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ALERT

One Year Into Russia's Invasion of Ukraine, Biden Administration Expands Sanctions, Export Control Restrictions

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On February 24, 2023, the Biden Administration, in coordination with leaders of the Group of Seven (G7), announced a new round of economic measures primarily targeting the Russian Federation on the one-year mark of Russia's military invasion of Ukraine. The measures include new sanctions on individuals and entities connected to Russia's sanctions evasion efforts and/or operating in industries that ultimately support Russia's war against Ukraine.

In addition, the Administration issued a series of new export restrictions and regulations related to Russia and Belarus, including measures to address the use of Iranian unmanned aerial vehicles (UAVs) found on the battlefields in Ukraine containing U.S. parts and components, new Entity List designations, and additional export controls on items destined for Russia and Belarus. These efforts are intended to further isolate Russia and Belarus from the international economy and hinder their ability to continue aggressions in Ukraine.

OFAC Expands Sanctions on the Russian Financial Services Sector, Metals and Mining Sector, and Military Supply Chains, and Targets Sanctions Evaders

The Department of the Treasury's Office of Foreign Assets Control (OFAC) imposed blocking sanctions on 22 individuals and 83 entities, including entities in the Russian financial services sector and metals and mining sector, along with entities that support Russia's military capabilities or are involved in Russian sanctions evasion. In addition to the new Specially Designated National (SDN) designations, OFAC, in consultation with the State Department, issued a determination

Authors

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Lori E. Scheetz
Partner
202.719.7419
lscheetz@wiley.law

John R. Shane
Partner
202.719.7222
jshane@wiley.law

Daniel P. Brooks
Partner
202.719.4183
dbrooks@wiley.law

Paul J. Coyle
Associate
202.719.3446
pcoyle@wiley.law

Practice Areas

Export Controls and Economic Sanctions
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Sanctions and Export Controls Resource Center
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authorizing the imposition of economic sanctions on any person determined to operate or have operated in the metals and mining sector of the Russian economy.

Russian Financial Services Sector

According to OFAC, prior to the new measures, "Russian banks representing over 80 percent of total Russian banking sector assets [were] already subject to U.S. and international sanctions." The new SDN targets include more than a dozen additional financial institutions in Russia, including Credit Bank of Moscow PJSC, one of the top-ten largest Russian banks by asset value. In addition, OFAC targeted several individuals and wealth management-related entities with SDN designations pursuant to Executive Order (EO) 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

OFAC also issued, or in specific instances amended, certain Russia-related general licenses (GLs) in conjunction with the financial services sector SDN designations:

- GL 8F: adding certain of the newly designated financial institutions to the authorization permitting certain energy-related transactions;
- GL 60: authorizing the wind down and rejection of transactions involving certain newly designated financial institutions through 12:01 a.m. eastern daylight time (ET), May 25, 2023; and
- GL 61: authorizing the wind down of certain securities and derivatives transactions involving certain newly designated financial institutions through 12:01 a.m. ET, May 25, 2023.

Military Supply Chains

As part of its continued efforts to target Russia's defense industries, OFAC imposed SDN designations on dozens of entities and individuals operating in sectors that directly or indirectly support Russia's war against Ukraine, including "firms that produce or import specialized, high-technology equipment used by Russian defense entities and companies that make advanced materials used in Russian weapons systems." Notably, OFAC imposed SDN sanctions on several Russian entities involved in the production of carbon fiber and related materials, as well as entities that operate in Russia's aerospace, technology, and electronics sectors.

Evasion-Related Sanctions

OFAC also imposed measures to address specific countries' efforts to help Russia circumvent sanctions and procure resources critical to its war against Ukraine. OFAC designated dozens of third-country individuals and companies involved in the circumvention efforts, including those related to arms trafficking and illicit finance.

