

Practice Update

Evolving U.S. Russia Sanctions: Closing the Loopholes and Expanding Restrictive Measures

May 19, 2022

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The United States continues to impose severe economic sanctions and trade restrictions against Russia, creating a robust and complex field of restrictions for U.S. and non-U.S. businesses alike. Sanctions, export controls, and trade restrictions are not just closing in on Russia, but also on those who choose to evade the sanctions imposed, as we previously reported. The United States has made clear that it will act against the friends of our enemies, and exercise its powers to impose secondary sanctions. Following our Akerman Practice Updates of March 2, 2022 and May 3, 2022, this article summarizes the additional U.S. sanctions, export controls, and trade restrictions imposed against Russia and its allies. In light of the White House's most recent announcement to expand sanctions together with G7 Leaders, it is clear the world is looking to compound pressure against Russia.

The United States will continue to intensify and assert extraterritorial jurisdiction to erode the Kremlin's ability to project power through economic and technological attrition. The industry is not only unpacking the deluge of novel rules but also anticipating intermediate trade effects and navigating new trade barriers. With increasing restrictions, revocation of Russia's Normal Trade

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Relations, and complexities of the evolving sanctions globally, companies should review their Russian business relationships, including supply chain and service providers to ensure they do not run afoul of the recent sanctions.

U.S. Sanctions Update (OFAC)

Following the near-comprehensive embargo on the so-called separatist regions of Donetsk (DNR) and Luhansk People's Republic (LNR) regions of eastern Ukraine (collectively, Covered Regions) on February 22, 2022, and robust blocking sanctions imposed on major Russian financial institutions, VTB Bank, PSB, VEB, Otkritie, Sovcombank, and Novikombank on February 24, previously [reported here](#), the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) continues to issue additional, targeted economic sanctions of varying degrees on Russia's financial system, state-owned enterprises, and Kremlin-connected entities and individuals. Additionally, the Biden Administration has warned that it will impose sanctions on parties - domestic or foreign - who evade current U.S. Sanctions.

To illustrate:

- On March 24, [the United States imposed full blocking sanctions](#) on more than 400 Russian elites, Duma members, and defense companies;
- On March 31, [OFAC added dozens of entities and individuals](#) to the Specially Designated Nationals and Blocked Persons List (SDN List) pursuant to the Countering America's Adversaries Through Sanctions Act (CAATSA) and Executive Order 14024;
- On April 1, the [Department of Commerce issued a final rule](#) adding more than 100 Russian and Belarusian entities to the BIS Entity List to "degrade [their] defense, aerospace, maritime, and other strategic sectors."

The pace of escalation, comprehensiveness of actions, degree of allied coordination, and near-term

impacts to a mid-level economy are truly unprecedented. Effects will continue to ripple beyond targets in the coming weeks as many of the “wind down” periods offered in general licenses have concluded. The extraterritorial nature of sweeping prohibitions will likely drive further disconnect from Russian banks, entities, and individuals plus secondary sanctions on foreign persons that gap-fill or otherwise support the Kremlin.

With Western cross-hairs now focused upon Russian oil, which accounts for roughly half of Russian export revenues, such import bans and related moves are longer-term plays over months and perhaps years. And, while recent actions have been Executive Order (EO)-driven for good reason, Congressional legislation may drive such a regime similar to the sanctions exemption regime available to those previously purchasing Iranian oil on a decreased, wind down basis.

In conjunction with the issuance of blocking sanctions, OFAC also continues to issue and update General Licenses, often authorizing the ability of U.S. financial institutions and persons to wind down certain categories of transactions with specified blocked entities/persons by an appointed deadline, or those that offer export of agricultural commodities, medicine, or medical devices.

U.S. Export Controls Update (BIS)

With respect to how the United States and its allies control flows of sensitive technology outside their respective borders, actions taken in past weeks are tectonic transformational shifts in scope and potential impact.

As OFAC economic sanctions typically run upstream in the value chain, export controls on sensitive technology often run down the value chain to customers, and the Biden Administration has dramatically expanded the scope of prohibitions,

removed many of the previous exceptions applicable to such exports, greatly expanded the “foreign direct product rule” and will require licenses to export products – applying a policy of denial, with certain exceptions on a case-by-case basis.

Initially, the U.S. Department of Commerce, Bureau of Industry and Security (BIS) on March 3, 2022 implemented additional sanctions under the U.S. Export Administration Regulations (EAR) aimed at severely restricting Russian military access to sensitive technology, including semiconductors, computers, telecommunications, information security equipment, lasers, and sensors.

Similar to OFAC, BIS continues to supplement, modify, and clarify restrictions on an unparalleled and rolling basis. For instance, BIS recently updated and extended the application of what it had described as the most comprehensive controls on a single country (i.e., FDP economy- and military-wide rules beyond those imposed on Huawei in 2020) to Belarusian entities for being subservient to and allowing Russia to use Belarus as a staging ground for invasion.

