

European Union: Clarifying the impact of the import ban on diamonds

Article 3p of Council Regulation (EU) 2023/2878

In depth

On 18 December 2023, the European Council adopted a twelfth package of restrictive measures against Russia. As expected, an import ban on diamonds was introduced in Article 3p of Council Regulation (EU) 2023/2878.

In 2022, the global production of diamonds tracked by the Kimberley Process amounted to USD 16,015,871,578.74, of which Russia accounted for USD 3,553,798,950.48.¹ The diamonds obtained in Russia alone represented 22.19% of the global production of diamonds. This number does not cover diamonds that have been extracted in countries other than Russia by Russian legal persons or by persons owned or controlled by such persons.

During our Baker McKenzie's Off The Shelf podcast, titled "[Crystallizing the impact of the proposed EU sanctions on diamonds](#)", which we hosted at the end of November, we stressed that the operational impacts of this ban on EU's importers would depend on the way it is framed, taking into account the recent trends we have observed in the previous measures adopted by the Council to improve the effectiveness of EU's restrictive measures.

In this follow-up article, we clarify the import ban on diamonds by unpacking and discussing some of its key features.

1. Material Scope

The material scope of the import ban on diamonds covers the following, based on Annex XXXVIII A of the Regulation:

- Unsorted diamonds (7102.10)
- Non-industrial diamonds, whether worked (7102.39) or not (7102.31)
- Synthetic or reconstructed diamonds, whether worked (7104.91) or not (7104.21)
- Specified articles classified in the following positions of the Harmonized System (HS) to the extent that they incorporate diamonds: 7113, 7114, 7115.90, 7116.20 and 9101

It is important to stress that some of these products have already been impacted by import bans, which have been imposed as part of previous packages of sanctions against Russia, such as goods classified in headings 7104 and 7115 of the HS (Article 3i) and specified goods classified in headings 7113 and 7114 of the HS (Article 3o).

By imposing a direct ban on such diamonds and products incorporating diamonds originating in Russia or exported from Russia, the EU is targeting an import volume that amounted to EUR 1,364,786,243 in 2022. This amount may have been underestimated because Extra-EU trade statistics only cover imports of goods originating in Russia, and not goods exported from Russia, which originate in any other third country.

By imposing an indirect import ban on specified goods when processed in a third country consisting of or incorporating diamonds originating in Russia or exported from Russia, the EU is impacting imports that amounted to EUR 22,185,123,407 in 2022.

For all or part of those goods, importers will be required to provide evidence of the country of origin of the diamonds or products incorporating diamonds used as inputs for the processing of the products in a third country.

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¹ https://kimberleyprocessstatistics.org/static/pdfs/public_statistics/2022/2022GlobalSummary.pdf

See Annex 1 for the import volumes of diamonds and products incorporating diamonds into the EU27 in 2022.

2. Prohibited imports

Article 3p of Council Regulation (EU) 2023/2878 imposes:

- **First**, as of 1 January 2024, a direct import ban on diamonds and products incorporating diamonds originating in Russia or exported from Russia into the EU.
- **Second**, as of 1 January 2024, an import ban on diamonds and products incorporating diamonds of any origin if they transited via the territory of Russia.
- **Third**, as of 1 March 2024, an indirect import ban on specified goods when processed in a third country consisting of diamonds originating in Russia or exported from Russia with a weight equal to or above 1.0 carat per diamond.
 - The scope of this ban is limited to goods listed in Part A of the table in Annex 1. Considering that goods classified in subheadings 7102.10 and 7102.31 originate in the country where they are obtained in their natural or unprocessed state, in practice, this indirect ban only targets non-industrial diamonds worked to final shape, whether or not polished. Through this ban, the EU is therefore targeting diamonds obtained in Russia that are worked to final shape in another third country.
 - Excluding EU's Member States,² the top three importers of goods classified in subheading 7102.31 of the HS originating in Russia in 2021 were: the United Arab Emirates (USD 1,190,127.70K), India (USD 863,477.07K) and Israel (USD 332,086.99K). The import volumes of goods classified in subheading 7102.39 of the HS originating in these countries amounted, in 2022, to USD 3,010,383,423 (India), USD 471,109,722 (Israel) and USD 176,882,280 (the United Arab Emirates). Combined, the goods originating in these countries represented 64.07% of the total import value of goods classified in that subheading that were imported into the EU27 in 2022. That being said, this is an overestimate as this indirect ban only concerns diamonds with a weight equal to or above 1.0 carat, while trade statistics do not make such a distinction.
- **Fourth**, as of 1 September 2024, an indirect import ban on specified goods when processed in a third country consisting of or incorporating diamonds originating in Russia or exported from Russia with a weight equal to or above 0.5 carats or 0.1 grams per diamond.
 - Due to the volume of the impacted goods - i.e., EUR 22,185,123,407 in 2022 - this ban will only enter into force when the traceability-based certification is fully deployed to ease the administrative burden. We discuss this mechanism in part 3 below.

