

# BUNKERSPOT



## RUSSIAN SANCTIONS:

THE BUNKERING PERSPECTIVE

INSIDE:

EU REGULATIONS  
GREEN CORRIDORS  
CII COMPLIANCE  
METHANOL

# A question of provenance

Sanctions introduced following Russia's aggression against Ukraine have blocked the sale and purchase of Russian-sourced bunker fuel. **Steve Simms** of Simms Showers takes a close look at how national regulations interpret the 'transformation' of Russian marine fuel into a non-sanctioned product – and uncovers more questions than clear answers

**F**ugu, a type of pufferfish, is one of Japan's desired foods. It has a big problem, though. If it's not substantially transformed, fugu is lethally toxic to humans. Death is pretty gruesome: fugu toxin paralyzes muscles. The eater remains fully conscious as they become unable to breathe and gradually asphyxiate.

There is no known antidote to fugu poison. The only way to survive is to purge one's system of the poison (not a pleasant process, either). So Japan strictly controls fugu preparation, requiring three years of training of chefs who substantially transform the fugu so it is suitable to eat (its eaters remaining alive and un-purged). The chefs' final exam includes eating the fugu they have prepared. If they live (and pass other parts of the exam) the chef is licensed to prepare and serve fugu. The eater gets a kind of profit: telling their friends that that they ate fugu and lived to talk about it.

During a recent bunkering industry meeting there was a question along these lines: 'So if we can't buy or sell Russian-sourced bunkers because of sanctions, where is all of the product going?' There was a long pause. Most traders and suppliers at the meeting knew exactly where the product was coming from (Russia), and going (for blending, or refining, or both, in countries without sanctions) and being re-sold as non-Russian product. None spoke up, though.

Buying and selling product which has any sanctioned content is like eating fugu. Substantially transformed fugu is desirable, even profitable. If not, though, it paralyzes and eventually slowly kills. Buying or selling sanc-

tioned product which has not been substantially transformed can be the same. A bunker trader or supplier selling product with substantial sanctioned (instead of transformed) content can face months of paralysing prosecution. If the resulting fines do not kill, the commercial impact (and purging of the sanctioned product) still might be crippling. But the selling of Russia-content ('substantially transformed' or, believed, or, represented to be as such) product, has become with Russian sanctions even more a mainstay of the international bunkering industry. If one can (or ever should) set ethical concerns aside,<sup>1</sup> the profit from buying and selling product with sanctioned content is, by virtue of the continued demand for Russian product that finds its way into bunkers, substantial. Is the practice, from a sanctions standpoint, though, legal?

This article addresses the unspoken challenge of sanctions: 'substantial transformation'. When (if ever) is a Russian (or Iranian, or Venezuelan) petroleum product one no longer – so that purchasing and selling it does not violate sanctions? What are the consequences of buying or selling product not so transformed? When is the transformation not sufficiently 'substantial' so that a buyer or seller violates sanctions?

Responding to the challenge that there is large scale evasion of Russia (and other) sanctions by diverting sanctioned product and 'transforming' it, there presently are proposals to set maximum prices for Russian petroleum products carried by tank-

ers subject to U.S., U.K. or European sanctions. At the September 2022 G7 summit:

G7 Leaders reaffirmed a shared commitment to preventing Russia from profiting from its war of aggression.... [confirming the] joint political intention to finalise and implement a comprehensive prohibition of services which enable maritime transportation of Russian-origin crude oil and petroleum products globally – the provision of such services would only be allowed if the oil and petroleum products are purchased at or below a price ('the price cap') determined by the broad coalition of countries adhering to and implementing the price cap.

