

The BakerHostetler logo is positioned in the upper left corner. It features the company name in a red, sans-serif font. The text is partially overlaid by a decorative graphic consisting of a grid of small, light-colored dots that tapers to the right.

Current State of U.S. Export Controls & Economic Sanctions- Russia and Beyond

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Agenda

1. Introduction – Why These Topics Matter
2. OFAC Sanctions Summary
3. Key Sanctions Updates
4. Export Controls Summary
5. Export Controls Update
6. Enforcement
7. Key Takeaways

Why Are We Here?



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- Trade sanctions are being increasingly used to help protect national security and U.S. policy interests
- Trade sanctions have extraterritorial reach and non-U.S. persons must comply with them
- Trade sanctions are complicated
- Companies and individuals can be held liable even when they did not know an activity was prohibited
- Penalties for violations can be severe (even for administrative violations)
- The government, customers, and competitors are watching; uptick in enforcement

Penalties for OFAC Violations

Type of Penalties	Corporate	Individual
Criminal	<p>Up to \$10,000,000 per violation</p> <p>Forfeiture of funds/property involved</p> <p>Suspension or revocation of export license</p>	<p>Up to \$10,000,000 per violation</p> <p>10-30 years imprisonment</p> <p>Forfeiture of funds/property involved</p> <p>Suspension or revocation of export privileges</p>
Civil	<p>From \$377,700 or 2x value of transaction up to \$1,876,699 per violation</p> <p>Forfeiture of funds/property involved</p> <p>Suspension or revocation of export license</p>	<p>From \$377,700 or 2x value of transaction up to \$1,876,699 per violation</p> <p>Forfeiture of funds/property involved</p> <p>Suspension or revocation of export privileges</p>

Penalties for ITAR Violations

ITAR PENALTIES		
Type of Penalty	Corporate	Individual
Criminal	Up to \$1,000,000 per violation	Up to \$1,000,000 per violation and/or up to 20 years imprisonment per violation
Civil	The greater of \$1,271,078 or twice the value of the transaction Denial of export privileges Debarment from federal contracting	The greater of \$1,271,078 or twice the value of the transaction Denial of export privileges Debarment from federal contracting

Penalties for EAR Violations

EAR PENALTIES (including Antiboycott)		
Type of Penalty	Corporate	Individual
Criminal	Up to \$1,000,000 per violation	Up to \$1,000,000 and/or up to 20 years imprisonment per violation
Civil	<p>Up to greater of \$374,474 per violation or 2x value of transaction</p> <p>Suspension or revocation of export privileges</p> <p>Seizure and forfeiture of goods</p> <p>Possible deportation of Foreign Person employees</p>	<p>Up to greater of \$374,474 per violation or 2x value of transaction</p> <p>Suspension or revocation of export privileges</p> <p>Seizure and forfeiture of goods</p> <p>Possible deportation of Foreign Person employees</p>

OFAC Sanctions Summary

U.S. Sanctions and Embargoes

General Types of Sanctions Programs:

- Asset Freezes, Financial Sanctions, Prohibitions on Foreign Investment
- Import and/or Export Embargoes
- OFAC and BIS



U.S. Sanctions and Embargoes

- Umbrella – applies to both ITAR- and EAR-controlled articles and related technical data and services
- Limited interactions allowed (without a license from Treasury) with parties or countries subject to comprehensive OFAC sanctions programs
- Key to OFAC compliance is to screen transactions and avoid problem countries
- Beware of “facilitation”

OFAC Regulations

- Code of Federal Regulations, Title 31, Parts 500 to 599
- Separate regulations governing each sanctions program
- Some programs have spawned multiple sets of regulations (*e.g.*, Iran, Non-Proliferation)
 - Currently OFAC administers numerous sanctions programs implemented through statutes, hundreds of Executive Orders, and multiple sets of regulations

Jurisdictional Reach of U.S. Sanctions

Apply to:

