

III. The role and impact of multilateral trade restrictions on Russia and Belarus

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Russia's invasion of Ukraine in February 2022 galvanized the European Union (EU), the United States and several other Western-aligned countries to apply a series of sanctions against both Russia and Belarus.¹ These measures included sectoral sanctions, banking restrictions, road and maritime transport bans, travel bans and asset freezes. While the sanctions lists do not always overlap, by the end of December 2022, the USA, the EU and the United Kingdom had each added approximately 1500 new Russia-related individuals and entities to their respective consolidated lists of sanctioned persons.² Within the EU's nine sanctions packages, for example, this represented an approximate doubling of its entire sanctions portfolio across the dozens of sanctions regimes it implements.

In addition to economic and financial sanctions, the EU, the USA and their allies also either adopted wide-ranging arms embargoes on Russia and Belarus or expanded their existing measures. The 27 EU member states, the USA and 10 other states committed to adopting trade restrictions on Russia and Belarus that were 'substantially similar', creating a coalition of 38 states that progressively enacted a set of aligned and expanding export control measures during 2022.³ These controls, covering both military items and a broad range of dual-use items, were imposed by 15 of the 20 largest exporters of goods to Russia in 2021, the exceptions being (in order of size) China, Türkiye, Belarus, India and Brazil.⁴ These measures together represent one of the most comprehensive sets of trade restrictions ever imposed on an industrialized state by its major trading partners. They were imposed more quickly and are broader in coverage than the arms embargoes previously imposed by the United Nations and the EU on Iran, North Korea and Libya.⁵ The scope of these measures and the speed of their adoption served to

¹ 'What are the sanctions on Russia and are they hurting?', BBC News, 30 Sep. 2022.

² US Department of State, Office of the Spokesperson, 'The impact of sanctions and export controls on the Russian Federation', Fact Sheet, 20 Oct. 2022; European Council, 'EU restrictive measures against Russia over Ukraine (since 2014)'; Neate, R., 'UK sanctions now cover £18bn of Russian-owned assets', *The Guardian*, 10 Nov. 2022; and British Foreign, Commonwealth and Development Office, 'UK sanctions following Russia's invasion of Ukraine', 13 May 2022 (updated 8 Feb. 2023).

³ These 10 additional states are Australia, Canada, Iceland, Japan, Republic of Korea, Liechtenstein, New Zealand, Norway, Switzerland and the UK.

⁴ United Nations, Statistics Division, UN Comtrade Database. Ukraine was one the 20 largest exporters to Russia in 2021 and has not joined the coalition of states imposing restrictions. However, all trade with Russia came to a halt with the invasion and Ukraine imposed a full trade embargo with Russia in Apr. 2022. 'Ukraine imposes full trade embargo against Russia', LB.ua, 9 Apr. 2022.

⁵ For a historical overview of sanctions on Iran, see Anthony, I., Bromley, M. and Wezeman, P., 'The role and impact of sanctions on Iran', *SIPRI Yearbook 2016*, pp. 87–114.

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accelerate debates—particularly in the USA—about the value and potential of establishing a new multilateral export control regime that would replace or supplement the existing regimes in which Russia participates and that would be partly aimed at restricting exports of technology to Russia (see section IV in this chapter).

This section outlines the trade restrictions that the EU, the USA and others have imposed; highlights the enforcement and compliance challenges that these restrictions have generated; and reviews assessments of their impact on Russia.

EU trade restrictions

Following Russia's annexation of Crimea in 2014 the EU imposed a ban on exports of military items to Russia as well as restrictions on exports of dual-use items.⁶ In response to the deteriorating human rights, democracy and rule-of-law conditions in Belarus, in 2011 the EU imposed a ban on exports of military items and equipment used for internal repression, and in 2021 imposed restrictions on exports of dual-use items and telecommunications equipment.⁷ These pre-2022 restrictions on exports to Belarus and Russia contained several exemptions that allowed certain exports to continue and new licences to be issued. For example, the restrictions on exports of dual-use items only covered transfers 'for military use . . . or for any military end-user' in Russia or Belarus.⁸ In addition, under a set of so-called grandfather clauses, new licences could be issued for exports of dual-use items and military items to Russia and dual-use items to Belarus if they concerned transfers covered by contracts signed before the embargoes were imposed. This meant that certain EU member states continued to grant licences for exports of military items to Russia after the imposition of the 2014 sanctions measures. For example, from 2015 onwards France continued to issue licences for the export of thermal imaging cameras that were integrated into Russian-made tanks, as

⁶ European Council, Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, *Official Journal of the European Union*, L229, 31 July 2014.

⁷ European Council, Council Decision 2011/357/CFSP of 20 June 2011 amending Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus, *Official Journal of the European Union*, L161, 21 June 2011; and European Council, Council Decision (CFSP) 2021/1031 of 24 June 2021 amending Council Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus, *Official Journal of the European Union*, L224, 24 June 2021.

