

Addressing the Business Risk Caused by Russian Sanctions: IR Global Trade and Customs Report

Since its invasion of Ukraine, Russia has become the most economically sanctioned country in the world. In addition to the objective of having Russia withdraw from Ukraine, the sanctions imposed on Russia, Belarus and the disputed Ukrainian provinces of Donetsk and Luhansk by the United States of America, the European Union, Canada, and other mostly Western countries (collectively referred to as “Russian sanctions” or “sanctions”) pose a serious business risk to any individual or company that currently does business in any of these territories or with any individuals or companies in those territories. The sanctions will also disrupt any potential future business. In addition, the sanctions could affect any individual or business that unintentionally deals with sanctioned goods, services, or individuals, recognizing that sanctions create a market void that some traders may try to fill by mislabeling the sanctioned goods or by taking other steps to circumvent the sanctions.

The risk posed by the sanctions goes beyond the loss or disruption of current or future business. Any company that intentionally or unintentionally violates the sanctions could face seizure and forfeiture of the goods, fines, imprisonment, or other penalties. Those companies would also likely face more scrutiny from enforcement agencies, which could increase their cost of compliance with the sanctions on an ongoing basis.

The business risk posed by the sanctions is very real and should not be ignored. Instead, companies and individuals should determine their degree of exposure to the sanctions, the effect on their current and future business, their potential exposure to penalties, and the steps that may be available to them to reduce or eliminate those risks. Essentially, any company that is potentially exposed to these risks should review their position as part of their ongoing due diligence.

Navigating the sanctions to determine risk can be difficult, particularly in cases where it is not immediately clear that current or future business could be affected. This Report has been prepared by IR Global Trade and Customs lawyers for use by IR Global Members. The Report is intended to be used as a Guide to the current sanctions and describes the basic process for determining potential exposure to business risk generated by the sanctions.

The Sanctions: A Brief Overview

To date, thousands of individual sanctions have been imposed on Russia, Belarus, and the Ukrainian provinces, and this number will likely increase. Sanctions are a political instrument designed to cause as much economic pain as possible to achieve a political end, in this case Russian withdrawal from Ukraine.

Sanctions are usually blunt instruments that may or may not have been developed with an eye to limiting their impact on business in the country imposing the sanction. However, in broad terms the sanctions include measures to:

- prohibit dealing with a growing list of individuals and companies and their assets or providing any financial or other support to those individuals and companies;
- prohibit dealing in specific goods;
- prohibit providing financing or insurance to specific sectors or government institutions;
- increase customs duties on more or all goods imported from Russia, Belarus or the Ukrainian provinces;
- close airspace to Russian or Belarussian owned, leased, or registered aircraft and prohibit Russian Belarussian owned, leased or flagged ships to dock in ports of the country imposing the sanction or to pass through its territorial waters;
- impose the broad range of existing customs and other laws regulating the import and export of goods to ensure that there is no circumvention of the sanctions; and
- prohibit any action that would facilitate any of the foregoing activities.

The sanctions are also generally supported by a range of enforcement measures including seizure and forfeiture of goods, fines, imprisonment, and other penalties. Any individual or company found to have violated any of the sanctions will likely find their future activities subject to increased surveillance by government officials, which could result in additional, ongoing costs.

Most sanctions are not absolute in the sense that it may be possible to obtain permission from government officials to continue to do business that would otherwise be subject to sanctions. For example, government officials may be willing to allow businesses to provide goods or services related to humanitarian or required medical aid.

In some cases, sanctions imposed by national governments may have an extraterritorial effect. This is the case with U.S. sanctions. This is also the case for most Canadian and European Union sanctions measures which apply to everyone inside Canada and the E.U. and to their citizens overseas.

Finally, most sanctions were developed, and are being developed, without broad-based consultations with domestic industry. Consequently, these sanctions may have a broader impact than is necessary to achieve their political objective. In these cases, it may be possible to lobby government to propose that a more limited sanction be adopted that would achieve that government's political objective while reducing the negative impact of the sanction on its domestic business community.

Assessing the Risk

The business risk associated with the sanctions can only be determined by considering the individuals' or companies' business relationship with the sanctioned territories and persons. To make it easier to assess the business risk, we have prepared an overview of the sanctions maintained by the United States, the European Union, Spain, Finland, Poland, and Canada in the



Annex attached to this Report. Beginning with this overview, we suggest that you take the following steps to assess the potential risk to your client caused by the sanctions.

- i) You or your client should review the sanctions to determine whether they could affect your current or planned business with the sanctioned territories and persons.

The purpose of this review is to try to identify the sanctions that could potentially affect your client and their current or future business interests. You should err on the side of caution by giving the benefit of the doubt to potential sanction risk. We take this position because if the application of a sanction is in doubt, officials maintaining the sanction measure will likely assume that the sanction has been violated to achieve their objective of having the maximum economic impact on the sanctioned territory.

- ii) You or your client should review your client's business operations to determine whether they are currently doing business in the sanctioned territories or in another third country, and to determine whether that business activity involves sanctioned goods, investment, financing, banking transactions, or transportation more broadly to determine whether that business could violate their home country sanctions or sanctions imposed by that other country.

The purpose of this review is to determine the degree to which the individual or company could violate the sanctions and the potential scope of penalties that could be applied to that violation.

- iii) You or your client should review your client's operations or business in third countries to determine whether they have any connections with the sanctioned territories and persons that could trigger penalties under the sanctions.

The purpose of this review is to consider the impact of your client's business operations overall. Although they may not do business in or with the sanctioned



territories directly, they may do business through a subsidiary or sister company overseas or through connections with other businesses overseas. Depending on the circumstances, the individual or business may violate sanctions imposed by their home country as well as the country of their overseas subsidiary, sister company, or other connection. In this case, the business of individual could potentially face penalties in both jurisdictions.

- iv) You or your client should review your client's business practices to determine whether they face a risk of seizure, forfeiture, or the inability to complete financial arrangements for any business transactions involving the sanctioned territories.

The purpose of this review is to determine whether your client's business has systems in place that will better ensure that they do not take any action that could violate the sanctions and invite penalties.

- v) You or your client should consider your client's business operations in the light of the sanctions adopted or being adopted by their home country to determine whether the sanction measures could be amended in a manner that achieves the same political goal while having less negative impact on your client's business.

Contact an IR Global Trade Lawyer if you have Questions or Concerns

We recognize that determining the impact of sanctions measures is not easy. In some countries, it may be difficult to identify the specific measures or to find the most current measures. If you believe that your client may face any risk resulting from the above-mentioned sanctions imposed by a specific country or countries, we encourage you to contact the relevant IR Global Trade and



Customs lawyer. We would be happy to discuss your client's circumstances and to take further action to assist your client if you consider such action to be appropriate.

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Canadian Sanctions on Russia

April 25, 2022

Canada has joined other countries, including the United States and the European Union, to impose sanctions on Russia and Belarus following Russia's invasion of Ukraine in February 2022. These are in addition to the sanctions that Canada had previously imposed on Russia following its annexation of Crimea in 2014. Canada has imposed several rounds of escalating sanctions since the Russian invasion and has indicated that it will continue to impose new sanctions so long as the Russian action against Ukraine continues. It is not clear whether Canada will withdraw some or all of the sanctions if Russia withdraws from the Ukraine or whether they will remain in place for the foreseeable future.

To date, Canada has imposed over 1,000 individual sanctions that prohibit individuals or entities in Canada, or Canadian individuals or entities outside Canada, from:

- dealing in any way with a growing list of Russian and Belarusian individuals or their assets;
- dealing with or providing financial support services to several Russian banks and Government institutions.
- providing financial services to Russian aircraft, aviation, or aerospace products.
- dealing in Russian petroleum products or providing specific goods or financing that would support Russian petroleum exploration or exploitation.

Canada's sanction measures also include:

- a prohibition on Russian ships or aircraft entering Canadian territorial waters, airspace or ports.
- Measures that will increase the customs duty rate on Russian and Belarussian goods imported into Canada to a minimum 35%.
- Cancelling all export permits for a range of goods and prohibiting issuing new permits that would allow the export of a further range goods to Russia or Belarus.
- Prohibiting any action that would violate any of these sanction measures.

Canadian sanctions and other trade measures aimed at Russia have been imposed under the *Special Economic Measures Act*, the *Customs Tariff*, and the *Export and Import Permits Act*. An intentional

or unintentional violation of these sanctions could result in seizures, forfeitures, fines, imprisonment, and other administrative penalties. Consequently, an alleged violation of these sanctions could also result in a lengthy and costly legal process and damage to corporate reputation.

Depending on the circumstances, the Canadian Government has the authority to issue orders or permits or to take other action to allow Canadian individuals or companies to do business with Russia or Belarus that that would otherwise be prohibited. This authority presents an opportunity for individuals to request specific relief from the sanction measures.

The following sections provide a brief description of the sanctions currently imposed under the *Special Economic Measures Act*, the *Customs Tariff*, and the *Export and Import Permits Act*. Each section describes the sanctions measures, the penalty for intentionally or unintentionally violating the sanctions measures, and the process in place for requesting an order, permit or other action to allow the sanctioned business to continue.

