

U.S. and Multilateral Russia-related Trade Policy and Import Restrictions

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Key Points

- The United States and its allies are banning imports or increasing tariffs on Russia's top products—crude oil, petroleum, petroleum fuels, oils, liquefied natural gas, coal, fish, seafood, alcohol, non-industrial diamonds, iron and steel.
- The United States and its allies are also banning exports and re-exports into Russia of “luxury goods.”
- Members of Congress introduced legislation to strip Russia of PNTR and MFN status.
- Other WTO members have suspended MFN or announced an intent to do so, with several members invoking the GATT Article XXI security exception.

I. Introduction

Russia's invasion of Ukraine has generated worldwide outcry and led the United States and its allies to take an unprecedented series of economic sanctions and export controls related to, for example, Russian institutions and specially designated nationals, and to unlicensed exports of certain items to Russia, Belarus, and the so-called Donetsk People's Republic and Luhansk People's Republic regions of Ukraine. After imposing an increasing number of economic sanctions and export controls, the United States and its allies are now increasingly taking measures affecting imports from Russia—effectively hitting Russia from all economic fronts.

This is the latest in a series of client alerts focusing on U.S. and allied action in response to Russia's invasion of Ukraine, and Belarus's enabling of it. On March 8, Akin Gump published a [client alert](#) detailing the expansive and novel export controls against Russia and Belarus. This alert concerns the bevy of actions that the United States and its partners have taken in the areas of trade policy and imports. In particular, this alert covers (1) restrictions imposed on Russian imports, (2) bans imposed on the export of and re-export “luxury goods” to Russia, (3) efforts to revoke Russian's permanent normal trade relations (PNTR) and most favored nation (MFN) status, and (4) trade policy measures taken to isolate Russia.

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The situation in Ukraine is fluid and changes daily and, accordingly, U.S. and plurilateral actions do likewise, requiring careful and constant monitoring.

II. Import Restrictions

The United States is targeting Russia's top imports to inflict maximum strain on the Russian economy. U.S. Census Bureau data for 2020 reveals that the United States' top imports from Russia are other precious metals (\$2.3 billion), petroleum products (\$982 million), fish and shellfish (\$899 million), steelmaking (\$756 million), chemicals-fertilizers (\$627 million) and nuclear fuel materials (\$610 million). Many different products in these sectors are now, or will be, banned from importation into the United States following a limited wind-down period.

On March 8, 2022, President Biden issued **Executive Order (EO) 14066**, the first Russia-related executive action that pertains to the prohibition on importing certain commodities. EO 14066 prohibits, among other restrictions, "[t]he importation into the United States of the following products of Russian Federation origin: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products." EO 14066 also prohibits new investment in Russia's energy sector in by U.S. persons, as well as any financing or facilitation by any person of prohibited imports—and any conspiracy (e.g., intentional transshipment) to violate the prohibition on imports.

This ban alone covers roughly 52 percent by value of Russian-origin inbound trade to the United States. The U.S. Department of the Treasury's Office of Foreign Asset Control (OFAC) issued an authorization (**General License 16**) to allow for the above-mentioned energy products to be imported into the United States until 12:01 a.m. EDT on April 22, 2022, so long as the imports are pursuant to written contracts or written agreements entered into prior to March 8, 2022. OFAC did not provide a wind down period for the "new investment in the energy sector" prohibition, and indicated that this prohibition is effective immediately. U.S. Customs and Border Protection (CBP) issued a **policy** shortly thereafter requiring that importers show evidence of a contract for purchase prior to March 8, 2022, and noted that the documentation will be required prior to the unloading of conveyances. Notably, the import ban will exempt goods that are "substantially transformed" outside of Russia.

In lockstep with the United States, the United Kingdom also announced on March 8, 2022, that it intends to phase out imports of Russian oil by the end of the year. The European Union has proposed a plan to make Europe independent from Russian fossil fuels well before 2030 and reduce EU demand for Russian gas by two-thirds before the end of the year. The President of the European Commission also stated that she "believes" the EU can be free from Russian gas by 2027. Canada and Australia implemented similar import bans, with Canada banning specific petroleum products from Russia and Australia banning the import of oil, refined petroleum products, natural gas, coal and other energy products from Russia.

On March 11, 2022, President Biden along with the European Union and G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States) announced that the countries will take further coordinated actions against Russia. For purposes of this alert, we highlight three actions the countries declared that they would take against Russia: (1) impose further restrictions on exports and imports of key

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goods and technologies on the Russian Federation to deny Russia revenues; (2) deprive “the elites, proxies and oligarchs that support President Putin’s war” access to luxury goods and assets (which we will discuss below in Section III); and (3) seek to revoke Russia’s PNTR/MFN status (which we will discuss below in Section IV).

