Crowell

U.S. and UK Announce New Round of Export Controls and Sanctions against Russia at the G7 Summit Meeting

Following a meeting of the G7 Summit Leaders, on May 19, 2023, the United States and the United Kingdom announced a new round of sanctions and export controls against the Government of the Russian Federation ("Russia") to continue their efforts against key sectors of Russia's military-industrial base. These actions target procurement and evasion networks to curtail the flow of necessary resources Russia needs to maintain and fund its campaign against Ukraine.

At a high level, the U.S. and UK actions to implement the G7 Leaders' commitment are:

United States

I. **BIS:** The Department of Commerce's Bureau of Industry and Security ("BIS") issued two new rules: the first broadly expands the scope of licensing requirements to include new categories of items that were previously not controlled; the second adds 71 entities to the Entity List.

II. **BIS and FinCEN**: Additionally, BIS, in coordination with the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued a supplement to their June 2022 joint advisory alert, providing financial institutions with updated guidance on export control restrictions within the context of Russian-related transactions.

III. **OFAC:** The Treasury Department's Office of Foreign Assets Control ("OFAC") took a series of actions updating and expanding its authorities to target Russia. OFAC's actions include: an expansion of sectoral sanctions to new sectors of Russia's economy; new restrictions on the export of certain U.S. services to Russia; new reporting requirements relating to Directive 4 Russian sovereign entities; along with new related Frequently Asked Questions ("FAQs").

IV. **OFAC and U.S. Department of State ("State")**: Both OFAC and State exercised their authority under Executive Order (E.O.) 14024**,** which authorizes sanctions to address specified harmful foreign activities of the Government of the Russian Federation. Combined, OFAC and State designated over 300 new entities determined to be involved in or otherwise supporting Russia's war efforts against Ukraine.

United Kingdom

V. **Sanctions Designations and Future Import Prohibitions:** The United Kingdom designated 86 persons in the defense, transportation, energy, metals, and financial sectors as being subject to asset freezing and trust services sanctions. The United Kingdom also announced it will ban (in future legislation) the importation of Russian diamonds, an industry worth $4 billion to Russia in 2021, as well as ending all imports of Russian-origin copper, aluminum, and nickel.

We summarize each of these actions in more detail below.

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I. BIS IMPLEMENTS NEW EXPORT CONTROLS

As indicated above, BIS issued two new rules on May 19, 2023, that are effective immediately:

- **Rule 1: "Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations (EAR) and Refinements to Existing Controls."** The changes from this new rule can be organized into four general groups, with three of the four amending certain supplements to Part 746 Embargoes and Other Special Controls of the EAR, and the fourth updating the Russia/Belarus Foreign-Direct Product Rule.

  i. **HTS codes and Supplement 4 to Part 746:** Specifically, BIS took this action under the industry sector controls, articulated in § 746.5 (*Russian and Belarusian Industry Sector Sanctions)*. This rule adds 1,224 Harmonized Tariff Schedule (HTS) codes to Supplement 4, which now totals over 2,000 entries. Supplement 4 lists various EAR99 industrial and commercial items that now have a license requirement for any export, reexport, or transfer to or within Russia or Belarus under § 746.5(a)(1)(ii). This expansion encompasses three entire harmonized system chapters, specifically Chapters 84, 85, and 90, and includes a variety of electronics, instruments, and advanced fibers for the reinforcement of composite materials, including carbon fibers. As it relates to its licensing policy under this section, BIS noted that, for items that are predominantly agricultural or medical in nature, it will review such license requests on a case-by-case basis; essentially all other license requests will be under a policy of denial.

