



24 March 2022

Minister of Foreign Affairs

For approval by

1 April 2022

Russia Sanctions – Approach Going Forward

BRIEFING Overview Submission

PURPOSE To provide an update on immediate next steps in the sanctioning of oligarchs; and to propose a forward work programme to continue implementing the Russia Sanctions Act.

NB: The Minister for Trade and Export Growth has a particular interest in the work on trade measures. You may also wish to consult with Ministers with Power to Act.

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	1 April 2022
Deputy Prime Minister	For information by	1 April 2022
Minister Responsible for the GCSB	For information by	1 April 2022
Attorney General	For information by	1 April 2022
Minister for Trade and Export Growth	For consultation by	1 April 2022
Minister of Immigration	For information by	1 April 2022
Minister of Defence	For information by	1 April 2022
Minister of Transport	For information by	1 April 2022
Minister of Commerce and Consumer Affairs	For information by	1 April 2022
Minister of Customs	For information by	1 April 2022

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Andrea Smith	Senior Responsible Owner	Russian Sanctions Taskforce	s9(2)(a)

Mā te Tari Minita e whakakī – Minister's Office to complete

- | | | |
|--|---|------------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Noted | <input type="checkbox"/> Referred |
| <input type="checkbox"/> Needs amendment | <input type="checkbox"/> Declined | <input type="checkbox"/> Withdrawn |
| <input type="checkbox"/> Overtaken by events | <input type="checkbox"/> See Minister's notes | |

Comments

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Pito matua – Key points

- The most coordinated and comprehensive barrage of sanctions in history are hitting the Russian economy hard. Aotearoa New Zealand now has the framework in place to use sanctions as a tool to complement and reinforce others' sanctions, with our measures demonstrating our condemnation of the invasion of Ukraine by Russia, and contributing to the international effort to erode Russia's ability to wage war.
- Work to progress sanctions under the Russia Sanctions Act is proceeding at pace. This includes necessary further legal work to underpin your decision-making and putting in place arrangements to help New Zealanders, in particular the business community, to understand and comply with sanctions.
- The immediate work is:
- Developing the designation framework (see accompanying submission)
- First sanctioning of oligarchs (8-20 people)^{6(a)} the timeline for which is:
 - 28 March: approval for amendments to regulations from Ministers with power to act (at Cabinet) in order to designate these oligarchs
 - 31 March: advice to you on proposed designations with draft regulations
 - 4 April: Executive Council
 - 4 April: Gazetting and public notification (time tbc).
 - 5 April: Entry into force of regulations
 - Announcements can be made after public notification on 4 April
- Officials recommend the following indicative work programme:
- **Immediate term**^{s9(2)(g)(i)}
 - Consideration of any remaining oligarchs^{6(a)}
 - Consideration of financial entities
 - Advice on family members and associates
 - Advice on any necessary amendments to the Regulations to refine sanctions on financial services to ensure they are appropriately targeted
- **Near term**^{s9(2)(g)(i)}
 - Advice on the process for amendments, revocations and exemptions under Section 13 of the Act
 - Advice on sanctioning high net worth individuals with connections to Aotearoa New Zealand
 - Advice on potential trade measures impacting Russia.
- **Medium term**^{9(2)(f)(iv)}
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- The work programme comes with risk.

s9(2)(g)(i)

- Aotearoa New Zealand's sanctions regime will add cost into or remove revenue opportunities for businesses.
- Russia may retaliate against our interests.
- Your decisions under the Act may be subject to legal challenge, particularly in relation to those with assets in Aotearoa New Zealand.
- Officials will therefore progress this work as quickly as possible, but at a pace that allows for prudent due diligence on legal and other regulatory or assurance elements to mitigate, as far as possible, those risks otherwise above.

