

U.S. Expands Russian Energy Sector Sanctions, Proposes Major Tariff Hikes on Nearly All Russian-Origin Goods & Imposes New Sanctions on Belarus

by Lawrence Ward, Dave Townsend, and T. Augustine Lo

As part of its expanding sanctions against Russia, the Biden Administration on March 8, 2022, issued Executive Order 14066 (“EO 14066,” see [here](#)) to bar imports into the United States of Russian crude oil, petroleum; petroleum distillates, liquefied natural gas, coal or coal products. EO 14066 also prohibits any new investment by U.S. persons in the Russian energy sector. In the previous week, the Biden Administration has also expanded export controls on oil refinery equipment destined for Russia and extended the recently expanded export controls on Russia to apply to Belarus as well.

In addition, on March 11, President Biden announced from the White House his intention to significantly increase the tariff rate on nearly all Russian goods imported into the United States in concert with similar tariff actions by other G-7 countries. The Biden Administration will now seek new legislation to revoke Russia’s Permanent Normal Trade Relations (“PNTR”) status under U.S. trade laws, which would subject Russian-origin goods to less favorable import tariff rates than the goods of almost all other countries in the world. Because multiple members of Congress in both parties already indicated support for such a measure in response to Russia’s invasion of Ukraine, this loss of PNTR status for Russia is likely to occur relatively soon.

Also on March 11, President Biden issued a new March 11 executive order (“March 11 EO”) to impose even harsher sanctions against Russia that are unique in the post-World War II period with respect to a major industrialized economy. The March 11 EO bans U.S. imports of Russian fish and seafood, alcoholic beverages, and non-industrial diamonds and also prohibits exports of luxury goods to Russia. Beyond that, March 11 EO contemplates the United States will prohibit new investments in sectors of the Russian economy beyond the energy sector already blocked by Executive Order 14066. The March 11 EO also prohibits the exportation of U.S. dollar banknotes to Russia.

President Biden and his Administration announced these latest actions as Russia’s invasion of Ukraine continues and Russian military action against Ukrainian cities intensifies. As we reported earlier [here](#) and [here](#), U.S. sanctions and export controls

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against Russia (and now Belarus) have grown rapidly since Russia began its military campaign in Ukraine. As a result, many companies across diverse sectors such as aviation, software, entertainment, media and retail have suspended their operations in Russia, terminated business relationships with Russian entities and severed ties with affiliates in Russia. However, the new U.S. economic sanctions and export controls launched by the Biden Administration target the Russian energy sector more broadly and more specifically than previous restrictions, given its outsized contribution to the domestic Russian economy, including new prohibitions against energy product imports from Russia and U.S. investments in that particular sector in Russia. The PNTR measure and March 11 EO are further evidence of the Administration's exceptional focus on applying unprecedented levels of economic pressure to meet the Russian attack on Ukraine. Moreover, companies should expect more such actions as both the Administration and Congress weigh even further punitive measures against Russia and Belarus.

U.S. Bans Imports of Russian Crude Oil, Petroleum and Petroleum Distillates, Liquefied Natural Gas, and Coal and Coal Products and Prohibits New U.S. Investment in Russian Energy Sector.

On March 8, President Biden signed EO 14066 to ban the import into the United States of crude oil, petroleum; petroleum distillates, liquefied natural gas, coal or coal products (collectively, the "Energy Products") that originate from Russia. In addition, EO 14066 prohibits any new investment by U.S. persons in the Russian energy sector. The U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC"), which is responsible for the implementation and enforcement of EO 14066, has provided guidance (summarized below) to clarify its key requirements.

The Biden Administration had previously rejected calls to bar imports of Russian crude oil and liquefied natural gas in the wake of Russia's invasion of Ukraine, citing concerns that such a ban would raise already-high energy prices and hurt U.S. consumers and that such action also lacked support from the European Union ("EU"). However, in announcing EO 14066, President Biden noted that the United States is far less reliant on Russian energy sources than Europe and stated the United States would take such action "when others cannot" because of their reliance on Russian energy supplies. Moreover, Congressional action to ban imports of Russian oil and gas appears imminent (see below), which could codify certain elements of EO 14066 into U.S. law.

