



13 April 2022

Minister of Foreign Affairs
Minister for Trade and Export Growth

For action by
For concurrence by

14 April 2022
14 April 2022

Russia Sanctions – Regulations for Trade Measures

BRIEFING Decision Submission

PURPOSE To seek approval of the parts of the Russia Sanctions Amendment Regulations (no 2) 2022 that enact the trade measures announced on 6 April.

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	19 April 2022
Deputy Prime Minister	For information by	19 April 2022
Minister Responsible for the GCSB	For information by	19 April 2022
Attorney-General	For information by	19 April 2022
Minister of Immigration	For information by	19 April 2022
Minister of Defence	For information by	19 April 2022
Minister of Transport	For information by	19 April 2022
Minister of Commerce and Consumer Affairs	For information by	19 April 2022
Minister of Customs	For information by	19 April 2022

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Andrea Smith	Deputy Secretary	Russia Sanctions Taskforce	s9(2)(a)
	Divisional Manager	Russia Sanctions Taskforce	

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 Withdrawn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

- On 4 April 2022, Cabinet agreed to make regulations under the Russia Sanctions Act 2022 (the Act) in relation to specific trade measures.
- The Russia Sanctions Amendment Regulations (no 2) 2022 (Amendment Regulations) (attached at Annex 1) implement these measures.
- It is the Minister of Foreign Affairs' discretion to recommend regulations be made under the Act, using the threshold established in Section 8 of the Act.
- Consistent with Cabinet's 4 April instructions, the Amendment Regulations include an increase in the tariff applied to imports of Russian products to 35%. This will apply to all products entering New Zealand after the entry into force of the trade measures in the Amendment Regulations. Product that has already been shipped from Russia at the time the trade measures enter into force, will not attract the 35% tariff, but product under contract but still in Russia at the time of entry into force, will attract a 35% tariff.
- Export prohibitions outlined in the Amendment Regulations cover the export of goods under the categories ^{s6(a)}

The prohibitions will apply to Russia and Belarus. Prohibiting the export of these goods is assessed as having a minimal effect on New Zealand exporters. Businesses will be able to apply for an exemption from the regulations.
- s6(a), s9(2)(f)(iv)
- The Amendment Regulations also include a humanitarian exemption so humanitarian organisations are able to provide humanitarian assistance without breaching sanctions and to ensure that goods that would otherwise be prohibited for export are able to be exported where there is a genuine humanitarian reason.
- These trade measures will come into force on 25 April 2022.
- Once agreed, public notification of the regulations will occur at approximately 5pm Tuesday 19 April through the Gazette and the trade measures will be included on MFAT's sanctions register.

Andrea Smith
for Secretary of Foreign Affairs and Trade

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Tūtohu – Recommendations

It is recommended that the **Minister of Foreign Affairs** (the competent Minister under the Russia Sanctions Act 2022 to authorise the making of regulations) and the **Minister for Trade and Export Growth** (given the regulations will contain trade measures):