- U.S. Citizens (wherever located)
- U.S. Permanent Residents (“green card” holders)
- Anyone located in the U.S., regardless of citizenship
- Employees of U.S. companies while representing the employer
- Foreign branches of U.S. companies
- In some cases, foreign subsidiaries of U.S. companies
- Increasingly, companies with no touchpoints with the U.S. (e.g., foreign financial institutions)



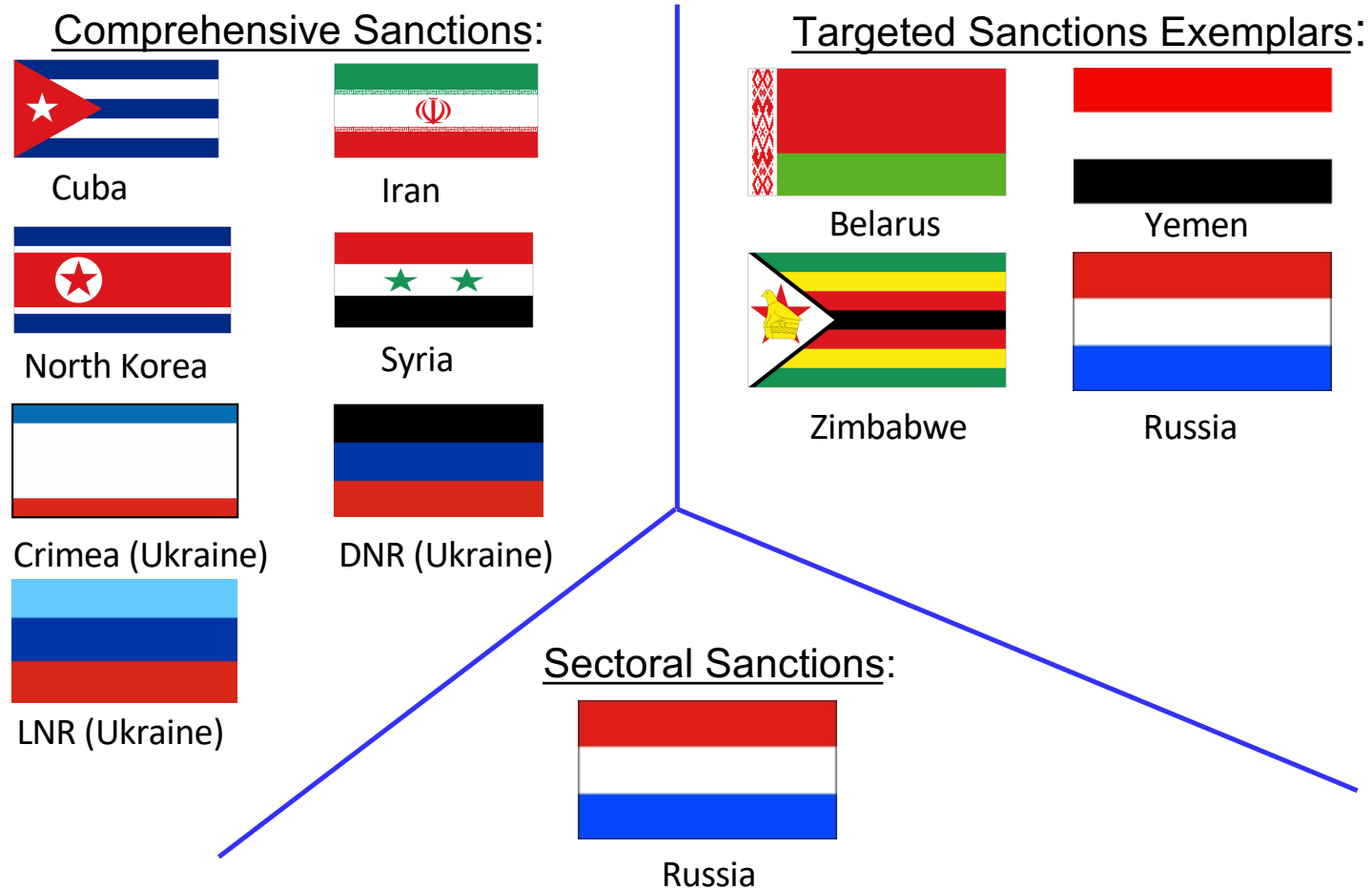
Jurisdictional Reach of U.S. Sanctions

- “Persons subject to the jurisdiction of the United States”
 - TWEA
 - Cuban Assets Control Regulations (CACR)
 - Iranian Assets Control Regulations (IACR)
- “United States Persons”
 - IEEPA
 - All other OFAC sanctions programs
- Non-U.S. Persons
 - Owned or controlled subsidiaries of U.S. persons (Cuba and Iran sanctions programs)
 - Some general licenses issued under the Cuba program allow certain activities by foreign subsidiaries . . .
 - Foreign persons trading in U.S. origin goods
 - “Secondary” sanctions programs

Types of Sanctions Programs

- “Primary” Sanctions
 - Comprehensive Embargoes
 - Target countries, regions, and/or individuals and entities
 - Prohibit all trade and transactions and “facilitation”
 - Usually include “blocking” or asset freezing provisions
 - Limited Embargoes
 - Usually target only certain types of trade or transactions with particular countries or designated persons
 - “Sectoral” sanctions
 - Relatively new form of sanctions focused on certain economic sectors of target countries

Types of Sanctions Programs



Types of Sanctions Programs

“Secondary” Sanctions

- Impose consequences for specified activities (*n.b.*, not prohibitions)
- May apply to both U.S. and non-U.S. persons
 - Principally designed to target certain types of activities by non-U.S. persons
- Sanctions (*n.b.*, not penalties)
 - Sanctioned person is blocked (*i.e.*, subject to travel bans and/or asset freezing) or prohibited from participating in various aspects of U.S. economy (*e.g.*, banking system)

Helpful Hints

- OFAC's Website (ofac.treasury.gov)
 - General Licenses
 - Frequently Asked Questions (FAQs)
