

# THE GLOBAL TRADE LAW JOURNAL

Volume 1, Number 1

January–February 2024

## **Editor's Note: Welcome!**

*Victoria Prussen Spears*

## **President Biden Creates a National Security Program That Will Impact Outbound U.S. Investments Involving “Countries of Concern”**

*Shawn B. Cooley, Timothy C. Welch, Nathan Cunningham, Christina Carone, and William Looney*

## **CFIUS Increases Its Scrutiny of Foreign Investment in the United States**

*Geoffrey M. Goodale and Lauren E. Wyszomierski*

## **The Importance of Focusing on Antiboycott Enforcement**

*Jen Fernandez, Andrew Shoyer, and Kayla M. Scott*

## **Foreign Investors Should Consider Treaty Protections When Structuring Their Investments Abroad**

*Michael G. Jacobson, Maria A. Arboleda, and Orlando F. Cabrera C.*

## **Sanctions and Export Controls Voluntary Disclosures: Key Takeaways from Federal Tri-Seal Compliance Note**

*David Mortlock, Britt Mosman, Michael J. Gottlieb, William J. Stellmach, and Joshua Nelson*

## **U.S. Agencies Update Nuclear-Related Export Controls—including for China**

*Barbara D. Linney, Melissa B. Mannino, Lana Muranovic, and James K. Perry*

## **BIS Proposes Changes to Section 232 Exclusion Process**

*Leah Scarpelli, Mario A. Torrico, and David R. Hamill*

## **A Recent (Non-Uyghur) Forced Labor Preclusion Federal Circuit Decision and Its Potential Impact on U.S. Exporters and Imports**

*David J. Berman, Michael J. Gottlieb, Lyssa K. Kutner, and Heather Hedges*

## **Now Misaligned Commitments on Social Issues Create Risks for Your Company**

*David E. Nesmith and Keran Bloor*

## **European Union Trade Sanctions on Russia**

*Konstantin Bureiko, Alan Kartashkin, Janie Shvets, and Anastasia Magid*

## **New Dutch Export Controls on Advanced Semiconductor Manufacturing Equipment**

*Lourdes Catrain, Stephanie Seeuws, Matthijs Dols, and Y. Alp Ozturk*

## **African Forum on Business and Human Rights: Here's What Companies Need to Know**

*Daniel Feldman, Mosa Mkhize, and Hannah Edmonds-Camara*

## **The Evaluation of the German FDI Regime—Cornerstones of Potential Revisions Revealed**

*Mirko von Bieberstein and Janine K. Kuehn*

---

# THE GLOBAL TRADE LAW JOURNAL

---

Volume 1, No. 1

January–February 2024

- 7 Editor's Note: Welcome!**  
Victoria Prussen Spears
- 11 President Biden Creates a National Security Program That Will Impact Outbound U.S. Investments Involving "Countries of Concern"**  
Shawn B. Cooley, Timothy C. Welch, Nathan Cunningham, Christina Carone, and William Looney
- 19 CFIUS Increases Its Scrutiny of Foreign Investment in the United States**  
Geoffrey M. Goodale and Lauren E. Wyszomierski
- 27 The Importance of Focusing on Antiboycott Enforcement**  
Jen Fernandez, Andrew Shoyer, and Kayla M. Scott
- 33 Foreign Investors Should Consider Treaty Protections When Structuring Their Investments Abroad**  
Michael G. Jacobson, Maria A. Arboleda, and Orlando F. Cabrera C.
- 41 Sanctions and Export Controls Voluntary Disclosures: Key Takeaways from Federal Tri-Seal Compliance Note**  
David Mortlock, Britt Mosman, Michael J. Gottlieb, William J. Stellmach, and Joshua Nelson
- 47 U.S. Agencies Update Nuclear-Related Export Controls—including for China**  
Barbara D. Linney, Melissa B. Mannino, Lana Muranovic, and James K. Perry
- 51 BIS Proposes Changes to Section 232 Exclusion Process**  
Leah Scarpelli, Mario A. Torrico, and David R. Hamill
- 55 A Recent (Non-Uyghur Forced Labor Prevention Act) Federal Circuit Decision and Its Potential Impact on UFLPA Enforcement Efforts**  
Ted Murphy, Aaron M. Applebaum, Elyssa R. Kutner, and Heather Hedges
- 59 How Misaligned Commitments on Social Issues Create Risks for Your Company**  
Tanya C. Nesbitt and Kerem Bilge

- 65 European Union Trade Sanctions on Russia**  
Konstantin Bureiko, Alan Kartashkin, Jane Shvets, and Anastasia Magid
- 79 New Dutch Export Controls on Advanced Semiconductor Manufacturing Equipment**  
Lourdes Catrain, Stephanie Seeuws, Matthijs Dols, and Y. Alp Ozturk
- 83 African Forum on Business and Human Rights: Here's What Companies Need to Know**  
Daniel Feldman, Mosa Mkhize, and Hannah Edmonds-Camara
- 89 The Evaluation of the German FDI Regime—Cornerstones of Potential Revisions Revealed**  
Mirko von Bieberstein and Lukas Nigl

