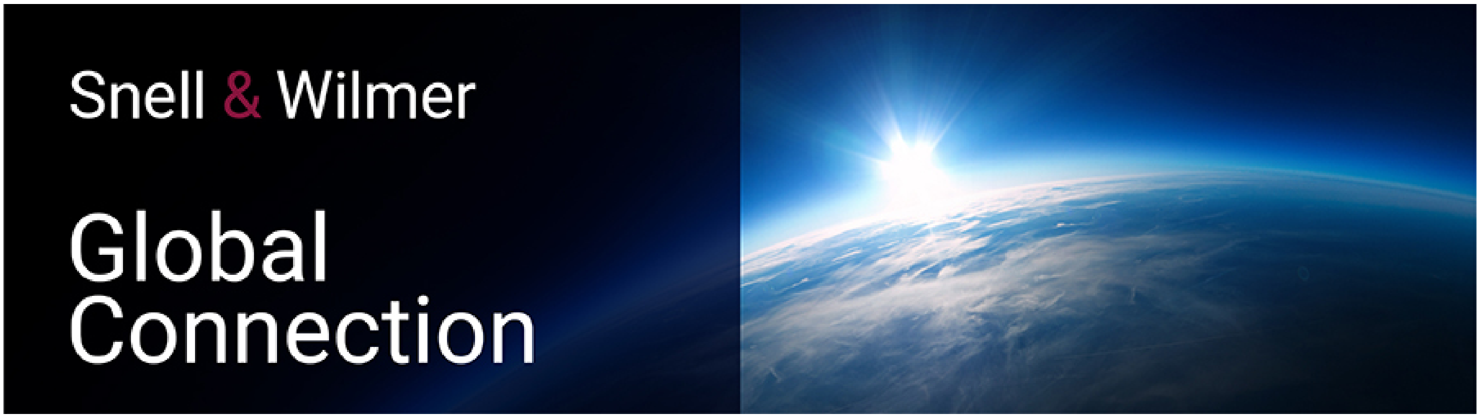


March 9, 2022


Brett W. Johnson
602.382.6312
bwjohnson@swlaw.com

Mary Colleen Fowler
602.382.6889
mfowler@swlaw.com


Snell & Wilmer
Past Issues

# The Russian-Ukraine Conflict: Expanding Export Restrictions in the Energy Sector

By Brett W. Johnson and Mary Colleen Fowler

The Russian Federation's intensifying war efforts across Ukraine prompted the U.S. government to announce that it will implement a ban on Russian oil and gas imports. Under the ban, the U.S. will not import "Russian crude oil and certain petroleum products, liquefied natural gas, and coal." It also forbids U.S. companies' investment in the Russian energy sector and financing that enables foreign companies making investments in Russia's energy sector. As the new sanctions are broad in scope it is likely that the U.S. and European Union will only expand economic sanctions to equal those imposed historically on Iran, Iraq, and North Korea. Companies may want to evaluate existing contracts related to Russian projects globally and potentially work to mitigate risks.

Since February, many companies have already wound down business deals involving Russian oil imports in expectation of sanctions. However, the announcement will likely carry secondary sanctions that companies should consider in their compliance plans—notably the order restricting U.S. persons from financing foreign companies that invest in the Russian energy sector.

Now, in addition to other economic sanctions, U.S. businesses may want to consider evaluating whether any foreign companies from which they import goods have ties to the Russian energy sector, specifically as it relates to oil imports. This restriction will likely impact U.S. companies that import goods from Asia that may fall under the category of "foreign companies making investments in Russia's energy sector." Global supply chains, already under significant strain from the COVID-19 pandemic, will continue to feel the rippling effects of sanctions that disrupt trade routes, freight costs, and accessibility to raw materials, making it all the more critical for U.S. companies to mitigate negative impacts by evaluating their current transactions and logistics against alternative routes going forward.

Although the decision to ban oil imports may be considered a bold strategy, U.S. foreign policy has consistently applied pressure to countries through oil bans. For example, over the years, the U.S. has implemented various bans against Iraq, Iran, Russia in 2014 on account of Crimea, and Venezuela. Time will tell whether the Biden Administration's most recent ban will elicit the desired result. Currently, the U.S. imports roughly 8 percent of oil from Russia, compared to the European Union's 40 percent importation of Russian oil. Nevertheless, the U.S. will feel the impact at home. In his announcement, Biden announced plans to counteract the increasing gas prices in the U.S., including the release of "more than 90 million barrels from the Strategic

Petroleum Reserve this fiscal year," and through seeking alternative paths to reduce "dependence on fossil fuels."

For the time being, the U.S. is the first, and only, country to aggressively target Russia's energy sector. Although the decision was made in close consultation with U.S. allies, there is no clear indication that the European Union will follow the U.S. lead, although it has indicated its plan to become less dependent on Russian oil by 2030. Similarly, the United Kingdom announced it would begin phasing out its reliance on Russian oil by the end of 2022.

Companies may want to take the opportunity to review their international trade policies globally, potentially anticipate additional sanctions, and potentially seek assurances or certificates of compliance from their supply and distribution chains. However, companies may want to consider reviewing applicable law and the actual contracts that may be at issue. For example, many companies are unilaterally stopping doing business with Russian entities globally. But, if the actual sanctions do not provide the legal authority to take such action, then companies may be subject to risk of breach of contract and related damages. Based on the public relations issues and potential loss of business in other sectors, this tactical decision may meet business interests. But, the legal risks should be considered and mitigation strategies developed.

Snell & Wilmer will continue to follow developments in the Russian-Ukraine conflict. To better understand the impact of the ever-changing economic sanctions, companies may want to 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.

Tweet!

LinkedIn



One Arizona Center | 400 East Van Buren Street | Suite 1900 | Phoenix, Arizona 85004