

## Russian Sanctions Against Turkey

*9 Feb 2016*

Following the incident of a Russian Su-24 jet being downed by Turkish F-16 fighters on 24 November 2015 causing the Russian aircraft crash in the Bayirbucak region of northern Syria, Russia imposed a series of economic measures and sanctions against Turkey. The first step in this direction was a decree prohibiting Turkish products along with other sanctions, approved by the President of Russia Vladimir Putin on 28 November 2015. With this presidential decree (numbered 583), the legal ground was prepared for economic embargos on Turkey and Turkish goods and services.

Following this decree, the Russian Government fleshed out the decree's commercial sanctions with an Executive Order on 30 November 2015 (numbered 1296). On 28 December 2015, some amendments were introduced to the previously approved decree, indicating the specifics and scope of previously determined sanctions.

Major sectors that are affected by the commercial sanctions are construction, tourism and hotel management, architecture, engineering-technical projects (technical tests, research, analysis) and woodworking. Additionally, from 1 January 2016, it is also prohibited for companies that are subject to Turkish legislation and/or controlled by Turkish citizens to do business with the Russian government or municipalities, regardless of the sector these companies operate in. A public statement by the Russian government explains that the sanctions in the Executive Order do not apply to projects contracted before 1 January 2016.

As of the date of writing, the types of the sanctions, limitations and prohibitions applied by Russia against Turkey include:

### **Imports of Agricultural Goods, Raw Materials and Food Products Prohibited:**

The Russian government imposed an embargo on Turkish products, especially fruits, vegetables, flowers, chicken, turkey and salt. In this regard:

#### **Fruits:**

- GTIP 0805 10- Orange, fresh or dried
- GTIP 0805 20- Tangerine (all kinds and hybrids), fresh or dried,
- GTIP 0806 10- Grapes, fresh
- GTIP 0808 10- Apple, fresh
- GTIP 0808 30- Pear, fresh
- GTIP 0809 10- Apricot, fresh
- GTIP 0809 30- Peach and nectarine, fresh
- GTIP 0809 40- Plum and sloe, fresh
- GTIP 0810 10- Strawberry, fresh

#### **Vegetables:**

- GTIP 0207 14- Tomato, fresh or cooled
- GTIP 0207 27- Onion, fresh or cooled
- GTIP 0704 10- Cauli and broccoli, fresh or cooled
- GTIP 0707 00- Cucumber and gherkin, fresh or cooled

**Birds:**

- GTIP 0207 14- Pieces and giblets of chicken, frozen
- GTIP 0207 27- Pieces and giblets of turkey, frozen

**Others:**

- GTIP 0603 12- Clove, fresh
- GTIP 2501 00- Salt and pure sodium chloride; sea water

**Turkish Companies Prohibited From Carrying Out Certain Activities in Russia:**

In certain operation fields, prohibitions and limitations apply to the activities of companies and organizations which are headquartered in Turkey, or are controlled by Turkish citizens.

Russian legislation defines criteria for "control" in Articles 5(1) and 5(2) of the Federal Law titled Order of Foreign Investment in Economic Structures Strategically Important for State Defense and Security, numbered 57-F3 and dated 29 April 2008. Accordingly, persons are deemed to have authority to control the company or organization where they:

- Hold more than 50% of votes as shareholders,
- Hold less than 50% of votes as shareholders, but control the company's decision making mechanism,
- Are authorized to appoint the CEO or more than half of the executive body members of the company or organization, or
- Are authorized to appoint more than half of the board of management or the executive body without any conditions,

Another important point is that sanctions in the decree also cover Turkish companies with their headquarters located in Russia. However, the Russian government failed to indicate the fields of operation for companies which are subject to these sanctions.

As for the operation fields included, The Resolution of the Government of the Russian Federation No. 1457 dated 29 December 2015 approved the list of certain types of works which are banned for performance in the territory of the Russian Federation by organizations under the jurisdiction of Turkey as well as organizations controlled by Turkish citizens effective from 1 January 2016. The restriction covers the following operation fields:

- construction of buildings, construction of engineering and special construction works.
- activities in the area of architecture and engineering design, technical testing, research and analysis.
- activities of travel agencies and other organization providing services in the tourism sector.
- operation of hotels and other places of temporary residence.
- works and services for the state and municipal needs.
- woodwork.