Andrea Smith
for Secretary of Foreign Affairs and Trade

s9(2)(g)(ii)

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Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|--|----------|
| 1 | Note that sanctions are having their desired effect on Russia, with Aotearoa New Zealand now having the legal framework in place to contribute to the international effort; | Yes / No |
| 2 | Approve the forward work programme for activity under the Russia Sanctions Act. | Yes / No |
| 3 | Note the imperative for officials to ensure that while progressing as quickly as possible, the work programme is paced to allow prudent due diligence to mitigate, as far as possible, the legal and other risks associated with this unique regulatory function. | Yes / No |
| 4 | Refer a copy of this submission to Ministers with Power to Act (those designated by Cabinet on 7 March 2022). | Yes/No |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

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Pūrongo – Report

1. In what has been described as the biggest imposition of economic sanctions in history, G7 countries, the European Union, Switzerland, Korea, and Australia have all imposed a barrage of sanctions on Russia in response to its invasion of Ukraine.
2. These have served to decouple the Russian banking system from the global economy; constrained the Russian elite's ability to travel or move their assets; and restricted Russia's imports and exports.
3. Sanctions have hit the Russian economy very hard. The Russian rouble has lost 40% of its value, inflation is forecast at 20%, and its official cash rate has doubled to 20%. GDP is projected to go into reverse, with shortages of consumer goods and cash in Russia.

Aotearoa New Zealand's Response

4. Since Parliament unanimously passed the Russia Sanctions Act on 10 March, you have approved regulations that provided for asset freezes on President Putin and 12 members of his Security Council, together with 19 entities. The regulations also enabled us to extend travel bans to more than 360 additional political and military leaders.
5. From a "standing start", Aotearoa New Zealand now needs to do the necessary work to meet the Act's purpose, including by expanding measures to cover additional individuals and entities, as well as considering what further activities we wish to prohibit (e.g. certain imports, exports).
6. In considering furthering the Act's objectives, Aotearoa New Zealand future measures may contribute to achieving one of the following three outcomes:
 - *Support our condemnation of the invasion of Ukraine* by exerting pressure on key decision-makers and constraining the elite's operating space. As each new regulation is adopted, the announcement of new sanctions measures sends a signal to Russia and the rest of the world that Aotearoa New Zealand remains focused on what we can do to counter Russian aggression.
 - *Erode Russia's ability to wage war*, either by denying it strategic goods and services or undermining Moscow's ability to sustain the war.
 - *Complement or reinforce others' sanctions* and enhancing effectiveness by applying these comprehensively. Preventing Aotearoa New Zealand from providing services to, or becoming a safe-haven for the assets of Russian oligarchs, banks and other actors is important; similarly, we should not become a market to which Russia diverts trade given it is shut out of other markets.
7. With a view to delivering on the purpose of the Russia Sanctions Act, we propose a forward work programme bringing forward measures (i) in the immediate future, by end April; (ii) in the near term^{9(2)(f)(iv)} and (iii) in the medium term^{9(2)(f)(iv)}

Oligarchs

8. ^{9(2)(g)(i)} officials are focused on designating oligarchs to prevent Aotearoa New Zealand from becoming a safe haven for the transfer of wealth or assets by high net worth individuals sanctioned in other jurisdictions. In an accompanying submission, we are

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proposing a sanctions designation process. Subject to your approval of that framework, we are aim to provide you with cases to consider in the following tranches:

Immediate

9. We expect to provide you next week with s6(a), s6(b)(i) 8-20 individuals 6(a)

10. Under its Autonomous Sanctions legislation, Australia has designated and declared 51 persons who fit the broad descriptor of oligarchs, political and economic elites, and their immediate family members. Of these:

- 16 were designated prior to the Russian invasion of Ukraine (their designation relates to the 2014 Crimea crisis)
- 18 are family members (9 of these individuals designated as part of the 2014 Crimea crisis)
- 17 were designated after the 24 February invasion

6(b)(i)

13. While Section 10(2) of the Act allows Regulations made under the Act to be applied to relatives of designated or "sanctioned" persons without having to meet any additional tests (i.e. beyond proof of them being a relative of a sanctioned person) it does not require it. Doing so would require a substantive amendment to the Regulations and we have not as yet been able to complete preparation of policy advice on the extent of family members that should be covered and why. While we consider this issue, for the purposes of next week's advice, where someone we are recommending for sanction has family members who have already been designated by Australia we will assess them against our designation framework in their own right.