While BIS has and will continue to supplement such actions, BIS’ novel application and expansion of Huawei-style restrictions to a single country in late-February (since updated) are perhaps most impactful to industry and so summarized below:

- Licenses will be required for exports to Russia, with a policy of denial, for goods, software, and technology in Categories 3 through 9 of the EAR’s Commerce Control List (CCL).
- Restrictions are expanded on Russian “military end users” and “uses”, that cover all items subject to the EAR, with limited exceptions for mass market encryption, so long as exports are NOT for government end users or Russian state-owned enterprises.

- Two New Foreign Direct Product Rule restrictions

1. *Creates a new FDP rule for all of Russia (“Russia FDP rule”).* To restrict Russia’s ability to acquire certain foreign-produced items, the Russia FDP rule establishes a control over foreign-produced items that are: (i) the direct product of certain U.S.-origin software or technology subject to the EAR; or (ii) produced by certain plants or major components thereof which are themselves the direct product of certain U.S.-origin software or technology subject to the EAR. This control applies when it is known that the foreign-produced item is destined to Russia or will be incorporated into or used in the production or development of any part, component, or equipment produced in or destined to Russia. The Russia FDP rule does not apply to foreign-produced items that would be designated as EAR99 (items not listed on the CCL), which includes many consumer items used by the Russian citizenry.
2. *Creates a new foreign direct product rule for Russian military end users (“Russia-MEU FDP rule”).* The Russia-MEU FDP rule is more extensive than the Russia FDP rule and applies to foreign-produced items that are: (i) the direct product of any software or technology subject to the EAR that is on the CCL; or (ii) produced by certain plants or major components thereof which are themselves the direct product of any U.S.-origin software or technology on the CCL. Such items will be subject to the EAR and require a license if an entity with a footnote 3 designation on the Entity List is a party to the transaction, or if there is knowledge that the item will be incorporated into or used in the production or development of any part, component, or equipment produced, purchased, or ordered by any entity with a footnote 3 designation (which is established in this rule and described below)

on the Entity List. These restrictions apply to all items, including those designated EAR99, with certain exceptions, and impose a license requirement for footnote 3-designated Russian military end users.

Partner Country Exclusion from Russia and Russia-MEU FDP rules. Certain partner countries that are adopting or have expressed intent to adopt substantially similar measures are not or will not be subject to the Russia and Russia-MEU FDP rules. Exports, reexports, and transfers (in-country) from the following countries are not subject to these rules: Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

- For Russian MEUs, restrictions are expanded to cover non-U.S. produced items that are the product of software or technology subject to the EAR under any CCL category (except for certain EAR99 items).
- ENC license exception (encryption commodities, software and technology) now excludes Russian government end users and Russian state-owned enterprises. Eligibility criteria was specifically narrowed for ECCN 5x002 products for civilian use to certain wholly-owned subsidiaries or joint ventures of U.S. companies headquarters in certain allied countries in Country Group A:5 and A:6.
- Rule adds 49 Russian military end-users to EAR's Entity List, creating license requirements (policy of denial) for export or report of all items subject to the EAR, with very limited exceptions.
- Bans the exports or reexport or in-country transfers of all items subject to the EAR to the

Covered Regions of LNR and DNR.

Suspension of Normal Trade Relations and Import Bans

On April 7, the Senate passed the Suspending Normal Trade Relations with Russia and Belarus Act, signed into law on April 8. Hr.R. 7108 suspends Russia's permanent normal trade relations (PNTR) status, which greatly increases the applicable duty rates for Russia and Belarus, among other effects. The law also directs the U.S. Trade Representative to use its voice and influence at the World Trade Organization to "encourage other WTO members to suspend trade concessions."

This suspension followed President Biden's Executive Order to ban the import of Russian oil, liquified natural gas, and coal to the United States. The EO bans crude oil and petroleum products, and bans new U.S. investment in Russia's energy sector.

Expanding Sanctioned Industries

In its most recent announcement, the United States has announced another layer of sanctions. The United States will sanction Russian television stations and broadcasting companies; it will prohibit U.S. persons from providing accounting, trust, and corporation formation services to any person in the Russian Federation; it will continue to ban the import of Russian oil, gas, and coal and work with G7 to "accelerate efforts to reduce dependence on fossil fuels;" it will further restrict Russia's industrial sector by limiting access to products, including wood products, industrial engines, motors, bulldozers, and other industrial and commercial equipment. Further, the Nuclear Regulatory Commission will suspend exports of special nuclear material, byproduct material, source material, and others to Russia.

Conclusion

Commensurate with further incursions into Ukraine, additional U.S. and allied restrictions are expected to follow. The situation is extremely fluid and so it is critical to those with Ukraine- or Russia-related interests to closely monitor developments and review all transactions on a case-by-case basis.

As the regulated community withdraws, disconnects, and recalibrates for compliance or voluntary-reputational reasons, the Akerman team is closely tracking the full suite of actions and is available to conduct compliance program assessments/audits and advise on effects to and considerations for specific situations and business operations.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.