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ON THE WAVE

EU-US SANCTIONS ON RUSSIA RUSSIAN EMBARGO



Since Russia's annexation of Crimea in March 2014, the international attention has been focused on the EU-US reactions, based on rounds of sanctions, tightening restrictions on major Russian state banks and corporations as well as on individual entities, and the effects of the recent Russian embargo of the trade, taking into account that Russia is the second biggest export market for EU agricultural products.

The present information to be intended as guidance only, will evidence the topics of Russian sanctions from three points of view: European Union ('EU'), United States of America ('US') and Russian Federation ('Russia').

EU SANCTIONS

On 23rd June 2014 EU Council published [Regulation No. 692/2014](#) ('Regulation 692') introducing trade sanctions in respect of goods originating in Crimea or Sevastopol and on the provision, directly or indirectly, of financing or financial assistance, as well as insurance and reinsurance, related to the import of such goods. On 30th July 2014, EU Council issued [Regulation No. 825/2014](#) amending the above Regulation 692.

Prohibitions

Pursuant to Article 2 of the Regulation 692 as recently amended it is prohibited:

- to import into the EU goods originating in Crimea or Sevastopol
- to provide, directly or indirectly, financing or financial assistance as well as insurance and reinsurance related to the import of goods originating in Crimea or Sevastopol
- to sell, supply or transfer designated key equipment and technology for infrastructure project in the transport, telecommunications and energy sectors
- to sell, supply or transfer key equipment and technology for the exploitation of oil, gas and mineral resources
- to provide technical and financial assistance related to the above activities
- to sell, supply, transfer, export, directly or indirectly, key equipment and technology listed in Annex III to any natural or legal person, entity or body in Crimea or Sevastopol or for use in Crimea or Sevastopol

Contracts entered into before 30 July 2014 (including ancillary contracts) must be executed (i.e. performed) by **28th October 2014**. "Goods" are defined as originating in Crimea or Sevastopol which are wholly obtained in Crimea or Sevastopol or which have undergone their last substantial transformation there.

Exemptions

Article 3 of the Regulation 692 provides that the prohibitions shall not apply in respect of the execution until 26th September 2014, of trade contracts concluded before 25th June 2014, or of ancillary contracts necessary for the execution of such contracts, provided that the natural or legal persons, entity or body seeking to perform the contract have notified, at least 10 working days in advance, the activity or transaction to the competent authority of the Member State in which they are established. Furthermore, goods made available to the Ukrainian authorities and entitled to "preferential origin" status in accordance with Regulation (EU) No. 978/2012 and Regulation (EU) No. 374/2014 or the [EU-Ukraine Association Agreement](#) may also be exempt.

Article 6 of the Regulation 692, as amended, prohibits the payment of claims in respect of contracts or transactions which are prohibited by the Regulation 692 if they are made by designated persons, entities or bodies listed in [Council Regulation 269/2014](#); persons, entities or bodies acting on behalf of designated entities; persons, entities or bodies who have been found by a competent authority to have infringed the prohibitions in the Regulation 692; or if claims relate to the import of goods originating in Crimea or Sevastopol.

Scope

As a result, article 10 of the Regulation 692, as amended, provides that it shall apply:

- within the territory of the EU
- on board any vessel under the jurisdiction of a Member State
- to all nationals of any Member State wherever located
- to any business inside or outside the territory of the EU, which is incorporated or constituted under the law of a Member State
- to any business or person doing business in the EU

Since 31st July 2014 it is unlawful for European flagged or managed vessels to perform such trade. Furthermore the prohibitions will prevent P&I Clubs domiciled in the EU from providing P&I insurance to any vessel of whatever nationality engaged in such trade. The prohibitions will also apply to non EU domiciled Members and Clubs to the extent that the prohibited activity and/or insurance provided constitutes business done wholly or partly in the EU. All International Group Club rules contain exclusions in relation to claims arising from trades for which it is unlawful to provide insurance by reason of sanctions.