Immediate term (by end April)

14. We propose to:

- continue assessing s6(a) with the aim of completing all those assessments by the end of April;
- provide general advice about the treatment of family members (which will likely go beyond oligarchs);
- lay the legal groundwork for your consideration of high net worth individuals with connections to Aotearoa New Zealand by reviewing and advising you on any necessary amendments to the Regulations, in particular to refine the definition of what is covered by an "asset freeze" and on exceptions. Given the pace with which the Regulations were

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9(2)(g)(i)

Near term^{9(2)(f)(iv)}

9(2)(f)(iv)

s9(2)(a)

9(2)(g)(i)

Medium term^{9(2)(f)(iv)}

20. We propose to continue assessing on a regular basis new oligarchs^{6(a)}

Financial entities

21. Russia's central bank and its large commercial banks have been the focus of sanctions from the G7, EU and Australia, with these measures having a material impact on Russia's ability access foreign reserves, service debt, and sustain the rouble. As you have identified, early consideration of the case for sanctioning these entities is required to ensure Aotearoa New Zealand does not become a safe haven or place to divert assets to. We propose to provide initial advice by the end of April (immediate term).

22. Other countries' sanctions on financial entities (together with Russia being decoupled from SWIFT) are already impacting remaining New Zealand firms doing business in Russia, which are struggling to close transactions. We are mindful Aotearoa New Zealand acting will exacerbate that problem: this is likely to be the most material way in which Russia sanctions will affect our business interests. At a national level, the impacts are likely to be minor. Before the invasion, Russia accounted for only 0.5% of our exports, and dairy accounted for just over half of that. Fonterra's decision to withdraw will have significantly reduced that exposure.

23. That being said, there are a series of companies with exposure, including:

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- Companies with ongoing export interests, including three with revenue between s9(2)(b)(ii)
 - Smaller firms for which Russia is a large market, e.g. it accounts for 25-30% of the revenue of 9(2)(b)(ii)
 - Companies with a presence in Russia, e.g. 9(2)(b)(ii)
24. Before providing advice on the designation of additional financial entities we are considering whether there should be any clarification of the scope of the services prohibition in the Regulations (currently broad and general) to enable sanctions to be targeted.
25. We also need to design measures in such a way as to 6(a)
being mindful of our host country obligations under the Vienna Convention on Diplomatic Relations in respect of the Russian Embassy in Wellington.

Potential Trade Measures

26. Likeminded partners have targeted particular sectors of trade with import bans; hiking tariffs; and imposing export prohibitions. Adopting appropriate trade sanctions alongside other partners will demonstrate solidarity with partners. We propose to provide advice on a targeted and graduated trade sanctions response by 9(2)(f)(iv) (near term).
27. Our trade with Russia is relatively small. We exported NZ\$293 million of goods in the year to June 2021, and imported just NZ\$90 million. Dairy products, particularly butter, made up more than half of these exports, with fruit, seafood products and wine also significant shares. Imports have fallen substantially in recent years. Oil (NZ\$54m), fertiliser (\$27m), wood (\$5.6m) and plastics (\$3.8m) are the major import categories, with a long tail of products worth less than \$2m in imports in 2021. Fonterra has now pulled out of the market (half of our exports) and other exporters are unable to export in (and are currently diverting to other markets. The closure of the Marsden Point refinery has led to a halt in imports of crude oil from Russia, which should see that category also collapse.
28. *Prohibit imports of a targeted range of products.* Of the measures available to New Zealand, import (or export) prohibitions are the most direct and straightforward to implement. Amplifying international partners' actions, these could be targeted to strategically significant sectors. For example, oil & gas revenues provided the Russian Government over a third of its revenues in 2021. 9(2)(f)(iv), 9(2)(g)(i)
29. Another option is raising tariffs on goods from Russia, likely outside the Russia Sanctions Act framework. The G7 has adopted an initiative to revoke Russia's 'Most Favoured Nation ('MFN')' treatment in their tariff schedules enabling them to raise tariffs on Russian products. Unlike G7 Members, we do not have a separate 'non-MFN' schedule of tariffs in our tariff schedule, making a similar approach here complex. 6(a)

