

15 December 2023

Personal details removed for proactive release

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OIA 28852

Tēnā koe

I refer to your email of 19 October 2023 in which you request the following under the Official Information Act 1982 (OIA):

How many applications have been made to the Minister under s 13(1) of the Russia Sanctions Act 2022 (the Act) for:

- 1. the amendment of a regulation (s 13(1)(a));*
- 2. the revocation of a regulation (s 13(1)(a));*
- 3. the amendment of a designation notice (s 13(1)(b));*
- 4. the revocation of a designation notice (s 13(1)(b));*
- 5. an exemption from a sanction in relation to particular persons, assets or services (s 13(1)(c)(i)); and*
- 6. an exemption from a sanction in relation to particular events or dealings (s 13(1)(c)(ii)).*

How many of these applications have been:

- 7. granted;*
- 8. declined; or*
- 9. are pending?*
- 10. In relation to any applications which have been granted, please provide copies of the written application and decision by the Minister (appropriately redacted to remove identifying details of any persons under s 17(1) of the OIA).*
- 11. For completeness, please otherwise confirm whether any person (whether individual or entity) has successfully applied to be removed from the sanctions register established under s 14 of the Act or Schedule 2 of the Russia Sanctions Regulations 2022.*
- 12. What is the average time in which the Minister has decided applications under s 13(4)?*

On 16 November 2023, the timeframes for responding to your request were extended by an additional 20 working days due to the consultations necessary to make a decision on your request. (15A(1)(b) of the OIA refers).

A response to each part of your request is set out below:

How many applications have been made to the Minister under s 13(1) of the Russia Sanctions Act 2022 (the Act) for:

- 1. the amendment of a regulation (s 13(1)(a));*
- 2. the revocation of a regulation (s 13(1)(a));*
- 3. the amendment of a designation notice (s 13(1)(b));*
- 4. the revocation of a designation notice (s 13(1)(b));*

The Ministry of Foreign Affairs and Trade (the Ministry) can confirm that no applications have been made.

How many applications have been made to the Minister under s 13(1) of the Russia Sanctions Act 2022 (the Act) for:

- 5. an exemption from a sanction in relation to particular persons, assets or services (s 13(1)(c)(i)); and*
- 6. an exemption from a sanction in relation to particular events or dealings (s 13(1)(c)(ii)).*

The Ministry received a total of 17 applications in relation to particular persons assets or services and/or in relation to particular events or dealings.

How many of these applications have been:

- 7. granted;*
- 8. declined; or*
- 9. are pending?*

The Ministry has granted six requests and declined five, no requests are pending. We have also advised five applicants that exemptions were not required, and one request was withdrawn.

- 10. In relation to any applications which have been granted, please provide copies of the written application and decision by the Minister (appropriately redacted to remove identifying details of any persons under s 17(1) of the OIA).*

Information relevant to question 10 is attached.

Please note that all of the applications received are withheld in full under section 9(2)(ba)(i) of the OIA, to protect the supply of confidential information by another party.

- 11. For completeness, please otherwise confirm whether any person (whether individual or entity) has successfully applied to be removed from the sanctions register established under s 14 of the Act or Schedule 2 of the Russia Sanctions Regulations 2022.*

No individuals have applied to be removed from the sanctions register.

- 12. What is the average time in which the Minister has decided applications under s 13(4)?*

Decisions made by the Minister of Foreign Affairs have taken 49.3 days on average.

We have withheld some information under the following sections of the OIA. Where the information has been withheld under section 9 of the OIA, we have identified no public interest in releasing the information that would override the reasons for withholding it:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(c): to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial;
- 9(2)(a): to protect individuals' privacy;
- 9(2)(ba)(i): to protect the supply of confidential information by another party;
- 9(2)(b)(ii): to avoid prejudice to the commercial position of another party;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments; and,
- 9(2)(g)(ii): to protect officers and employees from improper pressure or harassment.

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website: www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'SC', written in a cursive style.

Sarah Corbett
for Secretary of Foreign Affairs and Trade

Decision-maker assessment for exemption application from regulation 16 by ^{s9(2)(b)(ii),} ^{s9(2)(ba)(i)}

Executive Summary

[1] ^{s9(2)(b)(ii), s9(2)(ba)(i)} has applied for an exemption from regulation 16 of the Russia Sanctions Regulations 2022. This regulation imposes a 35% tariff on goods of Russian origin.

[2] ^{s9(2)(b)(ii), s9(2)(ba)(i)}

[3] It is recommended that an exemption be granted. The contradiction of the purposes of the Russia Sanctions Act 2022 and Russia Sanctions Regulations 2022 is not significant enough to justify the impact on ^{s9(2)(b)(ii),}
^{s9(2)(ba)(i)}

Test

[4] In deciding whether to grant an exemption, you must decide the application in a way that is consistent with the purpose of the regulations that establish the sanction. Good decision-making principles also apply. This table outlines the considerations that have informed the recommendation, to assist you in making your decision.

Considerations
The purpose of the Russia Sanctions Act 2022 and Russia Sanctions Regulations 2022.
Risk of exemption benefitting a designated person or entity.
The harm to affected persons if exemption is not granted.
The accuracy of facts and law.
The relevance of factors material to application.
Principles of natural justice.

Proposed Exemption

[5] The proposed exemption from regulation 16 would permit ^{s9(2)(b)(ii), s9(2)(ba)(i)} to import a product of Russian origin, without a 35% tariff. The exemption from regulation 16 is sought for this one-off transaction.

