



# CFIUS UPDATES AND U.S. OUTBOUND INVESTMENT REGIME PREVIEW

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# CFIUS Updates and U.S. Outbound Investment Regime Preview

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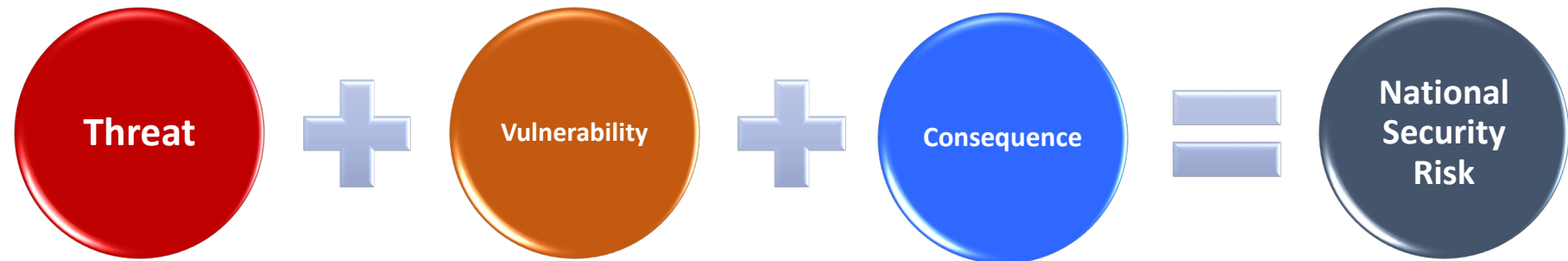
# Overview of CFIUS's Expanding Influence

01

# CFIUS Overview

- **CFIUS** is an inter-agency committee authorized to review foreign direct investment in the United States and **block** transactions or **impose measures to mitigate** any threats to U.S. national security.
- The Committee has existed since 1975, but has been significantly more active in recent years.
- In 2018, the Foreign Investment Risk Review and Modernization Act (“**FIRREA**”) expanded the categories of covered transactions, updated the review process, and made CFIUS review mandatory in certain cases.
  - CFIUS review now includes certain foreign **non-controlling** (equity) investments in U.S. businesses that deal with **critical technology, critical infrastructure, or the sensitive personal data** of U.S. citizens (“**TID**” businesses).

# National Security Risk Assessment: The Core of the CFIUS Analysis



**Threat:** Intent and capabilities of a foreign person to take action to impair national security.

**Vulnerability:** Extent to which the nature, location, or relationships of the U.S. business presents susceptibility to impairment of national security.

**Consequences:** Effect on national security from exploitation of vulnerabilities.

- The CFIUS regulations specifically address the national security risk assessment that the Committee undertakes.
- In order to provide additional information to evaluate the national security risk, the **National Intelligence Council** (“NIC”) produces a classified **National Security Threat Assessment** (“NSTA”) for transactions under CFIUS review:
  - Made up of representatives from the Intelligence Community;
  - NIC leads the effort to produce National Intelligence Estimates and other documents.