6. The price cap is specifically designed to reduce Russian revenues and Russia's ability to fund its war of aggression whilst limiting the impact of Russia's war on global energy prices, particularly for low and middle-income countries, by only permitting service providers to continue to do business related to Russian seaborne oil and petroleum products sold at or below the price cap. This measure would thus build on and amplify the reach of existing sanctions ....<sup>2</sup>

Sanctioning authorities in the U.S., U.K. and Europe recognise that despite sanctions, substantial amounts of Russian product is – through maritime transportation (and by corollary, the need to fuel that transportation) – reaching the international market. Might sanctioning authorities next trace the 'fingerprint' of sanctioned product that

is a component of a 'transformed' one?<sup>3</sup> Should bunker traders and suppliers now be more vigilant to confirm that the product that they buy (or sell) has been sufficiently transformed, so as not to be considered a sanctioned product? What should they now insist to receive from their suppliers, concerning product content – to assure that they are not receiving product that authorities consider (or might consider) to be subject to sanctions?

Economic reports confirm that, despite sanctions, the international bunkering market is absorbing significant amounts of Russian-sourced petroleum. Lessons learned about how to evade Iranian and Venezuelan sanctions have contributed to this. The *Wall Street Journal* in August 2022 reported that Russia, although well into sanctions from the U.S. and Europe, was earning an average of \$20 billion in monthly sales of petroleum products. This was about a 40% increase over the 2021 figure of \$14.6 billion average monthly sales. This despite the fact that in July 2022 Russia exported daily about 600,000 barrels less of crude oil, diesel and gasoline than in the pre-sanctions days of 2021.<sup>4</sup> With sanctions, Russia is exporting less product but making more money.

Sales are booming in Russia's export market, the world's largest in crude and refined fuels..... 'Russia is swimming in cash,' said Elina Ribakova, deputy chief economist at the Institute of International Finance. Moscow earned \$97 billion from oil and gas sales through July this year, about \$74 billion of that from oil, she said.<sup>5</sup>

The *Wall Street Journal* reports further that:

An unexpected market has been the Middle East. Exports of Russian fuel oil, a lightly refined version of crude, now go to Saudi Arabia and the United Arab Emirates, often stopping in Egypt *en route*.

The Russian oil is either burned in Saudi power stations or exported from Fujairah, a UAE port and hot spot for blending Russian and Iranian oils to conceal their provenance. This is oil that before the war was shipped to U.S. refiners.

\*\*\*

Iranian, Venezuelan and now Russian fuel oil is stored in the trading hub of Fujairah and intentionally disguised, according to oil traders. One trader in Switzerland said he was offered fuel oil that,

'Economic reports confirm that, despite sanctions, the international bunkering market is absorbing significant amounts of Russian-sourced petroleum'

based on characteristics such as its sulphur content, was clearly Russian. The label said otherwise.<sup>6</sup>

Transfers often occur at sea:

Oil is also being transferred between ships at sea, a page out of the play-book used to buy and sell sanctioned Iranian and Venezuelan oil. The transfers are happening in the Mediterranean, off the coast of West Africa and the Black Sea, with oil then heading toward China, India and Western Europe, according to shipping companies.<sup>7</sup>

S&P Global reports that in June 2022, tankers filled with Russian crude transferred to other ships offshore of Spain and South Korea more than 400,000 barrels a day of Russian crude, with the cargoes going to China and India. Ceuta and Malta are other transfer points; Lloyd's List Intelligence reports

that as many as three tankers a day were transferring Russian product, off Kalamata. With the transfers, the 'new' owners of the cargo change certification of the cargo origin.<sup>8</sup>

Russian – and Iranian and Venezuelan – product pre-sanctions have always been desirable for bunker traders and suppliers. Sanctions have not changed that. What has changed is how bunker traders and suppliers acquire the product. Sanctions prevent bunker traders and suppliers subject to the sanctions – generally those with U.S., U.K. or European operations – from buying and selling products directly from Russia, Iran or Venezuela. So, they buy from Fujairah, Singapore, India, or elsewhere. But, the source, or a source, is still Russia, (and) or Iran or Venezuela.

Since March 2022, the U.S. has prohibited the import of Russian-origin petroleum products and crude, making that import subject to sanctions. In other sanctions regimes, the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) generally has considered 'origin' to mean a product which contains 25% or more of a product. So, the idea is that any product 25% or more with Russian product could be subject to U.S. sanctions, and less than 25% not. Significantly, there is no OFAC statement for Russian product sanctions, stating that anything 25% or less Russia content is not subject to sanctions.

