Significant US Trade Controls on Countries (02/28/22)

Key:
- General embargo
- Cross-border activity with Iran
- Significant sanctioned parties
- Portions controlled by targeted groups
- Sanctions lifted
- In transition

Countries and regions highlighted include:
- Russia
- North Korea
- China and Hong Kong
- Cuba
- Venezuela
- Zimbabwe
- Somalia
- Afghanistan
- Turkmenistan
- Pakistan
- Iran
- Yemen
- Sudan
- North Korea
- Syria
- Libya
- Mauritania
- Central African Republic
- Nigeria
- Chad
- Mali
- Niger
- Cameroon
- Libya
- Turkey
- Ukraine
- Crimea
- Armenia
- Belarus
- Myanmar
- Sudan
- South Sudan
- Yemen
- Iraq
- UAE
- Turkmenistan
- Turkey
- China and Hong Kong (national security-based export/import controls)
- Mexico
- Nicaragua
- Panama
- Colombia
- Mexico
- Nicaragua
- Panama
- Colombia
Topics Covered

1. New US Sanctions Relating to Russia
2. New US Export Controls Relating to Russia
3. Russia Trade Controls Outlook
4. Key Compliance Steps

On many slides, we flag whether we anticipate:

- ↑ INCREASE these restrictions to increase
- ↓ DECREASE these restrictions to decrease
- ➡ CONTINUE these measures to continue for some time
- ← REVERSE these measures to be reversed
- ↔ WAIT AND SEE or it is too early to say what will happen
In April 2021, President Biden issued Executive Order 14024, creating a basis for sanctions against parties involved in Russian government activities of concern. Under this Order, broad sanctions were imposed in late February, including the following:

- Full blocking (asset freezing) sanctions on many additional significant companies, businesspeople and Russian government officials
- Various types of sanctions imposed on Russian banks holding more than 80% of the sector's assets, including a prohibition on US banks clearing transactions in any currency relating to Sberbank (Russia’s largest bank) or its subsidiaries, and blocking sanctions on several other major banks
- US debt and equity sanctions were broadened to apply to additional Russian banks and companies
- There are authorizations for certain transactions related to food and medical products under OFAC General License (“GL”) 6, aviation matters (GL7) and through 06/23/22 for energy projects involving some sanctioned Russian banks (GL8)

Both US and non-US persons should be alert for any transaction involving blocked parties

- See OFAC FAQ 980 for reassurance on the risk for non-US persons dealing with entities covered by these sanctions.

Will disrupt many payments to and from Russia, particularly the high volume of US$ transactions that originated with VTB or Sberbank

US companies should exercise caution when invoicing covered entities
On Feb. 22, the US used Executive Order 14024 (“EO 14024”) to impose blocking (asset freezing) sanctions on the following entities. Those in orange were previously covered by US debt and equity sanctions:

- **Vnesheconombank** ("VEB") and 25 of its subsidiaries including Prominvestbank in Ukraine, VEB Asia Ltd. in Hong Kong, VEB Leasing, Eximbank of Russia and Russian Agency for Export Credit and Investment Insurance. OFAC General License 3 provides a one month wind down period for existing transactions through March 23, and General License 9 authorizes transactions relating to debt and equity issued before Feb. 24, other than purchases by US persons, through May 24.

- **Promsvyazbank** ("PSB"), 17 of its subsidiaries and 5 vessels it owns

As is generally the case under US blocking sanctions, all entities in which these or other blocked parties have an aggregate ownership interest of 50% or greater are blocked even if they are not on the SDN List.

**Practical / Compliance Impact**

- VEB plays a key role in Russian sovereign debt, export and project financing. While not focused on cross-border commercial and corporate banking, given its sheer size, its blocking will disrupt the day to day transactions of many companies.

