

Proactive Release

03/04/2024

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister of Foreign Affairs

Title	Reference
<i>Cabinet Minute of Decision – Report of the Cabinet Foreign Policy and National Security Committee: Period Ended 16 February 2024</i>	CAB-24-MIN-0033
<i>Cabinet Foreign Policy and National Security Committee – Minute of Decision – Russia Sanctions</i>	FPS-24-MIN-0033
<i>Cabinet Foreign and National Security Committee paper – Russia Sanctions</i>	

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Key to OIA redaction codes:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 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.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Foreign Policy and National Security Committee: Period Ended 16 February 2024

On 19 February 2024, Cabinet made the following decisions on the work of the Cabinet Foreign Policy and National Security Committee for the period ended 16 February 2024:

FPS-24-MIN-0003

Russia Sanctions

Portfolio: Foreign Affairs

CONFIRMED

s9(2)(g)(ii)

Acting Secretary of the Cabinet

Proactively Released by the
Minister of Foreign Affairs



Cabinet Foreign Policy and National Security Committee

Minute of Decision

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Russia Sanctions

Portfolio Foreign Affairs

On 13 February 2024, the Cabinet Foreign Policy and National Security Committee:

- 1 **agreed** that a package of sanctions be implemented under the Russia Sanctions Act 2022 (the Act), with the announcement of the package being timed to coincide with the two-year point since Russia's February 2022 illegal invasion of Ukraine;
- 2 **agreed** that the package of sanctions consist of the following measures:
 - 2.1 implementation of the G7-plus oil price cap initiative;
 - 2.2 clarification and confirmation that the export of restricted items to Russia and Belarus through third countries is prohibited;
 - 2.3 designation of individuals and entities involved in sanctions evasion;
- 3 **authorised** the Minister of Foreign Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions above;
- 4 **noted** that officials will provide separate advice to the Minister of Foreign Affairs, as the Minister responsible under the Act, on implementing these measures;
- 5 s6(a), s9(2)(g)(i)
- 6
- 7 **noted** that the Minister of Foreign Affairs intends to submit a paper directly to Cabinet to authorise the submission to the Executive Council of the regulations referred to above;

8 **agreed** that for future sanctions decisions under the Act, the following processes be adopted:

8.1 s6(a), s9(2)(g)(i)

8.2

s9(2)(g)(ii)

Committee Secretary

Present:

Rt Hon Christopher Luxon
Rt Hon Winston Peters (Chair)
Hon David Seymour
Hon Nicola Willis
Hon Judith Collins
Hon Mark Mitchell
Hon Todd McClay

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet
Officials Committee for FPS

Office of the Minister of Foreign Affairs

Cabinet Foreign Policy and National Security Committee

Cabinet Foreign Policy and National Security Committee paper – Russia Sanctions

Proposal

- 1 This paper seeks agreement on both: a proposed new sanctions package under the Russia Sanctions Act 2022; and a process for future decision making under the Act.

Relation to government priorities

- 2 s6(a)

Executive Summary

- 3 I propose that the Cabinet Foreign Policy and National Security Committee approve the following paper proposing the implementation of a new package of sanctions under the Russia Sanctions Act 2022 (RSA), with its announcement timed to coincide with the two-year point since Russia's illegal invasion of Ukraine on 24 February 2022.

- 4 The proposed New Zealand package would comprise measures to counter sanctions evasion, involving: (a) implementation of the G7-plus oil price cap; (b) clarification and confirmation that the export of restricted items to Russia and Belarus through third countries is prohibited; and (c) the designation of individuals and entities involved in sanctions evasion.

- 5 s6(a)

- 6 This paper also seeks agreement on a process for future sanctions decision-making. After the RSA came into force, Cabinet adopted a streamlined process
s9(2)(g)(i)

- 7 s9(2)(g)(i)

It has enabled flexibility in responding to changing circumstances with regard to Russia's actions in Ukraine, and to the responses of likeminded countries.