The question though is whether 25% (or less, or more) is the measure? Has the Russia-source product been 'substantially transformed' so that the result is considered not to be a Russia-source product? OFAC never (and intentionally so, to encourage compliance) has defined what 'substantial transformation' actu-



ally is. Is it refining? Is it blending so that, kind of like mixing vodka and tonic (and maybe for better compliance, adding a lime slice), there is a new drink made from separate components? (BTW, advice right there, not to go too heavy on the vodka). The drink may be a blend, and so not essentially separate vodka and tonic, But there's still vodka in the drink.

There has been a significant increase in exports from India to Europe and the U.S. of products refined entirely from

It is not as a matter of U.S. Customs law, however, substantial transformation, for example, where someone in Country E imports fresh fruit from Countries A-D, peels, cuts, mixes the fruits together and freezes them to make salad. There is in Country E no substantial transformation of the fruit, and so the country of origin of each frozen fruit must be listed (and declared for Customs duty) on the product package. The same situation (that there is no substantial trans-

U.S. Customs regulations (19 Code of Federal Regulations (CFR) § 102.11 – General rules<sup>9</sup>) state that:

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

(a) The country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 [basically, 'substantial transformation'] and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Is this clear enough? Then:

(b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin **of the single material that imparts the essential character to the good**, or
- (2) If the material that imparts the essential character to the good is fungible, has been commingled, **and direct physical identification of the origin of the commingled material is not practical**, the country or countries of origin may be determined on the basis of an inventory management method. [Emphasis added]

In a 0.50% blend, it's the crude product, not the cutter stock, which 'imparts the essential character' of the blend: engines run on the crude product, not substantially the cutter stock. And, certainly even in a blend, the 'direct physical identification of the origin' of the crude petroleum product is practical by testing or marking beforehand.

The regulation continues though, that:

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

- (1) If the good was produced only as a result of **minor processing**, the country of origin of the good is the country or countries of origin of each material that merits

'Russian – and Iranian and Venezuelan – product pre-sanctions have always been desirable for bunker traders and suppliers. Sanctions have not changed that. What has changed is how bunker traders and suppliers acquire the product'

Russian crude. So far, OFAC has not identified the refined product to be subject to sanctions. So far, but will it do so? Where will the line be drawn (or re-drawn)?

Country of origin, long before the law of sanctions, though, has been a regular subject of Customs law. This is because Customs duties are often determined by the country of origin of a product (where for example, the country of origin is part of a free trade agreement, or not). From U.S. Customs law, there is substantial transformation where:

Eggs from Country A, flavouring from Country B, butter from Country C, and sugar from Country D are imported to Country E, where bakers make cookies. The cookies have an origin Country E, where the products from A-D were substantially transformed, into cookies. But, Country E could legally import, because its importers were not subject to sanctions for importing from A-D.

formation) occurs where there is only repackaging, dilution with water, or other similar minor processing. Generally, the more complex the processing, the more there is considered to be substantial transformation.

So, it is a legitimate question, at least as a matter of Customs law, whether blending Russian crude with non-sanctioned country cutter stock, is substantial transformation. The key again is not as much content as it is process. There, of course, is increasing demand for 0.50% sulphur MARPOL-compliant blends as prices for distillates (which have the arguably more complex processing) continue to increase. And, there is also blending of Russia-source product with other product, to make what arguably is mostly, other sourced product. But, is this blending – whether to make a 0.50% product or simply one with less Russian content, substantial transformation? Is it more like making a cookie, or a frozen fruit salad?



equal consideration for determining the essential character of the good;

(2) If the good was produced **by simple assembly** and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or

(3) If the country of origin of the good **cannot be determined** under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production. [Emphasis added]

From a U.S. Customs law standpoint, then, a blend would be 'minor processing' or 'simple assembly'. So, consider that the blend was produced from Russian crude in Singapore, or Fujairah, with cutter stock (or other source material of the same type as the Russian crude) from a non-sanctioned country. From a U.S. Customs standpoint, the country of origin still would be Russia, along with whatever were the countries of origin of the cutter stock.