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30. New Zealand's removal of MFN for Russia - which remains a WTO member (and can't be easily expelled) - will also have limited additional impact compared to the other measures. Its removal however risks signalling the further erosion of a core WTO principle. The removal of MFN from a current WTO member will raise further questions regarding the efficacy and utility of ^{s6(a)}
31. If at a later date, Ministers did want options on increasing the cost of Russian (and Belarusian) imports, officials could provide advice on either increasing tariffs in the manner of the G7 or introducing levies on some or all Russian (and Belarusian) imports. ^{9(2)(g)(i)}
32. *Prohibit exports of a targeted range of products and for a set of end users.* Likeminded partners have variously banned the export to Russia of strategic goods and technologies, inputs to sustain key industries like oil refining and construction, as well as luxury goods. Similarly, there are a range of identified entities which sustain Russia's military capability. The EU, UK and US have also instituted export controls on these entities and technologies and software destined for the defence, aerospace, and maritime sectors in Russia (and Belarus). ^{6(a)}
33. The impact of our imposing export prohibitions would be more limited than some other countries, given the dominance of staple food products in our export profile. That said, we propose to provide advice by mid-May on restricting exports of strategic goods and technologies beyond those covered by current export control settings on dual-use military goods – for example electronics, communications and other IT equipment, plus certain goods destined for the defence, aerospace, and maritime sectors. We also propose to examine the potential for bans of other goods that are part of partners' approaches, ^{s9(2)(f)(iv), s9(2)(g)(i)}. We have not been able to identify any partner that has banned the export of staple foods or medical equipment, which could have implications for ordinary Russians.
34. Our analysis takes account of the relative merits of any measure being justified in terms of World Trade Organisation exceptions, in this case the national security exception. Our interests lie with the WTO exceptions, including the security exception, being used sparingly to prevent their use by others in ways that impact New Zealand's trade. That said, officials will also be mindful of the fact that, through his invasion of Ukraine, Putin has shown a flagrant disregard for the international rules-based framework, and all measures should be considered to raise the diplomatic, political, and economic consequences of his actions.

Inhibiting Aviation and Shipping

35. Likeminded partners have taken or plan to take a variety of measures targeted at inhibiting Russia's aviation and shipping services. Russian aircraft are banned from the EU, Canada, UK and US airspace, with measures also taken against Russian-owned and/or flagged vessels. ^{6(b)(i)}
36. ^{9(2)(f)(iv), 9(2)(g)(i)}

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9(2)(f)(iv), 9(2)(g)(i)

Individuals and other entities

37. As we move into s9(2)(f)(iv) we expect to be able to 6(b)(i) covering a wider range of individuals and entities, including:
6(a), 9(2)(f)(iv)

On-going review

38. We will need to regularly review these listings and work areas, and their relative prioritisation, to ensure we continue to contribute to a collective and comprehensive response to Russia's illegal invasion of Ukraine.

What are the risks?

39. As we expand our sanctions regime, we are entering new terrain for Aotearoa New Zealand by implementing wide-ranging measures on a country outside the UN framework. We are doing that at pace and in circumstances in which everyone involved (in and outside Government) is on a steep learning curve.

40. We draw your attention to the following risks with the proposed work programme.

41. Complexity:

s9(2)(g)(i)

s9(2)(g)(i)

44. *Our understanding of consequences of sanctions.* Officials may not always fully understand the impact or consequences of some decisions you take under the Act. We may also

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9(2)(g)(i)

6(b)(i)

46. *Russia has clearly signalled that it will retaliate against sanctions.* s6(a)

47. *Beyond Russia.* The Russia Sanctions Act provides for measures against Russia or “a country that may be assisting Russia”. We have used this clause already to sanction Belarusian political and military leaders, vessels and aircraft. 6(a), 9(2)(g)(i)

48. *Legal risk.* 9(2)(h)

We will also be designing policies that support exemption requests and reviews.
9(2)(h)

49. *Resources.* As we design and plan what is an extensive new piece of work, we will better understand the resource implications for MFAT and for other agencies. Further advice will be provided to Ministers on this.

50. Officials will therefore progress this work as quickly as possible, but at a pace that allows for prudent due diligence on legal, regulatory, and assurance elements to mitigate, as far as possible, the risks outlined above.