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Navigating US Russian sanctions: what to consider

Trade Compliance professionals are closely following emerging US restrictions against Russia and evaluating potential impact to their businesses. Historically, Russian sanctions and export control restrictions have been notoriously difficult to navigate but impacted a limited number of economic sectors. By contrast, the new restrictions may be much broader, requiring companies to think carefully about how they approach transactions with Russian individuals and entities.

Sanctions in the pipeline

Momentum is gaining for new Russian restrictions, with the Department of the Treasury's Office of Foreign Assets Control ("OFAC") designating four individuals for alleged activities to destabilize Ukraine. Tellingly, it issued

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the following statement: "[T]he United States will continue to take steps, through actions like this one, and in partnership with the Ukrainian government, to identify, expose, and undercut Russia's destabilization efforts,"[1] potentially indicating more designations are on the horizon. Additionally, the US administration told the US semi-conductor industry to anticipate restrictions on exports to Russia if tensions escalate.[2]

Restrictions being considered include a change to the Commerce Department's Bureau of Industry and Security's ("BIS") "foreign direct product rule" to expand the range of products deemed to be of US origin and therefore subject to US export restrictions, much like what was done with regards to Huawei, which drastically cut its access to equipment and technology critical to its production efforts.[3]

Most notably of all, the US Congress is considering a bill that would impose a host of sanctions on Russian persons, entities sectors and services. The most impactful being restrictions around individual banks and "extractive industries" such as oil and gas extraction and production and coal extraction.

Also, interestingly, it includes denying Russian banks access to SWIFT. SWIFT is a secure communications platform used by banks, brokerages and other financial institutions to send and receive information. It is used by approximately 11,000 financial institutions across 200 countries.[4] While Russia has developed an alternative to SWIFT, it is not as sophisticated – meaning that losing access to SWIFT could have a resounding impact on the Russian economy. For those conducting business in Russia or with companies in Russia, making and receiving payments would become much more difficult, and in some cases, effectively impossible. Such a drastic step would impact all international business conducted with Russia – not just business with specifically designated parties. While cutting Russia off from SWIFT would likely be a sanction of last resort, it has been done before. In 2012, to comply with EU sanctions requirements, SWIFT disconnected Iran from its network, which lasted until 2016.

Consider the risk, now

While the proposed legislation has a long way to go before becoming law, it is probable that OFAC and BIS will issue more restrictions, thereby creating additional complexity. Companies that have touchpoints with Russia should begin assessing the potential impact of more sanctions. While risk assessments are foundational to any well-run sanctions program, for companies operating in or with ties to Russia, now is the time to conduct a Russia-focused sanctions assessment. In developing the risk assessment, compliance professionals should map their relationships with Russian entities against the current and proposed sanctions. Further, since there is still much that is unknown about the potential sanctions, the risk must be considered along a continuum to develop

1 "Treasury Sanctions Russian-Backed Actors Responsible for Destabilization Activities in Ukraine." US Department of the Treasury, 20 January 2022.

2 Alexandra Alper, Karen Freifeld, "White House tells chip industry to be ready for potential Russia export curbs," Reuters, 19 January 2022.

3 Ellen Nakashima and Jeanne Whalen, "US threatens use of novel export control to damage Russia's strategic industries if Moscow invades Ukraine," *Washington Post*, 23 January 2022.

4 Todd Prince, "The 'Nuclear Option'. What is SWIFT And What Happens If Russia Is Cut Off From It?," https://www.rferl.org/a/russia-swift-nuclear-option/31601868.html.

meaningful contingency plans. For example, OFAC's designations may minimally impact a company because it does not transact in the currently targeted sectors or with the designated individuals. As a result, the risk is low and may require only periodic revalidations. Alternatively, if sanctions against Russian banks are implemented, the impact could be far more severe, requiring a plan to quickly transition assets. For companies whose sanctions teams do not include Russia sanctions specialists, it may make sense to on-board someone who can navigate these new regulations, or at least identify a trusted third-party who can provide timely and accurate advice related to such sanctions.

Even if the proposed restrictions are not implemented, the results of the risk assessment will provide meaningful insight into the company's specific risk. It will then serve as a touchpoint when considering mitigating measures, while also exposing potential weaknesses. If the proposed restrictions are fully implemented, then international companies will be better positioned to operate in a higher-risk environment.■

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