Imports into the U.S. of any product require for Customs purposes a declaration of country of origin. A false (even mistaken) declaration of country of origin can result in substantial fines for the importer. Bunker traders and suppliers should question whether any blends they import into the U.S. so that they would not be considered to be Russian product. This also is not only blends to make a 0.50% MARPOL compliant product (which is usually not imported) but blends done between vessels or in tanks ashore of, for example, Russian origin and other product.

The '25% or less' supposed standard that OFAC follows (which again cannot be found in OFAC regulations, or 'Frequently Asked Questions' – FAQs) is not a part of U.S. Customs law. One importer having been told, and believing, that a cargo has less than 25% Russian product content might (might) avoid OFAC sanctions penalties for importing Russian-origin product, but, unless the blend is declared to be Russian origin, there will be a mis-declaration of origin which, if discovered, would draw a substantial Customs penalty.

The United States, though, has 'Buy America' laws requiring that certain products sold to the U.S. armed forces, must be of U.S. origin. A decision by the U.S. Department of Homeland Security – which administers U.S. Customs laws and 'Buy America' laws, concerned the refining in India of crude oil which the refiner bought in the U.S. and Mexico (Mexican crude is also part of what could be included, by treaty, in a

'Buy America' product). The refiner produced jet fuel from the U.S. and Mexican product, which it wanted to sell as a Buy America product to the U.S. armed forces. Even though the source was U.S. and Mexican crude, U.S. Homeland Security decided that the distillate product was 'substantially transformed' to be Indian – and thus not qualifying to be sold to the U.S. armed forces as a Buy America product. The Department of Homeland Security determined<sup>10</sup> as follows:

Under the ('Buy America') rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, charac-

**'It is a legitimate question, at least as a matter of Customs law, whether blending Russian crude with non-sanctioned country cutter stock, is substantial transformation'**

ter, or use distinct from that of the article or articles from which it was so transformed. See also 19 C.F.R. § 177.22(a).

A substantial transformation occurs when an article emerges from a process with a new name, character, and use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. See *United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940); and *National Juice Products Ass'n v. United States*, 628 F. Supp. 978 (Ct. Int'l Trade 1986).

\*\*\*

In this case, we find the... jet fuel is clearly a new and different article with a new

name, character, and use from that of the petroleum crude oil from which it was refined.... [T]he process to create jet fuel from straight crude oil to straight-run distillate still involves desalting and the application of heat distillation coupled with the utilisation of the Merox Oxidation unit to remove sulfur, which results in the creation of jet fuel.

So, a purchaser or seller of refined distillate can, at least under the determination above, be confident that that it will not violate sanctions by importing the product to the U.S. even if the product was refined solely from Russian crude. Again, though, not so with a blend or Russian-source petroleum product, and one from a non-sanctioned source. Significantly, U.S. Customs law, and Buy America regulations, not the supposed OFAC 25% content rule, give the clearest guidance.

It is important also to remember, too, that U.S. sanctions extend not only to countries of origin, but also to individuals, business enterprises and even individual vessels listed on OFAC's Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists (SDN List). So suppose, for example, that bunkers are the product of petroleum product purchased from a sanctioned person or company, or even carried by a sanctioned vessel. Arguably if that product has not been 'substantially transformed', then buying or selling it, involving an import into the United States could violate U.S. sanctions (and U.K. and/or European sanctions for imports there if the person, enterprise or vessel also is subject to those sanctions).

So the question arises, what is 'importing'? For example, many traders and suppliers utilise title retention clauses, providing that they retain title over bunkers until they are paid. What if those bunkers have not-substantially-transformed Russian product? Or, even if title has passed, is a bunker trader or supplier providing bunkers to a U.S.-bound vessel involved with importing a Russian-origin product, by having that product loaded onto the vessel?

