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New U.S. Russia Sanctions Target Financial Support of Military-Industrial Base and Expand Ban of Seafood Imports

The Biden Administration recently issued the [latest round](#) of U.S. sanctions against Russia, focusing on (1) secondary sanctions applicable to foreign financial institutions (“FFIs”) that engage in certain transactions in support of Russia’s military-industrial base, and (2) the importation into the United States of certain Russian-origin seafood processed in third countries. The U.S. sanctions, issued December 22, 2023, follow the [European Union’s twelfth package](#) of sanctions against Russia, imposed on December 18, 2023.

As a result of the new sanctions, it will be important for FFIs to conduct export controls-related due diligence for any transaction with potential Russia exposure and for U.S. seafood importers to engage in supply chain tracing to ensure that imported products are not prohibited.

To effectuate the sanctions, President Biden issued a new [executive order](#) (“EO”) amending [EO 14024](#) (providing for the imposition of sanctions against certain categories of Russia-related persons) and [EO 14068](#) (prohibiting certain Russia-related imports, exports, and new investment). Furthermore, the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) issued

a [determination](#) (the “Critical Items Determination”) identifying categories of goods triggering secondary sanctions risks for FFIs and a [determination](#) (the “Seafood Determination”) identifying categories of seafood processed in third countries that are prohibited for import.

SECONDARY SANCTIONS AGAINST FFIS

President Biden’s EO authorizes the imposition of sanctions against FFIs conducting or facilitating transactions:

- i. For or on behalf of persons designated as Specially Designated Nationals (“SDNs”) under EO 14024 for operating in the technology, defense and related materiel, construction, aerospace, or manufacturing sectors of the Russian economy; or
- ii. Involving Russia’s military-industrial base, including the supply to Russia (directly or indirectly) of certain listed items.

The Critical Items Determination lists items triggering sanctions for FFIs, including certain machine tools and manufacturing equipment; manufacturing materials for semiconductors and related electronics; electronic test

equipment; propellants, chemical precursors for propellants, and explosives; lubricants and lubricant additives; bearings; advanced optical systems; and navigation instruments.

It is important to keep in mind that the authority to impose sanctions against FFIs under item (i) above is separate from the authority to impose sanctions under item (ii) (involving listed “critical items”), and further that providing support for the supply of “critical items” is just an illustrative example of a transaction involving Russia’s military-industrial base. Thus, FFIs that conduct or facilitate significant transactions or provide any service involving Russia’s military-industrial base, whether or not involving “critical items,” run the risk of being sanctioned by OFAC.

Where an FFI engages in the above activity, OFAC is authorized to:

- Prohibit the opening of U.S. correspondent or payable-through accounts for the FFI or impose “strict conditions” on the maintenance of such accounts; or
- Block the property and interests in property of the FFI, *i.e.*, designate the FFI as an SDN, impose an asset freeze, and prohibit U.S. persons from engaging in all transactions and dealings with the FFI.

To aid FFIs in complying with the new sanctions, OFAC issued a [Compliance Advisory](#). The Advisory identifies the following as examples of activities that could place an FFI at risk:

- Maintaining accounts, transferring funds, or providing other financial services (*i.e.*, payment processing, trade finance, insurance) for any persons designated for operating in the specified sectors.
- Maintaining accounts, transferring funds, or providing other financial services for any persons, either inside or outside Russia, that support Russia’s military-industrial base, including those that operate in the specified sectors of the Russian Federation economy.

- Facilitating the sale, supply, or transfer, directly or indirectly, of the specified items to Russian importers or companies shipping the items to Russia.

- Helping companies or individuals evade U.S. sanctions on Russia’s military-industrial base. This includes:

- offering to set up alternative or non-transparent payment mechanisms,
- changing or removing customer names or other relevant information from payment fields,
- obfuscating the true purpose of, or parties involved in payments, or
- otherwise taking steps to hide the ultimate purpose of transactions to evade sanctions.

SEAFOOD SANCTIONS

President Biden’s EO broadens EO 14068’s pre-existing ban of the import of Russian-origin seafood to authorize OFAC to ban the import of seafood:

mined, extracted, produced, or manufactured wholly or in part in the Russian Federation, or harvested in waters under the jurisdiction of the Russian Federation or by Russia-flagged vessels, notwithstanding whether such products have been incorporated or substantially transformed into other products outside of the Russian Federation.

Therefore, under the new EO, OFAC has expanded the prior ban to now also prohibit imports of seafood that are of Russian origin or harvested in Russian waters or by Russia-flagged vessels—*even to the extent they are incorporated or substantially transformed into products made elsewhere.*

OFAC’s Seafood Determination, in implementation of the new sanctions, identifies salmon, cod, pollock, and crab as subject to the expanded import ban.

To ease the compliance burden associated with the new sanctions, OFAC issued a [general license](#) authorizing until February 21, 2024, the wind-down of transactions “ordinarily incident and necessary to the importation into the United States of seafood derivative products.” The general license applies to transactions pursuant to contracts entered into before December 22, 2023.

Notably, in a [Frequently Asked Question](#), OFAC stated that it intends to issue a determination similarly prohibiting the importation of certain Russian diamonds processed in third countries.

KEY TAKEAWAYS

Particularly notable aspects of the new sanctions include the following:

- *FFIs / secondary sanctions.*
 - FFIs can be subject to sanctions for engaging in transactions involving (1) SDNs designated for operating in certain sectors of Russia’s economy supporting Russia’s military-industrial base, or (2) the supply to Russia of certain specified critical items.
 - Notably, this applies even if a transaction is completely outside of U.S. “primary” sanctions jurisdiction (*e.g.*, to non-U.S. dollar-denominated transactions).
 - The new sanctions make clear that OFAC intends to focus on FFIs’ financial services as key nodes of support for Russia’s defense industrial base.
- *FFIs / export control due diligence.*
 - As a result of the Critical Items Determination, it is important for FFIs to conduct export controls-related due diligence for any transaction with potential Russia exposure.
 - Specifically, FFIs should consider integrating checks into their due diligence regarding possible direct or indirect export to Russia of listed “critical items.”
- The focus on the financial system’s role in facilitating exports of critical items to Russia is consistent with a recent [joint bulletin](#) issued by the U.S. Department of the Treasury’s Financial Crimes Enforcement Network and the U.S. Department of Commerce’s Bureau of Industry and Security regarding evasion of U.S. export controls.
- *Seafood / processing in third countries.*
 - The Seafood Determination’s focus on Russian-origin seafood processed in third countries reflects a concern by the United States and its [G7 partners](#) that third-country processing of sanctioned Russian items helps Russia to derive revenue and evade sanctions.
 - Along these lines, as noted above, OFAC intends to issue a determination imposing similar sanctions on Russian diamonds processed in third countries.
- *Seafood sanctions / supply chain tracing.*
 - With the updated sanctions prohibiting the import of Russian-origin seafood (including seafood harvested in Russian waters or by Russia-flagged vessels) that is processed in third countries, it will be important—and challenging—for U.S. seafood importers to engage in supply chain tracing to ensure that imported products are not prohibited.
 - U.S. seafood importers may wish to consider how to develop diligence processes to confirm that their imports are free of sanctions-related taint.
 - It seems likely that U.S. Customs and Border Protection will take an active role in seizing prohibited cargo, as under the [Uyghur and Forced Labor Prevention Act](#).

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