

Global Sanctions Overview: 2023 & Beyond

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The Pillsbury logo, featuring the word "pillsbury" in a lowercase, sans-serif font. The letters are a dark red or maroon color. The logo is positioned in the bottom right corner of the slide, set against a white rectangular background.

Background

- Overview of US Sanctions
- Geopolitical Turbulence and List Based Controls
- Lessons learned from the Russia-Ukraine Conflict
- Risk mitigation

Overview of U.S. Sanctions

Background: OFAC Programs

- Types of sanctions regulations
 - Country focused sanctions – Cuba, Iran, North Korea, Syria, and the Donetsk, Luhansk, and Crimea regions of Ukraine.
 - Regime/individual focused sanctions – e.g., Belarus, Iraq, South Sudan, Lebanon, Libya, Somalia
 - Issue-related – e.g., Transnational criminal organizations, counter terrorism, counter narcotics trafficking, non-proliferation, cyber
- Other targeted sanctions (e.g., sectoral sanctions) – Russia, Venezuela
- List based:
 - Specially Designated Nationals and Blocked Persons (SDN) List
 - Sectoral Sanctions Identifications (SSI) List
 - Chinese Military-Industrial Complex Companies (NS - CMIC) List

Comprehensive Sanctions: Economic Sanctions and Embargoes

- Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, and Luhansk regions of Ukraine
- All transactions or dealings are prohibited for U.S. persons (absent authorization from OFAC)
- These embargoes can prohibit:
 - U.S. export/import trade with target country
 - New investment in target country
 - Export or dealings in services, technology or property of the target country

Iran: Comprehensive Sanctions

- The U.S. government maintains a broad economic and trade embargo on Iran that generally prohibits:
 - Trade with Iran (import/export)
 - Services to or from Iran and dealing in services from Iran
 - New investment in Iran
 - Transactions with a long list of blocked parties
 - Transactions with Iranian financial institutions or the Central Bank of Iran
 - Transactions with the Government of Iran
 - Facilitation by U.S. persons
 - Dollar transactions through the U.S. banking system

Iran: Subsidiary Liability & Secondary Sanctions

- **Extraterritorial and special provisions:**
 - Subsidiary liability – Non-U.S. entity owned/controlled by a U.S. person is prohibited from knowingly engaging in transactions relating to Iran prohibited for U.S. persons
 - Secondary sanctions apply to non-U.S. persons for significant financial, material, technological, or support activity taking place outside of the United States and not subject to U.S. sanctions jurisdiction
 - Sanctions can include designation as an SDN and/or other prohibitions on engaging in activities subject to U.S. jurisdiction
 - SEC reporting for certain Iran-related (or SDN-related) activities of issuers and their affiliates
 - Numerous U.S. states maintain divestment and procurement measures targeting certain activities by non-U.S. companies in Iran

Cuba: Comprehensive Sanctions

- Cuba sanctions apply to all U.S. persons and to any entity owned or controlled, directly or indirectly, by a U.S. person (“persons subject to U.S. jurisdiction”).
- Blocked:
 - Cuban nationals, wherever located (unless unblocked)
 - Government of Cuba
 - Cuban SDNs, wherever located
- Sanctions eased in certain respects by Obama Administration, but tightened again by Trump Administration beginning in 2017.
- The Biden Administration has rolled back some of the Trump Administration’s programs as a means by which to offer more support to the Cuban people, but continues to face Congressional pressure to remain tough on the Cuba regime. Additional policy measures are expected this fall.

Cuba: Certain Permitted Activities

- OFAC general licenses and EAR license exceptions currently permit several types of transactions / activities with Cuba, such as:
 - Certain exports and imports
 - Telecommunications services
 - Certain financial services in support of authorized activities
 - Certain categories of travel to Cuba
 - Remittances
 - Excludes transactions involving parties on Cuba Restricted List
 - Support for Cuban private-sector activities
- Direct financial transactions are prohibited with entities and sub-entities listed by the State Department as being under control of or acting on behalf of the Cuban military, intelligence or security services (Cuba Restricted List)
 - List includes numerous Cuban hotels, among other entities