OFAC also has made no announced, formal conclusions about this. That is, OFAC has not imposed sanctions against vessel owners or operators with vessels arriving carrying Russia-sourced bunkers, or assessed sanctions against traders or suppliers of those bunkers. By analogy (only) there are the U.S. Iranian Transactions and Sanctions Regulations, 31' C.F.R. § 560.308, stating as follows:

With respect to goods (including software), the term importation means the bringing of any goods into the United States, except that in the case of goods

transported by vessel, importation means bringing of any goods into the United States with the intent to unlade them.

There is the same definition in OFAC's Weapons of Mass Destruction Trade Control Regulations, 31 C.F.R. § 539.307. Bunkers are not aboard vessel with the intent to 'unlade' them and so, if these regulations are enough, then bunkers not unloaded (or intended to be unloaded) and carried for fuel, are not 'imported'. But, notably, OFAC has never provided definition of 'importing' concerning the prohibition of Russia-sourced petroleum products.

Executive Order 14066, March 8 2022, 'Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine'<sup>11</sup> states the present U.S. sanctions on Russian petroleum product importation into the U.S.:

Section 1. (a) The following are prohibited:

(i) the importation into the United States of the following products of Russian Federation origin: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products;

\* \* \*

(iii) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.

\* \* \*

Sec. 2. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

In the Executive Order,

(c) the term 'United States person' means any United States citizen, lawful permanent resident, entity organised under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

This limitation applies only for the first section of the Order, however, not the other sections. Consequently, it is important that if a bunker trader or supplier is involved in pro-

viding Russian-origin bunkers, the trader or supplier should hesitate to provide any which it knows or should know with due diligence will be carried aboard any vessel for 'importation into the United States'.

Certainly, importing a blend into the U.S. including Russian product not 'substantially transformed' – offloading the product in the U.S. (whether onto a bunker tanker or on land) would violate the U.S. sanctions provisions, as above. And, from the plain meaning of the sanctions, there is no express exception for bunkers brought aboard a ship into the U.S., which have Russian content.

The U.S. Federal Regulations governing Russian sanctions are at 31 C.F.R. part 587 ([www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-587#subpart-F](http://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-587#subpart-F)). They have (like other sanctions regimes) a safe

**'Bunker traders and suppliers must exercise due diligence to assure that if they are buying product which contains Russia-source petroleum, the product has been "substantially transformed", even if the Russia-sourced content is small'**

harbour if there is, despite due diligence, a sanctions violation; that requires making a report to OFAC. So, if despite the due diligence, a bunker trader or supplier learns that it has done business with a sanctioned person or been involved with the purchase or sale of a sanctioned product the key is to report that to OFAC, having at hand the documentation of the due diligence. Should there be any transaction a trader or supplier has been involved with which it questions, then they should consult with counsel experienced in sanctions questions about whether there should be disclosure.

Arguably a step ahead of U.S. import

restrictions and restrictions on transactions with Specially Designated Nationals is the 21 July 2022 amendment of European Union amended Regulation (EU) No. 833/2014 governing vessels within the jurisdiction of any EU member state.<sup>12</sup> Circular 07/22: Sanctions – The European Union's 6th Sanctions Package – EU Regulation 833/2014 – (the 'Regulation') provide that from 4 June 2022, '[i]t shall be prohibited to purchase, import, or transfer, directly or indirectly, crude oil or petroleum products, as listed in Annex XXV, if they originate in Russia or are exported from Russia.' Also prohibited is any direct or indirect 'technical assistance, brokering services, financing or financial assistance or any other services related to the prohibition ...' Products prohibited include waste oils.

Unlike, potentially, the limited use (no 'unlading') of the term 'import' in the U.S. restrictions, 'transfer' broadly includes not only movement through Customs but transport of them, and includes Russian product that is transported together with other origin petroleum projects, and mixed.

The Regulation applies to all transactions after 5 February 2023, and to many before as the regulations detail. Although the Regulation does not prohibit EU vessels – or those vessels managed by EU persons – from transporting Russian product to third countries, it does prohibit EU insurance of any part of that transport, unless the insurance is through contract signed before 4 June 2022 and executed until 5 December 2022.

