

CLUB CIRCULAR

Tuesday, September 30, 2014

BSM-GM-10/011/14

To: All Members

On Recent Complications with Sea Trade in Ukrainian and Crimean Waters

Dear members and colleagues,

Further to the annexation of Crimea and the city of Sevastopol to the Russian Federation, there have been implemented some new regulations which can affect sea trade in Ukrainian and Crimean waters.

This circular aims to cover two aspects that our clients with operation in the said area may face:

- (a) Further to the annexation of Crimea and the city of Sevastopol to the Russian Federation, the new EU regulation No 692/2014 of 23 June 2014 (has come into force on 25 June 2014) introduced trade sanctions in respect some of goods originating in Crimea or Sevastopol and on the provision, directly or indirectly, financial assistance, as well as insurance and reinsurance related to the import of such goods;
- (b) As per the Directive No. 255 enforced on 15 July 2015, the Ukrainian authorities closed the ports of Evpatoria, Kerch, Sevastopol, Theodosia (Feodosia), and Yalta for international shipping. It has been noted that Ukrainian activist organizations monitor the foreign flagged vessel calling at Crimean ports in order to make the Black List of the Shipowners and are ready to take actions against the violators within the Ukrainian legislation.

With respect to the European Union Regulation No 692/2014, the Members should note that as per Article 2 of the said Regulation, with effect from 25 June 2014 it is prohibited:

- to import into the European Union goods originating in Crimea or Sevastopol;
- to provide, directly or indirectly, financial assistance, as well as insurance and reinsurance related to the import of such goods.

The prohibited goods, meaning the “goods originating in Crimea or Sevastopol”, are the goods which are wholly obtained in Crimea or which have undergone their last substantial transformation there, in accordance with Articles 23 and 24 of Regulation (EEC) No. 2913/92 of 12 October 1992, establishing the Community Customs Code:

- (a) mineral products extracted within that country;
- (b) vegetable products harvested therein;

- (c) live animals born and raised therein;
- (d) products derived from live animals raised therein;
- (e) products of hunting or fishing carried on therein;
- (f) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country;
- (g) goods obtained or produced on board factory ships from - the products referred to in subparagraph (f) originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag;
- (h) products taken from the seabed or subsoil beneath the seabed outside the territorial sea provided that goods originating in Crimea or Sevastopol which have been made available to the Ukrainian authorities or examination, for which compliance with the conditions conferring entitlement to preferential origin has been verified and for which a certificate of origin has been issued in accordance with Regulation (EU) No 978/2012 and Regulation (EU) No 374/2014 or in accordance with the EU-Ukraine Association Agreement.
- (i) waste and scrap products derived from manufacturing operations and used articles, if they were collected therein and are fit only for the recovery of raw materials;
- (j) goods which are produced therein exclusively from goods referred to in subparagraphs (a) to (i) or from their derivatives, at any stage of production.

For the further information on the above matter, the scope of application and the exclusions therefrom, please refer to the text of EU regulation No 692/2014 attached to this circular for your convenience.

The Managers would like to encourage all Members who can be subject to the scope of application of the above-mentioned Regulation to seek advice before fixing contracts for voyages from Crimea and Sevastopol. It should be noted by the Members that as per Section 31 of the Rules of the Association, there shall be no indemnity against any liabilities, costs or expenses where the provision of cover, the payment of any claim or the provision of any benefit in respect of those liabilities, costs or expenses may expose the Association to any sanction, prohibition, restriction or adverse action by any competent authority or government.

Though there's no official ban to call at Ukrainian ports after leaving a Crimean port, there are various obstacles which can be encountered by the foreign-flagged vessels, including their masters and crew members, if the special procedure of entering/departing these territories is not fulfilled. In brief, foreigners and persons without citizenship are only allowed to enter/depart temporarily occupied territory after obtaining special permission and only through check-points with getting all the documents required for crossing the land or sea border processed (see Art.10 of the Law).

As it was advised by our Correspondents working in the affected area, another aspect to be highlighted is that Ukrainian public organizations activated actions against Crimean



shipping, by monitoring ship calls and making the Black List of the violators of the above-mentioned procedure. Though no actual arrests or incidents were reported, since the vessels tend not to call to Ukrainian ports after leaving Crimean ports, the risk of encountering these problems is still high.

