

U.S. Government Sanctions Sberbank and Alfa Bank, Prohibits All New Investments in Russia, Imposes New Export Restrictions against Russian Civil Aviation & Ends PNTR Status for Russia and Belarus

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

On April 6, 2022, the U.S. Government announced its latest round of sanctions against the Russian Federation in coordination with the European Union (“EU”) and other allies. President Biden issued Executive Order 14071 (“EO 14071”) that broadly prohibits all new investments by U.S. persons in Russia. The U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) also expanded the list of Russian persons targeted for sanctions to include Russian President Putin’s adult daughters and other persons deemed to be responsible for reported atrocities and human rights violations in Ukraine. In addition, OFAC imposed blocking sanctions against Sberbank and Alfa Bank, which had already been subject to less restrictive OFAC sanctions previously. Furthermore, the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”) is imposing additional measures against Russian airlines and aircraft operators to enforce the export control restrictions BIS had imposed against Russia in late February. Finally, on April 8, President Biden signed into law legislation to suspend permanent normal trade relations (“PNTR”) with Russia and Belarus, and that change went into effect immediately on April 9.

EO 14071 of April 6, 2022

On April 6, President Biden issued EO 14071, building upon his other recent EOs. These EOs enlarged the scope of prohibitions against new investments by U.S. persons in the Russian economy and against the importation and exportation of certain products since Russia launched its invasion of Ukraine in late February beyond the territories it had seized in 2014. In the previous investment bans, EO 14066 had prohibited new investments by U.S. persons in Russia’s energy sector, and EO 14068 had authorized the Secretary of the Treasury, in consultation with the Secretary of State, to prohibit investments by U.S. persons in additional but unspecified sectors of the Russian economy. EO 14071 now supersedes both those earlier EOs by flatly banning all new investment by U.S. persons in Russia, regardless of the economic sector involved.

Related People

- Lawrence Ward
- Justin T. Huff
- Dave Townsend
- T. Augustine Lo

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EO 14071 also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose prohibitions against the supply of services from the United States and by U.S. persons to Russia. On February 24 and March 31, the Treasury Department had already issued determinations under EO 14024 that future sanctions could be potentially applied to entities operating in Russia's aerospace, electronics, financial services and maritime sectors. EO 14024 itself also indicates that entities operating in Russia's defense sector could become sanctions targets. Depending on how the new EO 14071 will be implemented, the United States could now ban entire categories of services provided to Russia, irrespective of the identity of the Russian party receiving such services, which would be vastly broader in scope than the earlier EO 14024 determinations.

Targeted OFAC Sanctions

Also on April 6, OFAC announced a new list of Russian entities and individuals that are subject to blocking sanctions on OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List"). These latest SDN List additions include Sberbank plus 42 of its subsidiaries and Alfa Bank and six of its subsidiaries. Both Sberbank and Alfa Bank had previously been subject to less restrictive sanctions but will now face a full blocking sanction that broadly prohibits all transactions with U.S. persons. Sberbank and Alfa Bank are two of Russia's most important banks, with Sberbank being the largest bank (holding some 30% of all bank assets in Russia) and Alfa Bank being the largest Russian privately owned bank. OFAC concurrently issued three new general licenses to permit certain wind-down transactions with these Russian banks within specified time limits. These new OFAC measures now effectively cut off all of the designated banking units of Sberbank and Alfa Bank from having any contact whatsoever with U.S. financial institutions, regardless of whether such transactions would be in U.S. Dollars or in any other currency.

The additions to the SDN List also include Russian President Vladimir Putin's two adult daughters, Russian Foreign Minister Sergei Lavrov's wife and daughter, and other members of Russia's Security Council. The United States coordinated these measures with similar sanctions imposed by the EU and other allies, adding to the growing number of Russian and Belarusian persons named to the SDN List since late February for their roles in human rights abuses and aggression against Ukraine.

U.S. Export Controls and Russian Civil Aviation

As we had previously reported [here](#), acting under the Export Administration Regulations ("EAR"), BIS had already imposed a prohibition in late February against the export, re-export, and transfer of a broad range of items where the destination is the Russian Federation, or where the transfer takes place within Russian territory, with some limited exceptions. BIS then applied this same EAR prohibition against Belarus in early March. Those new BIS measures affect many more "dual-use" goods under the EAR's Commerce Control List ("CCL") and made them subject to special BIS export licensing requirements with a stated "policy of denial," meaning that a U.S. exporter is unlikely to gain such an export license if the proposed end user is Russian or Belarusian. As BIS

had explained in its Federal Register notice announcing those February measures, the new prohibitions particularly affected many items used in civil aviation that had previously not required any BIS export licenses for exports to Russia. Since that time, Russian airlines and other Russian aircraft operators have continued to fly aircraft that were either of U.S. origin or were produced elsewhere with significant U.S.-origin equipment that are subject to that February prohibition, leading to apparent violations whenever such aircraft flew back to, or transited within, Russia.

