

United States Further Expands Russia Sanctions to Prohibit Services and Exports to Russia

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In response to entreaties by allies at the Group of Seven (G7) summit recently held in Japan, on May 19, 2023, the U.S. Department of Commerce and the Department of the Treasury jointly announced new restrictions on trade with Russia. This incremental expansion of export controls and sanctions against Russia is consistent with the U.S. government's recent surgical approach to trade controls, which seeks to avoid affecting parties unrelated to the targeted regime. Still, like the broad sanctions programs of the past, this targeted, piecemeal approach may have a chilling effect on commerce if businesses find it too impractical or costly to navigate the new complex rules governing trade with Russia.

Following is a general overview of the relevant changes made to the U.S. trade controls regime:

I. In alignment with international partners, the Department of Commerce's Bureau of Industry and Security (BIS):

- Expanded existing export controls such that all items in Chapters 84¹, 85², and 90³ of the Harmonized Tariff System now require a license for export to Russia. This includes certain electronics, instruments, and advanced fibers for the reinforcement of composite materials, including carbon fibers.
- Expanded export controls to certain discrete chemicals, biologics, fentanyl and its precursors, and related equipment classified for export as "EAR99."⁴

- Expanded the list of foreign-produced items that require an export license when destined for Russia, Belarus, or Iran. The purpose of these restrictions is to undermine the ability of Iran to support Russian and Belarusian industrial bases and military aggression, specifically regarding Iran's supply of unmanned aerial vehicles (UAVs) to Russia.
- Expanded the Foreign-Direct Product (FDP) Rule to apply to the Crimea region of Ukraine. This means that U.S. export controls over trade with Crimea now apply to foreign-made items that are the direct product of U.S.-origin technology or software (including items made at a plant or from a major component of a plant that itself is the direct product of U.S.-origin technology or software).

In addition, BIS added 71 new restricted parties to the Entity List (a list of entities that are prohibited from receiving items subject to U.S. dual-use export controls) for supporting Russia's military or defense sectors and released a joint alert with the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) advising U.S. institutions to remain vigilant against Russian export control evasion efforts.

II. The Department of the Treasury's Office of Foreign Assets Control (OFAC) published its own set of new restrictions, requirements, and clarifications intended "to further degrade the Russian Federation's capacity to wage war against Ukraine." As part of the coordinated effort, OFAC:

- Added the architecture, engineering, construction, manufacturing, and transportation sectors of the

¹ Chapter 84 relates to "Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof."

² Chapter 85 relates to "Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles."

³ Chapter 90 relates to "Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof."

⁴ EAR99 is a catch-all export classification given to commercial items that fall under the scope of the EAR, but that are not specifically enumerated on the Commerce Control List. Generally, EAR99 items do not require a license for export to most countries; these new restrictions change that status for a number of products for shipment to Russia and Belarus.

Russian economy to the list of industries to which Executive Order 14024 applies. With this change, OFAC now has the power to issue sanctions on the listed sectors of the Russian economy. U.S. persons with direct or indirect connections to the listed industries should remain alert for new restrictions or prohibitions in these areas.

- Prohibited the exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a United States person, wherever located, of architecture services or engineering services to any person located in the Russia unless the service is being provided:
 - to an entity owned or controlled, directly or indirectly, by a United States person; or
 - in connection with the wind-down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person.

OFAC also published definitions for architecture and engineering services so that businesses can determine whether their activities fall under the new prohibitions. These restrictions supplement the prohibitions on providing accounting, trust and corporate formation, and management consulting services as well as certain quantum computing services to Russia.

- Amended Directive 4 to require that U.S. persons in possession or control of any property in which any

entity subject to Directive 4 (a Directive 4 Entity) has a direct or indirect interest submit a report of such holdings to OFACreport@treasury.gov on or before June 18, 2023, and then again, annually, by June 30.

- Specified that U.S. persons whose divestment from the Russian Federation will involve the payment of an exit tax to a Directive 4 Entity will require a specific license from OFAC unless the payment is otherwise authorized by OFAC. Payment of exit taxes is not considered ordinarily incident and necessary to day-to-day operations in the Russian Federation and, thus, is not authorized under any general licenses.

Further, OFAC published additional FAQs intended to provide guidance as to how the above changes will be implemented and enforced.

Based on this recent expansion of prohibitions, businesses still operating in Russia should keep an ear to the ground regarding potential additional sanctions on the Russian construction, manufacturing, or transportation sectors.

For assistance in understanding how these new prohibitions or other U.S. trade controls impact your business, please reach out to Lowenstein Sandler's Global Trade & National Security team.

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