New sanctions

By [Council Regulation \(EU\) No. 833/2014](#) of 31st July 2014 ('Regulation 833') additional restrictive measures have been issued by EU. The Regulation 833 has been further amended by Council Regulation (EU) No. 960/2014 with effect from **12th September 2014**.

The new EU sanctions target Russia's state finances, energy and arms sectors. They fall into 3 main areas:

- financial sanctions against [designated Russian banks, energy companies and defense companies](#)
- arms embargo and restrictions on certain dual purpose technologies, which although intended for civilian use, might have military application
- restrictions on exports of high tech goods and services in the energy sector

The **financial sections** prevent 5 state owned Russian banks and their subsidiaries accessing EU primary and secondary capital markets. This means that these banks will be unable to purchase, sell, or receive brokering for new transferable securities. These include bonds, shares and money market instruments, such as treasury bills.

There is an **arms embargo**, and a **ban on the supply of dual-use goods** to Russia for military end-users and for certain other named end-users in Russia. There is also a ban on the provision of technical or financial assistance for supply or sale of these goods. The restrictions on dual-use apply to all items in Annex 1 of Council Regulation 428/2009, except goods and technology intended for the:

- aeronautics and space industry
- maintenance and safety of existing civil nuclear capabilities within the EU

There are **restrictions on the export of certain high-tech goods and associated services** to Russia for:

- deep water oil exploration and production
- arctic oil exploration and production
- shale oil projects

Existing **travel bans and asset freezes** have been extended. [119 individuals and 23 companies](#) have now been listed under these sanctions measures. The sanctions apply to all funds and economic resources belonging to, owned, held or controlled by those persons, entities or bodies listed.

As regards further **additional measures**, since July 2014 EU agreed to:

- suspend the financing of new projects in Russia by the European Investment Bank (EIB)
- coordinate EU member states' positions within the European Bank for Reconstruction and Development (EBRD) with a view to suspension of the EBRD's financing of new projects in Russia
- suspend, on a case-by-case basis, certain EU bilateral and regional cooperation programs with Russia

US SANCTIONS

In March 2014 US issued three Executive Orders relating to the escalating crisis in Ukraine.

By [First Executive Order 13660](#) ('E.O. 13660') US provided the Secretary of the Treasury with the authority to impose targeted economic sanctions against individuals or entities who engage in broadly-defined activities that "*undermine democratic processes or institutions in Ukraine*" or "*threaten the peace, security, stability sovereignty, or territorial integrity of Ukraine.*"

Any person or entity designated under E.O. 13660 is considered "blocked." To the extent the property and assets of such person or entity are in the U.S. or under the control of a US person, all such property and assets will be frozen. The provision or receipt of funds, goods or services by, to, or for the benefit of any blocked person is prohibited. In addition, a US person is prohibited from doing business with blocked persons or entities, as well as individuals or entities controlled by such a blocked person or entity.

By [Second Executive Order 13661](#) ('E.O. 13661'), US authorized the imposition of sanctions on any person determined to be:

- an official of the Government of the Russian Federation
- operating in the arms or related materiel sector in the Russian Federation
- for corporations/legal entities owned or controlled by, or acting for or on behalf of, a senior official of the Government of the Russian Federation or a person blocked under E.O. 13661
- materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to, a senior official of the Government of the Russian Federation or a person blocked under E.O. 13661

E.O. 13661 also prohibits transactions that evade or avoid, have the purpose of evading or avoiding, cause a violation of, or attempt to violate E.O. 13661. Lastly, E.O. 13661 expands upon a pre-existing ban on US visas for individuals complicit in human rights abuses and political oppression in Ukraine. Under E.O. 13661, the US State Department has maintained and will continue to maintain a confidential list of individuals subject to a visa ban on those determined to be responsible for or complicit in the political upheaval in Ukraine.

In connection with E.O. 13660 and E.O. 13661, OFAC blocked eleven individuals, all of whom were added to the [Specially Designated Nationals and Blocked Persons List](#) ("SDN List").