Background

[6] s9(2)(b)(ii), s9(2)(ba)(i)

[7] The applicant has provided (in writing and by phone) the following description of circumstances to support its exemption application:

1. s9(2)(b)(ii), s9(2)(ba)(i)

2. s9(2)(b)(ii), s9(2)(ba)(i)

3. s9(2)(b)(ii), s9(2)(ba)(i)

4. s9(2)(b)(ii), s9(2)(ba)(i)

5. s9(2)(b)(ii), s9(2)(ba)(i)

s9(2)(b)(ii), s9(2)(ba)(i)

6. s9(2)(b)(ii), s9(2)(ba)(i)

External Comments

[8] New Zealand Customs has been closely involved in the handling of this matter and are comfortable with the approach being recommended.

Considerations

The purpose of the Russia Sanctions Act 2022 and Russia Sanctions Regulations 2022.

[9] The purpose of the Russia Sanctions Act 2022 is—

- To enable New Zealand to impose and enforce sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia).
- The military actions began on 24 February 2022 in relation to Ukraine, but the sanctions may relate to military actions in Ukraine or in any other country.

[10] The purpose of the Russia Sanction Regulations 2022 is—

- To give effect to the Russia Sanctions Act 2022 by imposing sanctions in response to—
 - (a) Russia's military actions in relation to Ukraine; and
 - (b) any assistance that any other country or person may give Russia in connection with those actions.

[11] The exemption would not significantly contradict the above purposes. Not granting an exemption would have a negative impact on an Aotearoa New Zealand business much greater than any impact on Russia for the purposes above. The tariff on imports ensures Aotearoa New Zealand's trade measures complement and reinforce sanctions implemented by our partners and is designed to exert pressure on Russia by interrupting economic relations.

s9(2)(b)(ii), s9(2)(ba)(i)

s9(2)(b)(ii), s9(2)(ba)(i)

[12] There appears to be no sanctioned persons involved in this activity. The exemption application is for a one-off transaction and does not seek exemption for future shipments. In taking the decision to impose tariffs, Ministers accepted that the tariff would impact some New Zealanders as a result. s9(2)(b)(ii), s9(2)(ba)(i)

Risk of exemption benefitting a designated person or entity.

[13] The entity that produced the item is not a designated entity and the exemption is not likely to benefit any other designated person or entity.

The harm to affected persons if exemption not granted.

[14] If an exemption is not granted, the applicant will need to pay the 35% tariff
s9(2)(b)(ii), s9(2)(ba)(i)

The accuracy of facts and law

[15] Officials are satisfied with the accuracy of the relevant facts involved in application. We have no reason to doubt the veracity of the application.

[16] Officials are satisfied in the interpretation of the law relevant to this application. This is an application to be exempt under regulation 16 and there is nothing to indicate the application process is not open to the applicant.

The relevance of factors material to application

[17] Officials are satisfied all relevant factors have been considered and any irrelevant factors have been ignored.

Principles of natural justice

[18] If the decision-maker agrees with the recommendation that an exemption should be granted, the nature of the exemption will be outlined in a letter to the applicant.

Although there is no formal appeal process, if we receive subsequent information that is material to the outcome of the decision, the application may be revisited.

[19] The decision-maker must exercise the decision-making function without bias and impartially, and not stand to benefit in any personal interest, financial or otherwise, from the outcome of this application. Even where no actual bias exists, the decision-maker should be careful to avoid the appearance of bias.

[20] The decision-maker must only consider the factors outlined in this application and this application assessment to ensure fairness of procedure.

Decision: Exemption granted – YES/NO

Reasons for decision:

Chris Seed
Chief Executive

Date

Memo to the Chief Executive

Russia Sanctions Act 2022: Application for exemption under section 13 – s9(2)(b)(ii), s9(2)(ba)(i)

Date	30 March 2023
Action required	For decision
Submitted by	s9(2)(g)(ii) RST s9(2)(a)
Summary of issue and purpose of paper	<p>A decision is required on an application for an exemption from regulation 16 of the Russia Sanctions Regulations 2022. Decisions on these applications can be made by the Secretary, or be sub-delegated to officials.</p> <p>The paper and attachments provide an assessment on the application to assist you in making a decision.</p>
Major risks	<ul style="list-style-type: none"> Like any decision making function, there is a risk of judicial review of the decision. Officials believe this to be unlikely in this case.
MFAT units affected	<ul style="list-style-type: none"> Russia Sanctions Taskforce
Resource implications (including cost of proposal)	<ul style="list-style-type: none"> There are no resource implications that apply here.
Consultation undertaken Consultation mandatory if any implications exist for FIN, AMD, IMD, HRG and PCA. Other relevant internal units and external stakeholders	<p>There is no mandatory consultation required. No further consultation has been undertaken.</p> <ul style="list-style-type: none"> Customs New Zealand would be informed if the application is granted.

Recommendations

- | | | |
|----|---|-----------------|
| 1. | Note that section 13 of the Russia Sanctions Act 2022 provides for applications for revocation, amendment and exemption, and an application for exemption has been received. | YES / NO |
| 2. | Note decisions on exemptions from regulations 13 and 16 have been delegated to the Secretary of Foreign Affairs and Trade. | YES / NO |

3. **Approve** or **decline** the exemption contained in the attached assessment.

**APPROVE /
DECLINE**

Reasons for the decision if the application is declined:

Chris Seed
Chief Executive

Date

Report

Application for exemption under section 13 of the Russia Sanctions Act 2022

1. Section 13 of the Russia Sanctions Act 2022 ('the Act') provides that any person may apply to the Minister of Foreign Affairs ('the Minister') to request an amendment or revocation of a regulation, or an exemption from a sanction, or to request that the Minister ask the Secretary of Foreign Affairs and Trade ('the Secretary') to amend or revoke a designation notice made under the Russia Sanctions Regulations 2022 ('the Regulations').
2. The process for assessing applications made under section 13 was established in a submission to the Minister. In the same submission, the Minister delegated some of her powers to decide these applications to the Secretary on 3 May 2022.
3. All functions and, responsibilities regarding revocation, amendment and exception under section 13 are delegated to the Secretary. Decisions on applications for revocation and amendment are delegated to the Secretary. A partial delegation of authority was granted for decisions on applications for exemptions, relating to regulation 13 (export prohibition) and regulation 16 (tariff increase). The authority to grant exemptions in all other situations remains with the Minister.
4. The Minister approved for the sub-delegation of functions and powers under delegated to the Secretary. More information on sub-delegation can be provided if requested.

