Hughes Hubbard & Reed

New U.S. Trade Controls on Russia Mark One Year of War in Ukraine

Client Advisories

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March 6, 2023 – On February 24, 2023, to mark the one year anniversary of the Russian invasion of Ukraine, the White House announced a new set of sanctions and related measures targeting Russia in response to its aggression in Ukraine. The actions were coordinated with commitments by the G7 also released on February 24, 2023, as well as with restrictive measures issued by the EU (which we cover in a separate alert).

The U.S. actions include new rules issued by the U.S. Department of Commerce, Bureau of Industry and Security ("BIS") that significantly broaden the export controls applicable to Russia and Belarus, potentially implicating a wide variety of consumer and commercial items, and sanctions actions by the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC") that target, among other things, the Russian financial and mining and metals sectors. The White House imposed additional tariffs on Russian metal goods, while the U.S. Department of State imposed additional sanctions and visa restrictions.

1. Strengthened Export Controls

BIS published four Russia-related export rules on February 27, 2023, which were made available for inspection and took effect on February 24. These rules significantly expand the Foreign Direct Product rule ("FDP Rule") applicable to Russia and Belarus, and introduce a similar rule applicable to Iran; update the Russian and Belarusian industry sector sanctions and luxury goods sanctions administered by BIS; and add a total of 86 entities to the Entity List.

These rules implicate a very wide variety of goods, including relatively low-technology household appliances and computer equipment not traditionally subject to export controls, and should be carefully reviewed by manufacturers with any exposure to the Russian, Belarusian, or Iranian markets.

Updates to the Russian and Belarusian Industry Sector Sanctions and Luxury Goods Sanctions

This rule is intended to limit access to items that enable Russia's military capabilities and sources of revenues that could support those capabilities. It largely aligns the extant Russian and Belarusian industry sector sanctions and luxury goods sanctions implemented by BIS with controls implemented by U.S. allies and partners imposing substantially similar controls on Russia and Belarus.

The rule first makes certain formal changes to part 746 of the Export Administration Regulations ("EAR"), including the use of Harmonized Tariff Schedule ("HTS")-6 codes to identify restricted items in line with U.S. allies and partners, who are generally using equivalent HS-6 Codes.

The rule significantly expands the Russian and Belarusian Industry Sector Sanctions and Luxury Goods Sanctions by:

- Adding 322 industrial items (including industrial inputs, machinery, and electronics) to supplement no. 4 to part 746 of the EAR ("Supplement No. 4"), i.e., a list of industrial items that when subject to the EAR require a license for export, reexport, or transfer to or within Russia or Belarus.
- Expanding the list of items in supplement no. 6 to part 746 of the EAR ("Supplement No. 6"), i.e., a list of items potentially useful in chemical and biological warfare applications which when subject to the EAR require a license for export, reexport, or transfer to or within Russia or Belarus.
- Adding 276 commercial and consumer items to supplement no. 5 to part 746 of the EAR ("Supplement No. 5"), i.e., the list of luxury items that when subject to the EAR require a license for export, reexport, or transfer to or within Russia or Belarus.

Finally, the rule adds Taiwan to supplement no. 3 to part 746 of the EAR ("Supplement No. 3"), i.e., the list of countries that have committed to implementing substantially similar export controls on Russia and Belarus under their domestic laws and are therefore excluded from licensing requirements pursuant to the Russia/Belarus FDP Rule and the Iran FDP rule.

Changes to Russia/Belarus FDP Rule and Creation of an Iran FDP Rule

This rule imposes license requirements intended to target the supply of items which could be used as unmanned aerial vehicle components by Iran, Russia, or Belarus by creating a list of items used in certain UAVs at new supplement no. 7 to part 746 of the EAR ("Supplement No. 7") and expanding the extant Russia/Belarus FDP Rule and adding a new Iran FDP Rule to ensure foreign-produced items identified in the supplement are subject to the EAR when destined to Russia, Belarus, or Iran. Notably, the items covered in Supplement No. 7 include basic electronics such as "Processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits," "Memories," and "Other electronic integrated circuits."

The rule revises the existing Russia/Belarus FDP Rule at § 734.9(f) of the EAR to reference newly created Supplement no. 7. The new Russia/Belarus FDP Rule now provides that a foreign-produced item located outside the United States is subject to the EAR if the item meets the following product scope and destination scope criteria:

- *Product Scope*:
  - The item is the direct product of technology or software subject to the EAR that is specified in any ECCN in product groups D or E of the CCL, and the item is specified in any ECCN on the CCL or in Supplement No. 6 or 7 to Part 746 of the EAR; or
  - The item is produced by any plant or major component of a plant outside the United States where the plant or major component of the plant itself is a direct product of U.S. origin technology subject to the EAR that is specified in any ECCN in product groups D or E of the CCL, and the foreign produced item is specified in any ECCN on the CCL or in supplement no. 6 or 7 to Part 746 of the EAR.
- *Destination Scope*:
  - There is knowledge that the item is destined to Russia or Belarus, or will be incorporated into or used in the production or development of any part, component, or equipment specified in any ECCN on the CCL or identified in supplement no. 6 or 7 to part 746 of the EAR and produced in or destined to Russia or Belarus.

Pursuant to § 746.8(a)(2) of the EAR, a license is required to reexport, export from abroad, or transfer (in-country) to any country any foreign-produced item subject to the EAR under the new Russia/Belarus FDP rule. § 746.8(a)(4) of the EAR exempts countries listed in Supplement No. 3 from this requirement.