Syria: Comprehensive Sanctions

- Comprehensive sanctions in place since August 2011
 - Block Syrian government's property and interests in property that come into the U.S. or the possession or control of a U.S. person
 - Prohibit U.S. persons from engaging in virtually any dealing with the Syrian government, including its agencies, instrumentalities, and controlled entities
 - Prohibit U.S. persons from exporting services to Syria
 - Prohibit importation into U.S. of Syrian petroleum or petroleum products, and U.S. persons otherwise dealing in Syrian-origin petroleum or petroleum products
 - Prohibit U.S.-person facilitation of prohibited activities by non-U.S. persons or outside the United States
- Stringent export control restrictions also in place
- Caesar Syria Act signed into law in December 2019; provides for imposition of sanctions against persons that knowingly provide significant support to, or engage in significant transactions with, the Government of Syria

North Korea: Comprehensive Sanctions

- The U.S. government maintains a regime of broad primary and secondary sanctions for North Korea (pursued both pursuant to UN sanctions resolutions and unilaterally)
- Primary sanctions include:
 - A complete trade embargo on goods, services, and technology
 - Prohibition of new investment in N. Korea by U.S. persons
 - Prohibition on facilitation (and finance, approval, guarantees)

Targeted / Sectoral Sanctions

- Expansive sanctions against Russia in relation to the ongoing conflict in Ukraine; however, it is not subject to a complete embargo.
- Similarly, the U.S. maintains targeted sanctions against the Government of Venezuela.
- In both Russia and Venezuela, only certain dealings are prohibited. Companies should exercise caution when engaging in these regions.
 - Russia: the U.S. has issued expansive restrictions on almost all Russian financial institutions, restrictions on U.S. investment, and broad export prohibitions, including the export of certain services
 - The Crimea, Donetsk and Luhansk regions of Ukraine are subject to a complete embargo.
 - Venezuela: Dealings with the “Government of Venezuela” and targeted persons/entities, such as PdVSA, are prohibited.

Primary vs. Secondary Sanctions

- **Primary sanctions:** Activities within OFAC's jurisdiction, such as:
 - Activities by US persons or by persons in the United States
 - Activities involving the US financial system (includes clearing of USD through US intermediary banks)
- **Secondary sanctions:** US seeking to deter those outside of OFAC's jurisdiction
 - Can be mandatory or discretionary depending on the underlying statute (example in Russian CAATSA sanctions)
 - Dealings with SDNs can be subject to secondary sanctions but not in all cases

Geopolitical Turbulence and List Based Controls

Expanded use of List-based Controls Mainly Targeting China and Russia

- **Sanctions Lists**

- SDN and the 50% Rule
- Sectoral Sanctions List (SSI)
- Chinese Military-Industrial Complex Companies List (CMIC)

- **Export Control Lists**

- BIS Entity List
- Military End Use and Military End User Rule (MEU), and
- Military Intelligence End User (MIEU)

- **Import Controls**

- Uyghur Forced Labor Prevention Act
- UFPLA Entity List

Specially Designated Nationals (SDN) List

- List of individuals and entities who are “blocked”
- U.S. persons prohibited from doing business with a person on the SDN List
- SDN property interests that enter possession or control of U.S. person must be blocked
- Effectively prohibits dealing in U.S. dollars as U.S. banks clearing the funds must freeze the transaction and report to OFAC
- Designation applies to any entity owned 50% or more by SDN (OFAC’s 50% Rule)
- For example, many Russian banks have been added to OFAC’s SDN List, including: Sberbank, Alfa Bank, VTB, VEB, PSB, Otkritie, Sovcombank, Novikombank and Moscow Industrial Bank.
- In addition to full blocking sanctions, OFAC also issued narrower restrictions with specified financial institutions via directives.

Sectoral Sanctions Lists (SSI)

- OFAC maintains this sanctions list comprised of persons operating in sectors of the Russian economy identified by the Secretary of the Treasury
- Persons are added to the SSI List pursuant to one or more of four directives
 - **Directive 1** – prohibits new debt or equity of persons in the Russian financial services sector
 - **Directive 2** – prohibits new debt of persons in the Russian energy sector
 - **Directive 3** – prohibits transactions with the Russian defense and related material sector
 - **Directive 4** – prohibits transactions in support of Russian energy projects
- Unlike the SDN List, this is not a blocking program, only prohibits a narrow range of transactions.
- SSI List also applies to any entities that are owned 50 percent or more by one or more person(s) on the SSI List.