- | | | |
|---------------------|---|-----------------|
| 1 | <p>Note that on 4 April 2022 Cabinet authorised officials to draft amendments to the Russia Sanctions Amendment Regulations [CAB-22-MIN-0116] to:</p> <ul style="list-style-type: none"> • increase the tariff applied to imports of Russian products to 35%; and • allow for the extension of New Zealand export prohibitions to a wider range of industrial goods. | Yes / No |
| 2 | <p>Note that Cabinet agreed on 4 April to a waiver of the 28 day rule for these regulations on the basis that Russia’s invasion of Ukraine constitutes an international emergency that requires a swift response;</p> | Yes / No |
| 3 | <p>Note that under Section 8 of the Russia Sanctions Act 2022 (the Act) the Minister of Foreign Affairs alone may recommend Regulations be made if the Minister is satisfied that the test is met;</p> | Yes / No |
| 4 | <p>Agree that, in accordance with section 8 of the Act, the trade measures included in the attached Russia Sanctions Amendment Regulations (No 2) 2022 (the Amendment Regulations) (in Annex 1):</p> <ul style="list-style-type: none"> • are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country, and • that the United Nations Security Council is unlikely to act, or has acted insufficiently, in response to the threat; | Yes / No |
| 5 | <p>Note that product that has already been shipped from Russia at the time the trade measures in the Amendment Regulations enter into force (25 April), will not attract the 35% tariff, but that product under contract but not yet shipped by 25 April, will attract a 35% tariff;</p> | Yes / No |
| 6 | <p>Agree to the list of prohibited exports contained in Schedule 2 of the Amendment Regulations;</p> | Yes / No |
| 7 | <p>Agree to extend these export prohibitions to both Russia and Belarus;</p> | Yes / No |
| 8 | <p>Note that businesses affected by the export prohibitions will be able to apply for an exemption under section 13 of the Russia Sanctions Act 2022;</p> | Yes / No |
| s6(a), s9(2)(f)(iv) | | Yes / No |
| 10 | <p>Agree to include an humanitarian exception in the Amendment Regulations so humanitarian organisations are able to provide humanitarian assistance without breaching sanctions, and to ensure that goods that would otherwise</p> | Yes / No |

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be prohibited for export are able to be exported where there is a genuine humanitarian purpose;

- 11 **Approve** the trade measures in the proposed Amendment Regulations, subject to minor or technical amendments as required; **Yes / No**
- 12 **Note** that Gazetting of the Amendment Regulations will occur at approximately 5pm on Tuesday 19 April, with entry into force of the trade measures at 12:01am on Monday 25 April, and following this, the MFAT hosted public sanctions register and website will be updated with details of the regulations and any frequently asked questions; **Yes / No**
- 13 **Agree** that a press release following Gazetting or entry into force is not required, but that you may considering issuing a tweet after the Amendment Regulations are Gazetted; **Yes / No**
- 14 **Note** that the Minister of Foreign Affairs will authorise submission to the Executive Council of the Russia Sanctions Amendment Regulations (no 2) 2022 and sign an Executive Council Advice Sheet (Goatskin) for the Amendment Regulations; **Yes / No**
- 15 **Refer** a copy of this submission to Ministers with Power to Act (those designated by Cabinet on 7 March), the Minister of Transport, the Minister of Commerce and Consumer Affairs, and the Minister of Customs. **Yes / No**

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Hon Damien O'Connor
Minister for Trade and Export Growth

Date: / /

Date: / /

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Pūrongo – Report

1. On 4 April 2022, Cabinet agreed (CAB-22-MIN-0116) to make regulations under the Russia Sanctions Act 2022 (the Act) to:
 - increase the tariff applied to imports of Russian products to 35%; and
 - allow for the extension of New Zealand export prohibitions to a wider range of industrial goods.
2. The purpose of this submission is to seek approval for the Russia Sanctions Amendment Regulations (no 2) 2022 (the Amendment Regulations) to enact these trade measures (attached at Annex 1).

Threshold for making regulations

3. It is the Minister of Foreign Affairs' discretion to recommend regulations be made under the Act. Section 8 of the Act sets out the threshold for recommending sanctions, of which there are two limbs. Both limbs must be met.

Limb 1: Appropriate response to threats to sovereignty or territorial integrity of Ukraine or another country; and

Limb 2: Absence of sufficient United Nations Security Council Action.

4. A response is appropriate if the Minister of Foreign Affairs, considers it demonstrates New Zealand's condemnation of the threat. It is for the Minister of Foreign Affairs to determine what is appropriate to demonstrate New Zealand's condemnation and these include responses:
 - being designed to exert pressure on Russia (or a country that may be assisting Russia), including by interrupting economic relations; or
 - complementing or reinforcing sanctions by other countries.
5. The Minister of Foreign Affairs must also be satisfied that the United Nations Security Council is unlikely to act in response to the threat under Chapter VII of the Charter of the United Nations, or has acted (or is likely to act) but that action is, or may be, insufficient. To date the Security Council has been unable to act due to Russia's veto power.
6. Annex 2 contains details of the section 8 threshold.