- PSB appears to be focused on military project financing and personal banking for military personnel

- VEB and PSB were targeted by EU sanctions on Feb. 23 and Canadian sanctions on Feb. 24, and PSB was targeted under UK sanctions on Feb. 22.
On Feb. 24 the US used Executive Order 14024 to:

- **Prohibit US financial institutions**, beginning 03/26/22 to reject (refuse to process) most USD transactions and close all correspondent accounts involving Russia's largest bank, Sberbank or its subsidiaries including 25 subsidiaries placed on OFAC’s “CAPTA List”
  - These prohibitions are set out in **OFAC Directive 2**
  - Designated Sberbank subsidiaries include JSC Sberbank in Ukraine, Sberbank Europe AG in Austria, SB Securities SA in Luxembourg

- **Impose full blocking sanctions** on additional major Russian banks including VTB (Russia’s second-largest bank by assets), Otkritie, Sovcombank, Novikombank and their subsidiaries including 54 that were placed on SDN List. VTB in particular has several major subsidiaries including VTB Bank Europe SE.
  - **OFAC General License (“GL”) 12** authorizes US banks and US persons to “reject”, rather than “block” (freeze), transactions prohibited under EO 14024 involving VTB, Otkritie, Sovcombank or their covered subsidiaries, through 03/25/22
  - **OFAC GL 11** provides a one month wind down period through 03/25/22 for existing transactions involving VTB, Otkritie, Sovcombank or their covered subsidiaries
  - **OFAC GL 10** authorizes winding down through 05/24/22 of “derivative contracts” entered into before 02/24/22 that have as a counterparty or are “linked to debt or equity of” VTB, Otkritie, Sovcombank or their covered subsidiaries
  - **OFAC GL 9** authorizes transacting with debt and equity issued before 02/24/22 by Sberbank, VTB, VEB, Otkritie, Sovcombank and their covered subsidiaries, other than purchases by US persons, through 05/24/22
Also on Feb. 24, the US expanded its debt and equity sectoral sanctions to cover several additional Russian banks and companies, issuing new Directive 3 under EO 14024.

These sanctions prohibit transactions relating to new debt or credit with maturity over 14 days, or new equity, issued 03/26/22 onwards, by or for the following banks and entities or their subsidiaries. Those in orange are already covered by the similar sanctions under Directives 1, 2 and 3 issued in 2014 under Executive Order 13662:

- AlfaBank, Alrosa, Credit Bank of Moscow, Rostelecom, RusHydro, Sovcomflot and Russian Railways
- Sberbank, VTB, Gazprombank, VEB, Rosselkhozbank (Russian Agricultural Bank) and Bank of Moscow (part of VTB) (already covered by Directive 1 - EO 13662)
- Gazprom Neft and Transneft (already covered by Directive 2 - EO 13662)
- Gazprom and Gazprom Neft (already covered by Directive 4 - EO 13662)

These sanctions are less broad than blocking sanctions. The Directives and OFAC guidance expressly state that transactions are not generally prohibited if they do not relate to new debt or equity.

As these are some of the few major Russian banks not covered by blocking sanctions, we may see increased routing of cross-border payments through them.

New Directive 3 (EO 14024) has the same terms as 2014 Directive 1 (EO 13662), creating overlapping prohibitions for some Russian banks.
The US, EU, Australia and other countries have imposed sanctions on the so-called Donetsk and Luhansk People’s Republics (“DNR” and “LNR”), similar to those in place for years on Crimea.

**US Executive Order 14065** issued Feb. 21 generally prohibits the following transactions. OFAC has not yet clarified whether these sanctions are applicable to the entire Donetsk and Luhansk oblasts:

- New investment in the DNR or LNR;
- Importation into the US from the DNR or LNR, or exportation from the US or by a US person to the DNR or LNR, of goods, services or technology; and
- US person facilitation of such transactions by non-US persons.

OFAC general licenses provide a wind-down period through March 22, and authorize certain transactions related to telecoms, personal communications, food, medicine, medical devices and personal remittances.

