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ALERT

BIS Expands Export Control Restrictions on Russia, Belarus, and Iran

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On January 23, 2024, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) released a new rule to expand and strengthen its existing export control restrictions under the Export Administration Regulations (EAR) against the Russian Federation, the Republic of Belarus, and the Islamic Republic of Iran in response to Russia's ongoing aggression against Ukraine, Belarus's complicity in the invasion, and Iran's support for Russia. The rule largely builds on Russia-related export controls implemented over the past two years by the United States and its partners on a variety of inputs needed by Russia to support its defense industrial base and is intended to "enhance the effectiveness" of BIS's controls and "to better align them with those implemented by U.S. allies and partners."

Key changes, which became effective on January 23, 2024, include:

- **Expansion of the Industry Sector Sanctions**: The rule expanded the scope of the EAR's Russian and Belarusian Industry Sector Sanctions that apply to items identified in Supplement No. 4 to part 746 of the EAR by Harmonized Tariff Schedule (HTS)-6 Codes. In particular, BIS added 94 additional HTS-6 Code entries to Supplement No. 4, which now require a license for export or reexport to, or transfer within, Russia or Belarus. Supplement No. 4 previously included more than 2,000 HTS-6 Code entries, and this rule broadens it further to include a variety of industrial materials, items needed for manufacturing, and certain aircraft-related items. BIS controls imposed in May 2023 subjected the entire harmonized system chapters 84 (nuclear items, machinery, and mechanical appliances), 85 (electrical machinery and equipment), and 90 (optical, precision, medical and other instruments) to the

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industrial and commercial controls listed in Supplement No. 4; and with this rule, BIS expanded Supplement No. 4 to cover all of chapter 88 (focused on aircraft, spacecraft, and parts thereof) as well.

- **Additional Restrictions Targeting Iran's Supply of Unmanned Aerial Vehicles (UAVs) to Russia:** BIS added items classified under HTS-6 Code 852910 (antennas, antenna reflectors, and parts thereof) to Supplement No. 7 to part 746 of the EAR. Supplement No. 7 is a list of products, including foreign-produced items, requiring a license when destined to Iran, Belarus, Russia, or Crimea, which was originally published in February 2023 to counter the use of Iranian UAVs by Russia.
- **Elimination of the *De Minimis* Carve-Out for .y "600 Series" and 9x515 Items Destined for Belarus and Russia:** BIS expanded the scope of the restrictions in Section 734.4(a)(6)(ii) of the EAR to include Belarus and Russia such that there is no *de minimis* level for foreign-made products incorporating U.S.-origin 9x515 or "600 series" .y (or paragraph y) items destined for Belarus or Russia. In other words, regardless of its value, the U.S. content of a foreign-produced item remains subject to the EAR and relevant licensing requirements, i.e., even after the U.S. item is incorporated into foreign-manufactured products. According to BIS, eliminating the *de minimis* level for these less sensitive military and space-related .y items "will bring additional foreign-made military and spacecraft items within the scope of the EAR and put additional pressure on Russia's military and defense industrial base, as well as make it more difficult for foreign suppliers to provide even low-level military and spacecraft items to Belarus and Russia."

BIS also made several other clarifying and conforming changes to existing export controls on Russia and Belarus, including the following:

- The rule added an exclusion from the license requirements under the comprehensive export controls on Crimea, the so-called Donetsk People's Republic (DNR), and the so-called Luhansk People's Republic (LNR) regions of Ukraine in Section 746.6 of the EAR for exports, reexports, and transfers (in-country) related to deployments by the Armed Forces of Ukraine (AFU or ZSU) to or within these regions of Ukraine.
- Similarly, BIS clarified that U.S.-origin firearms that were provided to Ukraine pursuant to a BIS license may be temporarily imported into the United States for repair or replacement and returned to Ukraine for use in its defense against Russia under License Exception Servicing and Replacement of Parts and Equipment (RPL). BIS also indicated that it plans to update the "Exports of Firearms and Related Items FAQs" on its website to address this issue.
- BIS revised the introductory text of Supplement Nos. 2, 4, and 5 to clarify that fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washers, spacers, insulators, grommets, bushing, springs, wires, and solders are excluded from the scope of these three supplements, but remain subject to the license requirements under Section 744.21 for Russia and Belarus – i.e., military end use/user controls – and any other applicable part 744 end use/user controls for Russia and Belarus.
- The rule clarified that the scope of Supplement No. 6 to part 746, which restricts the provision of certain discrete chemicals, biologics, fentanyl and its precursors, and related equipment to Russia and Belarus, does not include "medicines," as defined in Section 772.1 of the EAR – i.e., EAR99 prescription and over

the counter ''drugs,'' as defined in Section 201 of the Federal Food, Drug, and Cosmetic Act, for humans and animals. Note that certain medicines, such as certain vaccines and immunotoxins, are on the EAR's Commerce Control List (CCL) and do not qualify for this limited carve-out.

- BIS added a new exclusion related to the luxury goods items identified in Supplement No. 5 to part 746 to clarify that "U.S.-origin controlled content that meets the criteria in new Section 746.10(a)(3) is excluded from *de minimis* calculations when identifying controlled U.S.-origin content." This addition aligns with similar exclusions for our partner countries found in Sections 746.5(a)(3) and 746.8(a)(5) of the EAR.
- BIS adopted a case-by-case license review policy (rather than a policy of denial) for license applications related to safety of flight under the Industry Sector Sanctions in Section 746.5(b)(2) and the luxury goods controls in Section 746.10(b). This is another conforming change that aligns with the CCL destination-based controls that already have a case-by-case licensing review policy for safety of flight in Section 746.8 of the EAR. In the rule, BIS also highlights that the U.S. government has a "narrow and restrictive interpretation" of items related to safety of flight such that, "falling within this safety of flight-related category would have to satisfy a strict standard and would not apply broadly to all items used on an aircraft, but only to those items without which an aircraft would be unable to be safely operated." Moreover, "BIS does not intend that this category apply to aircraft that are in 'production,' only those that require safety-critical items in an emergency."
- The rule implemented a common set of license exceptions for the Russia and Belarus controls under part 746 of the EAR by streamlining the license exceptions in paragraph (c) of Sections 746.5, 746.8, and 746.10. BIS stopped short of adopting the common set of license exceptions for Section 746.6 (the export controls on the embargoed regions of Ukraine) or expanding the set of license exceptions related to end user license requirements under Section 746.10(a)(2).
- In a helpful move for industry, the rule also clarified an "order of review" to guide exporters in determining licensing requirements for items that are controlled to Russia or Belarus by multiple sections of the EAR. Essentially, exporters should first review the Export Control Classification Number (ECCN) controls laid out in Section 746.8 of the EAR; if an item has an ECCN and is subject to these controls, the license requirements, license exceptions, and license review policies in Section 746.8 are controlling. The separate industry sector and luxury goods licensing requirements for certain HTS-6 Codes generally would not apply, with the exception of the end use controls on special oil and gas projects in Section 746.5(a)(1)(i) and the restrictions on luxury goods for Russian and Belarusian oligarchs and malign actors in Section 746.10(a)(2).

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