

Insights

CONGRESS VOTES TO IMPOSE TRADE PUNISHMENTS ON RUSSIA AND BELARUS, WILL CONSIDER TAX AND PROCUREMENT MEASURES

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On April 8, 2022, President Biden signed two trade-related bills: one revoking normal tariff treatment for Russia and Belarus, and the other banning Russian energy imports. Following the April recess, Congress may take further action on two more bills targeting companies operating in Russia: one to prohibit federal procurement from parties that continue to operate in Russia, and a second to disallow federal tax credits for taxes paid to the Russian government. All are in response to the continued escalation in Ukraine by Russia, with material support from Belarus.

Suspending Normal Trade Relations and Energy Imports

Congress passed the pair of import-restrictive bills in accordance with the President's recent actions and statements, on which we [reported](#) last month. The first bill, the Suspending Normal Trade Relations with Russia and Belarus Act, H.R. 7108, revokes Russia's and Belarus's permanent normal trade relations (PNTR) status and authorizes the President further to increase duty rates on all goods of Russian or Belarusian origin. PNTR—known internationally as most-favored nation (MFN)—is a World Trade Organization (WTO) principle whereby a member is obligated to provide its lowest tariff treatment equally to all other members, absent certain exceptions. PNTR duty rates, which average just over three percent *ad valorem*, are listed in Column 1 of the Harmonized Tariff Schedule of the United States (HTS) and, until now, applied to all U.S. trading partners but for Cuba and North Korea.

H.R. 7108 revokes PNTR status for Russia and Belarus, instead applying the Column 2 statutory duty rates [immediately](#) to all products imported therefrom. On March 11, 2022, President Biden [asked](#) Congress, which alone has the power to set duty rates, to take such action after coordinating with foreign allies. On average Column 2 rates are nearly 30 percent higher than Column 1 rates; however, the act delegates to the President through 2023 the power to raise duty rates for Russia and Belarus beyond the Column 2 rate, allowing even more flexibility to deter Russian and Belarusian imports.

The act further directs the U.S. Trade Representative (USTR) to encourage other WTO members to suspend Russia from the WTO and block Belarus's pending accession. Although Russia is presently a WTO member to which the United States is obligated to offer PNTR status, 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." H.R. 7108 also indefinitely extends the duration of the Global Magnitsky Human Rights Accountability Act to enhance the President's ability to sanction human rights violators.

The second bill, the Ending Importation of Russian Oil Act, H.R. 6968, explicitly codifies the outright ban on Russian energy imports imposed March 8, 2022 by [Executive Order \(EO\) 14066](#). EO 14066 specifically 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; coal; and coal products" for any sales made as of signing, with a [grace period](#) through April 22, 2022, for imports pursuant to pre-existing agreements. H.R. 6968 clarifies and slightly expands the subject products to include any of Chapter 27 of the HTS, which consists of mineral fuels and oils, products of their distillation, bituminous substances, and mineral waxes.

Both bills grant the President authority, subject to Congressional disapproval, to lift the ban and restore PNTR status provided he certifies that Russia or Belarus "has reached an agreement to withdraw forces and for the cessation of military hostilities that is accepted by the free and independent government of Ukraine; poses no immediate military threat of aggression to any North Atlantic Treaty Organization member; and recognizes the right of the people of Ukraine to independently and freely choose their own government." They each passed the Senate unanimously and the House overwhelmingly.

Denial of Federal Procurement and Tax Benefits

Congress has teed up further legislation to pressure Russia and Belarus on which it may act as soon as late April. First, House Oversight and Reform Committee Chairwoman Carolyn Maloney (D-NY) is advancing legislation that would bar or terminate federal contracts for companies operating in Russia. The bill, the Federal Contracting for Peace and Security Act, H.R. 7185, contains exceptions for activities that meet basic human needs, journalism, and operations in Russia to benefit Ukraine. Chairwoman Maloney moved the bill through committee on April 7, 2022, and it will be available for floor consideration when the House returns from its current district work period the week of April 25, 2022.

In the Senate, Finance Committee Chairman Ron Wyden (D-OR) and Member Rob Portman (R-OH) have [released](#) a bipartisan discussion draft of legislation that would deny companies tax credits for taxes paid to Russia or Belarus, alongside North Korea, Iran, Syria, and Sudan. Their draft would also tax companies at the full 21 percent corporate rate on income derived from operations in those countries, and contains a safe harbor exception for companies winding down operations there. Furthermore, certain other tax benefits would be denied to the Russia and Belarusian government,

and to persons or entities sanctioned by the United States in relation to the invasion of Ukraine or identified by the Treasury Secretary to (i) have participated in the invasion of Ukraine, (ii) be organized in Russia or Belarus, or (iii) be an executive or officer of such entity.

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