities** and **one aircraft** on the third anniversary of the Belarusian authorities' falsification of the August 2020 presidential election.
- Russia:
 - On September 14, 2023, OFAC and the Department of State designated more than **140 entities** and **24 individuals**, and identified **two vessels** as blocked property.
 - OFAC also issued General License 55A (authorizing certain oil exports to Japan) and General License 72 (authorizing wind down transactions with targeted entities).
 - Also new designations released on August 11, August 16 and August 24.

Iran Sanctions Update

New Designations

- On September 27, 2023, OFAC sanctioned **two individuals** based in Iran, the People's Republic of China, Hong Kong, Turkiye and the United Arab Emirates (UAE) involved in the procurement of sensitive parts for Iran's one-way attack unmanned aerial vehicle (UAV) program.
- Additional designations on September 15, September 18 and September 19.

OFAC Settlements

- \$9,618,477 settlement with 3M over 54 apparent violations of OFAC sanctions on Iran that arose from its subsidiary's sale of reflective license plate sheeting to an Iranian entity controlled by the Iranian Law Enforcement Forces.
- \$31,867 settlement with Emigrant Bank over apparent violations of sanctions against Iran.
- \$660,594 settlement with Construction Specialties Inc. over three apparent violations of OFAC sanctions on Iran that arose from its UAE subsidiary's exportation of U.S. origin goods to Iran.

Syria Sanctions Update

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- On July 27, 2023, OFAC imposed sanctions on Abdiweli Mohamed Yusuf, the head of the finance office of the Somalia-based affiliate of the Islamic State of Iraq and Syria (ISIS), designating him as a Specially Designated Global Terrorist.
- On August 8, 2023, OFAC issued an official OFAC *Compliance Communiqué* in response to questions from the non-governmental organization (NGO) community and the public on how to provide humanitarian assistance to Syria while complying with OFAC sanctions.
- On August 17, 2023, OFAC added **three individuals** and **three entities**—including two armed militia groups—to its SDN List for human rights violations.

Burma Sanctions Update

- On August 23, 2023, OFAC issued a determination that allows sanctions to be imposed on any foreign individual or entity that operates in the jet fuel sector of the Burmese economy pursuant to E.O. 14014.
 - OFAC also designated **two individuals**—Khin Phyu Win (associated with multiple jet fuel related companies within the Asia Sun Group) and Zaw Min Tun (director and owner of 11 Asia Sun Group companies)—and **one entity** (Shoon Energy PTE. LTD.) involved in the procurement and distribution of jet fuel to Burma's military regime, and **two entities** (P.E.I. Energy PTE. LTD and PEIA PTE. LTD.) for being owned or controlled by such persons.
 - The actions were reportedly in response to recent civilian airstrikes.

Crypto (Tornado Cash)

- On August 23, 2023, Roman Storm and Roman Semenov—Tornado Cash founders—were charged with operating the conspiracy to commit money laundering, commit sanctions violations and operate an unlicensed money transmitting business.
- These charges arise from their alleged creation, operation and promotion of Tornado Cash, which facilitated more than \$1 billion in money laundering transactions and laundered hundreds of millions of dollars for the Lazarus Group, the sanctioned North Korean cybercrime organization.

New Jersey State Divestment Law

- In 2022, a number of U.S. states passed state-specific Russia/Belarus sanctions legislation, including New Jersey.
- In August 2023, the U.S. District Court for the District of New Jersey issued a temporary restraining order against the state and indicated the law may be unconstitutional.
- In response, New Jersey halted its implementation of the law.

U.S. Export Controls Update

Ragan Updegraff

Summary of Updates

- Controls on providing keys to unlock object code software
- Nuclear nonproliferation controls on China/Macau and other China-related developments
- “High Priority List” and other Russia-related developments
- DDTC guidance on compliance program design

Keys to Unlock Object Code Software

- Transfer of “access information” requires a license to the same extent as the software the information is used to unlock
 - “Access information” includes decryption keys, passwords, etc., used to unlock source code or object code.
 - By issuing a “technical correction,” there are now two Export Administration Regulations (EAR) definitions of “release.”
 - Definition used in EAR Section 734.15, which limits “releases” to source code and technology (applicable to deemed exports and reexports).
 - Definition used in EAR Section 734.19, which applies to “transfers” of “access information” that unlock software (including source code or object code).
- Compliance Implications
 - Licenses may be required to send keys to unlock software already exported.
 - Licenses may be required to provide keys to access (even without a download) updated software if the update was not in the scope of a previously issued license.