However, it is important to keep some perspective on the ultimate economic significance of such U.S. import barriers against, say, Russian crude oil that would normally then be refined in the United States into other fuel products such as gasoline, diesel fuel or aviation fuel. For example, according to U.S. Government data, the United States imported about 27.7 million barrels of Russian crude oil in 2020, which made up only 1.3% of the nation's total crude oil imports that year. By way of comparison, the United States imported more than 1.3 *billion* barrels of crude oil from Canada, which represented some 61% of the 2.2 billion barrels of crude oil the United States imported in 2020. Expressed another way, according to U.S. Government data, Russia exported

roughly 5.5 million barrels *per day* of crude oil and condensates in 2020, so the United States imported only five days of Russia's total global exports of those products that year. All-in, in 2020, the U.S. imported roughly only about 7% of its total Energy Products from Russia.

In contrast, it is estimated that the EU imports roughly one-quarter of all its crude oil and about 40% of its natural gas from Russia, so the United States and the EU would naturally view the practicality of such a total ban on Energy Product imports from Russia quite differently. As much as the United States and the EU want to coordinate and adopt largely parallel sanctions on Russia to address the dire situation in Ukraine and as much as the EU would no doubt prefer to reduce its own energy dependence upon Russia at this point, the EU will likely have to chart its own more gradual reductions of such Russian energy imports to avoid unacceptable damage to its own national economies among the EU Member States.

Ban on Russian Energy Product Imports.

EO 14066 expressly prohibits the importation into the United States of Russian-origin "crude oil, petroleum, petroleum fuels, oils, and products of their distillation; liquefied natural gas, coal, and coal products." In a guidance published the same day, OFAC interprets this prohibition to apply to "goods produced, manufactured, extracted, or processed in the Russian Federation" unless they have been "incorporated or substantially transformed into a foreign-made product."¹

Although the term "substantial transformation" is not defined within OFAC's latest guidance, it is well-known in U.S. customs law, which holds that the origin of an imported article corresponds to the last place where it undergoes a change in its name, character and use through a significant manufacturing process. Accordingly, a U.S. importer of any manufactured Energy Product such as petroleum or petroleum distillates or coal products (if the importer does not already have such information) should undertake immediate due diligence on its supply chain to verify whether that product is of Russian-origin or instead has undergone a "substantial transformation" in a third country to confer a new country of origin that would avoid the EO 14066 ban. However, since crude oil, liquefied natural gas, and coal do not usually undergo any intermediate manufacturing process before importation, it is unlikely those particular Russian-origin Energy Products will be able to benefit from the "substantial transformation" exception in EO 14066.

The importation ban came into effect on March 8, 2022. The same day, OFAC issued a new General License 16 ("GL 16") to allow U.S. persons to wind-down their importation of Russian-origin Energy Products that are based on any pre-March 8, 2022 written agreements. The GL 16 wind-down window of 45 days will end at 12:01 a.m. U.S. Eastern Time on April 22, 2022. GL 16 also explicitly authorizes all transactions ordinarily incident and necessary to the importation of such covered Energy Products during this wind-down period, such as the payment for such purchases or the logistics for their shipment to the United States.

Ban on U.S. Investment in the Russian Energy Sector.

EO 14066 also prohibits U.S. persons from making any new investment in the energy sector of Russia unless otherwise authorized by OFAC. Although EO 14066 itself does not define what is considered the energy sector of Russia, OFAC broadly interprets that economic sector to include

the procurement, exploration, extraction, drilling, mining, harvesting, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, or transport of petroleum, natural gas, liquefied natural gas, natural gas liquids, or petroleum products or other products capable of producing energy, such as coal or wood or agricultural products used to manufacture biofuels, the development, production, generation, transmission or exchange of power, through any means, including nuclear, electrical, thermal, and renewable energy sources.²

OFAC's guidance also interprets "new investment" to mean "a commitment or contribution of funds or other assets for, or a loan or other extension of credit to, new energy sector activities (not including maintenance or repair) located or occurring" in Russia on or after March 8, 2022.³ OFAC further interprets a loan or extension of credit to include many diverse forms of financial transactions such as currency swaps, purchases of debt, purchases of loans made by another, sales of financial assets subject to repurchase, certain refinancing, issuance of standby letters of credit, and drawdowns on existing lines of credit. EO 14066's text does not seem to cover existing investments held by U.S. persons, and it does not clearly cover trading in publicly-traded shares, but OFAC may issue further guidance on these subjects. (Other future U.S. person investments in sectors of the Russian economy outside the energy sector have also been addressed in the new March 11 EO, as explained in the following section of this article.)

March 11 Executive Order.