Determination Regarding Russia's Metals and Mining Sector

OFAC, moreover, issued a new determination pursuant to EO 14024 targeting the metals and mining sector of the Russian economy, which gives it authority to designate as SDNs any individual or entity determined to operate or have operated in that sector. OFAC noted that "[t]his action complements existing provisions for sanctions against those that operate or have operated in the quantum computing, accounting, trust and corporate formation, management consulting, aerospace, marine, electronics, financial services, technology, and defense and related materiel sectors" of the Russian economy. Accordingly, OFAC designated four entities as SDNs for operating or having operated in the metals and mining sector of the Russian Federation economy: JSC Burevestnik Central Scientific Research Institute, OOO Metallurg-Tulamash, TPZ-Rondol OOO, and Mtsenskprokat. It is noteworthy that each of these entities also appears to have ties to the defense and related materiel sector of the Russian economy. OFAC also issued a series of FAQs (1114-1117) related to this determination, including guidance confirming that a sector determination does not automatically impose sanctions on all individuals and entities that operate in that sector.

As a result of OFAC's SDN designations, all property and interests in property of the new SDNs that are in the United States or in the possession or control of U.S. persons are blocked and must be reported to OFAC. In addition, any entities that are owned, directly or indirectly, 50% or more by one or more blocked persons are also blocked. As importantly, the new SDNs and their 50% owned entities are effectively cut off from the U.S. market, unless otherwise authorized by OFAC.

General License 13D

For those companies with operations in Russia, OFAC extended the duration of GL 13D, which permits certain administrative transactions prohibited by Directive 4 under EO 14024 that are necessary for day-to-day operations in Russia through 12:01 a.m. ET, June 6, 2023. This authorization, which previously was set to expire in March and has been extended multiple times, covers payment of taxes, fees, and import duties, along with the purchase or receipt of permits, licenses, registrations, and certifications, to, from, or through certain prohibited entities, including the Central Bank of Russia and the Ministry of Finance. In addition, OFAC issued FAQ 1118, confirming that GL 13D does not apply to Russia's so-called "exit tax" on divestment of assets located in Russia.

BIS Announces New Export Controls on Russia, Belarus, and Iran

Additions to the BIS Entity List

On February 24, BIS added 86 entities to its Entity List, including entities located in Canada, China, France, Luxembourg, the Netherlands, and Russia, for acting contrary to the national security or foreign policy of the United States, including participation in sanctions evasion and providing backfilling assistance to Russia's defense sector. BIS announced the additions to the Entity List in two final rules (read the rules here and here). Some of the entities are also designated as Russian/Belarusian Military End Users. Exports, reexports, and in-country transfers of items subject to the Export Administration Regulations (EAR), including EAR99 commodities, software, and technology (i.e., items controlled at the lowest levels) as well as many foreign-produced items that contain above *de minimis* controlled U.S. content or are derived from U.S. technology or software, are generally prohibited to Entity List designees without a license, and most license applications are subject to a presumption or policy of denial.

Amendments to EAR Part 746

In a new final rule issued and effective on February 24, 2023, BIS announced an expansion of the scope of the EAR's Russian and Belarusian industry sector and "luxury goods" sanctions that generally prohibit transactions involving specified EAR99 items. BIS also announced new export restrictions for Iran to prevent U.S. parts and components found in Iranian drones from being used in the conflict in Ukraine. These changes generally were made to coordinate more closely with the restrictions enacted by U.S. allies and partners.

- The heading for Supplement No. 2 (energy-related industry sector sanctions) was amended to clarify that the export restrictions on these items also apply to Belarus. Also, the HTS-6 Code and HTS Description are now used to identify the items subject to licensing requirements in Supplement No. 2 (*e. g.*, mobile drilling derricks, liquid elevators, aluminum containers for liquefied natural gas, line pipe for oil and gas pipelines), replacing the Schedule B number and Schedule B description previously used. Finally, Supplement No. 2 also now covers components, parts, accessories, and attachments of items identified in the supplement, even if not specifically identified by HTS Code or HTS Description.

- Supplement No. 3 was amended to now include Taiwan on the list of partner countries that are excepted from the expansive Russia/Belarus foreign direct product rules, as well as the expansive Russia/Belarus *de minimis* calculation rules. Taiwan was added to the list because it implemented similar sanctions against Russia.