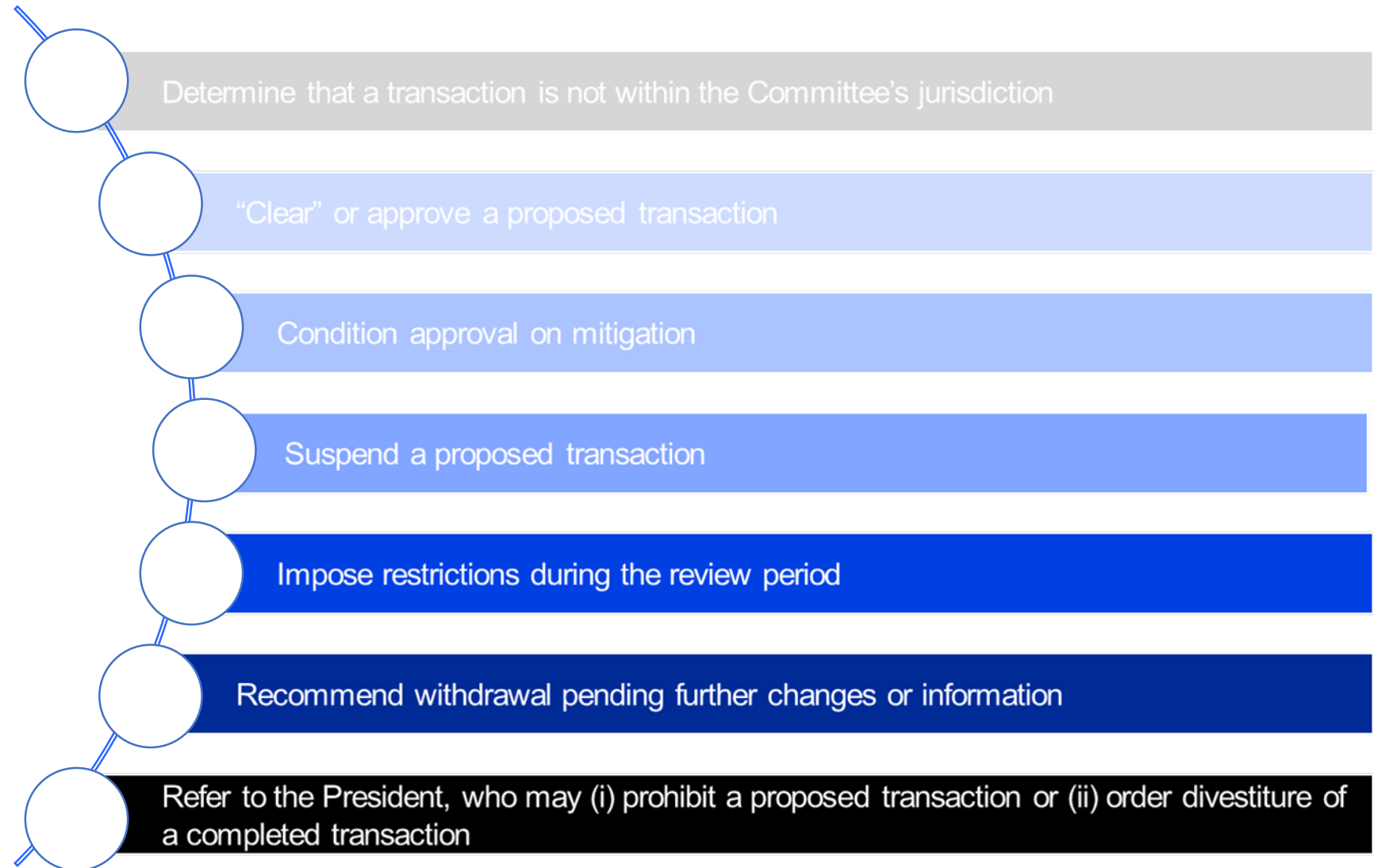
# Timeline

- Committee typically takes 1-2 weeks to formally accept a CFIUS filing.
- CFIUS issues a letter designating lead agency and starts the clock for the initial review period.

- CFIUS may continue review with a 45-day investigation period.
- CFIUS may ask additional questions, which require a response in 3 business days.
- CFIUS may extend investigation for 15 days for “extenuating circumstances” or may request the parties withdraw and refile.

Submit Draft	Submit Notice	Initial Review	Investigation	Presidential Review
<ul style="list-style-type: none"> <li>• Not required to submit draft filings, but routine practice.</li> <li>• Typically takes 3-4 weeks to collect the necessary information to prepare the draft filing.</li> <li>• Committee typically takes 1-2 weeks to review draft filings.</li> </ul>		<ul style="list-style-type: none"> <li>• CFIUS undertakes an initial 45-day review period.</li> <li>• CFIUS may ask questions, which require a response in 3 business days.</li> </ul>		<ul style="list-style-type: none"> <li>• While virtually all reviews conclude at the investigation phase, the President has the authority to review and block transactions during a 15-day period following the investigation phase.</li> <li>• No presidential decisions were made in 2021 or 2022.</li> </ul>

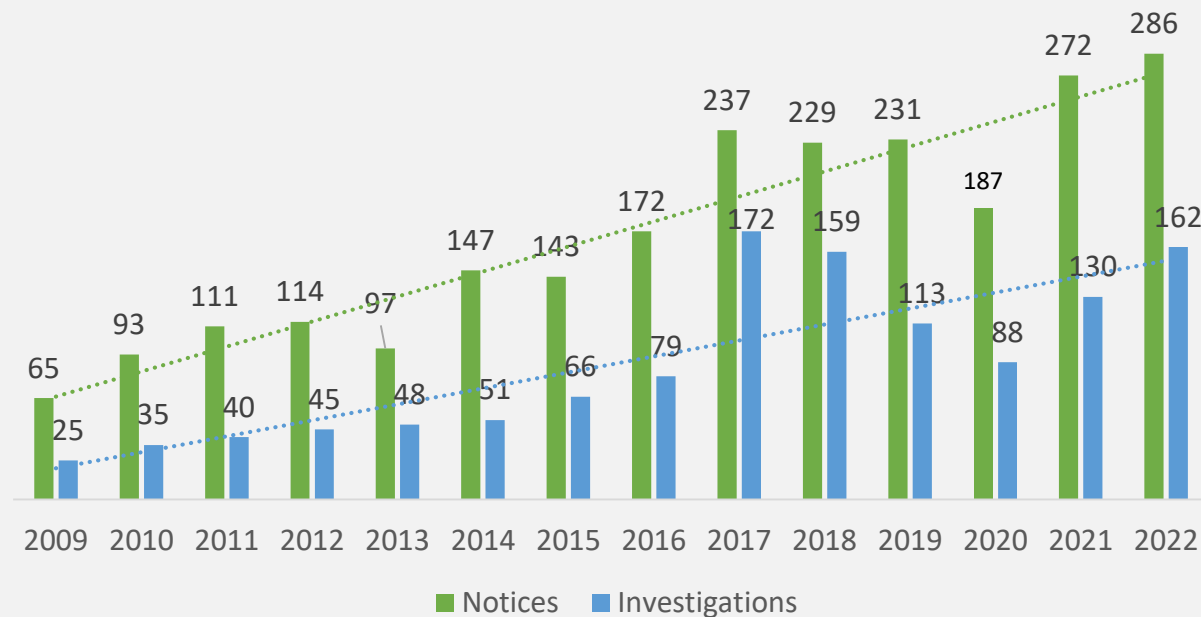
# Potential CFIUS Outcomes



# Over the past year, CFIUS's influence has continued to expand in meaningful ways.

- The annual number of CFIUS reviews and investigations has been rising overall in recent years, particularly since the 2018 Foreign Investment Risk Review and Modernization Act (“**FIRREA**”) introduced mandatory review.
- In the September 2022 Executive Order (“E.O.”), President Biden directed CFIUS to focus on specific factors, including **critical U.S. supply chain resilience, U.S. technological leadership, aggregate investment trends impacting national security, cybersecurity risks, and risks to U.S. persons’ sensitive data**.
- Recently, CFIUS clarified in FAQ guidance that it can request information on **all foreign investors, including limited partners** without significant governance rights.
- CFIUS also issued guidance that means parties can effectively **no longer use springing rights where this is a mandatory filing**.
- CFIUS recently released a final rule **adding 8 additional military installations** to its list that covers real-estate transactions within a 100-mile radius of the bases, which became effective September 22, 2023. Similarly, U.S. states have quickly passed laws impacting real estate transactions.

## CFIUS Notices and Investigations by Year



# CFIUS's Expanding View of National Security Factors

02

# National Security Policy Shapes The CFIUS Landscape



“We are identifying and investing in key areas where private industry, on its own, has not mobilized to protect our core economic and national security interests . . . . We are securing our **critical infrastructure**, advancing foundational **cybersecurity** for critical sectors, . . . working with the private sector to improve **security defenses in technology products** . . . and securing our **supply chains**.”

