

Vol. 42, No. 39

October 3, 2022

US Imposes More Russia Sanctions

OFAC designated 14 persons in Russia's military-industrial complex, including two international suppliers, three key leaders of Russia's financial infrastructure, immediate family members of some of senior Russian officials, and 278 members of Russia's legislature for enabling Russia's sham referenda and attempt to annex sovereign Ukrainian territory.

In addition, OFAC issued new [guidance](#) that warns of the heightened sanctions risk that international **actors outside of Russia** would face for providing political or economic support to Russia. Frequently Asked Question ([FAQ](#)) [1091](#), emphasizes that OFAC is prepared to more aggressively use its existing sanctions authorities, including E.O. 13660, E.O. 14024, and E.O. 14065, to target persons — inside or outside Russia

At a Senate Foreign Relations Committee [hearing](#) to review Russia sanctions September 28, **State's head of sanctions coordination James O'Brien** said the Administration is considering sanctions on Moscow's financial sector and high technology access. Some committee members countered that the Administration should be targeting Russia energy sector. Gaps in energy sanctions "have enabled Russia to weaponize energy supplies to Europe and generated very substantial revenues to keep Russia afloat," committee ranking Republican Jim Risch (Idaho) said.

"The administration has consistently extended the general license regarding nearly all energy-related transactions with major Russian banks giving them relief from sanctions. It is no wonder why Russian energy revenues are up and the ruble has stabilized," he continued. The G7's decision to impose an oil price cap will have no real impact, because the participating countries already have banned Russian oil imports, he said.

Treasury Assistant Secretary for Terrorist Financing and Financial Crimes Elizabeth Rosenberg argued that sanctions are having a major impact on the Russian economy. "Russia had been forced to impose draconian capital controls and is burning through its rainy-day fund, dramatically eroding its economic base and buffers in unsustainable ways. Russia will be in fiscal deficit by the end of this year," she said.

BIS Adds to Entity List

Commerce Department's Bureau of Industry and Security (BIS) issued a rule September 29 adding 57 entities located in Russia and the Crimea region of Ukraine to the Entity List for supporting the Russian invasion of Ukraine.

Commerce is also publishing [new guidance](#) which rules United States' **export controls on Russia can be applied to entities in third countries** that seek to provide material support for Russia's and Belarus's military and industrial sectors, including to replenish ("backfill") technologies and other items prohibited by the United States and the 37 allies and partners that have implemented substantially similar controls.

"Russia's attempts to illegally annex Ukrainian territory are a grotesque violation of Ukraine's sovereignty and a blatant effort to manufacture a false reality. This phony act to legitimize the invasion cannot stand," said **Under Secretary of Commerce for Industry and Security Alan Estevez**. "We are also further clamping down on entities that are seeking to support Russia's military effort—inside and outside of Russia—and will continue to coordinate with our allies and partners to continue to cut Russia off further from the technologies and other items it needs to sustain its war effort."

The entities are being added for a variety of activities contrary to U.S. national security and foreign policy interests, including acquiring or attempting to acquire U.S.-origin items in support of Russia's military. Some are also being added for their involvement in the development of quantum computing technologies, or are otherwise important to Russia in developing advanced production and development capabilities.

Fifty of the fifty-seven entities will also be subject to the Russia/Belarus Military End User Foreign Direct Product (FDP) Rule which impose severe restrictions on these entities' access to certain foreign-produced items.

The full list of entities is included in the text of the rule released today and is available on the Federal Register's website [here](#). An Index of resources for BIS Russia-related Export Controls can be found [here](#).

Legislative, Executive Action on Outbound Investment

Bipartisan consensus is building toward regulating outbound investment in China. At the Senate Banking Committee hearing September 29 "Examining Outbound Investment" lawmakers pressed to enact a legislation before the end of the year. The legislation by Senators Bob Casey (D-Pa), and John Cornyn (R-Texas), would set up a reporting process for investments that may be related to national security.

"This bill would help the US better understand the risks of allowing foreign adversaries to gain access to critical capabilities and technology and to design and manufacture goods critical to our economic

and national security interests,” Sen. Casey told the committee. “Without an outbound investment screening mechanism we cannot understand, much less safeguard, critical domestic industries and capabilities for American workers, manufacturers and innovators,” he continued. “We must avoid aiding and abetting our economic competitors and potential adversaries.”