Details of trade measures in the Amendment Regulations

7. The trade measures announced on 6 April will be implemented through the Amendment Regulations. The trade elements of these Amendment Regulations will come into force on 25 April.
8. **35% tariff:** As earlier advised, this higher across the board tariff on imports will ensure New Zealand's trade measures complement and reinforce sanctions by our partners and is designed to exert pressure on Russia by interrupting economic relations. Under the Regulations, the tariff will not be imposed on product that has already left Russia and is on its way to New Zealand on 25 April. However, goods that may be under contract but not yet shipped by 25 April, will be required to pay the 35% tariff.

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9. *Export prohibitions:* The decision to extend export prohibitions to a wider range of industrial goods reinforces actions taken by other partners and is aimed at exerting pressure on Russia and Belarus by denying their access to goods capable of dual-use or otherwise supporting or contributing to the invasion. Targeted products are listed in Schedule 2 of the Amendment Regulations ^{s6(a)}

The list includes certain types of electronic equipment, certain computer equipment and related software, certain telecommunications equipment, specific optical and acoustic equipment, including certain types of sensors, cameras and lasers, certain navigation equipment, vessels and marine equipment and related software, and certain engines and turbines, including aircraft engines. Schedule 2 of the Amendment Regulations specify the exports that are prohibited.

10. These prohibitions will be implemented at the border using the HS Codes assigned to each restricted product. Officials assess the risk of unintended capture of New Zealand exports to Russia to be small. That said, we have identified seven product lines where New Zealand businesses have exported greater than NZ\$0.5 million of these products to Russia. While there is the risk of some impact on New Zealand exporters, we have prioritised taking strong action to prevent Russia accessing products that could be used to support their strategic aims in targeting Ukraine over the free-flow of our own exports. Affected businesses will be able to apply for an exemption from the Regulations using section 13 of the Russia Sanctions Act and officials will engage with affected businesses.
11. The US Foreign Direct Product Rule (FDPR) means certain US prohibited goods that are foreign-produced and contain a specified percentage of US origin content, or produced by a plant that uses specific US technology, are captured by their sanctions. The FDPR is designed to prevent circumvention of US sanctions through goods being exported to a third country for minimal processing and then re-exported to Russia or Belarus. Currently New Zealand is exempt from the FDPR ^{s6(a)}

12. The FDPR extends to products exported to Belarus. Since our 1 April submission, we have assessed our goods exports to Belarus, which in the year ending 2021 came to just over NZ\$1.1 million (mostly in frozen fish exports). We therefore assess the risk of impact on New Zealand businesses from including Belarus in these export prohibitions is low. ^{s6(a)}, we propose including Belarus in these Amendment Regulations.

13. In recent days the US Department of Commerce has also expanded their list of export controls to include additional products. ^{s6(a), s9(2)(f)(iv)}

14. *Humanitarian exception:* We also propose to include a humanitarian exception in the regulations to make it clear that humanitarian organisations are able to provide humanitarian assistance without breaching sanctions. While the risk that their activities will breach sanctions is low, it is an important signal and will provide comfort to these organisations. We also want to ensure that goods that would otherwise be prohibited for export can be exported where this is for a genuine humanitarian purpose. This is to ensure that goods destined for - as an example - hospitals, are not prohibited. While partner's regimes vary, most provide

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for this situation in some way, whether it is via an exception (EU), or a licensing approach (US).

Timeline

15. Subject to your approval, the following timeline applies:

- Paperwork completed and returned to the Ministry on Thursday 14 April;
- Regulations submitted to the Executive Council on the afternoon of Tuesday 19 April;
- Regulations gazetted at approximately 5pm on Tuesday 19 April. You may consider issuing the following Tweet at this point:

s9(2)(g)(i)

- Entry into force of the trade measures in the Amendment Regulations at 12:01am on Monday 25 April, and MFAT's sanctions register and website updated shortly thereafter.