 - Interpretive Guidance
 - Recent Actions
 - Press Center
- ***Many general licenses are found on the website only and are not incorporated in Regulations!***
 - Allows flexibility in issuing and revoking general licenses compared to publishing an amendment to the Regulations in a Federal Register notice

Global Sanctions Update

I. Russia

Overview of Russia Sanctions - OFAC

The economic sanctions relating to the Russian invasion of Ukraine are being implemented through two sets of regulations:

- Russian Harmful Foreign Activities Sanctions Regulations (**RuHSR**); and,
- Ukraine-/Russia Related Sanctions Regulations (**Ukraine Sanctions**)

as well as through Executive Orders, directives, and numerous general licenses.

Current Key Prohibitions in OFAC Russia Sanctions

Import Restrictions on Goods from Russia or that are of Russian origin

- Import ban on crude oil, petroleum, and related energy products (gold added June 28, 2022)
- Import ban on items from key sectors (e.g., seafood, alcohol, and non-industrial diamonds)

Restrictions on the Export of Services to Russia

- Export ban on various IT-related services (June 12, 2024 Determination under E.O. 14071)
- Export ban on accounting services, trust and corporate formation services, and management consulting services (E.O. 14071, effective June 7, 2022)

Restrictions Regarding Financial Institutions, Financial Transactions, and Related Transactions with Russia

- Investment prohibition
- Prohibition relating to U.S. dollar denominated banknotes
- New debt and equity restrictions
- Designations of financial institutions, and executives and board members of financial institutions, as Specially Designated Nationals (SDNs)

SDN Designations Update

- As of January 2025, OFAC has added 1,000+ Russian entities, individuals, and vessels to the SDN List
- Notable designations in 2024 include Russia's third-largest bank (Gazprombank), two of Russia's largest oil conglomerates (Gazprom Neft and Surgutneftegas), and hundreds of non-Russian persons who allegedly help Russia evade sanctions or otherwise facilitate/support Russia's activities