Just with OFAC's approach, the Regulation does not define what Russian product (or how much of it) is prohibited, including to be insured. But the European Commission's (EC) interpretive answer is, 'none'. The EC's June 2022 Frequently Asked Questions – and answers<sup>13</sup> – state:

*2. Does Article 3m prohibit imports into the Union of goods listed in Annex XXV which originate in Russia but are blended for transport with goods listed in the Annex and which originate in a third country?*

*Last update: 22 June 2022*

Article 3m paragraph 1 prohibits, subject to certain exceptions and derogations, imports of goods set out in Annex XXV if such goods originate from Russia or are exported from Russia. It is therefore necessary to determine if the product originates in Russia.

For this purpose, the non-preferential rules of origin of the EU apply.

Russian oil transported together with oil of other origin in mixed fashion is subject to

the prohibition: As oil is a fungible material that cannot be physically segregated depending on its origin, Russian originating oil imported, transferred or purchased in the EU together with oil of other origin is subject to the sanctions, unless the exact share of the product which does not originate in Russia can be clearly demonstrated to the national authorities of the Member State.

**In such a case, the exact portion not originating in Russia can be allowed into the Union.** [emphasis added]

The EC elsewhere explains the ‘non-preferential rules of origin of the EU’ – with ‘substantial transformation’ at their centre:

General aspects of non-preferential origin

There are two basic concepts to determine the origin of goods namely wholly obtained products and products having undergone a last **substantial transformation**. If only one country is involved in producing a good the wholly obtained concept will be applied.

In practice this will mostly be restricted to products obtained in their natural state and products derived from wholly obtained products. If two or more countries are involved in the production of goods, the concept of last, **substantial transformation** determines the origin of the goods. [Emphasis added]<sup>14</sup>

Bunker traders and suppliers must therefore exercise due diligence to assure that if they are buying product which contains Russia-source petroleum, the product has been ‘substantially transformed’, even if the Russia-sourced content is small.

Consequently, traders and suppliers should require their suppliers to certify the source of the components of each product, and the process of making the product. They should state in their purchase specifications that the product must not contain any Russia (or Venezuela, or Iran, or other sanctioned countries’)-sourced product, unless the product has been substantially transformed and to set out the details of that transformation. Again, the simple mixing or blending of the product, at least under U.S. Customs regulations, will not be enough to establish that the product is not Russia-sourced.

Like for those eating fugu, buying and selling Russia-source, and other sanctioned countries’ sourced product, may be profitable for bunker traders and suppliers – including that not subject to U.S. and other sanctions – as long as the product first has been ‘substantially transformed’. The para-

dox though is that the present market points away from that ‘substantial transformation’, which to be certain is only an entirely distilled product. Instead, blends are less expensive and meet the 0.50% world-wide MARPOL sulphur content requirements.

Certainly, one would expect that non-transformed fugu would be very inexpensive, until it is substantially transformed. But consuming un-transformed fugu causes certain paralysis and at best disability (which is why it would be, before substantial transformation, very inexpensive). Again there is no known antidote; the only way to survive the poisoning is to purge one’s system of what was consumed (which by analogy for a bunker trader or supplier, would be a very expensive and painful process – including because lawyers certainly would have to be involved).

Blended Russian (or other sanctioned) product may also be relatively inexpensive, compared to product (including components to make the blend) sourced from elsewhere, but bunker traders and suppliers should expect growing scrutiny by sanctioning authorities, of those selling or buying the product.

1. A number of leading bunker traders and suppliers, for example, have policy stating that they do not trade in products created by slave labour, although it is often not illegal to buy or sell such products. The International Bunker Industry Association (IBIA), with the Russian invasion of Ukraine, expelled its few Russian-controlled members, on ethical rather than any required legal grounds. Although the purchase and sale of products with Russian product content – substantially transformed – may be legal, and certainly is profitable, the question is whether it is ethical. This is particularly so if one purports to be a supporter of Ukraine, or of others who sanctions are intended to support.

