

Mobility Matters Quarterly

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Russia Sanctions Disrupt Automotive Supply Chains and Production

As of February 22, 2022, President Biden and the Departments of State, Treasury and Commerce have implemented an array of sanctions and export controls severely restricting international trade and financing involving Russia, Ukraine and Belarus in response to the Russian invasion of Ukraine. These have been primarily imposed and implemented pursuant to Executive Orders, the Ukraine-/Russia Related Sanctions Regulations and the Russian Harmful Foreign Activity Sanctions Regulations. Below are summaries of the sanctions most relevant to the automotive and other mobility industries.

As a result of these restrictions, businesses in the auto and mobility sectors are carefully reviewing any transactions related to Russia. The restrictions, as well as political considerations, have led many OEMs to suspend or limit current operations in Russia.

Blocking and other restrictions imposed against major financial institutions in Russian and Belarus. Sanctions have targeted major financial institutions in Russia and

Belarus. For example, most significant Russian banks have been placed on the Specially Designated Nationals and Blocked Persons (SDN) list, including Foreign Economic Affairs Vnesheconombank, VTB Bank Public Joint Stock Company and most recently, Public Joint Stock Company Sberbank of Russia. As of the date of their designation to the SDN list by the Treasury Department's Office of Foreign Assets Control (OFAC), all property and interests in property of the SDNs, including all entities and property owned 50% or greater, directly or indirectly, individually or in the aggregate, by the SDNs are blocked and cannot be dealt in by any U.S. person unless generally or specifically authorized by OFAC.

Other financial institutions have been placed on non-SDN lists by OFAC, which impose other restrictions pursuant to Directives 1-4 under EO 14024 or Directives 1-3 under EO 13662. The Directives impose restrictions on new debt, new equity and corresponding payable through accounts at banks designated pursuant to the Directive. For more information on what is restricted and what is authorized pursuant to blocking and non-blocking sanctions against these financial institutions, see our [March 9 update](#).

These sanctions have a significant impact on financing and payment arrangements with not only the designated banks but also, in many instances, their global subsidiaries. As a result, transactions involving the auto industry in Russia require careful scrutiny of not only parties to a transaction (suppliers, customers, OEMs, carriers) but also the financial institutions that will be facilitating payment.

New export controls on trade with Russia and Belarus involving all items on the CCL and "luxury goods." The

Departments of Commerce, State and Treasury have also imposed hefty export controls on Russia and Belarus. For example, as of April 8, 2022, all exports, reexports and in-country transfers of goods, technology and software to Russia or Belarus “subject to Export Administration Regulations (EAR)” and listed on the Commerce Control List (CCL) are prohibited absent a license from Commerce’s Bureau of Industry and Security (BIS). In addition, BIS expanded the “foreign direct product rule” to provide that many items manufactured outside the United States through the use of U.S. origin technology are now subject to the EAR and require a BIS license for export to Russia. In the auto industry, many companies are realizing that fairly standard items such as semiconductor chips and ECMs for car components may be subject to the new export controls. For additional information, see our [April 11 update](#).

President Biden also issued EO 14068 on March 11, 2022, which, among other things, prohibits the “exportation, reexportation, sale or supply, directly or indirectly, from the United States or by a U.S. person, of luxury goods.” On that same date, BIS issued a [final rule](#) restricting the export, reexport or in-country transfer of “luxury goods” to Russia or Belarus as well as those “that are destined for Russian and Belarusian oligarchs and malign actors, regardless of their geographical location.” The list of luxury goods includes many automobiles and motorcycles. For additional information, see our [March 14 update](#). The European Union has issued similar, and perhaps broader, restrictions. Together these measures are greatly restricting supply chains serving automotive manufacturing facilities in Russia.

Embargo against the so-called Donetsk People’s Republic (DNR) and Luhansk People’s Republic (LNR) of Ukraine.

While the United States had previously imposed a comprehensive embargo against the Crimea region of Ukraine in 2014, it expanded the embargo to also cover Ukraine’s so-called DNR and LNR regions. Nearly all direct or indirect transactions, dealings or trade in or with the DNR, LNR or persons in these regions is prohibited. For more information on what is restricted and what is authorized in the region, see our [March 9 update](#).

Pending sanctions on export of certain “services” to Russia and Belarus. On April 6, 2022, President Biden issued EO 14071, which, among other things, prohibits the “exportation, reexportation, sale or supply, directly or

indirectly, from the United States or by a U.S. person” of certain services to any person in Russia. The types or categories of services that will be banned are yet to be determined by the Secretary of the Treasury Department.

These sanctions and export controls have wide-reaching implications across industries and have severely disrupted mobility and automotive supply chains in the region. In addition to financial institutions, many other state-owned entities in Russia and Belarus have been designated to the SDN list, impacting not only financing but also logistics, shipping and production. Businesses in the automotive and mobility industries should continue to monitor these changes and ensure that their investment, trade and financing activities in the region comply with U.S. sanctions and export controls.

