

Locke Lord QuickStudy: OFAC Russia Related Sanctions ?Update: ??January 3, 2023? ?

Locke Lord LLP

WRITTEN BY

[Ryan Last](#)

Russia's Response to Western Oil Price Cap and New OFAC Preliminary Guidance on Implementation of the Price Cap Policy for Petroleum Products of Russian Federation Origin

I. Russia's Response to Western Oil Price Cap

On December 27, 2022, reportedly in response to the West's "oil price cap" for crude oil of Russian Federation origin, global news services have reported that Russian President Putin will ban sales of Russian crude oil to the "Price Cap Coalition" (defined below), effective from February 1, 2023 to July 1, 2023. The decree will also ban sales of Russian refined oil products to the Price Cap Coalition. The dates for the product ban are not yet set, but are expected to commence on or after February 1, 2023. We understand from available translations that the Russian Federation's ban will apply to supply contracts that reference compliance with the oil price cap, and does not specifically designate a ban on sales to members of the Price Cap Coalition.

In our December 7, 2022 QuickStudy, we published that the United States, along with other G7 nations, including the European Union, Australia and Japan (collectively, the "Price Cap Coalition"), adopted a price cap of \$60 per barrel on seaborne crude oil of Russian Federation origin, effective as of December 5, 2022. The oil price cap prevents service providers domiciled in participating Price Cap Coalition countries from (i) trading and brokering, (ii) financing, (iii) shipping, (iv) insurance (including reinsurance and protection and indemnity), (v) flagging, and (vi) customs brokering (collectively, "covered services") to shipments of Russian crude oil, that are sold above \$60 per barrel. The U.S. oil price cap was authorized in a U.S. Department of the Treasury determination made on November 21, 2022 ("Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin"), and is subject to market adjustments.

In sum, following the February 1, 2023 effective date, Russia's latest move will allow service providers domiciled in Price Cap Coalition member states to provide covered services for Russian crude oil and refined petroleum products that are sold at or below the relevant price caps, and delivered to destinations other than to Price Cap Coalition member states. Separately, however, the member states of the Price Cap Coalition have each agreed to prohibit importation of Russian Federation origin crude oil and petroleum products into their respective countries:

- The U.S., pursuant to Executive Order 14066 of March 8, 2022, prohibited the importation into the U.S. of Russian Federation origin crude oil, petroleum, petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products;
- Australia prohibited the import, purchase or transport of Russian oil, gas, refined petroleum products and coal

since April 25, 2022;

- On March 8, 2022, the United Kingdom announced that it would transition away from Russian oil and oil products by the end of 2022;
- In early December 2022, European Union member countries began the phase-in of an earlier agreement that prohibits member countries from purchasing most Russian oil; and
- On December 5, 2022, Japan implemented a price cap on Russian crude oil, but excluded crude oil imported from the Sakhalin-2 plant.

II. New OFAC Preliminary Guidance on Implementation of the Price Cap Policy for Petroleum Products of Russian Federation Origin

On December 30, 2022, U.S. Department of the Treasury's Office of Foreign Assets Control's ("OFAC") published preliminary guidance regarding the implementation of the new price cap policy for petroleum products of Russian Federation origin ("Russian petroleum products").

The U.S. petroleum products determination, which will permit U.S. persons to provide the same covered services as set forth above for crude oil, will take effect at 12:01 a.m. Eastern Standard Time on February 5, 2023. As with the crude oil price cap policy, OFAC anticipates issuing a separate determination(s) to set the price caps for Russian petroleum products. OFAC anticipates amending General Licenses 56 and General License 57 to extend these authorizations to the Russian petroleum products.

Similar to the oil price cap policy:

- OFAC anticipates that the petroleum price cap will apply from the embarkment of maritime transport of Russian petroleum products (*e.g.*, when the Russian petroleum products are sold by a Russian entity for maritime transport) through the first landed sale in a jurisdiction other than the Russian Federation (through customs clearance).
 - This means that once the Russian petroleum products have cleared customs in a jurisdiction other than the Russian Federation, the price cap will not apply to any further onshore sale.
 - If, however, after clearing customs, the Russian petroleum products are re-shipped on the water (*i.e.*, using maritime transport) without being substantially transformed outside of the Russian Federation, the applicable price cap will apply and covered services can only be provided by U.S. service providers if the Russian petroleum products are sold at or below the then-current price cap.
- For purposes of assessing whether petroleum products are of Russian Federation origin, U.S. persons may reasonably rely upon a certificate of origin but should exercise caution if they have reason to believe such certificate has been falsified or is otherwise erroneous.

OFAC advises further that, if the Russian petroleum product or Russian oil are substantially transformed (*e.g.*, subjected to certain enumerated refining processes) in a jurisdiction other than the Russian Federation, they are no longer deemed to be of Russian Federation origin, and thus the price cap no longer applies. Note that OFAC has stated that blending operations, including gasoline blending, distillate blending, crude blending, residual fuel oil blending or other simple blending operations, do not qualify as substantial transformation.

It is not clear, however, whether or not liquified natural gas ("LNG") will be captured by the petroleum price cap; if

LNG is omitted, U.S. persons will be prohibited from providing covered services relating to LNG.

In our QuickStudies published on December 7, 2022, and November 29, 2022, we examined OFAC's November 21, 2022 oil price cap policy for Russian crude oil, and OFAC's guidance on the implementation of the price cap policy for Russian crude oil, as well as addressed what measures firms can take to comply with the oil price cap requirements.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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