

On February 25, 2022, the Department of Commerce Bureau of Industry and Security (“BIS”) unveiled extensive new export control regulations on Russia and Russian-aligned regions of Ukraine as part of the Biden Administration’s economic sanctions package in response to the Russia-Ukraine conflict. This alert is the second installment of the Biden Administration’s response to the Russia-Ukraine conflict. See also [our alert](#) on the US, UK and EU Targeted and Territorial Sanctions.

This alert summarizes the new license requirements; foreign-direct product (“FDP”) rules; scope of Russian military end use and end user control; Entity List additions; export controls on the Crimea Region of Ukraine, as well as the so-called Donetsk People’s Republic and Luhansk People’s Republic (together, the “Covered Regions of Ukraine”); and country list classification regarding Russia.

The UK Prime Minister announced that the UK would be implementing export controls similar to those now imposed by the United States, including a ban on the export of dual-use items to Russia. The EU is expected to adopt similar measures.

New Commerce Control List (“CCL”)-based License Requirements

Under § 746.8(a)(1) of the Export Administration Regulations (“EAR”; 15 C.F.R. parts 730-774), a license is required to export, reexport, or transfer (in-country) to or within Russia any item subject to the EAR and described in any Export Control Classification Number (“ECCN”) in Categories 3 through 9 of the CCL. Deemed exports and deemed reexports are excluded from this license requirement. Notably, the scope of this new license requirement captures items that previously did not require a license to send to Russia, including the parts and components used in civil aircraft controlled under ECCN 9A991.d. The Biden Administration’s objective is to restrict Russia’s access to items that it cannot independently produce.

Under § 746.8(a)(2) of the EAR, a license is required to reexport, export from abroad, and transfer (in-country) to any destination any foreign-made item subject to the EAR under the Russia FDP rule (§ 734.9(f)), which is described below.

Under § 746.8(a)(3) of the EAR, a license is required to reexport, export from abroad, and transfer (in-country) to or within any destination any foreign-made item subject to the EAR under the Russia-Military End User (“Russia-MEU”) FDP rule (§ 734.9(g)), other than EAR99-designated food or medicine or ECCN 5A992.c and 5D992.c items, unless they are destined for Russian government end-users or Russian state-owned enterprises (“SOEs”). The Russia-MEU FDP rule is described below.

BIS will review export license applications under this rule with a policy of denial. However, BIS will perform case-by-case reviews to determine whether the transaction involving the following applications of items would benefit the Russian government or defense sector: safety of flight, maritime safety, humanitarian needs, government space cooperation, items destined to specified Western subsidiaries and joint ventures operating in Russia,¹ civil telecommunications infrastructure provided by companies headquartered in Country Group A:5 and A:6 countries, and government-to-government activities.

The new rule allows for limited license exceptions when a license is otherwise required. Those license exceptions are:

- Certain sections of License Exception TMP for items for use by the news media, § 740.9(a)(9)
- License Exception GOV, § 740.11(b)
- License Exception TSU for software updates for civil end users provided those civil end users are subsidiaries or joint ventures of companies headquartered in the United States or a country or countries from Country Groups A:5 or A:6, § 740.13(c)
- License Exception BAG, excluding firearms and ammunition (paragraph (e)), § 740.14
- License Exception AVS, § 740.15 (a)-(b)
- License Exception ENC, excluding Russian government end users and Russian SOEs, § 740.17
- License Exception CCD, § 740.19

¹ The specified Western entities are wholly owned U.S. subsidiaries; foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies; joint ventures of U.S. companies with companies headquartered in Country Groups A:5 and A:6; wholly owned subsidiaries of companies headquartered in Country Groups A:5 and A:6; and joint ventures of companies headquartered in Country Groups A:5 and A:6 with other companies headquartered Country Groups A:5 and A:6, but not Russian-headquartered companies.

New Foreign-Direct Product Rules

The new Russian export controls establish two new FDP rules that cause more foreign-made items to be subject to the EAR when destined for Russia or Russian military end-users.

Section 734.9(f) is the Russia FDP Rule. For purposes of this rule, a foreign-made item located outside the United States is subject to the EAR if: (1) it is not EAR99; (2) it is either the direct product of U.S.-origin technology or software specified in any product group D or E ECCN in CCL Categories 3, 4, 5, 6, 7, 8, or 9, or the output of a plant or major component of a plant that itself is the direct product of such U.S.-origin technology or software; and (3) there is knowledge that the item is destined to Russia, or will be incorporated into or used in the production or development of any non-EAR99 part, component, or equipment produced in or destined to Russia.² Foreign-made items subject to the EAR under the Russia FDP Rule will be subject to the new § 746.8(a)(2) license requirement and eligible for limited exceptions described in § 746.8(c)(1)-(7) as discussed in the previous Part.