The application

5. An application has been received for an exemption from the 35% trade tariff under regulation 16 of the Regulations. This is the second application received for an exemption from regulation 16. It is the second application received within the delegated areas and which has been submitted to the Secretary for a decision.
6. Officials have prepared the attached assessment to assist in deciding whether to approve or decline the exemption request. If you grant the exemption, Customs will be informed and the applicant's one-off import will not be subject to the 35% tariff. If you decline the application the applicant will be informed of the decision and reasons why it was declined will be provided.
7. As with any public decision making power, the decision comes with risk of being judicially reviewed by the courts upon application by those impacted by the decision. We consider risk of this occurring to be low but if it were to happen, the assessment covers both the statutory considerations and good decision making principles which would render a successful review unlikely.



2 November 2022

Minister of Foreign Affairs

For action by

9 November 2022

Russia Sanctions Act 2022: Application for exemption under section 13 – ^{s9(2)(a)} (re-submission)

BRIEFING Decision Submission

PURPOSE To seek a decision on a request for an exemption from the Russia Sanctions Regulations 2022

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
s9(2)(g)(ii)	Divisional Manager	Russia Sanctions Taskforce	s9(2)(a)
	Legal Adviser	Russia Sanctions Taskforce	

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

☐ Approved☐ Noted☐ Referred☐ Needs amendment☐ Declined☐ Withdrawn☐ Overtaken by events☐ See Minister's notes**Comments**

Application for exemption under section 13^{s9(2)(a)}

Pito matua – Key points

- This submission provides further advice on an application for exemption submitted under section 13 of the Russia Sanctions Act 2022 ('the Act'). The application involves a^{s9(2)(a), s9(2)(ba)(i)} gift of US\$3,000 from^{s9(2)(a), s9(2)(ba)(i)} who lives in Russia, to^{s9(2)(a), s9(2)(ba)(i)} who lives in Aotearoa New Zealand. This application was declined when first submitted to you. In this submission, we provide further details on how the exemption process was designed to deal with legitimate gifts such as this, and additional context showing this payment was en-route to Aotearoa New Zealand before the relevant sanctions came into effect.
- While the decision is yours to make, officials believe the gift is legitimate and you could approve the exemption either because (i) it is the sort of transaction that the exemption process was designed to cover and/or (ii) the gift was 'en-route' to Aotearoa New Zealand before the sanctions came into effect (in the same way goods were exempt from the tariff increase if 'en-route' to Aotearoa New Zealand).
- Should you decide not to approve an exemption,^{s9(2)(a), s9(2)(b)(ii), s9(2)(ba)(i)}
- Along with the additional context, an assessment document has been attached as **Annex 1** to assist in your decision.

Additional context in support of an exemption

- The transaction was a^{s9(2)(ba)(i)} gift of US\$3,000 from^{s9(2)(a), s9(2)(ba)(i)} in Aotearoa New Zealand. Neither individual is sanctioned. The only reason this transaction is currently prohibited is because there is no legal obligation underpinning it. If there was a legal obligation, the exception in regulation 12(3) would apply and the receiving bank,^{s9(2)(b)(ii)}, could facilitate the transaction.
- A conscious decision was made not to include remittance-type payments (i.e. this situation) in the design of regulation 12(3), because it would create a loophole in the Regulations. If these types of payments were allowed under the exception, a sanctioned person could move assets out of New Zealand on a regular basis, masked as a remittance payment. Officials anticipated that legitimate and justified remittance-type payments, such as this transaction, could instead be permitted through exemptions, following an assessment of the merits of the case.
- These types of payments could justifiably be granted an exemption because they are not inconsistent with the purpose of the Act and the Regulations. They were specifically considered to be the type of transactions that may be caught up in the prohibition, but could subsequently be permitted through an exemption.
- This transaction was 'en-route' to New Zealand when it was caught by the prohibition. The payment was made *prior* to the sanctions coming into effect but was held up in an intermediary bank in^{s6(a), s9(2)(ba)(i)}. In the meantime, Aotearoa New Zealand imposed sanctions on the originating bank. When the funds were released by the intermediary bank,^{s9(2)(b)(ii)} was prohibited from completing the transaction because it originated from a sanctioned entity.

Application for exemption under section 13 – ^{s9(2)(a)}

- Assets in other situations have been treated differently if they are 'en-route' to Aotearoa New Zealand. For example, goods 'en-route' to Aotearoa New Zealand were exempt from the tariff increase, in situations when the decision to transport the goods had been made before the date of sanctioning and the goods had already commenced their journey.
- s9(2)(a), s9(2)(b)(ii), s9(2)(ba)(i)
- s9(2)(a), s9(2)(b)(ii), s9(2)(ba)(i)

The decision

- **If an exemption is granted (recommended)** the applicant will be informed of the outcome and be provided a letter outlining the nature of the exemption.
- **If the application is declined**, you will need to provide a detailed reason for the decision. The applicant will be informed of your decision and the reasons why it was declined. As with any public decision-making power, the decision comes with risk of being judicially reviewed by the courts upon application by those impacted by the decision.
- Whether the exemption is granted or declined, this decision will set a precedent should there be any similar applications in the future. However, due to the unique circumstances of this application (particularly the timeline which is unlikely to be replicated), we do not anticipate receiving another application with the same determinative factors. Assessments for other exemption applications will be based on the particular details of those applications. The final decision on whether to grant an exemption, based on the specific details of an application, remains with the Minister.
- We note that if you grant the exemption, the bank's decision following their own risk assessment will determine whether the payment is made ^{s9(2)(a)} We will make that clear ^{s9(2)(a)} in correspondence, should you approve the exemption.