I. Sanctions under the *Special Economic Measures Act*

(a) The Current Sanctions

Dealing with Designated Persons

To date, Canada has listed over 1,000 Russian and Belarussian individuals and enterprises on the economic sanctions list. The assets of these “designated persons” have been frozen and any person in Canada and any Canadian outside Canada has been prohibited from dealing with these “designated persons” or their assets. This includes any action:

- dealing in any property, wherever situated, that is held by or on behalf of a designated person;
- facilitating dealing or entering into any transaction related to dealing with those individuals or their assets;
- providing any financial or related services concerning that dealing;
- making any goods, available to any designated persons regardless of where those goods are located; or
- providing any financial or related services to or for the benefit of any designated person.

There are exceptions to the asset freeze and to the prohibition on dealing with designated persons which permit actions such as:

- payments made by or on behalf of designated persons under contracts entered into prior to these sanctions taking effect if the payments are not made to or for the benefit of the designated person;
- pension payments to any person in Canada or to any Canadian outside Canada;
- financial services required for a designed person to obtain legal services in Canada with respect to the application of any of the prohibitions in the Regulations; and
- loan repayments made to any person in Canada or any Canadian abroad in respect of loans taking effect before the sanctions were issued.

Dealing with Russian Sovereign Debt

Banks and Financial Institutions are prohibited from direct or indirect dealings in Russian Sovereign Debt and in dealing with the National Wealth Fund of the Russian Federation, the Central Bank of the Russian Federation, and the Ministry of Finance of the Russian Federation.

Prohibiting the Export of Certain Technology

Any person in Canada or any Canadian outside Canada is prohibited from exporting, selling, supplying, or supplying any good, wherever situated, or to provide any technology, to Russia or to any person in Russia set out in the *Restricted Goods and Technologies List*. The List includes goods such as: electronic equipment, telecommunication equipment, information security equipment and software, optical sensors, cameras and lasers, certain navigation equipment, aircraft, and diesel engines. The List is intended to prohibit the export of technology or goods that could benefit the Russian military or related industries, but it could have a broader impact on other sectors.

Restrictions on Transportation

Russian ships or any ship used, leased, or chartered, in whole or in part, by Russians or for the benefit of Russians may not dock in Canada or pass-through Canadian waters.

Canadian airspace is closed to all Russian aircraft. No one in Canada or no Canadian outside Canada may provide any insurance, reinsurance and underwriting services for aircraft and aviation and aerospace products owned by, controlled by, registered to, chartered by, or operated by entities and individuals that are resident, incorporated in or domiciled in Russia.

No Shipment of Petroleum Exploration Goods

Any person in Canada or any Canadian outside Canada is prohibited from exporting, selling, supplying, or shipping specific goods to Russia or to any person in Russia for their use in offshore oil (depth greater than 500m), shale oil or Arctic oil exploration and production. Canadians are also prohibited from providing any financial, technical, or other services related to the goods subject to this prohibition.

No dealing in Russian Petroleum Products

Any person in Canada or any Canadian outside Canada is prohibited from importing, purchasing, or acquiring petroleum products from Russia or from any person in Russia.

No Access to the SWIFT Banking System

Canada, along with other countries, have removed Russia from the SWIFT banking system, which will make it harder to pay Russians or Russian companies or to be paid by Russians or Russian companies.

Promoting Prohibited Activities is Prohibited

Canada has prohibited any activity that assists or promotes the prohibited activities.

(b) Penalties for Violating the *Special Economic Measures Act*

An intentional or unintentional breach of any of the sanctions imposed under the *Special Economic Measures Act* is punishable by a fine of up to \$25,000 and/or a term of imprisonment of up to 5 years.

(c) Applying for the Right to Continue to do Business

Canadians may apply to Government for a permit allowing that person or business to carry out a specified activity or transaction that would otherwise be restricted or prohibited. The permit may include conditions restricting the business activity. Subject to any terms or conditions, the permit holder could continue to do business with specific Russians or Russian companies.

Permit applications will be considered on a case-by-case basis. Permits will likely only be granted in extraordinary circumstances and may be limited to specific activities, such as providing humanitarian services or supplying required medical equipment.

(d) Applying to be Removed from the “Designated Persons” List

Any person or entity who has been placed on the list of “designated persons” can apply to the Government to have their name removed from the list. Government can grant the request depending on the circumstances and justification presented on behalf of the person or entity. If granted, Canadians and Canadian companies could continue to deal with those Russian individuals and companies subject to other economic sanctions that could affect those dealings.

II. Sanctions under the *Customs Tariff*

(a) Higher Duties on Most Russian and Belarussian Products

Canada amended the Customs Tariff on March 2, 2022, so that most Russian and Belarussian goods that were in transit and land in Canada after March 2, 2022, would be subject to 35% customs duties. The Russian and Belarussian goods that are not affected by this increase were those goods that were already subject to MFN duties that exceeded 35%. Consequently, all Russian and Belarussian goods imported into Canada will be subject to a minimum 35% customs duty.¹

¹ Although unlikely at this point, importers may request MFN treatment for any Russian goods in transit on or before March 2, 2022 by filing completed Customs B3-3 Forms.

(b) Penalties

The primary penalty will be the requirement to pay the minimum 35% customs duty on all imports. However, any importer that intentionally or unintentionally imports Russian or Belarussian goods that have not been properly declared as to origin, value for duty, or tariff classification could be subject to penalties under the Administrative Monetary Penalty System. The maximum penalty for a single contravention is \$25,000.00, but the total penalties could exceed that amount if officials consider that there has been more than one contravention.

(c) Requesting Reduced Duty Rates

The Government can issue Remission Orders to allow goods to be entered at lower duty rates, which would allow Russian or Belarussian goods to enter without having to pay the minimum 35% customs duty.

Importers can request that a Remission Order, but they are only granted in exceptional circumstances and for specific goods. Generally, Remission Orders are granted where it can be shown that the benefit to the Canadian economy outweighs the benefit of maintaining the higher duty rate. For example, exceptional circumstances may exist in cases where goods or commodities found exclusively in Russia or Belarus are essential to Canadian manufacturing.

III. Sanctions Under the *Export and Import Permits Act*

(a) The Sanctions

Effective February 24, 2022, Canada stopped issuing permits for the export and brokering of controlled goods to Russia and cancelled all valid permits for export and brokering that were issued prior to that date. These measures primarily affect the aerospace, technology, and mineral sectors, but could have broader implications.

(b) Penalties for Violating the *Export and Import Permits Act*

A Canadian who intentionally or unintentionally violate the *Export and Import Permits Act* by shipping any goods covered by the Act without an export permit or import permit could be subject to a fine of up to \$25,000, or be imprisoned for up to 12 months, or both.

In addition, depending on the circumstances a Canadian who exports goods subject to the Act without a permit could also face penalties under the Administrative Monetary Penalty System maintained by the Canada Border Services Agency.

(c) Applying for the Right to Continue to do Business

The Government can issue permits to would allow exports of goods on the Export Control List whose export would otherwise be prohibited.

IV. We Provide Sanctions-Related Services

If you are concerned that your current and future business may violate Canada's sanctions on Russia or Belarus, please contact us. Woods, LaFortune LLP is an international trade and customs law boutique that has an active export controls and sanctions practice.

Our lawyers have experience advising clients on Canada's sanctions regime and representing them before Government. We would be happy to review any issue concerning your current or future business to determine whether it would violate Canada's sanctions and determine what steps to take to resolve or mitigate that violation.

We also have experience lobbying Government on a range of trade issues. Our lawyers know how government works because we government experience. We would be happy to determine whether we could successfully lobby government to benefit your client by seeking an amendment to an existing sanction or opposing a proposed sanction.

If we can be of help, please contact Michael Woods or Gordon LaFortune to discuss these matters further.

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Annex European Union

The European Union has joined other countries, including the United States and Canada, to impose sanctions on Russia, Belarus and non-Ukrainian government-controlled areas. In this sense the European Union Treaties have invested the authority to take economic measures against other countries to the European Union institutions: the European Council and the Commission. These sanctions are then laid down in Regulations which are binding for all member states and its citizens and are in addition to the previously imposed on Russia following its annexation of Crimea in 2014. To date (20 April 2022) there were five rounds of ever-expanding sanctions, soon to be followed by a sixth. Each time, a new Regulation is issued amending the original Regulation which was issued at the time of the Crimean cessation and inclusion into Russia. However, sanctions are also issued to Belarus and the former Ukrainian provinces of Donetsk and Lugansk. These sanctions are listed in separate regulations.

RUSSIA

i. Sanctions on Individuals, Entities and Companies

So far, the EU has imposed entry bans and has frozen the accounts of 877 individuals (including President Putin, his foreign minister and 338 members of the State Duma) and 62 entities. The entry bans prevent the entry into or transit through EU territory by national persons responsible for actions or policies that threaten Ukraine or support Russia.

No claims in connection with any contract or transaction the performance of which has been affected, by the regulations shall be satisfied, if they have been made by:

- designated natural or legal persons, entities or bodies listed
- any natural or legal person, entity or body acting through or on behalf of one of the above-mentioned persons, entities or bodies.

ii. Economic Sanctions

The EU has introduced sanctions aimed at limiting any type of Russian access to the E.U.'s primary and secondary markets.