**EDITOR-IN-CHIEF**

**Steven A. Meyerowitz**

*President, Meyerowitz Communications Inc.*

**EDITOR**

**Victoria Prussen Spears**

*Senior Vice President, Meyerowitz Communications Inc.*

**BOARD OF EDITORS**

**Robert A. Friedman**

*Partner*

*Holland & Knight LLP*

**Geoffrey M. Goodale**

*Partner*

*Duane Morris LLP*

**Renée Latour**

*Partner*

*Clifford Chance*

**Britt Mosman**

*Partner*

*Willkie Farr & Gallagher LLP*

**Anthony Rapa**

*Partner*

*Blank Rome LLP*

**Brooke M. Ringel**

*Partner*

*Kelley Drye & Warren LLP*

**Samir D. Varma**

*Partner*

*Thompson Hine LLP*

**Timothy C. Welch**

*Partner*

*Weil, Gotshal & Manges LLP*

THE GLOBAL TRADE LAW JOURNAL at \$495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint. Copyright 2024 Fastcase, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner.

For customer support, please contact Fastcase, Inc., 729 15th Street, NW, Suite 500, Washington, D.C. 20005, 202.999.4777 (phone), or email customer service at [support@fastcase.com](mailto:support@fastcase.com).

Publishing Staff

Publisher: Morgan Morrisette Wright

Production Editor: Sharon D. Ray

Cover Art Design: Morgan Morrisette Wright and Sharon D. Ray

This journal's cover features a 1855 depiction of the American clipper ship *Red Jacket* on her journey from Melbourne, Australia, to Liverpool, England. The artwork was originally created by Charles Parsons and Joseph B. Smith, and later lithographed and published by Nathaniel Currier. It is reproduced courtesy of The Met Museum's public domain library.

Cite this publication as:

The Global Trade Law Journal (Fastcase)

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2024 Full Court Press, an imprint of Fastcase, Inc.

All Rights Reserved.

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE GLOBAL TRADE LAW JOURNAL, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

## **Articles and Submissions**

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,  
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@  
meyerowitzcommunications.com, 631.291.5541.

Material for publication is welcomed—articles, decisions, or other items of interest to international attorneys and law firms, in-house counsel, corporate compliance officers, government agencies and their counsel, senior business executives, and others interested in global trade law.

This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

### **QUESTIONS ABOUT THIS PUBLICATION?**

For questions about the Editorial Content appearing in these volumes or reprint permission, please contact:

Morgan Morrisette Wright, Publisher, Full Court Press at morgan.wright@vlex.com  
or at 202.999.4878

For questions or Sales and Customer Service:

#### **Customer Service**

Available 8 a.m.–8 p.m. Eastern Time

866.773.2782 (phone)

support@fastcase.com (email)

#### **Sales**

202.999.4777 (phone)

sales@fastcase.com (email)

# U.S. Agencies Update Nuclear-Related Export Controls—Including for China

Barbara D. Linney, Melissa B. Mannino, Lana Muranovic, and James K. Perry\*

*In this article, the authors examine recent actions by the U.S. Department of Commerce's Bureau of Industry and Security and the Nuclear Regulatory Commission to tighten controls on certain nuclear-related items destined for China (including Hong Kong) and Macau.*

---

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) expanded<sup>1</sup> its unilateral nuclear nonproliferation column 2 (NP2) controls by imposing a license requirement for exports, reexports (foreign country to China or Macau), and in-country transfers on eight export control classification numbers (ECCNs) when destined for China or Macau. The NP2-controlled items now subject to a license requirement for China (including Hong Kong) and Macau are:

- *ECCN 1A290*—Depleted uranium (any uranium containing less than 0.711 percent of the isotope U-235) in shipments of more than 1,000 kg in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.
- *ECCN 1C298*—Graphite and deuterium that is intended for use other than in a nuclear reactor.
- *ECCN 2A290*—Generators and other equipment “specially designed,” prepared, or intended for use with nuclear plants.
- *ECCN 2A291*—Equipment related to nuclear material handling and processing and to nuclear reactors and “parts,” “components,” and “accessories” thereof.
- *ECCN 2D290*—“Software” “specially designed” or modified for the “development,” “production,” or “use” of items controlled by ECCNs 2A290 or 2A291.

- *ECCN 2E001*—“Technology” for the “development” of equipment controlled under ECCNs 2A290 and 2A291 and “software” controlled under ECCN 2D290.
- *ECCN 2E002*—“Technology” for the “production” of equipment controlled by ECCNs 2A290 and 2A291.
- *ECCN 2E290*—“Technology” for the “use” of equipment controlled by ECCNs 2A290 or 2A291.

