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New Restrictions Curtail Use of U.S. Equipment or Technology for Oil & Gas Exploration and Production in Russia

BY THE GLOBAL TRADE CONTROLS PRACTICE

On August 1, the U.S. Commerce Department, Bureau of Industry and Security ("BIS") released new regulations implementing sweeping restrictions on the use of U.S.-origin energy exploration or production equipment and technology in connection with deepwater, Artic offshore, or shale oil or gas projects in Russia.[1]

The new ban, coordinated with similar restrictions imposed by the European Union, covers an extensive list of items not previously controlled for use in Russia, including "drilling rigs, parts for horizontal drilling, drilling and completion equipment, subsea processing equipment, Artic-capable marine equipment, wireline and down hole motors and equipment, drill pipe and casing, software for hydraulic fracturing, high pressure pumps, seismic acquisition equipment, remotely operated vehicles, compressors, expanders, valves, and risers."[2]

New U.S. "Russian Industry Sector Sanctions":

The U.S. rule is to be implemented primarily via new "Russian Industry Sector Sanctions" in the "Embargoes and Other Special Controls" provisions of the U.S. Export Administration Regulations ("EAR").[3] 15 C.F.R. Part 746. Specifically, new Section 746.5 prohibits any person from exporting, reexporting or transferring without a license any of the restricted items if the exporter "know[s] that the item will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia, or [is] unable to determine whether the item will be used in such projects."[4]

Moreover, common exceptions that ordinarily allow U.S. companies to use equipment overseas without the need to get an export license will be unavailable for projects in Russia. In other words, U.S. oilfield services companies will not be permitted to use the restricted equipment or technology on Russian exploration and production projects, even if the goods will remain in the custody and control of a U.S. person (such as the company or its employees) and are ultimately returned to the United States.[5]

Finally, the new rule takes effect immediately upon formal publication, with no "savings clause." At that time, shipments of covered items to Russia, even if in transit, cannot be conducted without a license from BIS.[6]

Those seeking to do business on Russian oil and gas projects using U.S. equipment or technology should not count on getting a license. BIS has declared that its policy on license applications will be: “presumption of denial.”[7]

Broad New EU Restrictions:

The new EU export restrictions, which took effect on August 1, 2014,[8] are even more robust, in that they extend beyond the oil and gas sector:

- **Dual-use Goods and Technologies**. The EU Regulation prohibits the sale, supply, transfer or export of all “dual-use” goods and technologies (i.e., items capable of either a civilian or a military end-use) to any natural or legal person, entity or body in Russia or for use in Russia.

- **Oil and Gas Restrictions**. EU persons and entities are prohibited, absent prior authorization, from engaging in the sale, supply, transfer or export of oil and gas related “equipment or technologies,” including certain technologies suited or use in deepwater oil exploration and production, Arctic oil exploration and production, or shale oil projects for use in Russia.

- **Restrictions on the Provision of Military Assistance**. The Regulation prohibits the provision of technical or financial assistance related to any goods or technology on the EU Common Military List to any person in Russia or for use in Russia.[9]

Taken together, the coordinated actions by the United States and the EU are designed to significantly curtail offshore, Artic and shale-formation oil and gas exploration and production activities in Russia. Companies engaged in transactions involving this industry sector are well-advised to consider the impact of the new rules on current, pending and future projects in Russia.

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[1] Russian Oil Industry Sanctions and Addition of Person to the Entity List, BIS Press Release (August 1, 2014) ("BIS Notice") (available at http://www.bis.doc.gov/index.php/component/content/article/66-about-bis/newsroom/press-releases/717-russian-oil-industry-sanctions-and-addition-of-person-to-the-entity-list

[2] BIS Notice at 22-23.

[3] The EAR, 15 C.F.R. Parts 710-774, administered by BIS, set forth comprehensive restrictions on the export or reexport of U.S.-origin commodities, technology and software in furtherance of U.S. national security, foreign policy and economic policy aims.

[4] 15 C.F.R. §746.5 (to be published in the Federal Register).

[5] *See* 15 C.F.R. §740.9.

[6] BIS Notice at 11-12. The new rule also restricts export transactions of any kind involving United Shipbuilding Corporation, a Russian state-owned defense contractor that was separately sanctioned by the U.S. and EU. BIS Notice at 6.

[7] BIS Notice at 9.

[8] Council Regulation (EU) No. 833/2014 (July 31, 2014).

[9] The EU Regulation also prohibits the purchase, sale, brokering of or assistance in relation to the issuance of "transferable securities" and "money-market instruments" with a maturity exceeding 90 days issued after August 1, 2014 by the following Russian banks: Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB), and Rosselkhozban. These restrictions mirror similar financial industry sanctions recently imposed by the U.S. Department of the Treasury.