

CLIENT ALERT

Sweeping Export Controls on Russia and Belarus Reach New Heights: Novel Foreign Direct Product Rules and Expanded Licensing Requirements

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In response to Russia's invasion of Ukraine, the Department of Commerce's Bureau of Industry and Security ("**BIS**") issued [a final rule imposing new license requirements and licensing policies under the Export Administration Regulations \("**EAR**"\) regarding exports to Russia and certain regions of Ukraine](#) on February 24, 2022.¹ The new rule is effective immediately. In addition, on March 2, 2022, [BIS subjected Belarus to the same new rule](#) it had imposed on Russia days earlier due to Belarus's support for the Russian invasion of Ukraine.²

With the new rule, BIS further supported U.S. government policy to hamstring the Russian and Belarussian militaries and certain sectors of their economies that are entirely dependent on U.S.-origin technology or products derived from that technology. The U.S. government implemented similar export control measures on Huawei in 2019. Those restrictions were designed to cut Huawei off from U.S.-origin semiconductors and software, and have appeared to be successful as Huawei has ceded market share in the mobile device market since the implementation of those export controls. The U.S. government has noted that it will be monitoring foreign parties using U.S.-origin technology for any circumvention or

¹ 87 Fed. Reg. 12226.

² 87 Fed. Reg. 13048.

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assistance to Russia or Belarus regarding the new rule and has warned that the U.S. government will restrict such entities' use of U.S.-origin technology if they are found to be in violation of these controls.

Specifically, the new rule:

- Imposes new Commerce Control List (“**CCL**”)-based license requirements for exports, reexports, and transfers (in country) to Russia and Belarus;
- Adds two new foreign-produced “direct product” rules (“**FDP**” rule(s)) specific to Russia and Belarus, and Russian and Belarussian ‘military end users’;
- Specifies a license review policy of denial applicable to all of the license requirements being added in the new rule with certain limited exceptions;
- Significantly restricts the use of EAR license exceptions; and
- Transfers forty-five Russian entities from the [Military End-User \(“MEU”\) List](#)³ and two Belarussian entities to the [Entity List](#)⁴ with an expanded license requirement of all items subject to the EAR (including foreign-produced items subject to Russia/Belarus-MEU FDP rule); and

The new rule is designed to restrict Russia’s and Belarus’s access to items that the two countries require to project military power and fulfill their strategic ambitions in Eastern Europe. The items subject to the new rule include sophisticated technologies designed and produced in the United States, in addition to certain foreign-produced items that contain or are based on U.S.-origin technology subject to the EAR or other technology that is subject to the EAR that are essential inputs to Russia’s and Belarus’s key technology and other sectors, in particular, the defense, aerospace, and maritime sectors. The global dominance of U.S.-origin software, technology, and equipment in conjunction with similar export restrictions imposed by U.S. allies and partners will curb Russia’s and Belarus’s strategic ambitions and hinder its key economic sectors.

Additional details of the new rule’s features are described below.

A. New Licensing Requirements on EAR Controlled Exports to Russia and Belarus

³ Supplement No. 7 to part 744 of the EAR.

⁴ Supplement No. 4 to Part 744 of the EAR.

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The new rule imposes three distinct types of licensing requirements for exports to Russia and Belarus under Section 746.8 of the EAR.⁵ The first license scheme concerns items subject to the EAR and classified under Export Control Classification Number (“ECCN”) Categories 3 through 9 of the CCL. Products classified under these categories are now subject to license requirements when exported to Russia and Belarus. The second and third licensing requirements concern foreign direct products subject to the EAR specific to the entire country of Russia and Belarus and certain identified military end users. The three new licensing requirements are discussed in detail below.

1. License Requirements for CCL Categories 3 Through 9

Under the first type of license requirement, a license is required for the export, reexport, or transfer (in-country) to or within Russia and Belarus of any item subject to the EAR and specified in an ECCN in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL.⁶ In a reflection of the significant national security and foreign policy concerns involved with the situation in Ukraine, BIS is imposing broad transfer (in-country) requirements for the entire countries of Russia and Belarus with the intention of further restricting the ability of the Russian and Belarussian militaries and defense sectors to acquire the covered items.

