

ADDING FUEL TO THE PRICE CAP GUIDANCE: OFAC ISSUES PRELIMINARY GUIDANCE ON IMPLEMENTATION OF THE PRICE CAP POLICY FOR PETROLEUM PRODUCTS OF RUSSIAN FEDERATION ORIGIN

As anticipated and previously forecasted, the US Department of Treasury Office of Foreign Assets Control ("OFAC") issued on December 30, 2022, its "Preliminary Guidance on Implementation of the Price Cap Policy for Petroleum Products of Russian Federation Origin" ("[OFAC Petroleum Guidance](#)").

The OFAC Petroleum Guidance is a companion document to OFAC's previously issued guidance with regard to crude oil ("[OFAC Guidance on Implementation of the Price Cap Policy for Crude Oil of Russian Federation Origin](#)") [which we previously wrote about](#).

Not surprisingly, OFAC is taking a similar approach to Russian petroleum products as it has for Russian oil. OFAC notes that it intends to publish final and combined guidance on **February 5, 2023**, which will be helpful for industry. Equally helpful, OFAC has defined "petroleum products" consistently with EU guidance, limiting it to products within HS 2710.

Importantly, OFAC is providing a grace period before any significant changes take effect, stating that, "*U.S. service providers can continue to provide covered services with respect to Russian petroleum products purchased at any price, provided that the Russian petroleum products are loaded onto a vessel at the port of loading for maritime transport prior to 12:01 a.m. eastern standard time, February 5, 2023, and unloaded at the port of destination prior to 12:01 a.m. eastern daylight time, April 1, 2023.*"

OFAC's Petroleum Guidance does provide helpful clarifications as to when the price cap "starts" and "stops." OFAC states that the price cap starts from the "*embarkment of maritime transport of Russian petroleum products through the first landed sale in a jurisdiction other than the Russian Federation.*" In practice, this means, "*once the Russian petroleum products have cleared customs in a jurisdiction other than the Russian Federation, the price cap does not apply to any further onshore sale.*" However, if "*after clearing customs, the Russian petroleum products are taken back out on the water (i.e., using maritime transport) without being substantially transformed outside of the Russian Federation, the price cap still applies.*"

OFAC also clarifies that once Russian petroleum products are substantially transformed (in a jurisdiction other than the Russian Federation), they are no longer considered to be of Russian Federation origin, and thus the price cap no longer applies. The OFAC Petroleum Guidance provides a list of processing that results in substantial transformation and those activities which do not result in substantial transformation.

OFAC confirms that "*For purposes of assessing whether petroleum products are of Russian Federation origin, U.S. persons may reasonably rely upon a certificate of origin but should exercise caution if they have reason to believe such certificate has been falsified or is otherwise erroneous.*" As a result, a certificate of origin is not a safe harbor and it remains important to consider all available information for potential red flags.

As with the prior guidance, the nuance is in the details, although the future guidance now expected in February 2023, should provide further clarity and direction for those operating in this space.

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