EU sanctions imposed Feb. 23 generally prohibit the following in relation to the portions of Donetsk and Luhansk not controlled by the Ukraine govt. (existing contracts notified to the member state competent authority may be grandfathered):

- Imports from those territories
- Tourism, investment in entities or real estate in those territories, financing of such entities, related investment services
- Exports to or for use in those territories of specified goods and technologies for use in transport, telecoms, energy and mining sectors, and related services
- Services related to infrastructure in those sectors

Similar sanctions may be extended to other regions of Ukraine if the US and EU determine they have fallen under the effective control of the Russian military.
In late February 2022 the US government greatly expanded its export controls relating to Russia, including some new types of restrictions that have never before been imposed on any country.

As with US export controls generally, the new measures apply to any “item”, including products, software or technology, that is of US origin, is shipped from the US, or is produced outside the US using certain types of US-origin content or technology (referred to as “items subject to the EAR”, which refers to the US Export Administration Regulations).

Both US and non-US persons are required to comply with these export controls, whenever they are in possession or control of an item that is subject to the EAR.

In summary, these expanded export controls seek to stop:

- The export to Russia of a small volume of significant high-tech items that are subject to the EAR, including items made outside the US utilizing certain US software or technology, and
- Most exports of items subject to the EAR to the Russian military or that will support products made for the Russian military anywhere in the world.

Many of the new controls are confusing, because they are so new and they are quite complex, with various carve-outs and exceptions intended to reduce the harmful impact on non-Russian companies.
On Feb. 24, the US Bureau of Industry and Security (“BIS”) broadened the controls in the Export Administration Regulations (“EAR”) to require a license (authorization) from BIS to export, transfer or release from any country to Russia or within Russia all items covered by categories 3 through 9 of the US Commerce Control List (“CCL”).

These categories of the CCL cover a significant range of electronics, telecoms, encryption, sensors, lasers, avionics, marine and aerospace items. The CCL is somewhat similar, though broader, than the EU “dual-use” list.

Under a “policy of denial,” BIS will deny license applications except, potentially, in specific types of cases such as those raising safety or humanitarian issues, or the interests of the US government or of US subsidiaries or joint ventures.

Also, as has been the case for Crimea since 2015, a license is now required to export almost any items subject to the EAR to the DNR or LNR, defined in a manner that suggests it includes the two entire oblasts.

Some previously routine exports to Russia are now effectively prohibited.

The volume of exports to Russia of CCL items that are subject to the EAR is low, relative to overall exports.

However, this is a major shift in BIS licensing policy, when combined with the fact that some license exceptions (authorizations written into the export control regulations) are no longer available for exports to Russia.

An important follow-on effect is that there is now a broader range of US-origin content that can make items produced outside the US “subject to the EAR” when exported to Russia, though this effect is not as broad for the EU+5 countries noted in the slides below.
The US imposed export control restrictions on military end-users and end-uses in Russia in 2014 and broadened them in mid-2020. These restrictions were broadened again on Feb. 24 to cover almost all items subject to the EAR.

- “Military end-use” of an item means, in summary, that it will be used as, incorporated into, used with, or used to develop or produce, military equipment or weapons.
- “Military end-users” are defined, in summary, as military units, national police, intelligence agencies, and any other party supporting such units or agencies.

The Entity List, one of the lists of restricted parties maintained by BIS, now includes almost 50 Russian military agencies and entities that are all considered Russian “military end users”.

- These entities were moved from the Military End User List to the Entity List, where they are identified by a “footnote 3”.

It is now necessary to consider, when exporting essentially any item subject to the EAR to Russia (other than certain food, medicine and consumer electronics), whether there could be a military end-use or end-user for that item.

Exports of essentially all items subject to the EAR are restricted to these parties, including the Russian Armed Forces, anywhere in the world.
BIS imposed a foreign direct product (“FDP”) rule relating to Russia on Feb. 24. Both US and non-US persons require a BIS license to export or transfer an item to any destination, if all of the following are true:

1. the item is included in the CCL, and
2. the item is either (a) the direct product of software or technology that is subject to the EAR and is included in any of Categories 3-9 of the CCL, or (b) is produced by a factory or equipment that is the direct product of such software or technology, and
3. the exporter knows or is aware there is a high probability that the item is going to Russia or will be incorporated into or used in the development or production anywhere in the world of a product going to Russia that is included in the CCL.