NP Column 2 Controls on China/Macau

- Nuclear Non-Proliferation (NP) Column 2 unilateral controls now apply to China and Macau
 - China and Macau previously subject only to NP Column 1 controls.
 - Items that now require authorization to export to China include items described in ECCNs 1A290, 1C298, 2A290, 2A291, 2D290, 2E001, 2E002 and 2E290.
 - Items covered by these ECCNs include depleted uranium, graphite and deuterium for non-nuclear end-use, as well as equipment used in nuclear power plants.
- Licenses will be required and reviewed to determine whether
 - Items are appropriate for stated end-use.
 - End-use is appropriate for the stated end-user.
 - There is risk of diversion to military end-users or for military end-uses.

Other China-Related Developments

- Additions to the Entity List
 - 10/6: Addition of 42 entities for providing U.S.-origin integrated circuits to Russia.
 - 9/27: Nanjing Institute of Astronomical Optics and Technology “for procuring U.S.-origin items in likely furtherance of Chinese military research.”
 - 9/27: Addition of 10 other Chinese entities for diverting items to Russia, Iran and/or Pakistan.
- Removal of 27 Chinese entities from the Unverified List
 - Entities may be added because the U.S. government is unable to complete end-use checks or because end-user is unable to produce items subject to such a check.
 - Removed because the Bureau of Industry and Security (BIS) was able to verify their *bona fides*.
- Removal of Zhejiang Perfect New Material Co., Ltd. from the Military End-User List

“High Priority List” for Exports to Russia

- Rollout of E5 Common “Highest” Priority List
 - Export Enforcement Five (E5) countries published four-tiered list of 45 HS codes.
 - Exporters “strongly encouraged to conduct additional due diligence.”
 - Publication includes list of “behavioral red flags,” including:
 - Purchaser is in non-Global Export Controls Coalition Country* and incorporated after February 2022.
 - Non-E5 purchaser orders significantly increased quantity of Tier 1 or Tier 2 items.
 - Purchaser willing to pay more than market price.

**The GECC includes Iceland, Liechtenstein, Norway, Switzerland, Australia, Canada, the 27 member states of the European Union (EU), Japan, the Republic of Korea, Taiwan, New Zealand, the United States and the United Kingdom.*

BIS Best Practice Guidance

- New BIS guidance re: nine “highest priority” HS codes
 - If exports/reexports to non-GECC countries, BIS is encouraging exporters to obtain written assurances through signed certifications that items will not be diverted to Russia.

<i>HS Codes</i>	<i><u>Highest Priority Items List</u></i> HS Description and Representative Part
8542.31	Electronic integrated circuits: Processors and controllers, whether or not combined with memories, convertors, logic circuits, amplifiers, clock and timing circuits, or other circuits
8542.32	Electronic integrated circuits: Memories
8542.33	Electronic integrated circuits: Amplifiers
8542.39	Electronic integrated circuits: Other
8517.62	Machines for the reception, conversion and transmission or regeneration of voice, images, or other data, including switching and routing apparatus
8526.91	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Radio navigational aid apparatus
8532.21	Other fixed capacitors: Tantalum capacitors
8532.24	Other fixed capacitors: Ceramic dielectric, multilayer
8548.00	Electrical parts of machinery or apparatus, not specified or included elsewhere in chapter 85

Other Russia-Related Developments

- Amendment to temporary denial order regulation
 - Increase from 180-day period now possible if party has engaged in “a pattern of repeated, ongoing, and/or continuous apparent violations of the EAR.”
 - BIS cited multiple temporary denial orders (TDOs) against Russian/Belorussian airlines as examples.
- Additions to the Entity List
 - 10/6: Addition of 49 entities (42 of them in China) for providing integrated circuits to Russia (Tier 1 “highest priority” items).
 - 9/27: Addition of 18 entities for providing Russian military support (including UAVs).
- License application guidance for medical-related items
 - Certification statement that conducted diligence and no military end-users.
 - Recommendation to limit to one consignee and no more than 100 end-users.
 - Group items into like categories and provide HS codes.

DDTC Compliance Risk Matrices

- Release of two compliance matrices—one for businesses and one for universities/research institutes
 - Complement to existing International Traffic in Arms Regulations (ITAR) Compliance Program Guidelines.
- Three-step approach:
 - Identify all ITAR-controlled activities.
 - Recognize threats and vulnerabilities related to ITAR-controlled activities.
 - Formulate risk-based ITAR compliance program to mitigate risk.
- Matrix for businesses divided into:
 - Enterprise risks (beyond size and structure)
 - Organizational functional risks
 - ITAR compliance program risks.

