



RUSSIA - MEASURES CONCERNING TRAFFIC IN TRANSIT

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY UKRAINE

The following communication, dated 9 February 2017, from the delegation of Ukraine to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the establishment of a panel pursuant to Articles 4.7 and 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") concerning multiple restrictions on traffic in transit from the territory of Ukraine through the territory of the Russian Federation to third countries ("the restrictions on traffic in transit").

On 14 September 2016, Ukraine requested consultations with the Russian Federation pursuant to Articles 1 and 4 of the DSU and Article XXII of the GATT 1994. This request was circulated on 21 September 2016 as document WT/DS512/1. On 23 September 2016, a corrigendum was circulated as document WT/DS512/2. The consultations were held on 10 November 2016 with a view to reaching a mutually agreed solution. Unfortunately, the consultations failed to settle the dispute.

As a result, Ukraine respectfully requests that a Panel be established pursuant to Articles 4.7 and 6 of the DSU and Article XXIII of the GATT 1994 to examine this matter on the basis of the standard terms of reference as set out in Article 7.1 of the DSU.

I. Background

Since the application of the *EU – Ukraine Deep and Comprehensive Free Trade Area* on 1 January 2016 and the suspension by the Russian Federation of the *Treaty on a Free Trade Area between members of the Commonwealth of Independent States* with respect to Ukraine, the Russian Federation has adopted and implemented a number of measures *vis-à-vis* Ukraine which are inconsistent with its WTO obligations. In particular, the Russian Federation has adopted and applied various measures concerning traffic in transit from the territory of Ukraine (either originating or passing through the territory of Ukraine) through the territory of the Russian Federation to third countries by means of road and rail transportation.

In the sections below, Ukraine will identify the specific measures at issue, by grouping them into two groups of measures. For each group of measures, Ukraine will summarize the legal basis for the complaint.

II. First Group of Measures

A. The Measures at Issue

As of 1 January 2016, the Russian Federation has imposed – through Decree of the President of the Russian Federation No. 1 and Resolution of the Government of the Russian

Federation No. 1 – measures concerning traffic in transit from the territory of Ukraine to the territory of the Republic of Kazakhstan through the territory of the Russian Federation.

Pursuant to Decree of the President of the Russian Federation No. 1, all international cargo transit by road and rail transport from the territory of Ukraine to the territory of the Republic of Kazakhstan through the territory of the Russian Federation must be carried out exclusively from the territory of the Republic of Belarus.

Transit of goods from the territory of Ukraine to the territory of the Republic of Kazakhstan through the territory of the Russian Federation must also comply with a number of additional restrictive conditions, i.e. (i) the application of special identification means (seals) including those functioning on the basis of the technology of global satellite navigation system GLONASS and (ii) the use of certain registration cards for drivers when entering the territory of the Russian Federation, which must be kept during the trip and returned when leaving the territory of the Russian Federation at permanent or mobile checkpoints.

Additionally, Decree of the President of the Russian Federation No. 319 of 1 July 2016, amending Decree of the President of the Russian Federation No. 1, has imposed a ban on all road and rail transit of goods which are subject to non-zero import duties according to the Common Customs Tariff of the Eurasian Economic Union as well as of goods falling under the import ban pursuant to the Resolution of the Government of the Russian Federation No. 778 of 7 August 2014 "On measures for implementation of the Decrees of the President of the Russian Federation No. 560 of 6 August 2014, No. 320 of 24 June 2015 and No. 305 of 29 June 2016".

Decree of the President of the Russian Federation No. 319 has also extended all the above-mentioned measures to transit of goods from the territory of Ukraine to the territory of the Kyrgyz Republic through the territory of the Russian Federation. The Russian Federation has adopted several legal instruments to implement the above-mentioned measures, in particular in connection with the requirements of special identification means (seals) and the registration cards for drivers.

