

Sanctions Update: US, EU, and UK Set \$60-per-Barrel Price Cap on Russian Crude Oil

The price cap operates as an exemption to the ban on transportation of Russian seaborne crude oil to other countries.

This Client Alert is published in the context of ongoing developments and should be read in conjunction with Latham's [previous sanctions updates](#). Given the frequency with which different jurisdictions are imposing new sanctions on Russia, businesses exposed to sanctions-related developments in Russia should obtain up-to-date legal advice before taking any steps that may have legal effects.

This Client Alert summarizes the key aspects of the \$60-per-barrel price cap on crude oil originating in Russia ("Russian crude").¹ It also addresses the accompanying licenses and guidance on the operation of the price cap as well as various clarifications to existing prohibitions relating to Russian crude that were issued by the US, the EU, and the UK alongside the cap.

The price cap was also adopted by the G7 and Australia — the other "price cap coalition" partners. All members of the price cap coalition have already banned the import of Russian crude into their respective territories. The cap does not authorize the import of Russian crude into coalition countries. Instead, it leverages the coalition's influence in the maritime transport industry to limit the price that Russia can charge countries that continue to import Russian crude. The coalition designed the cap to address two competing priorities: limiting oil revenues to Russia and combatting rising oil prices (since Russia is a significant source of global oil production, a cap risks restricting supply, thus boosting oil prices and feeding inflation).

US Update

On November 21, 2022, the Treasury Department's Office of Foreign Assets Control (OFAC) issued a [Determination](#) under Sections 1(a)(ii), 1(b), and 5 of [Executive Order 14071](#) that prohibits certain services performed by US persons if those services relate to the maritime transport of Russian crude that exceeds the price cap determined by the Secretary of Treasury, in consultation with the Secretary of State. On December 5, 2022, OFAC published a [second Determination](#) authorizing the prohibited services provided that the crude oil shipment being serviced was sold at or under a \$60-per-barrel cap. This is the first of three Russian crude oil-product caps that OFAC plans to issue. Separate caps on low-value and high-value refined petroleum products of Russian origin will take effect on February 5, 2023.

The services authorized by the updated Determination (the “covered services”) are:

- trading/commodities brokering;
- financing — but does not include the processing, clearing, or sending of payments by banks where the bank (1) is operating solely as an intermediary and (2) does not have any direct relationship with the person providing services related to the maritime transport of the Russian crude as it relates to the transaction;
- shipping;
- insurance, including reinsurance and protection and indemnity;
- flagging; and
- customs brokering.

The price cap applies only to the price of the crude oil and excludes the cost of shipping, freight, customs, and insurance. OFAC has warned that US persons providing these services must charge commercially reasonable rates. OFAC will view unreasonable rates as an attempt to avoid the cap.

For the purposes of the price cap, “crude oil” means articles defined at Harmonized Tariff Schedule of the United States subheading 2709.00. In determining whether crude oil is from Russia, OFAC has stated that US persons may reasonably rely on certificates of origin — unless they have reason to believe the certificates may be false. Crude oil from other countries that transits through Russia via pipeline is not subject to the cap if it has a valid certificate of origin from outside of Russia.

For a given shipment of Russian crude, the price cap applies from the point at which the crude oil is sold by a Russian entity for maritime transport through the first landed sale in a jurisdiction other than Russia (through customs clearance). The cap no longer applies when the crude oil is transferred through customs clearance in a jurisdiction other than Russia. If the crude oil is sold while at sea, the cap will apply to that sale (and any subsequent sales at sea) until the oil clears customs. If, after clearing customs, the crude oil is taken back out on the water without being substantially transformed, the cap still applies. However, once the crude oil is substantially transformed in a jurisdiction other than Russia, the cap no longer applies, even if the refined oil is subsequently exported by sea. “Substantially transformed” in this context means refined or undergoes other substantial transformation such that the product loses its identity and is transformed into a new product having a new name, character, and use.

OFAC’s [guidance](#) creates a safe harbor for US persons who make good-faith efforts to comply with the price cap while providing covered services to customers dealing in Russian crude. This distinguishes the cap from most OFAC enforcement regimes, under which violators are held strictly liable. To take advantage of the safe harbor, US persons must abide by a set of due diligence requirements that vary depending on which “tier” the person is in. The three tiers are:

- **Tier 1:** Actors who regularly have direct access to price information in the ordinary course of business (e.g., commodities brokers and oil traders). Tier 1 actors have the highest compliance burden because they regularly have direct access to price information. These actors must retain price information (such as invoices, contracts, receipts / proof of payment) and provide this information or an attestation to Tier 2 and 3 actors, as needed.