2. G7 Finance Ministers’ Statement on the united response to Russia’s war of aggression against Ukraine Berlin, 2 September 2022, [www.bundesfinanzministerium.de/Content/EN/Downloads/G7-G20/2022-09-02-g7-ministers-statement.pdf?\\_\\_blob=publicationFile&v=7](http://www.bundesfinanzministerium.de/Content/EN/Downloads/G7-G20/2022-09-02-g7-ministers-statement.pdf?__blob=publicationFile&v=7)

3. This has long been possible through the use, for example, of the Bunkertrace product. GC-MS testing also can readily detect the chemical component of a product, which will show its likely sources.

4. Joe Wallace, Anna Hirtenstein, *Russia Confounds the West by Recapturing Its Oil Riches*, *The Wall Street Journal*, August 29, 2022.

5. *Id.*

6. *Id.*

7. Anna Hirtenstein and Benoit Faucon, *Russian Oil Producers Stay One Step Ahead of Sanctions*, *The Wall Street Journal*, June 1, 2022.

8. S&P Global, *Tanker Switching Surges for Russian Oil*, Aug. 1, 2022, [www.spglobal.com/market-insights/latest-news](http://www.spglobal.com/market-insights/latest-news).

For more on OFAC’s enforcement approach of intentional vagueness, see the Author’s article on OFAC enforcement (of Iran sanctions), *General Counsel, Bunkerspot* April/May, 2016, at 34, [www.bunkerspot.com/images/mags/flipbook/bs\\_v13n2\\_AprMay\\_16/mobile/index.html#p=34](http://www.bunkerspot.com/images/mags/flipbook/bs_v13n2_AprMay_16/mobile/index.html#p=34)

9. [T.D. 96-48, 61 FR 28956, June 6, 1996, as amended

by CBP Dec. 21-10, 86 FR 35581, July 6, 2021]

10. 62328 Federal Register / Vol. 83, No. 232 / Monday, December 3, 2018 / Notices, DEPARTMENT OF HOMELAND SECURITY, U.S. Customs and Border Protection, *Notice of Issuance of Final Determination Concerning Certain Jet Fuel*

11. [https://home.treasury.gov/system/files/126/eo\\_prohibitions\\_imports\\_investments.pdf](https://home.treasury.gov/system/files/126/eo_prohibitions_imports_investments.pdf)

12. Lex: EUR-Lex - 02014R0833-20220604 - EN - EUR-Lex (europa.eu)

13. European Commission, *Oil Imports, Related Provision: Article 3m of Council Regulation 833/2014, Frequently Asked Questions – As of 22 June 2022*, [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/faqs-sanctions-russia-oil-imports\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-oil-imports_en.pdf)

14. European Commission, *Non-Preferential Origin*, [https://taxation-customs.ec.europa.eu/customs-4/international-affairs/origin-goods/non-preferential-origin\\_en](https://taxation-customs.ec.europa.eu/customs-4/international-affairs/origin-goods/non-preferential-origin_en).







J. Stephen (‘Steve’) Simms is a principal of Simms Showers, LLP, a US-based law firm representing bunker suppliers and traders world-wide.

Simms Showers advises bunker suppliers and traders on credit security, recovery, sales terms and conditions and MARPOL-related issues, including for 2022-2023-2050 and beyond.

Steve Simms serves as Chair of the International Bunker Industry Association’s (IBIA) Legal Working Group, is an IBIA Board member and serves as Legal Advisor to SEA/LNG, the industry group advancing the use of LNG as a marine fuel.

The opinions and recommendations of this article are his and not necessarily also those of IBIA or SEA/LNG, except if identified specifically as such.

 J. Stephen Simms  
Principal  
Simms Showers LLP

 Tel: +1 443 290 8704  
 Email: [jssimms@simmsshowers.com](mailto:jssimms@simmsshowers.com)  
 Web: [www.simmsshowers.com](http://www.simmsshowers.com)