

# CLIENT UPDATE

## RUSSIA IMPOSES RESTRICTIONS ON AGRICULTURAL IMPORTS FROM THE US, EU, CANADA, AUSTRALIA AND NORWAY

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The Russian Presidential Edict (Указ) of 6 August 2014 No. 560 “On Certain Special Economic Measures to Ensure Security of the Russian Federation” declares a one-year ban on certain imports of agricultural products, raw materials and foods from countries that have adopted economic sanctions against Russian persons or adhered to such sanctions. The Edict directs the Government of the Russian Federation to prepare the list of categories of banned products and work out specific measures to implement the ban. Such measures are listed in the Russian Government’s Decree (Постановление) of 7 August 2014 No. 778 “On the Measures to Implement the Russian President Edict No. 560” which provides that the restrictions will apply to imports of food and other agricultural products originating from the USA, the EU, Canada, Australia and Norway. The Decree also specifies the types of banned products, which include meat, poultry, fish and seafood, milk and milk products, vegetables, fruit and nuts, and other food and ready-made meals. All of these agricultural products are defined according to specific codes in Russia’s foreign economic activity classification codes used for customs clearance purposes (ТН ВЭД). The codes are based on the internationally accepted “Harmonized Commodity Description and Coding System”, “HS” (see Annex 1 for more details on the goods/codes in question). Baby food is specifically carved out from the ban. The Government’s Decree directed the Russian Federal Customs Service to enforce the ban, and the customs service has already started such enforcement. It has also clarified some practical issues of the ban in its Order No. 1496 dated 7 August 2014.

Neither the Presidential Edict nor the Government's Decree, nor the Federal Customs Service Order provide for any grace period or grandfathering clause in respect of supplies under pre-existing contracts.

This new ban on imports (which is officially referred to as a form of counter-sanctions) follows a recent series of de facto bans on imports of foreign food products by Russian hygienic and sanitary control bodies, which were not officially considered sanctions (e.g., the recently announced ban on Polish fruit produce on sanitary grounds).

### **IMPACT ON PERFORMANCE OF CONTRACTS**

Among the numerous potential impacts of the food imports ban is disruption of contracts relating to the international sale (exports) of designated foreign food products to Russia and their subsequent distribution in Russia. Production of food in Russia may also be affected to the extent it depends on imported agricultural raw materials originating from the designated countries. The disruptions may lead to legal disputes, including over liability for non-performance and termination of contracts. These and other issues will have to be determined under the applicable law, which may or may not be Russian.

If Russian law applies, the ban could potentially constitute *force majeure* (обстоятельства непреодолимой силы) under Article 401 of the Russian Civil Code ("RCC"), provided that it directly affects the contracts and makes their further performance impossible. Furthermore, it may be possible to terminate the relevant contracts, in full or in part, due to "[de facto] impossibility of performance" (Article 416 of the RCC), "impossibility of performance due to adoption of a state act" (Article 417.1 of the RCC) or a "material change in circumstances" (Article 451 of the RCC). Whether those provisions will apply to a particular contract is a heavily fact-specific question, depending, in particular, on the language of the contract, the actual impact of the imports ban on performance and the availability of alternative means to secure performance (e.g., using stocks of agricultural goods already imported to Russia and available for sale locally). Other open legal issues and potential exposure are outlined below.

### **OPEN LEGAL ISSUES**

The imports ban gives rise to a wide range of contractual and non-contractual legal issues (as partly discussed above). At the very least, these issues include applicability of the imports ban to the parties, its impact on the parties' sale contract, as well as the possible impact on a variety of related contracts (e.g., transportation, pre-export financing, insurance and other contracts directly or indirectly dependent on, or related to the importation of goods that are now banned from Russia). Finally, the parties may find

themselves exposed to even broader legal consequences, such as those resulting from the forced stoppage of food production in the exporter's country or Russia. All such consequences need to be carefully considered by the parties involved against the background of their factual situation and the relevant contractual language. We identify below some of the key issues and open questions that the parties are likely to encounter, which is not intended to form an exhaustive checklist:

### *Applicability of the ban*

- Do the goods qualify under Russian law as originating from the designated "banned" countries?
- Do the restrictions also apply to goods imported to Russia through other Customs Union countries (e.g., Belarus and Kazakhstan), e.g., exported there and then processed or re-exported to Russia from there?
- Does the imports ban apply in all circumstances regardless of the legal grounds for the imports, or would carve-outs be available, e.g., for gratuitous contracts?

