

## Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

### *Autonomous Sanctions Regulations 2011*

#### *Autonomous Sanctions (Import Sanctioned Goods—Russia) 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) Designation 2022* (the Designation) is to expand, under subregulation 4A(3) of the Regulations, what goods are ‘import sanctioned goods’ for Russia to include goods specified in Chapter 27 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification, including oil, refined petroleum products, natural gas and coal.

These goods are Russia’s largest global source of export revenue. The prohibition on the import of these products is in response to Russia’s unjustified war against Ukraine. Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. In response to Russia’s acts of aggression towards Ukraine, Australia’s international partners, including the United States and the United Kingdom, are expanding their sanctions frameworks relating to the import of Russian origin energy goods.

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 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 import prohibitions to Russian origin energy goods was subject to targeted consultation within government, including the Department of Industry, Science, Energy and Resources, and with the Australian petroleum refining industry. 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 goods designated as import sanctioned goods for Russia are set out in Schedule 1 to the 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 Designation and could in March 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: OBPR22-01961).

The instrument 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) Designation 2022*

Section 1

The title of the instrument is the *Autonomous Sanctions (Import Sanctioned Goods—Russia) Designation 2022*.

Section 2

Subsection 2(1) provides that the instrument commences the day after the end of the period of 45 days beginning on the day this instrument is registered. This commencement date provides Australians and Australian businesses who may be impacted by these regulations an opportunity to comply with the restrictions on the import of Russian origin energy goods, including oil, refined petroleum products, natural gas and coal.

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 instrument and can be inserted or edited at a later date.

Section 3

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

Section 4

Section 4 defines the term ‘Tariff Code’ which is used in the table in Schedule 1 of this instrument that sets out the goods designated as import sanctioned goods for Russia.

Section 5

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.

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.

Section 5 provides that goods that have been designated by the Minister as import sanctioned goods for Russia under subregulation 4A(3) of the Regulations are listed in Schedule 1 of the instrument.

Schedule 1

Schedule 1 sets out import sanctioned goods for Russia. These goods are Russian origin energy goods, as specified in Chapter 27 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification, including oil, refined petroleum, gas and coal products.

## **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) DESIGNATION 2022**

The *Autonomous Sanctions (Import Sanctioned Goods—Russia) Designation 2022* (the 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 Regulations**

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) Designation 2022* (the Designation) is to expand, under subregulation 4A(3) of the Regulations, what goods are ‘import sanctioned goods’ for Russia to include goods specified in Chapter 27 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification, including oil, refined petroleum products, natural gas and coal.

These goods are Russia’s largest global source of export revenue. The prohibition on the import of these products is in response to Russia’s unjustified war against Ukraine. Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. In response to Russia’s acts of aggression towards Ukraine, Australia’s international partners, including the United States and the United Kingdom, are expanding their sanctions frameworks relating to the import of Russian origin energy goods.

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 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 Designation expands, under subregulation 4A(3) of the Regulations, what goods are ‘import sanctioned goods’ for Russia to include goods specified in Chapter 27 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification, including oil, refined petroleum products, natural gas and coal. The import, purchase or transport of such goods therefore become subject to the existing prohibition on making a sanctioned import under regulation 12A of the Regulations. The Designation does not change the overarching operation of the Regulations.

The human rights obligation that may possibly be affected by the including energy-related goods 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 Designation has the effect of making goods specified in Chapter 27 of the Combined Australian Customs Tariff Nomenclature and Statistical Classification, including oil, refined petroleum products, natural gas and coal, ‘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 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 instrument is compatible with human rights as the measures in the Designation do not raise any human rights issues.