“We are countering intellectual property theft, forced technology transfer, and other attempts to degrade our technological advantages by **enhancing investment screening** [and] export controls . . . .”

U.S. National Security Strategy  
Released Oct. 12, 2022

# The National Security Strategy addresses various issues, but identifies China as the “pacing challenge.”

- On October 12, 2022, the Biden Administration released its long-awaited National Security Strategy.
- Two principal challenges identified:
  - **(i) geopolitical competition** (e.g., China, Russia) and **(ii) transnational challenges** (e.g., climate change, renewable energy, COVID-19, food insecurity, supply chains).
- Introduces a **modern industrial and innovation strategy**.
- Three strategic priorities:
  - **Domestic investment** in key technology areas,
  - **Strengthening alliances and building coalitions**, and
  - **Influencing global rules** on emerging technology and trade.
- Significantly, the Biden Administration has **distinguished** the threats posed by Russia and China, with Russia seen as a threat to **regional stability** while China is viewed as the **pacing challenge**.



Russia and the PRC pose different challenges. Russia poses an immediate threat to the free and open international system . . . . The PRC, by contrast, is the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to advance that objective.

*National Security Strategy*





# CFIUS E.O.: Specific Factors for Review

- On September 16, 2022, President Biden issued an E.O. directing CFIUS to specifically consider **5 factors** in the Committee's national security reviews:
  - **The resilience of critical U.S. supply chains** that may have national security implications, including those outside of the defense industrial base;
  - **U.S. technological leadership** in areas affecting U.S. national security, including but not limited to microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, and climate adaptation technologies;
  - **Aggregate industry investment trends that may have consequences** for a given transaction's impact on U.S. national security;
  - **Cybersecurity risks** that threaten to impair national security; and
  - Risks to **U.S. persons' sensitive data**.
- This was the **first-ever E.O. directing CFIUS to consider specific factors**—and appears to highlight the Biden Administration's efforts to ensure certain substantive factors are considered in the national security review, as well as to increase transparency in the CFIUS review process.
- The E.O. **does not** alter CFIUS's processes or legal jurisdiction, but rather **elaborates on certain existing factors** that the Committee is mandated by statute to consider.

# A Shifting National Security Strategy Reinforces Trendlines

“We are pursuing a modern industrial and innovation strategy to invest in our economic strength and technological edge at home, which is the deepest source of our power in the world.”

Jake Sullivan  
National Security Strategy

**The CHIPS and Science Act of 2022** authorized approximately \$280 billion in spending over 10 years to promote the manufacturing of semiconductors in the United States and to promote R&D in a range of high technology sectors, subject to prohibitions on using U.S. incentives to build facilities in China.

- This legislation marks a historic departure for the U.S. government, which until recently had not significantly restricted private companies’ strategies for offshoring and outsourcing technology outside traditional export control regimes.

**The Inflation Reduction Act of 2022** provides tax incentives for a wide range of renewable energy technologies (including wind, solar, and battery storage) and production facilities. Incentives increase where domestic content thresholds are met, potentially setting the stage for trade disputes.

## **Executive Order on Advancing Biotechnology and Biomanufacturing**

demonstrates the Biden-Harris Administration’s willingness to implement industrial policy via executive action.

# CFIUS Enforcement Guidance & Emerging Trends

03

# Formal Guidance from the Treasury on CFIUS Enforcement and the Penalty Process

## Violations

- **Failure to file** a timely mandatory declaration or notice.
- **Non-compliance with CFIUS mitigation measures.**
  - Mitigation measures often involve access rights to IP, technology, sensitive information, and the systems holding such information.
- **Material misstatement, omission, or false certification** affecting information filed with CFIUS.

## Penalties

- Potential Penalties:**
- For failure to comply with mandatory declaration or mitigation requirements, **up to \$250,000 or the value of the transaction**, whichever is greater; and
  - For material misstatements, omissions, or false certifications, **up to \$250,000 per violation.**
- Precedent Penalties:**
- In 2018, a **\$1,000,000 penalty** for repeated breaches of a mitigation agreement;
  - In 2019, a **\$750,000 penalty** for violations of a 2018 CFIUS interim order;
  - Informally, the Committee has acknowledged that **penalties have already been issued under the new enforcement guidelines.**

## Sources of Information

- **RFIs:** CFIUS may request information from relevant parties, who earn mitigation credit by cooperating.
- **Tips:** CFIUS provides phone and email hotlines for the public to share tips on transactions under review, non-notified transactions, or breaches of mitigation agreements.
- **Subpoenas:** The Committee has authority under the DPA to obtain relevant records and information.
- **Self-disclosures:** Similar to DOJ and other agencies, CFIUS factors self-disclosure into its enforcement actions.

## Aggravating & Mitigating Factors

- **Accountability and future compliance:** Impact of enforcement action on protecting national security and promoting compliance.
- **Harm:** Extent to which the conduct harmed U.S. national security.
- **Negligence, awareness and intent:** Level of culpability; efforts to conceal/delay sharing information; involvement of senior personnel.
- **Persistence and timing:** Time before CFIUS discovered the violation; frequency and duration of conduct.
- **Response and remediation:** Self-disclosure and cooperation; efforts to identify root cause and mitigate.
- **Sophistication and Record of Compliance:** History and familiarity with CFIUS; compliance resources; ability to implement mitigation efforts.

# Emerging Trends from CFIUS Annual Report

	2020	2021	2022 (Δ from 2021)
Declarations	126	164	154 (↓6%)
Notices	187	272	286 (↑5%)
Total Filings	313	436	440 (↑0.9%)

**Just the numbers:** Total number of filings before the Committee stayed on pace with 2021.

**Numbers in context:** Substantial *increase* in the number of filings relative to lower M&A activity and declining foreign direct investment in the U.S. year over year.