Chinese Military-Industrial Complex Companies List (CMIC)

- Prohibits U.S. persons from engaging in the purchase or sale of publicly-traded securities of designated entities – “Chinese Military-Industrial Complex Companies” (“CMIC”) – unless authorized by OFAC. (EO 14032)
- Non-SDN CMIC List managed by OFAC.
- Restrictions take effect 60 days after identification on the CMIC List. U.S. persons have 365 days from the effective date of any listing to divest any CMIC-restricted securities.
- Designation on the CMIC List does not necessarily mean a party is an MEU subject to license requirements under the EAR; however, it is a red flag triggering further due diligence.

Export Control List: BIS Entity List

- BIS list of names of foreign persons that are subject to specific license requirements for the export, reexport, and/or transfer (in-country) of items (commodities, software, and technology) subject to the EAR
 - List includes parties designated on national security or foreign policy grounds
 - Increasing focus on foreign policy issues, such as human rights violations and supply chain concerns
 - Independent of, and in addition to, license requirements otherwise imposed in the EAR
- Generally, BIS will impose a license requirement for all items subject to the EAR, including EAR99 items
- License applications are typically subject to a “presumption of denial”; however, BIS may call for a “case by case” review of certain ECCNs

Export Control List:

Military End User/End Use (MEU) Rule

- License requirement for exports, reexports, or transfers of certain items if the exporter has “knowledge” that the item is intended for a military end use or a military end user in **China, Russia, Belarus, Venezuela, or Myanmar (Burma)**.
 - Scope varies depending on the specific MEU type rule
- Covers “military end user” and “military intelligence end users” depending on the rule.
 - Traditional foreign military and related organizations (e.g., military, national guard, national police, etc.); and
 - Any other end user whose activities are intended to support ‘military end uses’
- BIS published an MEU list but not exhaustive

MEU Rule

- Definition of “military end user” is broad. There are two types:
 - Traditional foreign military and related organizations; and
 - National armed services (army, navy, marine, air force, or coast guard), the national guard and national police, government intelligence or reconnaissance organizations
 - Any other end user whose activities are intended to support ‘military end uses’
- The definition of “military end use” includes the following:
 - Incorporation into a military item described on the U.S. Munitions List (USML);
 - Incorporation into items classified under ECCNs ending in “A018” or under “600 series” ECCNs; or
 - These are items that were previously controlled on the USML but have since transitioned to the CCL
 - Any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of the items above.
 - Includes not just items incorporated into military products but also items involved in direct facilitation of military products (e.g., inspection or test equipment)

Military End User/End Use Rules

	MEU Rule	Expanded MEU Rule (Russia and Belarus)	Military Intelligence End-Use Rule
Items	Any item subject to the EAR listed in Supplement No. 2 to Part 744 (e.g., 3A991 chips, 4A994 computers, 5A991 telecommunications equipment, 5A992 mass market items, 9A991 aircraft, etc.)	Any item subject to the EAR	Any item subject to the EAR
Destination	“military end user” or for a “military end use” in China, Venezuela, Myanmar (Burma), or Cambodia	“military end user” or for a “military end use” in Russia or Belarus	‘military-intelligence end user’ or for a ‘military-intelligence end use’ in China, Russia, Belarus, Myanmar (Burma), Venezuela, Cambodia, or embargoed destinations (<i>i.e.</i> , Iran, North Korea, Syria, or Cuba)
Definitions	<p>“Military end user” is defined as:</p> <ul style="list-style-type: none"> Traditional foreign military and related organizations (e.g., military, national guard, national police, etc.); and Any other end user whose activities are intended to support ‘military end uses’ <p>“Military end use” is defined as:</p> <ul style="list-style-type: none"> incorporation into a military item described on the U.S. Munitions List (USML); incorporation into items classified under ECCNs ending in “A018” or under “600 series” ECCNs; or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items described above 	<p>“military end user” and “military end use” are defined the same as under the traditional MEU rule.</p>	<p>“Military-intelligence end user” is defined as: intelligence or reconnaissance organization of the armed services (army, navy, marine, air force, or coast guard); or national guard</p> <p>“Military-intelligence end use” is defined as: design, development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of, or incorporation into, USML items or items classified under A018 ECCN or 600 series ECCNs when intended to support the functions of a MIEU</p>

