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Russia/Ukraine Crisis: Latest Round of U.S. Sanctions

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On March 11, in coordination once again with G7 countries and the European Union, the Biden administration announced another round of significant new sanctions and other trade-related restrictions in response to Russia's invasion of Ukraine. The new measures—which include sanctions, export and import restrictions, and revocation of trade privileges—represent a marked escalation in financial and trade restrictions targeting Russia.

Overview of New Actions

President Biden issued an executive order, "Executive Order on Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression" (the "EO"), that introduces new restrictions targeting Russia.

- Authority for Russian Investment Ban: The EO creates a legal authority for the Secretary of the Treasury, in consultation with the Secretary of State, to restrict future U.S. investment in any sector of the Russian economy. As of this Alert, no additional sectors have been targeted for new sanctions.[1] However, the EO authorizes the Treasury Department to escalate sanctions against Russia's economic sectors if the situation in Ukraine continues to deteriorate. Notably, the EO does not define "new investment." In the context of prior sanctions authorities, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") has interpreted the term "investment" broadly.
  - For example, as used in section 233 of the Countering America's Adversaries Through Sanctions Act (CAATSA), OFAC "interpret[s] the term 'investment' broadly as a transaction that constitutes *a commitment or contribution of* funds *or other assets* or a loan or other extension of credit to an enterprise." FAQ 540 (emphasis added).
  - Similarly, under EO 14066, OFAC guidance defines "new investment in the energy sector in the Russian Federation" as "*a transaction that constitutes a commitment or contribution of* funds *or other assets for*, or a loan or extension of credit to, *new energy sector activities*[.]" FAQ 1019 (emphasis added).
  - Although these definitions appear closely tethered to financing activities, the references to "assets"—which can have both financial and non-financial connotations—may cause relevant industry actors to proceed cautiously, absent further guidance from OFAC.
- Import Ban: The EO prohibits the import of goods from various sectors of Russia's economy into the United States, including fish and seafood (and preparations thereof), alcoholic beverages (including, *inter alia*, spirits and vodka), and non-industrial diamonds (see FAQ 1027). In connection with the EO, OFAC published Russia-related General License (GL) 17, authorizing the import of covered products through 12:01 a.m. EDT, March 25, 2022, provided the underlying agreement predates the issuance of the EO. This restriction builds upon EO 14066, which bans the importation of Russian-origin crude oil, petroleum, petroleum fuels, oils, and products of their distillation, liquefied natural gas, coal, and coal products. By banning the import of additional major Russian exports, the EO will further restrict trade between the United States and Russia (and foreseeably will result in significant supply chain disruption for some U.S. businesses). In addition, the EO provides that the import restriction can be extended to additional Russian Federation origin products.
- Export Ban: The EO prohibits the export of luxury items—such as high-end watches, luxury vehicles, high-end apparel, high-end alcohol, and jewelry—from the United States or by a U.S. person to any person located in the Russian Federation. As with the import ban, the EO states that the export ban can be extended to cover to additional products. The EO does not define "luxury items," but OFAC subsequently clarified that these restrictions would be imposed by the Bureau of Industry and Security ("BIS") within the U.S. Department of Commerce. BIS issued a rule

[1] Pursuant to Executive Order 14066 ("EO 14066") issued March 8, U.S. persons already are prohibited from making (or facilitating) new investments in Russia's energy sector.

imposing licensing requirements—with a license policy of denial—for the export of luxury goods to (1) Russia or Belarus; or (2) Russian or Belarusian oligarchs, wherever located, that have been designated as sanctioned parties by OFAC. BIS's rule includes a lengthy description of the items—as determined by their Schedule B classification, and in some cases with value limitations—that qualify as "luxury goods." Parties selling U.S. spirits, tobacco products, clothing items, jewelry, vehicles, and antique goods may now be restricted from selling these products to Russia.

- Additional Banking Restrictions: The EO prohibits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a U.S. person of U.S. dollar-denominated banknotes to the Government of the Russian Federation or any person located in the Russian Federation, further restricting Russia's access to the global financial system. In connection with the EO, OFAC issued Russia-related General License (GL) 18 authorizing, *inter alia*, transactions ordinarily incident and necessary to the transfer of U.S. dollar-denominated banknote noncommercial, personal remittances from the United States to individuals located in the Russian Federation.

As is typical, the EO prohibits any approval, financing, facilitation, or guarantee by a U.S. person of a transaction by a foreign person where the U.S. person would be prohibited from engaging in the underlying transaction directly.

In conjunction with the EO, President Biden announced a range of additional actions:

- Additional SDN Designations: In recent weeks, OFAC has designated dozens of Russian firms and high-net-worth individuals (and their adult family members) to its Specially Designated Nationals And Blocked Persons (SDN) List. The U.S. announced additional sanctions on Russian elites and their families, including Russian financier Yuri Kovalchuk, executives of sanctioned Russian banks, and Duma members who sponsored legislation to recognize the so-called Donetsk People's Republic and Luhansk People's Republic regions of Ukraine. U.S. persons are prohibited from engaging in virtually all business or dealings, directly or indirectly, with the newly designated parties (as well as any entities in which they own a majority interest).

- Most Favored Nation Status: The Biden administration announced plans to work with Congress to revoke Russia's "most favored nation" trade status; once implemented, the United States will no longer guarantee positive treatment of Russia in trade agreements and will be empowered to impose heightened duties on imports of Russian-origin goods (to the extent such imports are not prohibited under other authorities).

- Financing Restrictions: The Biden administration announced that the G7 will restrict Russia's access to financing from multilateral financial institutions, including the International Monetary Fund and the World Bank.

- Virtual Currency: The Biden administration announced that the Treasury Department will publish new guidance regarding application of Russia-related sanctions to virtual currency, underscoring the Department's efforts to monitor attempted circumvention of sanctions through the use of virtual currency.

Takeaways

The authority to ban new investment in any sector of the Russian economy presents the greatest potential impact for U.S. persons—depending on how aggressively it is exercised—and therefore is likely to command significant attention. However, each of the actions announced on March 11 has the potential to cause significant disruption for individual U.S. businesses and industries, with cascading effects for the broader global economy.

In conjunction with existing sanctions targeting major Russian financial institutions, the EO's restrictions and the other measures announced by President Biden will render continued business in or with Russia financially or operationally challenging for many U.S. firms. Importantly, however, the sanctions and export restrictions announced to date do not amount to a comprehensive embargo, and the Biden administration has additional avenues for increasing pressure on Russia if its invasion continues.