⁸ European Council, Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (note 6); and European Council, Council Decision (CFSP) 2021/1031 of 24 June 2021 amending Council Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (note 7).

well as navigation systems and infrared detectors that were integrated into Russian-made combat aircraft and attack helicopters.⁹

Between Russia's invasion of Ukraine in February 2022 and 31 December 2022, the EU adopted a series of nine sanctions packages.¹⁰ These sanctions packages have progressively expanded the existing trade restrictions on Russia and Belarus. Under measures adopted in February and March 2022, the restrictions on exports of dual-use items were extended to all end-users in Russia and Belarus, regardless of whether they were for military end-use or for a military end-user.¹¹ The coverage of the trade restrictions has also progressively broadened beyond the list of controlled items covered by the EU military list and EU dual-use list. On 9 March 2022 the EU banned transfers of 'maritime navigation goods and technology' to Russia and on 8 April 2022 it banned transfers of 'goods which could contribute in particular to the enhancement of Russia's industrial capacities'.¹² The EU also began the process of establishing a control list for these items.

The list of items that these additional controls cover is laid out in Annex VII of the relevant EU regulation and includes 'cutting-edge technology (e.g. quantum computers and advanced semiconductors, high-end electronics and software); 'certain types of machinery and transportation equipment'; 'aviation and space industry goods and technology (e.g. aircraft, aircraft engines, spare parts or any kind of equipment for planes and helicopters, jet fuel)'; and 'maritime navigation goods and radio communication technology'.¹³ The range of items captured is broader than Western states imposed on the Soviet Union during the cold war.¹⁴ Many of the items are not included in any existing export control regime or national export control lists. This has created implementation challenges for the companies prod-

⁹ Guckert, E. et al., 'War in Ukraine: How France delivered weapons to Russia until 2020', *Disclose*, 14 Mar. 2022.

¹⁰ See European Council, 'Timeline: EU restrictive measures against Russia over Ukraine'.

¹¹ European Council, Council Decision (CFSP) 2022/327 of 25 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, *Official Journal of the European Union*, L48, 15 Feb. 2022; and European Council, Council Decision (CFSP) 2022/399 of 9 March 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, *Official Journal of the European Union*, L82, 9 Mar. 2022.

¹² European Council, Council Decision (CFSP) 2022/395 of 9 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, *Official Journal of the European Union*, L81, 9 Mar. 2022; and European Council, Council Decision (CFSP) 2022/578 of 8 April 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, *Official Journal of the European Union*, L111, 8 Apr. 2022.

¹³ European Council, 'EU sanctions against Russia explained', 18 Jan. 2023 (emphasis omitted).

¹⁴ The Coordinating Committee for Multilateral Export Controls (COCOM) was the main means through which Western states imposed restrictions on transfers of both military equipment and dual-use items to the eastern bloc during the cold war. See Mastanduno, M., *Economic Containment: CoCom and the Politics of East-West Trade* (Cornell University Press: Ithaca, NY, 1992).

ucing and exporting these items and enforcement challenges for the national authorities charged with ensuring that the sanctions are applied.¹⁵

The EU sanctions have also progressively removed the set of ‘grandfather clauses’ that applied to the Russia and Belarus sanctions prior to February 2022. The grandfather clause that allowed licences to be issued for exports of dual-use items to Russia and Belarus was removed on 25 February (new licences could be issued but only until 1 May 2022) and the grandfather clause that allowed licences to be issued for exports of military items to Russia was removed on 8 April. Several states have gone further than what is specifically required under the EU sanctions measures. For example, on 24 February all three regions of Belgium (Brussels, Flanders and Wallonia) suspended all licences for the export of dual-use items to Russia and Belarus, and Finland, Italy, Luxembourg and the Netherlands had all done so by 11 March.¹⁶ The EU restrictive measures prohibit exports of dual-use items except in certain limited cases but do not require member states to suspend licences issued before the they came into force.¹⁷

US trade restrictions

Since they are imposed via the US government’s system of strategic trade controls, the US sanctions on Russia and Belarus carry additional extraterritorial controls. This means that any item produced outside the USA using US-origin dual-use items are also banned from being supplied to Russia and Belarus.¹⁸ These types of controls—according to which the USA asserts that companies based outside its territory are subject to its laws—are unique to the USA and have often been a source of tension with other states, including EU member states. In an unprecedented move the USA has exempted the 37 states that have adopted the set of trade restrictions on Russia and Belarus from the new requirements.¹⁹

¹⁵ See Sidley Austin LLP, ‘One year of Russia restrictions: Six key trends and lessons for trade compliance’, Sidley Updates: Global Arbitration, Trade and Advocacy, 22 Feb. 2023.

¹⁶ Bovy, G., Van Reet, L. and Vynckier, J., ‘Belgium: Flanders, Brussels and Wallonia suspend export licenses to Russia’, *Sanctions & Export Controls Update*, 24 Feb. 2022; ‘Russia’s invasion of Ukraine’, Loyens & Loeff Blog, 11 Mar. 2023; Finnish Ministry for Foreign Affairs, ‘Authorisations to export dual-use items to Russia revoked’, *Export Control News*, 1 Mar. 2022; and Belfiori, O., Rossetti, D. and Tona, M., ‘Global sanctions alert: Italy’, *Lexology*, 11 Mar. 2022.