What's Next?

- New semiconductor-related rules
 - Controls on semiconductor manufacturing equipment to align controls with those recently adopted in Japan and the Netherlands
 - New Entity List additions (including new footnote 4 entities)
 - Possibly controls on providing computational capacity using GPUs and other integrated circuits controlled by ECCN 3A090.
- Further Entity List additions, especially with respect to China and Russia

U.S. Sanctions and Export Controls Enforcement

George Pence

Tri-Seal Compliance Note

- The Note reinforces the high priority the U.S. government places on enforcing export controls, sanctions, and other potential violations of national security laws.
- Voluntary self-disclosures (VSDs) can significantly mitigate civil and criminal liability for companies. However, they must be timely, accurate and complete, and backed by full cooperation and remediation of identified violations.
- VSDs to DOJ without aggravating factors are presumed to be resolved with a non-prosecution agreement. However, VSDs to only BIS and OFAC that disclose criminal violations will not be afforded such a presumption.
- Conducting internal investigations of potential violations is critical, and the strength of a company's compliance program and success in conducting internal investigations will be carefully considered by DOJ, BIS and OFAC.
- Companies are well advised to review their disclosures processes and compliance programs to ensure they align with the guidance and enforcement priorities discussed in the Note.

Recent Enforcement Actions

- Recent DOJ and BIS enforcement actions show DOJ's persistent focus on China and Russia-related violations.
- DOJ has targeted defendants whose alleged conduct benefited Russian elites and the Russian military, in line with the mission of the Russian Elites, Proxies and Oligarchs (REPO) Task Force.
- REPO announced that it had completed its initial effort to map and account for Russian sovereign assets that are immobilized and held in REPO member jurisdictions - estimated at \$280 billion. REPO members are committed to immobilizing those assets until Russia pays for the damage it has caused to Ukraine.
- OFAC announced settlements in two actions, totaling more than \$10 million, both involving Iran.
- It is uncertain whether the tragic events now unfolding in the Middle East will result in increased enforcement related to Iran.

EU and U.K. Sanctions and Export Controls Developments

Deesha Parmar

U.K.: Sanctions Developments

Asset Freeze Listings

- 55 persons and legal entities have been subject to asset freeze restrictions from July 17 to date.

Legal Advisory Services Restrictions

- U.K. persons are now prevented from directly or indirectly providing “legal advisory services” to any person who is not a U.K. person in relation to, or in connection with, any activity that would be prohibited under U.K. Russia Sanctions.
- Definition of “Legal Advisory Services.”
- General Licence issued by the U.K. government.
- Ongoing concerns for Legal Advisory Services.

U.K.: Sanctions Developments

Trade Restrictions: Licensing grounds - divestment from Russia

- The United Kingdom updated its Russia Guidance to add additional licencing grounds for trade activities that would otherwise be prohibited if necessary for divestment from Russia.

Oil Price Cap and Maritime Services Ban

- OFSI has updated its reporting forms for the Oil Price Cap and Maritime Services Ban General Licences. The updates provide additional information how to complete and return the reporting forms.

Trade Restrictions: Third country processed iron and steel measures

- Restrictions relating to Russian iron and steel processed in third countries are in force as of September 30, 2023.
- Guidance has been issued on what constitutes an “iron and steel” product.

U.K.: Sanctions Developments

OFSI Enforcement

August 31, 2023: OFSI disclosure of sanctions breach ([Notice](#))

- OFSI used its disclosure powers for the first time - disclosed that a U.K. fintech firm had breached financial sanctions after a cash withdrawal of £250 was made from a business account held by a company owned or controlled by a DP
- Key takeaways

August 22, 2023: HMRC compound settlement for trade sanctions breach ([Notice NTE 2023/17](#))

- U.K. company was fined £1 million by HMRC in relation to the unlicensed trade of goods in breach of The Russian (Sanctions) (EU Exit) Regulations 2019
- Key takeaways

EU: Sanctions Developments

The Commission confirmed that “firewalls” may be used to prevent DPs from exercising control over non-listed entities:

- EU entities owned but not controlled by a DP (due to a firewall) are not subject to asset freeze sanctions and may continue operating.
- Published guidance concerning the agri-food and fertilizer sector.