3. Import requirements

The requirement to prove the origin of the targeted goods incorporating diamonds originating in Russia will be deployed according to the phased implementation of the indirect import bans. Based on the above, this means that:

- As of 1 March 2024, importers will have to prove that the diamonds (with a weight equal to or above 1.0 carat per diamond) classified in subheading 7102.39 of the HS has not been worked using diamonds obtained in Russia that are classified in subheadings 7102.10 or 7102.31 of the HS.

For that purpose, importers can opt to prove the absence of Russia-originating inputs by relying on either the traceability-based certification or on any other evidence. Companies relying at this stage on their own traceability mechanism are expected to have a key competitive advantage compared to other companies. Overall, depending on its position in the supply chain, it seems a fair observation that the closest the operator is to the finished products, the more challenging it will be for the operator to identify (and keep track of) all the countries (and stakeholders!) that are involved in the processing of the materials it uses to manufacture the finished products - especially for the operators dealing with steel, gold and diamonds in their manufacturing process.

² World Integrated Trade Solution (WITS) | Data on Export, Import, Tariff, NTM (worldbank.org)

- As of 1 September 2024, importers will have to demonstrate the following:
 - **First**, the processed non-industrial diamonds (with a weight equal to or above 0.5 carats or 0.1 grams per diamond) classified in subheading 7102.39 are not worked using diamonds classified in subheadings 7102.10 or 7102.31 obtained in Russia.
 - **Second**, the processed synthetic (or reconstructed) non-industrial diamonds (with a weight equal to or above 0.5 carats or 0.1 grams per diamond) classified in 7104.91 are not worked using synthetic diamonds classified in subheading 7104.21 obtained in Russia.
 - **Third**, the articles classified in the specified positions of the HS (i.e., 7113, 7114, 7115.90, 7116.20 and 9101), to the extent that they incorporate diamonds, do not incorporate:
 - **On the one hand**, any non-industrial diamonds (with a weight equal to or above 0.5 carats or 0.1 grams per diamond) classified in subheading 7102.39 or 7104.91 originating in Russia, and/or
 - **On the other hand**, any processed non-industrial, synthetic or not, diamonds (with a weight equal to or above 0.5 carats or 0.1 grams per diamond) classified in subheadings 7102.10, 7102.31 or 7104.21 that have been obtained in Russia.

For that purpose, it will be mandatory for EU importers to rely on the certificate issued through the traceability-based mechanism to be deployed in the future, as evidence of their compliance with that requirement. In practice, each diamond obtained in a country will be assigned a unique identification number. Information about the subsequent processing operations is expected to be added to that ID number. Such information would then be automatically compiled into a certificate, which will have to be presented upon entry into the EU's customs territory, or into the customs territory of any other member of the G7.

A number of questions remain:

- As a G7 initiative, one would have expected this requirement to not apply to goods originating in these countries. In line with the recent amendment of Article 3g, one would have expected the non-application of this requirement to goods originating in partner countries (i.e., G7 members).
- It is currently unclear for importers what type of evidence will be accepted outside of the traceability mechanism between 1 March and 1 September 2024. In its recently amended FAQs, the European Commission provides a few examples - e.g., Kimberley Process certificates for non-mixed origin, evidence from traceability systems or laboratory reports. That list is, however, not extensive. The European Commission indicated it will provide a more extensive list of accepted evidence at a later stage. Therefore, it remains to be seen whether certificates of non-preferential origin of the diamonds will be accepted.
- The verification of importers' compliance with this requirement is expected to take place in Belgium. Therefore, goods entering the EU's customs territory via another EU Member State will have to be placed under a transit procedure. Based on the FAQs maintained by the European Commission, "import" should be interpreted as covering the placing of goods under any customs procedures. As a result, the placing of goods under a transit procedure might be interpreted by enforcement authorities as an import within the meaning of Regulation (EU) No 833/2014.
- As articles that are classified in the specified positions of the HS (i.e., 7113, 7114, 7115.90, 7116.20 and 9101) might not incorporate any diamonds, they should consequently not fall within the scope of this requirement. It remains unclear whether exemption codes will be made available or not. Should this be the case, such codes might be used by importers to circumvent the indirect import ban.
- Goods that originate from the country where it is obtained (i.e., goods classified in 7102.10, 7102.31, and 7104.21) should not fall within the scope of the indirect bans, based on the current text. Therefore, importers should not be required to provide evidence of their origin.