By [Third Executive Order 13662](#) ('E.O. 13662'), US authorized the imposition of sanctions against individuals or entities:

- operating in the financial services, energy, metals and mining, engineering, and defense and related material sectors of the economy of the Russian Federation
- materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to a designated person under E.O. 13662 or
- owned or controlled by or acting on behalf of a person or entity designated under E.O. 13662

E.O. 13662 also authorized sanctions against individuals believed to support the Russian Government. Accordingly, OFAC designated 20 individuals as SDNs: 16 officials of the Russian Government, and 4 individuals OFAC determined were controlled by, acting for or on behalf, or providing material or other support to a senior official of the Russian Government. OFAC also named Bank Rossiya as an SDN on the basis that it is frequently used by senior officials of the Russian Federation.

In **July 2014**, in response to the ongoing situation in Ukraine, US issued **a new set of sanctions** targeting the Russian **energy and financial services sectors**. Under the E.O. 13662, US created a new [Sectoral Sanctions Identifications List](#) (the '[SSI List](#)') on which it simultaneously placed four prominent Russian companies: Gazprombank OAO, VEB, OAO Novatek and Rosneft.

The SSI List is maintained by OFAC and includes individuals or entities determined by OFAC to be operating in the financial services, energy, metals and mining, engineering, defense and related material sectors of the Russian economy, as identified in E.O. 13662. The SSI List contains two separate "directives" which set forth the prohibitions for US Persons considering transactions with those named to the SSI List.

[Directive 1](#) prohibits US Persons from transacting in, providing financing for, or otherwise dealing in debt with a maturity of longer than 90 days or equity, if that debt or equity was issued on or after 16th July 2014 for any named person, their property, or their interests in property.

[Directive 2](#) prohibits US Persons from transacting in, providing financing for, or otherwise dealing in New Debt for any named person, their property, or their interests in property. Notably, Directive 2 does not include a prohibition on equity issued on or after 16th July 2014.

The prohibitions in Directive 1 apply to Gazprombank OAO and VEB, while the prohibitions in Directive 2 apply to OAO Novatek and Rosneft. The prohibitions likewise apply to any other entity which one of the foregoing sanctioned companies has a 50% or greater ownership interest, and all financing and the provision of services in support of the debt and equity issued on or after 16th July 2014.

US Administration added also new entities and individuals to the SDN List, including Feodosiya Enterprises, a key shipping facility in the Crimean Peninsula, due to its involvement in the misappropriation of state assets of Ukraine.

It is important to note that while Gazprombank OAO, VEB, OAO Novatek and Rosneft were named to the SSI List, none are SDNs, and accordingly their property or interests in their property have not been blocked. All other transactions with these entities are permitted, such as shorter-term debt transactions, maintaining correspondent accounts, and conducting dollar clearing transactions, so long as they do not involve prohibited long-term debt or equity transactions. However, this does not mean that every entity named to the SSI List in the future will be absent from the SDN List.

On **12th September 2014** US further imposed **new sanctions** on Russian financial institutions, energy and defense companies, broadening existing sanctions in Russia's energy and financial sectors and increasing the number of sanctioned entities in the energy and defense sectors.

As regards **financial sector sanctions**, US reduced the maturity period for debt issued on or after 16th July 2014 from 90 days to 30 days. Sberbank of Russia has been recently added to the SSI list, which already includes Bank of Moscow, Gazprombank, Russian Agricultural Bank, Vnesheconombank and VTB Bank, as well as entities that are 50% or more owed by these banks.

Relating to **energy sector sanctions**, AK Transneft and Gazprom Neft have been recently added to SSI list, which already includes Novatek and Rosneft, as well as entities 50% or more owed by these parties.

New sanctions relating to **defense sector** have been provided for by new [Directive 3](#), which prohibits US persons from all transaction in, provision of financing for, and other dealing in new debt of longer than 30 days maturity issued by **Rostec**, a major player in the Russian defense sector, as well as entities that are 50% or more owed by Rostec. No restrictions have been placed on the equity of Rostec. Further 5 Russian defense companies has been added to SDN list for their operations in the arms or related material sector in Russia.

