

RUSSIA RESPONDS TO UKRAINE SANCTIONS WITH BAN ON CERTAIN FOOD IMPORTS FROM THE EU, USA, CANADA, AUSTRALIA AND NORWAY

On August 6, 2014, President Putin issued Decree No. 560 "On Special Economic Measures to Protect Russia's Security", authorizing the Russian government to prohibit or limit food imports from countries that have imposed economic sanctions on Russian entities and/or individuals. The Russian government then promptly implemented the decree by issuing Regulation No. 778 "On Measures Aimed at Implementation of Presidential Decree No. 560 "On Special Economic Measures to Protect Russia's Security" of August 6, 2014" (the "Regulation").

The Regulation came into force on August 7, 2014 with immediate effect for all items not yet imported into Russia; there is no exception or "grandfathering" for items in transit or under contract. The Regulation provides a one-year prohibition on import of certain foodstuffs from the following countries of origin: all European Union countries, the United States, Canada, Australia and Norway. "Country of origin" is a term of Russian customs law which refers to the country where a particular food item was grown, gathered, extracted, or, in some cases, processed. Designating the "country of origin" as the place of processing depends on the type of food processed and the manner of processing. In general, processing requires some sort of significant transformation; mere cutting, packaging, sorting and similar actions do not ordinarily qualify.

The Regulation identifies prohibited agricultural products, raw materials and foodstuffs by reference to the names and numbers of broad categories used in the customs classifications (the "Customs Classifications") of the Customs Union between Russia, Belarus and Kazakhstan, rather than providing a list of individual foodstuff items. Therefore, review of the detailed items under each named category is required in order to determine whether particular foodstuffs are subject to the import prohibitions. In case of uncertainty, past customs practices in treating particular goods at the border could provide guidance; however, it is quite possible that customs authorities will now be more critical and conservative in reviewing imports from the affected countries of origin.

As a general matter, the precise application of the Regulation to some foodstuffs is not self-evident. Proper interpretation of the Regulation will require careful review of the relevant Customs Classifications, detailed knowledge of all ingredients of a particular food item and its production and packaging processes, as well as official recommendations and past practice of the customs authorities.

Before describing the prohibited categories, we note that the Regulation expressly excludes all types of baby food and omits certain other significant categories of food and beverage, e.g., (i) wheat, rice and other grains, (ii) bread, crackers and other baked goods,

(iii) pasta, (iv) cereals, (v) most canned, ready-to-eat foods (except as noted below), (vi) milk formula, (vii) fruit juices and (viii) wine and other alcoholic beverages.

The Regulation designates the following foodstuffs as prohibited (per the Customs Classifications):

- "cattle meat" ¹ (fresh, refrigerated or frozen), including raw beef, veal and buffalo meat (while mutton, lamb and goat meats are not considered "cattle meat"), but excluding organ meats and other "by-products"
- "pork meat" (fresh, refrigerated or frozen), including raw pork and boar meat, but excluding organ meats and other "by-products"
- "poultry meat" and "by-products" (fresh, refrigerated or frozen), including raw organ meats
- any meat that is salt-cured, dried, smoked or pickled in brine, including mutton, lamb and goat meats
- fish and fish "by-products", shellfish, mollusks and other water invertebrates (live, fresh, refrigerated, frozen, salt-cured, dried, smoked or pickled in brine, fish meal), including boiled or steamed shellfish in shells, as well as heat treated fish, shellfish, mollusks and other water invertebrates which were subsequently smoked
- "milk and dairy products", including milk, cream, yogurt, kefir, milk whey, butter, dairy paste, cheese and cottage cheese, but excluding ice cream
- vegetables, edible roots and tubers (fresh, refrigerated, frozen, dried)
- fruits and nuts (fresh, refrigerated, frozen, dried)
- uncooked and ready-to-eat sausage and like products made of meat, meat "by-products" or blood (including those made from mutton, lamb or goat meats); certain ready-to-eat products in which the concentration of the foodstuffs named in this item exceeds 20 percent
- ready-to-eat products and supplements containing certain amounts of malt extract, milk or vegetable fat as specified in the Customs Classifications, including certain dietary supplements and cooking ingredients

¹ The terms used in this summary are a direct translation of the terms used in the Customs Classifications.

The Regulation looks to the "country of origin" of foodstuffs, and not to the ultimate beneficial owner of such foodstuffs. Accordingly, to give a hypothetical example, a Turkish subsidiary of a EU company should still be able to deliver foodstuffs that are grown and harvested in Turkey and not processed elsewhere to Russia; conversely, a Turkish company should not be able to import into Russia unprocessed foodstuffs that are grown and harvested in the EU but transshipped to Russia via Turkey.

There has been some speculation that the food sanctions might be evaded by transshipping food via Belarus or Kazakhstan, the other members of the Customs Union. This is because Belarus and Kazakhstan have not imposed food sanctions, and cargoes transported across their frontiers into Russia are subject to simplified customs control procedures. Public statements by authorities in Kazakhstan and Belarus indicate that they are disinclined to impose similar food sanctions. At the same time, Kazakh and Belarusian customs authorities should refuse entry to foodstuffs banned by Russia if the cargoes are destined to Russia under relevant customs declarations.

Should you wish to discuss this situation and how it applies to your company, please feel free to contact your usual contacts at the Firm or [Scott Senecal](#) and [Yulia Solomakhina](#) in our Moscow office.

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