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## **RUSSIA – MEASURES CONCERNING THE IMPORTATION AND TRANSIT OF CERTAIN UKRAINIAN PRODUCTS**

### **REQUEST FOR CONSULTATIONS BY UKRAINE**

The following communication, dated 13 October 2017, from the delegation of Ukraine to the delegation of the Russian Federation and to the Chairperson of the Technical Barriers to Trade Committee, is circulated in accordance with Article 4.4 of the DSU.\*

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My authorities have instructed me to request consultations with the Government of the Russian Federation, pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 24.8 of the *Agreement on Trade Facilitation* ("TFA"), Article 14.1 of the *Agreement on Technical Barriers to Trade* ("TBT Agreement") and Article 11.1 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("SPS Agreement"), concerning certain measures affecting trade of juice products, beer, beer-based beverages and other alcoholic beverages, confectionery products, wallpaper and similar wall coverings from Ukraine which appear to be inconsistent with the Russian Federation's obligations under several of the WTO covered agreements. For the purpose of these proceedings, Ukraine relies on Article XXIII of the GATT 1994 as regards all of its claims.

#### **1. BACKGROUND TO THIS REQUEST**

1. The measures affecting trade of juice products, beer, beer-based beverages and other alcoholic beverages, confectionery products, wallpaper and similar wall coverings were imposed by the Russian Federation in response to Ukraine's decision not to become a party to the Treaty on the Establishment of the Eurasian Economic Union. Those measures are also part of the Russian Federation's efforts both to deter Ukraine from entering into the Association Agreement with the European Union. That Association Agreement was signed by the parties on 27 June 2014, entered into force provisionally on 1 January 2016 and entered into force entirely on 1 September 2017.

2. Such measures affect several categories of products, namely juice products, beer, beer-based beverages and other alcoholic beverages, confectionery products, wallpaper and similar wall coverings originating in Ukraine. Those products of Ukrainian origin may no longer be imported into the territory of the Russian Federation. Furthermore, the Russian Federation also prohibits traffic in transit of certain of those products from Ukraine, through its territory, to third countries. The measures are applied in a non-transparent and unpredictable manner by the Russian Federation, and appear not to have been published and administered in a manner that is consistent with the Russian Federation's obligations under several of the WTO covered agreements.

#### **2. MEASURES AFFECTING TRADE IN JUICE PRODUCTS FROM UKRAINE AND CLAIMS MADE AS REGARDS THOSE MEASURES**

##### **2.1 Import ban on Ukrainian juice products and related measures**

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\* Owing to technical reasons, the symbol G/TBT/D/51 was missing from the document circulated with the symbols, WT/DS532/1 – G/L/1189 – G/TFA/D1/1 – G/SPS/GEN/1582.

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### 2.1.1 Measures at issue

3. Since 29 July 2014, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing of the Russian Federation ("Rospotrebnadzor") has suspended "the importation into the territory of the Russian Federation of Ukrainian juice products, including baby food".<sup>1</sup> This general import ban was announced by Rospotrebnadzor on 31 July 2014, and was subsequently confirmed by various letters of Rospotrebnadzor.

4. According to Rospotrebnadzor, "[w]hile carrying out federal state sanitary and epidemiological surveillance and federal state surveillance in the field of consumer protection, it was revealed that Ukrainian juice products did not pass state registration for compliance with the technical regulations of the Customs Union, while their labels had a single sign of product circulation on the market of the Customs Union Member States – 'EAC'".<sup>2</sup>

5. Rospotrebnadzor did not specify the legal basis under Russian law for the general import ban of Ukrainian juice products and related measures and for the inspection procedures that allegedly were carried out. It also seems that Rospotrebnadzor did not publish this general import ban and related measures in a manner that is consistent with the Russian Federation's obligations under the WTO covered agreements. Moreover, the Ukrainian juice producers have no evidence of or information relating to the inspections of their products, which were allegedly carried out by the Russian authorities prior to imposing the general import ban.