**A significant increase in mitigation measures + decline in use of short-form declarations and declaration clearance rates** may reflect:

- Increased market hesitation to use the declaration process
- A more aggressive Committee, both in terms of review and on mitigation

	2021	2022
Concluded Action After Adopting Mitigation Measures	26	41 (↑58%)
Adopted Mitigation Measures for Withdrawn and Abandoned Notices	2	3
Conditions Imposed on Withdrawn Notices Without Mitigation Agreements	2	5
Measures Imposed on Notices from Prior Years	1	3
<b>Total</b>	<b>31</b>	<b>52 (↑67%)</b>

# Key Commentary from CFIUS Annual Conference (Sept. 2023)

“While promoting compliance remains the goal, robust enforcement with cases of noncompliance is key.”

- *U.S. Secretary of the Treasury Janet Yellen*

- Renewed focus on ensuring **ongoing compliance** and **pursuing enforcement** for non-compliance.
- Increasing use of **third-party monitors and auditors** in some mitigation agreements.
- **On-site compliance checks** and **warning letters** for violations of mitigation agreements increasing.
- Additional resources are being dedicated **to identifying non-notified transactions**.
- Additional **proposed rules to current regulations** are likely in the near future.



**Expanding Jurisdiction:  
Springing Rights,  
Limited Partners, and  
Real Estate; U.S. State  
Legislation**

**04**

# Recent CFIUS FAQs clarify guidance on “springing rights” and LP information

## Changes to...

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### Using “springing rights” to control timing of filings

- For **mandatory** filing purposes, CFIUS now considers a transaction’s “completion date” to be the date on which the foreign party obtains **any** equity interest in the U.S. business, **regardless of when other rights vest** (e.g., governance rights).
  - In practice, this means **parties can no longer use springing rights** to delay the onset of a *mandatory* CFIUS filing.
  - Though this update does not impact the timeline of **voluntary** filings, it represents a general change that **CFIUS no longer distinguishes between initial passive equity investments and future CFIUS-triggering rights**.
- 

### Requests for LP information

- CFIUS recently confirmed it has the right to request information on **all** foreign parties involved in a transaction, **including limited partners**, notwithstanding any confidentiality agreements between the LP and the foreign investor.
- CFIUS will request LP information on a **case-by-case basis** and may consider the LP’s nationality, identity, and capabilities.
- Customarily, entities have disclosed LPs with 5% or more ownership and/or non-customary rights, but this update **may change that approach**.

## Scrutiny into recent real estate deals may lead to further restrictions.

- Under FIRREA, CFIUS has the authority to review **real estate purchases by foreign investors** if the property is near certain military installations or other critical infrastructure, such as ports.
  - For **most facilities**, the restriction only applies to property located within a **1-mile radius** (the “Part 1” list);
  - But for **particularly sensitive installations**, the radius expands to **100 miles** (the “Part 2” list).
- Recently, a controversy arose when the Chinese-owned Fufeng Group bought land 12 miles from an Air Force base in North Dakota.
  - Military officials expressed serious concern about the transaction, but **CFIUS concluded that it did not have jurisdiction since the base was not on the list of restricted facilities.**
  - Local officials have barred any development of the property, though Fufeng may pursue future legal action.

## Federal and State Responses to Real Estate Acquisitions by Foreign Investors

### CFIUS

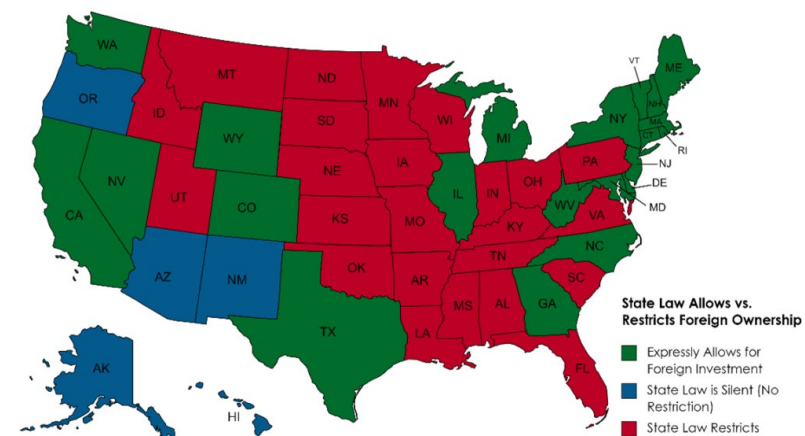
- 8 additional military installations were recently added to the “Part 2” list that covers transactions within a 100-mile radius (effective Sept. 22, 2023).
- Importantly, many military installation names have been updated recently, and CFIUS’s Geographic Reference Tool is not always updated.

### Congress

- More than a dozen bills have been introduced in Congress to address concerns about foreign acquisitions of U.S. real estate.
- The bills range in severity from increased reporting requirements to wholesale bans on certain purchases.

### States

- A number of states have responded with their own legislation:
  - In May, a Florida law barred foreign principals from “countries of concern” (including China, Russia, Iran, North Korea, Venezuela, and Syria) from acquiring an interest in agricultural property or property near sensitive military sites.
- As shown below, over 20 states have legislation restricting foreign ownership of U.S. land, and actions to amend or enact such legislation are pending in many other states.<sup>1</sup>



1. Statutes Regulating Ownership of Agricultural Land, the National Agricultural Law Center, available at <https://nationalaglawcenter.org/state-compilations/aglandownership/>.

# General contours of state legislation restricting certain foreign real estate activities

The bills introduced or passed in state legislatures vary in scope. They tend, however, to share certain core areas of focus:

- **Type of land restricted**—e.g., agricultural land, land with proximity to military installations, or all real property;
- **Class of foreign person restricted**—e.g., foreign governments; government officials and political parties; designated military companies; foreign companies and nationals; among others;
- **Jurisdictions targeted**—e.g., federally designated “foreign adversaries,” which includes China and the Hong Kong SAR, Cuba, Iran, North Korea, Russia, and the Nicolás Maduro Regime of Venezuela; or broader or narrower lists of restricted jurisdictions;
- **Types of activities restricted**—e.g., whether the restrictions apply to ownership/purchases, direct and indirect investments, and/or leaseholds;
- **Retroactivity and forced divestments**; and
- **Specific exceptions and carve outs**.