The new license requirements extend to many items that did not previously require a license to export to Russia or Belarus, such as parts and components used in civil aircraft controlled under ECCN 9A991.d. While these are historically low level common items that were not subject to major restrictions on exports, these products are still necessary for aircraft, vessels, and electronic items to properly function and as such, inhibit Russia’s and Belarus’s ability to obtain such items it is unable to independently produce.

2. Russia/Belarus FDP Rule

The Russia/Belarus FDP rule establishes a license requirement for foreign-produced items that meet certain product scope and destination scope requirements described in Section 734.9(f) of the EAR.⁷ The Russian/Belarus FDP rule makes several articles controlled for export under the EAR the “direct product” of a wide range of CCL software and technology, or items produced by a complete plant or a major component of a plant that itself is the direct product of such U.S.-origin technology or software, when it is known that the foreign-produced item is destined for Russia or Belarus or will be incorporated into or used in the production or development of any part, component or equipment produced in or destined for Russia or Belarus. These covered products are categorized in product groups D or E (software and technology) in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL. Notably, the product scope of the Russia/Belarus FDP rule does not include items designated EAR99 that are produced by software or technology as described in Section 734.9(f)(1)(i) or by a complete plant or major component of a plant as described in Section 734.9(f)(1)(ii).

⁵ 15 CFR § 746.8.

⁶ 15 CFR § 746.8(a)(1).

⁷ 15 CFR § 746.8(a)(2).

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Under the new rule, “any destination” is used to address situations involving multi-step manufacturing processes that occur in more than one country and in which the parties involved have knowledge that the foreign-produced item being produced will ultimately be destined for Russia or Belarus. For example, this means that the licensing requirements will apply to exports and reexports from abroad from manufacturing country 1 to manufacturing country 2 (each contributing to the production chain) when there is knowledge that the reexport or export from abroad of the item is ultimately destined for Russia or Belarus or will be incorporated into or used in the production of any part, component or equipment (not designated EAR99) produced in or ultimately destined for Russia or Belarus.

Products covered by the Russia/Belarus FDP rule are eligible for license exemptions described in Section 746.8(c)(1)–(7) of the EAR (more information below). As discussed above, such license applications will be subject to a general policy of denial but will be subject to the limited case-by-case circumstances involving the safety of civil aviation and safe operation of U.S.-origin aircraft discussed in Section 746.8(b) of the EAR.

3. Russia/Belarus-MEU FDP Rule

Under the Russia/Belarus-MEU FDP rule, foreign-produced items subject to the EAR, including EAR99 items, will be subject to new license requirements pursuant to Section 734.9(g) of the EAR. These license requirements apply to foreign-produced items that meet specific scope and destination scope requirements. The Russia/Belarus-MEU rule makes the direct product of a wide range of software and technology, as it applies to any software or technology (product group D or E) controlled under any ECCN, or items produced by a plant or major component of a plant that itself is the direct product of such U.S.-origin technology or software when it is known to be destined for any of the Russian and Belarussian military end users with a footnote 3 designation listed on the Entity List. This includes EAR99 designated items that are a direct product of technology or software described in 734.9(g)(1)(i) or produced by a plant or component of a plant as described in 734.9(g)(1)(ii). To the extent that the direct product of an item controlled under ECCNs 0, 1, and 2 may encompass EAR99 food or medicine, this rule exempts those items from the license requirement. A foreign-produced item meets the destination scope of the Russia/Belarus-MEU FDP rule if there is knowledge that the foreign-produced item will be incorporated into, or will be used in the production or development of any part, component or equipment produced, purchased, or ordered by any entity with a footnote 3 designation.

There are no license exceptions specified in the Entity List entry for footnote 3 on the entity list in Supp. 4 part 744. Other such license applications involving the Russia/Belarus-MEU entities will be subject to a policy of denial.

