



Australia to impose a 35% tariff on all imports from Russia and Belarus

The Prime Minister has announced that effective 25 April 2022 Australia will impose an additional 35% tariff on imports from Russia and Belarus. The move is the latest trade sanction in response to Russia's invasion of the Ukraine.

The move is facilitated by Australia revoking the most favoured nation status of Russia. As a member of the World Trade Organisation Russia is entitled to the lowest tariff Australia offers other WTO members. Australia could only impose the 35% tariff if Russia's most favoured nation status was revoked. Belarus is not a WTO member so is not accorded most favoured nation status.

In addition to the 35% special tariff, normal customs duties will apply. For many imports, this will mean a duty rate of 40%. Where a tariff concession applies, we expect this will only apply to the general 5% duty and not the new 35% duty.

It is unclear at the time of writing whether the tariff will apply to both goods of Russia/Belarus origin as well as goods exported from Russia/Belarus regardless of origin. Practically it may not make a difference as the Australian Border Force may be very slow to believe that goods exported from Russia originated in a different country.

Issues to Consider

Goods on the water

There will be goods already on the water from Russia that will arrive after 25 April. These goods will be subject to the 35% duty unless the Government drafts an in-transit provision. These imports will be risky for freight forwards as the consignment may not longer be economically viable. This results in a risk of the consignment being abandoned. Freight forwarders should be contacting any clients with Russian goods on the water and making them aware of this new duty. It may be that the client will elect to discharge the cargo in another port that is not imposing the high duty.

Origin of the goods

Australia's has a relatively low level of customs fraud, largely because duty rates are low. However, a 35% duty rate will motivate parties to lie about the origin of the goods. Where you have reason to suspect the goods are of Russian/Belarus origin we recommend requiring strong proof of the claimed origin. While a free trade agreement may not apply, you may nevertheless insist on a certificate of origin or a declaration of origin from the actual manufacturer.

Be very suspicious of goods that have previously been shipped from Russia and now have a new country of origin.

While the details are not yet known, we expect that goods of Russian origin shipped from a third country will be subject to the 35% duty.

Value of the goods

Just as there is motivation to lie about the origin of the goods, there will be the temptation to provide a false value to reduce the impact of the duty. Customs broker's should consider seeking proof of payment for goods of Russia/Belarus origin. This may also help satisfy you that the transaction does not breach the restrictions on dealing with Russian banks.

Is this legal

WTO members do not have an unrestricted right to remove the most favoured nation status of a country. However, such a step is permitted on national security grounds. Russia has claimed that similar acts by other countries are illegal. The removal of a country's most favoured nation status on security grounds is an interesting position where there has been no declaration of war by Australia and Australia and Russia are not combatants.

If Russia successfully challenged the sanctions it would result in Russia having the right to impose retaliatory sanctions.

It will be interesting to see if in future years this expansion of the "national security" exception is used to facilitate trade protection measures.

Existing contracts

Traders may now find themselves a party to a contract that is not commercially viable. If the trader is the importer it may wish to exit the contract. Where this is the case it will need to carefully review the contract to determine whether a new tariff provides a termination right.

It will also be important to determine which party has the obligation to pay Australian customs duties.

Importantly, most trade with Russia is still legal so it may be that the contract has not been frustrated.

Advice should be sought regarding the right to terminate, and if there is no right, the consequences of breaching the contract.

Advising clients

In quickly changing times it is important for logistics professionals to keep their customers well informed. This includes advising about the increased duty rate, what transactions are prohibited and the likely impact on shipping times. No doubt goods that appear to be from Russia will be subject to more regular holds by border authorities. This could result in increased storage costs and container detention.

Please contact Russell Wiese at CGT Law (rwiese@cgtlaw.com.au, 0431 646 488) to discuss further.