Practical / Compliance Impact

This rule is based on the FDP rule imposed on Huawei and broadened in 2020.

Because the manufacturing of certain high-tech products, such as advanced semiconductor chips, depends on US-origin technology, the rule was effective in cutting off Huawei’s supply of such products.

WAIT AND SEE
Military FDP Rule, EU+5 Carve-out

BIS also imposed a Russian military FDP rule on Feb. 24. Both US and non-US persons require a BIS license to export or transfer to any destination almost any item produced outside the US (other than certain food, medicine and consumer electronics), if both of the following are true:

(1) the item is either (a) the direct product of any software or technology that is subject to the EAR and is included in the CCL, or (b) is produced by a factory or equipment that is the direct product of such software or technology, and

(2) the exporter knows or is aware there is a high probability that a party on the Entity List with a footnote 3 designation (see the slide on Military Export Controls above) is involved in the transaction, or the item will be used anywhere in the world in developing or producing an item for such a party

Neither this FDP rule nor the one described on the previous slide applies to exports, reexports or transfers from or within any of the EU countries, Australia, Canada, Japan, New Zealand or the UK (the “EU+5 countries”)

Practical / Compliance Impact

- We are in uncharted territory because this is the first FDP rule that applies to almost any item, regardless of whether it is included in the CCL, as the BIS regulatory amendments expressly note

- Companies will need to work out what it means for such generic products to be the “direct product” of US software or technology

- The US government expects these countries to tighten their own export controls for Russia. Companies should be alert for those changes.
The Trump and Biden Administrations used various US sanctions authorities to impose blocking (asset freezing) sanctions on several companies, individuals and pipe-laying vessels involved in completing the Nord Stream 2 pipeline

- Sanctions were imposed in Jan. 2021 under Section 232 of CAATSA (a 2017 statute), and the US State Dept. said it could use Section 232 to sanction parties for actions taken under pre-August 2017 contracts, which previously were exempted
- Sanctions were imposed in May and August 2021 under PEESA, a 2019 statute, and an August 2021 Executive Order, on parties that provided, after November 2020, “services or goods that are necessary or essential to” pipe-laying vessels

However, both Trump and Biden resisted pressure from US Congress to impose broader sanctions, and in May 2021 as part of an understanding reached with Germany

All of this changed dramatically after Russia’s invasion of Ukraine

- German Chancellor Scholz announced on Feb. 22 that he would not allow the German certification of Nord Stream 2
- On Feb. 23 the US imposed full blocking sanctions on the pipeline company, Nord Stream 2 AG (a.k.a. New European Pipeline AG) and its CEO, Matthias Warnig

US companies are broadly prohibited from any action relating to the pipeline, its development, its funds or other assets. OFAC General License 4 provides a one week wind down period, through 03/01/22, for transactions involving Nord Stream 2 AG or its 50% or greater subsidiaries.

EU and other non-US companies could face US secondary sanctions for such transactions, but enforcement seems unlikely at this time given the US-German understanding.
On Feb. 28, the US issued an almost unprecedented general prohibition on US person participation in transactions involving the Russian Central Bank, Ministry of Finance or National Wealth Fund (the “CB, MF and NWF”)

- This was carried out in Directive 4 under EO 14024.

Leading up to this, since 2021 the US has been broadening the prohibitions on trading by US financial institutions (“FIs”) in Russian sovereign bonds, and lending to the CB, MF and NWF.

- Since August 2019, OFAC’s “CBW Act Directive” prohibited US banks from participating in the primary market for non-ruble sovereign bonds, and lending non-ruble funds to the Russian sovereign.

