SHIPPING | FEBRUARY 2023

PRICE CAP: RUSSIAN PETROLEUM PRODUCTS

As of 5 February 2023 the additional price caps have been adopted for Russian refined petroleum products. The new price caps expand UK, EU and US restrictions on the transport of seaborne Russian refined petroleum products to third countries, as well as the provision of finance, brokerage, shipping, or insurance services for such transport.

The Petroleum Products Price Cap

While the UK, EU and US (amongst others) have comprehensively prohibited the domestic *import* of Russian oil and oil products, the maritime transportation of Russian oil and oil products to third countries has only been prohibited if the cargo is bought above certain 'price caps'. Our December 2022 Client Alert set out the parameters of the price cap, which came into effect on 5 December 2022 for Russian crude oil (the "**Crude Oil Price Cap**").

Two further price cap levels have now been agreed for Russian petroleum products, as follows:

- "Premium-to-crude" petroleum products: **US$100 per barrel**
  - This includes products such as diesel, kerosene and gasoline.
- "Discount-to-crude" petroleum products: **US$45 per barrel**
  - This includes products such as fuel oil and naphtha.

These additional price caps (together, the "**Petroleum Products Price Caps**") are effective as of 5 February 2023. From this date, Russian petroleum products are only exempt from sanctions restrictions on the maritime transportation of Russian petroleum products to third countries, and the provision of associated services, if they are bought at or below the Petroleum Products Price Caps.

The Petroleum Products Price Caps, as well as the previously agreed Crude Oil Price Cap, will be reviewed mid-March 2023, and regularly every two months, and adjusted as appropriate to ensure their effectiveness.

The following UK General Licences give effect to the Petroleum Products Price Caps (together, the "**General Licences**"):

- **Oil Price Cap General Licence INT/2022/2469656**: initially only in relation to Russian crude oil, this general licence has now been amended to include authorisation for UK persons to conduct maritime transport and provide financial and brokering services, for petroleum products by ship from Russia to a third country, or between third countries, provided that the unit price is at or below the Petroleum Products Price Caps. This General Licence also authorises credit institutions to process payments in relation to these activities.
- **Refined Oil Products Winddown General Licence INT/2023/2660772**: provides a 55-day exemption for the above activities in relation to any Russian petroleum products above the Petroleum Products Price Caps that was loaded onto a Ship at the port of loading prior to 5:01 a.m. GMT, 5 February 2023, and offloaded at the port of destination prior to 5:01 a.m. GMT, 1 April 2023. This General Licence also authorises credit institutions to process payments in relation to these activities.

The General Licences come with reporting obligations and the UK's Office of Financial Sanctions Implementation ("**OFSI**") has issued several forms related to the use of the General Licences. These include notification, attestation, licence application and breach reporting forms.

The EU has also introduced the transitional exemption period of 55 days for Russian petroleum products that are purchased and loaded before 5 February 2023 and unloaded before 1 April 2023. Notably, this does not refer to a specific time, unlike the UK's Refined Oil Products Winddown General Licence.

The UK, EU and US have updated their guidance to reflect the Petroleum Products Price Caps (the "**Guidance**").

How do the Price Caps work?

The Petroleum Products Price Caps operate by way of exceptions from the prohibitions in UK, EU and US sanctions on the transportation (and in EU's case on the trading and brokering) of Russian petroleum products to third countries, and services (including insurance) related thereto. This means that unless the Russian petroleum products are bought at or below the Petroleum Products Price Caps:

- shippers and charterers cannot transport Russian petroleum products.
- credit institutions cannot finance Russian petroleum products transactions.
- insurance (and re-insurance) companies cannot provide their services to vessels carrying Russian petroleum products.

The Guidance makes it clear that the Petroleum Products Price Caps:

- do not affect non-Russian oil products originating in a third country which are only loaded in, departing from, or transiting through Russia, the owner of which is not Russian.
- apply from loading of the Russian oil onto a ship, until the point of delivery (passing through customs controls) to a third country.
- only cover the purchase price of the Russian oil and not any ancillary costs (such as shipping, freight, customs, insurance, transportation, and legal fees).

The Guidance (and the General Licences) also include extensive evidential, record keeping, and attestation requirements relating to the Petroleum Products Price Caps.