Military-Intelligence End Users (MIEU) Rule

- **Section 744.22** imposes a licensing requirement for export, reexport, or transfer of any item subject to the EAR, where there is knowledge that the item is intended for a “military-intelligence end use” or a “military-intelligence end user” in China, Russia, Burma (Myanmar), Venezuela or embargoed destinations.
- **Military-intelligence end user:** intelligence or reconnaissance organization of the armed services (army, navy, marine, air force, or coast guard); or national guard
- **Military-intelligence end use:** design, development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of, or incorporation into, USML items or items classified under A018 ECCN or 600 series ECCNs when intended to support the functions of a MIEU

Military-Intelligence End Users (MIEU) Rule (cont.)

- MIEUs are a subset of the “government intelligence and reconnaissance organizations” included in the definition of “military end users” in section 744.21.
 - Example of Chinese MIEU: Intelligence Bureau of the Joint Staff Department
- Imposes similar due diligence obligations to the MEU Rule
- No separate MIEU List
- Broader scope of restrictions than MEU rule:
 1. Applies to all items subject to the EAR, not just those in Supp. No. 2 to Part 744
 2. Restriction in 744.6 prohibits US persons from providing support to military intelligence end user/end use

List Based Sanctions Takeaways

- Need to screen parties to the transactions, owners and key business partners against the various lists
- Not all lists are the same – need to distinguish between
 - Export control-based lists – restrictions dealing with products, software and technology and
 - Sanctions-based list – restrictions impacting transactions with parties on sanctions list
- Some restrictions can impact IPOs and may require special sanctions and export control expert opinions on impact
 - Can include dealing with parties (key suppliers, vendors, etc) on the list even if company being involved in IPO is not on the list

Lessons learned from the Russia-Ukraine Conflict

US Targeted Sanctions on Russia and Belarus

- Focused on individuals and sectors of the economy with greatest impact
- OFAC Sanctions – Aviation, Energy, Banking
- Export controls – EAR and ITAR controlled items and “Luxury goods”
 - All ECCNs except EAR99
 - “Luxury goods” – EAR 746 Supp 5 contains the HTS numbers for goods covered including computers, fish, seafood, and preparations thereof; alcoholic beverages; tobacco; certain essential oils and cosmetics, plastics, leather, fur and silk articles, apparel and textiles; semi-precious stones and non-industrial diamonds.

Key Russia Sanctions Measures

- **SDN List:** Blocked individuals and entities, especially Russian banks (e.g., Sberbank, Alfa Bank, VTB, VEB, PSB, Otkritie, Sovcombank, Novikombank and Moscow Industrial Bank)
- **Restrictions on Financial Institutions** (E.O. 14024): OFAC Directives 1-4
- **SWIFT delisting** of major banks
- **Prohibited New Investment:** Prohibits US persons from making new investments or facilitating such investments in restricted sectors in the Russian Federation

Key Russia Sanctions Measures (cont.)

- **Restricted Services (E.O. 14071)**
 - “Accounting”
 - “trust and corporate formation,”
 - “management consulting”
 - “quantum computing” and
 - “architecture or engineering”
 - to any person located in the Russian Federation

Industry Specific Concerns: Aviation

- The U.S. has restricted the License Exception Aircrafts, Vessels, and Spacecraft (AVS) for Russian and Belarusian aircraft.
- This means that License Exception AVS is not available for aircraft registered in, owned, or controlled by, or under charter or lease by, Belarus or Russia, or by a Belarusian or Russian national.
- **In practice, no Russian or Belarusian airlines can fly aircraft subject to the EAR to/from Russia or Belarus**

Industry Specific Concerns: Aviation (cont.)

- Pursuant to §744.7 of the EAR, it is prohibited to export or reexport an item subject to the EAR to, or for the use of, a foreign aircraft unless there is a license exception (or no license required) to export the item to the country (including a national thereof) which is currently controlling, leasing or chartering the aircraft
 - **In practice, it is therefore prohibited to send aircraft parts/components that are subject to the EAR to Russian and Belarusian airlines anywhere in the world.**

Industry Specific Concerns: Energy

- **Nord Stream 2 Sanctions**
 - Effectively halting the company's pipeline project
- **Import Bans**
 - Russian crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products.
- **Export Controls**
 - Items related to deepwater oil and gas exploration, extraction and oil refining

Industry Specific Concerns: Energy (cont.)

