

Global Trade & National Security

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Notable Russia and Belarus Trade Controls in Response to the Ongoing Conflict in Ukraine – March/early-April Updates

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As an update to Lowenstein’s previous alert, “[Notable U.S. Sanctions and Export Controls Levied Against Russia and Belarus in Response to the Ongoing Conflict in Ukraine](#),” below is an overview of additional, notable U.S. trade controls imposed against Russia and Belarus since February 28, 2022.

1. Sanctions

On March 8, 2022, the White House issued Executive Order 14066, prohibiting 1) the import into the U.S. of Russian “crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products;” 2) U.S. persons from making new investment in the Russian energy sector; and 3) any activity by a U.S. person that would facilitate either of the above, such as approving, financing, or guaranteeing any import of Russian oil or coal products into the U.S. or new investment in the Russian energy sector by any person. Simultaneously, regarding agreements involving the above activities that were made prior to March 8, 2022, the U.S. Office of Foreign Assets Control (OFAC) issued General License 16, authorizing a wind-down period ending April 22, 2022, for activities ordinarily incident and necessary to the importation into the United States of crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products.

On March 11, 2022, the White House issued Executive Order 14068, which 1) prohibits the import of Russian fish, seafood, and related preparations; Russian alcoholic beverages; and Russian non-industrial diamonds, and authorizes certain U.S. agencies to expand this list; and 2) prohibits the direct or indirect export, reexport, sale, or supply of certain luxury goods (to be determined by U.S. agencies) to Russia; new investment in certain sectors of the Russian economy (to be determined by U.S. agencies); and the direct or indirect export, reexport, sale, or supply of U.S. dollar-denominated banknotes to Russia or the Russian government. General License 17A provides a narrow carve-out through June 23, 2022, for the import of Russia-origin fish, seafood, and preparations so long as such products are imported into the U.S. pursuant to a written

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contract entered into prior to March 11, 2022. Other narrow general licenses also apply.

On March 24, 2022, OFAC added dozens of companies in Russia's defense-industrial base to its Specially Designated Nationals List (SDN List). On March 31, 2022, OFAC 1) issued a determination that the aerospace, electronics, and marine sectors of Russia's economy are subject to sanctions pursuant to Section 1(a)(i) of Executive Order 14024 and that, therefore, Treasury may designate any individual or entity determined to operate or have operated in these sectors; and 2) added 21 entities and 13 individuals, including sanctions evasion networks, malicious cyber actors, and Russia's largest chipmaker, Joint Stock Company Mikron, to the SDN List. Further, on April 5, 2022, OFAC sanctioned Russia-based Hydra Market, a prominent darknet market, and associated virtual currency addresses based on its support of cybercrime.

On April 6, 2022, the White House announced that President Biden would issue a new executive order, "Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression." This order prohibits all new investment in the Russian Federation by U.S. persons, wherever located, as well as the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any category of services as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to any person located in the Russian Federation. The announcement also included the designation of members of the Russian Security Council and individuals found to be facilitators of Russian President Putin; family members supporting the Russian President and Foreign Minister; and two of Russia's largest banks, Sberbank and Alfa-Bank, their subsidiaries, and any entities owned 50% or more by those companies. OFAC issued additional general licenses authorizing transactions ordinarily incident to wind-down activities with these entities.

In addition to taking the actions outlined above, throughout this period OFAC has added a number of individuals and entities to its restricted parties lists and released various general licenses authorizing specific activities that would otherwise be prohibited.

2. Export Controls

On March 2, 2022, the U.S. Commerce Department, through its Bureau of Industry and Security (BIS), expanded the stringent export controls previously issued against Russia on February 24, 2022, to Belarus, in response to Belarus's actions in enabling Russia's invasion of Ukraine. This expansion included a policy of denial on sensitive items that support Belarus's defense, aerospace, and maritime industries; subjecting Belarus to the two new Foreign Direct Product (FDP) rules issued for Russia; imposing a ban of U.S. commercial exports to Belarusian military end users or for Belarusian military end uses; and expanding export licensing requirements for commercial items classified in Categories 3-9 of the Export Administration Regulations (EAR) with limited exemptions and a policy of denial.