The EU has prohibited the provision of any kind of financial assistance or support to Russian banks or companies. Among the most important the following should be noted:

- Financing Russian state and Russian banks and related entities is prohibited with the aim to reduce Russia's access to the most important capital markets. Access to the EU primary and secondary markets is limited to 11 companies (5 Russian financial entities, 3 entities from the energy sector and 3 from the defence sector).
- Restrictions on access to the EU capital market for certain Russian financial institutions and entities, as well as its Government and Central Bank.

As a result, Russia and its government, or, the Central Bank of Russia, or legal persons, entities or bodies acting on behalf of or under the direction of the entity referred to the central bank of Russia are excluded to access to the EU capital market.

The prohibitions will not apply to contracts signed before the 23rd of February. Neither will they apply to loans or credits the specific and documented purpose of which is to provide financing for the non-prohibited import or export of non-financial products and services between the Union and any third State, including expenditure on products and services from another third State which is necessary for the performance of import or export contracts.

- Prohibition of reserve and asset management transactions by the Russian Central Bank and anyone acting on its

- Prohibition of listing and provision of services in connection with the shares of Russian state-owned entities on European Union trading centres.
- The acceptance of deposits from Russian nationals or residents exceeding certain amounts, the holding of accounts of Russian clients by central securities depositories of the Union and the sale of euro-denominated securities to Russian clients are prohibited.
- EU bans access to SWIFT for certain Russian banks
- A prohibition to
 - (a) acquire any new or extend any existing participation in any legal person, entity or body incorporated or constituted under the law of Russia or any other third country and operating in the energy sector in Russia;
 - (b) grant or be part of any arrangement to grant any new loan or credit or otherwise provide financing, including equity capital, to any legal person, entity or body incorporated or constituted under the law of Russia or any other third country and operating in the energy sector in Russia, or for the documented purpose of financing such a legal person, entity or body;
 - (c) create any new joint venture with any legal person, entity or body incorporated or constituted under the law of Russia or any other third country and operating in the energy sector in Russia;
 - (d) provide investment services directly related to the activities referred to in points (a), (b) and (c).
- Exceptions can be made ensuring critical energy supply.
- Transactions with designated public companies in Russia, or companies outside the EU which are owned directly or indirectly for more than 50% by those designated companies. Contracts concluded before 16 March 2022 are excluded until 15 May 2022.

iii. Trade Measures

The E.U. has introduced several sanctions that affect the trade in goods, technology, and services (referred to collectively as “items”) with Russia. These include:

- a) The import and export of military items are prohibited.
- b) The export/transaction supply of the following items are prohibited.
 - Dual use “items” for military use and for civil one (when the end user is in the sanctioned list of the EU)
 - “Items” related to the Oil sector
 - “Items” related to the energy, petroleum and mineral resources sectors
 - “Items” for use in the aviation and space sector. Except if the contract has been signed before February 26th, and the export takes place before March 28th.

The E.U. may allow the trade in the following goods if it issues a license allowing the shipment:

- Dual use goods for civil use.
 - Goods related to the oil and energy sector described in the regulations developed in this regard.
- c). Prohibition of purchase, transport and/or import directly or indirectly of iron or steel products from Russia, as well as any related services;
- d) A prohibition of the sale, supply, transfer or export, directly or indirectly of certain luxury goods to anybody in Russia or for use in Russia unless the value of each designated product is less than EUR 300.

An overall provision prohibits the participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the above-mentioned prohibitions.

UKRAINE

- i. The import of items is prohibited when they are from the non-Ukrainian government-controlled areas of Donetsk and Luhansk, Crimea and Sevastopol with two exceptions:
 - If a certificate of origin is issued by the Ukrainian government.
 - If there is a contract signed prior to 23 February 2022 and the operation has been communicated to the competent authority 10 days in advance. In this case, the import declaration must be accompanied by the contract and a declaration of responsibility of the consignee.
- ii. Prohibitions of **exports** of items destined to the transportation, telecommunications, energy or oil sectors, gas and minerals and services of tourism activities except:
 - If the contract has been signed before 23 February 2022, and the competent authority has been notified 5 days in advance the operation may be carried out by providing to the customs declaration both the contract and the responsible declaration of the consignee.
- iii. The **acquisition** or extension of participation in real estate, the acquisition or extension of a participation in entities, including the acquisition in its entirety of such entities and the acquisition of shares, and other securities of a participative nature; the granting of any financing to entities in these regions, the creation of any joint venture and the provision of investment services directly or indirectly to entities in these regions, the creation of any joint venture and the provision of investment services directly or indirectly to entities in these regions are prohibited.

BELARUS

- i. **Import** prohibitions:

- Previous prohibitions on mineral products and potassium chloride products originating in or coming from Belarus are maintained.
- New prohibitions for: Wood, cement products; Iron and steel products; Rubber products.

The new prohibitions will not apply to contracts concluded before 2 March 2022 that will be executed before June 4, 2022.

WE PROVIDE SANCTIONS-RELATED SERVICES

If you are concerned that your current and future business may violate EU's sanctions on Russia or Belarus, please contact us.

IMPLEMENTATION OF THE MEASURES BY THE DIFFERENT MEMBER STATES OF THE EUROPEAN UNION

Please note, that each member states applies its own prosecution rules and criminal punishment rules for the breach of the EU sanctions. They vary considerably and they apply depending on the member state where the breach has occurred.

See Annex III for Finland

See Annex IV for Poland

See Annex V for Spain



ANNEX III OF SANCTIONS INDIVIDUAL REPORT BY FINLAND

As a Member State of the European Union Finland implements the EU sanctions against the Russian Federation and the Republic of Belarus. In the EU, sanctions are a tool developed by the Common Foreign and Security Policy (CFSP) seeking to bring about a change in the policy or conduct of those targeted. As CFSP is part of the Treaty on the European Union (TEU), a legislative act pursuant to the more practice-oriented Treaty on the Functioning of the European Union (TFEU) is enacted, usually under the special procedure laid down in Article 215 TFEU, although there are other alternatives, too.

Sanctions against Russian entities and individuals are found, on top of this report at my past employer's, the Council of the European Union – website, a timeline of restrictive measures in response to the crisis in Ukraine may be found, see <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-ukraine-crisis/history-ukraine-crisis/>.

As sanctions are partly based on the CFSP, individual Member States can in principle apply their own policies. However, as Article 215 is part of EU common commercial policy, Member States cannot act against it. Moreover, Member States are under an obligation to implement and apply sanctions regulations adopted by the EU. The Member States must provide for effective, proportionate and dissuasive penalties, and are required to take all measures necessary to make sanctions effective.¹

Finland penalizes actions against sanction through the so called Sanctions Act 1967, see the English translation at https://www.finlex.fi/en/laki/kaannokset/1967/en19670659_20150504.pdf.

In Finland, you can find information amongst other from the Ministry of Foreign Affairs website at <https://um.fi/international-sanctions>. Also the website of the Finnish Customs is authoritative, see <https://tulli.fi/en/russian-attack-on-ukraine>. Also the Finnish-Russian Chamber of Commerce, the Nuoli Confederation of Finnish Industries and the Finland Chamber of Commerce follow and communicate about the implementation of sanctions regularly.

As Finland is a regular transit country to and from Russia, sanctions invariably affect international carriages. Railas Attorneys specializes also in transport law.

One Frequently Asked Question about transit published on public websites goes as follows:

¹ See further Piet Eeckhout, EU External Relations Law, 2nd Edition, Oxford University Press 2013, pp. 540–547.

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If the goods have arrived to a warehouse from another warehouse or were transited from the United States / Canada via Europe before the restrictions began; can the goods be exported onward to Russia? The export declaration was made in the country of dispatch.

The EU sanctions prohibit the sale, delivery, movement or export either direct or indirect, of goods under restrictions to natural or legal persons, organisations and bodies in Russia. The restrictions are comprehensively formulated and they concern, among other things, all kinds of movement and delivery of goods from Finland to Russia. Exporting these kinds of goods onward to Russia is therefore prohibited as a rule (unless a limited exception in the regulation is applicable to the export).

It is possible to obtain a licence from the Ministry of Foreign Affairs to enable a delivery for which a binding agreement was made before the restrictions came into force. The Ministry of Foreign Affairs reviews such licence applications on a case-by-case basis. (Source: The Confederation of Finnish Industries EK).

For further inquiries, please contact me or any of the above-mentioned organizations.

Helsinki, 27 April 2022

Dr. Lauri Railas

Attorney-at-Law

Adjunct Professor (Docent) of Civil Law

University of Helsinki

POLISH SANCTIONS:

On April 16, 2022, the Law on Special Solutions to Counteract Supporting Aggression against Ukraine and to Protect National Security entered into force. It implements unprecedented solutions to tighten the enforcement of sanctions adopted against Russia and Belarus at the European Union level.

I. Sanctions against the person and entities:

The list of persons and entities against whom the measures are applied was created. The list is maintained by the minister responsible for internal affairs. The list shall be published on the website of the minister in charge of internal affairs.

Only a person or entity not on the lists set out in Regulation 765/2006 and Regulation 269/2014", in the regulations may be included on the Polish list. The list or its draft is not published yet.