Section 734.9(g) (the “Russia-MEU FDP Rule”) targets Russian military end-users. For purposes of this rule, a foreign-made item located outside the United States is subject to the EAR if (1) it is either the direct product of technology or software (regardless of origin) specified in any product group D or E ECCN in any CCL category or the output of a plant or major component of a plant that itself is the direct product of such U.S.-origin technology or software; and (2) there is knowledge that (i) the item will be incorporated into or used in the production or development of any part, component, or equipment produced, purchased, or ordered by a Footnote 3 designated entity³ (i.e., a military end-user on the Entity List under Russia), or (ii) a Footnote 3 designated entity is a party to any transaction⁴ involving the foreign-made item.⁵ Foreign-made items subject to the EAR under the Russia-MEU FDP rule will be subject to the new § 746.8(a)(3) license requirement without exception other than as specified in the Entity List entry for a Footnote 3 entity on the Entity List in Supplement No. 4 to part 744 of the EAR.

BIS has created a Russia Exclusions List to exclude certain countries,⁶ including the UK and EU, planning to implement similar export controls measures from the requirements of the Russia and Russia-MEU FDP Rules and the *de minimis* provisions under Supplement No. 2 to part 734 with respect to ECCNs that either control an item only for anti-terrorism (“AT”) reasons or are described in ECCN 9A991.

Expanded scope of Russia military end use and end user control under Section 744.21

Previously, the general prohibition of § 744.21(a) of the EAR required a license to export, reexport, or transfer (in-country) any item subject to the EAR listed in Supplement No. 2 to part 774 to Burma, Cambodia, China, Russia, or Venezuela if there is knowledge⁷ that the item is intended entirely or partially for a military end-use or end-user in any of the listed countries at the time of the export, reexport, or transfer (in-country). Now, for items destined to Russia, the new rule expands the product scope for this license requirement to cover all items subject to the EAR, except EAR99-designated food and medicine, and ECCN 5A992.c and 5D992.c items not for Russian government end users or Russian SOEs, if there is knowledge that the item is intended entirely or partially for a military end-use or end-user in any of the listed countries at the time of the export, reexport, or transfer (in-country). License Exception GOV (§ 740.11(b)(2)(i)-(ii)) is the only license exception available for such transactions.

Entity List Additions

BIS transferred forty-five Russian entities from the Military End-User List to the Entity List and expanded the corresponding license requirement to all items subject to the EAR. BIS also added two new Russian entities—the International Center for Quantum Optics and Quantum Technologies LLC, and SP Kvant (both denoted with an asterisk in the below list)—to the Entity List for obtaining or attempting to obtain U.S.-origin items in support of nuclear activities for Russia. These entities are now subject to license requirements that apply to all items subject to the EAR except for EAR99-designated food and medicine, as well as ECCN 5A992.c and 5D992 items not for Russian government end users or Russian SOEs. All forty-seven of the following entities are military end users under § 744.21(b) of the EAR.

- Admiralty Shipyard JSC
- Aleksandrov Scientific Research Technological Institute NITI
- Argut OOO
- Communication Center of the Ministry of Defence
- Federal Research Center Boreskov Institute of Catalysis
- Federal State Budgetary Enterprise of the Administration of the President of Russia
- Federal State Budgetary Enterprise Special Flight Unit Rossiya of the Administration of the President of Russia

² 15 C.F.R. § 734.9(f) (2022).

³ *Id.* § 734.9(g) n.3.

⁴ A transaction party could be a purchaser, intermediate consignee, ultimate consignee, or end-user. *Id.* § 734.9(g)(2)(ii).

⁵ *Id.* § 734.9(g)(2).

⁶ The twenty-seven countries of the European Union, Australia, Canada, Japan, New Zealand, and the United Kingdom, as listed in § 746.8(a)(4).

⁷ Per § 772.1 of the EAR, knowledge “includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts.”