s9(2)(g)(ii)

for Secretary of Foreign Affairs and Trade

Application for exemption under section 13 – s9(2)(a)

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|---|------------------------------|
| 1 | Note that section 13 of the Russia Sanctions Act 2022 provides for applications for amendment and revocation of regulations, and exemption from sanctions. An application for exemption has been received; | Yes / No |
| 2 | Note that this application has been resubmitted to you for reconsideration with additional context; | Yes / No |
| 3 | s9(2)(b)(ii), s9(2)(ba)(i) | Yes / No |
| 4 | Approve or decline the exemption contained in the attached assessment in Annex 1 . | Approve /
Decline |

Reasons for the decision if the application is declined:

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

Annex 1

Assessment of an exemption application by ^{s9(2)(a)} from regulations 10 and 11 of the Russia Sanctions Regulations 2022

Executive Summary

[1] ^{s9(2)(a)} has applied for an exemption from regulations 10 and 11 of the Russia Sanctions Regulations 2022 ('the Regulations'). Regulation 10 restricts dealing with assets and regulation 11 restricts dealing with services.

[2] ^{s9(2)(a)} transfer US\$3,000.00 from Russia to ^{s9(2)(a), s9(2)(ba)(i)} New Zealand. The transaction has been blocked by ^{s9(2)(b)(ii)} because the originating bank in Russia, ^{s9(2)(b)(ii)} is a sanctioned entity under the Regulations. This transaction was made before the bank was sanctioned, but does not fall within any of the exceptions under regulation 12. ^{s9(2)(b)(ii)} is therefore prohibited from facilitating the transaction. ^{s9(2)(a)} and ^{s9(2)(a)} are not sanctioned persons.

[3] An exemption could reasonably be granted to ^{s9(2)(a)} which would permit ^{s9(2)(ba)} to receive funds from ^{s9(2)(b)(ii)}. Granting this exemption is unlikely to be contrary to the purposes of the Russia Sanctions Act or Regulations.

Test

[4] In deciding whether to grant an exemption, you must decide the application in a way that is consistent with the purpose of the regulations providing for the sanction. Good decision-making principles also apply. This table outlines the considerations that may assist you in making your decision. Material relevant to each consideration is provided below.

Considerations
The purpose of the Russia Sanctions Act 2022 and Russia Sanctions Regulations 2022.
Risk of exemption benefitting a designated person or entity.
The harm to affected persons if exemption not granted.
The accuracy of facts and law.
The relevance of factors material to application.
Principles of natural justice.

Proposed Exemption

[5] The proposed exemption from regulations 10 and 11 would permit s9(2)(ba)(i) to receive money from s9(2)(ba) a sanctioned entity, and facilitate payment to the intended recipient. The exemption has been requested by s9(2)(a) for a one-off payment of US\$3,000.00.

Background

[6] The applicant, s9(2)(a) is an individual residing in s9(2)(a) Russia. s9(2)(a) attempted to transfer US\$3,000.00 s9(2)(a) who resides in New Zealand. s9(2)(a), s9(2)(b)(ii), s9(2)(ba)(i)

[7] The transaction was made s9(2)(ba)(i) from the applicant's bank account with s9(2)(ba)(i) in Russia. The transaction was held up by an intermediary bank s9(2)(ba)(i), s9(2)(b)(ii) who was sanctioned by New Zealand in April 2022. s9(2)(b)(ii) has subsequently blocked the transaction as it originates from a sanctioned entity, and is prohibited from accepting the payment under regulations 10 and 11. s9(2)(ba) notified s9(2)(a) of the following: (i) s9(2)

s9(2)(ba)(i), s9(2)(b)(ii)

[8] s9(2)(a) subsequently applied to the Ministry of Foreign Affairs and Trade for an exemption to the Regulations,

[9] s9(2)(a), s9(2)(ba)(i) exception under regulation 12(3) s9(2)(a), s9(2)(ba)(i) This exception allows New Zealand persons to receive money in specific situations. The Ministry has provided guidance on this exception, noting banks are allowed to release funds received from any person in Russia if two conditions are met.

1. The intended recipient is not a sanctioned person nor is owned or controlled by a sanctioned person; and
2. Immediately before the date the relevant Russian bank was sanctioned, it can be shown that the person from whom the transfer originated had a legal obligation to pay the money, whether at that time or in the future, to the New Zealand person.

¹s9(2)(b)(ii), s9(2)(ba)(i)

[10] s9(2)(a) provided the following reason as a justification for the exemption. We have provided a comment that may assist in making your decision.

s9(2)(a), s9(2)(ba)(i)

- Comment: s9(2)(ba)(i)

there is no recognised legal obligation under New Zealand law. Importantly, no evidence has been provided showing a pre-existing contractual (i.e. legal) obligation, which would trigger the exception in regulation 12(3).

[11] s9(2)(a), s9(2)(ba)(i)

[12] s9(2)(ba)(i)

External Comments

[13] s9(2)(ba)(i), s9(2)(b)(ii)

[14] s9(2)(b)(ii), s9(2)(ba)(i)

[15] The Reserve Bank of New Zealand (RBNZ) is the Anti-Money Laundering and Countering Financing of Terrorism supervisor for registered banks, non-bank deposit takers and life insurers. RBNZ does not have any mandate in administering the Russian Sanctions Act 2022. RBNZ also does not have any material concerns regarding this exemption application. s9(2)(b)(ii), s9(2)(ba)(i)

Considerations

The purpose of the Russia Sanctions Act 2022 and Russia Sanctions Regulations 2022.