The list of sanctions introduced by the act against person or entity listed on the Polish list:

1. the measures set out in Article 2(1) to (3) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and its involvement in Russia's aggression against Ukraine (OJ L 134, 20.05.2006, p. 1, as amended),
2. the measures set out in Articles 2 and 9 of Council Regulation (EU) No 269/2014 of 17 March 2014 on restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ EU L 78, 17.3.2014, p. 6, as amended),
3. exclusion from public procurement proceedings conducted under the Act of 11 September 2019 - Public Procurement Law.

A person or entity that, in relation to a listed person or entity:

1. *fails to comply with the obligation to freeze funds or economic resources or to prohibit the making available of funds or economic resources, as referred to in Article 2(1) or (2) of Regulation 765/2006 or Article 2 of Regulation 269/2014,*
 2. *fails to comply with the obligation to provide information promptly as required by Article 4(2) or 5 of Regulation 765/2006 or by Article 7(1) or 8 of Regulation 269/2014,*
 3. *fail to comply with the prohibition on knowingly and intentionally participating in activities the object or effect of which is to circumvent the application of the measures set out in Article 2(1) or (2) of Regulation 765/2006 or Article 2 of Regulation 269/2014*
- are subject to a financial penalty, in the amount of up to PLN 20,000,000.*

A person or entity subject to exclusion from the public procurement, who during the period of that exclusion applies for a public contract award or admission to a competition or takes part in a public contract award or competition, shall be subject to a financial penalty of up to PLN 20,000,000.

II. Prohibition to import or transfer the coal

In view of the threat to national security, it shall be prohibited to:

1) introduction into the territory of the Republic of Poland,

2) movement:

(a) between two countries through the territory of the Republic of Poland, which begins and ends outside this territory,

b) from the territory of a European Union Member State other than the Republic of Poland to the territory of the Republic of Poland

- goods falling under heading 2701 or 2704 of the Combined Nomenclature (CN) pursuant to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

A person or entity which violates the above prohibition shall be subject to a financial penalty in the amount of up to PLN 20,000,000.

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ANNEX V OF SANCTIONS
INDIVIDUAL REPORT BY SPAIN



The measures imposed by the EU are being followed by Spain and these are the criminal and prosecution rules for non-compliance with EU sanctions imposed by the Spanish Government.

- Spain has expelled 27 Russian diplomats, but this measure has not affected the Russian ambassador.

- Depending on the value of the merchandise, it is considered smuggling offense and those who commit it shall be punished with imprisonment from one to five years and a fine of one to six times the value of the goods, merchandise, goods or effects and additionally, suspension for a period of between six months and two years of the import, export or trade activities of the category of goods, merchandise, goods or effects that are the object of the contraband.

- Prohibition to obtain public subsidies and aid to contract with public administrations and to enjoy tax or social security benefits and incentives for a period of between one and three years.

- Confiscation of the goods.

- In any case the trade of goods prohibited will make the people or company to incur in an administrative infraction of smuggling (this will be the less penalty) and will have to pay fines depending on the

classification of the infraction (minor, serious and very serious)

- Spanish authorities may authorize exports of goods and services subject to EU sanctions in accordance with the provisions of the relevant EU Regulations. In this sense if the clients need to get these approvals, they can contact us so we can discuss the requirements and how to carry them out.

- These types of measures are reviewed periodically and should therefore be considered temporary, even if they last for a long period of time.

If you are concerned that your current and future business may violate EU's sanctions on Russia or Belarus, please contact us.

We have experience in reviewing any issue concerning your current or future business to determine whether it would violate EU's sanctions and determine what steps to take in order to resolve or mitigate that violation.

For further information, please contact the Export Control Department **bln palaoabogados, S.L.P.**

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1. THE ITALIAN OVERVIEW ON CRIMINAL CHARGES AND ADMINISTRATIVE FINES FOR THE VIOLATION OF EU SANCTIONS AND OTHER RESTRICTIVE MEASURES

1.1. European trade and financial restrictions on Russia, Belarus, and the Ukrainian provinces of Donetsk and Luhansk have raised several questions about their effects and enforcement, especially at the national level of each Member State.

With reference to Italy, to date, we are not aware of any specific legislative provision issued by the Italian Government to implement the application of sanctions and other restrictive measures imposed by EU Regulations No. 833/2014, No. 692/2014, and No. 269/2014, as recently amended and extended by the additional EU Regulations enacted in February, March, and April 2022.

However, in 2017 the Italian Government already enacted the Italian Legislative Decree No. 221 to align the national legislation with the provisions set forth by the EU Regulations addressing Dual-Use products, as well as with other commercial restrictive measures and trade embargoes imposed by the European Union.

Italian Legislative Decree No. 221/2017 focuses on the *"adaptation of national legislation to the provisions of European regulations for the purposes of reorganizing and simplifying procedures for the authorization of exports of dual-use items and technologies and the application of sanctions in the field of trade embargoes, as well as for any type of export transaction of proliferating materials"* and implements the provisions contained, among others:

- a) in the Regulation (EC) No. 428/2009 of 5 May 2009 (now replaced by Regulation No. 821/2021) setting up a Common regime for the control of exports, transfer, brokering and transit of dual use items;
- b) in the Council (EU) Regulations adopted pursuant to Article 215 of the Treaty on the Functioning of the European Union concerning restrictive measures against certain third countries subject to trade embargoes.

Italian Legislative Decree No. 221/2017 sets forth the criminal charges and administrative fines applicable to violations of the EU provisions on dual-use products as well as on the other EU restrictive measures or bans issued against third countries subject to trade embargoes.

Although Italian Legislative Decree No. 221/2017 only expressly refers to EU Regulation No 428/2009 (i.e., the regulation addressing and governing dual-use items), the provisions of such Italian decree including the criminal charges and administrative fines established therein must be interpreted as implicitly referring also to Regulations No. 833/2014, No. 692/2014 and No. 269/2014 and their subsequent 2022 updates, thus including the new "sanctions and restrictive measures" introduced by the recent EU Regulations adopted by the European Council in February, March and April 2022.

Such a broad interpretation is due to the fact that Regulations No. 833/2014, No. 692/2014 and No. 269/2014 must be considered as falling under the category of the Council (EU) Regulations mentioned under letter b) above, since they have been adopted pursuant to Article 215 of the TFEU and specifically concern restrictive measures against Russia, which

was under - and is still subject to - trade embargo.

1.2. In the light of the above, the Italian penalty system in this field is structured as follows:

1.2.1. On the one hand, any violation of the provisions or obligations relating to dual-use items and unlisted dual-use items, as set forth in Regulation (EC) No. 428/2009 of 5 May 2009 (now replaced by Regulation No. 821/2021), is sanctioned under Article 18 of the Italian Legislative Decree 221/2017, which punishes:

- a) With criminal charges (i.e., imprisonment from 1 to 6 years or a fine from 15.000 to 250.000 euro) the following conducts: any export transaction of dual-use items or unlisted dual-use items, transit or transfer within the European Union, or the supply of brokering services related to such items, without the relevant authorization, or with an authorization obtained by making false declarations or providing false documentation, or any transaction carried out in violation of the obligations provided for in the relevant authorization;
- b) With the seizure of the goods that were used or intended to be used to commit such offences, or when this is not possible with the seizure of other goods owned or somehow hold by the offender up to a value corresponding to the price or profit of the offence, the following conducts: all the conducts listed under letter a) above;
- c) With an administrative fine (i.e., a sum from 15.000 to 90.000 euro) the following conducts: any omission to provide information or to submit documentation required by the Italian competent authority on the final destination of the exported products.

1.2.2. On the other hand, any violation of the provisions or obligations set forth in EU Regulations No. 833/2014, No. 692/2014 and No. 269/2014 (as recently amended and extended by the additional EU Regulations enacted in 2022) is sanctioned under Article 20 of the Italian Legislative Decree 221/2017 (headed "*Sanctions relating to products listed by EU restrictive measures*"), which punishes:

- a) With the imprisonment from 2 to 6 years, any export transaction of products listed as embargoed products a result of EU restrictive measures, or the supply of brokering or technical assistance services concerning the same products, in violation of the prohibitions contained in the (EU) Regulations on restrictive measures.
- b) With the imprisonment from 2 to 6 years or a fine from 25.000 to 250.000 euro, any of the conducts referred to under letter a) above carried out without the prescribed authorization, or with an authorization obtained on the basis of false statements.
- c) With the imprisonment from 1 to 4 years or a fine from 15.000 to 150.000 euro, any failure to comply with the obligations prescribed in the relevant authorization.
- d) With the seizure of the goods that were used or intended to be used to commit such offences, or when this is not possible with the seizure of other goods owned or somehow hold by the offender up to a value corresponding to the price or profit of the offence, all the conducts described under letters a) to c) above.