In response to this situation, BIS has announced a series of measures to enforce its export restriction with respect to Russian-operated civil aircraft. First, on March 2, BIS revoked the license exceptions under the EAR with respect to such aircraft. Then, on March 18, BIS published a new list that identified certain Russian-owned or operated aircraft that may no longer benefit from any services by any U.S. persons worldwide. BIS cited General Prohibition Ten under Part 736 of the EAR, which broadly prohibits any transactions that are undertaken with knowledge that an EAR violation is likely to occur. This special BIS export control list includes aircraft operated by Aeroflot, Air Bridge Cargo, Aviastar-TU, Azur Air, Nordwind, and Utair, as well as Russian oligarch Roman Abramovich's private jet. BIS then updated this list on March 30, adding 73 more aircraft operated by Aeroflot, Air Bridge Cargo, Alrosa, Atran, Azur Air, Nordstar, Nordwind, Pegas Fly, Pobeda, Rossiya, Royal Flight, S7 Airlines, and Utair, while removing 12 specific aircraft that BIS had permitted to be returned to their respective owners or lessors outside Russia.

On April 7, BIS invoked a novel sanctions technique by issuing Temporary Denial Orders ("TDOs") against Aeroflot, Azur Air and Utair, meaning that these three Russian airlines may not participate in any transactions that are "subject to the EAR" for 180 days. These TDOs effectively cut off the three airlines from receiving many routine maintenance and repair services involving any parts, components, or software that are either U.S. origin, sourced from the United States, or made outside the United States with significant U.S. content and that are necessary to the continued airworthiness of these civil aircraft. BIS also noted that it could extend these TDOs beyond their initial 180-day terms.

On April 8, BIS further tightened export restrictions against Russian and Belarus. In response to the continuing crisis in Ukraine, BIS expanded the broad restrictions announced in late February and early March to cover all remaining items in Categories 0 through 2 on the CCL that were not previously covered by those restrictions. These expanded restrictions effectively prohibit the supply of a wide range of chemical, biological, and nuclear materials and related equipment to Russia and Belarus. The expansive controls include items that previously only required a BIS license when the destination is a country that raises anti-terrorism concerns (i.e., Iran, North Korea, and Syria). BIS also restricted the availability of License Exception AVS for Belarus, which means that Belarusian operated aircraft that are subject to the recently expanded export restrictions now face the same license requirement as Russian operated aircraft to return to or transit Belarus. This latest action potentially sets the stage for TDOs that are similar to those imposed against Russian airlines.

During March, BIS also added more Russian entities to its main export sanctions list, the Entity List. These additions cover a wide range of entities in or supplying Russia's defense sector. On March 3, BIS named 91 Russian entities to the Entity List that are located in Russia or elsewhere around the world. On April 1, BIS added 120 more entities in Belarus and Russia that will be subject to the new, expansive "military end-user foreign direct product" rule ("MEU-FDP Rule") under EAR Section 734.9 that targets Belarusian and Russian military end users in addition to the already broad prohibition against supplying items that are "subject to the EAR" generally applicable to entities on the Entity List. Under this MEU-FDP Rule, a foreign produced item becomes subject to the prohibition against exports, re-exports, and transfers within Belarus and Russia if the foreign producer of items relies on U.S.-origin software or technology subject to control under any Export Control Classification Number ("ECCN") or relies on production equipment that is made from such U.S. origin software or technology, and the foreign produced item either will be used to make items for Russian or Belarusian MEUs or will be involved in a shipment where Russian or Belarusian MEUs are transaction parties.

Separately, on March 11, BIS announced a new rule restricting luxury exports to Russia and Belarus consistent with EO 14068 (which we discussed [here](#)). This rule added a new EAR Section 746.10, which imposes a new license requirement for the export, re-export, and transfer of luxury items that are subject to the EAR and listed in Supplement No. 5 to EAR Part 746. This license requirement applies when the destination is Russia or Belarus or the end-user or a transaction party is a sanctioned Russian or Belarusian individual that OFAC has added to the SDN List since 2014 under certain EOs. BIS has provided a limited number of license exceptions under this new luxury item export rule.

Suspension of Russia and Belarus PNTR

On April 7, Congress approved legislation (H.R. 7108) to suspend Permanent Normal Trade Relations ("PNTR") with Russia and Belarus, as the House of Representatives voted 420 – 3 and the Senate voted unanimously to pass the bill. Since President Biden had already called on March 11 for this punitive action to be taken in coordination with U.S. allies, he immediately signed the bill on April 8. As we reported [here](#), this revocation of PNTR will immediately raise tariffs significantly on many (but not all) goods from Russia and Belarus. Now, as of April 9, the effective date of the PNTR status change, many Russian or Belarusian origin products imported into the United States will become subject to the tariff rates under "Column 2" of the Harmonized Tariff Schedule of the United States (which are generally much higher than the "Column 1" rates applicable to PNTR countries). The legislation also permits the President to impose even higher tariffs for specific Russian and Belarusian origin imports in consultation with Congress.

U.S. companies that have historically imported goods from Russia or Belarus should consider immediately how such higher U.S. tariffs could impact their cost structures and supply chains and assess their options for alternatives that would not be subject to such higher tariffs. Significantly, the legislation appears silent on whether such higher tariffs would be applicable to goods already in transit from Russia or Belarus to the United States when the new law became effective on April 9.

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