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U.S. and Allies Continue to Expand Sanctions Against Russia and Belarus

As hostilities in Ukraine continue, the United States and allied nations continue to announce further sanctions, export controls, and import bans against Russia. Most notably, since our last advisory, the Biden Administration and U.S. allies have announced new restrictions that target the Russian energy industry. Until the most recent wave of sanctions, the Russian energy sector was largely spared from sanctions due to the importance of Russian oil and gas exports to European and global economies. However, as the crisis in Ukraine continues and civilian casualties mount, these and other new restrictions signal a willingness to expand measures and increase the costs on Russia.

Further actions by the United States and its allies include restrictions on the import and export of luxury goods and banknotes and additional sanctions against Vladimir Putin's inner circle, including the recent designation of numerous Russian lawmakers. The United States has also indicated that it is concerned with the potential that cryptocurrency or other digital assets could be used as a means to circumvent sanctions. For its part, Russia is moving forward with various countermeasures in response to the wave of sanctions imposed against it.

Ban on Import of Certain Russian Energy Products and New Investments in the Russian Energy Sector

On March 8, 2022, President Biden announced Executive Order 14066, Prohibiting Certain Imports and New Investments with Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine. This Order specifically targets U.S. importation and financing of Russian energy. The ban prohibits the importation of crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products. Importation of Russian oil, gas, and coal to the United States can still occur, under a general license, if such contracts or written agreements were entered into before March 8, 2022, provided that such imports occur by 12:01 a.m. eastern daylight time on April 22, 2022. U.S. Customs and Border Protection (CBP) has also issued guidance on this general license requiring filers of entries or admissions to Foreign Trade Zones for shipments of oil, coal, or gas of Russian origin to provide documentation to show orders or contracts were entered into before March 8, 2022.

In addition, Executive Order 14066 prohibits new investments by U.S. persons, wherever located, across the Russian energy sector and further prohibits U.S. persons from approving, financing, facilitating, or guaranteeing a transaction by a foreign person involving such new investments if the transaction by that foreign person would be prohibited if performed by a U.S. person or within the United States. The United Kingdom also announced an import ban on Russian oil, which will be gradually phased in over the course of 2022. Due to the EU's reliance on Russian energy, the bloc has not agreed to a Russian energy import ban but did adopt a ban on new investment across the Russian energy sector, with limited exceptions.

Ban on Certain Russian Commercial Imports and Exports of Luxury Goods and U.S. Banknotes

On March 11, 2022, President Biden announced Executive Order 14068, Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression, targeting a variety of Russian commercial imports and exports of various luxury goods and U.S.-dollar-denominated banknotes to Russia. The ban affects the import of certain Russian-origin fish, seafood, and preparations thereof; alcoholic beverages; and non-industrial diamonds identified within the Harmonized Tariff Schedule of the United States (HTSUS), although more Russian goods could be added to this list in the future. While Russian-origin alcohol and non-industrial diamonds can no longer be imported to the United States, a general license allows identified fish, seafood, and preparations thereof from Russia to still be imported to the United States if such contracts or written agreements were entered into before March 11, 2022, so long as the actual imports into the United States occur by 12:01 a.m. eastern daylight time, June 23, 2022. The U.S. Treasury Department has also clarified that the import ban on these items does not prohibit U.S. persons from engaging in transactions to sell or redirect shipments outside the United States that were previously destined for the United States. Therefore, importers have the ability to redirect or resell these items to countries that have not initiated a ban on such goods.

The Executive Order also announced a U.S. export prohibition on "luxury items" to Russia, which includes goods such as certain watches, vehicles, apparel, alcohol, tobacco products, jewelry, and antique goods. To implement this policy, the U.S. Commerce Department, Bureau of Industry and Security (BIS) issued a new rule identifying various luxury goods in the new Supplement No. 5 to the Export Administration Regulations Part 746, which are now restricted for export to Russia, as well as Belarus, unless a license—which will be reviewed under a presumption of denial—is obtained.

Executive Order 14068 also prohibits the export of U.S.-dollar-denominated banknotes to the Russian government or any person located in Russia and further prohibits U.S. persons from approving, financing, facilitating, or guaranteeing a transaction by a foreign person involving U.S. banknotes if the transaction by that foreign person would be prohibited if performed by a U.S. person or within the United States. This restriction seeks to close an additional route for the Russian government and economy to gain access to Western financing and helps combat the use of physical banknotes as a major medium for sanctions evasion and illicit finance. Executive Order 14068 also provides the Secretary of the Treasury discretion, in consultation with the Secretary of State, to prohibit U.S. persons from new investments in any sector of the Russian economy, similar to the ban instituted in Executive Order 14066 on new investments in the Russian energy sector. The Secretary of the Treasury has not yet announced further investment prohibitions on additional Russian sectors.

