

CLIENT MEMORANDUM

U.S., EU Impose Coordinated Controls on Exports to Russian Energy Sector

August 8, 2014

AUTHORS

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On August 6, 2014, the U.S. Commerce Department's Bureau of Industry and Security (BIS) published a final rule amending U.S. Export Administration Regulations (EAR) and imposing significant new trade restrictions on certain items, software, technology, and data for use in Russia's oil and gas sector for exploration or production from deepwater, Arctic offshore, or shale projects. These restrictions target Russia's ability to develop long-term, technologically advanced energy projects, not its current production or sales.

The new EAR Section 746.5 (Russian Industry Sector Sanctions) imposes a BIS license requirement for the export, re-export, or transfer within Russia, of any item subject to the EAR listed in Supplement No. 2¹ and items specified in the Commerce Control List under Export Control Classification Numbers (ECCNs) 0A998, 1C992, 3A229, 3A231, 6A991, 8A992, and 8D999 when the exporter, re-exporter, or transferor knows, is informed that, or is unable to determine whether the item will be used directly or indirectly in Russia's energy sector for exploration or production from deepwater (greater than 500 feet), Arctic offshore, or shale projects in Russia that have the potential to produce oil or gas.

¹ Items in Supplement No. 2 are listed by Schedule B numbers, not by ECCNs. A Schedule B number is a 10-digit commodity classification number administered by the U.S. Census Bureau.

U.S., EU Impose Coordinated Controls on Exports to Russian Energy Sector

Continued

Impacted items include, but are not limited to, drilling rigs, parts for horizontal drilling, drilling and completion equipment, subsea processing equipment, Arctic-capable marine equipment, wireline and down hole motors and equipment, drill pipe and casing, software for hydraulic fracturing, high pressure pumps, seismic acquisition equipment, remotely operated vehicles, compressors, expanders, valves, and risers. Exporters should refer to the [EAR](#) and [Schedule B List](#) to determine if a particular item intended for export to Russia requires a license.

The rule applies to U.S. and foreign persons and the controlled items remain subject to U.S. jurisdiction, regardless of where they are shipped or transferred. The BIS review policy for items requiring a license for export to Russia is a presumption of denial when there is potential for use in exploration or production from deepwater, Arctic offshore, or shale projects in Russia that have the potential to produce oil.² There is also no savings clause, so shipments of controlled items in transit on or after August 6, 2014, are in violation of the rule.

The August 6 BIS trade restrictions follow the sanctions imposed by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) on July 29. OFAC added three Russian state-owned banks—VTB Bank, Bank of Moscow, and Russian Agricultural Bank—to the Sectoral Sanctions List. As of July 29, 2014, U.S. Persons are prohibited from transacting in, providing financing for, or otherwise dealing in new debt with a maturity of longer than 90 days or new equity in relation to those banks or any entity owned fifty percent or more by them. OFAC also added United Shipbuilding Corporation to its list of Specially Designated Nationals and Blocked Persons (SDNs). Under U.S. law, any assets of an SDN within the jurisdiction of the United States are blocked. Furthermore, transactions by U.S. Persons, or within the United States, involving an SDN, or an entity owned fifty percent or more by an SDN, are generally prohibited. BIS also added United Shipbuilding Corporation to its entities list, imposing a license requirement, with a presumption of denial, for the export, re-export, or other foreign transfer of U.S.-origin items to this entity.

The U.S. and EU coordinated their recent sanctions and restrictions, both targeting Russia's defense, finance, and energy sectors. However, the regulations leave room for differences in interpretation between U.S. and EU regulators on the definitions of "Arctic offshore" and "deepwater." Further, the list of items in the U.S. EAR Supplement No. 2 and EU Regulation Annex 2 are consistent, but classification interpretation may still vary. Therefore, companies should carefully examine the lists to determine whether a specific item is covered. For a detailed summary of the EU sector-specific sanctions, see our [EU Russian Sanctions Update](#), published on August 1, 2014.

Companies that are subject to U.S. or EU trade restrictions and do business in or with Russia or Russian entities should know whom they are dealing with and whether that entity or individual or the proposed transaction is subject to sanctions. U.S. sanctions apply not only to the listed individuals and entities, but also to companies in which these persons have a direct or indirect ownership interest of fifty percent or more. This approach differs in the EU, where the sanctions can apply to any entity "owned or controlled" by a designated entity or individual. The test of control, therefore, can bring into

² Although the scope of EAR Section 746.5's license requirement applies to exploration for both oil and gas, the presumption of denial specifies only use in the exploration for oil, meaning a license related to the gas sector will be reviewed without any presumption.

U.S., EU Impose Coordinated Controls on Exports to Russian Energy Sector

Continued

scope entities that do not meet the strict fifty percent ownership test, but are nonetheless effectively controlled by a designated individual or entity (such as through constitutional documents giving the designated entity control of the board of directors of a company). In addition to having adequate screening procedures in place that utilize the most current information, companies subject to U.S. or EU trade restrictions should conduct sufficient due diligence on their counterparties to determine whether these companies are owned or controlled by a sanctioned entity or individual.

Related Links

Bureau of Industry and Security, [Amendments to Export Administration Regulations](#), Federal Register, Volume 79, Number 151, (August 6, 2014)

Bureau of Industry and Security, [Export Administration Regulations](#), (August 6, 2014)

Census Bureau, [Schedule B List](#), (August 6, 2014)

Office of Foreign Assets Control, Specially Designated Nationals List, [Ukraine-Related Designations](#), (July 29, 2014)

Office of Foreign Assets Control, [Sectoral Sanctions Identification List](#), (July 29, 2014)

Relevant U.S. Press Releases

U.S. White House, Office of the Press Secretary, [Statement by the President on Ukraine](#), (July 29, 2014)

U.S. White House, Office of the Press Secretary, [Background Conference Call on Ukraine](#), (July 29, 2014)

Press Release, U.S. Department of Commerce, [Commerce Department Announces Further Expansion of Export Restrictions on Russia](#), (August 6, 2014)

European Union Sanctions

Client Memorandum, [EU Sanctions Update – Russia/Ukraine](#), (July 31, 2014)

[EU Council Regulation 833/2014](#), (July 31, 2014)

U.S., EU Impose Coordinated Controls on Exports to Russian Energy Sector

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If you have any questions or need any assistance in determining whether your company may be affected by U.S./EU sanctions against Russia, please contact Martin J. Weinstein (202-303-1122, mweinstein@willkie.com), Robert J. Meyer (202-303-1123, rmeyer@willkie.com), Jeffrey D. Clark (202-303-1139, jdclark@willkie.com), Peter Burrell (+44 20 3580 4702, pburrell@willkie.com), Miriam A. Bishop (202-303-1126, mbishop@willkie.com) or the Willkie attorney with whom you regularly work.

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