- 8 The recommended option for future decision making would establish a revised streamlined process ^{s9(2)(g)(i)}

This option strikes a balance between Cabinet oversight and the ability to take timely sanctions decisions if required.

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

Background

- 10 The Russia Sanctions Act 2022 (RSA) was passed unanimously by Parliament on 9 March 2022. It establishes a framework for New Zealand to impose and enforce sanctions in response to Russia's 24 February 2022 invasion of Ukraine through secondary legislation, the Russia Sanctions Regulations 2022 (RSR).
- 11 The RSA reduces the likelihood of New Zealanders, New Zealand businesses and our financial system being exploited by Russia and its supporters. Implementation of the RSA has been welcomed by both Ukraine and New Zealand's likeminded partners (including Australia, Canada, the European Union, the United Kingdom, and the United States). Our sanctions actions to date have ensured that New Zealand is a credible part of coordinated international efforts in response to Russia's invasion of Ukraine.
- 12 New Zealand had previously only applied sanctions authorised under United Nations Security Council (UNSC) Resolutions. Russia's February 2022 invasion of Ukraine represented a grave breach of fundamental international rules by a permanent member of the UNSC. In addition, Russia has used its veto powers to block UNSC action against itself. Russia's actions were such that New Zealand, a strong supporter of the multilateral rules-based order, adopted for the first time an autonomous sanctions framework to support collective efforts in response to Russia's actions.
- 13 The RSA does not establish a general autonomous sanctions regime, nor does it enable Magnitsky-style autonomous thematic sanctions.¹ Measures under the Act can only be taken if they are in response to Russia's February 2022 invasion.
- 14 The RSA mandates that a statutory review be commenced later this year on the operation and effectiveness of the Act. This review will be an opportunity to assess the efficacy of the sanctions regime and associated processes.

¹ Magnitsky-style sanctions are thematic sanctions imposed for serious human rights abuses, violations of international humanitarian law, and activities undermining good governance and the rule of law. Instead, the scope of the RSA is limited.

Actions taken under the RSA to date

- 15 To date, New Zealand has implemented 24 tranches of sanctions under the RSA. Over 1600 individuals and entities have been designated, predominantly from Russia, but with much smaller numbers from Belarus and Iran. Under the RSA, New Zealand individuals and entities are prohibited from dealing with sanctioned people, as well as assets, services and securities in relation to them. Other sanctions made under the RSA include: travel bans, prohibitions on specified ships and aircraft, restrictions on specified imports and exports, and the imposition of a 35% tariff on all Russian imports.
- 16 The RSA as part of a global effort has been instrumental in trade with Russia falling to low levels. Exports from New Zealand to Russia in the year to June 2023 were down from NZ\$388,247,444 in 2020 to NZ\$51,696,572. For the same period, imports were down from NZ\$478,022,240 to NZ\$12,690,464.
- 17 The RSA expressly provides for New Zealand to take into account relevant sanctions actions of likeminded countries. ^{s6(a)}

The Regulatory process under the Russia Sanctions Act

- 18 The Minister of Foreign Affairs is the responsible Minister under the RSA and is empowered to recommend that regulations imposing sanctions be made. The Minister may make such recommendations if satisfied that the statutory threshold is met. ^{s9(2)(g)(i)}

- 19 ^{s6(a)}

- 20 ^{s6(a), s9(2)(g)(i)}

It enabled flexibility in responding to changing international circumstances, and in complementing sanctions adopted by other like-minded countries in a timely way.

² Prime Minister, Deputy Prime Minister, Minister of Foreign Affairs, Attorney-General, Minister of Defence, Minister Responsible for GCSB, Minister for Trade and Export Growth, and Minister of Immigration.

³ CAB-22-MIN-0058.

⁴ CAB-22-MIN-0400.

⁵ CAB-23-MIN-0301.

