



Trade Matters

Lowenstein Sandler's Global Trade & National Security Newsletter

April 2022

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1. Updates to Russia Sanctions and Export Controls

In response to the ongoing attack on Ukraine, the U.S. government continues on a weekly basis to increase economic sanctions and export controls on Russia.

Economic Sanctions

- On **March 8**, the White House issued an Executive Order banning 1) the import into the United States 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 into the Russian energy sector; and 3) any activity by a U.S. person that would facilitate either of the above. A general license provides a short wind-down period.
- On **March 11**, the White House issued an Executive Order banning 1) the import of Russian fish, seafood, and related preparations; Russian alcoholic beverages; and Russian nonindustrial diamonds (the order leaves open the ability for certain U.S. agencies to expand this list); and 2) 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. Some narrow General Licenses apply.
- On March 31, the Department of the Treasury **expanded its sanctions authorities** to cover Russia’s aerospace, electronics, and marine sectors, which means that Treasury can now impose sanctions on any individual or entity that operates or has operated in those sectors.
- The Office of Foreign Assets Control (OFAC) continues to add individuals and entities to the Specially Designed

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Nationals List, including the largest chip maker—[Joint Stock Company Mikron](#).

- On **April 6**, the U.S. government issued full blocking sanctions on Russia's largest financial institution, Sberbank, and Russia's largest private bank, Alfa Bank. This action will freeze any of Sberbank's and Alfa Bank's assets touching the U.S. financial system and prohibit U.S. persons from doing business with them. Sberbank holds nearly one-third of the overall Russian banking sector's assets and is systemically critical to the Russian economy. Alfa Bank is Russia's largest privately owned financial institution and Russia's fourth-largest financial institution overall. To the extent companies may have any activities or transactions involving Sberbank or Alfa Bank, OFAC issued a general license authorizing U.S. persons to engage in transactions to wind down business activities (until April 13 for Sberbank, and until May 6 for Alfa-Bank).
- President Biden will also sign a new executive order to prohibit new investment in Russia by U.S. persons wherever located, which will further isolate Russia from the global economy.

Various states are also developing sanctions programs. Over 20 states have implemented or proposed actions to review or terminate existing state contracts and procurements with Russian entities and to prohibit state agencies from entering into new contracts with Russian entities.

Export Controls

- On **March 2**, the U.S. Commerce Department, through its Bureau of Industry and Security (BIS), expanded the stringent export controls previously issued against Russia on Feb. 24 to Belarus in response to Belarus's support for Russia's invasion of Ukraine. This rule includes a policy of denial on sensitive items that support Belarus's defense, aerospace, and maritime industries; subjects Belarus to the two new Foreign Direct Product rules issued for Russia; imposes a ban of U.S. commercial exports to Belarusian military end users or for Belarusian military end uses; and expands 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**, BIS targeted Russia's oil refinery sector. The new rules expand on BIS' 2014 restrictions over certain exports supporting Russian exploration or production from deep water, 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 of items necessary for refining oil to Russia. Additionally, BIS added 91 new parties that provided support to Russian security services, military, defense, or military/defense R&D sectors to its Entity List.
- On **March 11**, 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**, in response to violations of its Feb. 24 rule prohibiting the export, reexport, 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

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considered an additional violation of General Prohibition Ten of the EAR. On March 30, BIS updated this list, adding 73 new 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**, BIS added 120 entities to its Entity List for supporting the Russian and Belarusian militaries.

2. China Section 301 Tariffs

- United States Trade Representative (USTR) Reinstates Certain Section 301 Exclusions

On March 23, USTR announced the reinstatement of 352 Section 301 exclusions. The newly reinstated exclusions span Lists 1 through 4A and include finished products like motorcycles, backpacks, and safes as well as manufacturing inputs like automobile parts and chemicals. The exclusions will apply retroactively to Oct. 12, 2021, and will extend through Dec. 31, 2022. As with previous exclusions, the scope of each will be governed by the scope of the relevant 10-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading and product description published in USTR's Federal Register notice, which can be found [here](#). While there currently are no scheduled opportunities for companies to request additional product exclusions, USTR said it "may consider further extensions as appropriate," leaving the door open for potential opportunities to obtain exclusions in the future.

