
U.S. and UK Take Modest Steps to Restrict Exports to Russia

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The Obama Administration has threatened to impose additional sanctions on Russia in response to the Ukraine crisis but so far has only blocked the assets of 32 individuals and one bank. Additionally, with little fanfare, the two primary U.S. agencies responsible for issuing export licenses announced that they have stopped processing applications for licenses to export or re-export products and technology to Russia. The United Kingdom is suspending existing licenses and will not process license applications to export to Russia products and services that are destined for military use in the Ukraine.

United States Export License Policy

The Commerce Department's Bureau of Industry and Security (BIS) administers the Export Administration Regulations (EAR), which apply to exports of commercial and dual-use products, software and technology. BIS posted a notice on its website on March 26 stating that it has not been issuing licenses for the export or re-export of items to Russia since March 1, just days after the initial armed invasion of Crimea. During fiscal year 2013, BIS approved 1,832 license applications for export/re-export to Russia of U.S. origin items.

The State Department's Directorate of Defense Trade Controls (DDTC) administers the International Traffic in Arms Regulations, which govern exports of military equipment, software, technology and services. DDTC posted a notice on its website on March 27 similarly announcing that it has placed a hold on issuing licenses for exports to Russia.

The actions have been taken independently of the sanctions imposed by the United States on individuals and entities considered to be associated with President Putin following Russia's annexation of Crimea. Neither agency has amended its regulations. Rather, they are exercising their existing broad discretion over licensing decisions. Consequently, their announcements have no effect on the export of items not requiring a license, or those qualifying for license exceptions or exemptions. There is also no effect on exporting items under licenses that have previously been approved by either agency. At this point, companies may continue to ship these items to Russia.

United Kingdom Export License Policy

On March 18, the United Kingdom announced that it was suspending existing licenses and processing license applications “for direct export to Russia for military and dual use items destined for units of the Russian armed forces or other state agencies which could be or are being deployed against Ukraine.” This suspension also applies to licenses for exports to third countries of items to be incorporated into equipment destined for use by Russia against the Ukraine.

Modest Impact and Mixed Signals

The suspension of license processing for Russia will, of course, have an immediate impact on companies with pending applications and those that regularly require export licenses for operations in Russia. For example, applications for technical assistance agreements for space launch services will be on indefinite hold and the volatility of the situation in Ukraine makes it impossible to predict when that policy may be revised.

Within the larger policy context, however, these actions are not likely to have an important impact on diplomacy. Most U.S. trade with Russia does not require export licenses, and while the United Kingdom and Russia earlier this year had discussed expanding their defense trade cooperation, they had not yet signed an agreement before the Ukraine crisis exploded.

Meanwhile, other countries are sending mixed signals regarding defense and high technology trade. Although the German government cancelled a Rheinmetall contract to deliver a combat simulator to Russia, Siemens’ CEO promised continued cooperation in a meeting with President Putin last week. France is still scheduled to deliver two aircraft carriers to Russia, and even the United States has not taken steps to suspend or cancel the delivery to the Afghan defense forces of Russian Mi-17 helicopters purchased from Rosoboronexport.

As the Ukraine crisis continues, it is possible that the U.S. and allied country governments will strengthen their technology and defense trade sanctions, perhaps expanding them to include other products or technology that do not now require licenses but might be seen as sensitive. Companies trading in agricultural or low technology commercial items, however, are unlikely to be affected by export restrictions unless a total trade embargo is imposed on Russia, which currently is not a policy option on the horizon.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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