In a letter sent to the White House before the hearing, Sens. Casey and Cornyn called for the President to move forward with executive action while deliberations continue in Congress. Executive action could then be bolstered by statutory provisions to “safeguard our national security and supply chain resiliency on outbound investments to foreign adversaries”.

Ranking Republican Pat Toomey (Pa) said he is concerned that the White House intends to rush through an executive order establishing an outbound investment regime. “An Executive Order is not a substitute for a new congressionally-passed law,” he said.

Any outbound investment regime must have clear statutory boundaries, Sen. Toomey continued. “Therefore, a notification regime for outbound American investments in China should, at a maximum, only be applicable to direct US investments in Chinese entities that are manufacturing, producing, developing, or testing a technology, for which a US exporter would otherwise be required to seek a license under current US law to export.”

Harris: US Hopes to End EV Tax Concerns

Vice President Harris promised Korean Prime Minister Han that the Administration will try to address Seoul’s concerns about a recently-enacted tax credit to promote the production of electric vehicles in the United States. Trade partners, including South Korea, are complaining that the tax credit will put them at a disadvantage and that they violate World Trade Organization rules.

The Vice President, who met with the Korean Prime Minister in Tokyo, “underscored that she understood the ROK’s concerns regarding the Act’s tax incentives for electric vehicles, and they pledged to continue to consult as the law is implemented,” according to a White House readout. She did not make any commitment or offer any proposal to resolve the issue, a senior Administration official told reporters. “What the Vice President did was explain our view, which is as follows: that this law is really a good thing for Americans, the world, and the planet, in terms of what it does for clean energy and climate,” the official said.

“We think that the South Koreans and all of our partners in this region and beyond recognize that, so it’s a hugely important step on the climate front and dealing with the climate crisis,” the official continued. The Vice President “listened very carefully and made clear our commitment to work in the US government... as we look at the implementation of this law to help address that issue. And that process is going on now, and extensive conversations have taken place,” according to the official.

The [Inflation Reduction Act](#) includes a requirement that electric vehicles be assembled in North America in order to qualify for the tax credits.

White House Action on Outsourcing Urged

House and Senate Democratic leaders – along with a bipartisan group of lawmakers – are urging President Biden to **take executive action to keep production of critical items from moving overseas to countries like China and Russia while Congress works on legislation.**

In a [letter to the President](#), bipartisan and bicameral supporters of the National Critical Capabilities Defense Act (HR 6323, S 1854) said the bill is undergoing revisions in response to input from the Administration and stakeholders. But while the legislation works its way through Congress, the lawmakers called on President Biden to issue an executive order “to safeguard our national security and supply chain resiliency on outbound investments to foreign adversaries.”

“While we believe that this revised legislation provides the US with the strongest foundation to compete in a global economy, American workers, businesses and our national security cannot afford to wait,” they said. “When we cede our manufacturing power and technological know-how to foreign adversaries, we are hurting our economy, our global competitiveness, American workers, industry and national security,” the lawmakers wrote. “Government action on this front is long overdue to address the scope and magnitude of these serious risks we face as a country.”

The bill would create a National Critical Capabilities Committee, which will be empowered to review and block certain US production offshoring, development or manufacturing of identified critical national capabilities being made within adversarial nations including China and Russia. It encompasses the production of medical supplies and medicines, articles essential to the electrical grid and areas vital to US national security.

Signing the letter are House Speaker Nancy Pelosi (D-Calif) and Senate Majority Leader Chuck Schumer (D-NY, along with Sens. Bob Casey (D-Pa) and John Cornyn (R-Texas) and Reps. Rosa DeLauro (D-Ct), Bill Pascrell (D-NJ), Brian Fitzpatrick (R-Pa) and Victoria Spartz (R-Ind).

Labor, CBP Report on Forced Labor – The New FCPA

Forced Labor is a ‘Top-Tier’ compliance issue, Department of Homeland Security Undersecretary Robert Silvers told the [WSJ](#) this week.

“Compliance professionals—and, indeed, C-suite executives—need to understand that forced labor is now a top-tier compliance issue, said Silvers. “Forced labor belongs in the same breath as FCPA. When it comes to corporate compliance programs, [the] boards of directors need to be focused on this, CEOs need to be focused on this [and], compliance teams certainly need to be laser focused on this.”

