

Insights

CONTINUED SANCTIONS AGAINST RUSSIA AND BELARUS

Mar 04, 2022

On March 2, 2022, in response to the increased escalation in Ukraine, the U.S. Commerce Department's Bureau of Industry and Security (BIS) imposed new export control measures targeting Belarus for its assistance to Russia during the escalation. The measures mirror the export control measures targeting Russia implemented on February 24, 2022. These measures take effect immediately. Our prior alert on February 25, discussed the additional export control measures targeting Russia.

Broadly, the measures do the following:

- Impose a license requirement for the export, reexport, or transfer of any item subject to the Export Administration Regulations (EAR) and described in any Export Control Classification Number (ECCN) in Categories 3 through 9 of the Commerce Control List (CCL). License applications will be subject to a policy of denial (except in certain specified cases), and limited license exceptions are available. Like the Russian measures, the license requirement does not apply to deemed exports and deemed reexports.
- Extend the military end use and military end user restrictions (MEU Rule) in 744.21 of the EAR to include Belarus. All items subject to the EAR (including EAR99 items other than EAR99 food and medicine) require a license for export, reexport, or transfer to Russia where you have knowledge that the item is intended, entirely or in part, for a military end use or military end user in Belarus.
- Expand the two new foreign direct product rules (the Russia FDP Rule and the Russia MEU FDP Rule) to also include Belarus.
- Expand the types of items that are considered controlled U.S. content to Belarus for purposes of the *de minimis* analysis.
- Remove Belarus from Country Group A:4 (Nuclear Suppliers Group) and add Belarus to Country Groups D:2 (Nuclear) and D:4 (Missile Technology).

- Expand the Military Intelligence End Use/End User restriction in 744.22 of the EAR to include Belarus and adds Belarus to the restrictions on specific activities of US persons in 744.6 of the EAR.
- Add Belarus as an eligible country for license exception CCD.
- Add 2 new Belarusian entities to the Entity List.

In addition, the final rule also makes certain changes applicable to both Russia and Belarus. Specifically, the final rule removes the exclusion under the MEU Rule that was previously available for shipments to Russia of mass market encryption items and software classified under ECCN 5A992.c and 5D992.c that are not for Russian “government end users” or Russian state-owned enterprises (SoEs). The exclusions under the MEU rule are now only for EAR99 food and medicine.

Additionally, under the final rule, commodities and software classified under ECCNs 5A992 or 5D992 do not require a license to or within Russia or Belarus for civil end-users that are affiliates of US companies or of companies headquartered in specified allied countries. The final rule also limits the availability of two license exceptions for exports, reexports, and transfers:

- License Exception ENC is only available for Russia and Belarus for civil end-users that are affiliates of U.S. companies or of companies headquartered in specified allied countries.
- License Exception AVS is not available for any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia.

Export Control Measures Targeting Oil Refinery Sector

On March 3, 2022, BIS issued yet another [final rule](#) targeted at the oil refinery sector in Russia. The new rule creates a new Supplement No. 4 to Part 746 that lists by HTS and Schedule B code items related to the oil refining sector. A license is required for the export, reexport, or transfer of all items subject to the EAR that are described on this list to Russia. The rule takes effect immediately.

Additions to Entity List

On March 3, 2022, BIS issued a [final rule](#) to add 91 entities to the Entity List under the destinations of Belize, Estonia, Kazakhstan, Latvia, Malta, Russia, Singapore, Slovakia, Spain, and United Kingdom. The entities were added on the grounds that they have been involved in, contributed to, or otherwise supported the Russian security services, military and defense sectors, and military and/or defense research and development efforts. Licenses are required for the export, reexport or transfer of any items subject to the EAR when the listed entity is a party to the transaction (i.e., purchaser, intermediate consignee, ultimate consignee, end user).

Airspace Ban

In addition, on March 1, President Biden announced during the State of the Union address that the United States would be joining Canada and the European Union in closing U.S. airspace to Russian flights. [The restrictions](#) went into effect on March 2, 2022, suspending “the existing, proposed, and prospective scheduled passenger and all-cargo operations of all foreign air carriers of the Russian Federation (Russia) to and/or from the United States.”

Additional SDN Designations and New General License

On March 3, 2022, OFAC [designated as SDNs](#) a number of Russian elites and their family members, along with 26 Russia- and Ukraine-based individuals, seven Russian entities identified as being connected with Russian efforts to promulgate disinformation and influence perceptions, and 22 defense-related firms. Along with the designations, OFAC issued General License 15 authorizing transactions with entities owed 50 percent or more by Alisaher Usmanov that are not specifically identified on the SDN List; property and property interests of those unlisted entities are unblocked and debits to accounts on the books of a US financial institution of those entities are authorized.

Anticipated Future Measures

The U.S. may also implement measures to restrict imports from Russia. Several bills introduced in both chambers of Congress, including the [“No Most Favored Nation Trading with Russia Act,”](#) would end Russia’s permanent normal trade relations (PNTR)—known as most-favored nation (MFN)—status, under which World Trade Organization (WTO) members including the U.S. agree generally not to discriminate in tariff treatment among trading partners. Revoking this status would move Russia from Column 1 to Column 2 of the Harmonized Tariff Schedule—joining only Cuba and North Korea—and give the president leeway to increase tariffs. On March 3, Canada became the first country to revoke Russia’s MFN status, as well as that of Belarus.

The bills also direct the president to encourage Russia’s suspension from the WTO. Additionally, lawmakers are reported to be drafting legislation to prohibit Russian oil imports entirely under a national emergency.

The U.S. International Trade team will continue to monitor the latest developments and is available to discuss the effect of these new sanctions on your operations.

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