Proposed sanctions package

- 21 I propose that a package of sanctions be agreed under the RSA, with its announcement being timed to coincide with the two-year point since Russia's illegal invasion of Ukraine on 24 February 2022. The package would comprise measures to counter sanctions evasion, including: (a) implementation of the G7-plus oil price cap; (b) clarification and confirmation that the export of restricted items to Russia and Belarus through third countries is prohibited; and (c) the designation of individuals and entities involved in sanctions evasion.
- 22 Should Cabinet agree, officials will provide me with advice enabling me to make a decision as to whether the statutory threshold in the RSA has been met for each of the measures in the proposed sanctions package. If I am satisfied of this, given the tight timeframe I intend to submit a paper directly to Cabinet to authorise the submission to the Executive Council of the amendment regulations which would implement the proposed package of sanctions.

The G7-plus Oil Price Cap

- 23 The G7-plus "oil price cap" on Russian-origin oil is a global initiative established in September 2022 by G7 members, plus Australia, and the EU. The objective of the cap is to ensure that countries reliant on Russian oil can continue to import it at a price which constrains Russia's oil revenues while also avoiding global oil market instability.
- 24 Implementation of the price cap is through a prohibition on certain services involved in the maritime transportation of Russian-origin oil, unless the oil transaction involved is within identified price points. Services covered would include brokering, financing, financial assistance, and insurance services provided by New Zealand businesses.
- 25 When the G7-plus announced the oil price cap initiative, New Zealand publicly confirmed support, ^{s9(2)(g)(i), s6(a)}
The New Zealand sector had very limited exposure, and Russian-origin oil imports had already been prohibited by New Zealand. By mid-2023, the oil price cap had been implemented by coalition countries, and efforts to evade had increased in sophistication. ^{s9(2)(g)(i), s6(a)}
- 26 I propose that the implementation of the oil price cap be one part of the new sanctions package. This would align New Zealand with close partners (i.e. the G7-plus), all of which have already adopted the relevant measures, ^{s6(a)}

Strengthening export prohibitions

- 27 New Zealanders and New Zealand businesses are already prohibited from exporting strategic good, luxury goods, and oil exploration and production-related products to Russia.

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- 28 Global trade patterns have shown that certain third countries (e.g. Central Asian, European and Middle Eastern countries) have become a common route to evade trade restrictions imposed by like-minded countries. This is reflected in trade statistics, which show an increase in goods exported from those countries to Russia compared to volumes pre-February 2022. ^{s6(a)}
- 29 I propose that the new sanctions package contain an amendment to existing export prohibitions to clarify and confirm that the export of restricted items to Russia and Belarus through third countries is prohibited. This would make clear to New Zealand businesses that circumvention of export prohibitions through third country channels is not permitted. It would also reinforce partners' actions by aligning our prohibitions.

Designation of individuals and entities involved in sanctions evasion

- 30 Sanctions evasion can include hiding or disguising beneficial ownership, concealing the origin and movement of funds, and obscuring the ultimate destination of export goods. Common evasion methods include moving assets and funds to agents, relatives or shell companies, or the routing of business transactions through third countries and new accounts. Sanctions evasion is an evolving area of focus for like-minded partners.
- 31 I propose that the sanctions package includes designations of individuals and entities involved in sanctions evasion, in particular the following groups:
- 31.1 Relatives and associates of listed sanctioned persons who are complicit in evasion by transferring or moving assets to conceal ownership and control.
 - 31.2 Senior leadership in entities already sanctioned by New Zealand, who, by virtue of positions, are able to exercise significant influence over the sanctioned entity.
 - 31.3 Individuals and entities involved in procurement networks that circumvent sanctions to source defence-related materiel critical to the Russian war effort.
 - 31.4 Individuals and entities associated with the Democratic Peoples' Republic of Korea (DPRK) involved in the provision of military support to Russia

32 ^{s6(a)}

Process to implement sanctions under the RSA in future

- 33 Three options have been identified for future decision making process under the RSA. I propose that Cabinet agree to the first option as it strikes a balance between Cabinet oversight and the ability to take timely sanctions decisions in response to rapidly changing circumstances.

