



**COMMUNICATION FROM UKRAINE WITH REGARD TO  
TRADE-RESTRICTIVE MEASURES FROM THE RUSSIAN FEDERATION**

The following communication, dated 8 July 2016, is being circulated at the request of the delegation of Ukraine.

1.1. Ukraine draws WTO Members' attention to very recent, additional trade-restrictive measures adopted by the Russian Federation. These latest actions extend the duration of import bans and highly targeted, onerous transit measures. The scope of goods impacted is substantially expanded and the transit measures include further country destinations. A brief summary of the essential facts are as follows:

1.2. Two Russian Federation measures<sup>1</sup> dating back to early August 2014 foresaw prohibiting imports of certain agricultural products from certain WTO Members until 5 August 2016. The identified countries were: United States of America, European Union, Canada, Australia and Norway. In August 2015 Albania, Montenegro, Iceland, Liechtenstein and Ukraine were added to the above-mentioned list of countries. This severe trade-stopping action for Ukraine entered into effect on 1 January 2016. The outright ban imposed significant trade impact for Ukraine businesses due to the high level of previous bilateral trade with the Russian Federation.

1.3. Unfortunately, one more chapter in what appears to be a manual on "how not to conduct trade" particularly awaited Ukraine businesses: introduction of vaguely defined trade-disrupting transit measures for goods crossing the Russian Federation territory. Ukraine immediately noted its extreme disappointment in G/C/W720 when these Russian Federation actions were suddenly announced.<sup>2</sup> The objective of the transit actions alludes to ostensible national security concerns and severely restricts international transit of cargo by automotive and railway transportation. Most interesting, however, is that the restrictions only apply for goods directly entering the Russian Federation via the common Ukraine-Russian border. It is obviously clear that a number of discrete country borders exist on Russia's western boundaries. Only one country faces these transit restrictions at the common border with the Russian Federation: Ukraine.

1.4. The impact of Russia's restrictive transit rules has been devastatingly evident during the period of being in effect. Ukraine's export to the Republic of Kazakhstan decreased by more than \$112 million (about 50%) for four months. Why Ukraine's bilateral trade to Kazakhstan and other destinations in that region dropped dramatically is abundantly clear as vagueness disappeared and reality of the new requirements became apparent. Major transit restrictions are: (a) navigate a significantly longer route; (b) enter via a limited number of checkpoints only on the Belarusian border; (c) exit a limited number of checkpoints into Kazakhstan; (d) form specialized convoys of limited numbers on limited days; (e) pay for escort services; (f) register for and pay for specialized

<sup>1</sup> Presidential Decree as of 6 August 2014 No. 560 "On applying of certain special economic measures in order to ensure safety of the Russian Federation" and Government Resolution of 7 August 2014 No. 778 "On measures concerning implementation of the Presidential Decree as of 6 August 2014 No. 560 "On applying of certain special economic measures in order to ensure safety of the Russian Federation".

<sup>2</sup> Presidential Decree No. 1 "On protection of economic security and national interests of the Russian Federation in international transit of goods from the territory of Ukraine to the Republic of Kazakhstan through the territory of the Russian Federation" and Government Resolution No. 1 "On measures for implementation of Presidential Decree No. 1 "On protection of economic security and national interests of the Russian Federation in international transit of goods from the territory of Ukraine to the Republic of Kazakhstan through the territory of the Russian Federation" both dated 1 January 2016.

satellite tracking; (g) special requirements for drivers of vehicles. These requirements clearly exceed Article V of GATT 1994. Moreover, they raise serious questions if zero justification is or can be given regarding their trade-pertinent rationale. Why are such targeted trade-restrictive measures necessary? What is the nature of the risk and how do these requirements address the danger?

1.5. The Russian Federation's set of highly restrictive transit measures represents a major Ukraine trade concern. Accordingly, Ukraine has raised the issue in several relevant WTO Committees: Committee on Agriculture (9 March 2016 and 7 June 2016); Council for Trade in Goods (15 April 2016); SPS Committee (30 June 2016) and TBT Committee (15 June 2016). Admittedly, at first frustration and displeasure dominated. Trade through this entire region is important, and not only Ukraine's goods. Hence, even in spite of the significant additional costs and burdens, Ukraine commercial entities have pursued efforts to test the viability of maintaining a flow of at least some goods via this transit route. In the first six months of 2016 (since the transit measures were introduced) some trade has been possible, but as noted above at comparatively very low levels. At the same time, Ukraine has sought to clarify the exact implementing rules and their underlying rationale. Such operational details were unfortunately mostly discovered on a trial and error basis, which only mounted Ukraine's concern and frustration. The systemic concerns of such unexplained transit measures must be of interest to the wider trading community. Ukraine has not been able to gain any meaningful, trade-founded insight into the basic facts and rationale of the Russian Federation's transit measures. Certainly, responses in the various WTO committees have been less than satisfying; no meaningful and substantive response has been forthcoming from the Russian delegation. A recent Russian Federation response to seven detailed and distinctly different questions in the Committee on Agriculture yielded in total the simplistic: "*All actions of the Russian Federation are in full compliance with the WTO provisions*".

1.6. Regrettably, yet one more chapter in this never-ending saga has been recently publicized. One can only surmise that the effect of the already severe transit and import prohibition measures have failed to ensure Russia's national safety and defence concerns. Why, otherwise, would yet additional restrictive transit measures be piled on top of the existing ones? Recently the Russian Federation promulgated two additional trade-disruptive measures. Presidential Decree as of 29 June 2016 No. 305<sup>3</sup> extends until 31 December 2017 the import prohibitions noted above: Government Resolution No. 778 and Presidential Decrees No. 560, No. 320. Furthermore, as of 1 July 2016 Presidential Decree No. 319<sup>4</sup> expands the scope of the already existing transit measures to the Kyrgyz Republic and bans:

- Transit of goods for which the Russian Federation applies non-zero import duties set by the Common Customs Tariff of the Eurasian Economic Union;
- transit of goods which are under the import prohibitions pursuant to the Government Resolution of the Russian Federation of 7 August 2014 No. 778 "On measures concerning implementation of the Presidential Decrees of 6 August 2014 No. 560 and of 24 June 2014 No. 320".