## Spotlight on Florida Senate Bill 264 (2023) (“SB 264”) and the constitutional challenge in *Shen v. Simpson*

SB 264, which took effect on July 1, 2023, has garnered significant attention as it is one of the most restrictive of the new wave of state legislation that restricts foreign acquisition of real estate.

- **Prohibitions on covered foreign persons owning or acquiring interests in land in Florida**
  - **“Foreign principals”** cannot “directly or indirectly own, have a controlling interest in, or acquire by purchase, grant, devise, or descent”:
    - any **“agricultural land”** in the state;
    - real property **within ten miles** of any **“military installation”** or **“critical infrastructure facility”** (such as airports, seaports, power plants, or refineries).
  - Certain **China-related persons** cannot “directly or indirectly own, have a controlling interest in, or acquire by purchase, grant, devise or descent” **any real property in Florida**, including land, buildings, fixtures, and all other improvements to land.
- **Registration requirement**
- **Four exemptions**—e.g., ownership and interests in land or real property acquired prior to July 1, 2023; *de minimis* indirect interest; land or real property interests acquired by certain means; and certain residential real property.
- **Constitutional challenge in *Shen v. Simpson***
  - In May 2023, a group of Chinese citizens who live, work, study, and raise families in Florida filed a constitutional challenge against SB 264, contending that it violates the Fourteenth Amendment’s Equal Protection and Due Process Clauses and the Supremacy Clause, as well as the Fair Housing Act. The developments in *Shen* are being closely followed as an indication not only of whether SB 264 will survive the constitutional challenge, but also as an indication of the potential viability of other similar state laws.

# Key Takeaways for Investment Activity

- CFIUS is a **prominent** national security tool, and its role is only increasing as it **broadens its focus**, **expands its authorities**, and **increases enforcement**.
- Increased importance of **national security due diligence** to determine appropriate calibration of risk:
  - CFIUS (and **potential outbound investment**) due diligence should be prioritized given the Administration's focus on this area; and
  - Certain sectors are higher risk, specifically semiconductors and microelectronics, supercomputing and quantum computing, AI, biotech, EV and battery technology, nuclear fusion, hypersonics and space technologies.
- There is potential for **increased transaction timelines**.
- Heightened investor scrutiny by the USG, particularly in transactions with a China nexus:
  - Potential for increased risk in **non-notified transactions** coming to attention of CFIUS and being subject to mitigation or unwinding; and
  - Increased focus on CFIUS **enforcement** also impacts risk calculus for voluntary filings—and the import of confirming whether there are mandatory filing obligations (e.g., target reps and due diligence).
- Guidance on **springing rights** and **LP review** creates meaningful impact on deal constructs and timelines, while **real estate** creates an increasingly complex analysis that may need to consider state requirements as well as CFIUS regulations.

# Looking Ahead: Outbound Investment Review

05



# Outbound Investment



“. . . the United States now is undertaking a period of **historic investment in our infrastructure**, in our people, in our manufacturing, and **in our supply chain**. And as a result, we have a very strong economy.

However, it is **not intended to hinder China's economic progress**. We believe a strong Chinese economy is a good thing. And President Biden has been crystal clear repeatedly on this point; we seek **healthy competition with China**. A growing Chinese economy that plays by the rules is in both of our interests. That said, we have to make sure there is a **level playing field** and we will at all times do what we need to do to **protect our workers**.”

- U.S. Secretary of Commerce Gina M. Raimondo

# Outbound Investment Restrictions: Executive Action

## The Restrictions

- On August 9, 2023, the Biden Administration issued an **Executive Order outlining controls on outbound U.S. investments in certain Chinese entities**, accompanied by an Advance Notice of Proposed Rulemaking (“ANPRM”) for public comment.
- **No immediate new legal obligations or restrictions** were imposed.
- In broad strokes, the program will:
  - **Prohibit U.S. persons from directly or indirectly entering into certain types of transactions with a covered foreign person** engaged in activities involving the specified covered national security technologies and products; and
  - **Require notification to Treasury by U.S. persons** who directly or indirectly enter into the same types of transactions for a broader set of defined covered national security technologies and products.
- Initial target sectors include:
  - **Semiconductors and Microelectronics**;
  - **Quantum Information Technologies**; and
  - **Artificial Intelligence (“AI”) Systems**.
- Countries of concern identified as the **People’s Republic of China**, including the Special Administrative Regions of **Hong Kong** and **Macau**.



## The Implementation Process

- **No effective date** set as of yet and no clear timeline for implementation.
- The ANPRM included a broad list of **83 specific questions** that Treasury posed to the public for comment. Comments were due on September 28, 2023.
- At some undefined point after public comments are received and digested, Treasury will issue a **Notice of Proposed Rulemaking** setting out a draft of the regulations and allowing for public comment.
- The actual rules will come into effect at some point after that public comment period ends, which is **very likely months away**.
- **Allied countries are likely to develop similar restrictions**.
  - A G7 statement on May 20, 2023, acknowledged that “appropriate measures designed to address risks from **outbound investment could be important to complement existing tools**.”
  - The European Commission listed outbound investment as a priority for 2023.
  - In May 2023 at the U.S.-EU Trade & Tech Council, the parties agreed to **coordinate any such outbound investment policies**.