  BIS' goal here is two-fold: 1) to continue depriving Russia of critical resources needed to outfit its military-industrial complex; and 2) ease the compliance burden on exporters by standardizing the requirement so that now all items require a license.

  ii. **Chemicals and Supplement 6 to Part 746:** This action also utilizes BIS' authority under the industry sector controls in § 746.5, specifically § 746.5(a)(1)(iii). Here, BIS added new chemicals to Supplement 6, which lists items that are otherwise designated as EAR99, but have been identified as likely providing a benefit for Russia's chemical and biological weapons production capabilities and/or carry a high diversion risk from Belarus to Russia. This is a specialized list comprised of discrete chemicals, biologics, fentanyl and its precursors, and related equipment. A license is required for any item now listed on Supplement 6 that is subject to the EAR prior to the export, reexport, or transfer (in-country) of these items to or within Russia or Belarus. As above, the licensing policy is generally a policy of denial unless there is some humanitarian or health and safety need.

  iii. **"Iran UAV" Rule and Supplement 7 to Part 746:** This change is primarily a fix, specifically, to add one item to Supplement 7 that appears inadvertently omitted from an earlier rule.

For context, BIS promulgated a rule on February 24, 2023, that targeted Iran's supply of UAVs to Russia (see *Export Control Measures Under the Export Administration Regulations (EAR) to Address Iranian Unmanned Aerial Vehicles (UAVs) and Their Use by the Russian Federation* (88 Fed. Reg. 12150)). This February 2023 rule, also known as the "Iran UAVs rule," among other changes, created Supplement 7. On May 19, 2023, BIS added one HTS entry to Supplement 7 that appears to have been inadvertently omitted from the Iran UAVs rule and now has a license requirement.

iv. **Expansion of the Russia/Belarus Foreign-Direct Product ("FDP") Rule:** Specifically, the Russia/Belarus FDP rule in § 734.9(f) will be expanded to add the "temporarily occupied" Crimea region of Ukraine, and will be renamed as the "Russia/Belarus/temporarily occupied Crimea region of Ukraine" FDP rule. BIS also made conforming changes in the EAR, specifically the license requirements paragraphs in § 746.6, to acknowledge this change. BIS states this rule is intended to strengthen the EAR's controls in this region and to make it more difficult for items to be procured for Russia's use in Crimea and its ongoing military aggression in Ukraine.

v. **Conforming the De Minimis Exception and Deemed Export Rules for Items Controlled for Russia:** Previously, the EAR included an exemption for deemed exports and reexports involving Russian persons outside of Russia (§746.8(a)(1)), as well as applying the *de minimis* rule to items in U.S.-allied countries (§746.8(a)(5)), if the underlying item was listed on the Commerce Control List and was only controlled for export to Russia after the expansion of export controls in February 2022. The new controls also apply those exemptions to items identified (via HTS or description) in Part 746 Supplement Nos. 2, 4, and 6.

- **Rule 2: "Addition of Entities to the Entity List."** Under this rule, BIS added 71 entities to the Entity List. The sixty-nine Russian entities BIS added to the Entity List for providing support to Russia's military and defense sector are also receiving the "footnote 3" designations as Russian or Belarusian "military end users." This means that these entities are now also subject to the Russia/Belarus-Military End User FDP Rule per § 734.9(g), which represents some of the most severe restrictions under the EAR. The remaining two entities designated under this rule are one Armenian and one Kyrgyz entity for preventing the successful accomplishment of end-use checks and posing a diversion risk to Russia.

II. BIS AND FINCEN SUPPLEMENTAL JOINT ALERT FOR FINANCIAL INSTITUTIONS

As stated above, BIS and FinCEN jointly issued a supplement to their June 2022 joint alert (the "June 2022 Joint Alert"). This supplemental alert (the "Supplemental Alert") aims to provide financial institutions updated guidance on the EAR's export control restrictions within the context of Russia-related transactions, and provides a description of evasion typologies as well as additional transactional and behavioral red flags to assist financial institutions in identifying suspicious transactions relating to possible export control evasion.