Also on March 11, 2022, the United States took action on (1) further restrictions on imports and (2) banning exports of luxury goods (discussed in Section III) through [EO 14068](#), which bans the importation of certain strategic Russian products including fish, seafood, alcohol and non-industrial diamonds into the United States. As noted above, precious metals, fish and seafood are among Russia’s top imports into the United States. Concurrently, OFAC issued [General License 17](#), which authorizes the importation of goods pursuant to written contracts or written agreements entered into prior to March 11, 2022, but only for imports made through 12:01 a.m. EDT on March 25, 2022. CBP issued another policy requiring documentation until the import ban takes full effect on March 25, 2022. While OFAC has not released guidance as of the time of this publication, OFAC and CBP likely will enforce EO 14068 similarly, exempting goods that are “substantially transformed” outside of Russia. CBP and OFAC also likely will become aggressive about investigating transshipment and evasion of the import bans.

On March 15, 2022, the European Union also acted with regard to (1) restrictions on imports and (2) banning exports of luxury goods (discussed in Section III). The European Union published its first import ban on Russian products, focusing on certain iron and steel products that originate in Russia, are being exported from Russia or are located in Russia. Also on March 15, 2022, the United Kingdom announced a 35 percentage point increase on top of existing tariffs to apply to imports of key goods from both Russia and Belarus, such as vodka, fertilizer, iron and steel (i.e., £900 million worth of imports). On March 20, 2022, Australia prohibited the export of aluminum ores (including bauxite), alumina and related products to Russia.

Unsurprisingly, Russia responded to the U.S. and allied actions with countermeasures. On March 5, 2022, the Russian government issued an order declaring 48 “unfriendly countries”—including the United States, the G7 and EU member states. On March 8, 2022, the Russian government followed those designations with a decree prohibiting or restricting the export from and/or import into Russia of products and/or raw stock from forthcoming lists. On March 9, 2022, the Russian government identified a list of goods and equipment previously imported to Russia from abroad, the export of which from the country is temporarily restricted. The list includes manufacturing and telecommunications equipment, medical equipment, farm machinery, rail cars and locomotives, containers, turbines, metal and stone working machinery, and wood products. The Russian government also instituted a strategy of “import substitution” to minimize the effect of sanctions and allocated grants for this purpose. Without a resolution to the Ukrainian conflict, Russia likely will implement similar additional measures in the days ahead.

III. Export Ban on “Luxury Goods”

The purpose of the “luxury goods” ban is to target luxury items and goods frequently purchased by Russian elites. As referenced in Section II, in addition to restrictions on imports, EO 14068 also prohibits without a license the export and re-export of so-called “luxury goods.”

Without referring to EO 14068, the Commerce Department's Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) on March 11, 2022 to impose two new license requirements pertaining to "luxury goods," which are defined in a new Supplement No. 5 to Part 746 of the EAR. While Supplement No.5 covers the export of certain goods that objectively fall within the "luxurious" category (i.e., clothing articles retailing above \$1,000, fur skins, jewelry and silk), many of the goods included in the ban are not what one would traditionally consider to be "luxury goods" (i.e., beer, cigarettes, certain plastics and used cars). The approximately 400 products are defined by Harmonized Tariff Schedule (HTS) Schedule B numbers, as well as a 10-digit commodity description and per unit wholesale price if applicable.

Notwithstanding the EO's prohibition on shipments of luxury goods by U.S. persons, wherever located, the EAR did not impose any controls on U.S. persons shipping luxury goods outside the United States that are not subject to the EAR. Rather, the jurisdiction of the new controls applies to the "luxury" goods that are "subject to the EAR." In this context, such items that are not destined to military end users or others on the Entity List would be "subject to the EAR" if they are made in the United States, wherever located, or that are shipped from the United States, regardless of their country of origin. Foreign-made luxury goods that are EAR99 items shipped from outside the United States would also be "subject to the EAR" if destined to military end users on the Entity List under the Russia/Belarus Military End User Foreign Direct Product Rule.

As promised in the March 11, 2022, announcement of President Biden along with the European Union and G7 countries on March 15, 2022, the European Union also acted to ban exports of luxury goods. Specifically, the regulation prohibits the sale or export of certain listed luxury goods (e.g., luxury cars and watches) to any person in Russia or for use in Russia. Similar to the U.S. ban, the EU ban also has a value criteria depending on the category of luxury goods.

IV. PNTR/MFN Treatment

In the United States, "normal trade relations" (NTR) means that a trading partner receives "most-favored-nation" treatment. MFN is a tariff treatment that is equal to other U.S. trading partners who are members of the World Trade Organization (WTO). If a country has "permanent normal trade relations," the President, through a delegation of power from Congress, does not need to determine annually whether to grant the country NTR. As such, the revocation of PNTR, NTR or MFN would have the same effect—higher tariffs on imports from Russia thereby making Russian goods less desirable to businesses and consumers.

