

**United States Department of
Commerce Expands Foreign
Direct Product Rules
Targeting Russia and
Russian Military End-Users**

STRATEGIC TRADE RESEARCH INSTITUTE

March 2022

Summary

On February 24, 2022, the U.S. government's Department of Commerce, Bureau for Industry and Security (BIS) issued a [Final Rule](#) in response to the Russian Federation's further invasion of Ukraine. This Rule expanded the Foreign Direct Product Rule (FDPR) for 1) all of Russia and 2) Russian military end-users, in order to block Russia's access to global high-tech products and other major dual-use items and technologies.

Background on Foreign Direct Product Rule (FDPR)

The U.S. Export Administration Regulations (EARs) make non-U.S.-made items subject to the [FDPR](#) when the item is:

- 1) The direct product of U.S. technology or software that is controlled for national security reasons, or a major component of a plant that is the direct product of national security-controlled technology or software;
- 2) The resulting non-U.S. made item is also controlled for national security reasons;
- 3) The non-U.S. made item is destined to a destination listed in a specific Country Group.

BIS imposed extensive sanctions on Russia by amending the U.S. Export Administration Regulations (EARs). In response to Russia's 2014 invasion of Ukraine and occupation of the Crimean region, BIS had imposed special controls on items subject to the EAR intended for use in specified Russian industry sectors.

New Foreign Direct Product Rules

1) Russia Foreign Direct Product Rule

Under the first new FDPR, a license requirement applies if "knowledge" exists that the foreign-produced item falling under the specifications below is destined to Russia or will be incorporated into or used in the production or development of any part, component, or equipment not designated as EAR99 and produced in or destined to Russia.

This applies to exports from abroad, transfers, or reexports of foreign-produced items not designated as EAR99 that are:

- The direct product of U.S.-origin technology or software subject to the EAR specified in any ECCN in product groups D and E in CCL Categories 3-9; or
- Produced by any plant or major component of a plant that itself is the direct product of U.S.-origin technology or software subject to the EAR specified in any ECCN in product groups D and E in CCL Categories 3-9.

2) Russia Military End-User Foreign Direct Product Rule

The second new FDP rule targets Russian military end-users. Foreign-produced items subject to the EAR under the military end-user rule are subject to the license requirements. This FDPR imposes a licensing requirement for export from abroad, transfers, or reexports of foreign-produced items that are:

- The direct product of technology or software subject to the EAR specified in any ECCN in product groups D and E of any CCL category; or
- Produced by any plant or major component of a plant that itself is the direct product of US-origin technology or software subject to the EAR specified in any ECCN in product groups D and E of any CCL category.

General Implications

- Under the two new FDPRs, the scope of technologies for which export to Russia is restricted has been significantly expanded
- License applications under the new FDPRs will likely be denied under the general policy of denial established by the new rules
- The Entity List has been expanded
- The Russia FDP rules will not apply to countries that have imposed similar restrictions domestically.

Implications for Risk Identification and Compliance

Exports under the FDPR, even from overseas manufacturing facilities, will require a BIS export license. This means that companies cannot avoid sanctions by selling through foreign affiliates or manufacturers who use U.S.-origin export-controlled software or technology to produce end products.

To effectively screen exports to ensure they comply with the new regulations, exporters should:

- Screen to determine the ECCN of all technologies should they be destined for export to Russia or Russian military end-users, to confirm whether the FDPR applies to that technology and if so, what steps to take
- Examine the entities to which technology is being exported, to ensure that there is no export to restricted entities
- Establish hiring processes that screen the most current version of the Entity List from the BIS website to avoid deemed export risks.