The Labor Department reports it has identified some 158 goods from 77 countries that it believes are produced by child labor or forced labor in violation of international standards. The [new report](#) adds 32 goods to the list, including two new ones – dairy products and açai berries.

Labor also released its latest [report on the worst forms of child labor](#). It reviews 131 countries and territories' child labor situations, including trafficking, debt bondage, forced labor, hazardous work, commercial sexual exploitation and the use of children in armed conflict or illicit activities. The report details these countries' governments efforts to eliminate child labor and provides nearly 2,200 country-specific recommendations for eliminating child labor.

In their operational statistics for August 2022, US Customs & Border Protection [reported targeting 838 entries valued at more than \\$266.5 million for suspected use of forced labor](#) in the production of imported goods, including goods subject to the Uyghur Forced Labor Prevention Act and Withhold Release Orders.

The US Department Commerce (ITA) makes available free training on the topic to help you understand the law and regulations, identify red flags, and teach you how to develop a due diligence plan. [\[Link\]](#)

WTO Budget Plan at Odds With Membership

Geneva – Some World Trade Organization members are unhappy with Director-General Ngozi Okonjo-Iweala's budget request for 2023. A 49-page "WTO Mid-Term WTO Budget Review" sent to members last week calls for an overall WTO budget of CHF 212.45 million for 2023.

The budget review emphasizes pursuing non-mandated negotiations on digital trade, trade and health, supply chain disruptions, trade and climate change and trade and gender among others, while putting the Doha Development Agenda negotiations to bed once and for all, said a delegate who asked not to be quoted.

At the June 2022 Ministerial Conference, the Ministers committed "to work towards necessary reform of the WTO", envisioning "reforms to improve all its functions" with "decisions, as appropriate, to be submitted to the next Ministerial Conference." However, they provided no substantive guidance for the content of the reform they called for in their Ministerial outcome document

The DG said in the review "at our very successful MC12, Members gave us the mandate not only to implement the outcomes in the areas of fisheries subsidies, intellectual property, and food security, but also to continue negotiations in those and other areas and **to explore critical emerging issues, such as trade and health, supply chains disruptions, trade and climate change, and trade and women's economic empowerment.**"

She said the Secretariat has been loaded with more work on areas of "intellectual property, government procurement, and competition, integrated work at the intersection of trade and health, especially collaborative technical assistance." Without disclosing what has been achieved in the reform of the Secretariat based on the recommendations of McKinsey & Company, and the additional costs that it had imposed on members, **she argued for "the need for increased budgetary resources for 18 additional staff posts so that the Secretariat can create more value and deliver desired output to members."**

Moreover, the WTO is overstuffed yet the DG wants to create new positions, the member argued, adding that apparently, the Secretariat has absorbed 30 staff members of the Appellate Body Secretariat who do not have a lot to do. At a time when countries are drowned in multiple crises, especially food, financial and fiscal crises, the DG's demand is "imprudent and highly irresponsible to ask for more resources when there is clearly no need," said a member from South America.

In her response to members' concerns, the deputy director general in charge of the Secretariat transformation process, Angela Ellard of the United States, said "the focus of the transformation work is now shifting to implementing the outcomes approved so far on rewards, outside promotion, procurement, risk management, promotions, mobility, recruitment and career pathways." While emphasizing "digital trade", a non-mandated issue being pursued by the informal Joint Statement Initiative groups, she did not mention termination of the 1998 moratorium on customs duties for electronic transmissions, said people familiar with the document.

The statement in the DG's mid-term review that "data and analysis on COVID therapeutics and diagnostics to support discussions related to MC 12 decision" will require additional analytical resources," is a cause for worry as it tends to suggest that the **six-month deadline to extend the TRIPS decision on vaccines to diagnostics and therapeutics could be undermined**, the trade envoy said.

The DG's review says "high-quality economic research, analysis, and data is necessary to facilitate work emerging from MC 12, including on WTO reform," **calling for additional hiring of econometricians, statisticians, supply chain and data analytics staff** to support the effort.

The mid-term review with its grand demands seems to be oblivious of the fact that the WTO is a member-driven, rule-based and inter-governmental multilateral trade body, said another member. **It is members who set the agenda and rules and not the DG, whose role is limited as per the Marrakesh Agreement.** The WTO is not a research-body like the World Bank or the International Monetary Fund, and the DG's plans to work based on her World Bank experience will undermine the role of the trade body, the member said.