The Supplemental Alert provides background to financial institutions on new export controls developments since the June 2022 Joint Alert, including, among other things, the use of third-party intermediaries and transshipment points, as identified in a multi-agency compliance note. It also notes that Specially Designated Nationals and Blocked Persons ("SDNs") or parties on the Entity List may establish front companies in third countries or request a procurement agent to obtain goods on their behalf, with payment for these services originating from a front company's non-Russian bank account, which may transit through the U.S. financial system as a correspondent bank transaction.

FinCEN and BIS emphasize that financial institutions should apply a risk-based approach to trade finance, including their customer due diligence and beneficial ownership information collection and verification, that considers the red flags and typologies identified in the Supplemental Alert. In particular, the Supplemental Alert "strongly encourage[s]" financial institutions to perform due diligence when dealing with transactions involving the High Priority Items List – nine Harmonized System ("HS") Code items covering critical U.S. components that Russia relies on for its weapons systems. HS codes may be found on trade documents, such as invoices, packing slips, bills of lading, and related documents. Specific diversion risks identified in the Supplemental Alert include companies that now engage in export-related trade involving the High Priority Items List when:

(1) the company never received exports prior to February 24, 2022;

(2) the company received exports prior to February 24, 2022, but none involving any of the nine codes on the High Priority Items List; or

(3) the company received exports involving the nine codes on the High Priority Items List, but saw a spike in such imports after February 24, 2022.

As a result, although framed as a request, the Supplemental Alert creates new regulatory expectations for financial institutions involved in this type of trade. In particular, the agencies expect that financial institutions with customers involved in trade, particularly those in non-Global Export Control Coalition countries conduct the following due diligence:

- Evaluating the customer's date of incorporation (e.g., incorporation after February 24, 2022),
- Evaluating the end user and end use of the item (e.g., whether the customer's line of business is consistent with the ordered items),
- Evaluating whether the customer's physical location and public-facing website raise any red flags (e.g., business address is a residence, no website is available), and
- Evaluating whether there are any anomalous increases in the volume or value of orders, including by requesting additional information about end use and end user, or inconsistencies between the items ordered and customer's line of business.

The Supplemental Alert also provides nine additional red flags, which should be read in conjunction with the prior red flags and guidance in the June 2022 Joint Alert, and which FinCEN will expect financial institutions to look for and investigate when determining whether they are obligated to file suspicious activity reports ("SARs") with FinCEN. As with the earlier alert, FinCEN requests that financial institutions filing SARs relating to this Supplemental Alert reference the term "FIN-2022-RUSSIABIS" in SAR field 2 and the SAR narrative section.

III. OFAC IMPOSES NEW SANCTIONS

The other major actions announced on May 19, 2023, relate to OFAC's expansion of various prohibitions and restrictions under its Russia-related sanctions authorities. OFAC's actions are pursuant to currently-existing legal authorities, grouped in the following categories: (1) Sectoral, (2) Services, (3) Reporting Requirement, and (4) Designations.

The table below summarizes the first three of OFAC's actions:

Sanction Type	Summary
Note: unless otherwise stated, the below actions are effective as of May 19, 2023.	
Sectoral	**What**: OFAC is expanding its sectoral sanctions against the Russian Federation to encompass the following sectors: architecture, engineering, construction, manufacturing, and transportation. This means that OFAC may choose in the future to impose sanctions on persons (most likely Russian entities) operating in these sectors, through a subsequent designation made by OFAC in consultation with the State Department, or vice versa). These new sectors build on the already-sanctioned metals and mining, quantum computing, accounting, trust and corporate formation, management consulting, aerospace, marine, electronics, financial services, technology, and defense and related materiel sectors of the Russian Federation economy.
	How: OFAC issued a Determination Pursuant to Section 1(a)(i) of E.O. 14024 Executive Order 14024 of April 15, 2021 Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation
	Why: The new sectoral determinations are being made in support of the G7 Leaders' commitment to further target those operating in key sectors of Russia's military-industrial base.
	Related FAQ(s) (if applicable): 1126. Under Executive Order (E.O.) 14024, "Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation," any person determined to operate or have operated in certain sectors of the Russian Federation economy may be blocked. How is OFAC defining those sectors?