The March 11 EO⁴ broadly targets the Russian economy in ways that are unprecedented for a major U.S. trading partner since the end of World War II. The March 11 EO specifically calls for bans on imports of Russian-origin fish and seafood, alcoholic beverages and non-industrial diamonds and on exports of luxury goods to Russia. In addition, the March 11 EO also authorizes the Secretary of the Treasury and Secretary of Commerce to broaden both import and export bans to other products. The March 11 EO also empowers the Secretary of the Treasury to ban new investments by U.S. persons in entire sectors of the Russian economy beyond the EO 14066 ban against new investments in the Russian energy sector.

Perhaps the most striking feature of the March 11 EO is its prohibition on the exportation, re-exportation or supply of U.S. dollar denominated banknotes to Russia. This broad ban will adversely affect the Russian Central Bank as well as Russian companies and ordinary Russian citizens. By limiting Russia's access to such U.S. banknotes, that will further reduce the value of the Russian ruble in relation to the U.S. dollar and make it more difficult for the Russian government and Russian companies or individuals to repay

U.S. dollar-denominated debts or to purchase imports that would be payable in U.S. dollars.

Along with the March 11 EO, OFAC issued several new general licenses to soften the blow for certain persons. OFAC created a short two-week window to wind-down U.S. import transactions affected by the new ban. OFAC will also allow U.S. persons to continue making certain personal remittances and payments for personal maintenance in Russia despite the ban on sending U.S. dollar banknotes to Russia. Nongovernmental organizations also will be able to engage in certain humanitarian and democracy-building activities in the recently sanctioned Donetsk People's Republic and Luhansk People's Republic regions of Ukraine.

Blocking Sanctions on More Russian Oligarchs and Government Leaders.

On March 3, 2022, OFAC imposed blocking sanctions on a large number of wealthy Russian individuals, their close relatives, and certain aircraft and recreational vessels owned by them. These Russian oligarchs are reputedly tied to Russian President Vladimir Putin's inner circle. As a result of these sanctions and coordinated actions by U.S. allies, a global hunt is underway to seize the sanctioned superyachts belonging to these Russian oligarchs. In the same announcement, OFAC also designated for blocking sanctions several organizations and individuals that are tied to Russia's worldwide online propaganda campaign. On March 11, OFAC announced additional blocking sanctions against key Russian leaders including Dmitry Sergeevich Peskov, President Putin's spokesperson, and his immediate family members.

Expanded U.S. Export Controls for Belarus and Russia.

The U.S. Department of Commerce Bureau of Industry and Security ("BIS") has also issued four new notices that expand U.S. export controls for items destined for Belarus or Russia.

- On March 2, 2022, BIS imposed on Belarus the same expanded export controls that it had announced the previous week for Russia, which we previously reported [here](#) and made other changes to the Export Administration Regulations ("EAR"). The BIS announcement of this action is available [here](#).
 - Belarus is now subject to the expanded export controls on Categories 3 through 9 of the Commerce Control List ("CCL"); the new foreign direct product ("FDP") rules announced for Russia and Russian military end users ("MEUs"); expanded export controls for reasons of nuclear non-proliferation concerns; and MEU and military-intelligence end-user prohibitions. BIS also amended the availability of License Exceptions AVS, CCD, and ENC with respect to Belarus under the expanded CCL and FDP controls;
 - BIS added two Belarusian entities to the Entity List; and
 - BIS removed an exemption for mass-market encryption items for eight Russian entities on the Entity List.
- On March 3, 2022, BIS expanded the scope of oil refinery equipment that require a BIS export license to export to or be transferred within Russia. The new rule retains a preexisting restriction on exports of oil and gas items that are intended for use in

Russian oil and gas projects or where the end use is unknown and now adds a list of oil refinery items under a new Supplement No. 4 to EAR Part 746 that will require a BIS export license for any exports to Russia whether or not those items are intended for use in oil projects or refineries in Russia. Supplement No. 4 provides both Schedule B and six-digit Harmonized Tariff Schedule (or “HTS”) codes for the covered items, which will now include, among other things, oil and gas field wire line and downhole equipment, gas separation equipment, and similar gear such as alkylation and isomerization units, delayed cokers, flexicoking units, hydrogen generation technology, refinery fuel gas treatment and sulphur recovery technology or thermal cracking units.