- **Investment Bans**

- March 8, 2022: Executive Order 14066 prohibited US persons from investing in Russia's energy sector
- April 6, 2022: E.O. 14068 prohibited all new investment in categories to be enumerated by the Departments of Treasury and State.
- These rules further prohibit U.S. persons from approving, financing, facilitating or guaranteeing investments by foreign persons in Russia's energy sector.

- **Price Caps**

- Russian-origin oil and petroleum products, implemented as a ban on the transportation of Russian seaborne crude oil and petroleum products to third countries and associated services including brokering, financing and insurance, except where the products are purchased at or below the applicable capped price.

Expected Trends

- Increased review and enforcement of transactions
- Continued focus and scrutiny of country of concern, such as China and Russia, and state-owned entities
- Focus on preventing sanctions circumvention
- Increased use of List Based Sanctions
- Industry/Sector-based scrutiny

Import Prohibitions: Forced Labor

- Section 307 of the Tariff Act (19 USC 1307) bans the import of goods produced “wholly or in part” by convict labor or forced labor
 - *Interpreted to cover forced labor “at any tier of their supply chain, down to every input into the products”*
 - Largely enforced by “Withhold Release Orders (WROs)”

Import Prohibitions: Uyghur Forced Labor Prevention Act (UFLPA)

- Effective June 21, 2022, the Uyghur Forced Labor Prevention Act (UFLPA) specifically targets imports from the Xinjiang Uyghur Autonomous Region of the People's Republic of China (XUAR).
 - All goods from XUAR or incorporating items from XUAR are now presumed to be made with forced labor and banned from import
 - Also targets goods from identified entities (Entity List) both within and outside XUAR
 - Imposes a “clear and convincing” evidence standard for importers to overcome the presumption, similar to North Korea forced labor rebuttal standard per CAATSA - 22 USC 9241a
- DHS has formally published the UFLPA Entity List and will continue to add entities to the list.

Forced Labor: UFLPA Guidance and Resources

- The Forced Labor Enforcement Task Force published the “Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China” on June 17.
 - This included the initial UFLPA Entity List and guidance for importers on due diligence, effective supply chain tracing, and supply chain management measures.

Forced Labor: UFLPA Guidance and Resources

(cont.)

- Custom and Border Protection's Operational Guidance, published June 13, outlined the standards importers must comply with under UFLPA.
 - It clarified that if an importer believes that its importation has been wrongfully detained under the UFLPA, the importer may submit detailed documentation to prove that the goods and its components were produced outside of the XUAR.
 - Alternatively, it outlines how an importer may attempt to overcome the rebuttable presumption and the types of evidence importers may submit.
 - It established there is no de minimis exception.

Thinking Ahead to Risk Mitigation

What can you do to Mitigate Risk?

- Review supply chain for higher risk suppliers
 - Use existing lists to flag risk and assess future risk
- Review export controls and sanctions on bill of materials for your end products
- **Assess sectors of higher risk:** AI, Semiconductors, Quantum Computing

Risk Mitigation Tools: Due Diligence and KYC

- **Know Your Customer (KYC)**

- KYC checks on all parties, banks, insurers, vendors, business partners when dealing with transactions that may involved sanctioned parties, persons, or products
- KYC checks can include identifying UBOs for OFAC's 50% test and the EU control test
 - OFAC's 50% rule applies to entities "owned" directly or indirectly 50% or more by SDNs
 - EU and UK rules apply to entities "owned" or "controlled" by sanctioned parties.
 - "Control" requires companies to ask whether earlier association with currently sanctioned parties could continue to cause risk.

Risk Mitigation Tools: Due Diligence and KYC (cont.)

- **Screening**

- Manual Screening: Review the names of potential customers and partners and compare them to the Consolidated Screening List, which combines screening lists issued by the Departments of Commerce, State, and Treasury
 - Third-Party Software: Purchase third-party software that has a variety of different tools and allows for screening against U.S. lists, as well as non-U.S. lists (e.g., EU, UN, etc.)
- Nearshoring/ Friendshoring (supply chain and manufacturing centers)