Finally, the newest sanctions set out in the [Directive 4](#) target the energy sector, in particular the Russia's **oil and gas exploration industry**. Directive 4 prohibits US person from directly or indirectly providing, exporting, or reexporting any US or non-US goods, services (except for financial services), or technology to parties subject to this Directive, in support of exploration or production for deepwater, Arctic offshore, or shale projects in Russia or maritime area claimed by Russia that have the potential to produce oil. 5 Russian energy companies are directly subject to the Directive: Gazprom, Gazprom Neft, Lukoil, Rosneft and Surgutneftegas, as well as any entity that is 50% or more owed by these parties.

It is important to note that projects that have the potential to produce *oil and gas* are subject to Directive 4. Those ones that have the potential to produce *gas* only are not subject to the Directive. The sanctionable services include, but not limited to, drilling, geophysical and geological services, logistical services, management services and modeling capabilities.

THE RUSSIAN EMBARGO

The Russia's reaction to the EU-US sanctions issued in July 2014 did not delay in coming.

On 6th August 2014 the President of the Russian Federation signed Decree No. 560 "On Application of Certain Special Economic Measures for ensuring the Security of the Russian Federation" ('Decree'), which was further supplemented on 7th August 2014 with [Resolution No. 778 by the Government of the Russian Federation "On Measures on the Implementation of the Decree"](#) ('Resolution').

The Decree and the Resolution introduce a prohibition on the importation into Russian Federation of certain agricultural products, raw materials and food which originate from countries which have imposed sanctions on Russian legal and/or natural persons.

The Decree came into force on 6th August 2014 (the date of its signing) and the Resolution came into force on 7th August 2014 (the date of its official publication). On 20th August 2014 a **new Resolution** No. 830 amended the previous one, increasing the list of banned products.

Products

Hereunder it is reproduced the list of banned agricultural products, raw materials and foodstuffs:

CN CODE	List of products
0201	Meat of bovine animals, fresh or chilled
0202	Meat of bovine animals, frozen
0203	Pork, fresh, chilled or frozen
0207	Meat and edible offal of the poultry indicated in line 0105, fresh, chilled or frozen
Out of 0210	Meat salted, in brine, dried or smoked
Out of 0310	Live fish (excluding hatchlings of salmon (<i>Salmo salar</i>) and trout (<i>Salmo trutta</i>))
0302, 0303, 0304, 0305, 0306, 0307, 0308	Fish and crustaceans, mollusks and other aquatic invertebrates
Out of 0401, out of 0402, Out of 0403, out of 0404, Out of 0405, out of 0406	Milk and dairy products (excluding lactose-free milk and lactose-free milk products)
0701 (excluding 0701 10 000 0), 0702 00 000, 0703 (excluding 0703 10 110 0), 0704, 0705, 0706,	Vegetables, edible roots and tubers (excluding seed potatoes, seed onion, sugar maize hybrid for planting, peas for planting)

The Resolution explicitly excludes from the below list any articles which are to be used as infant food.

Countries

The countries of origin of food products the importation of which into the Russian Federation is prohibited are the following:

- EU Member States
- US
- Canada
- Australia
- Kingdom of Norway

Russian entities

Russian parties which are prohibited from carrying out any foreign trade operations in relation to the importation of food products from the countries above mentioned are the following:

- i) legal entities incorporates under the law of the Russian Federation
- ii) legal entities and natural personas which are subject to the jurisdiction of the Russian Federation, including the branch firms of foreign entities based in Russia
- iii) public authorities of the Russian Federation, federal state bodies and local self-government authorities

Terms

The Prohibition will be in force for one year (**7th August 2015**), save for any potential revision of the term.

Consequences

Russian Federal Custom Service, Ministry of Industry and Trade and Ministry of Agriculture have been immediately instructed to enforce the Resolution.