On March 4, 2022, BIS targeted Russia's oil refinery sector. The new rules expand existing 2014 restrictions on certain exports supporting Russian exploration or production from deepwater, Arctic offshore, or shale projects with potential to produce oil or gas by 1) imposing a policy of denial and 2) further restricting the export to Russia of items necessary for refining oil. Additionally, BIS added 91 parties that provided support to Russian security services, military, defense, or military/defense R&D sectors to its Entity List.

On March 11, 2022, to implement the prohibitions of Executive Order 14068 (outlined above), BIS issued parallel rules restricting the export of luxury goods destined for 1) Russia or Belarus, and 2) designated Russian or Belarusian oligarchs or malign actors, wherever located. Applicable luxury goods can be found in the new Supplement No. 5 to part 746 of the EAR. A limited number of license requirements may apply.

On March 18, 2022, in response to violations of its February 24, 2022 rule prohibiting the export, re-export, or in-country transfer of aircraft under the jurisdiction of the EAR to or within Russia, BIS published a list of almost 100 violating aircraft. In its press release, BIS put the public on notice that “providing any form of service to these aircraft requires authorization” and that any such service would be considered an additional violation of General Prohibition Ten of the EAR. General Prohibition Ten prohibits “[p]roceeding with transactions with knowledge that a violation has occurred or is about to occur.”¹ The scope of prohibited services is broad and would include selling, transferring, or financing such violating aircraft.

On March 30, 2022, BIS updated this list, adding 73 aircraft and removing those that have received BIS authorization to be transported out of Russia. Note that this list is not exhaustive and can be added to or revised at any time. Further, the restrictions of Prohibition Ten are not limited to activities with listed aircraft, and U.S. persons should be careful to avoid servicing any aircraft running afoul of the prohibitions of the EAR.

On April 1, 2022, BIS added 120 entities to its Entity List for supporting the Russian and Belarusian militaries.

3. Other Relevant Actions

On March 2, 2022, Attorney General Merrick B. Garland announced a U.S. interagency enforcement initiative, Task Force KleptoCapture, which will focus on enforcing the sanctions, export control, and economic countermeasures that have been imposed in response to Russia’s actions in Ukraine.

On March 7, 2022, BIS added South Korea to the list of countries excluded from the Russia/Belarus licensing requirements. These exclusions are in support of coalition building and a multilateral approach to standing up to Russian aggression. Such exclusions are based on a determination that the partner country has relevant export controls substantially similar to that of the United States.

Many U.S. states have implemented or proposed their own restrictions on state procurement contracts with Russian entities. Further, some states have imposed certification and disclosure requirements on state contractors regarding ties to Russia or Belarus, and others have taken even further steps, such as requiring state entities to divest money and assets from Russian entities or those supporting Russia’s invasion of Ukraine.²

With regard to imports, the Biden administration announced in March that it will work with Congress to revoke Russia’s and Belarus’s Permanent Normal Trade Relations (PNTR) status. Stripping Russia and Belarus of their PNTR status would subject Russia-origin and Belarus-origin imports to increased tariffs, far above the rates currently applicable to those countries and most other nations. On March 17, 2022, the U.S. House of Representatives overwhelmingly passed the Suspending Normal Trade Relations with Russia and Belarus Act. The bill is now in the Senate, where it has bipartisan support and is likely to pass.

¹ 15 C.F.R. 736.2(b)(10)

² [https://www.governor.ny.gov/sites/default/files/2022-02/Executive Order No. 14.pdf](https://www.governor.ny.gov/sites/default/files/2022-02/Executive%20Order%20No.%2014.pdf)

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