- OFAC Directive 1 (EO 14024) of April 2021 prohibited US FIs from participating in the primary market for bonds issued in any currency by the CB, MF and NWF after 06/14/21, and from lending in any currency to those entities after 06/13/21.

- On Feb. 22 this was expanded as Directive 1A to also prohibits US FI participation in the secondary market for such bonds issued after 03/01/22.

The EU and UK are expected to issue broad prohibitions on transactions with the Russian Central Bank in the first few days of March.

Since Feb. 23, under EU sanctions it is generally prohibited to “purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments issued after 9 March 2022 by” Russia, its government or Central Bank, or parties acting for them. Also it is generally prohibited to make new loans or credit to any such entity.
Over the past year, the EU imposed significant restrictions on trade with Belarus, and the EU and US imposed significant sanctions on major Belarusian companies, in response to political repression by its government

- In April 2021 the US ended its partial suspension of broad sanctions against Belneftekhim and several other major Belarusian companies
- In June 2021 the EU restricted imports of some Belarusian potash and petroleum products, restricted some exports to Belarus, and imposed capital markets sanctions on the government
- In August 2021 President Biden issued Executive Order 14038 and under this authority OFAC imposed blocking sanctions on several more major Belarusian companies and oligarchs
- In December 2021 the US, EU, UK, Canada and other countries imposed sanctions on more Belarusian parties, many of them to “catch” up to the other’s sanctions. For example, the US issued Directive 1 (EO 14038) prohibiting transactions relating to new debt with a maturity over 90 days issued by or for the Belarus Ministry of Finance or Development Bank.
Beginning Feb. 24, the US and EU have announced additional sanctions on major Belarusian banks, companies and businesspeople, to put pressure on the Belarusian government to cease its involvement in and support of the Russian attack on Ukraine.

On Feb. 24, the US has imposed blocking sanctions on:

- 24 individuals and entities including oligarch Aliaksandr Zaitsau (targeted by the EU earlier), and two major state-owned banks: Belarusian Bank of Development and Reconstruction/Belinvestbank and Bank Dabrabyt JSC

- 9 defense firms, including Minsk Wheeled Tractor Plant (MZKT) targeted by EU in Dec 2021), the State Authority for Military Industry (SAMI) and the State Owned Foreign Trade Unitary Enterprise Belspetsvneshtechnika (BSVT)

- Several executives of those companies and defense sector officials
Feb. 26 Joint Statement by US, EU, Germany, France, UK and Canada:

“Selected Russian banks” will be “removed” from the SWIFT system

Will impose sanctions that prevent Russian Central Bank from “deploying its international reserves”

Will step up efforts to identify and freeze assets of targeted parties in the US and EU

On Feb. 24, Canada imposed and the UK said it will impose asset freezing sanctions on most major Russian banks

Practical / Compliance Impact

Not a game changer (likely to target banks already covered by sanctions), but will increase disruptions to cross-border payments

The US has already implemented this with Directive 4 issued Feb. 28, prohibiting all transactions by US persons relating to the Russian Central Bank, Ministry of Finance and National Wealth Fund

Apparently this is contributing to the collapse in Russian ruble and financial markets

Be alert to the application of blocking sanctions on companies you deal with – the prohibitions are broad, and likely to be a focus for US and EU sanctions enforcement

Going beyond the EU asset freeze sanctions on VTB, Promsvyazbank and Bank Rossiya, these Canadian and UK sanctions will amplify the effect of US blocking sanctions on other major banks such as Otkritie and Sovcombank

WAIT AND SEE

INCREASE

INCREASE
## Russia Sanctions Outlook (2)

### Anticipate escalating market disruptions:

- Logistics and shipping, due to bilateral EU-Russia airspace closures that broadened on Feb. 28, potential spike in fuel costs, anticipated EU prohibition on supply (leasing) of aircraft to Russia, US sectoral sanctions imposed on Russian Railways on Feb 24.

