

United States Bans Russian-Affiliated Ships from Entering Any U.S. Port

by Lawrence Ward, Justin T. Huff, Dave Townsend, and T. Augustine Lo

On April 21, 2022, President Biden further expanded U.S. sanctions against Russia due to its invasion of Ukraine by issuing a new Presidential Proclamation 10371 [see [here](#)] (“Proclamation 10371”)[1] to bar all Russian-affiliated vessels from entering any U.S. port, effective as of 12:01 a.m., Eastern U.S. Time, on April 28, 2022, except for certain limited situations. This latest move, building upon a host of other U.S. economic and export control sanctions, seeks to further divorce the U.S. economy from Russian firms, whether state-owned or otherwise. President Biden issued this ban under the authority granted by Congress through the National Emergencies Act, 50 USC §§1601 et seq., and Section 1 of Title II in the Magnuson Act, 46 USC §76001. Other prior White House actions with respect to Russia’s war on Ukraine have been primarily issued under the International Emergency Economic Powers Act, 50 USC § 1701 et seq.

In Proclamation 10371, President Biden declared a national emergency that requires a ban on Russian-affiliated vessels entering any U.S. ports and that directs the Department of Homeland Security to issue new regulations to implement this new directive. The Proclamation defines vessels to be “Russian-affiliated” if they are:

- (i) vessels of Russian registry (i.e., the vessel is Russian flagged);
- (ii) vessels that are Russian owned (i.e., the legal title of ownership of the vessel that appears on the ship’s registration documents is the Government of the Russian Federation or a Russian company, citizen, or permanent resident); or
- (iii) vessels that are Russian operated (i.e., a Russian company, citizen, or permanent resident is responsible for the commercial decisions concerning the employment of a ship and decides how and where that asset is employed).

Media reports indicate that a number of Russian vessels have preemptively become reflagged and reregistered in other countries even before Proclamation 10371 was released by the White House on April 21. Such a move would likely avoid the first criterion in Proclamation 10371 but, by itself, would probably be insufficient to enable a

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Russian-affiliated vessel to enter a U.S. port under the other two stated criteria.

(Historically, after the initial U.S. sanctions were imposed in 2014 following the Russian annexation of the Crimea region of Ukraine, there were some Russian attempts to evade such U.S. sanctions by creating multiple holding companies in other countries to disguise their actual Russian ownership, and it is possible that some such efforts might occur again in response to this latest U.S. maritime sanction.)

The Proclamation recognizes only two limited circumstances when a Russian-affiliated vessel may be allowed into a U.S. port notwithstanding the new ban:

(a) Russian-affiliated vessels used in the transport of [nuclear] source material, special nuclear material, and nuclear byproduct material for which, and for such time as, the Secretary of Energy, in consultation with the Secretary of State and the Secretary of Commerce, determines that no viable source of supply is available that would not require transport by Russian-affiliated vessels; and

(b) Russian-affiliated vessels requesting only to enter United States ports due to *force majeure*, solely to allow seafarers of any nationality to disembark or embark for purposes of conducting crew changes, emergency medical care, or for other humanitarian need.

Proclamation 10371 aligns U.S. policy on the sanctions against Russian shipping with measures already taken by the United Kingdom, Canada, and the European Union. According to public media reports about the size of the Russian-affiliated fleet, Proclamation 10371 should potentially affect about 460 Russian vessels engaged in international trade, including about 160 tankers. Published data show that such Russian vessels had entered U.S. ports roughly 1,800 times during 2021, which is a volume of shipping traffic that is proportionate to the relatively modest volume of historical two-way goods trade between the United States and Russia.

As we had noted earlier [see [here](#)], President Biden's Executive Order 14066 dated March 8, 2022, had already barred the importation of Russian-origin crude oil and liquefied natural gas ("LNG") into the United States, so there should be few reasons for Russian crude oil tankers or LNG carriers to come into U.S. ports anyway. In addition, as we had explained previously see [here](#)], based on legislation requested by President Biden in March, Congress ended "Most Favored Nation" ("MFN") status for Russian imports effective April 9, 2022, making many Russian-origin goods subject to the higher "Column 2" tariffs on the Harmonized Tariff Schedule of the United States ("HTSUS"). Those substantially higher import tariffs would naturally tend to depress the volume of Russian goods being purchased and imported into the United States, so Proclamation 10371's actual effects may only be marginally additive in further reducing Russian trade activities. However, this latest executive action does effectively eliminate the residual maritime linkages between Alaskan ports and the Russian Far East, except in the case of maritime accidents or other humanitarian needs.

Moreover, based on global vessel tracking sites, Russian-affiliated vessels appear to be rerouting to other ports in Asia or Africa to off-load or even to make difficult and sometimes dangerous ship-to-ship transfers at sea to vessels registered in other

countries to mitigate the effect of such shipping bans and probably to try to mask the country of origin of some fungible Russian goods. Some of these Russian vessels also seem to be turning off their transponders that would normally allow tracking websites to monitor their movements through international waters and into various ports in an effort to avoid being tracked. Such short-term Russian responses – which impose higher operating costs and delays and which can thus affect the total transaction costs for the goods being shipped – will likely increase the economic toll on Russia of its war in Ukraine.

In another telling and somewhat unexpected move, on April 4, the Joint War Committee in London, including Lloyd's Market Association ("LMA") syndicate members and London-based insurance carrier representatives, issued a new guidance that declares all Russian ports as "high risk" zones for shipping. Such authoritative guidance will be closely followed by marine insurance underwriters, and it will probably have the effect of raising marine insurance costs for all vessels entering such Russian ports, even for Russian vessels themselves. Such added incremental marine insurance costs will also increase the burdens being placed upon Russia's import and export trade that must move by ocean transport.

In addition, it has been reported that a number of western firms have reportedly also begun to cut off engine and navigation equipment services, certification services, and other needed services for Russian-affiliated vessels. These moves mirror the actions taken by western aviation firms that are beginning to hobble the Russian aviation sector and to disable its commercial aircraft from safe and effective operation. As previously noted in our earlier articles on expanded U.S. export controls with respect to Russia [see [here](#) and [here](#)], U.S. marine equipment or electronics suppliers whose products are subject to control under any Export Control Classification Number ("ECCN") within any of the 10 categories of the Commerce Control List ("CCL") in the Export Administration Regulations must now apply to the Bureau of Industry and Security ("BIS") for an export license to provide any such items to a Russia-based end-user. Unless License Exception AVS in EAR §740.15(b)(1) related to the export of equipment or spare parts for vessels or some other license exception in EAR Part 740 is applicable, those expanded controls now require a BIS export license even for items under ECCNs that previously did not require any license for Russia and even if the items are already located outside the United States (including within Russian territory). Moreover, BIS will also treat all such export license applications under a "policy of denial," meaning very few, if any, such applications will be granted. As fewer non-Russian vessels are willing and available to carry Russian goods to Russia's remaining overseas markets, such equipment-based or service-based U.S. sanctions (and similar measures imposed by U.S. allies) on Russia's maritime industry may eventually degrade Russia's ability to keep its entire fleet of ocean-going vessels in operation.

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cope with the impact of U.S. economic sanctions, trade embargoes, export controls and other measures that affect cross-border transactions.

[1] Declaration of National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Russian-Affiliated Vessels to United States Ports, 87 Fed. Reg. 24265 (April 22, 2022).