[16] The purpose of the Russia Sanctions Act 2022 is—

- To enable New Zealand to impose and enforce sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia).
- The military actions began on 24 February 2022 in relation to Ukraine, but the sanctions may relate to military actions in Ukraine or in any other country.

[17] The purpose of the Russia Sanction Regulations 2022 is—

- To give effect to the Russia Sanctions Act 2022 by imposing sanctions in response to—
 - (a) Russia's military actions in relation to Ukraine; and
 - (b) any assistance that any other country or person may give Russia in connection with those actions.

[18] The exemption would not contradict the above purposes. Granting the exemption would align with the Government's intention to target those who are linked with Russia's war in Ukraine, or who are of economic or strategic importance to the Russian Government, and not ordinary Russian people. Given the value of the payment is relatively small (US\$3,000.00) and only sought for a one-off payment, there is very minimal risk this would undermine the economic pressure sanctions are intended to exert on Russia, by permitting this economic activity to occur.

Risk of exemption benefitting a designated person or entity.

[19] The exemption is very unlikely to benefit a designated person. ^{s9(2)(a)}

While ^{s9(2)(ba)(i)} is a sanctioned entity, the transaction fee paid to them for a payment of US\$3,000.00 is unlikely to be substantial, or likely to lead to any other substantial benefits to the bank. Given the transaction was made in ^{s9(2)(ba)(i)} these costs are likely to already have been passed on to the applicant.

The harm to affected persons if exemption is not granted.

[20] If an exemption is not granted, ^{s9(2)(ba)(i), s9(2)(b)(ii), s9(2)(a)}
^{s9(2)(a)}

^{s9(2)(a), s9(2)(ba)(i)}

[21] Material to this application is that s9(2)(a) made the payment prior to the bank being sanctioned. The delivery of the payment was delayed due to circumstances outside her control. At the time s9(2)(a) made the payment, she could not have reasonably expected this outcome, given the bank was not sanctioned and the transaction was lawful in every other way. As discussed above, while there is no legal obligation behind the payment, and therefore the exception in regulation 12(3) does not apply, the basic premise of the payment is the same and consistent with the rationale behind the exception. Namely, so funds can legally be received in New Zealand where they were made prior to any sanctioning. If there was a legal obligation to make the payment, there would be no question as to the transaction's lawfulness, or Government's comfort in permitting this type of transaction to proceed.

[22] For completeness, harm may eventuate even if an exemption were granted.
s9(2)(ba)(i), s9(2)(b)(ii)

The exemption would simply provide a legal basis for the transaction to be lawful under the Regulations but is not a guarantee of payment.

The accuracy of facts and law

[23] Officials are satisfied about the accuracy of the relevant facts involved in the application. We have no reason to doubt the veracity of the application, particularly given the details of the transaction were verified by s9(2)(ba)(i)

[24] Officials are satisfied in the interpretation of the law relevant to this application. This is an application for the bank transaction to be exempt from regulations 10 and 11. There is nothing indicating the application process is not open to this applicant.

The relevance of factors material to application

[25] Officials are satisfied all relevant factors have been considered. There was nothing provided in the application we deemed irrelevant and all details have been provided in this assessment.

Principles of natural justice

[26] Your decision will be provided by letter to the applicant. If you agree that an exemption should be granted, this will be noted to her. If the exemption is not granted, the letter will outline the reasons why the application is denied. Although there is no formal appeal process, if we receive subsequent information material to the outcome of the decision, the application may be revisited.

[27] The decision-maker must exercise the decision-making function without bias and impartially, and not stand to benefit from any personal interest, financial or otherwise,

from the outcome of this application. Even where no actual bias exists, the decision-maker should be careful to avoid the appearance of bias.

[28] The decision-maker must only consider the factors outlined in this application and this application assessment to ensure fairness of procedure.

Released under the Official Information Act 1982



13 March 2023

Minister of Foreign Affairs

For action by

20 March 2023

Russia Sanctions Act: applications for exemption under s 13 - prohibited goods held by customs

BRIEFING Decision Submission

PURPOSE To seek decisions on eight exemption requests made in relation to the import prohibition of luxury goods under the Russia Sanctions Regulations 2022.

Tukunga tūtohua – Recommended referrals

Minister for Trade and Export Growth

For information by

17 March 2023

Minister of Customs

For information by

17 March 2023

Taipitopito whakapā – Contact details

NAME s9(2)(g)(ii)	ROLE	DIVISION	WORK PHONE s9(2)(a)
	Divisional Manager	Russia Sanctions Taskforce	
	Legal Adviser	Russia Sanctions Taskforce	

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

☐ Approved☐ Noted☐ Referred☐ Needs amendment☐ Declined☐ Withdrawn☐ Overtaken by events☐ See Minister's notes**Comments**