# Outbound Investment Restrictions: ANPRM Comments from Key Stakeholders

## Areas of concern:

- Need for **objective standards and clear definitions** to determine who are covered investors and foreign parties.
- Parties need clear guidance for **due diligence and compliance**, including the ability to rely on representations.
- Regulations should recognize the **difficulty of accessing foreign financial information** for diligence purposes.
- Covered activities are drawn too broadly and need **protections/exemptions** for passive investments, third-party financial services, intracompany transfers, and academic/research collaborations.
- Covered products should be **more clearly defined** by objective technical parameters and account for dual uses of innovative AI and quantum technologies.
- Regulations **need alignment** with CFIUS, EAR, CHIPS, and sanctions authorities, as well as international cooperation to prevent confusion and loss of competitiveness.

## Representative remarks:

- “[The proposed definitions of ‘covered foreign person’] will inevitably establish a set of facts that U.S. investors will **have to assess for every active investment** they make.”
- “[Treasury should] **consider spelling out what diligence** U.S. persons should undertake.”
- “Treasury should **make explicit that transactions** undertaken by financial institutions that are not the primary investment . . . are **excepted from the scope.**”
- “**Dual-use goods** may be used to create an AI system . . . for example, the proposed definition of ‘AI systems’ would capture basic laptops and gaming systems such as an X-Box.”
- “In the **absence of parallel regimes**, foreign entities can replace U.S. financing and technological expertise as the program is implemented.”

# Outbound Investment Restrictions: Potential Restrictions from Congress

## The Restrictions

- **Cornyn-Casey Outbound Investment Transparency Act**
  - Included as part of the Senate's version of the **FY 2024 National Defense Authorization Act**.
  - Would require U.S. firms to notify Treasury about investments in covered sectors, such as **semiconductors, AI, quantum technology, hypersonics, satellites, and lasers** in countries of concern—**China, Russia, Iran, North Korea**.
  - Notification regime only, but **includes more sectors and countries of concern** than the Biden Administration's E.O. and ANPRM.
- **House Financial Services Committee Chairman Patrick McHenry** wrote Treasury Secretary Yellen opposing the Administration's outbound investment proposal.
  - Questioned the legality of the ANPRM's use of IEEPA as its statutory authority.
  - Requested that Treasury re-issue the ANPRM under OFAC or another appropriate office.
  - Questioned the value of a regime intended to decrease investment in China.
  - Argued that the program's concerns are already covered by existing intellectual property protections, inbound investment screening, and export control regimes.

## The Implementation Process

- Cornyn-Casey Outbound Investment Transparency Act may **yet make it into the final NDAA**.
- The act **faces headwinds from key players in both parties**:
  - Some argue that **tougher measures** are needed;
  - Others claim that such measures would be **ineffective at best** and advantageous to China at worst.
- The **legislative fate of Congressional restrictions remains to be seen** in light of the actions taken by the White House.
- Additional action by Congress in this space **cannot be wholly discounted and may indeed be compatible** with the Biden Administration's proposed regulations.

# HFSC Chair Patrick McHenry's Letter

- In a September 27, 2023 letter, the **Chair of the House Financial Services Committee** expressed legal objections and a significantly different policy conception of investment in China

## Legal objections:

- Using IEEPA to block investments may be a novel use of emergency authorities (potentially exposing regulations to litigation).
- Office of Investment Security may be restricted to only implementing inbound work.

## Policy objections:

- China is not significantly intent on exploiting U.S. outbound investment;
- Program's concerns already served by existing intellectual property, *inbound* investment, and export control regimes;
- Regulations penalize U.S. private control of Chinese companies, which should be encouraged;
- Sanctions regime is more suited to this kind of work.



“If we oppose China’s state-run economy, we want **more private investment** – not less. Of those private investors, we want **more of them to be Americans** – not fewer. And if we are truly concerned by China’s technology companies, we want as **many Americans as possible steering them . . . .**”

- House Financial Services Committee Chair Patrick McHenry

# Looking Ahead: De-coupling v. De- risking

06

# De-coupling vs. De-risking from China

“The economic relationship between the U.S. and China is one of the most significant in the world. We share \$700 billion dollars of trade and I concur with you that it is profoundly important that we have a stable economic relationship which is to the benefit of both of our countries and in fact what the world expects of us. It's a complicated relationship; it's a challenging relationship. We will of course disagree on certain issues, but I believe we can make progress if we are direct, open, and practical.”

--U.S. Commerce Secretary Raimondo, August 28, 2023

## De-coupling

- Proponents of **de-coupling** see the U.S. and Chinese economic and political models as **incompatible**, necessitating separation of U.S. and China entities.
  - U.S. officials, however, continue to state their views that de-coupling is neither desirable nor feasible.
  - The Secretaries of State and Treasury have both made recent statements to this effect.
- On an individual basis, however, **de-coupling may make sense for businesses whose operations attract significant regulatory scrutiny**.
  - In these cases, reduced scrutiny may be worth the cost required to separate entities, IP, technology, infrastructure back-office operations, and supply chains.

## De-risking

- Proponents of **de-risking** recognize that U.S. companies will continue to do business in China, but advocate for **better safeguards** in these activities.
- De-risking requires careful thought as to how to effectively segment, but not fully separate:
  - Business operations;
  - Processes;
  - Technology (including IP);
  - Networks and system infrastructure; and
  - Data flows.
- Recent **expansions to Chinese national security authorities and raids** on the Chinese offices of U.S. firms highlight these challenges:
  - Data flows from China to the U.S. can trigger Chinese scrutiny.
  - Meanwhile, Chinese officials could gain access to sensitive parent-company information by seizing servers at Chinese subsidiaries.

In recent years, China has similarly enacted **national security laws** impacting the operations of foreign businesses, including the Cyber Security Law (2017); the Export Control Law (2020); Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures (2021); the Anti-Foreign Sanctions Law (2021); and the Data Security Law (2021), among others.