Ukraine understands that the Russian Federation imposes these measures through the following legal instruments:

- Decree of the President of the Russian Federation No. 1 of 1 January 2016 "On measures to ensure economic security and national interests of the Russian Federation in international cargo transit from the territory of Ukraine to the territory of the Republic of Kazakhstan or the Kyrgyz Republic through the territory of the Russian Federation", as amended by Decree of the President of the Russian Federation No. 319 of 1 July 2016 "On amendments to the Decree of the President of the Russian Federation No. 1 of 1 January 2016 'On measures to ensure economic security and national interests of the Russian Federation in international cargo transit from the territory of Ukraine to the territory of the Republic of Kazakhstan through the territory of the Russian Federation'", which was adopted in accordance with Federal Law of the Russian Federation No. 281-FZ of 30 December 2006 "On special economic measures";
- Decree of the President of the Russian Federation No. 560 of 6 August 2014 "On the application of certain special economic measures to ensure security of the Russian Federation", as amended by Decrees of the President of the Russian Federation No. 320 of 24 June 2015 and No. 305 of 29 June 2016 "On extension of certain special economic measures to ensure security of the Russian Federation";
- Resolution of the Government of the Russian Federation No. 778 of 7 August 2014 "On measures for implementation of the Decrees of the President of the Russian Federation No. 560 of 6 August 2014, No. 320 of 24 June 2015 and No. 305 of 29 June 2016", as amended by the following Resolutions of the Government of the Russian Federation: (i) Resolution No. 830 of 20.08.2014; (ii) Resolution No. 625 of 25.06.2015; (iii) Resolution No. 842 of 13.08.2015; (iv) Resolution No. 981 of 16.09.2015; (v) Resolution No. 1397 of 21.12.2015; (vi) Resolution No. 157 of 01.03.2016; (vii) Resolution No. 472 of 27.05.2016; (viii) Resolution No. 608 of 30.06.2016; (ix) Resolution No. 897 of 10.09.2016; and (x) Resolution No. 1086 of 22.10.2016;

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- Resolution of the Government of the Russian Federation No. 1 of 1 January 2016 "On measures related to the implementation of the Decree of the President of the Russian Federation No. 1 of 1 January 2016 'On measures to ensure economic security and national interests of the Russian Federation in international cargo transit from the territory of Ukraine to the territory of the Republic of Kazakhstan or the Kyrgyz Republic through the territory of the Russian Federation'", as amended by (i) Resolution of the Government of the Russian Federation No. 388 of 30 April 2016 "On introduction of amendments to Appendix to the Resolution of the Government of the Russian Federation No. 1 of 1 January 2016"; and (ii) Resolution of the Government of the Russian Federation No. 732 of 1 August 2016 "On amendments to some acts of the Government of the Russian Federation";
 - Resolution of the Government of the Russian Federation No. 147 of 27 February 2016 "On approval of requirements to the identification means (seals) including the ones functioning on the basis of the technology of global satellite navigation system GLONASS", as amended by Resolution of the Government of the Russian Federation No. 732 of 1 August 2016 "On amendments to some acts of the Government of the Russian Federation";
 - Order of JSC "Russian Railways" No. 529 of 28 March 2016 "On approval of the procedure for installing (removing) of the identification means (seals) operating on the basis of the technology GLONASS";
 - Resolution of the Government of the Russian Federation No. 276 of 6 April 2016 "On the procedure of exercising control over the international road and rail cargo transit from the territory of Ukraine to the territory of the Republic of Kazakhstan or the Kyrgyz Republic through the territory of the Russian Federation", as amended by Resolution of the Government of the Russian Federation No. 732 of 1 August 2016 "On amendments to some acts of the Government of the Russian Federation";
 - Any amendments, supplements, replacements, extensions, implementing measures and any other measures related to the measures listed above.

B. [Legal Basis for the Complaint](#)

Ukraine considers that the measures identified in Section II.A are inconsistent with the following WTO provisions:

- Article V:2 of the GATT 1994 and paragraph 2 of Part I of the Protocol on the Accession of the Russian Federation (WT/MIN(11)/24 and WT/L/839) ("the Accession Protocol") which incorporates commitments in paragraph 1161 of the Report of the Working Party on the Accession of the Russian Federation (WT/ACC/RUS/70 and WT/MIN(11)/2) ("Working Party Report"), because, by requiring that transit from the territory of Ukraine to the Republic of Kazakhstan and the Kyrgyz Republic through the territory of the Russian Federation be carried out exclusively from the Republic of Belarus and by imposing a ban on transit of certain goods, the Russian Federation denies freedom of transit through its territory via the routes most convenient for international transit, for traffic in transit from the territory of Ukraine and because, by requiring that transit from the territory of Ukraine to the Republic of Kazakhstan and the Kyrgyz Republic through the territory of the Russian Federation be carried out exclusively from the Republic of Belarus, complies with specific requirements concerning seals and registration cards and by imposing a ban on transit of certain goods, the Russian Federation makes distinctions based on the place of origin, departure, entry, exit or destination;
- Article V:3 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraph 1161 of the Working Party Report, because, by requiring that transit from the territory of Ukraine to the Republic of Kazakhstan and the Kyrgyz Republic through the territory of the Russian Federation be carried out exclusively from the Republic of Belarus, complies with specific requirements concerning seals and registration cards and by imposing a ban on transit of certain goods, traffic in transit coming from the territory of Ukraine through the Russian Federation's territory is subject to unnecessary delays and restrictions;

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- Article V:4 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraph 1161 of the Working Party Report, because the charges and regulations imposed by the Russian Federation, through the measures identified in Section II.A, on traffic in transit from the territory of Ukraine are not reasonable, having regard to the conditions of the traffic;
 - Article V:5 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraph 1161 of the Working Party Report, because, since the measures identified in Section II.A only apply to transit from the territory of Ukraine, the Russian Federation fails to accord, with respect to charges, regulations and formalities, to traffic in transit from the territory of Ukraine treatment no less favourable than the treatment accorded to traffic in transit from any third country;
 - Article XI:1 of the GATT 1994 because, through the measures identified in Section II.A, the Russian Federation maintains prohibitions or restrictions on the exportation or sale for export of products from Ukraine destined for the territory of other contracting parties.

Ukraine also considers that the Russian Federation acted inconsistently with the following WTO provisions:

- Article X:1 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraphs 1161, 1426 and 1427 of the Working Party Report, because the measures identified in Section II.A have not been published promptly in such a manner as to enable the Ukrainian Government and traders to become acquainted with them;
- Article X:2 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraphs 1161, 1426, 1427 and 1428 of the Working Party Report, because Decree of the President of the Russian Federation No. 319 and Resolution of the Government of the Russian Federation No. 732 became effective and/or were enforced before being officially published;
- Article X:3(a) of the GATT 1994 because the laws, regulations, decisions and rulings concerning traffic in transit as identified in Section II.A are not administered in a uniform, impartial and reasonable manner.

III. [Second Group of Measures](#)

A. [The Measures at Issue](#)

The Russian Federation also imposes other measures concerning traffic in transit from the territory of Ukraine through the territory of the Russian Federation.

First, since 30 November 2014, transit of goods subject to veterinary and phytosanitary surveillance and which are included in the list approved by Resolution of the Government of the Russian Federation No. 778 of 7 August 2014 and subsequent amendments, is prohibited through the checkpoints of the Republic of Belarus. The list of goods subject to this transit prohibition includes but is not limited to: bovine meat, fresh pork, live fish, fish and crustaceans, milk and dairy products, vegetables, fruits and nuts, sausages and similar products, food or prepared food, salt and plant products. The entry of such goods destined for consignees in the Republic of Kazakhstan and third countries for their subsequent transit through the territory of the Russian Federation is only allowed through the checkpoints located at the Russian part of the external border of the Customs Union.

Furthermore, the transit of goods subject to the above-mentioned transit restriction to the Republic of Kazakhstan must take place upon permits issued by the Committee of Veterinary Control and Surveillance of the Ministry of Agriculture of the Republic of Kazakhstan and indicating Russian checkpoints on the external border of the Customs Union, while the transit of the same goods to third countries can take place only upon permits issued by the Federal Service for Veterinary and Phytosanitary Surveillance of the Ministry of Agriculture of the Russian Federation ("Rosselkhoznadzor").