6. Repeated requests for information regarding the general import ban on Ukrainian juice products were sent to Rospotrebnadzor and other government bodies of the Russian Federation by the Ministry of Economic Development and Trade of Ukraine and Ukrainian producers. The requested information concerned, *inter alia*, the precise grounds for imposing the import ban and copies of the results of the inspection of the Ukrainian products. It appears that neither Rospotrebnadzor nor any other government body provided a substantiated and adequate response to these requests.

7. In addition, Ukraine requested, on 15 August 2015, information and clarifications via the TBT enquiry point of the Russian Federation in accordance with Articles 2.5 and 10 of the TBT Agreement. At the time of filing this request for consultations, no response has been received from the Russian Federation.

8. It appears that the Ukrainian juice products comply with the applicable technical regulations of the Customs Union and that their importation is accompanied by all necessary documents confirming their quality and safety, including evidence of state registration and certificates of conformity proving the compliance of the products with the regulatory legal acts of both the Russian Federation and the Customs Union. Some of the declarations of conformity of the Customs Union were even obtained after the imposition of the import ban. The Russian Federation, however, failed to take this information into account.

9. As a result of the general import ban, customs authorities crossed out the stamps "allowed for import" in customs declarations and transportation documents of Ukrainian juice products. The juice products were sent back to Ukraine. When doing so, the customs authorities did not provide the Ukrainian producers with any official document on the basis of which the goods were returned; nor did they provide any adequate explanation for these actions.

10. Ukrainian juice producers have also confirmed that they continue to export their juice products to the other member states of the Eurasian Economic Union on the basis of the declarations of conformity of the Eurasian Customs Union, which are also valid in the Russian Federation. Ukraine understands that the Russian Federation imposes, makes effective and/or administers the general import ban on Ukrainian juice products and related measures through, *inter alia*:

- Notice of Rospotrebnadzor dated 31 July 2014 "On the ban of importation of Ukrainian juice products";

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<sup>1</sup> Notice of Rospotrebnadzor dated 31 July 2014 "On the ban of importation of Ukrainian juice products".

<sup>2</sup> Notice of Rospotrebnadzor dated 31 July 2014 "On the ban of importation of Ukrainian juice products".

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- Letter of Rospotrebnadzor No. 03-63/1048 dated 1 August 2014;
  - Letter of Rospotrebnadzor No. 04-5724-14 dated 4 August 2014;
  - Letter of the Belgorod customs office of the Federal Customs Service of the Russian Federation No. 51-20/31676 to a Russian importer of juice products from Ukraine, dated 4 August 2014; and
  - Letter of Rospotrebnadzor No. 01/14112-14-39 to the Ministry of Economic Development and Trade of Ukraine dated 28 November 2014 "Regarding limitation of import of the products manufactured in Ukraine to the Russian Federation".

11. In addition, this request also covers, in whatever form, any related measures of the Russian Federation that guide, modify, supplement, extend, renew, replace, administer, implement and/or are otherwise closely connected to the above-mentioned measures. This is particularly important given the fundamental lack of transparency on the part of the Russian Federation with regard to the measures at issue including, in particular, the lack of identification of the reasons justifying the measures as well as the lack of a statement of the legal basis of those measures.

#### 2.1.2 Legal basis of the complaint

12. First, those measures of the Russian Federation impose restrictions on the importation of juice products from Ukraine and appear to discriminate between Ukrainian products and domestic like products and like products originating in third countries. Furthermore, the measures have not been published and administered properly, and information on the measures is not easily accessible or often unavailable.

13. As a result, Ukraine considers that those measures of the Russian Federation are inconsistent with several provisions of the GATT 1994, the TFA and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles I:1, X:1, X:2, X:3(a), X:3(b) and XI:1 of the GATT 1994;
- Articles 1.1.1(a), 1.1.1(f), 1.1.1(h), 1.3.1, 2.1.1 and 2.1.2 of the TFA; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 1426, 1427 and 1428 of the Working Party Report.