Tri-Seal Compliance Note

In March 2024, OFAC, in collaboration with BIS and the DOJ, published a Tri-Seal Compliance note: [Obligations of foreign-based persons to comply with U.S. sanctions and export control laws](#)

- Warns that sanctions “create legal exposure not only for U.S. persons, but also for non-U.S. companies who continue to engage with sanctioned jurisdictions or persons in violation of applicable laws.”
- Details coordinated efforts of OFAC, BIS, and DOJ to bring sanctions and enforcement actions against non-U.S. persons acting in contravention of U.S. policy



Alerts Specifically for Financial Institutions

In separate alerts, OFAC:

- “warn[ed] foreign jurisdictions and financial institutions about Russia’s attempts to evade sanctions by opening new overseas branches and subsidiaries of Russian financial institutions” ([Sept. 4, 2024](#)); and
- “warn[ed] foreign jurisdictions and financial institutions about the sanctions risks of joining the Russian financial messaging system,” which OFAC alleges the Central Bank of Russia (CBR) created in 2014, following Russia’s invasion of Crimea, with the express purpose of diminishing the effect of sanctions imposed by the U.S. and its allies ([Nov. 21, 2024](#)).

II. Venezuela

Current State of U.S. Sanctions Against Venezuela

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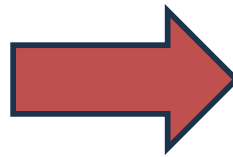
- During the Obama Administration, U.S. gov't progressively strengthened sanctions in effort to exert pressure on Maduro regime
- Oct. 2023 → Maduro reps and the leading Venezuelan opposition party (Unitary Platform) reached agreement that competitive presidential elections would be held in 2024
- In response, the U.S. implemented partial/conditional relaxation of certain sanctions against Venezuela in recognition of efforts by the Maduro gov't to improve democratic processes in Venezuela
 - Significantly, General License 44 authorized (through April 18, 2024) all transactions involving the oil and gas sector of Venezuela, including PdVSA
- After the election in Venezuela, which the U.S. described as "[fraudulent](#)," OFAC allowed GL 44 to expire and designated additional Venezuelan persons.

Current State of U.S. Sanctions Against Venezuela

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Historically, OFAC's position has been that the "ultimate goal of sanctions is not to punish, but to bring about a positive change in behavior" in Venezuela.

It remains to be seen how the Trump administration will approach Venezuela sanctions.



III. Iran

Current State of U.S. Sanctions Against Iran

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- U.S. sanctions on Iran have been very active, particularly in light of Iran's support for Hamas and Russia's war in Ukraine.
- **Oct. 2024:** OFAC issued a [determination](#) implementing sanctions against the petroleum and petrochemical sectors of Iranian economy
- OFAC has designated numerous entities and individuals for:
 - attempting to [interfere](#) in the 2024 U.S. elections;
 - being part of Iran's "[shadow fleet](#)" transporting illicit Iranian petroleum to foreign markets;
 - facilitating foreign sales of Iranian [missiles and UAVs \(drones\)](#);
 - [human rights](#) violations;
 - supporting [Hamas](#);
 - plotting [assassinations](#) of Iranian dissidents and opposition activists in the U.S. and elsewhere;
 - smuggling [U.S. technology](#) to the Central Bank of Iran;
 - and more!

General 2024 Developments

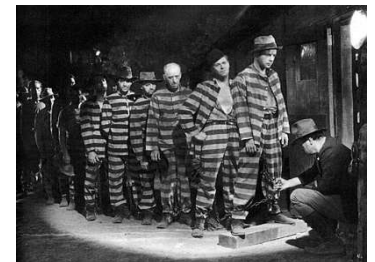
OFAC announced 11 enforcement actions that collectively netted nearly \$50 million in penalties and settlement payments, including:

- [\\$20 million](#) settlement with a Thailand-based company for causing U.S. financial institutions to process hundreds of millions of dollars in wire transfers for sales of Iranian products
 - Demonstrates OFAC's willingness to enforce sanctions extraterritorially.
 - See, also, 2024 OFAC settlement for [\\$3,740,442](#) with a Switzerland-based global private banking group related to Cuba sanctions
- [\\$7,452,50](#) settlement with a U.S. financial institution for violations of OFAC's Ukraine-/Russia-Related sanctions
 - Example of OFAC's strong focus on financial institutions
- [\\$1,104,408](#) penalty against an individual for violations of OFAC sanctions by operating a business in Iran
 - Example of OFAC's willingness to go after individuals

Overview of U.S. Export Controls

Export Controls – Why Do They Matter?