Ukraine understands that these measures are imposed through, inter alia, the following documents:

- Instructions of the Federal Service for Veterinary and Phytosanitary Surveillance of the Ministry of Agriculture of the Russian Federation ("Rosselkhoznadzor") No. FS-NV-7/22886 of 21 November 2014;
- Instructions of the Federal Service for Veterinary and Phytosanitary Surveillance of the Ministry of Agriculture of the Russian Federation ("Rosselkhoznadzor") No. FS-AS-7/22903 of 21 November 2014;
- Any additional measures that prolong, replace, amend, implement, extend or apply the measures at issue, as well as other related measures (including but not limited to measures related to veterinary and phytosanitary surveillance) adopted by the Russian Federation.

As a result of the restrictions imposed by these Instructions combined with the restrictions imposed by Decree No. 1, the goods falling within the scope of these Instructions are prohibited for transit from the territory of Ukraine through the territory of the Russian Federation to the territory of the Republic of Kazakhstan and the Kyrgyz Republic.

Second, the Russian Federation also imposes restrictions on the traffic in transit from the territory of Ukraine through the territory of the Russian Federation to countries in Central and Eastern Asia and Caucasus other than the Republic of Kazakhstan and the Kyrgyz Republic by de facto applying Decree No. 1 and Resolution No. 1 to transit from the territory of Ukraine to third countries other than the Republic of Kazakhstan and the Kyrgyz Republic.

Third, due to the fundamental lack of transparency concerning some of the measures at issue and the Russian Federation's failure to observe the transparency and publication obligations of the GATT 1994 and of its Accession Protocol, this Panel Request also covers any other related measures adopted and/or applied by the Russian Federation concerning traffic in transit from the territory of Ukraine to countries in Central/Eastern Asia and Caucasus through the territory of the Russian Federation, including measures that implement, complement, add to, apply, amend or replace any of the measures mentioned in Section II.A or Section III.A.

B. [Legal Basis for the Complaint](#)

Ukraine considers that the measures identified in Section III.A are inconsistent with the following WTO provisions:

- Article V:2 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraph 1161 of the Working Party Report, because, through the different measures identified in Section III.A, the Russian Federation denies freedom of transit through its territory via the routes most convenient for international transit, for traffic in transit from the territory of Ukraine and because it makes distinctions based on the place of origin, departure, entry, exit or destination;
- Article V:3 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraph 1161 of the Working Party Report, because, through the different measures identified in Section III.A, traffic in transit coming from the territory of Ukraine through the Russian Federation's territory is subject to unnecessary delays and restrictions;
- Article V:4 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraph 1161 of the Working Party Report, because, through the different measures identified in Section III.A, the charges and regulations imposed by the Russian Federation on traffic in transit from the territory of Ukraine are not reasonable, having regard to the conditions of the traffic;
- Article V:5 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraph 1161 of the Working Party Report, because, through

the different measures identified in Section III.A, the Russian Federation fails to accord, with respect to charges, regulations and formalities to traffic in transit from the territory of Ukraine treatment no less favourable than the treatment accorded to traffic in transit from any third country;

- Article XI:1 of the GATT 1994 because, through the different measures identified in Section III.A, the Russian Federation maintains prohibitions or restrictions on the exportation or sale for export of products from Ukraine destined for the territory of other contracting parties.

Ukraine considers that the Russian Federation also acted inconsistently with the following WTO provisions:

- Article X:1 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraphs 1161, 1426 and 1427 of the Working Party Report, because the measures concerning transit of goods from the territory of Ukraine to countries other than the Republic of Kazakhstan and the Kyrgyz Republic through the territory of the Russian Federation made effective by the Russian Federation have not been published promptly in such a manner as to enable the Ukrainian Government and traders to become acquainted with them;
- Article X:2 of the GATT 1994 and paragraph 2 of Part I of the Accession Protocol which incorporates commitments in paragraphs 1161, 1426, 1427 and 1428 of the Working Party Report, because the Russian Federation has enforced and/or made effective measures of general application including measures concerning the transit of goods from the territory of Ukraine to countries other than the Republic Kazakhstan and the Kyrgyz Republic through the territory of the Russian Federation before such measures were officially published;
- Article X:3(a) of the GATT 1994 because the Russian Federation fails to administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings concerning traffic in transit as identified in Section III.A.

These violations nullify or impair benefits accruing to Ukraine directly or indirectly under the covered agreements within the meaning of Article XXIII:1 of the GATT 1994.

Ukraine asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body expected to be held on 20 February 2017.
