

Managing Risk in International Trade and Investment

Guest and Dorsey Panelists

Valentin Povarchuk, Senior Corporate Counsel—Trade Compliance & Regulatory Affairs, Seagate Technology LLC

Ranj Sangra, Associate General Counsel, Ballard Power Systems Inc.

Christopher Bercaw, **Karen Yiqin Fan**, and **David Townsend**, Dorsey & Whitney LLP

Program Materials

PowerPoint Presentation

Dorsey Publications

Dorsey eUpdate: *Fundamental Research & National Security: Recent Developments & New Issues*, Nelson Dong, Nicole Engisch, Alex Hontos, Justin Huff & Lawrence Ward (September 7, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/9/fundamental-research-and-national>

Dorsey eUpdate: *Navigating Data Breach Notification and Prevention in Hong Kong: A New Comprehensive Guide in Hong Kong*, Hilda Chan & Janet Wong (August 16, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/8/navigating-data-breach-hong-kong>

Dorsey eUpdate: *Executive Order 14105 on Outbound Investment in China and Proposed Rule*, Nelson Dong, Justin Huff, Lawrence Ward & T. Augustine Lo (August 15, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/8/bidens-executive-order>

Dorsey eUpdate: *Outbound Investment Screening Becomes a Reality*, Nelson Dong, Justin Huff & Lawrence Ward (August 10, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/8/outbound-investment-screening-becomes-a-reality>

Dorsey eUpdate: *Recent Trends in Wire Fraud Scams: Uncovering and Tackling the Latest Tactics in Hong Kong*, Joshua Colangelo-Bryan, Steve Nelson & Janet Wong (June 6, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/6/recent-trends-in-hk-wire-fraud-scams>

Dorsey eUpdate: *Protecting Against Business Email Scams and Recovering Funds Wired to the United States*, Joshua Colangelo-Bryan, Steve Nelson & Janet Wong (June 6, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/6/protecting-against-business-email-scams>

Dorsey eUpdate: *DOJ Strike Force Allegations Highlight Diversion and Theft from U.S. Companies*, Nelson Dong, Nicole Engisch, T. Augustine Lo, Dave Townsend & Lawrence Ward (May 19, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/5/justice-strike-force-allegations>

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Dorsey eUpdate: *United States Continues Expansion of Export Control Sanctions on Chinese Companies*, Nelson Dong, Justin Huff, T. Augustine Lo, Dave Townsend & Lawrence Ward (February 17, 2023) <https://www.dorsey.com/newsresources/publications/client-alerts/2023/2/us-continues-export-control-sanctions>

Dorsey eUpdate: *Biden Administration Restricts U.S. Exports of Advanced Computing and Semiconductor Manufacturing Equipment, Software, and Technology to China* (November 28, 2022), Nelson Dong, Lawrence Ward, T. Dave Townsend & T. Augustine Lo <https://www.dorsey.com/newsresources/publications/client-alerts/2022/11/us-adds-strict-limits-on-technology-exports>

Dorsey eUpdate: *The Chips and Sciences Act of 2022 – The Impact on China*, Catherine Pan-Giordano & Ting Zhou (September 19, 2022) <https://www.dorsey.com/newsresources/publications/client-alerts/2022/09/the-chips-and-sciences-act-of-2022>

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**Christopher Bercaw, Karen Yiqin Fan, and Dave Townsend,
Dorsey & Whitney LLP**

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Guest and Dorsey Speakers



Ranj Sangra
Associate General Counsel
Ballard Power Systems Inc.



Valentin Povarchuck
Senior Corporate Counsel - Trade
Compliance & Regulatory Affairs,
Seagate Technology LLC



Christopher Bercaw
Partner
Dorsey & Whitney LLP



Karen Yiqin Fan
Partner
Dorsey & Whitney LLP



Dave Townsend
Partner
Dorsey & Whitney LLP

Topics

- **Cross Border Investment: Trends and examples from the panel**
- **U.S. national security measures: Committee on Foreign Investment in the United States (CFIUS), reverse CFIUS, China-specific export controls**
- **Geopolitical Risk: What's Coming Next?**
- **Q&A**

International Trade and Services Trends

- **2022: Significant growth in total imports, exports, and cross-border services**
 - Surpass pre-pandemic levels to all-time highs
 - Imports up 15%; Exports up 18%; Services up 17%
- **Top Trade Partners**
 - Canada: Total trade up 19% in 2022 from 2021, to a new record high
 - Mexico: Total trade up 18% in 2022 from 2021, to a new record high
 - China: Total trade up 5% in 2022 from 2021, to a new record high
- **2023: Numbers down slightly year-to-date relative to 2022**
- **Sources: U.S. Bureau of Economic Analysis (BEA) and the Office of the United States Trade Representative (USTR)**

Inbound Investments into China

China is falling as a share of both inbound and outbound FDI, but remains tempting to foreign investors in certain sectors.

