"SEVERE" SANCTIONS & EXPORT CONTROLS

THE U.S. RESPONSE TO WAR IN UKRAINE

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Agenda

- Background
- Sanctions measures
- Export control measures
- Legislative proposals
- Considerations for industry

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Background

- Heightened uncertainty
- Based on our analysis of media reports, official statements, and legislative proposals
- “Start high, stay high” approach
- Potential for multiple waves of sanctions
- U.S./EU coordination
- Core elements of a sanctions response coming into focus

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Likely core elements

- Official statements and reporting suggest that a sanctions package is likely to contain the following core elements:
  - Banking & financial sanctions
  - Expansion of SDNs/SSIs
  - Export controls

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SANCTIONS MEASURES

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Bank sanctions

- Sanctions on major Russian banks appear likely
  - Sberbank*, VTB, Gazprombank, & others are likely targets
  - Some debate whether Sberbank will be included in a first wave
- Potential scope not clear:
  - SDNs – complete blacklist
  - Targeted sanctions, like foreign exchange controls
  - Entire bank, or only certain parts?

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SWIFT

- Global, interbank messaging system
- The U.S. and EU have reportedly considered SWIFT sanctions that would cut Russia off from the interbank messaging system
- Would have significant immediate impact on funds flows to/from Russia and within Russia, for a time
- Appears less likely based on more recent reporting
- Cutting off SWIFT could have long term consequences that run counter to U.S. policy

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U.S. / foreign currency

- Reports suggest that U.S. sanctions will be designed to limit the use of the U.S. dollar (and potentially other currencies) in or with Russia
- Form of sanctions not clear:
  - By designating major banks as SDNs
  - By imposing more targeted foreign exchange sanctions against specific banks or the financial sector

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SDN Designations

- Reports suggest that SDN designations against Russian business leaders and companies will be a component of a sanctions package
- Potential focus:
  - Government-owned or –controlled companies
  - Business leaders close to the Russian government (and their companies)
  - RDIF
- Impact of 50 Percent Rule

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Energy, extractive industries

- Nord Stream 2 – Biden says no to pipeline if there is an invasion
- Oil & gas
- Extractive industry (metals, coal, mining)
- Key issue: detrimental impact on Western economies
- Different forms:
  - Targeted sectoral sanctions
  - Full SDN sanctions
- First wave v. second wave?

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Sovereign debt

- Sanctions currently prohibit dealings in primary market for Russian sovereign debt
- Potential to be expanded to the secondary market

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EXPORT CONTROL MEASURES

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Foreign Direct Product Rule

- Huawei as a model
- Rule would likely restrict the export or transfer of items to Russia or certain Russian parties that contain semiconductors made with either U.S. technology/software or production equipment that was made with U.S. tech/software
- Could have a broad impact on the long term availability of production equipment, technology items, and consumer goods
- Significant due diligence to implement

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Emerging / sensitive technologies

- Reports suggest that U.S. export controls would limit transfers of items related to emerging or sensitive technologies, including quantum computing and artificial intelligence
- Other reports have indicated that controls regarding sales of item useful to the Russian defense and aerospace sectors would be targeted
- Also possible that export controls will focus on the energy industry
  - Rather than target existing supplies of energy, damage ability to expand production in future

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Export embargo

- Some reports indicate that a full U.S. export embargo is under consideration:
  - Would prohibit to export of all items “subject to the EAR,” regardless of the type of item being exported
  - Would be an extreme measure & appears less likely than more targeted controls
- Also possible that Russia could be subject to “AT” controls, restricting exports of many less sensitive items
- Entity List could also be an important tool based on recent deployment against Chinese and Russian companies

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THE DEFENDING UKRAINE SOVEREIGNTY ACT OF 2022

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Proposed legislation

- **Mandatory Sanctions on Officials**
- **Mandatory Sanctions on Financial Institutions:** 3 or more of: Sberbank, VTB, Gazprombank, VEB.RF, RDIF, Credit Bank of Moscow, Alfa Bank, Rosselkhozbank, FC Bank Otkritie, Promsvyazbank, Sovcombank, and Transkapitalbank.
- **SWIFT:** Authorizes sanctions on SWIFT & reports on the issue.
- **Sovereign Debt:** Prohibits transactions on primary and secondary Russian sovereign debt.
- **Additional Sanctions:** Requires the President to identify and sanction sectors and industries the President determines should be sanctioned, including oil and gas extraction and production; coal extraction, mining, and production; and minerals extraction and processing.
- **Nord Stream 2:** Encourage sanctions to prevent the Nord Stream 2 pipeline from becoming operational.
- *Preemptive sanctions*?

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Takeaways

- Prospects
- Timing
- The legislation can be used to approximate where U.S. policy is headed on Russia
- The Biden Administration already has authority to impose these sanctions, but there has been close coordination between the administration and Democrats on the substance of the bill

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KEY CONSIDERATIONS

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Banking disruption

- Some level of banking disruption likely if sanctions are imposed.
- Exposure to high risk financial institutions?
- Alternative routes for payments?
- Reliance on USDs or other foreign currencies for Russia-related payments?

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SDN designations

- Conduct designation risk assessment for key partners in Russia
  - Revenue risk?
  - Supply risk?
- Consider potential impact of wind down, maintenance, or operation general licenses, which have been issued in the past
  - Status of existing agreements?
- Have policies in place to deal with potential sanctions?
- Nexus to U.S., EU, other Western countries?

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Export controls

- Prepare for disruption to flows of goods, software, and technical know how into Russia as exporters assess scope of new requirements
- Assess potential immediate risks & longer term implications
- Consider possibility of expanded “sectoral” sanctions that restrict sensitive sectors, in addition to FDPR and traditional “dual use” controls

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QUESTIONS?

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