2. RUSSIAN COUNTERMEASURES AND IMPACTS ON OUR ITALIAN CLIENTS

2.1. To date, we are aware that the Russian Government have adopted the following main countermeasures against so-called “*unfriendly states*”:

- a) Russian companies will be able to pay their debts exceeding the amount of 10 million rubles in a calendar month to foreign creditors based in “*unfriendly states*” only in Russian rubles (instead of otherwise applicable currency).
- b) Russian residents are prohibited until 31 December 2022 from making capital contributions / partnership investments in favour of non-residents.
- c) Russian residents, subject to some certain exceptions, are prohibited, without a prior clearance by the *Government Commission for Control over Foreign Investments*, from conducting the following transactions with foreigners based in “*unfriendly states*” and persons controlled by such foreigners:
 - Providing loans in rubles;
 - Transferring ownership of securities; or
 - Transferring ownership of real estate.
- d) Russian residents are allowed to make use of an invention, utility model or industrial design without the consent of the right holders based in “*unfriendly states*” and without granting them any compensation for such use.
- e) Foreign residents (either companies or individuals) based in “*unfriendly states*” are not allowed to transfer funds from their Russian accounts to their accounts outside of Russia for a period of six months.
- f) Foreign legal entities based in “*unfriendly states*” are prohibited from buying any non-ruble currency in Russia.

2.2. Since the outbreak of the war in Ukraine and the issuance of the very latest sanctions by the European Union and the United States as well as of the countersanctions adopted by the Russian Federation, we have received many requests of assistance from our Italian corporate clients concerning their trade relationships with Russian clients as well as their business operations on the Russian territory.

Our clients’ requests of assistance regarded more the impacts that the trade restrictive measures issued by the EU and the US could have had on their commercial relationships with the already existing or new potential Russian clients rather than the impacts deriving from the possible application of the countersanctions adopted by the Russian Government.

In this respect, our assistance was mainly focused on and aimed at assessing whether:

- a) the products marketed by our Italian clients had to be considered as dual-use products or whether they were somehow subject to any ban or restrictions on their export towards the territories of Russia, Belarus, and/or the provinces of Donetsk and Luhansk; and

- b) our clients' Russian or Belarus counterparts (either individuals or legal entities) were listed in any of the list of designated persons issued by the European Union with the consequence that trade and export transactions with such counterparts proved to be prohibited.

2.3. To properly react to the current instable situation and ensure compliance with the current EU legal framework on sanctions against Russia and Belarus, Italian and EU companies doing business with such countries – whether they have ongoing contracts or are currently negotiating new contracts – should take the following actions:

- a) Carry out an accurate due diligence on all their contractual counterparties (including banking intermediaries) to check whether there are any customers targeted by sanctions, which could jeopardize the fulfillment of the contract or the execution of the payment.
- b) Carry out an accurate due diligence on the products to be exported and their customs classification to check whether the same are prohibited or subject to restrictive measures or subject to appropriate authorization, with particular reference to dual-use or potentially dual-use goods.
- c) Carefully check whether their commercial relationships with Russian or Belarus counterparts are affected by financial restrictive measures to avoid to the maximum extent possible that the existence of such restrictions may result in the blocking of bank payments and may thus jeopardize the receipt of payments from customers.
- d) Ensure that supply contracts with customers include appropriate safeguarding clauses against the risk that counterparts undertake any action that may cause a breach by the European supplier of the EU Regulations on sanctions and restrictive measures imposed against Russia and Belarus.
- e) Implement and strictly follow internal business procedures and programs to ensure compliance with the current sanctions legal framework to avoid the risk of violating existing commercial and financial ban and/or restrictions.

June 17, 2022

**TRADE AND SANCTIONS TARGETING RUSSIA AND BELARUS AS A
RESULT OF THE WAR IN UKRAINE**

Robert B. Silverman and William F. Marshall¹

In response to the Russian invasion of Ukraine, major world leaders, including the United States and the European Union, have imposed sweeping economic sanctions and export control restrictions on Russia and Belarus, targeting key industries, entities, and individuals.

The United States has utilized a wide range of regulatory enforcement agencies and measures, including export controls from the Department of Commerce's Bureau of Industry and Security ("BIS"), sweeping economic sanctions from the Department of Treasury's Office of Foreign Assets Control ("OFAC"), and significant enforcement activity, including a newly established U.S. Department of Justice ("DOJ") task force dedicated to holding corrupt Russian oligarchs accountable. This memorandum addresses the current state of the U.S. sanctions on Russia and Belarus, as of June 17, 2022.

CRITICAL POINTS

- The United States, in conjunction with its allies in Europe and Asia, have issued unprecedented financial sanctions, export controls and import embargoes against Russia and Belarus as a result of the Russian invasion of Ukraine.

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- The United States has banned the importation of Russian oil, revoked permanent normal trade relations with both Russia and Belarus as well as substantially expanded previous economic sanctions against both countries. Through the issuance of a series of Executive Orders, the United States has: prohibited all new investment in, import or export from or destined to the DNR and LNR regions; and prohibited certain imports from and new investments in Russia of certain oil and gas products and prohibited the importation of fish, seafood, alcoholic beverages, and non-industrial diamonds among other potential import bans under consideration.
- BIS has implemented significant export control restrictions on Russia and Belarus under the Export Administration Regulations (“EAR”), including new licensing requirements, foreign-direct product and military end-user rules, and BIS Entity List additions.
- The U.S. has imposed prohibitions against the export and re-export to Russia and Belarus of “luxury goods.”
- The U.S. has imposed sanctions in response to human rights violations and sanction evasion by Russia and Belarus and affiliated persons and entities.
- OFAC has imposed various financial sanctions targeting Russian financial institutions, state-owned enterprises, and certain Russian individuals. OFAC has also placed various major Russian banks on the Specially Designated Nationals and Blocked Persons List (SDN).
- The Department of Justice has launched Task Force KleptoCapture, which serves as an interagency task force dedicated to the enforcement of the sweeping economic sanctions, export restrictions, and other measures the U.S. has imposed on Russia and Belarus.

I. ECONOMIC MEASURES BANNING CERTAIN IMPORTS AND NEW INVESTMENTS IN RUSSIA

On Friday, April 8, President Biden signed into law the revocation of permanent normal trade relations with Russia and Belarus.² As a result of this legislation, H.R. 7108, from April 9, 2022, imports originating from Russia and Belarus are no longer eligible for the “most-favored

² H.R. 7108, April 8, 2022, signed by President Joseph R. Biden, Jr. available at <https://www.whitehouse.gov/briefing-room/legislation/2022/04/08/bills-signed-h-r-6968-and-h-r-7108/>

nation" (MFN) tariff rates that the United States currently applies to imports from all WTO Member countries. Rather, imports originating from Russia and Belarus are now subject to the duty rates set forth in "Column 2" of the Harmonized Tariff Schedule of the United States, which average approximately 32.3% compared to an average MFN rate of 3.3%.

H.R. 7108 also authorizes the President to increase the rates of duty on products of Russia and Belarus above the levels set forth in Column 2. This remains a strong possibility in this case as many of the significant items imported from Russia have column 2 rates of zero or low column 2 rates. Belarus is not a WTO member and does not have permanent normal trade relations with the U.S. but has enjoyed the MFN rate through Presidential waivers previously issued. The President's authority to proclaim such duty increases expires on January 1, 2024.

Also on April 8, president Biden signed into law the "Ending Importation of Russian Oil Act". This act prohibits the importation of energy products from Russia. Specifically, the bill prohibits the importation of Russian products that are classified under chapter 27 of the Harmonized Tariff Schedule ("HTS") which includes mineral fuels, mineral oils and products of their distillation, bituminous substances, and mineral waxes.³ This act significantly expands prior measures taken in Executive Order 14066. Under the act, the president may permit importation of energy products if certain conditions are met. Congress can also overturn the President's

On February 21, 2022, the President issued Executive Order 14065, expanding the scope of the U.S. economic sanctions imposed in 2014 relating to Russia's annexation of Crimea to

³ H.R. 6968, April 8, 2022, signed by President Joseph R. Biden, Jr. available at <https://www.whitehouse.gov/briefing-room/legislation/2022/04/08/bills-signed-h-r-6968-and-h-r-7108/>

cover the Donetsk People’s Republic (“DNR”) and Luhansk People’s Republic (“LNR”) territories in Ukraine, now deemed “independent” by Russia. The Executive Order prohibits all new investment in the DNR and LNR regions by any U.S. persons, wherever located, along with the import or export of any goods, services, or technologies from or to those regions. It also prohibits any action by a U.S. person, wherever located, to approve, finance, facilitate, or guarantee any transaction involving the DNR and LNR by a foreign person where the transaction would otherwise be prohibited under the Executive Order by a U.S. person or within the U.S.

On March 8, 2022, President Biden signed into effect Executive Order 14066, prohibiting certain imports from and new investments in Russia in response to the nation’s continued efforts to undermine the sovereignty and territorial integrity of Ukraine. The Executive Order also prohibited the importation into the U.S. of certain oil and gas products of Russian origin, including: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products. The Order further prohibits any new U.S. investment in Russia’s energy sector. This prohibition has now been codified into law following the April 8 signing of H.R. 6968 the “Ending Importation of Russian Oil Act”.⁴

On March 11, 2022, President Biden issued Executive Order 14068, prohibiting the importation of a wide range of products of Russian origin, including: fish, seafood, and preparations thereof; alcoholic beverages; non-industrial diamonds; and any other products of Russian origin as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce. U.S. Customs and Border Protection (“CBP”)

⁴ <https://www.whitehouse.gov/briefing-room/legislation/2022/04/08/bills-signed-h-r-6968-and-h-r-7108/>

coordinated with OFAC, and on March 25, 2022, all shipments of the sanctioned imports were effectively prohibited.

