

## Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

*Autonomous Sanctions Regulations 2011*

*Autonomous Sanctions (Import 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 ‘import sanctioned goods’ for a country or part of a country. The import, purchase or transport of ‘import sanctioned goods’ is prohibited under regulation 12A of the Regulations.

The purpose of the *Autonomous Sanctions (Import Sanctioned Goods—Russia) Amendment (No.1) Designation 2022* (the Amendment Designation) is to expand, under subregulation 4A(3) of the Regulations, what goods are ‘import sanctioned goods’ for Russia to include gold. Gold is defined under tariff code 7108 as ‘Gold (including gold plated with platinum) in unwrought or in semi-manufactured forms, or in powder form’ (as specified in Chapter 71 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification) if the gold was exported from Russia after the commencement of the Amendment Designation.

The prohibition on the import of these products is in response to Russia’s illegal war against Ukraine. Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. Gold has been Russia’s top export after energy in recent years, representing five per cent of global gold exports in 2020. Coordinated action to restrict trade in Russian gold is necessary to further curtail Russia’s ability to fund its invasion of Ukraine.

In response to Russia’s acts of aggression towards Ukraine, Australia’s international partners, including the United States, the United Kingdom, Canada, New Zealand and Japan, have applied sanctions to the import of Russian-origin gold. The London Bullion Market Association, which self-regulates the formal gold market, has also limited the flow of Russian gold onto global markets by suspending six Russian refineries from its ‘Good Delivery List’.

When considering whether to apply autonomous sanctions, the Government considers Australia’s national interest, including bilateral, regional and multilateral relationships, 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 sanctions. The Amendment Designation, which expands the listed goods considered to be

‘import sanctioned goods’ for Russia, does not alter the operation of the existing regulatory framework. On 15 August 2022 an exposure draft of the Amendment Designation was made available for public comment. Consultations closed on 29 August 2022. No submissions were received. The exposure draft was also subject to consultation within government, including with Treasury, the Australian Prudential Regulation Authority and Australian Border Force.

The goods designated as import sanctioned goods for Russia are set out in Schedule 1 to the Amendment Designation and are described by reference to a customs tariff code used in the Combined Australian Customs Tariff Nomenclature and Statistical Classification. This document is incorporated as existing at the time of the commencement of the Amendment Designation and could in September 2022 be freely accessed on the Australian Border Force website ([www.abf.gov.au/importing-exporting-and-manufacturing/tariff-classification](http://www.abf.gov.au/importing-exporting-and-manufacturing/tariff-classification)).

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required (reference: OBPR22-02947).

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 (Import Sanctioned Goods—Russia) Amendment (No.1)  
Designation 2022*

Section 1

The title of the instrument is the *Autonomous Sanctions (Import 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 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 4A(3) of the *Autonomous Sanctions Regulations 2011* (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

Regulation 4A of the Regulations sets out what constitutes a sanctioned import for a country or part of country. Provision of a sanctioned import is prohibited under regulation 12A, unless the Minister has granted a permit under regulation 18. The prohibition in 12A is not limited to the physical importation of an import sanctioned good. It also extends to the prohibition on the purchase or transport of such a good (including outside Australia, noting the extraterritorial application of Australian sanctions law).

Item 1A of the table in subregulation 4A(2) of the Regulations provides that arms and related material are import sanctioned goods for Russia. The Minister for Foreign Affairs has the authority, under subregulation 4A(3) of the Regulations, to designate by legislative instrument, additional goods as import 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 import prohibitions that apply in respect of a sanctioned country, enabling Australia to be responsive to evolving situations of international concern.

Goods that have been designated by the Minister as import sanctioned goods for Russia under subregulation 4A(3) of the Regulations are set out in the Principal Designation. Item 2 of the Amendment Designation amends Schedule 1 of the Principal Designation to designate gold as an import sanctioned good for Russia. Gold is captured if it falls within Combined Australian Customs Tariff Nomenclature and Statistical Classification code 7108, meets the description of gold provided ('gold (including gold plated with platinum) in unwrought or semi-manufactured forms, or in powder form'), and was exported from Russia after the

commencement of the Amendment Designation. The designation only applies to gold exported after this date because persons subject to Australian jurisdiction (including financial institutions or individuals) may import, purchase or transport gold as an investment asset. Applying the designation to gold that was already outside Russia at commencement of the designation would impose an unnecessary compliance burden on these persons, without imposing significant costs on Russia. By targeting gold that is exported from Russia after commencement the designation focusses on reducing the revenue Russia would otherwise receive by exporting gold.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

### **AUTONOMOUS SANCTIONS (IMPORT SANCTIONED GOODS—RUSSIA) AMENDMENT (NO.1) DESIGNATION 2022**

*The Autonomous Sanctions (Import 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 ‘import sanctioned goods’ for a country or part of a country. The import, purchase or transport of ‘import sanctioned goods’ is prohibited under regulation 12A of the Regulations.

The purpose of the Amendment Designation is to expand, under subregulation 4A(3) of the Regulations, what goods are ‘import sanctioned goods’ for Russia to include gold. Gold is defined under tariff code 7108 as ‘Gold (including gold plated with platinum) in unwrought or in semi-manufactured forms, or in powder form’ (as specified in Chapter 71 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification) if the gold was exported from Russia after the commencement of the Amendment Designation.

The prohibition on the import of these products is in response to Russia’s illegal war against Ukraine. Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. Gold has been Russia’s top export after energy in recent years, representing five per cent of global gold exports in 2020. Coordinated action to restrict trade in Russian gold is necessary to further curtail Russia’s ability to fund its invasion of Ukraine.

In response to Russia’s acts of aggression towards Ukraine, Australia’s international partners, including the United States, the United Kingdom, Canada, New Zealand and Japan, have applied sanctions to the import of Russian-origin gold. The London Bullion Market Association, which self-regulates the formal gold market, has also limited the flow of Russian gold onto global markets by suspending six Russian refineries from its ‘Good Delivery List’.

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 4A(3) of the Regulations, what goods are ‘import sanctioned goods’ for Russia to include gold, as defined under tariff code 7108 ‘Gold (including gold plated with platinum) in unwrought or in semi-manufactured forms, or in powder form’ (as specified in Chapter 71 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification) if the gold was exported from Russia after the commencement of the Amendment Designation. The import, purchase or transport of gold therefore become subject to the existing prohibition on making a sanctioned import under regulation 12A 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 the including gold as ‘import 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 12A of the Regulations provide that strict liability applies unless the sanctioned import is authorised by a permit under regulation 18 of the Regulations. The Amendment Designation has the effect of making gold, as defined under tariff code 7108 ‘Gold (including gold plated with platinum) in unwrought or in semi-manufactured forms, or in powder form’ (as specified in Chapter 71 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification) if the gold was exported from Russia after the commencement of the Amendment Designation, ‘import 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.