- **Tier 2:** Actors who are sometimes able to request and receive price information from their customers in the ordinary course of business (e.g., financial institutions, ship/vessel agents, and customs brokers). To qualify for the safe harbor, Tier 2 actors must, “if practicable,” request and retain documents proving the Russian crude they are servicing was bought at or below the cap. If the actor cannot obtain those documents, it must obtain customer attestations in which the customer attests that the Russian crude was bought at or below the cap. OFAC’s guidance contains a sample customer attestation.
- **Tier 3:** Actors who do not regularly have direct access to price information in the ordinary course of business (e.g., insurers, P&I clubs, shipowners, and flagging registries). To benefit from the safe harbor, these actors must obtain customer attestations that, for the service being provided, the Russian crude was or will be purchased at or under the cap.

OFAC has stated that it will focus its enforcement efforts on willful violators of the price cap. It will not pursue penalties against service providers who reasonably rely on the documents or attestations described above, unless the provider knew or had reason to know that the documentation was falsified or that the Russian crude it is servicing was bought above the cap. Service providers should consider a customer or counterparty’s refusal to provide the required documents or attestations as a red flag. All relevant records must be retained for five years, in accordance with [31 CFR § 501.601](#).

In connection with this directive, OFAC has issued three general licenses:

- [General License No. 55](#) authorizes, through September 30, 2023, all transactions originating from the Sakhalin-2 project, provided that the Sakhalin-2 byproduct is solely for import into Japan.
- [General License No. 56](#) authorizes certain transactions related to the import of Russian crude into the Republic of Bulgaria, the Republic of Croatia, or landlocked EU Member States as described in [Council Regulation \(EU\) 2022/879 of June 3, 2022](#).
- [General License No. 57](#) authorizes all regular transactions related to preserving the health or safety of a crew or the environment during a vessel emergency.

EU Update

On December 3, 2022, the European Council announced the adoption of the \$60-per-barrel price cap (effective as of December 5, 2022). Russian crude of a value below the cap is exempt from the prohibitions that the EU imposed [earlier this year](#) on the maritime transportation of Russian crude and the provision of technical assistance, brokering services, and financing or financial assistance related to the maritime transport of Russian crude to so-called “third countries” (i.e., non-EU countries). The EU released accompanying [Guidance](#) on the cap.

These measures apply to Russian crude falling under CN code 2709 00 as of December 5, 2022, and will apply to Russian petroleum products falling under CN code 2710 as of February 5, 2023. Oil and petroleum products that originate in a third country and are only loaded in, depart from, or transit through Russia are exempt from the price cap, provided that the crude does not originate in Russia and is not owned by Russian persons.

Through [EU Regulation 2022/2369](#) (amending [Council Regulation \(EU\) No 833/2014](#)), the EU has:

- provided a transitional period of 90 days which applies after each change to the price cap, to cover the direct or indirect provision of technical assistance, brokering services, or financing or financial assistance, related to the transport of Russian crude and petroleum products originating in Russia (subject to certain conditions);
- clarified that, as of December 5, 2022, the prohibition does not apply to Russian crude purchased above the \$60-per-barrel price cap which was loaded onto a vessel at the port of loading prior to December 5, 2022, and unloaded at the final port of destination prior to January 19, 2023;
- implemented an “emergency clause” that enables maritime transport of oil above the price cap or the provision of appropriate services where necessary for the immediate prevention and mitigation of an event that is likely to have a substantial impact on human health and safety or the environment, or in response to natural disasters; and
- introduced a regular review of the price cap mechanism, beginning in mid-January 2023 and repeating every two months, in order to take into account the principle that the cap should be at least 5% below the average market price for Russian crude and petroleum products.

The EU Guidance clarifies that:

- Shipping, freight, customs, and insurance costs are not included in the price cap and must be invoiced separately and at commercially reasonable rates. As such, some market participants may be required to adjust their invoicing models to show the price of the oil up to the port of loading and the price for transportation and other services separately.
- The price cap applies from the receipt on a vessel of the Russian crude or petroleum products (loading). Any intermediary trade conducted while the oil is at sea must occur at or below the cap.
- Businesses should exercise appropriate due diligence in assessing the origin of the oil and should rely on documentation at their disposal to determine the origin of the oil, which may include certificates of origin.
- The price cap does not affect the import ban into the EU — it only concerns the trading and transport of Russian crude and petroleum products to and between third countries.
- Ship-to-ship transfers for the transport of prohibited Russian crude are explicitly prohibited if the underlying price is above the price cap.

