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U.S. FURTHER EXPANDS MEASURES AGAINST RUSSIA WITH ADDITIONAL IMPORT, EXPORT, SANCTIONS RESTRICTIONS

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Last week, the United States continued to impose sweeping restrictive measures in response to the conflict in Ukraine, including measures targeting imports of certain Russian energy and "signature" products into the United States, further export restrictions on U.S. "luxury" goods and banknotes, and additional sanctions prohibitions and designations, while calling on Congress to end Russia's permanent normal trade relations status. Entities should ensure that they are updating their compliance policies, including their supply chain and screening procedures, to take into account these additional restrictions, and monitoring legislative developments.

BAN ON RUSSIAN ENERGY IMPORTS AND NEW INVESTMENT

On Tuesday, March 8, 2022, the President issued Executive Order (EO) 14066, which prohibits:

- the importation into the United States of the following products of Russian Federation-origin: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas (LNG); coal; and coal products; and
- new investment in the Russian energy sector by a U.S. person, wherever located.

U.S. persons are also prohibited from approving, financing, facilitating, or guaranteeing foreign persons in conducting the above transactions to the extent that the transaction would be prohibited for U.S. persons or within the United States.

The import ban took effect immediately for all new sales. In conjunction with the issuance of EO 14066, the Office of Foreign Assets Control (OFAC) issued General License (GL) 16 to authorize until April 22, 2022, transactions for the importation of products banned under EO 14066 pursuant to written contracts or agreements entered prior to March 8. Accordingly, U.S. Customs and Border Protection (CBP) issued subsequent guidance stating that otherwise-banned goods may be unladen provided filers of entries or Foreign Trade Zone (FTZ) admissions first show corresponding purchase orders or sales contracts pre-existing the ban. No FTZ direct delivery privileges are now allowed. Importantly, OFAC explained that the ban only applies to the listed goods and does not apply to goods not of Russian origin that merely transit Russia or the resale or redirection of shipments of banned products previously destined for the United States.

The restrictions on new investments by U.S. persons in Russia's energy sector are also effective immediately and prohibit U.S. persons from committing or contributing funds or assets for, or loans or other extensions of credit to, new energy sector activities in Russia. OFAC has indicated that it will interpret the energy sector to include extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, LNG, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources. Maintenance and repair, and the unwinding of contracts, are excluded from the scope of new energy sector activities. Importantly, GL 8A for certain transactions "related to energy" may not be relied upon to authorize any of the import or new investment activities prohibited under EO 14066.

The Administration's decision came a day before the House of Representatives overwhelmingly passed its own ban on Russian energy imports and authorized strengthened sanctions. The Suspending Energy Imports from Russia Act, H.R. 6968, would ban the importation of all newly-sold Russian products of Chapter 27 of the Harmonized Tariff Schedule of the United States (HTS) 45 days after enactment, allowing the president to exempt sales already executed. Chapter 27 comprises mineral fuels and oils, products of their distillation, bituminous substances, and mineral waxes—all of, but more than just, the products banned by EO 14066. It would also amend the Global Magnitsky Human Rights Accountability Act to enhance the President's ability to sanction human rights violators. Finally, it directs the U.S. Trade Representative (USTR) to consider steps to suspend Russia's membership in the World Trade Organization (WTO). The House bill is now before the Senate.

BAN ON RUSSIAN SIGNATURE IMPORTS AND U.S. LUXURY EXPORTS

On Friday, March 11, President Biden issued another Executive Order, EO 14068, imposing further import, export, and sanctions restrictions. Specifically, EO 14068 prohibits:

- the importation into the United States of Russian-origin signature products including fish, seafood, and preparations thereof; alcoholic beverages; non-industrial diamonds; and any other products as determined by the Secretary of the Treasury;
- the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person of certain luxury goods, and any other items as may be determined by the Secretary of Commerce, to any person located in Russia;

- new investment by U.S. persons in sectors of the Russian economy to be determined by the Secretary of the Treasury;
- the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person of U.S. dollar-denominated banknotes to the Russian Government or any person located in Russia.

EO 14068, like EO 14066, prohibits U.S. persons from from approving, financing, facilitating, or guaranteeing any of the above activities by a foreign person to the extent that the activity would be prohibited if performed in the United States or by a US person.