# Additional Resources

## Client Alerts & Articles:

- Gibson, Dunn & Crutcher LLP Client Alert, "[The Rise of State Laws Restricting Foreign Entities from Acquiring Property: Another Front in U.S.-China Tensions and the Constitutional Challenge of Florida SB 264 in Shen v. Simpson](#)" (Sept. 12, 2023).
- Stephenie Gosnell Handler et al., "[Tech Outbound Investment Is Target of National Security Scrutiny](#)," Bloomberg Law (Aug. 14, 2023).
- Gibson, Dunn & Crutcher LLP Client Alert, "[CFIUS Annual Report for CY 2022: Top Takeaways](#)" (Aug. 9, 2023).
- Gibson, Dunn & Crutcher LLP Client Alert, "[Outbound Investment Review Swiftly Takes Shape Amid China Worries](#)" (Apr. 11, 2023).

## Upcoming Related Webinars:

- [Sanctions Update EU and Germany: Current Developments and Trends](#)

Thursday, October 19, 2023

*One year and a half after Russia's full-scale invasion of Ukraine, the EU and German sanctions regimes have evolved in an unprecedented fashion, posing sanctions compliance challenges for companies acting in the global space. The EU has introduced elements reminiscent of secondary sanctions, which it opposed so much in the past, while Germany has added a new sanctions enforcement authority and developed a distinct sanctions guidance. An efficient compliance management system keeping track of comprehensive export/import-related restrictions and ensuring the quality of screening results has become crucial in this environment. Hear from our experienced practitioners, who are authors of the [ICLG Sanctions Laws and Regulations Report 2024 Germany](#), about these and other developments and trends.*





**GIBSON DUNN**



## EDUCATION

[Stanford University](#)

2011 Juris Doctor

[Georgetown University](#)

2001 Master of Arts

[U.S. Naval Academy](#)

2001 Bachelor of Science

# Stephenie Gosnell Handler

Partner / [Washington, D.C.](#)

Stephenie Gosnell Handler is a partner in Gibson Dunn's Washington, D.C. office, where she is a member of the International Trade and Privacy, Cybersecurity, and Data Innovation practices. Ms. Handler's legal advice is deeply informed by her operational cybersecurity and in-house legal experience at McKinsey & Company, and also by her active duty service in the U.S. Marine Corps.

Ms. Handler advises clients on complex legal, regulatory, and compliance issues relating to international trade, cybersecurity, and technology matters. Ms. Handler advises global clients on U.S. regulatory compliance and derisking in a rapidly evolving geopolitical landscape. She assists clients with all aspects of CFIUS matters, including strategic frameworks and advising throughout the CFIUS process. Ms. Handler specializes in leveraging her regulatory expertise in CFIUS and trade controls as well as her operational and regulatory expertise in cybersecurity, data, and technology to provide actionable solutions to address complex issues arising at the intersection of these disciplines.

Ms. Handler returned to Gibson Dunn as a partner of the Washington, D.C. office after serving as Director of Cybersecurity Strategy and Digital Acceleration at McKinsey & Company. In this role, she led development of the firm's cybersecurity strategy and advised senior leadership on public policy and geopolitical trends relating to cybersecurity, technology, and data. She previously led McKinsey's in-house cybersecurity legal team, where she advised on diverse global cybersecurity and technology matters, including strategic legal issues, data localization, regulatory compliance, risk management, governance, preparedness, and response.

Previously, Ms. Handler was a senior associate at a leading international law firm, where she focused her practice on international trade matters including CFIUS, export controls, and sanctions, and cybersecurity matters across the cybersecurity risk management and incident lifecycle, including assessments, incident response preparedness, incident response, regulatory compliance, transactional due diligence, and regulatory enforcement actions. Ms. Handler started her legal career at Gibson Dunn, where she focused on international trade, cybersecurity, and transactional matters.

Ms. Handler earned her J.D. from Stanford University in 2011. She earned her M.A. from Georgetown University and her B.S. from the U.S. Naval Academy, both in 2001. Prior to attending law school, Ms. Handler served as an active duty officer in the U.S. Marine Corps for seven years, including deployment to Iraq.

Ms. Handler's full biography can be found [here](#).





#### EDUCATION

[Duke University](#)

2008 Juris Doctor

[Princeton University](#)

2003 Bachelor of Arts

# Amanda H. Neely

Of Counsel / [Washington, D.C.](#)

Amanda H. Neely is of counsel in the Washington, D.C. office of Gibson, Dunn & Crutcher and is a member of the Public Policy and Congressional Investigations practice groups.

Ms. Neely served as Director of Governmental Affairs for the Senate Homeland Security and Governmental Affairs and General Counsel to Senator Rob Portman. Under Senator Portman's chairmanship, she also served as Deputy Chief Counsel for the Permanent Subcommittee on Investigations. In those roles, she managed Senator Portman's regulatory reform agenda and led oversight of federal government agencies and investigations into private entities. She previously served in several other Capitol Hill offices including as Oversight Counsel for the House of Representatives Committee on Ways and Means.

At Gibson Dunn, Ms. Neely has represented clients undergoing investigations by several congressional committees. She has helped witnesses prepare to testify before the Senate Banking, Housing, and Urban Affairs Committee, the Senate and House Agriculture Committees, and the House Financial Services Committee. She also has assisted clients appearing before independent commissions such as the Financial Crisis Inquiry Commission and the Commission on Wartime Contracting, as well as assisted clients engaging with regulatory agencies such as the Consumer Financial Protection Bureau, Commodity Futures Trading Commission, and Securities and Exchange Commission in their rulemaking processes. Ms. Neely was actively involved with the firm's Financial Markets Crisis Group's efforts to monitor market developments and governmental actions throughout the 2008 financial crisis and its aftermath and advised clients on how best to respond to the changing regulatory landscape. She also has participated in a variety of litigation matters before state and federal trial and appellate courts, including several class action defense and False Claims Act cases.

Ms. Neely clerked for the Honorable David B. Sentelle, then-Chief Judge of the United States Court of Appeals for the District of Columbia Circuit. She earned her law degree *cum laude* from Duke University School of Law, where she served as the Articles Editor for both the *Alaska Law Review* and the *Duke Journal of Constitutional Law & Public Policy*. Ms. Neely was a member of the Duke Law Moot Court Board and served on the executive board of the Duke Law Federalist Society. In 2003, she graduated *cum laude* from Princeton University, where she majored in English and earned a certificate in Medieval Studies. She then served for two years on United States Senator Elizabeth Dole's staff as a legislative correspondent, focusing on banking, housing, budget, and tax issues. Ms. Neely is admitted to practice law in the District of Columbia and before the United States Courts of Appeals for the District of Columbia Circuit and the Eleventh Circuit.