II. EXPORT CONTROL RESTRICTIONS ON RUSSIA AND BELARUS

A. New BIS License Requirements

BIS has implemented significant export control restrictions on Russia and Belarus under the U.S. Export Administration Regulations (“EAR”), including new licensing requirements, foreign-direct product and military end-user rules, and BIS Entity List additions. Except as noted below, the restrictions under the EAR apply only to exports from the United States, or to re-exports of goods located in foreign countries that are “items subject to the EAR.” Items subject to the EAR include: any items currently in the U.S. (including foreign-made items), in a U.S. foreign trade zone, or moving through the U.S.; U.S. origin items, wherever located; foreign-made items with more than a *de minimus* amount of “controlled” U.S. content;⁵ and any foreign-produced items that are the “direct product” of certain U.S. software or technology or produced by certain related parts or major components. Consequently, a foreign entity (non-US person) located abroad is prohibited from re-exporting a US origin item in contravention of these new licensing requirements. However, if the goods are not U.S. origin or contain more than a *de minimus* amount of controlled U.S.-origin content, then the new restrictions under the EAR do not apply to goods located overseas.

⁵ In this context, “controlled” is defined as any item requiring a license to be exported to its destination. For foreign-made items, the “*de minimus*” requirement is satisfied when the item contains more than 25% controlled U.S. content.

Initially, BIS revised the EAR to add new license requirements for exports of all items classified under Export Control Classification Numbers (“ECCNs”) in Categories 3 through 9 of EAR’s Commerce Control List (“CCL”) to Russia and Belarus.⁶ On April 8, the Department of Commerce announced the expansion of these new license requirements to all items on the CCL⁷. In addition to the comprehensive license requirements, BIS has also limited the license exceptions available. As of April 8, the remaining available license exceptions are: (1) TMP for items for use by news media; (2) GOV for government related items; (3) TSU for software updates for civil end users that are subsidiaries or joint of ventures of companies headquartered in the United States or country or countries from Country Groups A:5 and A:6; (4) BAG, excluding firearms and ammunition, which relates to personal baggage accompanying passengers; (5) AVS, except for aircraft registered in, owned, or controlled by, or under charter or lease by Belarus or a national of Belarus following the April 8 rule; (6) CCD; and (10) ENC for exports and re-exports to, and transfers in, Belarus and Russia for (i) civil end-users that are wholly-owned US subsidiaries, (ii) foreign subsidiaries of US companies that are joint ventures with other US companies, (iii) joint ventures of US companies with companies headquartered in countries from Country Group A:5⁸ and A:6⁹ in supplement 1 to Part 740 of the EAR, (iv) the wholly-owned subsidiaries of companies headquartered in countries from Country Group A:5

⁶ See EAR § 746.8(a)(1).

⁷ See, <https://www.commerce.gov/news/press-releases/2022/04/commerce-department-expands-restrictions-exports-russia-and-belarus>

⁸ 15 C.F.R. § 740, Supplement 1: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Ireland, Italy, Japan, South Korea, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom,

⁹ *Id.*: Albania, Cyprus, Israel, Malta, Mexico, Singapore, South Africa, and Taiwan.

and A:6, or (v) joint ventures of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6.

B. Foreign Direct Product and Military End-User Rules

Additionally, BIS created two new Foreign Direct Product Rules (“FDP Rules”) that target Russia and Belarus generally as well as Russia/Belarus-military end users.¹⁰ The Russia/Belarus FDP Rule imposes a license requirement for the reexport, export from abroad, or transfer (in-country) of any foreign-produced items subject to the EAR under the Russia FDP Rule to any destination. This requirement does not apply to items with a designation of “EAR 99”.

In conjunction with the Russia/Belarus FDP Rule, BIS created a new Russia/Belarus-Military End User FDP Rule. This new Russia/Belarus-military end user FDP rule imposes a license requirement on foreign-produced items that are either the direct product of certain U.S.-origin software or technology subject to the EAR or produced by certain plants or major components thereof which are the direct product of certain U.S.-origin software or technology subject to the EAR when it is known that will be incorporated into or will be used in the production, or development of any part or component or equipment. These items are now subject to BIS license requirements when it is known that the foreign-produced item is destined for Russia or Belarus, or that it will be incorporated into or used in the development of any part, component, or equipment produced, purchased or ordered by any entity with a footnote 3

¹⁰ See EAR § 734.9.

designation in the license requirement column of the entities list.¹¹ Notably, the product scope of the Russia/Belarus-Military End User FDP rule includes items designated EAR99 that are a direct product of technology or software subject to the EAR and specified in any ECCN in product groups D or E in any categories of the CCL or produced by a complete plant or major component of a plant when the plant or major component of a plant is itself is a direct product of U.S.-origin technology or software subject to the EAR that is specified in any ECCN in product groups D or E in any categories of the CCL.

Various U.S. allies are also implementing similar export control measures toward Russia and Belarus, making them exempt from some of the licensing requirements imposed under the FDP Rules when goods are exported to these countries. These countries include: all EU countries, Australia, Canada, Japan, New Zealand, and the U.K.

C. Additions to BIS's Entity List and Regional Export Restrictions¹²

On February 24¹³ and March 2¹⁴ making new rules on Russia and Belarus respectively, BIS designated 47 additional Russian entities which were determined to be military end-users and 2 Belarusian military end-users for which the foot note 3 designation applies. On March 3, 91 new designations were made, including: 1 entry in Belize, 3 entries in Estonia, 1 entry in Kazakhstan, 1 entry in Latvia, 2 entries in Malta, 81 entries in Russia, 1 entry in Singapore, 1

¹¹ Footnote 3 to the BIS Entities List previously applied only to Huawei and certain Huawei subsidiaries prior to this new Russia-military end user FDP rule.

¹² Consolidated Screening List of all entities identified by U.S. government agencies is maintained by the Dept. of Commerce available at <https://www.trade.gov/data-visualization/csl-search>

¹³ 87 Fed. Reg. 12,226 (Bureau of Industry & Security, March 3, 2022)

¹⁴ 87 Fed. Reg. 13,048 (Bureau of Industry & Security, March 8, 2022)

entry in Slovakia, 2 entries in Spain, and 3 entries in the U.K. Restrictions imposed by the Entity List subject U.S. persons to BIS licensing requirements for the exportation, re-exportation, or transfer of EAR-controlled items to any foreign person or entity designed on the List.

On April 1, BIS added a further 120 Russian and Belarussian entities to the Entities List. Of those, 95 entities are being added with a footnote 3 designation because the End-User Review Committee (ERC) has determined they are military end users. The other 25 entities were added without such a military end-user designation. In addition to the several export controls on Russia and Belarus discussed above, BIS has imposed export restrictions on transactions involving Crimea, DNR, and LNR. Any export activity that involves these disputed regions is now subject to comprehensive restrictions by BIS, with limited exceptions.

On May 11, BIS published a new rule expanding the scope of Russian industry sector sanctions by imposing a license requirement for exports, reexports, or transfers (in-country) to and within Russia for additional items subject to the Export Administration Regulations (EAR). Specifically, 205 items, identified by Schedule B numbers or Harmonized Tariff Schedule subheadings at the 6 digit level and 478 corresponding 10-digit subheadings.¹⁵ The list consists of a wide range of machinery, parts, and related industrial items.

More recently, on June 2, BIS revised and clarified previous rulings extending license requirements to food and medicine designated as EAR99. Corresponding modifications to the Russian and Belarussian military and end users on the Entity list as a result of the new license

¹⁵ <https://www.federalregister.gov/documents/2022/05/11/2022-10099/expansion-of-sanctions-against-russian-industry-sectors-under-the-export-administration-regulations>

requirement.¹⁶ Also on June 2, the U.S. Commerce Department through BIS also added 71 new entities located in Russia and Belarus to the Entities List. The total number of parties added to the Entities List now stands at 322. Of the 71 new entities added, 66 entities were determined to be ‘military and end users’ and are subject to the licensing requirements of the EAR under the FDP rules.

D. Export Controls on Oil and Gas Extractions

On March 2, 2022, the Biden Administration released a statement announcing that the Department of Commerce would impose additional export control restrictions on oil and gas extraction equipment, targeting Russia’s oil refining capacity. On March 3, 2022, BIS published amendments to the EAR implementing such oil sector sanctions, specifying certain oil refinery equipment by their respective Harmonized Tariff Schedule codes (“HTS codes”) that now require a license for the export, re-export, and in-country transfer to or within Russia, regardless of the equipment’s intended end-use.

E. Luxury Goods

Executive Order 14068 also imposed extensive sanctions on the export or re-export to, and transfers, within Russia and Belarus, of certain “luxury goods”, as well as exports, re-exports or transfers in country to certain Russian and Belarus individuals. On March 11, 2022, BIS issued correlating regulations, identifying the list of luxury goods that are subject to export license requirements. With these regulations, BIS implemented two new license requirements:

¹⁶ <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3005-2022-06-02-bis-press-release-russia-revisions-and-clarifications-rule/file>

one applying to luxury goods subject to BIS’s Export Administration Regulations (“EAR”) that are destined for Russia or Belarus and the other applying to such items that are destined for Russian and Belarusian oligarchs and malign actors, regardless of their geographical location.