The Club strongly recommends to all Members with their business area involving Ukrainian and Crimean waters to constantly check the latest situation with their port agents in respect to the Law of Ukraine, in order to avoid possible delays, arrests, detention fines and the problems with Immigration and Customs authorities, should the vessel make a potential call to Ukrainian port before or after a call at a port in the Crimean region.

For any queries on this topic, please do not hesitate to contact the manager:

manager@britishsteamship.com

Yours faithfully

British Steamship Management Limited

Manager of

British Steamship P&I Association (Bermuda) Limited

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COUNCIL REGULATION (EU) No 692/2014**of 23 June 2014****concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2014/386/CFSP ⁽¹⁾ concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol,

Having regard to the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

- (1) At its meeting of 20-21 March 2014, the European Council strongly condemned the annexation of the Autonomous Republic of Crimea ('Crimea') and the city of Sevastopol ('Sevastopol') to the Russian Federation and emphasised that it will not recognise the annexation. The European Council asked the Commission to evaluate the legal consequences of that annexation and to propose economic, trade and financial restrictions regarding Crimea for rapid implementation.
- (2) In its Resolution of 27 March 2014, the United Nations General Assembly affirmed its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders, underscoring the invalidity of the referendum held in Crimea on 16 March, and called upon all States not to recognise any alterations in the status of Crimea and of Sevastopol.
- (3) On 23 June 2014, the Council adopted Decision 2014/386/CFSP concerning restrictions on goods originating in Crimea or Sevastopol and on the provision, directly or indirectly, of financing or financial assistance, as well as insurance and reinsurance, related to the import of such goods, in response to the illegal annexation of Crimea and Sevastopol. In order to minimise the effect of such restrictive measures on economic operators, exceptions and transitional periods should be provided for in respect of trade in goods and related services for which transactions are required by a trade contract or ancillary contract, subject to a notification procedure.
- (4) These measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring their uniform application in all Member States, regulatory action at the level of the Union is necessary in order to implement them.
- (5) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force on the day following that of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions apply:

- (a) 'claim' means any claim, whether asserted by legal proceedings or not, made before or after 25 June 2014, under or in connection with a contract or transaction, and includes in particular:
 - (i) a claim for performance of any obligation arising under or in connection with a contract or transaction;
 - (ii) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;

⁽¹⁾ Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol (see page 70 of this Official Journal).

- (iii) a claim for compensation in respect of a contract or transaction;
 - (iv) a counterclaim;
 - (v) a claim for the recognition or enforcement, including by the procedure of *exequatur*, of a judgment, an arbitration award or an equivalent decision, wherever made or given;
- (b) 'contract or transaction' means any transaction of whatever form, whatever the applicable law, and whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose 'contract' includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;
- (c) 'goods originating in Crimea or Sevastopol' means goods which are wholly obtained in Crimea or in Sevastopol or which have undergone their last substantial transformation there, in accordance, *mutatis mutandis*, with Articles 23 and 24 of Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾;
- (d) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.
- (e) 'competent authorities' means the competent authorities of the Member States as identified on the websites listed in the Annex.

Article 2

It shall be prohibited:

- (a) to import into the European Union goods originating in Crimea or Sevastopol;
- (b) to provide, directly or indirectly, financing or financial assistance as well as insurance and reinsurance related to the import of the goods referred to in point (a).

Article 3

The prohibitions in Article 2 shall not apply in respect of:

- (a) the execution until 26 September 2014, of trade contracts concluded before 25 June 2014, or of ancillary contracts necessary for the execution of such contracts, provided that the natural or legal persons, entity or body seeking to perform the contract have notified, at least 10 working days in advance, the activity or transaction to the competent authority of the Member State in which they are established.
- (b) goods originating in Crimea or Sevastopol which have been made available to the Ukrainian authorities for examination, for which compliance with the conditions conferring entitlement to preferential origin has been verified in accordance with Regulation (EU) No 978/2012 and Regulation (EU) No 374/2014 ⁽²⁾ or in accordance with the EU-Ukraine Association Agreement.

Article 4

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions laid down in Article 2.

Article 5

Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.

Article 6

1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 118, 22.4.2014, p. 1.

other claim of this type, such as a claim for compensation or a claim under a guarantee, particularly a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

- (a) designated natural or legal persons, entities or bodies listed in Annex I to Council Regulation (EU) No 269/2014;
- (b) any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a);
- (c) any natural or legal person, entity or body which has been found by an arbitral, judicial or administrative decision to have infringed the prohibitions set out in this Regulation;
- (d) any natural or legal person, entity or body, if the claim relates to goods the import of which is prohibited under Article 2.

