Insights: Alerts

U.S. Administration Announces Additional Economic Actions Against Russia

MARCH 14, 2022 Written by Mauricio Escobar, Gunjan R. Talati

On March 11, 2022, U.S. President Joe Biden signed an Executive Order banning the import of goods into the U.S. of Russian origin—seafood, spirits/vodka, and non-industrial diamonds. The Executive Order also includes an export, sale, and supply ban on luxury goods to Russia directly or indirectly. The value of the products covered by the luxury exports restrictions is nearly $550 million per year. Although Executive Order 14066 of March 8, 2022, banned new U.S. investments in the Russian energy sector (see our prior Alert), the new Executive Order establishes the authority for future investment restrictions in any sector of the Russian economy by a U.S. person wherever located.

Ban on Imports of Certain Russian-Origin Goods, and Exports of "Luxury Goods" to Russia (including Belarus)

The new Executive Order bans all imports of Russian-origin products: fish, seafood and preparations thereof; alcoholic beverages; non-industrial diamonds; and any other products of Russian Federation origin as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce. The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued guidance in the form of FAQs addressing the newest Executive Order. Under its new guidance, OFAC defines "Russian Federation origin" as "goods produced, manufactured, extracted, or processed in the Russian Federation, excluding any Russian Federation origin good that has been incorporated or substantially transformed into a foreign-made product." To understand further which products OFAC considers to be banned fish, seafood, alcoholic beverages, and non-industrial diamonds, please refer to OFAC's FAQ 1,027 and the chapters of the Harmonized Tariff Schedule of the United States that reference specific import codes.

OFAC issued General License No. 17 authorizing transactions that are ordinarily incident and necessary to the importation into the U.S. of the banned products until 12:01 a.m. Eastern Daylight Time on March 25, 2022, so long as such transactions are in connection with written contracts or written agreements entered prior to March 11, 2022. U.S. persons are not prohibited from engaging in transactions to sell or re-direct shipments outside the U.S. that were previously destined for the U.S. To the extent the import of banned products of Russian origin to jurisdictions outside of the U.S. does not involve sanctioned persons or an otherwise prohibited transaction, non-U.S. persons are not exposed to sanctions under the new Executive Order.

To address the export ban on luxury goods to Russia (including Belarus), the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") will be issuing a new Final Rule on March 16, 2022, that adds two new export license requirements under the Export Administration Regulations ("EAR"). The Final Rule will be effective March 11, 2022. The luxury goods subject to the export ban are listed in Supplement 5 to EAR Part 746 and include, among others, certain spirits, tobacco products, clothing items, diamonds, vehicles, and antique goods. Applications for export and reexport of luxury goods to Russia (or Belarus) or Russian (or Belarusian) individuals on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List") will be reviewed by BIS under a policy of denial. The new restrictions

do not apply to luxury goods subject to EAR that “were en route aboard a carrier to a port of export, reexport, or transfer (in-country)” as of March 11, 2022.

Export Ban on U.S. Dollar-Denominated Banknotes

The new Executive Order prohibits the exportation, reexportation, sale, or supply, directly or indirectly from the U.S., or by a U.S. person, wherever located, of U.S. dollar-denominated banknotes to the Government of Russia or any person located in Russia. The new General License No. 18, however, authorizes certain transactions that are ordinarily incident and necessary to the transfer of U.S. dollar-denominated banknotes for noncommercial, personal remittances from: (i) the U.S. or a U.S. person, wherever located, to an individual located in Russia; or (ii) a U.S. person who is an individual located in Russia. General License No. 18 does not authorize U.S. financial institutions to process transactions for the provision of U.S. dollar-denominated banknotes to foreign financial institutions for further distribution or supply to the Government of Russia or any person located in Russia.

Ban on New Investments in Russia

The ban on new investments in Russia does not impose any new legal prohibitions, compared to the ban set out in Executive Order 14066 of March 8, 2022 since the U.S. Department of Treasury will determine which sectors in consultation with the U.S. Statement Department. The new prohibition does, however, signal that more expansive investment bans in *any* sector of the Russian economy may be on the horizon as the conflict in Ukraine continues.

International Support

On March 11, 2022, the European Commission also announced further economic actions against Russia, including an export ban on luxury goods from EU member states to Russia, an import ban on key goods in the iron and steel sector from Russia, and a ban on new European investments across Russia's energy sector. The announcement is aligned with the March 11, 2022, Joint Statement by the Group of Seven leaders announcing further economic actions against Russia.

A Path Forward

Companies in the U.S. importing the newly banned products should note the source of those products and obtain certifications from suppliers that the products are not subject to sanctions. To the extent imports come from sanctioned entities or from banned industry sectors, companies should determine whether they need to wind down transactions with affected suppliers, including re-sell or redirect affected shipments to comply with applicable sanctions, and if a special license from OFAC will be necessary to comply with OFAC's regulations.

Companies exporting luxury goods to Russia should identify if the goods are subject to EAR and require a license. Private equity and other investment firms (in the U.S. or U.S.-based) should assess their portfolio companies and investments (including their fund investors) to determine whether they are facilitating or enabling investment in any sectors of the Russian economy and closely monitor whether those sectors are subject to sanctions.

Related People






Mauricio Escobar
t 281.809.4084
mescobar@ktslaw.com



Gunjan R. Talati
t 404.815.6503
gtalati@ktslaw.com