Like the US, the EU intends to enforce the measures through a process of recordkeeping and attestation. The EU Guidance indicates that Member States are expected to operate a three-tier system, as follows:

- **Tier 1:** Actors who regularly have direct access to price information in the ordinary course of business.
 - The EU’s listed examples are: “commodities brokers, commodities traders, and other persons acting in their capacity as seller or buyer of Russian oil.”

- The EU advises that “Tier 1 actors should retain and share, as needed, documents that show that seaborne Russian oil was purchased at or below the price cap.”
- **Tier 2:** Actors who are sometimes able to request and receive price information from their customers in the ordinary course of business.
 - The EU’s listed examples are: “financial institutions, custom brokers.”
 - The EU advises that, “when practicable, Tier 2 actors [are to] request, retain and share, as needed, documents to show that seaborne Russian oil was purchased at or below the price cap. When not practicable to request and receive such information, Tier 2 actors should obtain and retain customer attestations in which the customer commits to not purchase seaborne Russian oil above the price cap.”
- **Tier 3:** Actors who do not regularly have direct access to price information in the ordinary course of business.
 - The EU’s listed examples are: “insurers, including P&I clubs, shipowners, ship management companies, flagging registries.”
 - The EU advises that: “Tier 3 actors should obtain and retain customer attestations in which the customer commits to not purchase seaborne Russian oil above the price cap, for example as part of their annual insurance policy or ordinary business operations. This can be done through a sanctions exclusion clause or through the use of a price cap attestation.”

UK Update

On December 5, 2022, the UK introduced the \$60-per-barrel price cap on the provision of maritime transportation of certain oil and oil products, which serves as an exemption to the prohibition that the UK government imposed [earlier this year](#) on direct or indirect supply or delivery by vessels of Russian crude or oil products falling within commodity codes 2709 and 2710.

The prohibition operates in a similar way to the EU price cap, and extends to the provision of certain associated services, such as the provision of financial services, funds, or brokering services in pursuance to or in connection with an arrangement whose object or effect is the supply or delivery by ship of Russian crude and oil products to a third country or from one third country to another third country, unless at or below the price cap. In the UK context, a “third country” means a country that is not the UK or Russia.

In line with the EU Guidance, the UK’s Office of Financial Sanctions Implementation (OFSI) has issued updated [Guidance](#) on the operation of the price cap clarifying that Russian crude and oil products will be considered to be at or below the cap when the unit price of the oil is at or below the cap at the date of the most recent transaction. The unit price is the price per barrel of the Russian crude or oil products, and the most recent transaction is the most recent transaction in the period of time between the oil or oil products first being loaded onto the ship and the oil or oil products being offloaded in a third country.

The UK Guidance provides further information on exceptions and licensing and imposes attestation requirements on industry participants depending on their “tier” status. The UK’s tier system largely reflects that used by the US and the EU, holding as follows:

- **Tier 1: Persons holding price information.**
 - The UK states that Tier 1 “includes persons who regularly have direct access to the price paid for a cargo in their ordinary course of business.” The UK provides as examples: “importers; commodities brokers; and traders.”
 - Tier 1 persons are required to “hold and share price information or provide attestations to Tier 2 or Tier 3 counterparties.” The UK Guidance notes that Tier 1 persons “might choose” to provide both “original price information” and “a signed attestation” in order to “reassure their counterparties.”
- **Tier 2: Persons directly interacting with parties with price information.**
 - The UK states that Tier 2 includes “but is not limited to”: “financial institutions providing transaction-based trade finance; customs brokers; ship agents; shipping companies chartering a vessel for the purposes of shipping a consignment of Russian oil or oil products from a place in Russia to a third country, or from one third country to another third country.”
 - Tier 2 persons are required to: “request price information or an attestation from Tier 1 counterpart[ies].” They have further obligations depending on whether they are interacting with Tier 1 or Tier 2 persons.
 - If interacting with a Tier 1 person, Tier 2 persons are also required to:
 - share any price information or attestation received from the Tier 1 person with any other counterparty in the transaction chain who requests it;
 - determine that they will not proceed with the transaction if the Tier 1 person does not comply with the Tier 2 entity’s price/attestation request within five working days;
 - (if the Tier 1 counterparty is under UK jurisdiction) ask for and receive confirmation that the Tier 1 counterparty has reported its use of any relevant OFSI General Licences on a quarterly basis;
 - (if the Tier 1 counterparty is not under UK jurisdiction) report this situation to OFSI on a quarterly basis; and
 - undertake appropriate due diligence on Tier 1 providers (or any associated counterparties) to satisfy themselves, based on the information available, of the reliability and accuracy of any information provided by the Tier 1 entity pursuant to a request for the price information/attestation.
 - If interacting with a Tier 3 person (or another Tier 2 person), a Tier 2 person must:
 - request and retain that price information and/or a signed attestation from their counterparty;
 - share this price information/attestation onward in the chain with any counterparty that requests it; and