- Supplement No. 4 (industrial/commercial industry sector sanctions) was amended to add HTS-6 Code entries corresponding to 322 industrial items that will now require licenses for export, reexport, or transfer to or within Russia or Belarus. These items include various flat-rolled products of iron or nonalloy steel, outboard boat engines, vacuum pumps, and other industrial and commercial products. Much like Supplement No. 2 mentioned above, Schedule B numbers and Schedule B Descriptions were removed from the supplement and the HTS-6 Code will now determine the items requiring licenses.

- Supplement No. 5 (luxury goods sanctions) was amended to include an additional 276 "luxury goods" items subject to the licensing requirement for export, reexport, or transfer to or within Russia or Belarus and to Russian/Belarusian "oligarchs" and "malign actors" worldwide. The luxury goods added are expansive and include household items such as electrical fans, air conditioners, refrigerators, cooking appliances, restaurant equipment, smartphones, modems, radio/TV and related items, smoke detectors, ATMs, various turbojet and other aircraft parts and turbines, gears and pulleys, and other items.

- Supplement No. 6 (restrictions on chemical/biological items and other activities of concern) was amended to expand the list of EAR99 items related to chemical and biological weapons that require a license to more closely align with U.S. allies' controls. Among other items, BIS added thiafentanil; reagents and materials for oligonucleotide synthesis; and resins, reagents, and materials for peptide synthesis.

- Supplement No. 7 was added to EAR Part 746 to counter the use of Iranian UAVs by Russia by identifying several EAR99 items subject to U.S. jurisdiction used in Iranian UAVs that are now subject to license requirements for export by anyone to Iran. While Iran is already subject to a comprehensive U.S. embargo primarily administered by OFAC, the new rule added an "Iran Foreign Direct Product Rule" (and made related changes to the existing Russia/Belarus Foreign Direct Product Rule) to capture foreign-produced items identified in Supplement No. 7 and classified either as EAR99 or specified in any ECCN in Category 3, 5, 6, or 7 of the Commerce Control List that are the direct product of certain U.S. technology or software so that these items are subject to the EAR when destined for Iran, Russia, or Belarus. Notably, these new controls do not apply to the partner (excluded) countries identified in Supplement No. 3 of Part 746 of the EAR, nor do they apply to transactions abroad involving Iran that would otherwise meet the terms and conditions of an OFAC general license if the transactions had been subject to OFAC jurisdiction.

License Review Policy and Additional Clarifications

This new rule also adds a new case-by-case license review policy for license applications for the disposition of items by companies headquartered outside of Country Groups D:1, D:5, E:1, and E:2 that are curtailing or closing all operations in Russia or Belarus. The new case-by-case license review policy is intended to assist in the orderly exit of companies and entities from Russia and Belarus in a manner consistent with U.S. national security and foreign policy interests.

BIS also made some clarifications to its existing controls. For example, the licensing carve-out for items controlled under ECCN 5A992 or 5D992 under Section 746.8 of the EAR also applies to items that otherwise would be subject to the "Luxury Goods Sanctions" license requirements under EAR Section 746.10(a)(1). Also, BIS explicitly clarified that Section 744.7 applies to (in-country) transfers related to Russian and Belarusian aircraft and vessels.

Tariff Rates Increased on Aluminum Imports

In addition to sanctions and export control measures, President Biden also issued a proclamation raising tariffs on certain Russian products imported into the United States in order to both reduce additional revenue to Russia and U.S. reliance on Russia. The increase in tariffs includes more than 100 Russian metals, minerals, and chemical products and will affect one of Russia's primary industries. Specifically, Section 232 tariffs on aluminum and derivative articles produced in Russia will be increased to a 200% ad valorem rate of duty beginning on or after 12:01 a.m. eastern standard time on March 10, 2023. This could have a significant impact on companies that integrate Russia-origin aluminum or derivative products into their supply chains. In addition, a 200% tariff will be imposed on aluminum and derivative articles where any amount of primary aluminum is used to manufacture articles smelted or cast in Russia beginning on or after 12:01 a.m. eastern standard time on April 10, 2023. Any country that imposes a tariff of 200% or more on its imports of aluminum articles that are products of Russia may be exempt from the tariff imposed by this proclamation.

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