- On March 3, 2022, BIS added 91 Russian-owned entities to its Entity List under 96 new entries. The U.S. Government believes there is a significant risk that these entities are engaging in activities that are contrary to U.S. national security and foreign policy interests. U.S. exporters should take particular notice that these 91 Russian-owned entities are located not only in Russia itself but also in Belize, Estonia, Kazakhstan, Latvia, Malta, Singapore, Slovakia, Spain and the United Kingdom.
- On March 4, 2022, BIS added the Republic of Korea (called “South Korea” in the EAR) to the list of countries that are exempt from the new “foreign direct product” (“FDP”) export license requirements imposed on third country exports to Belarus and Russia under EAR Section 746.8. This exemption is based on BIS’s determination that South Korea has its own robust export controls regime that makes the additional EAR-based FDP controls unnecessary. The currently exempt countries from the additional FDP requirements appear in Supplement No. 3 to EAR Part 746.

Potential Removal of PNTR Status and Congressional Action on Russia.

The On March 11, the Biden Administration announced that the United States and the other G-7 countries will jointly seek to revoke Russia’s “most favored nation” (“MFN”) or “permanent normal trade relation” (“PNTR”) status under their respective domestic trade laws.⁵ Assuming this action proceeds, Russia would thereby lose the principal benefit of its World Trade Organization (“WTO”) membership⁶ with respect to some major trading partners for exports of its Energy Products and other Russian goods. This concerted action by the United States and its allies will greatly burden Russian exports to countries that represent more than half of the global economy, although other WTO member states may choose to continue to grant MFN status to Russian-origin goods under the WTO system.

Under U.S. trade laws, the United States grants PNTR status to enable free international trade with another nation. In U.S. practice, PNTR for a foreign nation means that it receives all the normal benefits of free trade, such as lower tariffs that are enjoyed equally by other U.S. trading partners that have PNTR under U.S. law. A nation with PNTR status will not be disadvantaged in trading with the United States as compared to other U.S. trading partners.

Revoking Russia’s PNTR status would thus immediately raise the U.S. tariffs on nearly all imported goods that originate from Russia (which would be goods other than the Russian Energy Products that are now barred outright from importation under EO 14066 or the other products that are banned under March 11 EO). Canada adopted just such a punitive measure late last week and placed a 35% tariff on all imports from Russia.

Currently, under U.S. law, among all the nations of the world, only Cuba and North Korea lack PNTR status. As a result of not having PNTR status, Cuban and North Korean goods are subject to much higher U.S. import tariff rates (as high as 45% or even 110% in some instances) to the extent the importation of such goods is not already prohibited outright by U.S. trade embargoes imposed on those countries.

The Biden Administration's announcement on PNTR coincides with Congressional efforts to address the Russian invasion of Ukraine, including Congressional action to revoke PNTR status for Russia. The U.S. Congress has been considering further punitive measures against Russia, which could add yet more (or more intense) U.S. economic sanctions and export controls. However, it is unclear what specific action that Congress may take as a compromise package is still being negotiated between the House of Representatives and the Senate, with particular attention to certain Russian energy or financial services companies. In monitoring these possible Congressional approaches to the Ukraine crisis, the Biden Administration may have formulated its own Energy Product import prohibition in EO 14066, its PNTR revocation proposal (as summarized above), and March 11 EO, at least in part, to get ahead of potential Congressionally-mandated efforts to do the same.

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If you have any questions regarding this eUpdate, please contact the attorneys profiled below. Dorsey's attorneys routinely counsel clients to address and mitigate the impact of U.S. economic sanctions, trade embargoes, export controls and other measures that affect cross-border transactions.

¹ OFAC Frequently Asked Question 1,019 (Mar. 8, 2022), available at: <https://home.treasury.gov/policy-issues/financial-sanctions/faq/added/2022-03-08>.

² *Id.*

³ *Id.*

⁴ The White House also issued an explanatory Fact Sheet to accompany March 11 EO: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/11/fact-sheet-united-states-european-union-and-g7-to-announce-further-economic-costs-on-russia/>

⁵ On August 22, 2012, Russia became a WTO member after a 19-year membership accession process. WTO rules require that each WTO member grant newly acceding members "immediate and unconditional" MFN or PNTR status. To comply with those WTO requirements, the United States extended PNTR status to Russia through Congressional action that President Obama signed into law effective as of December 14, 2012.

⁶ Both the United States and Russia are signatories to certain WTO agreements that generally require MFN or PNTR treatment for imports from other WTO member nations. Ending Russia's PNTR status would likely then lead to WTO trade disputes that might take years of international trade litigation between the United States and Russia to reach any meaningful conclusion.