The new controls are intended to “allow the U.S. government to monitor the export of these items to assure that they are only being used in peaceful activities, such as commercial nuclear power generation, medical developments, production of or use in medicine, and non-military related industries.”<sup>2</sup>

The Nuclear Regulatory Commission (NRC) also took action to impose new restrictions. The NRC has issued an order<sup>3</sup> suspending certain general licenses in 10 C.F.R. Part 110 and, as a result, these general licenses for exports of special nuclear material,<sup>4</sup> source material,<sup>5</sup> and deuterium<sup>6</sup> when destined for China are no longer available.<sup>7</sup> Materials and supplies captured by this new rule include specific grades of plutonium, uranium, and deuterium or heavy water for nuclear end uses. The rule is intended to improve oversight and control on nuclear materials for end uses in China, as there are growing concerns that access to these materials and supplies is furthering China’s nuclear capabilities, which are perceived as detrimental to U.S. national security interests.

## **Export Administration Regulations’ Commerce Control List Updated to Implement Nuclear Suppliers Group Changes for Select ECCNS**

---

Effective August 18, 2023, BIS amended<sup>8</sup> five ECCNs controlled for NP1 reasons to implement commitments agreed to during the Nuclear Suppliers Group’s (NSG) 2019 and 2022 plenary meetings.<sup>9</sup> The ECCNs that were amended are:

- *ECCN 1B229*—Entry was removed. The entry previously controlled water hydrogen sulfide exchange tray columns and internal contactors.

- *ECCN 1B231*—Tritium facilities or plants and equipment. The entry was amended to include “hydrogen isotope” before purification. This is intended to ensure that only hydrogen isotope purification systems fall within the scope of the ECCN.
- *ECCN 2B209*—Flow-forming machines, spin-forming machines, and mandrels. The entry was revised to expand control criteria to include control rotor-forming mandrels with internal diameters between 75 mm and 650 mm. Previously, the maximum diameter covered was 400 mm.
- *ECCN 2B228*—Rotor-fabrication and rotor-assembly equipment, rotor-straightening equipment, bellows-forming mandrels, and dies. The entry was expanded to control bellows with inside diameters between 75 mm and 650 mm. Previously, the maximum diameter covered was 400 mm.
- *ECCN 3A233*—Mass spectrometers capable of measuring ions of 230 u or greater, having better than two parts in 230 and ion sources thereof. A technical edit was made to use the unit “u” or “Dalton” instead of the outdated atomic mass unit.

Items controlled for NP1 reasons require a license to all countries, including China, except for NSG member countries listed in Country Group A:4.<sup>10</sup> Parties engaging in exports of nuclear-related items should carefully review the amended ECCNs to ensure there are no licensing requirements imposed by these changes.

## Conclusion

---

The new controls highlight the U.S. government’s focus on limiting China’s access to U.S. materials and supplies due to China’s civil-military fusion strategy and the BIS’s participation in multi-lateral export control regimes. As a result of the new China-related controls, all ECCNs with an NP reason for control are subject to a BIS license requirement when destined for China (including Hong Kong) or Macau and NRC-regulated items require a specific license to go to China. The NSG-related Commerce Control List amendments are to ensure that the Export Administration Regulations’ Commerce Control List NP controls are in alignment with those of the NSG participating nations.

## Notes

---

\* The authors, attorneys with Baker & Hostetler LLP, may be contacted at [blinney@bakerlaw.com](mailto:blinney@bakerlaw.com), [mmannino@bakerlaw.com](mailto:mmannino@bakerlaw.com), [lmuranovic@bakerlaw.com](mailto:lmuranovic@bakerlaw.com), and [jperry@bakerlaw.com](mailto:jperry@bakerlaw.com), respectively.

1. <https://www.federalregister.gov/documents/2023/08/14/2023-17243/expansion-of-nuclear-nonproliferation-controls-on-the-peoples-republic-of-china-and-macau>; <https://www.federalregister.gov/documents/2023/08/29/C1-2023-18047/expansion-of-nuclear-nonproliferation-controls-on-the-peoples-republic-of-china-and-macau-correction>.

2. See “Expansion of Nuclear Nonproliferation Controls on the People’s Republic of China and Macau,” 88 Fed. Reg. 54875, 54876 (Aug. 14, 2023), <https://www.federalregister.gov/documents/2023/08/14/2023-17243/expansion-of-nuclear-nonproliferation-controls-on-the-peoples-republic-of-china-and-macau>.

3. <https://www.govinfo.gov/content/pkg/FR-2023-08-14/pdf/2023-17394.pdf>.

4. See 10 C.F.R. § 110.21.

5. See 10 C.F.R. § 110.22.

6. See 10 C.F.R. § 110.24.

7. The NRC previously issued an order in October 2021 that suspended exports of all radioactive materials under a general license to China General Nuclear and its subsidiaries or related entities, <https://www.federalregister.gov/documents/2021/10/01/2021-21342/order-suspending-general-license-authority-to-export-radioactive-material-and-deuterium-to-china>.

8. <https://www.federalregister.gov/documents/2023/08/18/2023-16750/commerce-control-list-updates-based-on-the-latest-nuclear-suppliers-group-nsg-plenary-meetings>.

9. The NSG is a multilateral international organization of nuclear supplier countries that seek to contribute to the nonproliferation of nuclear weapons by issuing regulatory guidance for nuclear export controls.

10. <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-740#Supplement-No.-1-to-Part-740>.