2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the natural or legal person, entity or body seeking the enforcement of that claim.

3. This Article is without prejudice to the right of natural or legal persons, entities or bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.

Article 7

1. The Commission and the Member States shall inform each other of the measures taken under this Regulation and share any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

2. The Member States shall immediately inform each other and the Commission of any other relevant information at their disposal which might affect the effective implementation of this Regulation.

Article 8

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall notify the rules referred to in paragraph 1 to the Commission without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 9

1. Member States shall designate the competent authorities referred to in this Regulation and identify them on the websites listed in the Annex. Member States shall notify the Commission of any changes in the addresses of their websites listed in the Annex.

2. Member States shall notify the Commission of their competent authorities, including the contact details of those competent authorities, without delay after the entry into force of this Regulation, and shall notify it of any subsequent amendment.

3. Where this Regulation sets out a requirement to notify, inform or otherwise communicate with the Commission, the address and other contact details to be used for such communication shall be those indicated in the Annex.

Article 10

This Regulation shall apply:

- (a) within the territory of the Union, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;

- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 11

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 23 June 2014.

For the Council
The President
C. ASHTON

ANNEX

Websites for information on the competent authorities and address for notification to the European Commission

BELGIUM

<http://www.diplomatie.be/eusanctions>

BULGARIA

<http://www.mfa.bg/en/pages/135/index.html>

CZECH REPUBLIC

<http://www.mfcr.cz/mezinarodnisankce>

DENMARK

<http://um.dk/da/politik-og-diplomati/retsorden/sanktioner/>

GERMANY

<http://www.bmwi.de/DE/Themen/Aussenwirtschaft/aussenwirtschaftsrecht,did=404888.html>

ESTONIA

http://www.vm.ee/est/kat_622/

IRELAND

<http://www.dfa.ie/home/index.aspx?id=28519>

GREECE

<http://www.mfa.gr/en/foreign-policy/global-issues/international-sanctions.html>

SPAIN

<http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/GlobalizacionOportunidadesRiesgos/Documents/ORGANISMOS%20COMPETENTES%20SANCIONES%20INTERNACIONALES.pdf>

FRANCE

<http://www.diplomatie.gouv.fr/autorites-sanctions/>

CROATIA

<http://www.mvep.hr/sankcije>

ITALY

http://www.esteri.it/MAE/IT/Politica_Europea/Deroghe.htm

CYPRUS

<http://www.mfa.gov.cy/sanctions>

LATVIA

<http://www.mfa.gov.lv/en/security/4539>

LITHUANIA

<http://www.urm.lt/sanctions>

LUXEMBOURG

<http://www.mae.lu/sanctions>

HUNGARY

http://www.kulugyminiszterium.hu/kum/hu/bal/Kulpolitikank/nemzetkozi_szankciok/

MALTA

http://www.doi.gov.mt/EN/bodies/boards/sanctions_monitoring.asp

NETHERLANDS

www.rijksoverheid.nl/onderwerpen/internationale-vrede-en-veiligheid/sancties

AUSTRIA

http://www.bmeia.gv.at/view.php3?f_id=12750&LNG=en&version=

POLAND

<http://www.msz.gov.pl>

PORTUGAL

<http://www.portugal.gov.pt/pt/os-ministerios/ministerio-dos-negocios-estrangeiros/quero-saber-mais/sobre-o-ministerio/medidas-restritivas/medidas-restritivas.aspx>

ROMANIA

<http://www.mae.ro/node/1548>

SLOVENIA

http://www.mzz.gov.si/si/zunanja_politika_in_mednarodno_pravo/zunanja_politika/mednarodna_varnost/omejevalni_ukrepi/

SLOVAKIA

http://www.mzv.sk/sk/europske_zalezitosti/europske_politiky-sankcie_eu

FINLAND

<http://formin.finland.fi/kvyhteisty/pakotteet>

SWEDEN

<http://www.ud.se/sanktioner>

UNITED KINGDOM

<https://www.gov.uk/sanctions-embargoes-and-restrictions>

Address for notifications to the European Commission:

European Commission
Service for Foreign Policy Instruments (FPI)
EEAS 02/309
B-1049 Brussels
Belgium
E-mail: relex-sanctions@ec.europa.eu