4. Recommendations

Based on the above, we recommend that importers do the following:

- **First**, secure their existing supply chains by:
 - Reviewing their import data to flag imports of products classified in any of the commodity codes listed in Annex XXXVIII A of Council Regulation (EU) 2023/2878, regardless of their non-preferential origin.

- Reviewing the classification of the targeted items in the Combined Nomenclature, considering any relevant legal or explanatory notes, Regulations, as well as Binding Tariff Information.
- Prioritizing the review of the targeted items against the prohibitions and requirements imposed by Article 3p of the Regulation, considering the phased implementation of the indirect import ban and the risk profile of the country of origin.
- Engaging in a critical review of the country of non-preferential origin declared for such goods.
- Engaging with their supply chain stakeholders to collect information about the countries involved in the processing of the diamonds and of the articles incorporating diamonds and agree on the type of evidence that will be made available between 1 March 2024 and 1 September 2024 to prove the absence of Russia-originating inputs.
- Due to a lack of clarity at this stage about the other types of evidence accepted during that period, it is clear that relying on the traceability mechanism to be deployed will bring more certainty about the goods' compliance with Article 3p, which might subsequently impact diamond prices.
- **Second**, optimize their supply chains and hence develop their competitive advantage by setting up an efficient, fluid, yet robust Track & Trace process considering any relevant risks and opportunities to limit as much as possible the time-and-cost-to-market, while avoiding any unintentional breach.

Baker McKenzie's unique expertise in customs and global trade controls matters - including sanctions - as well as our strong local market knowledge, allow us to navigate complex supply chains and translate complicated legal requirements into pragmatic and implementable business decisions to secure and optimize your impacted operations.

Annex 1 – Import volumes of diamonds and products incorporating diamonds into the EU27, 2022³

	HS Code	Description	Total Import Volume EU27 (2022)	Import Volume of Russia-originating goods into EU27 (2022)	Top 3 Trading Partners (2022)
PART A					
	7102.10	Unsorted diamonds	EUR 109,204,933	0	Zimbabwe, South Africa, Brazil
	7102.31	Non-industrial diamonds, unworked or simply sawn, cleaved or bruted.	EUR 7,615,947,460	EUR 1,284,340,885	United Arab Emirates, Canada, Russia
	7102.39	Non-industrial diamonds, other than unworked or simply sawn, cleaved or bruted.	EUR 5,433,762,362	EUR 71,616,552	India, Israel, United States
PART B					
	7104.21	Synthetic or reconstructed diamonds, unworked or simply sawn or roughly shaped	EUR 44,441,919	0	United States, China, Switzerland
	7104.91	Synthetic or reconstructed diamonds, other than unworked or simply sawn or roughly shaped	EUR 94,868,288	EUR 11,285	India, United States, Israel
PART C					
Ex	7113	Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal, incorporating diamonds	EUR 6,495,758,669	EUR 3,376,039	Switzerland, Thailand, Turkey
Ex	7114	Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal, incorporating diamonds	EUR 45,734,219	EUR 19,244	United Arab Emirates, China, Turkey
Ex	7115.90	Other articles of precious metal or of metal clad with precious metal, incorporating diamonds , not elsewhere specified, excluding platinum catalysts in the form of wire cloth or grill	EUR 137,492,048	EUR 4,937,371	United States, Switzerland, Japan
Ex	7116.20	Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed), incorporating diamonds	EUR 232,536,956	EUR 173,765	Thailand, China, Vietnam
Ex	9101	Wrist-watches, pocket-watches and other watches, including stopwatches, incorporating diamonds , with case of precious metal or of metal clad with precious metal	EUR 1,975,376,553	EUR 311,102	Switzerland, Hong-Kong, United Kingdom
		TOTAL	EUR 22,185,123,407	EUR 1,364,786,243	

³ <https://trade.ec.europa.eu/access-to-markets/en/statistics>

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