### *Impact on the sale contract*

- Does the ban qualify as *force majeure* and thus relieve a party from liability for non-performance or improper performance?
- Does the ban qualify as a legal ground for termination of the contract (e.g., due to the *de facto* or legal impossibility of performance or a "material change in circumstances", frustration or similar doctrines)?
- Is the affected party required to give notice of the ban to the counterparty?
- Would the origin of the goods be deemed an "essential condition" of the contract and are any alternative means of performance (e.g., replacement of the banned goods) available?
- What measures are to be taken by the parties now and going forward to mitigate losses?
- How does the legal analysis change where the goods are subject to general or individual restriction on sanitary and similar "technical" grounds in addition to or alternatively to an official imports ban?

*Impact on other contracts and legal relations*

- What is the impact of the stoppage of supplies on any related resale, logistics or insurance contracts?
- Does the ban (and the relevant stoppage of supplies and proceeds) affect the parties' pre-export or other facilities or breach any ancillary/security instruments thereto; does any of this lead to an event of default?
- To the extent the ban results in a local production stoppage (*e.g.*, at a Russian facility operating on imported raw materials), how are the facility's domestic contracts and legal relations affected (and in particular, if necessary, is it entitled to reduce procurement of goods and services from its suppliers and/or lay off part of the workforce)?

We will continue to provide updates as the situation develops.

For updates on Ukraine-related sanctions and other sanctions developments, please subscribe to the Debevoise & Plimpton LLP Sanctions Alert. The Sanctions Alert is a free, semi-monthly e-mail summary of developments in the area of economic and trade sanctions in the United States, the European Union, Russia and around the world. If you would like to subscribe, please e-mail [sanctions@debevoise.com](mailto:sanctions@debevoise.com) with a request to be added to the Sanctions Alert mailing list or sign up [here](#). The Firm's sanctions-related publications can also be found on [The Sanctions Resource](#) page of our website.

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Please do not hesitate to contact us with any questions.

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**ANNEX 1: LIST OF BANNED GOODS (UNOFFICIAL TRANSLATION)**

| <b>Customs Classification Code (TH BƏΔ), similar to HS Codes</b>                             | <b>Product's name<sup>1, 2</sup></b>  |
|--|---|
| 0201   | meat of bovine animals, fresh or chilled  |
| 0202   | meat of bovine animals, frozen  |
| 0203   | meat of swine, fresh, chilled or frozen   |
| 0207   | meat and edible “offal” (“sub-products”) of the poultry mentioned in heading 0105, fresh, chilled or frozen |
| from 0210 <sup>3</sup>   | meat (salted, in brine, dried or smoked)  |
| 0301, 0302, 0303, 0304, 0305, 0306, 0307, 0308   | fish and crustaceans, mollusks and other aquatic invertebrates  |
| 0401, 0402, 0403, 0404, 0405, 0406   | milk and dairy produce  |
| 0701, 0702 00 000, 0703, 0704, 0705, 0706, 0707 00, 0708, 0709, 0710, 0711, 0712, 0713, 0714 | edible vegetables and certain roots and tubers  |
| 0801, 0802, 0803, 0804, 0805, 0806, 0807, 0808, 0809, 0810, 0811, 0813                       | fruit and nuts  |

<sup>1</sup> For the purposes of this list, please refer to the Customs Classification (HS) Codes of the Customs Union only; the descriptive names of the products are given merely for convenience.

<sup>2</sup> Except baby food.

<sup>3</sup> For the purposes of this item, please refer to the Customs Classification (HS) Codes of the Customs Union as well as to the product's name.

| <b>Customs Classification Code (TH BЭД), similar to HS Codes</b>    | <b>Product's name<sup>1,2</sup></b>  |
|---|--|
| 1601 00   | sausages and similar products, of meat, meat offal or blood; food preparations based on these products |
| 1901 90 110 0,<br>1901 90 910 0,                                    | prepared foodstuffs, including cheese and curd based on vegetable oil                                  |
| 2106 90 920 0,<br>2106 90 980 4,<br>2106 90 980 5,<br>2106 90 980 9 | foodstuffs (containing milk, based on vegetable oil)   |