California Back in the Driver’s Seat on GHG Standards

On March 9, 2022, the U.S. EPA reinstated California’s authority under the Clean Air Act (CAA) to enforce its more stringent greenhouse gas (GHG) emissions standards for passenger cars and light-duty trucks. Known formally as a “waiver” of preemption under the CAA, this approval reinstates California’s 2013 waiver, which previously implemented its [Advanced Clean Cars \(ACC\) program](#). This includes not only its more stringent GHG standards for certain passenger cars and trucks, but also its zero-emission vehicle (ZEV) requirements. California’s waiver for the ACC program was originally approved by EPA in 2013 under the Obama administration but withdrawn in 2019 by the Trump administration. The Biden administration directed EPA to review the withdrawal in January 2021 and EPA proposed a Notice of Reconsideration in April 2021.

The 2013 ACC program includes updates to California’s Low Emission Vehicle (LEV) program (LEV III) and a ZEV sales mandate. The LEV program regulates GHG emissions and smog-forming emissions of criteria pollutants. It applies to passenger cars, light-duty trucks and medium-duty passenger cars and includes limited requirements for heavy-duty vehicles for model years (MYs) 2017 through 2025.

California demonstrated it was ready and waiting for this waiver reinstatement [by proposing new standards for subsequent MYs on April 12, 2022](#), including a mandate

that all new cars and passenger trucks sold in California be ZEVs by 2035.

California's actions on GHG standards effectively force auto manufacturers to comply with its more stringent standards to sell vehicles in California (and the many states that ultimately adopt its standards). Most manufacturers elect to comply with the California standards nationwide to avoid manufacturing two different fleets in the United States. Yet, practically, this waiver reinstatement may not make a difference for many automakers, as several had agreed to voluntarily comply with the ACC program while the waiver was withdrawn.

With the 2013 waiver reinstatement, EPA also simultaneously withdrew the Trump administration's 2019 Safer Affordable Fuel-Efficient Vehicles Rule Part One: One National Program Rule (SAFE-1) (issued by EPA and the National Highway Traffic Safety Administration), which prohibited other states from adopting California's GHG emission standards. Several states are expected to implement California's GHG standards, as they had done before the waiver was withdrawn in 2019.

EPA's [Notice of Decision](#) reinstating the waiver and withdrawing the SAFE-1 Rule was published on March 14, 2022 at 87 Fed. Reg. 14332.

This action is among the Biden administration's many ambitious regulatory efforts to combat climate change, which also include [EPA's 2021 greenhouse gas emissions standards for passenger cars and light duty trucks through MY 2026](#), finalizing action to [cut the production and consumption of HFCs in the United States](#), proposing [new emissions standards for heavy duty vehicles](#), and proposing new protections to [reduce methane and other harmful pollution from the oil and gas industry](#).

California Advisory Group Submits Lithium-Ion Car Battery Recommendations

On March 15, 2022, the California Lithium-Ion Car Battery Recycling Advisory Group (Advisory Group) held its final meeting and voted to finalize its report of policy recommendations for the California Legislature (Legislature) regarding lithium-ion car battery recycling and recovery. Pursuant to [Assembly Bill 2832](#), the report has now been submitted to the Legislature for consideration. While the

Legislature has not revealed a plan to put any specific recommendation into the budget and/or eventual bill, it will continue to receive technical support from the Advisory Group and work with it to develop the specific proposal(s) in the eventual bill.

The bill's focus will be to eliminate the problem of "stranded batteries," which in this context are lithium-ion car batteries that are no longer in use and/or are out of warranty. Although there are industry standards for replacing batteries under a warranty, there are none addressing the collection, transportation, and processing of retired/out-of-warranty batteries, and it is unlikely the average individual consumer or small business has the materials and resources necessary to dispose of these batteries properly, which could result in the unsafe accumulation, abandonment, and improperly managed disposal of them and their components.

As discussed in the [January edition](#) of *Mobility Matters Quarterly*, two policy proposals the Advisory Group voted on received overwhelming majority support, with one receiving 93% support and the other 67% approval. The first, a "core exchange and vehicle backstop" program, defines the responsibility for out-of-warranty batteries under three possible scenarios: (1) an electric vehicle (EV) still in service, (2) an EV reaching end of life where a dismantler takes ownership of the vehicle, and (3) an EV reaching end of life that has an OEM-certified battery and is not acquired and removed by a licensed dismantler. The second policy, a "producer take-back" method, states that the auto manufacturer is responsible for ensuring the proper repurposing, reuse, and recycling of its batteries at a licensed facility at no cost to consumers if the batteries are no longer wanted by the owners and no other entity has taken possession of them.