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s6(a), s9(2)(g)(i)

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Legislative implementation

- 41 The proposed package of sanctions will require an amendment to the RSR. In order for an implementation to be made around 24 February 2024, I intend to lodge a paper seeking authorisation for submission of the amendment regulations to the Executive Council for consideration by Cabinet on 26 February 2024.

Regulatory Impact Statement

- 42 The Treasury's Regulatory Impact Analysis team considers that the proposal to implement a new package of sanctions under the RSA is exempt from the requirement to provide a Regulatory Impact Statement, on the grounds that it would have no or only minor impacts on businesses, individuals, and not-for-profit entities in the context of the existing sanctions in place.

Climate Implications of Policy Assessment

- 43 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Human Rights

- 44 Compliance with New Zealand Bill of Rights (NZBORA) requirements was considered at the time the Russia Sanctions Bill 2022 was proposed for introduction to the House.
- 45 It was assessed that while the legislation clearly targets Russian individuals and entities, the threshold for imposing sanctions does not distinguish on the basis of nationality. The Act expressly allows for other countries, and individuals of other nationalities, to be the target of sanctions. To the extent that there is indirect discrimination against those of Russian nationality, this is demonstrably justified as necessary to hold those responsible for threats to the sovereignty and territorial integrity of Ukraine to account.
- 46 Specific sanctions imposed by regulation limit freedom of movement and freedom of association, for example travel bans. The limits on these are demonstrably justified in relation to the purpose of sanctions, and in that way are consistent with NZBORA.

Financial implications

- 47 There are no direct financial implications from the proposals in this paper. The cost of the Ministry of Foreign Affairs work arising from proposals in this paper will be funded from Vote Foreign Affairs baselines.

Other implications

- 48 s6(a)

Consultation

- 49 The Ministry of Foreign Affairs and Trade has consulted the following agencies in developing this paper: Cabinet Office, Crown Law Office, Customs New Zealand, Department of Internal Affairs, Financial Markets Authority, Immigration New Zealand, Land Information New Zealand, New Zealand Police, Ministry of Defence, Ministry of Justice, Ministry of Transport, Reserve Bank, and Treasury.

Communications

- 50 I propose that the Prime Minister and Minister of Foreign Affairs make a joint announcement around 24 February 2024 to coincide with two year point since Russia's 2022 invasion of Ukraine.

Proactive Release

- 51 This paper will be proactively released with appropriate redactions within 30 business days of the decisions having been confirmed by Cabinet. It is expected that the announcement will have been made within this period.

Recommendations

The Minister of Foreign Affairs recommends that Cabinet Business Committee:

- 1 **agree** that a package of sanctions be implemented under the Russia Sanctions Act 2022 (the Act), with the announcement of the package being timed to coincide with the two year point since Russia's February 2022 illegal invasion of Ukraine;
- 2 **agree** that the package of sanctions consists of the following measures: (a) implementation of the G7 plus oil price cap initiative; (b) clarification and confirmation that the export of restricted items to Russia and Belarus through third countries is prohibited; and (c) designation of individuals and entities involved in sanctions evasion;
- 3 **agree** to authorise the Minister of Foreign Affairs to issue drafting instructions to give effect to the decisions above;
- 4 **note** that officials will provide separate advice to the Minister of Foreign Affairs, as Minister responsible under the Act, on implementing these measures;
- 5 s6(a), s9(2)(g)(i)
- 6
- 7 **note** a direct to Cabinet request will be lodged for Cabinet to authorise the submission to the Executive Council of the regulations referred to above;

8 **agree** that for future sanctions decisions under the Russia Sanctions Act 2022 the following processes be adopted:

8.1 s6(a)

8.2 s6(a), s9(2)(g)(i)

Rt Hon Winston Peters

Minister for Foreign Affairs

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Minister of Foreign Affairs