The UK and EU also announced prohibitions on certain Russian imports and luxury good exports. The UK will ban the export of luxury goods to Russia and will introduce an additional 35% tariff on Russian goods such as vodka, steel, art, and fur. The EU will ban luxury good exports worth more than €300, including jewelry, and exports of cars costing more than €50,000. The EU also announced an import ban on various Russian and Belarusian steel products, amounting to approximately €3.3 billion in lost export revenue for Russia alone. There is a three-month transition period to allow contracts created before the ban (March 2, 2022 for Belarus; March 16, 2022 for Russia) to complete, followed by the complete cessation of steel imports from the two nations. To help with the inevitable shortfall in steel, the EU will be increasing the amounts of steel nations within the bloc are allowed to import from non-EU countries.

SWIFT Cutoffs to Belarusian Banks

After denying seven important Russian banks access to the SWIFT payment messaging system, on March 12, 2022, the EU expanded its response by cutting off several Belarusian banks from SWIFT. The EU identified three Belarusian banks, along with their Belarusian subsidiaries: Belagroprombank, Bank Dabrabyt, and the Development Bank of the Republic of Belarus. The denial of access will cut off the banks' communications to more than 11,000 banks and other financial organizations in more than 200 countries and territories and will greatly impede the banks' abilities to complete international financial transactions for their customers. The EU further targeted Belarus by also prohibiting transactions with the National Bank of Belarus related to the management of reserves or assets and the provision of public financing for trade with and investment in Belarus.

Digital Assets as a Circumvention Vehicle for Sanctions

Convertible virtual currencies (CVCs), such as bitcoin, and related digital assets offer nontraditional methods for Russian and Belarusian sanctioned persons to circumvent multinational sanctions restrictions. A recent U.S. Executive Order announced on March 9, 2022, Ensuring Responsible Development of Digital Assets, specifically identified the potential pathways that CVCs provide for evading sanctions because their movements can be outside traditional financial institutions, such as banks, which have established systems for blocking the movement of assets of sanctioned persons.

To highlight the importance of this issue, the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) recently issued an alert to increase awareness of methods that could be used to evade sanctions on Russia, FinCEN Advises Increased Vigilance for Potential Russian Sanctions Evasion Attempts. The alert provides examples of red flags that could signal attempts to evade sanctions, such as the use of shell companies to conduct international wire transfers, often involving financial institutions in jurisdictions distinct from company registration; instances in which a customer's transactions are initiated from or sent to the IP addresses from non-trusted sources, such as locations in Russia or in comprehensively sanctioned jurisdictions; and instances in which a customer uses a CVC exchanger in a high-risk jurisdiction with inadequate "know your customer" or customer due diligence measures. Financial institutions should be wary of these and other red flags, especially those involving CVCs, because their opaqueness can provide cover for circumventing multinational sanctions against Russia and Belarus.

Further Sanctioning of Russian Elites

On March 11, 2022, the United States imposed further sanctions on Russian elites close to Putin, including immediate family members of Putin's spokesperson, Dmitry Peskov; 12 members of the lower house of the Russian legislature, the Duma; and the 10-member management board of the sanctioned VTB Bank. Additionally, OFAC added an additional designation to Viktor Vekselberg, a Russian oligarch who has been on the Specially Designated National (SDN) List since 2018. Furthermore, on March 24, 2022, the G7, including the United States, EU, and UK, announced coordinated efforts to sanction more than 400 Russian individuals and entities. New U.S. sanctions that are part of this effort target 48 Russian defense companies to further erode Russia's defense-industrial base and its supply chain, 328 additional Duma members that supported the Russian government's efforts to violate Ukraine's sovereignty and territorial integrity, and close Putin confidante and CEO of Sberbank, Herman Gref.

The UK has been especially active—it also has imposed sanctions on all 386 members of the Duma, as well as various oligarchs, such as the owner of the English Premier League's Chelsea Football Club, Roman Abramovich. On March 24, 2022, 65 additional sanctions were announced against a range of key Russian strategic industries, such as Russian Railways, drone company Kronshtadt, and the private security company the Wagner Group; Russian banks, including Alfa-Bank and Gazprombank; and elites, including Gref and financier Oleg Tinkov.

The EU also sanctioned 14 oligarchs and businesspeople, including Abramovich, as well as 146 members of the upper house of the Russian legislature, the Federation Council. The UK and EU sanctioning of Abramovich has also negatively affected companies partially owned by him, including steelmaker Evraz plc, which was removed from Financial Times Stock Exchange indices as a result of major international brokerage firms no longer supporting trading in its securities due to Abramovich's minority shareholdings. Indeed, the situation of Evraz highlights the challenge for the global business community arising from the still-evolving EU and UK practices of potentially treating as sanctioned an entity that is owned "or controlled" by a sanctioned person.