	1127. What does a determination of a sector pursuant to Executive Order (E.O.) 14024 do?
	Related GL(s) (if applicable): N/A

Services	**What**: Expanding prohibitions on services from the United States or by U.S. persons to any person located in the Russian Federation on ***architecture services*** and ***engineering services***. Pursuant to the sanctions authority in E.O. 14071, the following services already are subject to this ban: accounting; trust and corporate formation services; management consulting; quantum computing; services as they relate to the maritime transport of (i) crude oil and (ii) petroleum of Russian Federation origin. As of May 19, 2023, this list now also includes architecture and engineering services. This action will go into effect on June 18, 2023.
	How: Determination Pursuant to Section 1(a)(ii) of E.O. 14071 Executive Order 14071 of April 6, 2022 Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression
	Why: These prohibitions align with similar actions by the European Union and the United Kingdom and further inhibit Russia's abilities to maintain, let alone advance, its capabilities in critical key sectors.
	Related FAQ(s) (if applicable): 1128. Under Executive Order (E.O.) 14071, "Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation," U.S. persons are prohibited from providing certain services to persons located in the Russian Federation. How will OFAC define those categories of services? According to OFAC, **Architecture Services** include: **"**include advisory services; pre-design services; design services, including schematic design, design development, and final design; contract administration services; combined architectural design and contract administration services; including post construction services; and all other services requiring the expertise of architects. The prohibition applies to such services as they relate to residential, institutional, leisure, commercial, and industrial buildings and structures; recreational areas; transportation infrastructure; land subdivisions; and not necessarily related to a new

	construction project. The term also includes urban planning services (i.e., land use, site selection, and servicing of land for systemic, coordinated urban development) and landscape architectural services. OFAC intends to interpret this term consistent with UN Central Product Classification (CPC) Codes 86711-86704, 86719, and 86741-86742." **Engineering Services** include: "assistance, advisory, consultative, design, and recommendation services concerning engineering matters or during any phase of an engineering project. Engineering design services may be for: the construction of foundations and building structures (i.e., structural engineering); mechanical and electrical installations for buildings; the construction of civil engineering works; industrial processes and production; or other engineering designs, such as those for acoustics, vibration, traffic control systems, or prototype development for new products. The term additionally includes geotechnical, groundwater, and corrosion engineering services; integrated engineering services, such as those for transportation infrastructure or other projects; engineering-related scientific and technical consulting services, including geological, geophysical, geochemical, surface or subsurface surveying, and map making services; testing and analysis services of chemical, biological, and physical properties of materials or of integrated mechanical and electrical systems; and technical inspection services. OFAC intends to interpret this term consistent with UN CPC Codes 86721-86727, 86729, 86731-86733, 86739, 86751-86754, 86761-86764, and 86769. Additionally, OFAC does not consider maritime classification services to be subject to the prohibition, as is consistent with the OFAC Guidance on Implementation of the Price Cap Policy for Crude Oil and Petroleum Products of Russian Federation Origin."
	Related GL(s) (if applicable): N/A

Reporting Requirement	**What:** New requirement for U.S. persons to report to OFAC any property in their possession or control in which any Directive 4 entity under E.O. 14024 has an interest of any nature whatsoever, direct or indirect. This list is comprised of the (i) Central Bank of the Russian Federation; (ii) National Wealth Fund of the Russian Federation; and (iii) Ministry of Finance of the Russian Federation. If subject to this new requirement, you must submit a report to OFACreport@treasury.gov on or before June 18, 2023, and annually thereafter.
	How: Amending Directive 4 under Executive Order (E.O.) 14024

