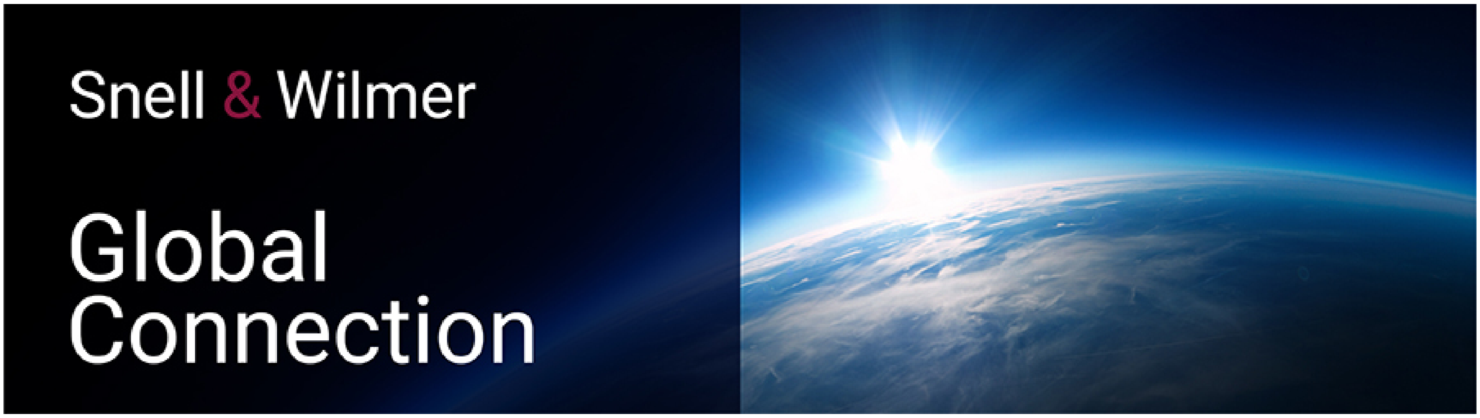

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Russian-Ukraine Conflict: Expanded Export Sanctions, Preparing for More

By Brett W. Johnson and Mary Colleen Fowler

The United States and the European Union announced new economic sanctions against Russia and Belarus due to the ongoing invasion of Ukraine. It is important to appreciate the timing of the implementation of the sanctions and whether a wind down of operations time period is possible. If dates are not immediate or decisions to exit the Russia market are based on valid public relations concerns, companies should consider the contract breach implications and work toward mitigating risk. The reality is that sanctions will continue to be rolled out and companies can look toward other sanction regulations, such as against North Korea, Cuba, or Iran, to potentially plan out what sanctions could be implemented.

The newly announced sanctions will extend export control policies to Belarus. Specifically, Belarus will not be able to divert technology and software through its country to Russia. These measures seek to limit availability of materials Russia will need to continue its military operations. Other sanctions will target Russia's defense sector by "impos[ing] significant costs on Russian weapon development and production companies." Moreover, entities that support the Russian or Belarusian military operations will be added to the Commerce Department's Entity List, which will effectively restrict trade between U.S. companies and any designated entity.

Additionally, specific technology exports within the oil refining sector will be restricted. This is a first step to inhibit Russia's ability to be a lead energy supplier. For the time being, the United States remains committed to its assertion that it will not issue restrictive sanctions on Russian oil and gas exports. But, this may change as pressures mount. The United States and the European Union indicated additional sanctions against the oil and gas sector are "very much on the table, but we need to weigh what all the impacts will be." Regardless, the decision to apply limited pressure on the Russian oil sector at this time is consistent with other recent sanctions, such as the carved-out exceptions for energy payments from other financial sanctions.

There are also significant impacts on the supply chain logistics. The United States has joined other countries in banning Russian aircraft from its airspace. Although the modern transportation logistical network may be able to absorb the restrictions on vessels (air and maritime), this still is decreasing the available transportation modes that have already been significantly decreased due to COVID-19 and the global shortage of transporters. As such, continued logistical and mitigation planning should be considered to ensure legal compliance and minimize risk.

Additionally, the U.S. is issuing more sanctions targeting specific individuals of the Russian elite, cutting these individuals off from the U.S. financial system with full blocking sanctions. It has identified additional individuals that will be sanctioned to a lesser degree because of their role in supporting Russian foreign policy and for propagating disinformation. This follows the EU's recent imposition of sanctions on 26 Russian individuals involved in the finance, banking, and oil sectors.

These U.S. sanctions are in tandem with the EU's announcement that it will ban seven Russian banks from SWIFT effective March 12, 2022. The banks include VTB Bank, Bank Rossiya, Bank Otkritie, Novikombank, Promsvyazbank, Sovcombank and Vnesheconombank. The European Union, which is able to control SWIFT because it is domiciled in Belgium, indicated it will add more banks "depending on Russia's behavior."

Snell & Wilmer will continue to follow developments in the Russian-Ukraine conflict. To better understand the impact of the ever-changing economic sanctions, companies should consider reaching out to legal counsel, review and adapt existing policies and procedures, and understand contract performance obligations, including force majeure, choice of law, and dispute provisions. Importantly, companies should continue to keep up with new sanctions and Russian responses as the global supply system is impacted.

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