1.7. A fundamental obligation of all WTO Members is to provide timely and transparent information on measures impacting trade. Moreover, Members have a responsibility to justify such trade-impinging measures within the well-known parameters of WTO commitments. Among other principles, a key aim is to ensure predictability. The "one day" notice for these latest supplementary transit measures gives no assurance of predictability.

1.8. The Russian Federation's glaring lack of transparency can be factually determined with regards to these transit measures. Even after repeated efforts, the Russian Federation has yet to give any clear, plausible and logical justification for the cumulative set of transit measures, which continue to distort Ukraine's transit trade with countries on Russia's eastern/southern borders. Ukraine's access to these markets depends on transiting the territory of the Russian Federation. At

---

<sup>3</sup> Presidential Decree as of 29 June 2016 No. 305 "The extension of certain special economic measures to ensure the security of the Russian Federation".

<sup>4</sup> Presidential Decree as of 1 July 2016 No. 319 "On Amendments to the Presidential Decree as of 1 January 2016 No. 1 "On protection of economic security and national interests of the Russian Federation in international transit of goods from the territory of Ukraine to the Republic of Kazakhstan through the territory of the Russian Federation".

a minimum, it is intuitively evident that the Russian Federation's restrictive transit measures by far exceed Article V of the GATT 1994 and commitments undertaken by the Russian Federation in its Protocol of Accession to the WTO. These import bans and transit measures appear to fall into a politically-motivated category. The Russian Federation is failing to abide by WTO transparency provisions and fundamental trade principles such as predictability. Russian Federation's measures as known and understood today reflect unjustified, discriminatory and obstacles to international trade.

1.9. Once again, Ukraine turns to the Russian Federation and seeks meaningful, substantive responses to the following questions on the transit measures.

#### QUESTIONS TO THE RUSSIAN FEDERATION REGARDING TRANSIT MEASURES

- (1) Explain in detail the requirement that traffic in transit from the territory of Ukraine through the territory of the Russian Federation must comply with since July 2016.
- (2) Provide information about the policy rationale behind the introduction of the measures.
- (3) Explain the rationale for the Russian Federation's decision to ban traffic in transit from the territory of Ukraine specifically to the Republic of Kazakhstan and Kyrgyz Republic.
- (4) Explain the rationale for the Russian Federation's decision to ban transit of the following goods from the territory of Ukraine to the Republic of Kazakhstan and Kyrgyz Republic:
  - (a) Goods for which the Russian Federation applies tariffs rates higher than zero according to the Common Customs Tariff of the Eurasian Economic Union;
  - (b) goods which are under the import prohibitions pursuant to the Government Resolution of the Russian Federation of 7 August 2014 No. 778 "On measures concerning implementation of the Presidential Decrees of 6 August 2014 No. 560 and of 24 June 2014 No. 320" concerning the application of certain special economic measures in order to ensure security of the Russian Federation.
- (5) Provide information on checkpoints, which can be used for transit of goods from the territory of Ukraine through the territory of the Russian Federation to the Republic of Kazakhstan and the Kyrgyz Republic.
- (6) Explain why the Russian Federation decided to restrict carrying out traffic in transit from the territory of Ukraine to the territory of the Republic of Kazakhstan through certain checkpoints in the Russian Federation-Belarus border.
- (7) Explain why the Russian Federation decided to restrict the exit of traffic in transit from the territory of Ukraine to the territory of the Republic of Kazakhstan through certain checkpoints in the Russian Federation-Kazakhstan border.
- (8) Provide all operational details, including subsidiary legislation or enforcement orders for customs authorities regarding the implementation of these measures.
- (9) Explain how Russian Federation's authorities enforce these measures and, in particular, if the country of origin of goods is the basis for applying these measures.
- (10) Clarify whether:
  - (a) The measures are applied, whether in law or in fact, only to goods in transit from the territory of Ukraine to the territory of the Republic of Kazakhstan and the Kyrgyz Republic; or

- (b) the measures are also applied, whether in law or in fact, to goods in transit from the territory of Ukraine to the territories of other countries. List these countries, if applicable.
- (11) State whether the Russian Federation has any other similar trade restrictions on traffic in transit. If so, please provide details.
- (12) Explain what regime was applicable to traffic in transit from the territory of Ukraine through the territory of the Russian Federation prior to the entry into force of the Presidential Decree of the Russian Federation as of 1 January 2016 No. 1 and the related legal acts.
- (13) Explain in detail the requirements for traffic in transit of the goods originating in Ukraine subject to the SPS and TBT restrictions under the Russian Federation's acts through the territory of the Russian Federation.
- (14) Provide all operational details, including subsidiary legislation or enforcement orders for customs authorities regarding this issue.
- (15) Describe what normative acts of the Eurasian Economic Union or the Russian Federation regulate traffic in transit from, or to the countries other than Ukraine.
- (16) Provide statistics for traffic in transit from the territory of Ukraine through the territory of the Russian Federation, by country of destination, for 2013, 2014, 2015 and the first half of 2016.
- (17) Explain how the measures comply with the WTO Agreements, including GATT Article V.
- (18) Explain how the measures are consistent with commitments undertaken by the Russian Federation upon accession to the WTO.
-