



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

March 2022

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1. United States Hits Russia With Expanded Sanctions and Export Controls

In what remains a rapidly changing environment, in the last several weeks, the U.S. government imposed significant additional sanctions on Russia, including the following:

- A new prohibition on the direct or indirect importation or exportation of goods, services, or technology from or to the Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, as well as any new investment in these regions, subject to a wind-down period for existing activities ending on March 23, 2022
- A prohibition against:
 - Participating in the primary market for ruble- or non-ruble-denominated bonds issued after June 14, 2021, by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation
 - Lending ruble- or non-ruble-denominated funds to the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation after June 14, 2021
 - Dealing in Russian sovereign debt to the secondary market for bonds issued after March 1, 2022
- The addition of more entities to the Specially Designated Nationals and Blocked Persons (SDN), Non-SDN Menu-Based Sanction (NS-MBS), and Correspondent Account or Payable-Through Account (CAPTA) lists
- A new directive restricting U.S. financial institutions from undertaking certain transactions with designated foreign

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financial institutions, including Public Joint Stock Company Sberbank of Russia and its 50 percent or more owned subsidiaries. This prohibition will go into effect on March 26, 2022, or, for any new institution designated under Directive 2, within 30 days of the designation. Another new directive prohibits U.S. persons from transactions in, provision of financing for, or other dealings in new debt of longer than 14 days or new equity for designated entities

- Limited general licenses i) authorizing prohibited activities ordinarily incident and necessary to overflight payments, emergency landings, and air ambulance services; ii) providing wind-down periods for certain transactions related to energy (June 24, 2022), debt or equity (May 25, 2022), derivative contracts (May 25, 2022), and certain blocked persons (March 26, 2022); and iii) authorizing the rejection of transactions with certain blocked persons through March 26, 2022
- The designation of Russian President Vladimir Putin, Foreign Minister Sergey Lavrov, and others as SDNs; such designations of a sitting president are extremely rare

The U.S. government has named federal prosecutor Andrew Adams to lead Task Force KleptoCapture, an interagency group set up to enforce U.S. sanctions against Russia.

The U.S. Department of Commerce, Bureau of Industry and Security (BIS), is scheduled to revise U.S. commercial export controls in the first week of March to:

1. Extend export controls to all U.S.-origin commercial items destined for a military end use or military end users in Russia (including those not normally requiring a license for export to Russia), with limited exceptions;
2. Increase licensing requirements for exports to Russia and designated Russian entities;
3. Restrict the use of license exceptions for exports, reexports, and transfers to Russia;
4. Further restrict the export to Russia and Russian military end users of foreign direct products of i) certain U.S.-origin software or technologies and ii) certain plants or major components thereof that are themselves the direct product of certain U.S.-origin software or technology;
5. Impose a policy of denial of export license applications related to the above restrictions, with limited exceptions (such as exports related to safety of flight, maritime safety, humanitarian needs, government space cooperation, civil telecommunications infrastructure, and government-to-government activities, and those supporting limited operations of partner country companies in Russia); and
6. Add more Russian entities to the Entity List (which restricts the export of U.S. commercial goods to listed parties).

2. White House Releases Updated Emerging Tech List

On Feb. 7, the White House published an [updated list](#) identifying critical and emerging technologies that are significant to U.S. national security. The list named 19 technology categories: advanced computing; advanced engineering materials; advanced gas turbine engine technologies; advanced manufacturing; advanced and networked sensing and signature management; advanced nuclear energy technologies; artificial intelligence; autonomous systems and robotics; biotechnologies; communication and networking technologies;

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directed energy; financial technologies; human-machine interfaces; hypersonics; networked sensors and sensing; quantum information technologies; renewable energy generation and storage; semiconductors and microelectronics; and space technologies and systems. The technologies in these categories likely will be reflected in export controls issued by the Bureau of Industry and Security (BIS) and scrutinized by the Committee on Foreign Investment in the United States (CFIUS) when involved in investments in U.S. businesses.

3. DDTC Proposes to Align ITAR Foreign Nationality Rules With EAR

On Feb. 2, the Directorate of Defense Trade Controls (DDTC) issued a **proposed rule** that would make several revisions to the International Traffic in Arms Regulations (ITAR), including a revision to how foreign persons are defined under the ITAR. The significant change would only consider and define nationality by a person's current citizenship or permanent residence, rather than also consider previously held citizenships. This definition more closely aligns to how the Export Administration Regulations (EAR) defines nationality.

4. Corporate Values-Based Compliance Program Can Help Avoid Sanctions Double Binds

The decision by the Court of Justice of the European Union in *Bank Melli Iran v. Telekom Deutschland GmbH* provides businesses a compliance strategy to mitigate the risks arising from navigating one country's sanctions regulations and another country's blocking regimes. Robust compliance continues to be essential when mitigating risk. Companies can establish in their corporate compliance procedures reasons for not doing business with a sanctioned entity, independent of compliance with foreign sanctions, such as human rights.

5. National Security Systems Contractors Should Anticipate New Cybersecurity Requirements

President Biden's recent **national security memorandum** on cybersecurity will impact government contractors. Federal agencies must identify their national security systems and report cyber incidents to the National Security Agency (NSA) and must secure cross-domain solutions. In addition, the NSA may create binding operational directives, requiring agencies to take specific actions against cybersecurity threats and vulnerabilities. While these requirements currently only apply to government agencies, as we've previously seen with such policies and processes, the requirements often ultimately flow down to the contractors.

TRADE TIP OF THE MONTH: Lowenstein Sandler has launched **G-BRIDGE** (Generating Business Relationships in the Defense and Government Environment). G-BRIDGE is **designed** to link innovative companies to government opportunities and legal support through determining government needs and introducing companies to potential avenues for creating or expanding business with government entities.

- **Client Alert:** "Notable US Sanctions and Export Controls Levied Against Russia and Belarus in Response to the Ongoing Conflict in Ukraine"

February 28, 2022

Global Trade & National Security Client Alert

Doreen M. Edelman, Abbey E. Baker, Christian C. Contardo

- **Client Alert:** "Western Sanctions Targeting Russia Increase Business Risks for Companies"

February 25, 2022

Global Trade & National Security Client Alert

Doreen M. Edelman, Zarema A. Jaramillo, Abbey E. Baker, Christian C. Contardo

- **Article:** "Interview of Brian Murphy, Former Chief of Intelligence, Department of Homeland Security"

February 2, 2022

Global Trade & Customs Journal

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