	Executive Order 14024 of April 15, 2021 Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation
	Why: This reporting requirements seeks to provide OFAC with additional information on Russian sovereign assets that are immobilized within U.S. jurisdiction pursuant to Directive 4 under E.O. 14024.
	Related FAQ(s) (if applicable): OFAC updated FAQs 998-1002, 1004-1005, and 1118 to reflect this amendment.
	Related GL(s) (if applicable): General License 13E, "Authorizing Certain Administrative Transactions Prohibited by Directive 4 under Executive Order 14024"

IV. OFAC AND STATE DESIGNATIONS PURSUANT TO E.O. 14024

- State designated as blocked or identified as blocked property almost 200 individuals, entities, vessels, and aircraft. State is "imposing sanctions on individuals and entities complicit in: sanctions evasion and circumvention; maintaining Russia's capacity to wage its war of aggression; supporting Russia's future energy revenue sources; [sic] Russia-installed puppet occupation authorities; those involved in theft of Ukrainian grain; and the systematic and unlawful transfer and/or deportation of Ukraine's children." (see State's press release).
- OFAC similarly designated 22 individuals and 104 entities, "targeting those attempting to circumvent or evade sanctions and other economic measures against Russia, the channels Russia uses to acquire critical technology, its future energy extraction capabilities, and Russia's financial services sector." (see OFAC press release).
- Both agencies utilized the sanctions designation authority of E.O. 14024, which authorizes sanctions with respect to specified harmful foreign activities of the Government of the Russian Federation.
- OFAC has additionally announced several related General Licenses:
    - **i.** General License 66, "Authorizing the Wind Down of Transactions Involving Public Joint Stock Company Polyus;"
    - **ii.** General License 67, "Authorizing Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Public Joint Stock Company Polyus;" and
    - **iii.** General License 68, "Authorizing the Wind Down of Transactions Involving Certain Universities and Institutes."

V. UK IMPOSES SANCTIONS AND ANNOUNCES IMPORT PROHIBITIONS

The UK continues to work with its G7 partners to stand against Russia's invasion of Ukraine and to tackle all forms of sanctions circumvention.

Parallel to the U.S. actions, the UK bolstered its number of sanctioned entities, adding 86 individuals and entities to the Russia sanctioned list on 19 May 2023. Additional trade measures have also been announced, with legislation being introduced later this year banning the importation of Russian diamonds, an industry worth $4 billion to Russia in exports in 2021, as well as ending all imports of Russian-origin copper, aluminum, and nickel (building on pre-existing bans on the importation of Russian origin iron and steel).

Underlying legislative position: The Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855) ("the Russia Regulations") were made under the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act) and provide for the imposition of financial sanctions, including asset freezes and other financial and investment restrictions, on persons who are or have been involved in destabilizing Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine; or obtaining a benefit from or supporting the Government of Russia.

Sanctioned entities: On 19 May 2023, the Foreign, Commonwealth and Development Office updated the UK Sanctions List on GOV.UK. All 86 newly designated entries are now subject to an asset freeze and trust services sanctions. The designations target individuals and organizations directly connected to Russia's efforts in the Ukraine invasion, including defense and transport industries. as well as others involved in key revenue streams such as energy, metals and financial sectors. The designations include persons in the defense, transportation, energy, metals, and financial sectors. The UK also removed three individuals from being subject to an asset freeze or to trust services sanctions: Nikolay Yurievi PETRUNIN, Kyrylo Sergiyovich STREMOUSOV, and Vladimir Nikolayevich SUNGORKIN.

VI. EU STATEMENTS

The EU has been debating its 11th round of sanctions and there is a wide range of expectations about when such additional sanctions might be issued, up to and including the end of June 2023, when EU leaders meet. That draft is not public, but in addition to dozens of designations (largely of military affiliated companies and some third country companies bypassing sanctions), it reportedly contains a proposal to limit EU trade with third countries that are aiding Russia in bypassing sanctions.