



## STEPTOE OUTSIDE COUNSEL

# Tightening the screws on trade controls related to Russia

**O**n 8 May 2022, President Biden issued a fact sheet entitled “United States and G7 Partners Impose Severe Costs for Putin’s War Against Ukraine”. Effective 9 May, the US Department of Commerce’s Bureau of Industry and Security (“BIS”) published a new rule (“New Rule”) expanding US export controls under Section 746.5 of the Export Administration Regulations (“EAR”). These new export controls apply to items intended for the Russian industrial sector.

Previously, Section 746.5 had focused US export controls on items identified in Supplement No. 2 to Part 746 related to the Russian oil or gas deepwater, Arctic offshore, or shale formation exploration and production projects.

The New Rule has expanded the scope of EAR-controlled items subject to licensing requirements for export, reexport, or transfer (in country) to or within Russia, regardless of the industry, end use or end-user. According to BIS, the items now subject to US license requirements, listed in Supplement No. 4 to Part 746 of the EAR, are consistent with EU restrictions for similar items involving Russian trade.

More specifically, the new BIS rule

adds 205 6-digit Harmonized Tariff Schedule (“HTS”) codes and the corresponding 478 Schedule B numbers to describe the list of items requiring a license. HTS codes are six-digit codes used by global customs authorities upon importation to identify and declare products for duties, taxes, and other entry purposes. A Schedule B number is a US-specific coding system administered by the US Census Bureau to monitor and declare items exported from the US. These Schedule B numbers take the same form as HTS codes for the first six digits, but include four additional digits that help further identify and classify products.

Notably, most (if not all) of the items subject to the more stringent controls in Supplement No. 4 appear to be goods that are not enumerated on the US Commerce Control List (“CCL”) with an Export Control Classification Number. Rather, these goods are classified in the catch-all “EAR99” category for items not elsewhere specified on the CCL, and previously would not have required a license for export or reexport to Russia.

The New Rule applies to a broad range of products having industrial and commercial applications, with a policy

goal of limiting Russia’s access to items and revenue that could support its military capabilities in Ukraine, including, among others:

- Supported catalysts
- Veneer sheets and sheets for plywood and other wood
- Casks, barrels, staves, hoops, and other wood products
- Various iron or steel products (e.g., drums, tanks, vats, etc.)
- Wood working and metal working products
- Various boilers, engines, and motors
- Parts for fans, air-conditioning machines, ice-making machines, drinking water coolers, etc.
- Filters, centrifuges, mechanical appliances, elevators, etc.
- Various machine tools, machinery, and parts
- Generating sets
- Battery and cell parts
- Transmission apparatus for radio broadcast or television
- Motor vehicles, trailers, parts of work trucks, etc.
- Surveying instruments
- Measuring or checking instruments

The New Rule published a “savings clause” allowing items that: (1) were “en route aboard a carrier” to a port as of or on 9 May 2022; and (2) exported, reexported, or transferred (in country) “pursuant to actual orders” to proceed without a license to or within Russia. Otherwise, a specific license application must be approved by BIS for controlled items destined to Russia, and no EAR license exceptions are available except License Exception GOV in Section 740.11(b).

License applications for the export, reexport, or transfer (in-country) of any item subject to the New Rule will be reviewed under a policy of denial, except that a case-by-case license review policy will apply to applications necessary for health and safety reasons, or for items that meet humanitarian needs.

In light of US foreign policy and national security objectives countering Russia’s actions in Ukraine and elsewhere, more compliance resources may need to be directed to assessing how the trade restrictions could apply to supply chains. Exporters and reexporters should take care not to transfer or deliver controlled items to Russia without a BIS license or other authorization. ■

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