Ms. Neely's full biography can be found [here](#).



#### EDUCATION

Chicago-Kent College of Law,  
Illinois Institute of Technology  
2016 Juris Doctor

University of Minnesota  
2013 Bachelor of Arts

# Annie Motto

Associate Attorney / [New York, NY](#)

Annie Motto is an associate in the New York office of Gibson, Dunn & Crutcher LLP where she currently practices in the firm's Litigation Department, and is a member of the International Trade practice group.

She advises clients on compliance with export controls (ITAR and EAR), economic sanctions, foreign investment reviews, and the Uyghur Forced Labor Prevention Act (UFLPA). Ms. Motto also defends clients before the U.S. Department of Commerce and the U.S. International Trade Commission, including preparing questionnaire responses and filings in anti-dumping and countervailing duty proceedings and sunset reviews. She conducts internal investigations, prepares voluntary disclosures and directed disclosure responses, and works with clients to improve their trade compliance programs. Ms. Motto also represents *pro bono* clients in immigration matters, helping them secure Temporary Protected Status (TPS) in the United States.

Ms. Motto earned her J.D., *magna cum laude*, from Chicago-Kent College of Law in 2016, where she was elected to the Order of the Coif, served as Editor-in-Chief of the *Chicago-Kent Law Review*, was a national champion on the trial advocacy team, and graduated seventh in her class. Ms. Motto earned her undergraduate degree in Political Science and Psychology from the University of Minnesota.

Prior to joining Gibson Dunn, Ms. Motto served as a Trial Attorney for the United States Department of Justice, Civil Division, Commercial Litigation Branch, where she gained substantial trial and appellate litigation experience representing the United States in a variety of commercial litigation matters, including international trade, bid protests, breach of contract, veterans benefits, and employee and personnel suits. As a Trial Attorney, she argued more than 25 cases in federal trial and appellate courts and achieved a directed verdict in favor of the United States in a trial where plaintiff sought more than \$6 million in damages. Annie received a Special Commendation Award and Attorney General's Award—the Department's highest award for attorneys—for work she did as part of a team defending the United States in high-profile international trade and national security matters. Prior to joining the Department of Justice, Ms. Motto served as a law clerk to the Honorable Karen L. Hayes in the Western District of Louisiana and the Honorable Joe Billy McDade in the Central District of Illinois.

Ms. Motto is admitted to practice law in the State of New York. She is also admitted to practice in the United States Court of International Trade and the United States Court of Federal Claims.

Mrs. Motto's full biography can be found [here](#).

# Chris R. Mullen

Associate Attorney / [Washington, D.C.](#)

Chris R. Mullen is an associate in Gibson, Dunn & Crutcher's Washington, D.C. office, and a member of the International Trade Practice Group. His practice primarily focuses on international trade and white-collar investigations. Mr. Mullen counsels clients on a range of matters, including navigating export controls under the ITAR and EAR, global economic sanctions, anti-money laundering regulations, compliance risk assessments, CFIUS review, and FCPA compliance. He also advises companies on international trade matters related to corporate mergers and acquisitions, as well as compliance with anti-money laundering obligations at the state and federal levels. Mr. Mullen also works *pro bono* on immigration matters, where he helps asylum seekers secure Temporary Protected Status (TPS) in the United States.

Prior to joining Gibson Dunn, Mr. Mullen was an associate at a leading international law firm, where he also focused his practice on international trade matters including CFIUS, export controls, and sanctions, and advised clients on risk assessments, regulatory compliance, transactional due diligence, and regulatory enforcement actions.

Mr. Mullen received his law degree from New York University, where he served as Editor-in-Chief of the *New York University Journal of International Law and Politics*. He received a Bachelor of Arts degree in History and Politics with high distinction from the University of Virginia.

Mr. Mullen is admitted to practice in the District of Columbia. Mr. Mullen's full biography can be found [here](#).



## EDUCATION

[New York University](#)

2018 Juris Doctor

[University of Virginia](#)

2012 Bachelor of Arts

# Appendix

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# The Committee Consists of Nine Permanent Members

## CFIUS Member Agencies



Commerce



Defense



Energy



Homeland  
Security



Chair, Treasury



USTR



OSTP



State



Justice

*In addition, there are 5 Observer Agencies—Council of Economic Advisors, Homeland Security Council, National Economic Council, National Security Council, and Office of Management and Budget. Other agencies may be added for specific reviews.*

# Types of Filings: Declarations vs. Notice

## Declaration:

- Confidential filing.
- Abbreviated filing that could result in a shorter review timeline (30-day assessment).
- Largely voluntary, but there may be a mandatory filing requirement (e.g., critical technology companies, TID U.S. businesses where a foreign government is acquiring a “substantial interest”).
- In 2022, nearly 3/5 of declarations (~58%) were cleared in the declaration review period.
- CFIUS outcomes:
  - Clear during the 30-day review.
  - Request parties file full written notice.
  - Notify the parties that the Committee was unable to conclude action.

## Notice:

- Confidential filing.
- “Traditional” (aka pre-FIRRMA) long-form filing, contents set forth by regulation.
- Voluntary filing, but clearance creates a legal safe harbor (e.g., CFIUS cannot take *ex post* action to unwind a transaction).
- Review timeline includes 45-day review, 45-day investigation (as needed), and 15-day presidential review (as needed).
- Parties may withdraw and abandon transaction or refile after restructuring
- In 2022, ~57% of notices proceeded to investigation phase, an uptick from recent years.
- In 2022, ~14% of notices resulted in mitigation, and ~31% were withdrawn (most of which were refiled).



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