- Strict liability (*i.e.*, intentions are irrelevant)
- Criminal and Civil Penalties
 - (Civil): Up to ~\$1.2 million *per* violation, or twice the value of each transaction that violates the law
 - (Criminal): Up to 20 years in prison
- Revocation of Export Privileges
- Negative Publicity



What is an Export?

- Export transactions include:
 - Items being sent out of the U.S., even temporarily
 - Shipment of foreign-origin items after being repaired in the U.S.
 - E-mails, phone conversations, internet uploads and downloads
- Exports also include releases of technology or software to foreign nationals in the U.S. or abroad (*i.e.*, “**deemed exports**”)
 - Visual inspection by foreign nationals of U.S.-origin technology and facilities
 - Access to technical data
- A foreign person is anyone who is not one of the following:
 - (1) U.S. citizen;
 - (2) A lawful U.S. permanent resident (*i.e.*, a “green card” holder);
or
 - (3) Some type of protected individual (*e.g.*, refugee)

U.S. Export Control Laws, Regulations, and Agencies

Agency	Jurisdiction	Applicable Regulation
DDTC	Controls <u>defense</u> articles and defense services	International Traffic in Arms Regulations (“ITAR”) (22 CFR Part 120 et. seq.)
BIS	Controls export and re-export of most <u>commercial items and “dual use” items</u> (items having both commercial and military applications); also enforces sanctions and antiboycott laws	Export Administration Regulations (“EAR”) (15 CFR Part 730 et. seq.)
OFAC	Administers and enforces <u>sanctions</u> against targeted countries, individuals, companies, etc. that threaten U.S. national security or foreign policy	Foreign Assets Control Regulations (31 CFR Part 500 et. seq.)
Census	Compiles U.S. <u>export statistics</u> and oversees export clearance process through the Automated Export System (“AES”)	Foreign Trade Regulations (“FTR”) (15 CFR Part 30)
CBP	Serves as a “ <u>gatekeeper</u> ,” assisting with the enforcement of imports and exports, including seizing and detaining shipments	U.S. Customs Regulations (19 CFR Parts 1-199)

Items Controlled by the ITAR and EAR

ITAR = “Military” Items

- Military items listed in the U.S. Munitions List (**USML**)
- Controls defense articles, technical data, and defense services



EAR = “Dual-Use” and Commercial Items

- “Dual-Use”: items with both commercial and military (or nuclear) applications, and listed in the Commerce Control List (**CCL**)
- An item subject to the EAR but not on the CCL is designated “**EAR99**”



ITAR – Overview of Controls

- Exports under the ITAR include:
 - Sending or taking defense articles out of the U.S. in any manner
 - Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the U.S. or abroad
 - Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the U.S. or abroad
- Military items that could be subject to the ITAR:
 - U.S.-origin military items, *wherever located*
 - Foreign-made military items incorporating *any* U.S. military content
 - Unlike the EAR, the ITAR has no *de minimis* rule (*i.e.*, no minimum threshold)
- Items that are subject to the ITAR are listed on the USML

EAR - Overview of Controls

Subject to the EAR

- Items not subject to the exclusive jurisdiction of another agency (e.g., DDTTC)
- All items in the United States (including in transit)
- All U.S.-origin items, wherever located
- Foreign-made items that incorporate controlled U.S.-origin items
 - Unless *de minimis* rules apply (>0%, >10%, or >25%, depending on the product and country)
- Certain foreign-made direct products of U.S.-origin technology or software

Export Controls: Russia

Russia's Invasion of Ukraine

- The U.S. government has imposed sanctions and tight export controls on Russia and Belarus in an effort to hinder Russia's ongoing invasion of Ukraine.
- These controls significantly curtail exports, reexports and transfers (in country) of technology, commodities, and software (collectively, the "items") destined for or transiting Russia or Belarus and items intended for certain persons affiliated with Russia or Belarus.