The Commission issued a list of items whose export to Russia is prohibited but which are found on the battlefield in Ukraine or which are critical for Russian military systems:

- 45 dual-use and advanced technology items.
- Including integrated circuits, radio frequency transceiver modules and items for the manufacturing and testing of components of printed circuit boards.

EU: Sanctions Developments

Oil Price Cap Guidance

- EU issued guidance clarifying that oil and petroleum products originating in a third country and only being loaded in, departing from or transiting through Russia are exempt from the price cap - provided that both the origin and the owner of those goods are non-Russian. (FAQ 8)
- De minimis amount of Russian oil left? (FAQ 8)
- Russian oil or petroleum transported together with oil of other origin in mixed fashion is subject to the price cap. (FAQ 8)
- Bunkering.

Oil Imports

- Ship-to-ship transfers.
- Territorial waters, internal waters and ports of member states.

Outbound Investment Update

Laura Black

Overview

- August 9, 2023, E.O. on outbound investment to China (including Hong Kong and Macau).
- Rulemaking process that will lead to prohibitions and notification requirements on certain investments by U.S. persons in China/Chinese entities involving semiconductors, quantum computing and artificial intelligence.
 - Indigenous development for military, intelligence and mass surveillance uses
 - Intangible benefits, such as managerial assistance, investment and talent networks, market access and enhanced access to additional financing
 - Not all capital; not commercial transactions
 - Not a “reverse CFIUS.”
- Treasury Department issued an Advanced Notice of Proposed Rulemaking (ANPRM) for public comment, which sets out details about how Treasury is considering implementing the E.O.
 - Lengthy process before program is effective.
 - Scoping of most terms is same for prohibition and notice; distinction is based on types of activities with respect to the technologies.

Covered Transactions

The following (direct or indirect) transactions by a U.S. Person would be covered:

- Acquisition of an equity interest or contingent equity interest in a covered foreign person
- Provision of debt finance to a covered foreign person if debt is convertible to equity
- Greenfield investments that could result in the establishment of a covered foreign person
- Establishment of a joint venture, wherever located, that is formed with a covered foreign person or could result in the establishment of a covered foreign person.

Activities that would not be covered include:

- | | |
|--|-------------------------------|
| • University-to-university research collaborations | • Bank lending |
| • Contractual arrangements or the procurement of material inputs for any of the covered national security technologies or products | • Underwriting services |
| • Intellectual property licensing arrangements | • Debt rating services |
| • The processing, clearing, or sending of payments by a bank | • Prime brokerage |
| | • Global custody |
| | • Equity research or analysis |

Excepted Transactions

- **Intracompany transfers**

- Sale or purchase of inventory or fixed assets
- Provision of paid services
- Licensing of technology
- Provision of loans, guarantees or other obligations.

- **Follow-on Investments**

- Open issue; capex?

- **Passive investments**

- Publicly traded securities
- Index fund, mutual fund, exchange-traded fund or similar instruments
- Passive limited partner investments without influence and subject to potential de minimis threshold.

- **Other**

- Binding commitments prior to E.O.
- Buying out Chinese shares in third country entity.

U.S. Persons



1. U.S. citizens and lawful permanent residents
2. Entities organized under the laws of the U.S. or any jurisdiction of the U.S.
3. Any person in the U.S.

Expanded application:

- Knowingly investing in a third country entity that will use funds for prohibited investment in China - close loophole.
- **Knowingly directing**, e.g., foreign private equity funds with U.S. general partner; U.S. person officer or director.
- U.S. persons must take “**reasonable steps**” with respect to a foreign person it controls (50% direct or indirect interest, i.e., **subsidiaries** in third countries).

Chinese Persons



Person of a Country of Concern

1. Citizens and permanent residents of China who are not U.S. persons.
2. Entities organized or with a principal place of business in China.
3. The Chinese government and persons controlled by government.
4. Entities owned (50% or greater) by any of 1-3 above → **subsidiaries**.

Covered Foreign Person

1. Any person of a country of concern engaged in, or that U.S. person knows or should know will be engaged in, a covered activity with respect to a covered technology or product.
2. A person whose in/direct subsidiaries are referenced above + comprise >50% of revenue, net income, capex, or operating expense → **parents**.

Knowledge standard: “actual or constructive,” including awareness of high probability of future activities, based on “reasonable due diligence.”