The rule also creates a new Iran FDP Rule at § 734.9(j) of the EAR modelled after the Russia/Belarus FDP Rule but more narrowly targeted at Iran's UAV activities of concern. The Iran FDP Rule now provides that a foreign-produced item located outside the United States is subject to the EAR if the item meets the following product scope and destination scope criteria:

- *Product Scope*:
  - The item is the direct product of technology or software subject to the EAR that is specified in any ECCN in product groups D or E in Categories 3 through 5 or 7 of the CCL, and the item is identified in Supplement No. 7 to part 746 of the EAR or is specified in any ECCN in Categories 3 through 5 or 7 of the CCL; or
  - The item is produced by any plant or major component of a plant outside the United States where the plant or major component of the plant itself is a direct product of U.S. origin technology subject to the EAR that is specified in any ECCN in product groups D or E in Categories 3 through 5 of the CCL, and the foreign produced item is identified in Supplement No. 7 to part 746 of the EAR or is specified in any ECCN in Categories 3 through 5 or 7 of the CCL.
- *Destination Scope*:
  - There is knowledge that the item is destined to Iran, or will be incorporated into or used in the production or development of any part, component, or equipment identified in Supplement No. 7 to part 746 of the EAR or is specified in any ECCN in Categories 3 through 5 or 7 of the CCL.

Pursuant to § 746.7(a)(1)(iii), a license is required to reexport or export from abroad to Iran any foreign-produced item subject to the EAR under the Iran FDP Rule located in or destined to Iran. Countries listed in Supplement No. 3 to Part 746 are exempt from this requirement. Notably, the rule states that items newly subject to the EAR under the Iran FDP Rule will be subject to OFAC's licensing jurisdiction where the export or reexport is prohibited by the prohibitions of 31 C.F.R. § 560.204 and § 560.205 of OFAC's Iranian Transactions and Sanctions Regulations ("ITSR"). However, a BIS license is not required for items caught under the Iran FDP Rule that would have otherwise met all of the terms and conditions of an OFAC general license (e.g., medical devices or communications devices authorized for export or reexport to Iran under the ITSR or devices facilitating communication over the internet covered under General License D-2). But any export, reexport, or transfer (in-country) subject to a part 744 end-use or end-user license requirement will still require a separate authorization from BIS.

Notably, the rule does not state that end products incorporating components listed in Supplement No. 7 (e.g., a household appliance containing an electronic integrated circuit) are themselves subject to the provisions of the Russia/Belarus FDP Rule or Iran FDP Rule.

Entity List Additions

BIS issued two rules on February 24 adding entities to the Entity List.

The first rule added 76 entities under the destination of Russia. The rule states that the End-User Review Committee ("ERC") determined the entities were involved in activities including the filtration of the local population in occupied areas of Ukraine, and attempting to acquire U.S. origin items in support of activities contrary to U.S. foreign policy or national security, or in support of Russia's military.

The second rule added 10 entities under the destinations of Canada, China, France, Luxembourg, Netherlands, and Russia. The rule states that the ERC determined that the parties significantly contributed to Russia's military and/or defense industrial base and are involved in activities contrary to U.S. foreign policy and national security. All the designated entities (including those not under the destination of Russia) were also determined to be Russian or Belarusian "military end users" in accordance with § 744.21 of the EAR, and received a footnote 3 designation on the Entity List. This designation subjects the entities to the Russia/Belarus-Military End User FDP Rule detailed under § 734.9(g) of the EAR, and are subject to a license requirement for all items subject to the EAR.

2. OFAC Sanctions

In a February 24, 2023 press release, Treasury announced new sanctions pursuant to Executive Order ("E.O.") 14024 of April 15, 2021 (authorizing sanctions on Russia in response to harmful foreign activities). The actions include a determination by OFAC to target the metals and mining sector of the Russian economy pursuant to Treasury's authority under E.O. 14024. Treasury also announced the imposition of blocking sanctions – i.e., addition to the Specially Designated Nationals and Blocked Persons List ("SDN List") – on 22 individuals and 83 entities:

- Four entities were sanctioned for operating or having operated in the metals and mining sector of the Russian economy.
- Numerous financial institutions were sanctioned for operating or having operated in the financial services sector of the Russian economy. With these designations, well over 90% of Russia's financial institutions are now subject to asset blocking. OFAC issued corresponding General Licenses authorizing the wind down and rejection of transactions involving certain of the financial institutions, and the wind down of certain securities and derivatives transactions involving certain of the financial institutions, through 12:01am EDT, May 25, 2023. OFAC also issued an amended General License adding certain of the financial institutions to the authorization to process certain energy-related transactions.
- The remaining individuals and entities were sanctioned for involvement with the financial services, management consulting, technology, aerospace, defense and related materiel, and electronics sectors of the Russian economy; involvement in arms dealing (pursuant to Belarus-related E.O. 14038); or for being owned or controlled by, or for having acted or purporting to act for or on behalf of, such entities or the Government of the Russian Federation.

Additional details are available in the related OFAC "Recent Actions" release.

3. Other Actions

In a pair of proclamations dated February 24, 2023, President Biden imposed an increase in tariffs on a wide variety of Russian metal products, and a separate increase in tariffs on Russian aluminum. Additional details are available in a U.S. Trade Representative press release.

The State Department also issued a statement announcing separate blocking sanctions targeting more than 60 individuals and entities in connection with Russia's activities in Ukraine. The names of these parties were not announced, but should be published in the Federal Register in the coming months. The State Department also announced it was imposing visa restrictions on more than one thousand individuals connected with the Russian military for conduct related to Ukraine.

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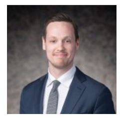

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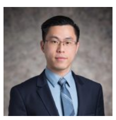

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