In addition to recommending a comprehensive policy for handling end-of-life and out-of-warranty batteries, the Advisory Group developed 19 policy options to address more specific barriers and opportunities in the following categories:

- Access to battery information
 - Physical labeling requirements
 - Electronic information exchange (a QR code linking the battery to an online database)
 - Universal diagnostic systems

- Support reuse, repurposing, and recycling industry development
 - Establishing a timeline for hazardous waste processing permits
 - Expanding eligibility for relevant incentive programs to include reused and repurposed batteries
- Reverse logistics
 - Supporting the enforcement of unlicensed dismantling laws
 - Developing training materials for parties handling end-of-life batteries
 - Universal waste regulations
 - Identifying strategies to reduce the burden of collection and transportation
 - Developing a strategic collection and sorting infrastructure
 - Requiring preapproval to bid on EVs at auctions
 - One notable change to the report in its last editing cycle was to add a preapproval process for bidding on EVs at auto auctions. The previous language raised concerns about vehicles going to unlicensed dismantlers and implied the current auction process did not require the proper registration. To address this issue, the following revision was proposed and approved: *To minimize unlicensed dismantling, the Advisory Group recommends requiring that interested parties apply for pre-approval before participating in auto auctions. The pre-approval process should include registering and verifying contact information (e.g., name, address, etc.) in order to track the battery.*

- Circular economy and quality recycling

Many of these policies recommended by the Advisory Group require research and “should be updated as the industry evolves,” including areas such as:

- Solutions for reducing the cost of collection and transportation
- Recycling performance targets
- Feasible recycled content standards and analysis of economic impacts

As of now, there is no indication of what the Legislature and its committees will do with the final report. The Advisory Group has created several viable options for the Legislature to consider, and whether it adopts policies as a whole, combines policies, or takes fragments of policies and combines them with others is yet to be seen. The Advisory Group will continue to assist the Legislature as it considers the recommendations and should any be taken forward, “that is when the nuance and details will be figured out.”

The California legislative committees likely to have jurisdiction over reviewing the final policy and drafting the legislation include the transportation committee and committees dealing with hazardous substances and environmental health and safety. The report will also be sent to legislative counsel and analysts to review as well as Senator Dahle who created the Advisory Group.

Mobility Technology Company International Structure Case Study: TuSimple

TuSimple Holdings Inc., an autonomous trucking technology company founded in 2015, has been rising quickly in the highly anticipated Level 4 autonomous trucking business, especially since its IPO on Nasdaq last April, which raised over \$1 billion. TuSimple, which leads the race in developing and operating driverless big-rig trucks, made news last December when it completed the world’s first fully autonomous semi-truck run on public roads between Tucson and Phoenix, Arizona. Its press release claimed that the vehicle making the 80-minute drive was the first class 8 autonomous truck operated on open public roads without a human in the vehicle or human intervention. TuSimple is reported to have partnered with big package delivery firms such as DHL and UPS in the United States.

Like many other mobility technology companies, TuSimple was a true international company, at least until its most recent restructures. Its founders, controlling shareholders, and major investors have both U.S. and Chinese backgrounds; its board of directors and management team originally included members from both the United States and China; and its operations were divided between the United States and China. The 100 Level 4 autonomous semi-trucks it operates are divided between the United States (approx. 75) and China (approx. 25). Its Chinese operations employ about 500 and the U.S. side has about 1,000, mainly engineers.

TuSimple, however, was required to change its international structure to address national security concerns from the Committee on Foreign Investment in the United States (CFIUS). According to the company's 8-K report, in February TuSimple entered into a National Security Agreement (NSA) with the U.S. government under which it has agreed to limit access to certain data and adopt a technology plan; appoint a security officer and a security director; establish a government security committee of the board of directors to be chaired by the security director; periodically meet with and report to certain CFIUS monitoring agencies; and that its largest shareholder, Sun Dream Inc. (holding approx. 20% of outstanding shares), will no longer be represented on the board after its representative directors' current terms expire.

The NSA was the result of a CFIUS review triggered by the 2017 investment by Sun Dream, an affiliate of the well-known Chinese internet company Sina.com. The NSA, a "mitigation measure," is suspected to be a compromise between TuSimple and CFIUS that avoided Sun Dream being forced into a complete divestiture. On its March 3 8-K filing, TuSimple announced that it has restructured its board and management team.

On March 21, 2022, to many observers' surprise, TuSimple reported its plan to spin off its operations in China for up to \$1 billion. While spinning off the Chinese operations is not part of the NSA – CFIUS did not request it – it is not hard to understand. The spin-off is a natural result of the NSA, which has made communication and collaboration between the U.S. and Chinese teams – once an advantage – no longer feasible. After it announced its intent to spin off the Chinese operations, TuSimple's stock price rose.

What can we learn from TuSimple's recent operational developments? First, mobility technologies are increasingly about data (and artificial intelligence) and connectivity, which will face more and more restrictions crossing national borders. Second, mobility technology companies expanding into international markets should utilize structures that can withstand tightening restrictions to address national security (including data flow) and other geopolitical concerns. It was reported that to prepare for its Nasdaq IPO, TuSimple devised four alternative structures in 2019 to ensure it could withstand a catastrophic change in the geopolitical climate. It would be fascinating to find out if the

changes the company implemented in 2022 were drawn from the 2019 alternative plans. Mobility companies, especially those with international operations, should pay close attention to TuSimple's recent developments. Having the potential of leading the next wave of energy and industrial revolutions, mobility companies will probably face more "protection" (i.e., scrutiny) for geopolitical reasons.

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