

Updates



The U.S. government issued [guidance on October 14, 2022](#), emphasizing that the United States is "prepared to use its broad targeting authorities against non-U.S. persons" who continue to trade with Russia sanctions targets, particularly with private sector companies that support the Russian military. This guidance bolstered the government's earlier pronouncement, issued by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) on [September 30, 2022](#), which stated in no uncertain terms that the United States plans "to more aggressively use its authorities under existing U.S. sanctions programs" to target foreign entities and individuals providing assistance and support to Russian sanctions targets as well as those more generally supporting Russia's occupation of Ukraine. This statement was followed swiftly by sanctions on Chinese and Armenian suppliers allegedly providing goods and technology to a Russian military-linked firm.

As stated in OFAC's October 14, 2022, guidance (the October 14 guidance), these advisories and the recent sanctions should "serve as a warning that those who support sanctioned Russian persons risk being sanctioned themselves." Below is a brief summary of the circumstances under which sanctions may be imposed on non-U.S. companies continuing to trade with Russia and key takeaways from the guidance to mitigate the risks of becoming a potential sanctions target.

"Secondary Sanctions" Defined

Broadly speaking, under primary sanctions, the U.S. government restricts U.S. persons and entities from engaging with foreign entities and individuals designated as prohibited parties under U.S. sanctions laws and identified on the Specially Designated Nationals and Blocked Persons (SDN) List, as well as limiting transactions by non-U.S. persons and entities involving SDNs where the transaction involves a "U.S. nexus"—for example, activity within the United States or the U.S. financial system or in which U.S. persons or U.S. dollars are involved. Once an entity or individual is placed on the SDN List, they are effectively banned from engaging or participating with the U.S. market, including transactions involving U.S. banks directly or indirectly. Primary sanctions operate as a strict liability regime and, thus, violations can carry civil monetary penalties and other consequences regardless of the offending party's intent. Where willful conduct is involved, moreover, primary sanctions violations may be criminally prosecuted in the United States.

As a result, where exclusively non-U.S. parties and conduct are involved in transactions or dealings that do not have a U.S. nexus, the United States has no direct basis to enforce primary U.S. sanctions restrictions. However, in the interest of furthering U.S. foreign policy and national security aims, the United States has adopted additional targeted sanctions authorities that, under certain circumstances, encourage foreign entities and individuals to voluntarily comply with U.S. sanctions and export controls or else risk being placed on U.S. sanctions lists themselves, through application of so-called "secondary sanctions." Secondary sanctions may be applied if foreign entities transact with or otherwise support parties subject to U.S. sanctions directly. Beyond being blocked from accessing U.S. markets as an SDN, secondary sanctions can take other forms, including exclusion from U.S. correspondent banking relationships in the case of foreign financial institutions. Unlike primary sanctions regimes, which apply automatically when violations occur, OFAC has discretion over the application of secondary sanctions to any particular foreign person or entity.

Secondary Sanctions on the Basis of Trade With Russia

Authority for imposing secondary sanctions on non-U.S. entities and individuals trading with sanctions targets exists under many U.S. sanctions programs. Until now, however, such authorities have been applied sparingly even with regard to the most critical U.S. policy objectives.

Under the Russia-related sanctions programs, multiple executive orders (EOs)—including EOs 13660, 14024, and 14065—have been issued to authorize the imposition of sanctions on persons outside of Russia where they continue to trade with Russian sanctions targets under circumstances viewed as particularly harmful to U.S. policy objectives. In general, as further described in guidance provided at OFAC FAQ 1091 and 1092, the

circumstances that may lead to secondary sanctions include providing "material assistance, sponsorship, or financial, material, or technological support for, or goods or services to or in support of" (1) any person or entity sanctioned pursuant to the above referenced EOs, or (2) otherwise engaging in such assistance or support in relation to the following:

- Actions or policies that undermine democratic processes or institutions in Ukraine or threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine.
- Misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine.
- Any of the following activity on behalf of or for the benefit of the government of Russia:
 - Malicious cyber-enabled activities.
 - Interference in a U.S. or other foreign government election or actions or policies that otherwise undermine democratic processes or institutions in the United States or abroad.
 - Transnational corruption.
 - Assassination, murder, or other unlawful killing of, or infliction of other bodily harm against, a U.S. person or a citizen or national of a U.S. ally or partner.
 - Activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners.
 - Deceptive or structured transactions or dealings to circumvent any U.S. sanctions.

Importantly, non-U.S. persons or entities can also be subject to secondary sanctions for "knowingly engag[ing] in a significant transaction" with certain individuals or entities determined by U.S. authorities to be "part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation." The list of individuals and entities subject to this designation can be found [here](#).

In particular, OFAC has [promised](#) to "leverage existing authorities to target entities and individuals in jurisdictions outside Russia" for supporting the Russian military and defense industry, "including transactions by persons in third countries that provide material support to Russia's military, defense industrial base, and designated entities and persons operating or that have operated in Russia's defense industrial base" and foreign entities and individuals that facilitate circumvention of U.S. sanctions on Russia and Belarus.

In the October 14 guidance, U.S. authorities further clarified that application of secondary sanctions will not be limited to trade in obvious military goods but will also include goods and technology benefitting Russian military interests, including microelectronics, such as semiconductors, which are viewed as "the lifeblood of Russia's weaponry."

Setting an Example

On September 30, 2022, OFAC designated [Sinno Electronics Co., Limited](#) (Sinno), a Chinese entity, and Taco LLC, an Armenian entity, to the SDN list, because, despite their "awareness of restrictions on exports to Russia," the companies continued to maintain a relationship with a Russian procurement firm linked to the Russian military. Prior to this designation, in June 2022, Sinno was added to the U.S. Department of Commerce Entity List, which had already largely prevented it from purchasing U.S. technology.

Key Takeaways

In summary, the October 14 guidance indicates that the United States is poised to more aggressively deploy secondary sanctions on non-U.S. companies in wholly foreign transactions where those transactions may be viewed by U.S. authorities as: (1) facilitating circumvention of U.S. sanctions on Russia or Belarus, or (2) otherwise assisting or supporting critical Russian sanctioned persons or sanctionable activities, particularly those linked to the military sector. *For companies operating outside of the United States in countries that have not imposed robust sanctions on Russia and/or Belarus to date, this announcement significantly increases the risks of doing business with counterparties in either jurisdiction.*

Notably, U.S. authorities take a broad view of what activity might constitute sanctions evasion, including any conduct that may be regarded as masking the involvement of sanctioned Russian parties with U.S. markets (e.g., use of cryptocurrency) as well as any activity that could result in sanctioned Russian parties obtaining U.S. goods or services. Similarly, U.S. authorities are likely to aggressively pursue companies continuing to provide goods or services that are viewed—even in hindsight—as benefiting Russian military interests, directly or indirectly. In light of the recent statements and sanctions actions by U.S. authorities, foreign parties continuing to trade with Russia that historically have not had a need to implement U.S. sanctions compliance procedures should consider developing a risk-based approach to identify and vet secondary sanctions risks that may be raised by transactions linked to Russia.

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