Covered Technologies/Products - Semiconductors

<u>Technology</u>	<u>Prohibited</u> <i>Covered transactions with covered foreign persons engaged in activities involving:</i>	<u>Notification Requirement</u> <i>Covered transactions with covered foreign persons engaged in activities involving:</i>
<i>Semiconductors and Microelectronics</i>	<ul style="list-style-type: none">• Certain technologies that enable advanced integrated circuits (ICs), (e.g., EDA tools used exclusively for IC design, front-end semiconductor equipment designed exclusively for volume fabrication).• Certain advanced IC design and production (e.g., design for 3A090 chips, advanced nodes production, certain special production process (e.g., gallium-based compound IC manufacturing), certain IC packaging that support 3D integration).• Installation or sale to third-party customers of certain supercomputers.	Design, fabrication and packaging of other (less advanced) chips.

Covered Technologies/Products - Quantum Computing

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<u>Technology</u>	<u>Prohibited</u> <i>Covered transactions with covered foreign persons engaged in activities involving:</i>	<u>Notification Requirement</u> <i>Covered transactions with covered foreign persons engaged in activities involving:</i>
<i>Quantum Computing</i>	<ul style="list-style-type: none">• <i>Quantum Computers and Components:</i> The production of a quantum computer, dilution refrigerator or two-stage pulse tube cryocooler.• <i>Quantum Sensors:</i> The development of a quantum sensing platform designed to be exclusively used for military end uses, government intelligence or mass-surveillance end- uses.• <i>Quantum Networking and Quantum Communication Systems:</i> The development of a quantum network or quantum communication system designed to be exclusively used for secure communications, such as quantum key distribution. <p>* “Quantum computer” is defined as a computer that performs computations that harness the collective properties of quantum states, such as superposition, interference or entanglement.</p>	None.

Covered Technologies/Products - Artificial Intelligence

<u>Technology</u>	<u>Prohibited</u> <i>Covered transactions with covered foreign persons engaged in activities involving:</i>	<u>Notification Requirement</u> <i>Covered transactions with covered foreign persons engaged in activities involving:</i>
<i>Artificial Intelligence</i>	<p>Development of software that incorporates an AI system and is designed to be exclusively/primarily used for military, government intelligence or mass-surveillance end-uses.</p> <p>* “AI system” as an engineered or machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.</p>	<p>Development of software that incorporates an AI system and is designed to be exclusively/primarily used for:</p> <ul style="list-style-type: none">• Cybersecurity applications• Digital forensics tools and penetration testing tools• Control of robotic systems• Certain surreptitious listening devices• Non-cooperative location tracking• Facial recognition.

Legislation

- **Senate Amendment to NDAA: Outbound Investment Transparency Act**
 - Mandatory notification requirement for outbound investment and certain other transactions in China and other countries of concern
 - Key differences: No prohibitions; broader range of transactions; additional sectors (hypersonics, satellite-based communications, and networked laser scanning systems)
- **House Financial Services Committee: Chinese Military and Surveillance Company Sanctions Act of 2023**
 - Full SDN sanctions on companies that “knowingly engage in significant operations in the defense and related material sector or the surveillance technology sector” in China
 - Annual process to determine whether companies on the CMIC, Military End User, Entity, or 1260H lists should be subject to such sanctions

Legal Intelligence on Government Compliance Priorities

Mac Fadlallah & Jasper Helder

US/UK Compliance Priorities

- U.S./U.K. government official delegations tackling evasion/circumvention via third countries. Priorities include:
 - **Export Controls** - with specific focus on Common High Priority Items List/ High Priority Battlefield Items.
 - **Price Cap & Migration of Traders** - migration of trading to Middle East since the introduction of Russia sanctions/the oil price cap.
 - **Russian Gold** - data indicates extremely high volumes of gold exported from Russia.→ *Emphasis on deterrence, disruption and demonstration = key purpose of sanctions*
- U.S./U.K./EU - Common High Priority Items List
 - 45 common high-priority items, with 4 tiers, targeting battlefield items at heightened risk for illegal diversion to Russia and for use in its war efforts.
 - EU - list may support DD for exporters and targeted anti-circumvention actions by customs and enforcement agencies of partner countries.
 - BIS press release - 1) patterns that “raise diversion concerns” 2) list of new transactional and behavioural red flags for exporters and 3) certification.

U.S. - OFAC Priorities

OFAC Priorities

- New OFAC Director Brad Smith
- Cooperation with the U.K. (info exchanges, enforcement, licensing, policy)
- Reorganization of Compliance and Enforcement functions
- Dual OFAC/State designation authority under RuHSR
- Expect new maritime-related industry guidance (from the U.K. as well).

Interview with Ryan Fayhee

By Jon Poling

Live Q & A