¹⁷ See European Commission, ‘Consolidated FAQs on the implementation of Council Regulation no. 833/2014; and Council Regulation no. 269/2014’, 22 June 2022 (Update of 3 Mar. 2023), p. 133.

¹⁸ Contini, K. B., Test, L. S. and Howard, C., ‘BIS expands sanctions against Russia and Belarus and adds four countries to global export controls coalition’, *Sanctions & Export Controls Update*, 12 Apr. 2022.

¹⁹ Contini, Test and Howard (note 18).

Impact of the trade restrictions

Following Russia's invasion of Crimea in 2014 and the subsequent EU and US imposition of sanctions, Russia announced plans to increase the level of self-sufficiency in the Russian defence industry and reduce its reliance on foreign-made components. In May 2014 President Vladimir Putin declared: 'We need to do our utmost for anything used in our defence sector to be produced on our territory, so that we are not dependent on anyone'.²⁰ Despite these stated ambitions, a series of investigations during 2022 revealed that Russian military equipment deployed in Ukraine relied heavily on parts and components manufactured abroad. For example, Conflict Armament Research investigations identified '144 non-Russian manufacturers of more than 650 unique component models in Russian materiel used in the war on Ukraine'.²¹

Many of these parts and components were not covered by the trade restrictions in place at the time that the shipments occurred. However, the expanding set of measures that have been adopted by the coalition of 38 states mean that many have become subject to export control measures during 2022. For example, commenting on reports concerning the supply of Swiss components used in Russian missiles, a spokesman for the Swiss export licensing authority noted that in February 2022 the items were not classed as controlled dual-use items.²² However, the spokesman noted that 'since the comprehensive goods sanctions against Russia came into force on March 4, 2022, such goods have been banned for delivery and sale to Russia'.²³

Investigations by the Royal United Services Institute and by Reuters also highlighted cases of transfers that would have potentially breached export control restrictions in place at the time.²⁴ This supported previous reports noting that since 2014 Russia had been engaged in longstanding and widespread efforts to bypass the trade restrictions imposed by the EU and the USA and to obtain controlled technology.²⁵ Reports have also pointed to Russia's continued ability to access Western-produced parts and components, even after the imposition of the expanded sanctions measures, via a range of distributors based in countries not part of the coalition of 38 states. For example, a report in December 2022 highlighted transfers of US-made

²⁰ 'UPDATE 1: Putin wants Russian defence industry to be self-sufficient', Reuters, 14 May 2014.

²¹ Conflict Armament Research, 'Component commonalities in advanced Russian weapon systems', Sep. 2022.

²² Dahm, V. P., 'Putin hortet haufenweise Schweizer Hightech-Bauteile für seine Waffen [Putin hoards heaps of Swiss high-tech components for his weapons]', Blue News, 16 Aug. 2022.

²³ Dahm (note 22).

²⁴ See Byrne, J. et al., *Silicon Lifeline: Western Electronics at the Heart of Russia's War Machine* (Royal United Services Institute: London, 8 Aug. 2022); and Grey, S., Tamman, M. and Zholobova, M., 'Exclusive: The global supply trail that leads to Russia's killer drones', Reuters, 15 Dec. 2022.

²⁵ See Rettman, A., 'EU arms firms trying to flout Belarus and Russia ban', EUobserver, 6 Oct. 2021.

components from a Hong Kong-based company to a firm in St Petersburg with close ties to a key manufacturer of drones used by the Russian military.²⁶ Analysis of Iranian-made drones used by Russia in Ukraine has also demonstrated that Iran has utilized a wide range of both controlled and non-controlled dual-use items produced in the USA and other Western states that strictly control exports of such goods to Iran.²⁷

Conclusions

The trade restrictions imposed by the USA, the EU and 10 other like-minded states on Russia and Belarus represent one of the most comprehensive sets of trade restrictions imposed in the post-cold war period on a major trade partner. These restrictions went well beyond the scope of the military and dual-use items covered by the control lists of the multilateral export control regimes. In particular, the restrictions on exports to Russia were expanded to cover items that might be of relevance for both the development and use of weapon systems but also for Russia's industrial capabilities more broadly. As such, the restrictions indicate a willingness on the part of the EU, the USA and their allies to use export controls as tools of economic warfare. The restrictions have also highlighted the ability of coalitions of states to work outside the frameworks of both the UN and the existing multilateral export control regimes when developing and applying coordinated export control measures.

²⁶ Grey, Tamman and Zholobova (note 24).

²⁷ Albright, D., Burkhard, S. and Faragasso, S., 'Iranian drones in Ukraine contain Western brand components', Institute for Science and International Security Report, 31 Oct. 2022.