The specific requirements for various industry participants differ depending on the position of each participant assessed by reference to a tier system that was agreed between the UK, EU and US ahead of the implementation of the Crude Oil Price Cap in December 2022, as follows:

- **Tier 1** is for operators that know, or can directly access, the price per barrel of Russian oil, such as commodities brokers, commodities traders, and importers.
- **Tier 2** is for operators that interact with parties who have price information and can therefore request and receive the price per barrel of Russian oil, such as financial institutions (EU), financial institutions providing transaction-based trade finance (UK), customs brokers, charterers, and ship agents.
- **Tier 3** is for operators with no direct access to the price per barrel of Russian oil, such as cargo insurers, flagging registries, insurance brokers, P&I clubs, reinsurers, ship owners and ship management.

The three tiers are subject to different obligations which correspond to the level of information available to each.

The UK differs from the EU and US in that it (i) imposes additional reporting obligations on operators dependent on which of the above tiers they fall into, and (ii) requires records to be kept for four years after the calendar year in which the record was created. The EU and US instead require records to be kept for a minimum of five years from the date of transportation or the transaction.

Both the UK and US sanctions also include a “safe harbour” from enforcement for service providers who in good faith collect, rely on and maintain, appropriate records or attestations from others showing that the relevant price cap was complied with.

Consequences of breach

While shipowners and traders need to understand the full impact of these measures, it is also vitally important that service providers such as banks and insurers understand the impact on them.

Examples of consequences for breaching the Petroleum Products Price Caps rules include the following:

- UK-based ship operators who “knew or had reasonable cause to suspect” that a cargo was purchased above the relevant price cap will be subject to UK penalties. The UK’s maximum penalty is the greater of GBP 1 million or 50% of the value of the breach.
- If a third country-flagged vessel intentionally carries Russian cargo which was traded above the relevant price cap, EU operators will be prohibited from insuring, financing, and servicing this vessel for 90 days after the cargo has been delivered.
- The usual range of enforcement tools is available to EU member states where there is a breach of sanctions by an EU entity. These vary between EU member states but are likely to include both civil and criminal measures.
- EU flagged vessels will be subject to penalties according to national legislation, but the EU is already working on a penalty of 5% of global turnover for companies that break EU sanctions.

Member states may enforce against insurers that provide insurance in breach of the Petroleum Products Price Caps.

What should you do now?

The Crude Oil Price Cap has resulted in EU and UK carriers and insurers requesting additional compliance information and the Petroleum Products Price Caps will trigger the same.

Similar requirements are likely to be made by non-EU carriers that rely on EU insurance (or whose insurance risk is ceded to European markets) as the EU's prohibitions on the provision of services applies in respect of all vessels, not just those subject to EU jurisdiction.

Some key considerations:

- Ensure any Russian cargo which was traded above the Petroleum Products Price Caps, and which was already loaded on a vessel before 5 February 2023, is delivered (and customs cleared) in a third country before 1 April 2023.
- Ensure that any Russian petroleum product cargoes which are loaded onto or carried on vessels comply with the Petroleum Products Price Caps.
- Comply with all evidential, attestation and reporting (for UK operators) obligations when making use of the Petroleum Products Price Caps or other exemptions.
- Consider whether your existing contract wording is sufficient to ensure compliance.
- EU based insurers must conduct due diligence on members and assureds and apply a "look back" period of 90 days to ensure that vessels have not discharged any cargo in breach of the price caps in that period.
- Maintain careful records of the due diligence carried out, to ensure you can rely on any available defence.

We can help you navigate these, and other sanctions queries. Please contact us using the details below.

For more information, please contact the authors of this alert:

DANIEL MARTIN
Partner, London
T +44 (0)20 7264 8189
E daniel.martin@hfw.com

SARAH HUNT
Partner, Geneva
T +41 (0)22 322 4816
E sarah.hunt@hfw.com

HERMANCE SCHAERLIG
Associate, Geneva
T +41 (0)22 322 4803
E hermance.schaerlig@hfw.com

JAMES NEALE
Associate, London
T +44 (0)20 7264 8470
E james.neale@hfw.com

RICHARD SOYOYE
Associate, London
T +44 (0)20 7264 8379
E richard.soyoye@hfw.com

STEPHEN GREEN
Associate, London
T +44 (0)20 7264 8346
E stephen.green@hfw.com