

US Bans Russian Oil Imports and Restricts Investment in Russia's Energy Sector

Skadden

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On March 8, 2022, President Joe Biden issued [Executive Order \(E.O.\) 14066](#), which bans the import of Russian oil, gas and other energy products into the United States and imposes sweeping prohibitions on new U.S. investment in the Russian energy sector, as well as on the facilitation of such transactions by foreign persons.¹ This is the latest in a series of actions the Biden administration has taken in response to Russia's invasion of Ukraine and follows recent efforts in the U.S. Congress to legislate an import ban. U.S. companies and individuals — in particular, those that invest in energy companies, participate in energy projects with Russian partners or finance such ventures — should carefully consider the impact of these measures on their activities and ensure that they are in compliance.

Overview of the Executive Order

The E.O. prohibits three categories of activities:

- The import into the U.S. of Russian crude oil; petroleum; petroleum fuels, oils and products of their distillation; liquefied natural gas; coal; and coal products (the Import Ban);
- “New investment” by U.S. persons in the Russian energy sector (the Investment Ban); and
- Any approval, financing, facilitation or guarantee by a U.S. person of transactions by foreign persons that would be prohibited by the E.O. if performed by a U.S. person or within the United States (Facilitation Ban).

We address each element below.

Import Ban

The Import Ban is a step that is rarely used except as part of more comprehensive economic sanctions. The U.S. government typically relies on generally applicable tariffs and quotas to regulate oil imports, such as the quota system implemented under the now-defunct Mandatory Oil Import Program.²

Both the [U.K.](#) and [EU](#) have taken steps to significantly reduce their import of oil and petroleum products from Russia by the end of 2022.

The Import Ban applies only to products of Russian origin. In its [FAQ](#), the Office of Foreign Assets Control of the U.S. Department of the Treasury (OFAC) clarified that goods subject to the E.O. are deemed to be of “Russian Federation origin” if they are “produced, manufactured, extracted, or processed in Russia.” Goods that are extracted outside of Russia and simply transit through or depart from Russia will not be considered of Russian origin.

OFAC explained that goods are no longer of Russian origin if they have been incorporated or “substantially transformed” into a foreign-made product. The OFAC FAQ do not offer a definition of “substantially transformed.” In trade law, however, “substantial transformation” typically refers to a method for determining country of origin when a good originally from one country undergoes a fundamental change (normally as a result of processing or manufacturing) in form, appearance, nature or character in another country, adding significantly to the value of the good.

¹ E.O. Section 1(a).

² 24 Fed. Reg. 1781, 1781-1822 (March 12, 1959), Proclamation 3279: Adjusting Imports of Petroleum and Petroleum Products into the United States; see also Act of June 16, 1933, ch. 90, § 3, 48 Stat. 196.

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OFAC has provided a limited carve-out from the ban for imports based on written agreements entered into before the E.O. was signed. [General License \(GL\) 16](#), which was issued on the same day as the E.O., authorizes transactions that are “ordinarily incident and necessary to the importation of” covered products pursuant to written contracts dated before March 8, 2022. The authorization in GL 16 applies only through 12:01 a.m. Eastern Daylight Time on April 22, 2022. Import activities that occur after this time — even pursuant to contracts that predate the E.O. — would be subject to the prohibition unless the general license is extended or the activities are otherwise authorized by OFAC. OFAC has clarified in its FAQ that it may issue specific licenses on a case-by-case basis for shipments occurring after April 22, 2022. The OFAC FAQ also indicate that the E.O. does not prohibit U.S. persons from engaging in transactions to sell or redirect to other jurisdictions shipments of covered products that were previously destined for the United States.

New Investment Ban

The E.O. also bans new U.S. investment in Russia's energy sector. As the [Biden administration has explained](#), this measure is intended to ensure that American companies and American investors are not “underwriting Putin's efforts to expand energy production inside of Russia.”

Under the Investment Ban, “United States persons,” wherever located, are prohibited from making “new investments” in the “energy sector in the Russian Federation.” As is standard in most sanctions programs, the E.O. defines “United States person” as any U.S. citizen, lawful permanent resident or entity organized under the laws of the United States or any jurisdiction within the U.S. (including foreign branches), or any person in the U.S.³

The E.O. does not define the term “investment.” But in its FAQ, OFAC explained that a “new investment in the energy sector of the Russian Federation” is “a transaction that constitutes a commitment or contribution of funds or other assets for, or a loan or other extension of credit to, new energy sector activities (not including maintenance or repair) located or occurring in the Russian Federation beginning on or after March 8, 2022.” In other words, the Investment Ban applies to U.S. investment in equity, debt or other financial arrangements involving “new energy sector activities” in Russia beginning on or after March 8, 2022.

OFAC's FAQ interpret “loans or extensions of credit” broadly to include, among other things, overdrafts, currency swaps, purchases of loans made by another person and drawdowns on existing lines of credit. Note that the Russia-related [GL 8A](#) issued on April 15, 2021, remains valid until June 24, 2022, and

³ E.O. Section 4(c).

authorizes certain transactions “related to energy” involving specified Russian financial institutions but does not authorize transactions that are specifically prohibited by the new E.O.

Finally, the E.O. does not define the term “energy sector.” But OFAC clarified in its FAQ that this term extends beyond the products covered by the Import Ban to include the development, production, generation, transmission or exchange of power, through any means, including renewables. Specifically, OFAC explained that the Investment Ban applies to “new energy sector activities” excluding maintenance and repair activities, and that, for purposes of the E.O., the “energy sector” includes:

the procurement, exploration, extraction, drilling, mining, harvesting, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, or transport of petroleum, natural gas, liquified natural gas, natural gas liquids, or petroleum products or other products capable of producing energy, such as coal or wood or agricultural products used to manufacture biofuels, the development, production, generation, transmission or exchange of power, through any means, including nuclear, electrical, thermal, and renewable.

We recommend that investors carefully review all such investments on a case-by-case basis with counsel.⁴

Facilitation Ban

The E.O. also prohibits “any approval, financing, facilitation, or guarantee” by a U.S. person of a transaction by a foreign person where that transaction would be prohibited under the E.O. if performed by a U.S. person or within the United States.⁵ While the OFAC FAQ for the E.O. did not define the term “facilitation,” OFAC has used the concept of facilitation in several other sanctions programs, which may be instructive here. Under those programs, activities that may amount to prohibited facilitation include, but are not limited to, approving, assisting, supporting, or engaging in business planning or decision-making.⁶

Thus, consistent with other sanctions programs, U.S. persons — both individuals and companies — will need to carefully evaluate their involvement, even indirect, in transactions by foreign persons that are prohibited by the E.O.

⁴ The Investment Ban operates in tandem with recently implemented export controls with respect to oil and gas refining equipment and other sanctions (discussed in our [March 9, 2022](#), and [February 26, 2022](#), client alerts).

⁵ E.O. Section 1(a)(iii).

⁶ See, e.g., 31 C.F.R. Part 560 (Iranian Transactions and Sanctions Regulations).

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