

Locke Lord QuickStudy: Joint U.S. – U.K. Measures Target ?Russian Metal Exports: Prohibitions and Implications

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On December 6, 2023, and February 24, 2024, the G7 Leaders announced their intention to diminish Russia's earnings from metal exports. On April 12, 2024, in collaboration with the United Kingdom the United States introduced two additional measures to further disrupt Russia's revenue from aluminum, copper, and nickel exports of Russian Federation origin, including leveraging U.S. global metal exchanges. To enact these measures, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") released two determinations related to the prohibitions of Russia-related metals, issued General License ("GL") 13I ("Authorizing Certain Administrative Transactions Prohibited by Directive 4 under Executive Order ("EO") 14024"), published five new FAQs (1168-1172), and amended two FAQs (1019 and 1128) related to Russian Harmful Foreign Activities Sanctions Regulations ("RuHSR"), 31 CFR part 58.

On April 19, 2024, OFAC published GL 94 ("Authorizing Transactions Involving OWH SE i.L.").

Determinations

OFAC issued the Determination Pursuant to Section 1(a)(i)(A) of EO 14068, "Prohibitions Related to Imports of Aluminum, Copper, and Nickel of Russian Federation Origin" ("Metal Import Determination"), which prohibits the importation and entry into the United States, including foreign trade zones within the United States, aluminum, copper, and nickel originating from Russia that was produced on April 13, 2024 or later.

OFAC also issued the Determination Pursuant to Section 1(a)(ii) of EO 14071, "Prohibitions on Certain Services for Acquisitions of Aluminum, Copper, or Nickel of Russian Federation Origin" ("Metals Services Determination"), which prohibits the exportation, reexportation, sale, or provision of certain services from the United States or by U.S. persons to any entity in Russia. These services include "warranting" services for Russian-origin metals on global metal exchanges and services facilitating the acquisition of such metals as part of derivative contract settlements. Again, services related to metals produced before April 13, 2024, are exempted from this prohibition. "Warranting" means "an electronic record or physical document of title to, possession of, or rights in respect of a specified lot of metal, which includes metal held in a third country within a global metal exchange."

GLs

GL 13I, which replaces 13H, authorizes U.S. persons, and those controlled by them, through July 11, 2024 to pay

taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, certifications, or tax refunds related to certain financial activities in Russia, even if such activities are banned by Directive 4 under EO 14024. Such transactions must be ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons. However, U.S. persons can't use this license to move money to accounts held by Russia's Central Bank, National Wealth Fund, or Ministry of Finance. Furthermore, GL 13I doesn't cover transactions banned by the RuHSR, which include dealing with blocked persons or paying exit taxes, unless pursuant to special license from OFAC.

GL 94 authorizes all transactions prohibited by the RuHSR or Ukraine-/Russia-Related Sanctions Regulations, 31 CFR Part 589 ("URSR"), involving OWH SE i.L. (formerly known as VTB Bank Europe SE), or any entity in which OWH SE i.L. owns, directly or indirectly, a 50% or greater interest ("OxaWH SE i.L. Entities"). All property and interests in property of OWH SE i.L. Entities are unblocked. GL 94 does not authorize any transactions otherwise prohibited by the RuHSR or the URSR, including transactions involving any person blocked pursuant to the RuHSR or the URSR, other than OxaWH SE i.L. entities, unless pursuant to an OFAC special license.

FAQs

Per FAQ 1172, U.S. banks are not prohibited from processing, clearing, or sending payments for Russian metals on behalf of non-U.S. persons, as outlined in the Metal Services Determination, subject to two conditions. Firstly, the bank must only act as an intermediary. Secondly, the bank should not have a direct relationship with the persons involved in the transaction covered by the Metals Services Determination (referred to as a non-account party). It's important to note, however, the Metal Services Determination does not grant U.S. banks permission to offer any of the services banned by the Metals Services Determination, either directly or indirectly, to persons in the Russian Federation, particularly concerning aluminum, copper, or nickel originating from Russia.

FAQ 1171 clarifies that the rules outlined in the Metals Import Determination and the Metals Services Determination, do not prohibit transactions in aluminum, copper, or nickel that has been processed or significantly altered into other items outside of Russia. FAQ 1019 provides clarification that, for purposes of EO 14068, as amended by EO 14114, and the Metals Services Determination, the term "Russian Federation origin" excludes any goods originating from Russia that have been incorporated or substantially transformed into products made elsewhere.

For the purposes of the Metals Import Determination and Metals Services Determination, OFAC stated in FAQ 1170 that it anticipates publishing regulations defining "aluminum," "nickel," and "copper" to include articles or products defined at the following Harmonized Tariff Schedule of the United States ("HTSUS") chapter headings:

- "Aluminum": defined at HTSUS Chapter 76.
- "Nickel": defined at HTSUS Chapter 75.
- "Copper": defined at HTSUS Chapter 74.

FAQ 1169 states that the Metals Services Determination prohibits certain services from being exported, sold, or provided by U.S. persons to persons in Russia. These include warranting services for Russian metals on global metal exchanges and acquiring these metals for derivative contract settlements, termed "Covered Metals

Acquisition Services.” However, this rule doesn’t apply to services related to Russian metals produced before April 13, 2024. To comply, U.S. global metal exchanges must not accept Russian metals produced after this date, and they should cease related services and transactions. U.S. persons are banned from providing services for acquiring covered Russian metals in physically settled derivative contracts, and U.S. traders can’t physically receive metals upon contract settlement. Pre-April 13, 2024, Russian metals remain tradable, with market participants relying on standard documentation, although caution is advised against falsified records.

Given ongoing tensions over Ukraine, cybersecurity, and human rights, it’s likely that pressure through sanctions will persist as a tool to isolate Russia from the U.S. and its trading partners. There have been indications that U.S. sanctions may increase from targeting specific sectors or persons to comprehensive measures covering entire Russian economy similar to the Iranian sanctions program. Furthermore, continued collaboration between the U.S., EU, and other allies will likely shape the strength and impact of future sanctions programs.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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