**** Briefs *****

US Goods Trade Deficit Down in August. The US trade deficit in goods was \$87.3 billion in August, down \$2.9 billion from \$90.2 billion in July, according to a Commerce Department advance report released yesterday. Exports of goods for August were \$179.8 billion, \$1.7 billion less than July exports. Imports of goods for August were \$267.1 billion, \$4.6 billion less than July imports. Commerce is slated to release its full report on the August trade balance on October 5.

Jones Act Waiver for Puerto Rico. Secretary of Homeland Security Alejandro Mayorkas announced yesterday a temporary waiver of the Jones Act in order to provide faster relief to Puerto Rico following Hurricane Fiona. The Jones Act requires that all maritime cargo transport between US ports to occur on US flagged ships. But the law provides Homeland Security with the authority to waive the Jones Act in the interest of national security.

US Trade Representative Katherine Tai met Tuesday with Japan's Minister of Economy, Trade and Industry Nishimura Yasutoshi as Administration officials work to keep discussions moving forward on the Indo-Pacific Economic Framework. Ms. Tai is in Tokyo as part of the official US delegation attending the funeral of former Japanese Prime Minister Abe. Vice President Kamala Harris also is visiting Tokyo as part of a swing through the region to discuss the IPEF, among other issues.

Commerce Secretary Gina Raimondo met with Indian Minister of External Affairs Subrahmanyam Jaishankar yesterday to discuss the IPEF and the US-India commercial relationship. India is participating in the IPEF, but is the only member to opt out of the trade pillar of the proposed agreement. In the meeting, Ms. Raimondo emphasized the need for an ambitious and high-standard outcome, supported by concrete benefits, in order to deliver to all IPEF members, according to a readout from her office.

Firearms Export Controls Questioned Four Senate and House Democrats are questioning whether the Commerce Department should be responsible controlling exports of assault weapons. In a letter to Commerce Secretary Gina Raimondo, the lawmakers noted that Commerce has approved \$15.7 billion in firearms export licenses while denying only 0.4 percent of applications since taking over approvals from the State Department. “We are writing with grave concern about Commerce Department actions that have weakened oversight of assault weapon and high-capacity magazine exports, padding the gun industry’s profits while putting deadly weapons in the hands of corrupt actors around the world,” according to the letter, written by Sens. Elizabeth Warren (D-Mass) and Chris Murphy (D-Conn) and Reps. Joaquin Castro (D-Texas) and Norma Torres (D-Calif).

USDA Supports US Fertilizer Production. The Administration is making \$500 million in grants available to increase domestic production of fertilizer to spur competition and combat price hikes being felt by US farmers caused by the war in Ukraine. The [Fertilizer Production Expansion](#) grants will be used to support independent, innovative and sustainable US fertilizer production. Funds also will expand the manufacturing and processing of fertilizer and nutrient alternatives in the US and its territories. Eligible entities are for-profit businesses and corporations, nonprofit entities, Tribes and Tribal organizations, producer-owned cooperatives and corporations, certified benefit corporations and state or local governments. Private entities must be independently owned and operated to apply. The maximum award is \$100 million and the minimum \$1 million.

FinCEN Final Rule on Beneficial Ownership Treasury’s Financial Crimes Enforcement Network (FinCEN) issued a final rule establishing a beneficial ownership information reporting requirement, pursuant to the bipartisan Corporate Transparency Act (CTA). The [rule](#) will require most corporations, limited liability companies, and other entities created in or registered to do business in the United States to report information about their beneficial owners—the persons who ultimately own or control the company, to FinCEN. The requirement go into effect January 1, 2024. [Fact Sheet.](#)

Jones Act Waiver Slammed After Homeland Security Secretary Alejandro Mayorkas approved a “temporary and targeted” Jones Act Waiver on shipments to Puerto Rico, to permit a British Petroleum (BP) vessel’s delivery of fuel to the hurricane-ravaged island, domestic shipping interests cried foul. “This stunt by a foreign oil company showing up unannounced in Puerto Rico while

on its way overseas hoping to sell its fuel at a premium to Puerto Ricans in need, and thereby triggering a public and political rush to judgment, is bad precedent, a circumvention of U.S. law, and should never be tolerated,” [stated](#) the American Maritime Partnership.

