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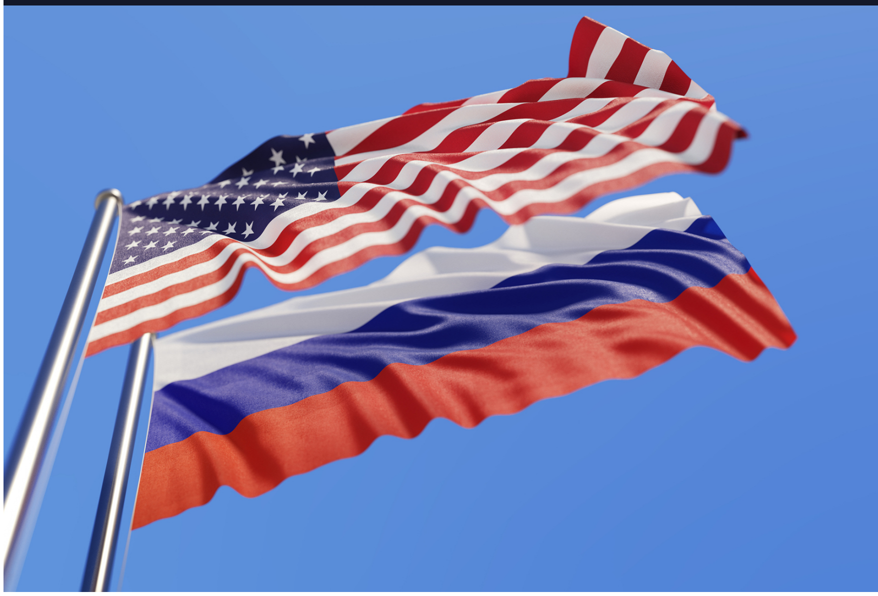

ALERTS

Recent U.S. Sanctions, Export Controls On Russia And Belarus Underscore Compliance Concerns In International Transactions

April 4, 2023

Highlights

Companies should consider reviewing new sanctions and export controls targeting Russia's mining and metals sectors, hundreds of individuals and entities in and outside of Russia, and changes to low-level items requiring a license for Russia and Belarus

New U.S. government guidance highlights diversion and evasion risk for international transactions

Companies should expect robust enforcement as the U.S. continues to find new ways to partner with allies to combat sanctions evasion tactics

A number of recent actions by the U.S. government increase the restrictions related to Russia and Belarus trade sanctions and highlight the risk for companies doing business even in unrelated countries. These actions include:

1. Additional sanctions and export controls targeting Russian and Belarus in specified sectors, designation of individuals and entities supporting Russia's war effort, and augmented

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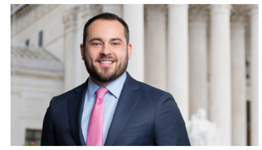

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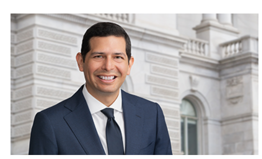

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export controls targeting particular goods and industries. These actions follow several prior rounds of Russia-related sanctions and export controls on Russia and Belarus and result in a complex web of restrictions that companies need to understand and navigate;

2. The publication of cross-agency guidance concerning Russia's use of third-party intermediaries and transshipment points to evade U.S. sanctions; and
3. The U.S. participation in the Group of Seven (G7) nations' Enforcement Coordination Mechanism, one of many ways the U.S. is working cross-border to identify potential violations and enforce its sanction and export controls laws.

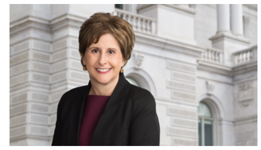
New Restrictions Implemented on One-Year Anniversary War in Ukraine

On Feb. 24, 2023, one year after Russia began its war on Ukraine, the U.S. government, working together with G7 leaders, announced the imposition of new trade and economic restrictions on Russia and Belarus. These actions included:

- Metals and Mining Sectors Sanctions: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) expanded its sanctions targeting specific sectors of the Russian economy to also cover Russia's metals and mining sectors. More specifically, OFAC issued a determination that allows it to sanction any individual or entity operating in Russia's mining and metal sector. By "mining and metal sector," OFAC means "any act, process, or industry of extracting, at the surface or underground, ores, coal, precious stones, or any other minerals or geological materials in the Russian Federation, or any act of procuring, processing, manufacturing, or refining such geological materials, or transporting them to, from, or within the Russian Federation."

  In other words, this term is defined to cover essentially any type of metals and any Russian entities operating in these spaces could be designated under this authority. As part of its announcement, OFAC designated four entities for operating in Russia's mining and metal sector, all of which had links to Russia's defense or aviation sectors. These sector-specific sanctions build on prior OFAC determinations allowing for sanctions against those that operate or have operated in the quantum computing, accounting, trust and corporate formation, management consulting, aerospace, marine, electronics, financial services, technology, and defense and related materiel sectors of the Russian Federation economy. Companies operating in any of these sectors should consider reviewing all their business partners – including service providers, supply and distribution chain relationships, and other third-party partners – to determine whether they need to take actions to safeguard against current sanctions or future designations.

  The United States also imposed import restrictions on



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RELATED PRACTICE AREAS

International Trade

imports of Russian aluminum, which are addressed here.