- Section 301 Litigation: Lists 3 and 4A

On April 1, the Court of International Trade (CIT) ordered USTR to further explain or reconsider its decisions to impose List 3 and 4A tariffs, finding that the explanation USTR provided in its public announcements and briefs filed with the CIT were not sufficient. At the same time, the CIT declined to order USTR to issue refunds for List 3 and 4A tariffs and stop imposing the tariffs going forward. More specifically:

- The CIT took a broad reading of the government's authority, saying that it was within USTR's rights to impose the List 3 and 4A tariffs.
- The CIT sent the matter back to USTR after ruling that the agency failed to adequately respond to comments submitted in advance of the tariffs, ordering USTR to further explain its tariff decisions and potentially reconsider them.
- The CIT ruled that the tariffs may remain in place while USTR reconsiders its action pertaining to these comments. USTR now has until June 30 to return to the CIT with a response to the remand, at which point the CIT will determine if it accepts USTR's explanations and update its opinion accordingly.

3. US Threat Assessment: China and Russia Remain Priority

On March 9, the U.S. Intelligence Community released its 2022

Annual Threat Assessment report, providing insight on what will inform national security policies, such as the Committee on Foreign Investment in the United States (CFIUS) national security reviews. China, Russia, Iran, and North Korea remain priority national security threats. The assessment also notes that new and emerging technologies have resulted in increasing opportunities for transnational conflict, so they will also be a continued focus of the U.S. government.

4. How Crypto Companies Are Impacted by Russia Sanctions

The New York State Department of Financial Services issued **guidance** to all entities subject to its regulation, focusing on those involved in virtual currency activity in particular. The Russian invasion increases the risk that virtual currency transfers may be used to evade sanctions for listed individuals and entities. Companies should be wary of customers using shell corporations created specifically to obfuscate both the origin and the destination of assets. Crypto companies should have policies, procedures, and processes in place to implement necessary internal controls, with appropriate training, risk assessments, and testing and auditing against their risk profile. These internal controls can include the use of geolocation tools and IP address identification and blocking capabilities to detect and prevent potential sanctions exposure.

5. Companies Must Prepare for Emerging ESG Risks in Supply Chains

Investors and companies are increasing focus on supply chain risks following December's **Uyghur Forced Labor Prevention Act** and the Russian invasion of Ukraine. With the increased focus on environmental, social, and governance (ESG) issues and supply chains, it may be helpful to refresh or develop robust due diligence policies and procedures. The trend of requiring increased supply chain transparency and accountability continues to garner bipartisan support and consumer attention, so comprehensive supply chain tracing is becoming a compliance expectation.

6. FCC Adds 3 Companies to National Security Threat List

On March 25, the Federal Communications Commission (FCC) **added** Russian-owned AO Kaspersky Lab, China Telecom (Americas) Corp, and China Mobile International USA Inc. to the list of telecom firms deemed risky to U.S. networks. The list was created three years ago by the Secure and Trusted Communications Networks Act of 2019; Huawei and ZTE were among the first entities added.

TRADE TIP OF THE MONTH: Increased economic sanctions and export controls require that companies update compliance programs to ensure they are complying with the new requirements. Companies can ask their customers to sign end-use statements or insert compliance clauses into contracts. Businesses should not only frequently screen customers but also ensure that they are in compliance with OFAC's 50 percent rule. The rule imposes prohibitions on any companies owned 50 percent or more by one or more sanctioned parties. At a minimum, OFAC

expects companies to search for any publicly available information on customers before doing business with them.

Additional Resources

- **Firm News:** “Doreen M. Edelman Named Top Advisor by Foreign Investment Watch for Third Consecutive Year”
March 20, 2022
- **In the Media:** Doreen M. Edelman, Chair of the firm’s Global Trade & National Security practice, stresses the need for companies to screen their client lists against government sanctions databases in light of the sanctions against Russia in CNBC’s “Small Business Playbook.”
March 26, 2022
- **In the Media:** *Law360* features G-BRIDGE, Lowenstein’s new platform that matches private companies with government agencies to address issues such as cybersecurity, in its interview with Jeffrey B. Jones, counsel in the firm’s Global Trade & National Security practice.
March 22, 2022
- **In the Media:** Christian C. Contardo addresses the impact of Russian sanctions on global supply chains in *SupplyChainBrain*.
March 21, 2022
- **In the Media:** Doreen M. Edelman, Chair of the firm’s Global Trade & National Security practice, addresses the challenges companies face in light of increasingly strict sanctions on Russia in *Export Compliance Daily*.
March 8, 2022
- **In the Media:** Doreen M. Edelman, partner and Chair of the firm’s Global Trade & National Security practice, speaks with *USA Today* about the potential effect of Russian sanctions on American businesses and investors.
March 1, 2022
- **In the Media:** Christopher Gerold was quoted in an article in *Law360* about Crypto.
March 9, 2022



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