BIS / Special Priorities Assistance BIS-999 Contractors may request Special Priorities Assistance (SPA) when placing rated orders with suppliers, to obtain timely delivery of products, materials, or services from suppliers, or for any other reason under the DPAS, in support of approved national programs. The Form BIS-999 is used to apply for such assistance. This notice allows for an additional 30 days for public comments. [[87 FR 58772](#)]

BIS / International Import Certificate BIS-645P For the U.S. importer, this procedure provides that, where required by the exporting country, the importer submits an international import certificate to the U.S. Government to certify that he/she will import commodities into the United States and will not reexport such commodities, except in accordance with the export control regulations of the United States. This notice allows for an additional 30 days for public comments. [[87 FR 58483](#)]

State/ DDTC Request to Change End-User, End-Use and/or Destination of Hardware and Open General Licenses (DS6004). DDTC has launched a pilot program pursuant to its authorities in ITAR § 126.9(b) in order to assess the concept of an OGL mechanism by which it may authorize certain transfers of defense articles to predetermined parties. Interested persons are invited to submit comments regarding this proposal. [[87 FR 58895](#)]

OFAC Western Balkans Stabilization Regulations , originally issued in 2001, have been reissued in their entirety. The [measures](#) are directed against violence in the former Yugoslav Republic of Macedonia, southern Serbia, the Federal Republic of Yugoslavia, and elsewhere in the Western Balkans region and seek to ensure the implementation of the Dayton Accords in Bosnia.

OFAC Central African Republic Sanctions of 2014 have been [reissued](#) to provide a comprehensive set of regulations that include additional interpretive guidance and definitions, general licenses, and other regulatory provisions. Issued in furtherance of the International Emergency Economic Powers Act and the United Nations Participation Act, the sanctions are intended to punitively punish the country for its failure to establish law and order and guaranteeing peace and security in the region. Unlike several other unilateral sanctions, this arms embargo has been adopted by the UN Security Council, most recently in its [Resolution 2648](#).

State Supports Guinea Sanctions The State Department announced its [support for the sanctions](#) imposed by the Economic Community of West African States (ECOWAS) against Guinea.

*** Appointments ***

Senate Ag Okays Taylor The Senate Agriculture Committee yesterday approved the nomination of Alexis Taylor to serve as Agriculture Undersecretary for Trade and Foreign Agricultural Affairs. The committee vote sets the nomination up for final Senate approval. It remains to be determined when the Senate will vote on Ms. Taylor's nomination.

Approval of another top agricultural trade nominee – Doug McKalip to be US chief agricultural negotiator – is being held up by Sen. Bob Menendez, who is concerned about a lack of transparency in the Administration's trade negotiations.

International Telecommunication Union named Doreen Bogdan-Martin to serve as the next Secretary-General. "With her deep knowledge of the ITU along with her extensive experience in diplomacy and technology, Ms. Bogdan-Martin is extremely qualified to lead the ITU during these challenging times. She has the technical expertise and leadership skills that are essential for ensuring the future of the internet is safe, secure, open and accessible." Paul Lekas, Senior Vice President, Global Public Policy, Software & Information Industry Association (SIIA)

*** Calendar ***

October 5– 6. ACE/AES Export Compliance Seminar It's critical to provide accurate data in your export filing using the Automated Commercial Environment (ACE) to avoid costly penalties. This 2-day virtual program features experts from the U.S. Census Bureau, Bureau of Industry and Security, and U.S. Customs & Border Protection to provide you with important training on these requirements.

[Register \(\\$95\)](#)

October 6 Infrastructure in Ukraine: A Ministry Discussion on Rebuilding for U.S. Business 11:30 AM – 12:15 PM EDT. Virtual discussion with Ukrainian Deputy Minister of Infrastructure and an interagency panel from the Departments of Commerce, State and Transportation to explore opportunities for how U.S. business can engage in Ukraine's reconstruction effort

<https://www.trade.gov/infrastructure-ukraine-ministry-discussion-rebuilding-us-business>

October 17-21 Advanced Manufacturing Trade Mission to Indonesia, Singapore, and Japan. In November, an [Aerospace and Defense Trade Mission to Indonesia](#). And in March 2023 Trade Winds, the largest U.S. government annual trade mission, heads to Bangkok with mission stops to five other countries in the region. Visit the [Trade Winds ASEAN web page](#) to learn more.