- Restricted Parties Designations: OFAC added over 100 persons (individuals and entities) to the Specially Designated Nationals and Blocked Persons (SDN) list, including:
    - More Russian financial institutions, including Credit Bank of Moscow Public Joint Stock Company, Russia's largest non-state public bank
    - Russian wealth management-related entities
    - Entities that produce carbon fiber and related advanced materials, as well as entities operating in Russia's aerospace, technology, and electronics sectors
    - Individuals and entities trying to avoid sanctions, arms dealers supporting Russia and Belarus, and a Russian elite-linked business in the management consulting sector and related entities, and other entities supporting Russia's war efforts

At the same time, OFAC issued new general licenses and amended a prior general license to authorize certain wind-down and other transactions with some of the newly designated financial institutions. Companies should consider ensuring their screening processes account for not only the newly added individuals and entities, but also any entities owned 50 percent or more by one or more SDNs.

The Department of Commerce's Bureau of Industry and Security (BIS) also added multiple entities to its list of entities determined by the U.S. to be acting contrary to national security or foreign policy interests. These entities were included for a variety of reasons related to their support of Russia's defense-industrial sector and war effort and are located in Russia, China, Canada, France, Luxembourg and the Netherlands. See here and here. Many of the entities were also designated as Russian/Belarusian Military End Users, which imposes some of BIS' most severe export restrictions on these entities, effectively cutting them off from obtaining items subject to the Export Administration Regulations (EAR), including certain foreign-produced items.

The Department of State also announced the designation of more than 60 individuals and entities determined to be "complicit in the administration of Russia's government wide and policies of aggression toward Ukraine." These targets include government ministers, governors, and high-level officials in Russia, as well as six individuals and three entities operating in parts of Ukraine occupied by Russia, facilitating grain theft, and governing on behalf of Russia. The State Department also designated three entities involved in expanding Russia's future energy production (e.g., oil and nuclear projects) and export capacity.

- Expanded Export Controls Measures: BIS issued additional rules targeting Russia and Belarus, including:
    - Implementing EAR revisions to enhance existing sanctions and align them with U.S. allies, including expanding the industry sector sanctions and luxury goods sanctions, and refining other related controls. This added over 270 luxury goods items that require export licenses, such as electrical machinery and parts, lighting equipment, radar detectors, radios, vehicle parts, cooking equipment, smartphones, radio navigation and so much more.

  As a result, companies should take another look at the lists of items that require a license for Russia and Belarus to determine if their items are on such lists. Such companies should consider how to safeguard against not only shipments directly to Russia and Belarus, but also potential diversions or transshipments.

  Recent investigations indicate that pieces of Iranian unmarked aerial vehicles (UAVs) have been found on the battlefield in Ukraine, in some cases with U.S.-branded parts and components. Accordingly, an additional rule issued by BIS imposes new export control measures on low-level U.S. items that may be re-exported to Iran in order to address the use of Iranian UAVs by Russia in its ongoing war against Ukraine.

Cross-Agency Guidance on Sanctions Evasion

On March 2, 2023, BIS, OFAC, and the U.S. Department of Justice jointly published compliance guidance called Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls. This guidance warns companies to be vigilant against sanctions and export controls evasion attempts, noting that “[b]usinesses of all stripes should act responsibly by implementing rigorous compliance controls, or they or their business partners risk being the targets of regulatory action, administrative enforcement action, or criminal investigation.”

In particular, companies should consider reviewing the enforcement actions highlighted by the agencies in the guidance, as well as the detailed list of common red flags indicating potential sanctions evasion attempts. Examples of such red flags are:

- Use of corporate vehicles such as shell companies to obscure ownership, source of funds, and/or countries involved
- Payment coming from a third-party not listed on the end-user forms
- IP addresses unrelated to a customer’s reported location

G7 Nations Announce Formation of Sanctions Enforcement Coordination Mechanism

Shortly after the one-year anniversary of Russia's invasion of Ukraine in February, the leaders of the G7 nations announced the formation of an Enforcement Coordination Mechanism to bolster the compliance and enforcement of its sanctions and to prevent Russia for benefiting from the G7 economies.

The G7 nations are the U.S., U.K., France, Germany, Canada, Japan and Italy. The group indicated that it would be taking measures against third-party nations that seek to evade their sanctions and that are providing material support to Russia's war in Ukraine. The announcement states that the group is committed to preventing Russia from finding new ways to obtain advanced materials, technology and military industrial equipment that Russia can use to further violate international law. It also states that it wishes to reduce Russia's energy revenue by building on already existing export bans.

The G7 nations indicated they are working closely with key partners on further measures on Russian diamonds and would continue to impose targeted sanctions on those responsible for war crimes in Ukraine.

This represents one more tool in the U.S. government's enforcement arsenal, in addition to other enforcement efforts such as Task Force KleptoCapture and the Russian Elites, Proxies, and Oligarchs task force.

Lessons for Companies

As Russia's war against Ukraine continues, the U.S. government and its allies seek ways to challenge Russia's efforts and heightened enforcement of these new rules is a U.S. priority. Thus, companies should consider reviewing their existing business activities involving Russia, Belarus, Ukraine and parties in the region, and be prepared for swift and persistent changes to U.S. sanctions and export controls. Companies should consider preparing for U.S. government inquiries into their transactions, even if not doing business in Russia or Belarus, as third-party intermediary risks are global.

Due to the evolving complexities of the trade restrictions, companies should consider reviewing and updating their compliance policies, and look to enhance screening suppliers and due diligence for business partners. In short, knowing your supply and distribution chains to avoid or mitigate disruptions as the rules evolve is key.

Depending on the level of involvement with business conducted with Russia, sanctioned regions of Ukraine, Russia's neighboring countries, or countries known to assist Russia, companies will want to stay on top of their end-use and end-user declarations and bolster supplier certifications to reduce exposure in current transactions. Additional sanctions and other trade restrictions are likely to endure and enforcement of these new rules will remain a priority to further isolate Russia and those who assist Russia as the war against Ukraine continues.

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