- Cross-border trade in electronics, specialized software, other high-tech items, oil and gas equipment and other specialized goods destined for Russia or for use elsewhere to produce items exported to Russia.

- Securities markets due to US and EU blocking (asset freeze) on major Russian banks and their subsidiaries that are market makers and have issued their own securities. On Feb. 24 Clearstream terminated its settlement of securities trades in rubles.

- Cross-border payments, as most of the largest Russian banks are now targeted by a mix of asset freezing, payment settlement bans and other sanctions.

### Practical / Compliance Impact

- **Act now to seek alternative supply and logistics arrangements**

- **EU and UK expected to impose export controls that will increase the effect of the US controls**

- **Be alert to any involvement in holdings or trades of blocked banks – securities could be frozen**

- **Try to shift to Russian banks covered only by limited sanctions, in a compliant manner**

---

INCREASE

INCREASE

INCREASE

WAIT AND SEE
Key Compliance Steps (1)

- Create a system to check customers, suppliers, and other counterparties as appropriate against the sanctions lists
- Be aware of the broad implications of blocking / asset freezing sanctions
- Be alert for Russian ownership of a company – several of the sanctioned companies and banks have numerous subsidiaries
- When a trade controls concern arises, analyze carefully which trade controls measures are applicable

Practical / Compliance Impact

- Major companies, banks and businesspeople are being added to the lists on a daily basis
- Adopt list review practices that are reasonable and practical, considering the nature of your company’s business
- Many companies rarely encounter these sanctions, and the implications can be broad and counter-intuitive
  - Funds and other assets may need to be blocked/ frozen
  - It may be prohibited to take any other action relating to funds, products or software from or destined for the sanctioned party, or to terminate existing agreements / contracts
- Generally, companies directly or indirectly owned by sanctioned parties are also covered by sanctions. Under US sanctions, the key is the 50% ownership rule.
- This often requires careful analysis under the regulations. Seeking to comply with trade controls measures that are not, in fact, applicable, may make a situation much more difficult.
### Key Compliance Steps (2)

<table>
<thead>
<tr>
<th>Expect many payments to and from Russia to fail, and seek alternative, legal routings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Try to ensure payments, including those from customers and to suppliers, are not made through blocked banks</td>
</tr>
<tr>
<td>Be alert for additional portions of Ukraine becoming covered by the same broad sanctions as the Donbas and Crimea</td>
</tr>
<tr>
<td>Be alert for any customers that may be part of or making products or software for, Russian military, police or intelligence units or agencies</td>
</tr>
<tr>
<td>Note that almost all Commerce Control List items now require a BIS license to export to or transfer within Russia</td>
</tr>
</tbody>
</table>

### Practical / Compliance Impact

<table>
<thead>
<tr>
<th>The sanctions on Russian banks imposed by the US on Feb. 22 and 24, and expected in the EU and UK, will cause US and EU banks to refuse to process many payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payments relating to Sberbank will likely fail</td>
</tr>
<tr>
<td>Much worse, after March 25, payments relating to VTB or Otkritie will likely be frozen by any US bank they pass through</td>
</tr>
<tr>
<td>This is likely to occur if Russian troops take control of other oblasts or regions of Ukraine</td>
</tr>
<tr>
<td>Continue to try to prevent your goods going to the sanctioned regions by working with your Russia distributors</td>
</tr>
<tr>
<td>As detailed in the slides above, the new military end-use and foreign direct product rules under US export controls cover essentially all items (including EAR99) and apply to both US and non-US companies</td>
</tr>
<tr>
<td>The US government estimates this will lead to BIS license applications for hundreds of exports that previously did not require a license</td>
</tr>
</tbody>
</table>
Glen N. Kelley advises US and non-US companies and financial institutions on US economic and financial sanctions, US foreign investment law (the CFIUS process), export controls and defense trade controls, and US anti-money laundering and anti-bribery law. Glen handles transactional and compliance issues, licensing, and negotiations with US government agencies related to these laws and regulations.