- Federal State Unitary Enterprise Dukhov Automatics Research Institute (VNIIA)
- Foreign Intelligence Service (SVR)
- Forensic Center of Nizhny Novgorod Region Main Directorate of the Ministry of Interior Affairs
- *International Center for Quantum Optics and Quantum Technologies LLC
- Irkut Corporation
- Irkut Research and Production Corporation Public Joint Stock Company
- Joint Stock Company Scientific Research Institute of Computing Machinery
- JSC Central Research Institute of Machine Building (JSC TsNIIMash)
- JSC Kazan Helicopter Plant Repair Service
- JSC Rocket and Space Centre – Progress
- Kamensk-Uralsky Metallurgical Works J.S. Co.
- Kazan Helicopter Plant PJSC
- Komsomolsk-na-Amur Aviation Production Organization (KNAAPO)
- Ministry of Defence of the Russian Federation including the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations of the Russian Federation
- Moscow Institute of Physics and Technology
- NPO High Precision Systems JSC
- NPO Splav JSC
- Oboronprom OJSC
- PJSC Beriev Aircraft Company
- PJSC Irkut Corporation
- PJSC Kazan Helicopters
- POLYUS Research Institute of M.F. Stelmakh Joint Stock Company
- Promtech-Dubna, JSC
- Public Joint Stock Company United Aircraft Corporation
- Radiotechnical and Information Systems (RTI) Concern
- Rapart Services LLC
- Rosoboronexport OJSC (ROE)
- Rostec (Russian Technologies State Corporation)
- Rostekh – Azimuth
- Russian Aircraft Corporation MiG
- Russian Helicopters JSC
- *SP Kvant
- Sukhoi Aviation JSC
- Sukhoi Civil Aircraft

- Tactical Missiles Corporation JSC
- Tupolev JSC
- UEC-Saturn
- United Aircraft Corporation
- United Engine Corporation
- United Instrument Manufacturing Corporation

None of these entities qualify for a license exception when they are parties to a transaction, except JSC Central Research Institute of Machine Building (JSC TsNIIMash) and JSC Rocket and Space Centre – Progress, which are eligible for a U.S. Government authorization under License Exception GOV (§ 740.11(b)(2), (e)).

Additionally, BIS revised two Russian entities—Federal Security Service (FSB) and Main Intelligence Directorate—already on the Entity List by adding a Footnote 3 designation to each because the End-User Review Committee has determined that these entities are military end users.

Comprehensive export, reexport, and transfer (in-country) restrictions on Covered Regions of Ukraine

BIS has expanded the restrictions in § 746.6 to apply to export, reexport, and transfer (in-country) transactions involving the Donetsk People’s Republic and Luhansk People’s Republic regions of Ukraine (together, the “Covered Regions of Ukraine”) and the provision of goods, services, or technology from the United States or by a U.S. person. BIS has also imposed new license requirements for certain export, reexport, and transfer (in-country) transactions involving the Crimea region of Ukraine to ensure all restrictions on it conform with those on the Covered Regions of Ukraine.

BIS has imposed a license requirement for the export and reexport to Crimea and the Covered Regions of Ukraine, as well as the transfer within the three regions, of all items subject to the EAR, other than EAR99-designated food and medicine and certain software for Internet-based personal communications (i.e., ECCN 5D992.c software). BIS will review applications involving such transactions under a policy of denial except for items authorized under the Department of the Treasury’s Office of Foreign Assets Control general licenses. The same narrow license exceptions previously available to Crimea under § 746.6 are also now available to the other Covered Regions of Ukraine.

Russia Country Group Designation

BIS adds Russia to Country Group D:5 to “harmonize[] the arms embargo-related provisions in the EAR with the Directorate of Defense Trade Controls’s regulation of arms embargoes in 22 C.F.R. § 126.1 of the International Traffic in Arms Regulations (“ITAR”; 22 C.F.R. parts 120-130). Per § 742.4(b)(1)(ii) of the EAR, “items classified under 9x515 or ‘600 series’ ECCNs will be reviewed [with a policy of denial] consistent with [U.S.] arms embargo policies in § 126.1 of the ITAR” when they are destined to a Country Group D:5 country.

Complementary UK and EU Export Controls

As discussed above, the UK plans to implement export controls similar to those the United States has imposed, including a ban on the export of dual-use items—namely “high-end and critical technical equipment and components in the electronics, telecommunications, aerospace and other sectors”—to Russia.

The European Commission has announced its intent to implement a technical compliance denial, which effectively operates as a ban, on imports of goods originating from the Covered Regions of Ukraine into the European Union. The European Commission also plans to impose restrictions on the direct and indirect provision of financing, insurance, and reinsurance of goods originating from the Covered Regions of Ukraine. Additionally, the European Commission will likely prohibit entities within its jurisdiction from selling, supplying, transferring, or exporting tourism services, as well as goods and technology within the key sectors (e.g., items related to transport; telecommunications; energy; oil and gas; and minerals as described in Annex II of the Council Regulation 2022/262), to the Covered Regions of Ukraine.

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