B. Expanding Scope of Military End Use and User

As part of the new Russia/Belarus MEU-FDP rule, BIS is expanding the scope of the existing “military end use” and “military end user” control under Section 744.21 of the EAR for Russia and Belarus supply chain items subject to the EAR except for food and medicine designated EAR99. The new rule simultaneously removes forty-five Russian entities from

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the MEU List in Supp. 7 and adds them to the Entity List, and adds two Belarussian entities to the Entity List with an expanded license requirement for export, reexport, and transfer (in-country) of all items subject to the EAR including those items subject to the Russia/Belarus-MEU FDP rule for MEUs in Russia and Belarus. Additionally, BIS is adding two new Russian entities to the Entity List under the new rule and revises two existing entries for Russian entities on the Entities List. Notably, the addition of the Ministry of Defence of the Russian Federation to the Entity List covers the Armed Forces of Russia and all operating units wherever located, including the army, navy, marines, air force, and coast guard. A similar scope is applied to the Ministry of Defence of the Republic of Belarus. A complete list of the forty-nine Russian/Belarussian MEU entities added to the Entity List can be found in the Notice published in the [March 3](#) and [March 8](#) *Federal Register* notices.⁸

C. Certain Countries Exempted

In accordance with U.S. government policy, BIS has determined that certain countries are committed to implementing similar export controls as part of their domestic sanctions against Russia and Belarus (“**Certain Country Exclusion**”). These countries are excluded from the requirements of the Russia/Belarus and Russia/Belarus-MEU FDP rules and the *de minimis* provisions under Supplement No. 2 to part 7344 of the EAR with respect to ECCNs that either specify only anti-terrorism in the reason for control or are classified under ECCN 9A991. This list includes the 27 EU countries, Australia, Canada, Japan, New Zealand, South Korea, and the United Kingdom.⁹ Some of these countries have committed to but not yet implemented similar controls under their own domestic laws. It should be noted that the Certain Country Exclusion may be full or partial based on the specific country involved and only applies when the criteria specified in Section 746.8(a)(4) and (5) are met. These license requirements are not used to determine controlled U.S.-origin content in a foreign-made item for *de minimis* purposes, provided that the U.S.-origin content is described in ECCNs that either specify only anti-terrorism in the reason for control paragraph of the ECCN or is classified under ECCN 9A991, is included in the scope column of the Russia/Belarus exclusions list, and the foreign-made item will be reexported or exported to Russia/Belarus from a country on the Russia/Belarus exclusions list.

Supplement No. 3 to part 746 of the EAR includes three columns for the listed countries: (1) the countries for purposes of the exclusion under Section 746.8(a)(4) and (5); (2) the scope of the exclusion; and (3) the *Federal Register* document announcing the addition of such countries to the supplement.

D. Licensing Policies

License applications for exports of items under CCL Categories 3 through 9 and the Russia/Belarus FDP rule will now be reviewed under a policy of denial with certain limited exceptions. License applications for (1) safety of flight; (2) maritime

⁸ 87 *Fed. Reg.* 12226 and 87 *Fed. Reg.* 13048

⁹ Supplement No. 3 to Part 746 of the EAR.

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safety; (3) meeting humanitarian needs; (4) enabling government space cooperation; and (5) companies headquartered in [Country Groups A:5 and A:6](#)¹⁰ to support civil telecommunications infrastructure, or involving government-to-government activities will be reviewed on a case-by-case basis. Applications for items destined for (1) wholly owned U.S. subsidiaries; (2) foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies, (3) joint ventures of U.S. companies headquartered in Country Group A:5 and A:6; or (5) joint ventures of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6 will also be reviewed on a case-by-case basis. The case-by-case review policy does not apply to Russian/Belarusian headquartered companies. Exports under the Russia/Belarus-MEU FDP rule will be reviewed under a policy of denial in all cases.

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¹⁰ Supplement No. 1 to Part 740 of the EAR.