BIS Identification of Aircraft Exported to Russia in Violation of U.S. Export Controls

On March 18, 2022, BIS identified U.S.-made Boeing commercial and Gulfstream private aircraft that have flown to Russia in violation of the EAR. BIS in a press release announced "[i]n doing so, BIS is notifying the public that providing any form of service to these aircraft requires an authorization. Absent such authorization, any person anywhere—including within Russia—risks violating the EAR and would be subject to BIS enforcement actions which could include substantial jail time, fines, loss of export privileges, or other restrictions."

Further Distinctions Between the U.S. and UK 50 Percent Rules

As we have discussed in previous advisories, the United States maintains a so-called "50 Percent Rule": an entity is treated as an SDN if it is owned 50 percent or more, directly or indirectly, by one or more SDNs. This is true even if the entity in question is not actually included on the SDN List. The UK and EU have similar rules but go further by also employing a "control" test in which they consider whether a designated individual or entity has a practical ability to control an entity without being a majority owner. These 50 Percent Rules have been the subject of much discussion among businesses as they seek to navigate the recent waves of Russia sanctions and the trickle-down consequences for business owned in part by Russian individuals or entities.

The UK clarified its application of the 50 Percent Rule on March 23, 2022: when making an assessment on ownership and control, it "would not simply aggregate different designated persons' holdings in a company, unless, for example, the shares or rights are subject to a joint arrangement between the designated parties or one party controls the rights of another. Consequently, if each of the designated person's holdings falls below the 50% threshold in respect of share ownership and there is no evidence of a joint arrangement or that the shares are held jointly, the company would not be directly or indirectly owned by a designated person." Thus, the UK rule now differs from the U.S. rule in multiple respects. Companies with operations in the United States and UK will therefore need to be sensitive to these differences in making sanctions risk assessments.

Further Russian Countermeasures

The Russian government is continuing to pass measures to counter Western sanctions and trade restrictions. In a regulation introduced on March 7, 2022, Russian entities that use patents from owners that are citizens of or registered in 48 "unfriendly nations" are not obligated to provide the patent owners *any* compensation. These unfriendly nations include nations of the EU, the United States, the UK, and other nations that have imposed economic measures against Russia.

Further, a recent Russian court decision on copyright infringement of the British cartoon *Peppa Pig* by a Russian entity ruled that such intellectual property (IP) can be copied by Russian businesses without penalty or concern for the trademark rights of the IP holder due to "unfriendly actions of the United States of America and affiliated foreign countries." While Russia was already known for being weak in protecting Western IP, the new regulation and court decision could be harbingers of Russia being a new center for IP theft.

On March 9, 2022, a Russian government commission took initial steps toward possible nationalization of the assets of foreign companies by agreeing to a draft law on the subject. While the draft law still must go through the Russian legislature to become law, Putin has voiced his support for possible expropriation of assets. The draft law targets companies with more than 25% of their shares owned by entities from "unfriendly states" and orders such companies into "external administration," eliminating existing shareholder rights and allowing the auctioning of new shares to new shareholders at the behest of the Russian government. It appears most likely that potential expropriation efforts would initially focus on foreign firms that have frozen operations in Russia since the invasion of Ukraine. Companies that could be affected by potential nationalization movements should begin planning for contingencies in case such efforts gain traction.

Additionally, on March 9, 2022, Russia issued an order imposing an export permit requirement on the export of certain products that are being exported from Russia and from certain areas that Russia considers to be its sovereign territory. The order outlines various appendices that include over 200 items identified by Eurasian Economic Union (EAEU) product classification code and provides guidance on the specific Russian ministry that is authorized to grant export permit for such items.

Actions to Take and Possible Further Economic Measures

Like previous rounds, this new round of economic measures necessitates U.S. companies and financial institutions that deal with Russian and Belarusian entities to update monitoring and compliance measures within their organizations. Complying with these updated actions will be especially challenging because recently sanctioned oligarchs have indirect interests in businesses incorporated across the world. U.S. financial institutions must also manage the logistics of the removal of identified Belarusian financial institutions from SWIFT. Additionally, companies that export luxury goods should investigate how their export controls programs are affected by updated restrictions and update their programs accordingly.

Additional rounds of sanctions and export controls could lead to expanded targeting of Russian economic sectors by the U.S. Treasury Department. More Russian and Belarusian financial institutions could also be sanctioned, as well as removed from the SWIFT payment messaging system, further blocking these countries' banking sectors from access to Western financing. Companies should also be aware of weakening IP protections in Russia and the possible nationalization of assets in the country. As possible further economic measures are being considered by the United States and allies, companies should adjust their operations to meet the new demands of recent sanctions and export controls and take steps to mitigate the economic and political risks of any ongoing business with Russia.

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