Like the energy import ban, the signature products import ban took effect immediately for all new sales, although new GL 17 provides authorization until March 25, 2022, for transactions ordinarily incident and necessary to the importation of goods covered by EO 14068, provided they are pursuant to written contracts or written agreements entered into prior to March 11, 2022. Under related CBP guidance, imports based on pre-existing contracts must be substantiated by documentation and then unladen before March 25, and no FTZ direct delivery is permitted. OFAC defines the subject HTS codes in the general license, and has indicated that EO 14068 does not prohibit the unwinding of contracts or engaging in transactions to sell or re-direct shipments outside of the United States of prohibited imports previously destined to the United States.

Also prohibited under EO 14068 is the export, re-export, sale or supply from the United States or by US persons of U.S. dollar denominated banknotes to the government of Russia or any person located in Russia. General Licenses 18 and 19 authorize certain transactions involving U.S. dollar denominated banknotes for noncommercial, personal remittances to individuals in Russia and for personal maintenance of US person individuals located in Russia, respectively.

On the export side, in conjunction with EO 14068, Bureau of Industry and Security (BIS) issued a final rule to impose a license requirement for the export of luxury goods to Russia or Belarus or to any Russian or Belarusian oligarch or malign actor (wherever located) designated under certain SDN program designations. The luxury goods covered by the final rule are identified by Schedule B number and description in a new supplement to Part 746 of the U.S. Export Administration Regulations (EAR), which includes alcohol, tobacco, cosmetics, yachting or sporting parts and equipment, art and statutes, leather bags, fur, silk, carpets and rugs, high-value apparel and footwear, down, china, crystal, jewelry, precious metals and stones, coins, cars and motorcycles, pianos, and antiques. Export and reexport activities related to subject goods are now covered by both the U.S. export control and sanctions restrictions, meaning authorizations may need to be in place from both OFAC and BIS for such export and reexport activity. While a limited number of license exceptions are available for the country-wide bans, the worldwide SDN ban has none.

REVOCATION OF RUSSIAN PNTR STATUS

Finally, in Friday's announcement, the President additionally called on Congress to end Russia's permanent normal trade relations (PNTR)—known internationally as most-favored nation (MFN)—status. MFN is a WTO principle whereby a member generally is obligated to provide equal tariff treatment to all other members; however, Article XXI of the General Agreement on Tariffs and Trade (GATT) allows WTO members to suspend such treatment for the protection of national security "in time of war or other emergency in international relations." The United States currently extends PNTR status, with duty rates codified in Column 1 of the HTS, to all trading partners but for Cuba and North Korea. Were Congress to revoke Russian PNTR status, the president would have the power to levy tariffs at the significantly higher Column 2 statutory rates on all products imported therefrom. Congress should be receptive to the President's request, as trade committee leaders of both parties and chambers had on Monday reached a deal to end PNTR for Russia and Belarus but that provision was reportedly pulled from the aforementioned bill passed by the House at the Administration's request while allies were consulted. Speaker Pelosi says that the House will take up new legislation right away.

OTHER SANCTIONS ACTIONS

On Friday, March 11, OFAC added 35 more Russian political and business elites to the SDN List. U.S. persons must cease all dealings with these individuals and their property and interests in property, and such property and property interests that are within the United States or the possession or control of U.S. persons must be blocked.

In addition, OFAC issued GL No. 23 under EO 14065 to permit certain otherwise prohibited nongovernmental organization humanitarian activities in the so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR) regions of Ukraine, and reaffirmed that the sanctions prohibitions extends to cryptocurrency in addition to fiat currency.

COOPERATION WITH THE G7 AND EUROPEAN UNION

The United States is not alone in many of these measures, having consulted with allies in advance to maximize their impact. On March 8, 2022, the United Kingdom also announced that it will curtail Russian energy imports, phasing out oil entirely by the end of 2022 and exploring options to do the same for natural gas; the European Union too announced a plan to eliminate all Russian energy imports by 2030, beginning with gas. The EU will also ban the export of its luxury goods to Russia, and will ban the importation of Russian iron and steel, a step the United States has not yet taken. The G7 members and EU will seek to revoke MFN status for Russia as well; on March 3, Canada became the first country to do so, raising duty rates to 35 percent on most Russian (and Belarussian) products.

The experienced international trade team at BCLP is available to assist importers, exporters, and other companies and individuals in navigating the new trade and investment measures against Russia.

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