Applications for exemption under section 13 – import prohibition

Pito matua – Key points

- This submission seeks your decision on eight exemption applications made to you under s 13 of the Russia Sanctions Act 2022 (RSA) and provides background context.
- All of the Aotearoa New Zealand-based applicants request exemptions from the luxury goods import prohibition, imposed by the Russia Sanctions Regulations 2022 (RSR).
s6(c) Two of the applications additionally request exemptions for ongoing, future imports of the same items.
- Importers of prohibited goods have two avenues for relief (i.e. to receive their goods): (i) through the Customs and Excise Act “review of seizure” process; and (ii) through the s 13 RSA “exemption process”. The operational and legal interaction and sequencing of these two pieces of legislation is being tested for the first time. This has required Customs and MFAT to work through a range of options to reconcile the application of the Acts and this has taken some time.
- s6(c)
- Under s 13 of the RSA you are required to make a decision in relation to each application whether to:
 - a) approve the exemption request: in which case the goods will be delivered to the importer; or
 - b) decline the exemption request: s6(c)

s6(c)
- MFAT officials, in consultation with Customs officials, have undertaken a detailed review of each of the applications and weighed their merits against a range of factors including the intent and purpose of the Russia Sanctions legislation and natural justice.
- We recommend **four requests** for a one-off exemption to import prohibited goods currently held by customs be **granted**. An exemption on one of the imports is justifiable because there is reasonable doubt that the good is of Russian origin. Exemptions on the other three imports are justifiable because agreement for payment and delivery of the goods was made prior to the import prohibition coming into effect and there are similarly justified exemptions applicable for financial exchanges.
- We recommend that the other **four requests** for a one-off exemption to import prohibited goods, **and both future requests** for exemptions to import prohibited goods on an ongoing basis, be **declined**. This is justifiable because the luxury goods prohibition was developed to be strictly applied, and a lack of knowledge of the law does not provide sufficient excuse. Moreover, as the law were also designed to capture specified goods of Russian origin, regardless of which country they were exported from to prevent evasion of sanctions, the fact some items came from third countries is not relevant. All other factors provided by the applicants do not outweigh this consideration (see annex 1).

Applications for exemption under section 13 – import prohibition

- Where exemptions are granted, applicants will be informed of the outcome and provided a letter outlining the nature of the exemption. This will also be communicated to Customs and the goods will be released to the importers immediately. All granted exemptions must be noted on the public MFAT sanctions register, in accordance with the RSA.
- Where applications are declined, applicants will be informed of the outcome by letter from MFAT which will provide the reason for that decision. A comment box has been provided below to note a reason for declining, should that decision be taken. Officials have populated these boxes with possible reasons for each decision. If you do not agree with any of the reasons, please identify an alternate reason for your decision. As with any public decision-making power, your decision could be subject to judicial review.

s9(2)(g)(ii)

for Secretary of Foreign Affairs and Trade

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Applications for exemption under section 13 – import prohibition

Tūtohu – Recommendations

It is recommended that you:

- | | | |
|----|---|-------------------------|
| 1 | Note that section 13 of the Russia Sanctions Act 2022 provides for applications for exemption from sanctions in the Russia Sanctions Regulations 2022, and that eight applications for exemption have been received; | Yes / No |
| 2 | Approve (recommended) or decline an exemption for ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 1; | Approve /Decline |
| 3 | Approve or decline (recommended) an exemption for ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 2; | Approve /Decline |
| 4 | Approve or decline (recommended) an exemption for ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 3; | Approve /Decline |
| 5 | Approve (recommended) or decline an exemption for ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 4; | Approve /Decline |
| 6 | Approve or decline (recommended) an exemption for ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 5; | Approve /Decline |
| 7 | Approve or decline (recommended) an exemption for ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 6; | Approve /Decline |
| 8 | Approve (recommended) or decline an exemption for the current shipment of ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 7; | Approve /Decline |
| 9 | Approve or decline (recommended) an exemption for future shipments of ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 7; | Approve /Decline |
| 10 | Approve (recommended) or decline an exemption for the current shipment of ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 8; | Approve /Decline |
| 11 | Approve or decline (recommended) an exemption for future shipments of ^{s9(2)(b)(ii), s9(2)(ba)(i)} in application 8; | Approve /Decline |
| 12 | Agree with the reasons provided by officials for each of the eight applications below. If you do not agree with any of the reasons please identify an alternate reason for your decision. | Yes/No |
| 13 | Note that officials will provide further advice on policy and process related to the import prohibitions. | Yes / No |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Date: / /

Applications for exemption under section 13 – import prohibition

Reasons for decision – please provide other reason if alternate decision is taken.	
Application 1 ^{s9(2)(b)(ii), s9(2)(ba)(i)} Approved because there is reasonable doubt that the item is of Russian origin.	Application 2 ^{s9(2)(b)(ii), s9(2)(ba)(i)} Declined because the prohibition is strict and intends to capture luxury goods of Russian origin regardless of country of export. Other factors do not outweigh this.
Application 3 ^{s9(2)(b)(ii), s9(2)(ba)(i)} Declined because the prohibition is strict and intends to capture luxury goods of Russian origin regardless of country of export. Other factors do not outweigh this.	Application 4 ^{s9(2)(b)(ii), s9(2)(ba)(i)} Approved because an obligation to deliver the goods existed prior to the import prohibition coming into effect.
Application 5 ^{s9(2)(b)(ii), s9(2)(ba)(i)} Declined because the prohibition is strict and intends to capture luxury goods of Russian origin regardless of country of export. Other factors do not outweigh this.	Application 6 ^{s9(2)(b)(ii), s9(2)(ba)(i)} Declined because the prohibition is strict and intends to capture luxury goods of Russian origin regardless of country of export. Other factors do not outweigh this.
Application 7 ^{s9(2)(b)(ii), s9(2)(ba)(i)} – current shipments) Approved because an obligation to deliver the goods existed prior to the import prohibition coming into effect.	Application 7 ^{s9(2)(b)(ii), s9(2)(ba)(i)} – future shipments) Declined because the prohibition is strict and intends to capture luxury goods of Russian origin to reduce revenue gained in Russia by the sale of Russian origin goods to New Zealanders. Other factors do not outweigh this.
Application 8 ^{s9(2)(b)(ii), s9(2)(ba)(i)} – current shipments) Approved because an obligation to deliver the goods existed prior to the import prohibition coming into effect.	Application 8 ^{s9(2)(b)(ii), s9(2)(ba)(i)} – future shipments) Declined because the prohibition is strict and intends to capture luxury goods of Russian origin to reduce revenue gained in Russia by the sale of Russian origin goods to New Zealanders. Other factors do not outweigh this.