- **China's real GDP will grow by 5.2% in 2023, driven by a rebound in private consumption. Demand for eating out, domestic travel and electronic vehicles is rising.**
- **China has updated its guidelines for its green energy market by providing various incentives to attract foreign investors, such as government procurement of local produced products, tax exemption for reinvestments, local funding support, and lower rate of personal income tax for local-based executives.**

MNCs Monetizing Quality China Operations

Since 2017, MNCs have realized nearly US\$100bn from divestitures of PRC-based assets, with ~90% of transactions concluded with Chinese buyers.

- From the buy-side, growing appetite from PRC corporates and financial sponsors for quality MNC assets as alternatives to overseas acquisitions (which is becoming increasingly difficult to execute).
- From the sell-side, many MNCs need to rationalize their China portfolio in reaction to challenges of remaining in the PRC, including moderating GDP growth, fierce competition from local players, rising geopolitical tensions, major regulatory changes, and management constraints stemming from the COVID pandemic.

Significant deal examples include:

- **Coca-Cola, represented by Dorsey**, refranchised all existing Coca-Cola-owned bottling operations in China by dividing the 11 subsidiaries owned by a joint venture of Coca-Cola, COFCO and Swire Group between COFCO and Swire Group, two franchise partners of Coca-Cola in China in 2022.
- **Huntsman, represented by Dorsey**, acquired a MDI (diphenylmethane diisocyanate) facility through the separation of a joint venture owned by Huntsman, BASF and three state-owned companies in China in 2023.
- **Subway** sold their China Business to a investor consortium and signed a master franchise agreement with the consortium (which will result in nearly 4,000 new restaurant openings across Mainland China in the next 20 years) in 2023.
- **McDonald's Corp** sold their controlling stake in McDonald's China Management Ltd to CITIC Capital in Jan 2017.

U.S. Export Controls on Goods and Services to China

- Focus on thwarting flows to China for artificial intelligence, military applications, or companies that supply the military
- Expansion of existing controls (effective 11/17/23)
 - Expansion to companies headquartered in China wherever located, and to other countries subject to U.S. arms embargoes
 - Capture foreign made goods, software, and technology
 - Clarification of restrictions on U.S. persons support and facilitation of Chinese production activities
- Considering further expansions (Comments due 12/30/23)
 - Cloud computing, and internet-as-a-service providers
 - Definition of companies to be considered “Chinese”

Reverse CFIUS Process – Proposed Rule

- Proposes regulatory framework for review and certain reporting of outbound investment from the United States to China
- Defines covered foreign (Chinese) person “of concern”
- Defines “covered transaction” with respect to types of investments subject to review and/or reporting
- Targets
 - Semiconductors and microelectronics
 - Quantum information technologies
 - Certain artificial intelligence systems
- See Dorsey’s eUpdate here:
<https://www.dorsey.com/newsresources/publications/client-alerts/2023/8/bidens-executive-order>

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U.S. Trade Policy: Notable Trends

- **Biden Administration adopts much of Trump trade policy**
 - China tariffs remain
 - Section 232 tariffs on aluminum/steel remain
 - No effort to negotiate new free trade agreements
- **U.S. investment and subsidies**
 - Semiconductors
 - Green energy
 - Infrastructure
- **Continued growth of international trade, including growth of trade between China and the United States**

Geopolitical Trends and Risks

- **U.S.-China trade and investment**
 - China's stalling economic performance
 - Will the United States revoke Permanent Normal Trade Relations with China? → Congressional support is growing
 - CFIUS scrutiny of Chinese investments
 - Reverse CFIUS – Growing list of sectors off limits for US investors?
 - Taiwan, Hong Kong, South China Sea
- **Russia-Ukraine; Israel-Hamas**
- **Forced labor**
 - China (Uyghur Forced Labor Protection Act (UFLPA))
 - Mexico (U.S.-Mexico-Canada Agreement rapid response dispute resolution mechanism)

Enforcement Developments

- **Significant 2023 Enforcement Cases**
 - Focus on networks sending military or dual-use items to Russia
 - Third-country evasion or facilitation of U.S. sanctions
- **Voluntary-Self Disclosures (VSDs) to Bureau of Industry and Security ([memorandum](https://www.bis.doc.gov/index.php/documents/enforcement/3262-vsd-policy-memo-04-18-2023/file) dated 4/23/23)**
<https://www.bis.doc.gov/index.php/documents/enforcement/3262-vsd-policy-memo-04-18-2023/file>
 - Non-disclosure is an aggravating circumstance, increasing penalties
 - Incentivizing disclosure of third-party violations

Ongoing Antidumping and Countervailing Duty Investigations

- *Frozen Warmwater Shrimp* from five countries
- *Aluminum Extrusions* from fifteen countries
- *Truck and Bus Tires* from Thailand
- *Mattresses* from thirteen countries
- *Certain Paper Shopping Bags* from eight countries
- *Certain Pea Protein* from China
- *Aluminum Printing Plates* from China and Japan
- *Brass Rod* from seven countries
- *Boltless Steel Shelving* from five countries
- *Tin Mill Products* from eight countries

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