- undertake appropriate due diligence on that person (or any associated counterparties) to satisfy themselves, based on the information available, of the reliability and accuracy of any information provided by that person pursuant to a request for the price information/attestation.
- **Tier 3: Entities with no direct access to price information.**
 - The UK states that persons in the Tier 3 group “include, but are not limited to”: “insurance brokers; cargo insurers; protection and indemnity insurers; re-insurers; general financing facilities in financial institutions; flagging registries; ship management companies; shipowners.”
 - An entity in Tier 3 “with no direct access to price information, either through their own transactions or those of their Tier 1 or Tier 2 counterparties,” are required to:
 - ensure the counterparty has committed not to purchase Russian oil or oil products above the price cap — either through provision of a signed attestation or inclusion of an attestation in contractual obligations;
 - share attestation onward in the chain with any counterparty, such as another Tier 3 person, that requests it; and
 - undertake appropriate due diligence on that person (or any associated counterparties) to satisfy themselves, based on the information available, of the reliability and accuracy of any information provided by that person pursuant to a request for the attestation.
 - Further, if the Tier 3 person is directly transacting with a Tier 1 entity under UK jurisdiction, the Tier 3 person is required to ask for and receive confirmation that the Tier 1 counterparty has reported its use of any relevant OFSI General Licences. Conversely, if the Tier 3 person is directly transacting with a Tier 3 entity not under UK jurisdiction, then the Tier 3 person is required to report this activity to OFSI in line with relevant periodic reporting requirements.

UK service providers are also under a legal requirement to report breaches of the prohibitions to OFSI. OFSI advises that UK persons should withdraw their services as soon as reasonably practicable if they suspect that a breach of UK sanctions has occurred.

General Licences

By way of ensuring the functioning of the new regulations, the UK has published the following General Licences:

- [INT/2022/2469656](#): **“Oil Price Cap” General Licence** — this authorizes the following (subject to certain conditions) as of December 5, 2022:
 - the supply or delivery of Russian crude by ship from Russia to a third country, or between third countries, provided the price cap is complied with;
 - the provision of Relevant Services (namely, financial services and funds and brokering services relating to maritime transportation of certain oil and oil products), provided that the price cap is complied with; and
 - the ability of Relevant Institutions to process payments.

- [INT/2022/2470256](#): **“Wind-down” General Licence** — this authorizes the following (subject to certain conditions) for Russian crude and oil products which were loaded before 05:01 GMT on December 5, 2022, and unloaded before 05:01 GMT on January 19, 2023:
 - the supply or delivery of Russian crude by ship from Russia to a third country, or between third countries;
 - the provision of “Relevant Services” (namely, Financial services and funds and brokering services relating to maritime transportation of certain oil and oil products); and
 - the ability of Relevant Institutions to process payments.
- [INT/2022/2470056](#): **“Correspondent Banking and Payment Processing” General Licence** — this indefinitely authorizes Relevant Institutions to process, clear, or send payments from any person/entity in connection with activities that would otherwise breach regulation 46Z9C (relating to the provision of financial services and funds for the maritime transportation of certain oil and oil products) of the Russia (Sanctions) (EU Exit) Regulations 2019 (as amended), subject to certain conditions.
- [INT/2022/2470156](#): **“Oil Price Cap: Exempt Projects and Countries” General Licence** — this indefinitely authorizes the supply or delivery of Russian crude by ship from a place in Russia to a third country or from one third country to another third country (subject to certain conditions) in relation to, among other things, the Sakhalin-2 Project and in order to meet certain energy-related needs in Bulgaria and Croatia.

To assist compliance with the UK regulations and General Licences, OFSI has issued a [number of forms](#), including a [sample attestation form](#), a [form for reporting use of the “Oil Price Cap” General Licence](#), and a [form for reporting suspected breaches](#).

What’s Next?

Latham & Watkins is tracking developments across all regions closely and expects that the US, the EU, the UK, and other governments around the world may impose additional rounds of sanctions as events unfold. The firm is well positioned to advise clients on the legal and practical impacts of these measures.

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Endnotes

¹ All values are in US\$.