BIS defined “luxury goods” by listing all such goods by Harmonized Tariff Schedule (HTS) or corresponding Schedule B code. The affected HTS codes include, among other things: beverages, spirits, and vinegar; tobacco and manufactured tobacco substitutes; essential oils and resinoids; perfumery; plastics and articles thereof; articles of leather; furskins and artificial fur; wood and articles of wood; silk; wadding, felt and nonwovens; carpets and other textile floor coverings; special woven fabrics; articles of apparel and clothing accessories, knitted or crocheted; other made up textile articles; footwear, gaiters and the like; headgear and parts thereof; prepared feathers and down; artificial flowers; articles of human hair; ceramic products; glass and glassware; natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewelry; coin; nuclear reactors, boilers, machinery and mechanical appliances; certain vehicles; clocks and watches; musical instruments; and works of art, collectors’ pieces and antiques.¹⁷

These regulations apply to any listed product that is an “item subject to the EAR” and is destined for Russia or Belarus, regardless of whether it is a direct or indirect export. For goods located overseas, if they are not “items subject to the EAR” (e.g., foreign made items with less than de minimis US content), then these EAR regulations do not apply. We note that the language of the luxury goods prohibition contained in EO 14068 is unclear as to the scope of the

¹⁷ The complete list of luxury goods subject to the sanctions can be found in the March 11, 2022, Federal Register notice, located at: <https://www.federalregister.gov/documents/2022/03/16/2022-05604/imposition-of-sanctions-on-luxury-goods-destined-for-russia-and-belarus-and-for-russian-and>.

prohibition. On its face, without reference to BIS's Final Rule, the prohibition in EO14068 may extend to any such item listed in Supplement 5, whether or not subject to the EAR, when a US person is involved in the export or re-export wherever that US person may be located.

Additionally, BIS issued a final rule implementing strict export controls on commodities destined for Russia in order to restrict Russia's access to items that could potentially aid in its aggression against Ukraine. These export control measures were implemented in its February 24 *Federal Register* notice.¹⁸ The list of commodities includes, among other things: aromatic hydrocarbon production units; atmospheric-vacuum crude distillation units; catalytic reforming/cracker units; delayed cokers; flexicoking units; hydrocracking reactors and reactor vessels; hydrogen generation technology and recovery and purification technology; hydrotreatment technology/units; naphtha isomerization units; polymerization units; refinery fuel has treatment and Sulphur recovery technology; solvent de-asphalting units; Sulphur production units; Sulphuric acid alkylation and regeneration units; thermal cracking units; transalkylation units; visbreakers; and vacuum gas oil hydrocracking units.¹⁹

¹⁸ 87 *Fed. Reg.* 12,226 (Bureau of Industry & Security, March 3, 2022)

¹⁹ The complete list of commodities can be found in the March 8, 2022 Federal Register Notice, located at: <https://www.federalregister.gov/documents/2022/03/08/2022-04912/expansion-of-sanctions-against-the-russian-industry-sector-under-the-export-administration>.

III. U.S. SANCTIONS ON RUSSIAN FINANCIAL INSTITUTIONS, MAJOR STATE-OWNED ENTERPRISES, AND RUSSIAN INDIVIDUALS

The U.S. Department of Treasury, through OFAC, has also imposed various financial sanctions targeting Russian financial institutions, state-owned enterprises, and certain Russian individuals. OFAC has placed various major Russian banks on the SDN List, which is a list of individuals, companies, groups, and entities owned or controlled by, or acting for or on behalf of, targeted countries (in this case, Russia and Belarus). The assets of persons and entities on the SDN list are “blocked,” and U.S. persons are generally prohibited from dealing with them.

A. SDN Additions: Russian and Belarusian Financial Institutions²⁰

To date, notable Russian financial entities on the SDN list include: The Central Bank of Russia, Vnesheconombank (“VEB”), Promsvyazbank, VTB Bank, Bank Otkritie, Sovcombank OJSC, Novikobank, Sberbank, Alfa-Bank, Gazprombank, Sberbank and Alfa-Bank and Moscow Industrial Bank. Notable Belarusian entities on the list include: The Belarusian Bank of Development and Reconstruction Belinvestbank JSC, and Bank Dabrabyt JSC. The list also includes the blocked entities’ majority-owned subsidiaries. These additions to the SDN list mean that all U.S. persons are prohibited, in any way, from dealing or transacting with these financial institutions and their majority-owned subsidiaries, absent express authorization from OFAC. Any non-U.S. persons are also prohibited from dealing or transacting with these institutions and subsidiaries if such activities have a direct or indirect nexus with the U.S. Additionally, non-U.S. financial institutions and companies can potentially be subject to secondary sanctions, including

²⁰ The Consolidated Screening List may be accessed at <https://www.trade.gov/data-visualization/csl-search>

being placed on the SDN list, if they conduct “significant” transactions or dealings with the sanctioned entities.

On April 20, pursuant to Executive Order 14024, the Department of State has designated 16 Bank Otkritie Board members for being a “member of the board of directors” of a blocked entity²¹. On May 8, OFAC designated the executives of Sberbank, Gazprombank, and Moscow Industrial Bank on the SDN List.

B. SDN Additions: Russian and Belarusian Government Officials, State-Owned Enterprises, Oligarchs, and the Energy and Defense Industrial Bases

OFAC has also targeted major Russian and Belarusian government officials, oligarchs, and their family members, in addition to various entities in both nations’ defense and energy industries. Notable sanctioned government officials include Russian President Vladimir Putin, Foreign Minister Sergei Lavrov, and various other Russian security council members and Putin facilitators. On June 2, OFAC designated both Maria Zakharova, the spokesperson of the Russian Ministry of Foreign Affairs, and Sergei Gorkov, head of RosGeo, for their involvement with the Government of the Russian Federation²². OFAC has also sanctioned several Russian elites and their family members, including Alisher Usmanov, Sergei Ivanov, Nikolai and Andrey Patrushev, and Igor and Ivan Sechin, in addition to the Russian financial sector leaders, including Alexander Vedyakhin and Andrey Puchkov. Most recently, OFAC has sanctioned Putin’s daughters, along with Lavrov’s wife and daughter. OFAC has also designated various Belarusian

²¹ See, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220420>

²² See, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220602>

individuals and entities as SDNs, including Belarusian offices and elites and major Belarusian defense companies. Most recently, pursuant to E.O. 14024, OFAC has sanctioned God Nisanov, Evgeny Novistsky, and Alexey Mordashov, three Russian elites with close ties to the Russian Federation. Mordashov's wife and two adult children have also been sanctioned along with four of his companies: Severgroup, Severstal, Algoritm, and Nord Gold.

On April 6, 2022, OFAC added two of Russia's largest banks, Public Joint Stock Company Sberbank of Russia ("Sberbank") and Joint Stock Company Alfa Bank ("Alfa-Bank"), and their subsidiaries to the SDN List. OFAC also issued 3 new and 3 amended Russia-related General Licenses, and added several other parties to the SDN List. President Biden also issued a new Executive Order 14071, "Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression" ("New Investment Ban EO"). On May 8, OFAC added the executives and board members of Sberbank, Gazprombank, and Moscow Industrial Bank as well as 10 of its subsidiaries to the SDN list²³.

Recently, on June 6, the U.S. Department of the Treasury clarified that the "new investment" prohibitions of E.O 14066, 14068, and 14071, prohibit U.S. persons from purchasing debt and equity securities issued by an entity in the Russian Federation. Moreover, the prohibitions also extend to U.S. financial institutions from participation in the secondary market for ruble or non-ruble denominated bonds issued after March 1, 2022. However, it was noted that transactions in the secondary market for debt or equity of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of

²³ See, <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220508>

Finance of the Russian Federation (“Directive 4 entities”) were not prohibited provided that no Directive 4 entity is a counterparty to such transaction.²⁴

With respect to the new and amended General Licenses, OFAC issued General License 21, which authorizes, subject to certain conditions, US persons to engage in transactions ordinarily incident and necessary to the wind down activities involving Sberbank CIB USA, Inc., or any entity in which Sberbank CIB USA, Inc., directly or indirectly, holds a 50 percent or greater interest, through 12:01 am ET, June 7, 2022. The second General License 22 issued by OFAC authorizes, subject to certain conditions, US persons to engage in transactions ordinarily incident and necessary to the wind down activities involving Sberbank, or any entity in which Sberbank, directly or indirectly, holds a 50 percent or greater interest, through 12:01 am ET, April 13, 2022. We note, however that this General License does not authorize transactions prohibited by Directive 2 issued by OFAC under Executive Order 14024.²⁵ Finally, General License 23 authorizes, subject to certain conditions, US persons to engage in transactions ordinarily incident and necessary to the wind down activities involving Alfa-Bank, or any entity in which Alfa-Bank, directly or indirectly, holds a 50 percent or greater interest, through 12:01 am ET, May 6, 2022.