Russia received PNTR status in 2012, the same year that Russia acceded to the WTO. Congress passed the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (P.L. 112-208), which gave the President the authority to grant PNTR to Russia by proclamation. Congress achieved this by overriding a provision in existing U.S. law that required the President to deny NTR status to any country without NTR at the time of the law's enactment in 1975. At the time, this provision was intended to preclude the United States from having NTR with communist countries.

Within days of Russian launching its onslaught on Ukraine, several members of Congress introduced legislation (e.g., H.R. 6835, H.R. 6905, H.R. 7014, S. 3717, S. 3722, S. 3725, S. 3786) to revoke Russia's PNTR or MFN status. As stated above, on March 11, 2022, President Biden, the European Union and the G7 announced their support for revoking Russia's PNTR status. On March 17, 2022, by a 424 to 8 vote, the U.S. House of Representatives passed a bill to strip both Russia and Belarus of PNTR. Several members of the U.S. Senate have expressed their support for the bill, thereby increasing the likelihood that the legislation becomes law.

Several allies have taken similar (and in some cases, more advanced) steps. On March 3, 2022, Canada became the first country after Ukraine to revoke Russia's and Belarus's MFN status. On March 15, 2022, the European Union announced that it would stop treating Russia as a MFN effective immediately. The EU announcement identified several "like-minded partners" (Albania, Australia, Iceland, Republic of Korea, Moldova, Montenegro, New Zealand, North Macedonia and Norway) that also committed to seek the revocation of Russia's MFN status.

Russia has, in turn, retaliated against these moves. For starters, Russia has threatened to challenge the actions revoking its MFN status in dispute settlement before the WTO, which is discussed below in greater detail in Section V. Moreover, Russia has loosened protections afforded to intellectual property rights by allowing third parties to use patents and trademarks held by foreign companies that have exited Russia, without restrictions or costs. Russia likely will undertake additional action as it becomes increasingly isolated in the global economy.

V. WTO Action

MFN is one of the bedrock principles of the WTO. But General Agreement on Tariffs and Trade (GATT) Article XXI provides a security exception to this foundational principle. GATT Article XXI states in relevant part:

"Nothing in this Agreement shall be construed . . .

(b) to prevent any [member country] from taking any action which it considers necessary for the protection of its essential security interests . . .

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any [member country] from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security."

Since the outbreak of the conflict, several nations have relied on this provision to defend the WTO legality of the actions taken against Russia. On March 2, 2022, Ukraine invoked the security exception and rescinded the application of WTO agreements in trade relations with Russia, and urged WTO members to suspend Russia's participation in the WTO. On March 3, 2022, Canada also revoked Russia's MFN status on the basis of the security exception.

For its part, the United States thus far has taken steps to build consensus at the multilateral level.

On March 15, 2022, a group of countries including the United States published a joint statement at the WTO. The statement indicates that each of the signatory countries

has taken, or intends to take, retaliatory trade action against Russia, or otherwise will provide support for Ukraine. Albania, Australia, Canada, the European Union, Iceland, Japan, the Republic of Korea, Moldova, Montenegro, New Zealand, North Macedonia, Norway, the United Kingdom and the United States all signed on to the joint statement, invoking the national security exception in GATT Article XXI. These nations stated that they “will take any actions, as WTO members, that we each consider necessary to protect our essential security interests. These may include actions in support of Ukraine, or actions to suspend concessions or other obligations with respect to the Russian Federation, such as the suspension of most-favoured-nation treatment to products and services of the Russian Federation.”

That same day, Russia issued a statement of its own at WTO. Russia stated that it wanted to draw attention to “dangers looming over the multilateral trading system because of the recent aggressive and politically motivated trade restrictive actions of certain Members.” Russia makes three core arguments. First, Russia argues that the WTO does not provide for the ability to suspend its membership’s rights or to expel it from the WTO. Second, Russia calls the withdrawal of MFN treatment for Russian goods and services “unilateral” and “unjustified,” and states that it violates the WTO principle of non-discrimination. Third, Russia asserts that “the issue of territoriality” is outside the scope of the WTO.

However, in a possible move to pre-empt a response from the WTO collectively, it appears that Russia may formally seek to withdraw from the WTO. On March 21, 2022, Russia’s parliamentarians published a bill in its lower house, the State Duma, which would immediately retract Russia’s WTO membership if adopted.

VI. Conclusion

The response of the United States and its allies to Russia’s aggression against Ukraine will continue to evolve as the conflict unfolds. Akin Gump will continue to monitor the situation for the latest developments and stands ready to answer questions.

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