Russian port administrations and customs have been made aware of the embargo, and so during customs clearance are likely to prohibit the discharge of any listed goods it can be established that their country of origin is sanctioned. These prohibited goods remain on board or are put into custom's warehouse for temporary storage requiring re-importation of the goods back to the shippers. The same likely applies to any of prohibited cargoes arriving to Russian Federation by road.

Besides this, it appears that no official guidelines, updates or procedures have been so far sent to the Russian port authorities or Coast Guard.

It should also be mentioned that vessels are still prohibited from calling at the ports of Crimea, Sevastopol, Yalta, Theodosia and Kerch, inter alia. Parties engaging in trade to Russia whether by ship and/or road should also ensure that the final destination of the cargo under the contracts of carriage is not in any prohibited areas, such as Crimea.

Finally, there appears to be no discrimination against vessels by their flags or any such intention in the near future.

Reactions to Russian embargo

The EU-US policy is clearly aimed at seeing an increasingly isolated Russian Federation due to its actions in Ukraine. Is Russia really isolated?

East Asia: US tried to enlist support for sanctions from China, Japan, Singapore and South Korea, however without much success, save for Japan. China relations with Russia continue being excellent and are even reinforced by EU-US sanctions against Russia, as exemplified, among other, by the huge 30 years USD 400 billion gas deal. The launch of Russia's use of China UnionPay credit card system and deals regarding supply of fruits and vegetables to Russia from China seems to be reached in August 2014.

South Asia: Considering Indian historical relations with Russia, India is unlikely to abandon Russia notwithstanding US pressure. Meanwhile, on 26th August 2014 the Pakistan Ambassador to Russia suggested that Pakistan could supply food products to Russia non inferior in quality to Europe's standards. Sri Lanka would also plan larger fish, seafood export to Russia.

Central Asia: Most Central Asian Countries have mostly good relationship with Russia.

Latin America: Despite attempts by the EU to talk Latin America out of taking advantage of the Russian embargo, Latin American countries quasi-unanimously seized this new opportunity. Brazil, Argentina, Colombia, Ecuador, Mexico, Peru announced in August food-export deals with Russia.

Middle East: Turkey is trying to take advantage of the opportunity offered by the Russian embargo. The tricky point is focused on the fact that Turkey is a candidate country to EU. Predictably considering the good relationships between the two countries, Iran also stressed its readiness to export food to Russia.

North Africa: Egypt, Tunisia and Morocco expressed their willingness to supply goods that Russia does not receive from Europe now. Different summits have been arranged in the earlier September between Russian delegation and representatives of North African countries.

Europe: Serbia refused to take any sanction against Russia, most probably considering the long-standing relationship with its Government. On the contrary, Montenegro accepted to follow the EU decisions. In the EU there are different positions among Member States. Besides hardliners against Russia, such as Poland and UK, some states increased a more measured approach to sanctions, notably Finland, if not some plain oppositions coming from Austria, Czech Republic, Slovakia and Hungary. It would also seem that within European States a domestic opposition is developing against sanctions, in more or less generalized way, in particular from agricultural and food industry interests. Recent protests have been recently raised in Italy, Spain, France and Germany, taking into account the widespread interests in the export business.



The response of the European Commission to the Russian embargo

Russia is the second biggest export market for EU agricultural products. Food and raw materials account to 10% of all EU exports to Russia – but this is maybe only 1-3% of overall EU production. But again this varies from product to product and region to region. Generally speaking, the EU will be the most affected partner among all those targeted by the measures, as 73% of imports that are banned come from the EU. This comes as no surprise, given that the EU alone represents 86% of Russia's total imports from the EU, US, Canada, Australia and Norway (and 43% of entire Russian imports from the world).