BIS Actions

- Since September of 2024, BIS has:
 - Provided guidance regarding the Russian evasion schemes to help industry members identify Russian evasion practices
 - Provided guidance to financial institutions to enhance their due diligence in processing export transactions
- BIS has also implemented new license requirements for exports (direct or indirect), reexports (from one third country to another), and transfers (in country) (any transfer within any third country) for:
 - All items on the EAR's Commerce Control List (CCL)
 - Luxury goods listed in the EAR
 - Sector-specific items
 - Any items subject to the EAR going to a military end use or end user (MEU)
 - Any item subject to the EAR going to a person or entity designated on the SDN List under the Russia program
 - Foreign-produced items that are subject to the EAR under the FDPRs, including the specific Russia/Belarus rules in Sections 746.8 and 734.9(f) and (g) of the EAR
 - Any item subject to the EAR if a person on the BIS Entity List, BIS Denied Persons List, or another sanctioned persons list is involved in the transaction

BIS License Requirements Broken Down

- Items subject to Russian industry-sector sanctions require a BIS license
 - This includes EAR99-designated software items such as:
 - Customer relationship management (“CRM”)
 - Business intelligence (“BI”)
 - Supply Chain Management (“SCM”)
 - Computer aided design (“CAD”)



DDTC License Requirements to Russia

- All defense articles and defense services on the USML require licenses for export to Russia
 - Applications for such licenses are subject to a policy of denial
 - License applications related to government space cooperation will be considered on a case-by-case basis



U.S. Extraterritorial Reach

Certain foreign-produced items require a BIS License under the *De Minimis* Rule or under Foreign Direct Product Rules (FDPRs):

- ***De Minimis* Rule:** The *De Minimis* Rule says that a foreign-produced item that derives more than 25 percent of its value from controlled U.S.-origin items is subject to the EAR
 - As of January 23, 2024, there is *no de minimis level* for any foreign-produced item incorporating a U.S.-origin item that is on the EAR’s CCL with a certain classification
- **FDPRs:** Under the FDPRs, if items are the “direct product” of certain U.S.-origin-controlled technology or software, they can be subject to the EAR
 - **15 C.F.R. Section 746.8(a)(2) and Section 734.9(f):** A license will be required when there is reason to know the foreign-produced item meets the product scope and is destined for Russia, Belarus or the Crimea region of Ukraine or will be incorporated or used in the production or development of any part, component or equipment specified in any ECCN on the CCL or in Supplement Nos. 6 or 7 to Part 746 of the EAR and produced in or destined for Russia or Belarus
 - **15 C.F.R. Section 746.8(a)(3) and Section 734.9(g):** A license is required to export, reexport, or transfer any foreign-produced items subject to the EAR if destined for a “Russia/Belarus-Military End User” or intended for use in procurement related to the Russian or Belarusian military

Key Takeaways

Key Takeaways

“Know Your Customer” and Screen

- Customers
- Foreign Sales Agents
- Distributors
- Freight Forwarders
- Potential Foreign Business Partners
- Employees



Key Compliance Takeaways

- Verify whether the EAR, ITAR, or both apply to the company's technologies, software, and commodities
- Know the classifications of the company's products, technology, and software
- Conduct sanctioned person screening at the time of the order and prior to the export, reexport, or transfer (in-country) to verify that no party to transaction is covered by any applicable sanctioned persons list – including the BIS Denied Persons List or Entity List or OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List)
- Conduct training; training and issue spotting is important
- Know and vet the end-use and end-user, including screening and end-use statements
- Have policies and procedures in place



QUESTIONS?



Thank You!

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