

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Autonomous Sanctions Regulations 2011

*Autonomous Sanctions (Export Sanctioned Goods—Russia) Amendment (No. 1)
Designation 2022*

Autonomous sanctions are measures not involving the use of armed force which the Australian Government imposes and implements as a matter of foreign policy. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the designation of goods as ‘export sanctioned goods’ for a country or part of a country. The supply, sale or transfer of ‘export sanctioned goods’ to Russia, for use in Russia or for the benefit of Russia is prohibited under regulations 4 and 12 of the Regulations.

Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. The purpose of the *Autonomous Sanctions (Export Sanctioned Goods—Russia) Amendment (No. 1) Designation 2022* (the Amendment Designation) is to expand, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for Russia to include certain luxury goods. In prohibiting the export of such goods, Australia is demonstrating its condemnation of Russia’s illegal and unjustified invasion of Ukraine. Through banning the export of luxury goods to Russia, Australia’s sanctions remain targeted at Russian elites.

When considering whether to apply autonomous sanctions, the Government considers Australia’s national interest, including bilateral, regional and multilateral equities, and the impact of sanctions on Australia’s economic, security or other interests.

Details of the Amendment Designation are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations are part, was the subject of extensive consultation with governmental and non-governmental stakeholders when introduced, and when amended to include the Russia/Ukraine sanctions. The application of the existing sanctioned supply prohibitions to Russia was subject to targeted consultation within government, including in the Department of Foreign Affairs and Trade and with the Australian Border Force. The Minister considered such consultation to be appropriate and practicable in the circumstances, given the urgency presented by Russia’s actions, and because the proposed amendment does not alter the operation of the existing regulatory framework.

The luxury goods designated as export sanctioned goods for Russia in the Amendment Designation are described by reference to codes in the Australian Harmonized Export Commodity Classification (AHECC). This document is incorporated as existing at the time of the commencement of the Amendment Designation and could in March 2022 be freely accessed on the Australian Bureau of Statistics website ([Australian Harmonized Export Commodity Classification \(AHECC\), 2022 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-harmonized-export-commodity-classification-ahecc-2022)).

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required (reference: OBPR22-02074).

The Amendment Designation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A statement of compatibility with human rights is at **Attachment B**.

*Autonomous Sanctions (Export Sanctioned Goods—Russia) Amendment (No. 1)
Designation 2022*

Section 1

The title of the instrument is the *Autonomous Sanctions (Export Sanctioned Goods—Russia) Amendment (No. 1) Designation 2022* (the Amendment Designation).

Section 2

Subsection 2(1) provides that the Amendment Designation commences the day after the end of the period of three days beginning on the day this instrument is registered.

Subsection 2(2) is a technical provision that makes clear that any information inserted in column 3 of the table about the specific date of commencement is not part of the Amendment Designation and can be inserted or edited at a later date.

Section 3

The Amendment Designation is made under subregulation 4(3) of the *Autonomous Sanctions Regulations 2022* (the Regulations).

Section 4

Each instrument that is specified in a Schedule to the Amendment Designation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amendment Designation has effect according to its terms.

Schedule 1

Item 1

Item 1 inserts a heading into Schedule 1 of the *Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022* (the Principal Designation) to reflect that there are now two Parts in the Schedule.

Item 2

Regulation 4 of the Regulations sets out what constitutes a sanctioned supply for a country or part of country. Provision of a sanctioned supply is prohibited under regulation 12, unless the Minister has granted a permit under regulation 18.

Item 3A of the table in subregulation 4(2) of the Regulations provides that export sanctioned goods for Russia are: (i) arms and related materiel and (ii) specified items suited to use in certain categories of oil exploration or production projects in Russia. The Minister for Foreign Affairs has the authority, under subregulation 4(3) of the Regulations, to designate by legislative instrument, additional goods as export sanctioned goods for a country or part of a country mentioned in the designation. This mechanism exists to ensure that the Australian Government is able to act swiftly to expand the existing export prohibitions that apply in respect of a sanctioned country, enabling Australia to be responsive to evolving situations of international concern.

Goods that are designated as export sanctioned goods for Russia under subregulation 4(3) are

set out in the Principal Designation. Item 2 of the Amendment Designation amends Schedule 1 of the Principal Designation to insert a new Part 2 to designate certain luxury goods as export sanctioned goods for Russia. A good is captured if it falls within a specified Australian Harmonized Export Commodity Classification (AHECC) code, meets the description, and meets the relevant value threshold (where applicable) as set out in the table in Part 2 of Schedule 1.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

AUTONOMOUS SANCTIONS (EXPORT SANCTIONED GOODS—RUSSIA) AMENDMENT (NO. 1) DESIGNATION 2022

The *Autonomous Sanctions (Export Sanctioned Goods—Russia) Amendment (No. 1) Designation 2022* (the Amendment Designation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Amendment Designation

Autonomous sanctions are measures not involving the use of armed force which the Australian Government imposes and implements as a matter of foreign policy. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the designation of goods as ‘export sanctioned goods’ for a country or part of a country. The supply, sale or transfer of ‘export sanctioned goods’ to Russia, for use in Russia or for the benefit of Russia is prohibited under regulations 4 and 12 of the Regulations.

Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. The purpose of the Amendment Designation is to expand, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for Russia to include certain luxury goods. In prohibiting the export of such goods, Australia is demonstrating its condemnation of Russia’s illegal and unjustified invasion of Ukraine. Through banning the export of luxury goods, Australia’s sanctions remain targeted at Russian elites.

When considering whether to apply autonomous sanctions, the Government considers Australia’s national interest, including bilateral, regional and multilateral equities, and the impact of sanctions on Australia’s economic, security or other interests.

Human rights implications

The Amendment Designation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Amendment Designation expands, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for Russia to include luxury goods, including alcoholic beverages, tobacco products, works of art, and cosmetics. The supply, sale or transfer of such goods therefore become subject to the existing prohibition on making a sanctioned supply under regulation 12 of the Regulations. The Amendment Designation does not change the overarching operation of the Regulations.

The human rights obligation that may possibly be affected by including luxury goods as ‘export sanctioned goods’ for Russia is the presumption of innocence. Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. As strict liability offences allow for the imposition of criminal liability without the need to prove fault, all strict liability offences engage the presumption of innocence in article 14(2) of the ICCPR. A strict liability offence will not necessarily violate the presumption of innocence provided that it is: (i) aimed at achieving a purpose which is legitimate; (ii) based on reasonable and objective criteria, and (iii) proportionate to the aim to be achieved.

Regulation 12 of the Regulations provide that strict liability applies unless the sanctioned supply is authorised by a permit under regulation 18 of the Regulations. The Amendment Designation has the effect of making certain luxury goods ‘export sanctioned goods’ for Russia. The effect of this is that strict liability applies to the existence or otherwise of a sanctions permit. For an individual, strict liability will not apply to any other element of the offence.

The Amendment Designation is compatible with human rights because the limitations that arise are reasonable, necessary and proportionate measures which enable Australia to maintain its foreign policy and national security interests.

Conclusion

This Amendment Designation is compatible with human rights as the measures in the Amendment Designation do not raise any human rights issues.