Applications for exemption under section 13 – import prohibition

Pūronga – Report

1. Since the implementation of further trade measures (ban on import of luxury goods) under the Russia Sanctions Regulations 2022 (RSR) on 4 November 2022, there have been a number of instances of prohibited goods arriving at the border.
2. Goods prohibited for import into Aotearoa New Zealand are considered forfeit to the Crown, and subsequently seized by Customs under the Customs and Excise Act 2018 (CEA). Importers have the right to request a Review of Seizure (ROS) for any seized goods. This is the standard statutory process under the CEA for all prohibited goods. The RSA, and RSR prohibitions, were designed to utilise this process. In addition to this process, another avenue for review and exemption exists under s 13 of the Russia Sanctions Act 2022 (RSA) for goods prohibited under the RSR.
3. The operational impact of the interaction between these two legislative regimes is now playing out at the border for the first time. ^{s6(c), s9(2)(g)(i)}
4. In the meantime, the current applications must be assessed in accordance with s 13 of RSA which requires you to decide applications “as soon as is reasonably practicable”. ^{s9(2)(g)(i)}

Criteria for assessing exemption requests

5. The RSA requires applications under s 13 to be “decided in a way that is consistent with the purpose of the regulations providing for the sanction”. In accordance with this requirement, standard assessment criteria was established in advice to you on 2 May 2022. These considerations have been used to evaluate the applications and form officials’ recommendations, and for reference are:
 - The purpose of the RSA and RSR;
 - Risk of exemption benefitting a designated person or entity;
 - The harm to affected persons if exemption is not granted;
 - The accuracy of facts and law;
 - The relevance of factors material to the application; and
 - Principles of natural justice.
6. The purpose of the Russia Sanctions Act 2022 is;
 - (1) To enable New Zealand to impose and enforce sanctions in response to military actions by Russia (and by countries or persons who may be assisting Russia).

Applications for exemption under section 13 – import prohibition

- (2) The military actions began on 24 February 2022 in relation to Ukraine, but the sanctions may relate to military actions in Ukraine or in any other country.
7. The purpose of the Russia Sanction Regulations 2022 is to give effect to the Russia Sanctions Act 2022 by imposing sanctions in response to:
 - a) Russia's military actions in relation to Ukraine; and
 - b) any assistance that any other country or person may give Russia in connection with those actions.
8. In addition to the above purpose, the regulations enacting the import prohibition have several other purposes. This includes: exerting pressure on Russia in concert with partner countries by decoupling our economies, minimising harm to New Zealanders, and utilising existing operational processes and procedures where appropriate. Specific to the import prohibition, the existing operational processes and procedures are those under the CEA for managing prohibited goods.

The current exemption requests

9. Eight applications for exemption have been received by MFAT from Customs. Six of the applications request exemption for a one-off import of prohibited goods that have arrived in Aotearoa New Zealand, and currently held by Customs. Two of the applications request exemption for one-off imports of prohibited goods currently held by Customs **and** for exemption for future imports of the same prohibited goods.
10. Balancing the relevant considerations, and following consultation with Customs, we recommend the following:
 - Four of the requests for one-off imports of prohibited goods are approved and exemptions granted.
 - Four of the requests for one-off imports of prohibited goods are declined and exemptions not granted.
 - The two requests for future import of prohibited goods are declined and exemptions not granted.
11. These decisions would be consistent with the purpose of the regulations imposing the sanction. Further details and analysis of each application in accordance with the standard considerations, and reasons for the decision, are detailed in **Annex 1**.
12. As noted above, MFAT consulted Customs on these applications and corroborated the details of each one. Officials are confident in the accuracy of the relevant facts of each application and are satisfied in the interpretation of the law relevant to the applications.
13. Principles of natural justice have been applied in assessing these applications, and in considering the ability for affected persons to seek further relief through the Customs process.

Future applications made in the same circumstances

14. These decisions will create a precedent should other applications be received under s 13 of the RSA before seizure. Officials will recommend other applications in these circumstances are decided consistently with these decisions.

Applications for exemption under section 13 – import prohibition

15. We note Customs ROS procedure under the CEA is a well-established review process.
s9(2)(g)(i)
16. If an application under s 13 is received after a ROS is completed, consistency and alignment with Customs' review will be appropriate. There is strong interest in ensuring decision making between legislative processes is consistent, and that MFAT as the oversight agency for Russia Sanctions supports actions and decisions taken by the operational and enforcement agencies.

Upcoming policy advice

17. These applications have demonstrated to officials the impact of the import prohibitions on New Zealanders. Officials are reviewing whether changes to the luxury goods import ban might be desirable to mitigate impacts on New Zealanders. We may provide additional advice on this in due course if officials consider some changes are desirable.

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Applications for exemption under section 13 – import prohibition

Annex 1

Application 1 - s9(2)(b)(ii), s9(2)(ba)(i)

- This application requests a one-off exemption for the import of s9(2)(b)(ii), s9(2)(ba)(i)
- The applicant has noted in support of the application:
 - s9(2)(b)(ii), s9(2)(ba)(i)
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- s9(2)(g)(i)
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- Officials believe **approving** this application and **granting an exemption** would be consistent with the purpose of the regulations providing for the sanctions because on the facts it is not clear that the country of origin is in fact Russia.

