

Contractors Feel Impact Of Russia Trade Disruptions

By **Daniel Wilson**

Law360 (April 6, 2022, 8:40 PM EDT) -- The supply chain impacts of sanctions and trade disruptions stemming from Russia's invasion of Ukraine are being felt by many federal contractors, especially technology firms, despite Russia's position as a relatively minor direct trade partner with the U.S.

Since Russia's invasion of its neighbor on Feb. 24, a move President Joe Biden called "premeditated and unprovoked," the U.S., European Union and other allies have implemented an ever-increasing set of sanctions and other restrictions on Russian banks, companies, oligarchs and other elites.

This has resulted in supply chain disruptions for many U.S. companies, and federal contractors are no exception, with technology contractors particularly hard-hit, said Rob Sneckenberg, a government contracts partner at Crowell & Moring LLP.

"[The impact] is pretty widespread in any of your nonservice industries ... anybody who needs raw materials or supplies, especially in the tech industry," he said.

Russia is a relatively minor direct trade partner for the U.S., with \$22.2 billion in Russian goods and services — mostly mineral fuels and metals — exported to the U.S. in 2020. In comparison, imports from China, the top exporter to the U.S., totaled \$450.4 billion that year, according to the U.S. Trade Representative.

But Bass Berry & Sims PLC member Thad McBride, whose practice focuses on international trade issues, said it was "notable to me how many of our clients buy stuff from Russia, in a bunch of different industries."

"You do have a decent number of U.S. companies that get a lot of inputs from Russia and Russian suppliers," he said. "And now that's gotten much harder."

And globally, Russia is a significant supplier of a number of materials used in manufacturing the semiconductors that are a key component in many modern products, both commercial and military.

Russia and Ukraine are, for example, collectively responsible for roughly 90% of the world's supply of neon, a requirement for the lithography process used to manufacture computer chips and other advanced semiconductors, according to technology industry analysts.

Russia is also the world's leading supplier of palladium and a significant supplier of cobalt, both used

extensively in the electronics industry, and also produces germanium, which is "very important for certain types of semiconductor chip production," said Nazak Nikakhtar, chair of Wiley Rein LLP's national security practice and a former senior international trade official at the U.S. Department of Commerce.

"I would look at it in terms of not only U.S. imports from Russia, but Russia's global output, because if Russia's global output now is being significantly reduced, that means that supply chains are going to reconfigure, and we're going to have less to share around globally, especially at a time when imports are increasing," she said.

Russia is also an important supplier of titanium, used extensively in the aerospace industry, and of gas, oil and coal — particularly to Europe — and is a leading supplier of more common metals used extensively in manufacturing such as aluminum and nickel, Nikakhtar said.

Those metals, even if available from other sources, "are seeing higher prices as a result of the sanctions on Russia," said Anthony Lewis, a Sullivan & Cromwell LLP partner who regularly prosecuted sanctions and export controls cases in his former role as a federal prosecutor.

The speed at which sanctions on Russia have ramped up and evolved, not only in the U.S. but in many other jurisdictions, has also made it hard for companies to track, digest and understand what their obligations are, Sneckenberg and Nikakhtar said.

And even if a particular Russian supplier isn't subject to sanctions, the sanctions leveled at the Russian financial sector can make it hard to work out how to actually pay a supplier, according to Lewis. Some U.S. companies have decided to stop doing business in Russia altogether, even if that affects their supply chains, deciding that the compliance issues and reputational risks aren't worth it, McBride said.

Russia-related disruptions have also piled on top of other ongoing concerns for federal contractors, such as inflation that is at its highest point in decades, as well as the ongoing supply-chain issues resulting from the COVID-19 pandemic, highlighted for example in the National Defense Industrial Association's recent "Vital Signs" report on the health of the defense industrial base.

That means that for the aerospace and defense firms that make up the NDIA's membership, "across the board, it's just getting more expensive to do business," said the industry group's director of strategy Nick Jones.

There are other potential risks for companies that do business with the federal government, such as proposed legislation that would ban the government from contracting with anyone who does business in Russia — and there are similar bills pending in several states. There is also ongoing uncertainty about how contracting officers will treat contractual disruptions stemming from the war in Ukraine.

Federal agencies had largely said they would be accommodating toward requests for adjustments related to COVID-19. But it remains to be seen if they will take a similarly flexible approach to modifying existing contracts or providing other relief due to Russia-related disruptions, according to Sneckenberg.

"The main thing right now is for contractors who are entering new contracts, be that new contracts with the federal government or new contracts with suppliers and subcontractors, to seek to the extent possible to negotiate in ... clauses giving you some specific subsequent adjustments," he said.

In the longer term, the supply chain disruptions resulting from Russia's invasion should prompt — and in

some cases are prompting — federal contractors and other U.S. companies to reconsider how much of their critical supply chain should remain overseas after decades of offshoring, particularly to China, which often acts against the U.S.' geopolitical interests, according to Nikakhtar.

"It's almost an impossible task, but it's an important task," she said. "And so companies are trying to figure it out."

--Editing by Nicole Bleier and Marygrace Anderson.