On April 6, OFAC also amended General License 8B, which amends and replaces previous General License 8A, adding Alfa-Bank to the list of entities with whom transactions “related to energy,” as defined in General License 8B, are authorized until June 24, 2022.²⁶

²⁴ <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1005>

²⁵ *Directive 2: Prohibitions related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*, available at https://home.treasury.gov/system/files/126/correspondent_accounts_directive_2.pdf

²⁶ April 6, 2022 OFAC notice available at <https://home.treasury.gov/news/press-releases/jy0705>

General License 9B, which amends and replaces previous General License 9A, continues to authorize transactions that are ordinarily incident and necessary to dealings in debt or equity involving certain sanctioned banks, and adds Alfa-Bank within scope (through 12:01 am ET, June 30, 2022) subject to certain conditions. Finally, General License 10B, amends and replaces previous General License 10A and continues to authorize transactions ordinarily incident and necessary to the wind down of certain derivative contracts involving certain sanctioned banks, and adds Alfa-Bank within scope (through 12:01 am ET, June 30, 2022) subject to certain conditions.

Also, on April 6, the white issued an EO 14071²⁷ banning new investment in and certain services to the Russian Federation, which prohibits “new investment” in Russia by a US person, wherever located, although the term “new investment” is not defined. The Investment and Services Ban EO also authorizes OFAC to implement, in consultation with the US State Department, prohibitions on the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a US person, wherever located, of any category of services to any person located in Russia. Any approval, financing, facilitation, or guarantee by a US person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited if performed by a US person or within the United States, is prohibited.²⁸ In order to target Russian oil and energy industries, OFAC imposed sanctions against Russia’s Nord Stream 2 pipeline project, spanning from Russia to Germany, which was

²⁷ See <https://www.govinfo.gov/content/pkg/FR-2022-04-08/pdf/2022-07757.pdf>

²⁸ Investment and Services Ban EO: <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/06/prohibiting-new-investment-in-and-certain-services-to-the-russian-federation-in-response-to-continued-russian-federation-aggression/>

pending commercial operations. OFAC expressly designated the project's managing directors as SDNs along with Nord Stream 2 AG, a Swiss entity owned by Russian-owned gas company Gazprom, which built and manufactured the pipeline in recent years.

Again, on May 8, OFAC added additional individuals and entities to the SDN list as well as certain General Licenses consistent with such additions²⁹. Of note is a new General License 25³⁰ that authorizes all transactions ordinarily incident and necessary to the receipt or transmission of telecommunications involving the Russian Federation that are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 ("RuHSR"), are authorized. As well as the exportation or re-exportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, wherever located, to the Russian Federation of services, software, hardware, or technology incident to the exchange of communications over the internet, such as instant messaging, videoconferencing, chat and email, social networking, sharing of photos, movies, and documents, web browsing, blogging, web hosting, and domain name registration services, that is prohibited by the RuHSR. General License 25 does not authorize the payment to or through accounts held within banks subject that have been added to the SDN list pursuant to previous Executive Orders.

On May 8, further designations were made against 7 entities and 69 vessels connected to maritime defense logistics including the Ministry of Defense's shipping company. Fertoing, a specialized marine engineering company, was also blocked from accessing critical U.S.³¹.

²⁹ For the most up-to-date list of entities and individuals affected, please check the Consolidated Screening List available at <https://www.trade.gov/data-visualization/csl-search>

³⁰ General License 25 (April 7, 2022) available at https://home.treasury.gov/system/files/126/russia_gl25.pdf

³¹ <https://home.treasury.gov/news/press-releases/jy0707>

technologies. The Treasury Department designated Russian state-owned and controlled media channels Russia-1, Channel One, and NTV. These channels have been a large source of both disinformation and revenue collection for the Russian state. OFAC issued General License 33, which allows for the wind-down of operations, contracts, or other agreements which included these media entities.

C. Other Financial Sanctions

The U.S. has placed a ban on the export, re-export, sale or supply, either directly or indirectly, from the U.S. or by a U.S. person, of U.S. banknotes to Russia. This also includes the sale or distribution of crypto and virtual currency. Pursuant to Executive Order 14024, OFAC has designated Bitriver AG and its Russian 10 based subsidiaries. OFAC and the Treasury Department are taking action to ensure that alternative assets such as cryptocurrencies do not become a mechanism for the Putin regime to avoid or offset the impact of sanctions.

IV. HUMAN RIGHTS VIOLATIONS AND SANCTIONS EVASION ENFORCEMENT ACTIVITY

A. Human Rights Violations

The United States is taking additional action to promote accountability for human rights abuses and violations against Ukrainian people in towns and cities occupied or under siege. On April 20, 2022, visa restrictions have been imposed on 587 Russian individuals pursuant to a new policy under Section 212(a)(3)(C) of the Immigration and Nationality Act.

The policy, originally announced March 15, generally includes Russian government officials involved in silencing dissent in Russia and other countries. As of April 20, additional

action has included Duma members as well as family members who may fall under the policy.

The United States is acting against 48 individuals and 10 purported “authorities” of the DNR and the LNR pursuant to the violation of Section 212(a)(3)(C) for their actions in prison facilities and places of unofficial detention in Russia-controlled areas of the Donbas since 2014. In addition, 17 individuals are being held responsible for undermining democracy in Belarus pursuant to Presidential Proclamation 8015 for intimidation, harassment, and repression of strikers supporting a pro-democracy movement, and the expulsion of students for participating in peaceful pro-democracy protests.

On May 8, an additional 2,600 Russian and Belarusian military officials have been designated for their involvement in human rights abuses, violations of international humanitarian law, or public corruption in Ukraine.

Three named Russian officials, Khusein Merlovich Khutaev, Nurid Denilbekovich Salamov, and Dzhabrail Alkhazurovich Akhmatov were publicly designated for their involvement in gross violation of human rights pursuant to Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2022. In addition to sanctions issued to Belarus in light of their involvement Kremlin’s war, the United States continues to hold Belarusian officials responsible for the continued political oppression in Belarus. Three new Belarusian officials have been named pursuant to Section 7031(c) as of May 8, Dzmitry Pailichenka, Yury Sivakov, and Viktor Sheiman, this restriction prohibits entry into the United States for them and their immediate family members.

B. Sanction Evasion

In an attempt to deter sanctions evasion, OFAC has publicly designated entities and individuals involved in attempting to evade sanctions imposed on Russia by the U.S. and their international partners. Namely, OFAC is designating Russian commercial bank Transkapitalbank and a global network of more than 40 individuals and entities led by Oligarch Konstantin Malofeyev. Included in these entities are organizations whose primary mission is to facilitate sanctions evasion for Russian entities. In order to further their mission against sanction evasion, on May 8, the Treasury Department specified that under E.O. 14071, U.S. persons are prohibited from providing accounting, trust and corporate formation, and management consulting services to any person located in the Russian Federation³².

C. SIGNIFICANT ENFORCEMENT ACTIVITY

1. DOJ Task Force

On March 2, 2022, the DOJ announced its launch of Task Force KleptoCapture, which serves as an interagency task force dedicated to the enforcement of the sweeping economic sanctions, export restrictions, and other measures the U.S. has imposed, along with its allies and partners, on Russia and Belarus. The DOJ stated that the purpose of KleptoCapture is to ensure that the full effect of these measures, designed to isolate Russia from global markets and impose punitive costs for its actions of war, by targeting the crimes of Russian officials, government-aligned elites, and those who aid or conceal related unlawful conduct.

³² <https://www.state.gov/targeting-russias-financial-defense-and-marine-sectors-and-promoting-accountability-for-russian-and-belarusian-military-officials/>

The Task Force will be run by the Office of the Deputy Attorney General and staffed with prosecutors, analysts, and professional staff across the DOJ who serve as experts in sanctions and export control enforcement, anticorruption, asset forfeiture, anti-money laundering, tax enforcement, national security investigations, and foreign evidence collection. KleptoCapture will leverage the DOJ's tools and authorities against any efforts to evade or undermine the economic actions taken by the U.S. government in response to Russia's military actions.

2. REPO Task Force

The Department of Treasury and the DOJ have joined the Russian Elites, Proxies, and Oligarchs (REPO) Task Force, an international enforcement mechanism designed to ensure that the measures against Russia are carried out to the fullest extent. Other nations with a significant presence on the Task Force include: Australia, Canada, the EU, France, Germany, Italy, Japan, and the United Kingdom.

D. BIS Enforcement Action

On April 7, 2022, BIS announced their first enforcement action in response to the Russian invasion of Ukraine. This action suspended the export privileges of three Russian airlines Aeroflot, Azur Air, and Utair by issuing Temporary Denial Orders ("TDO") due to ongoing export violations related to export controls on Russia previously imposed by BIS. The action terminates the rights of these airlines to participate in transactions subject to the EAR, including exports and reexports from the U.S. These TDOs are issued for 180-days and may be renewed. On April 21, BIS issued a TDO temporarily denying all export privileges for the

Russian cargo aircraft carrier Aviastar due to ongoing violations. More recently, on May 20, BIS issued a TDO against another Russian airline, Rossiya.

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Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP (“GDLSK”) is a limited liability partnership practicing customs and international trade law in New York, Washington, D.C., California, and Wisconsin.

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