Application 2 - s9(2)(b)(ii), s9(2)(ba)(i)

- This application requests a one-off exemption for the import of s9(2)(b)(ii), s9(2)(ba)(i)
- The applicant has noted in support of the application:
 - s9(2)(b)(ii), s9(2)(ba)(i)
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- s9(2)(g)(i)

Applications for exemption under section 13 – import prohibition

- s9(2)(g)(i)
-
- Officials believe **declining** this application and **not granting an exemption** would be consistent with the purpose of the regulations providing for the sanctions. The regulations were intentionally developed to capture goods of Russia origin, even if not exported from Russia, to minimise risk of sanctions evasion. Other factors provided do not outweigh this consideration.

Application 3 - s9(2)(b)(ii), s9(2)(ba)(i)

- This application requests a one-off exemption for the import of s9(2)(b)(ii), s9(2)(ba)(i)
- s9(2)(b)(ii), s9(2)(ba)(i)
- s9(2)(g)(i)
-
- Officials believe **declining** this application and **not granting an exemption** would be consistent with the purpose of the regulations providing for the sanction. The regulations were intentionally developed to capture goods of Russian origin, even if not exported from Russia, to minimise risk of sanctions evasion. Other factors provided do not outweigh this consideration.

Application 4 - s9(2)(b)(ii), s9(2)(ba)(i)

- This application requests a one-off exemption for the import of s9(2)(b)(ii), s9(2)(ba)(i)
- The individual has noted in support of the application:
 - s9(2)(b)(ii), s9(2)(ba)(i)
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 -
- s9(2)(g)(i)
-

Applications for exemption under section 13 – import prohibition

- s9(2)(g)(i)
- Officials believe **approving** this application and **granting an exemption** would be consistent with the purpose of the regulations providing for the sanction. ^{s9(2)(b)(ii), s9(2)(ba)(i)}

Granting an exemption would be consistent with the policy intent behind the exception in regulation 12(3), which permits receiving money that is a restricted asset if there is an obligation to pay, and with the intention behind the lead in period for goods en-route to Aotearoa New Zealand, before the prohibition came into effect.

Application 5 – ^{s9(2)(b)(ii), s9(2)(ba)(i)}

- This application requests a one-off exemption for ^{s9(2)(b)(ii), s9(2)(ba)(i)}
- The individual has noted in support of the application:
 - ^{s9(2)(b)(ii), s9(2)(ba)(i)}
 -
 -
- ^{s9(2)(b)(ii), s9(2)(ba)(i)}
- ^{s9(2)(g)(i)}
-
- Officials believe **declining** this application and **not granting an exemption** would be consistent with the purpose of the regulations providing for the sanction. The regulations were intentionally developed to capture goods of Russian origin, even if not exported from Russia, to minimise risk of sanctions evasion. Other factors provided do not outweigh this consideration.

Application 6 – ^{s9(2)(b)(ii), s9(2)(ba)(i)}

- This application requests a one-off exemption for the import of ^{s9(2)(b)(ii), s9(2)(ba)(i)} .

Applications for exemption under section 13 – import prohibition

- s9(2)(b)(ii), s9(2)(ba)(i)
- s9(2)(g)(i)
-
- Officials believe **declining** this application and **not granting an exemption** would be consistent with the purpose of the regulations providing for the sanction. The regulations were intentionally developed to capture goods of Russian origin, even if not exported from Russia, to minimise risk of sanctions evasion. Other factors provided do not outweigh this consideration.

Application 7 - s9(2)(b)(ii), s9(2)(ba)(i)

- This application requests an exemption for the import of s9(2)(b)(ii), s9(2)(ba)(i). The application has been made for both a current consignment held by Customs, and for future imports of the same items.
- The individual has noted in support of the application:

s9(2)(b)(ii), s9(2)(ba)(i)

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- s6(c), s9(2)(g)(i)
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Applications for exemption under section 13 – import prohibition

- Officials believe **approving** this application and **granting an exemption for the goods currently held by customs** would be consistent with the purpose of the regulations providing for the sanction. ^{s9(2)(b)(ii), s9(2)(ba)(i)}

Granting an exemption would be consistent with the policy intent behind the exception in regulation 12(3), which permits receiving money that is a restricted asset if there is an obligation to pay, and with the intention behind the lead in period for goods en-route to Aotearoa New Zealand, before the prohibition came into effect

- Officials believe **declining** this application and **not granting an exemption for future imports** would be consistent with the purpose of the regulations providing for the sanction. The regulations were intentionally developed to capture goods of Russian origin and to reduce revenue gained in Russia by the sale of Russian origin goods to New Zealanders. Other factors provided do not outweigh this consideration. ^{s9(2)(ba)(i), s9(2)(b)(ii)}

Application 8 - ^{s9(2)(b)(ii), s9(2)(ba)(i)}

- This application requests an exemption for the import ^{s9(2)(b)(ii), s9(2)(ba)(i)}
The application has been made for both a current consignment held by Customs, and for future imports.
- The individual has noted in support of the application:

— ^{s9(2)(b)(ii), s9(2)(ba)(i)}

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- ^{s9(2)(g)(i)}

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Applications for exemption under section 13 – import prohibition

- Officials believe **approving** this application and **granting an exemption for the goods currently held by customs** would be consistent with the purpose of the regulations providing for the sanction.^{s9(2)(b)(ii), s9(2)(ba)(i)}

Granting an exemption would be consistent with the policy intent behind the exception in regulation 12(3), which permits receiving money that is a restricted asset if there is an obligation to pay, and with the intention behind the lead in period for goods en-route to Aotearoa New Zealand, before the prohibition came into effect

- Officials believe **declining** this application and **not granting an exemption for future imports** would be consistent with the purpose of the regulations providing for the sanction. The regulations were intentionally developed to capture goods made in Russia and to reduce revenue gained in Russia by the sale of Russian origin goods to New Zealanders. Other factors provided do not outweigh this consideration.

1.