EU28 Agri-Food Exports to Russia and the World by Member State in 2013 (million Euro)

	EU agri-food exports to world (Extra-EU)	EU agri-food exports to Russia	Share of agri-food exports to Russia	Export of banned products	Share of banned in exports to Russia	Share of banned in all agri-food exports (Extra-EU)
Lithuania	2 273	1 374	60%	922	67%	41%
Poland	4 516	1 267	28%	840	66%	19%
Germany	15 463	1 649	11%	594	36%	4%
Netherlands	16 787	1 551	9%	523	34%	3%
Denmark	6 250	627	10%	341	54%	5%
Spain	8 622	572	7%	326	57%	4%
Belgium	5 059	558	11%	281	50%	6%
Finland	1 456	464	32%	274	59%	19%
France	21 295	756	4%	233	31%	1%
Italy	11 231	705	6%	163	23%	1%
Greece	1 682	158	9%	114	72%	7%
Austria	2 265	247	11%	104	42%	5%
Hungary	1 183	266	22%	78	29%	7%
Ireland	2 722	216	8%	70	32%	3%
Latvia	989	628	63%	67	11%	7%
Estonia	329	228	69%	60	26%	18%
UK	8 800	148	2%	21	14%	0%
Sweden	2 096	107	5%	13	12%	1%
Portugal	1 643	48	3%	13	28%	1%
Czech Republic	535	96	18%	12	12%	2%
Cyprus	109	12	11%	12	96%	11%
Slovenia	355	34	10%	10	29%	3%
Bulgaria	1 377	56	4%	8	14%	1%
Croatia	591	16	3%	7	43%	1%
Slovakia	125	32	26%	6	19%	5%
Luxembourg	39	8	21%	5	55%	12%
Romania	2 141	42	2%	1	3%	0%
Malta	95	0	0%	0	0%	0%
EU28	120 027	11 864	10%	5 098	43%	4%

On 18th August 2014 the Commission announced [emergency market measures](#) worth up to 125m€ to fund withdrawals (for free distribution or other destinations), green harvesting and non-harvesting of perishable fruit & vegetable most immediately impacted by the Russian measures, with a ceiling of 82m€ for apples & pears and 43m€ for the other fruit & vegetables.

The regulation requires Member States to notify the Commission every Monday and Thursday of the volumes so far claimed. The volumes notified by Member States to the Commission on 8th September, relating to amounts covered in claims from 18th August to 3rd September, indicate that the financial ceilings in the Regulation have been reached for apples & pears and for the other products, and so the measure must be suspended.

On 10th September 2014 **The European Commission suspended the emergency market measures** for perishable fruit and vegetable markets (worth 125 million €) announced on 18th August in the wake of the Russian measures banning imports of certain EU agricultural products. There has been strong interest from the sectors concerned, but the scheme has to be closed due to **a disproportionate surge in claims** – for example where the figures submitted for some products are several times higher than the total EU average annual exports to Russia.

In order to prolong the effectiveness of the emergency measures and still achieve the objective of stabilizing the markets for these products in all Member States affected by the Russian embargo, the European Commission will come forward with a more targeted scheme in the near future.

The response of the Russian Federation to new EU-US sanctions

In response to the new round of restrictions issued by EU and US on 12th September, Russia warned that it could introduce further protective measures, which may affect machine-building, the petrochemical and automotive sectors, as well as restrictions on imports of used cars and textiles.

A further issue on the table concerns Dobrolyot, the new Russian low-cost carrier blacklisted by EU in August 2014 due to its service to Simferopol. In the context the Russian Government is considering a series of responses, so far announced only. Such responses may include an airspace ban against EU and US airlines that fly over Russian airspace to Eastern Asia, namely, the Asia-Pacific Region. A further only mentioned measure may involve the so-called Russian airspace entry and exit points for European scheduled and charter flights, affecting transportation costs and fare prices for the Western carriers.

Absent de-escalation of the situation in Ukraine, sanctions may continue to expand as part of EU-US government's effort to isolate Russia from the global financial system. This is not to say that business with Russia needs to be avoided altogether. The sanctions to date are narrowly tailored to specific industries and entities. On the contrary, most concerns refer to the measures that Russia is theoretically in condition to adopt to respond against the EU-US rounds of sanction.

From the time being, Russia would seem to be far from being isolated.

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. For any further information, please contact Studio Legale Garbarino Vergani at the following contacts as reported hereunder.

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