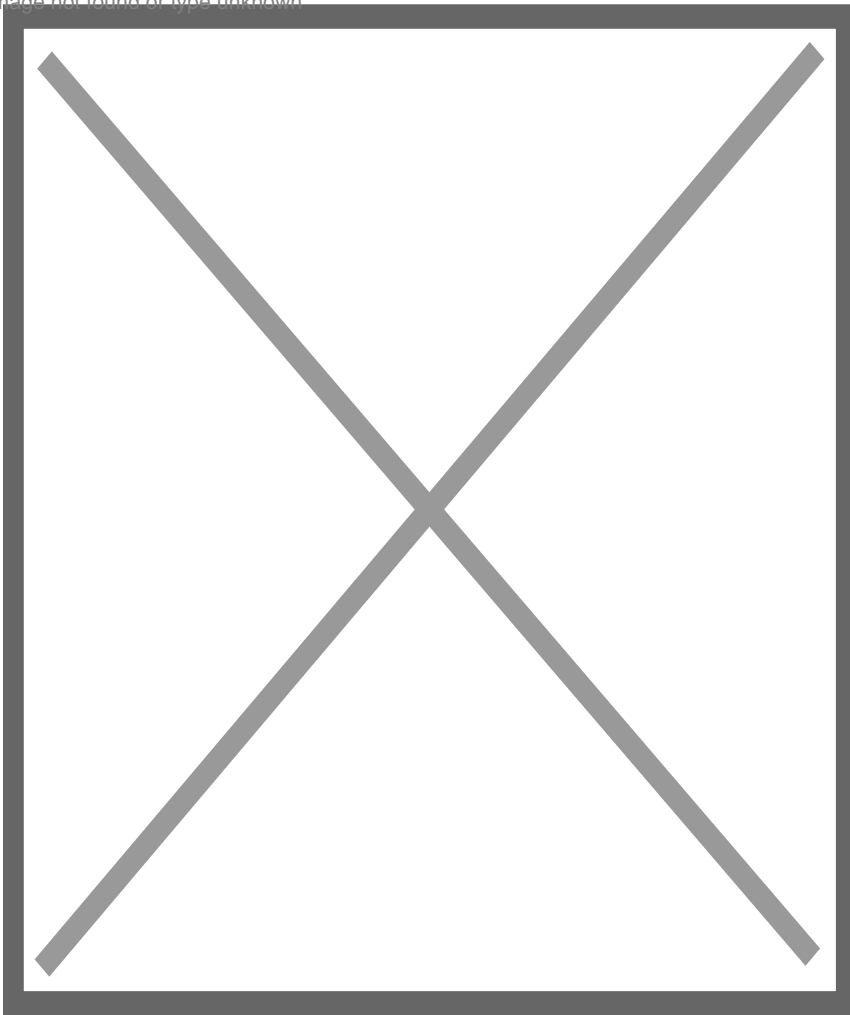
It is important to note that here is an exemption from this ban for works (services) performance of which is envisaged by the contracts entered into before the adoption of the Resolution of the Government of Russian Federation No. 1457 dated 29 December 2015, for the term of validity of such contracts.

**Employing Turkish Citizens Prohibited**

Employers and contractors are prohibited from employing Turkish citizens as of 1 January 2016. However, Turkish employees which were already in an employment or legal relationship with an employer in Russia on 31 December 2015 may continue to be employed.

The Russian government created an exemption for 53 companies to continue employing Turkish citizens:

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### **Visa-Free Travel Agreement Suspended**

The visa-free travel agreement between Russia and Turkey has been suspended from 1 January 2016. Previously, Russian and Turkish citizens could travel freely between the two countries without a visa.

### **Charter Flights From Russia To Turkey Banned**

The Russian government has banned charter flights to Turkey, except those used to bring Russian tourists from Turkey back to Russia. Additionally, supervision of regular commercial flights has increased.

### **Tourism Banned**

Russian tour operators and tourism agencies have abstained from selling Russian citizens tour packages to Turkey.

### **Transportation Prohibited**

Supervision has increased for Turkish sea transportation companies operating in the Sea of Azov and Black Sea ports, as well as companies involved in land transportation through Russia. The number of trucks and lorries from Turkey which are accepted to pass through Russia is now limited. In 2015, around 8,000 trucks and lorries were accepted to pass through Russia. However, this number is set as at a maximum of 2,000 for 2016.

## Joint Activities Suspended at Government Level

Commercial and economic activities between Turkey and Russia at the government level have been suspended. However the Russian government has appointed their Ministry of Economy to negotiate with Turkey about:

- The bilateral Agreement on Trade in Services and Investments,
- The Middle-term program for economic, trade, scientific, technical and cultural cooperation for 2016-2019,
- Formation of the joint Fund for Financing Investment Projects in Russia and Turkey.

Russia's sanctions directly affect Turkey, Turkish companies and Turkish citizens. However, they also indirectly affect many European and American companies. Some of these companies face severe procurement problems where they have production facilities in Russia, yet source raw materials or parts required for these facilities from Turkey.

On the other hand, it is positive that the sanctions exclude on-going investment undertakings in Russia, as well as Russia's gas exportation to Turkey. These are the two largest goods and services exchanged between the countries.

It is important to note that penal clause or compensation claims will inevitably arise for Turkish and foreign parties which are unable to fulfill their undertakings and are forced to cancel reservations.

Therefore, serious and legitimate concerns exist regarding the rights and obligations of parties involved in agreements which are already executed in Turkey for future expected businesses in Russia, or agreements which would have been executed in connection with the on-going agreements in Russia.

Parties who are obliged to provide goods or services are preparing to file for objective impossibility and force majeure objections. Meanwhile, parties which have made a payment or submitted a guarantee letter are preparing for collection of penal clauses and compensation.

Investment arbitration against Russia is considered possible for investors whose long term undertakings are affected by the sanctions. Investors would be able to seek penal and compensation amounts which they might have to pay for breach of these undertakings.

The Russian government - as if acknowledging the affects and results of the sanctions which cause a logarithmic domino effect for governments and companies - has given some signals indicating that the sanctions will be eased. In this regard, it is speculated that the Russian Ministry of Commerce is working on draft legislation to ease the sanctions.

Considering the stadiums and other facilities required to be built for the FIFA World Cup to be held in Russia in 2018, Sberbank's activities in Turkey, Rosatom's nuclear center in Turkey, as well as all other commercial projects and benefits, the clear preference is to lift the sanctions altogether. However, if this cannot be done in the near future, it is best for both Turkey and Russia to ease these sanctions to keep the commercial effects at minimum.

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