14. Second, insofar as the measures of the Russian Federation fall within the scope of the TBT Agreement, Ukraine considers that they are inconsistent with several provisions of that agreement. Indeed, these measures appear to create unnecessary obstacles to international trade and discriminate between, on the one hand, (suppliers of) Ukrainian products and, on the other hand, (suppliers of) domestic like products and (suppliers of) like products originating in any other country. The Russian Federation has failed to base those measures on international standards and has failed to adequately explain the justification for those measures. Furthermore, the Russian Federation has failed to undertake and complete its conformity assessment procedures in an expeditious manner and in a no less favourable manner for Ukrainian products than for like domestic products. The Russian Federation also failed to adequately transmit the results of such assessments to the applicants thereof and ensure that, whenever possible, results of conformity assessment procedures in other Members are accepted. In addition, the Russian Federation failed to provide sufficient information about the measures and to respond to reasonable enquiries from Ukraine and Ukrainian producers.

15. As a result, Ukraine considers that the measures of the Russian Federation are inconsistent with several provisions of the TBT Agreement and the Accession Protocol of the Russian Federation, including but not limited to:

- Article 2.1, 2.2, 2.4, 2.5, 2.11, 5.1.1, 5.1.2, 5.2.1, 5.2.2, 5.2.8, 6.1 and 10.1 of the TBT Agreement; and
- Paragraph 2 of Part I of the Accession Protocol which incorporates the commitments in paragraphs 714, 715, 719, 728, 745, 784, 799, 803, 804 and 813 of the Working Party Report.

## 2.2 Transit ban on Ukrainian juice products

### 2.2.1 Measures at issue

16. Since 2016, the Russian Federation has prohibited traffic in transit, through its territory, of Ukrainian juice products that may not be imported. The specific ground invoked for imposing that transit ban is the fact that the importation of Ukrainian juice products has been prohibited since 29 July 2014. The transit ban, which is applied as a result of the import ban, applies to all juice products of Ukrainian origin, regardless of the border at which the products enter the territory of the Russian Federation.

17. As a result, the transit ban on Ukrainian juice products challenged in these proceedings appears to apply separately and in addition to the bans and restrictions of traffic in transit introduced by 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" ("Decree No. 1") and 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'" ("Decree No. 319"), which are challenged in WT/DS512 *Russia – Measures Concerning Traffic in Transit*.

18. It appears that the transit ban has not been published and administered in a manner that is consistent with the Russian Federation's obligations under the WTO covered agreements. For example, there appears to be no explanation of the reasons for applying the transit ban in 2016 despite the fact that the import ban was already in place as of 29 July 2014.

19. Ukraine understands that the Russian Federation imposes, makes effective and/or administers this transit ban on Ukrainian juice products through, *inter alia*:

- Letter of the Federal Customs Service of the Russian Federation No. 01-11/15777 "On submission of information" of 6 April 2016;
- Articles 152(2) and 216 of the Customs Code of the Customs Union; and
- Articles 5 and 12(1)(6) of the Federal Law of the Russian Federation No. 311-FZ dated 27 November 2010, "On Customs Regulation in the Russian Federation".

20. In addition, this request also covers, in whatever form, any related measures of the Russian Federation that guide, modify, supplement, extend, renew, replace, administer, implement and/or are otherwise closely connected to the above-described measures. This is particularly important given the fundamental lack of transparency on the part of the Russian Federation with regard to the measures at issue including, in particular, the lack of identification of the reasons justifying the measures as well as the lack of a statement of the legal basis of those measures.

### 2.2.2 Legal basis of the complaint

21. Through those measures, the Russian Federation denies freedom of transit through its territory to traffic in transit of Ukrainian juice products, discriminates amongst traffic in transit, and subjects traffic in transit from Ukraine to unnecessary delays and restrictions. Furthermore, these measures have not been properly published and administered, and information on these measures is not easily accessible or often unavailable.

22. As a result, Ukraine considers that those measures of the Russian Federation are inconsistent with several provisions of the GATT 1994, the TFA and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles V:2, V:3, V:5, V:6, X:1, X:2, X:3(a) and X:3(b) of the GATT 1994;
- Article 1.1.1(a), 1.1.1(f), 1.1.1(h), 2.1.1, 2.1.2, 11.1(a), 11.1(b) and 11.8 of the TFA; and

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- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 1161, 1426, 1427 and 1428 of the Working Party Report.

### **3. MEASURES AFFECTING TRADE IN BEER, BEER-BASED BEVERAGES AND OTHER ALCOHOLIC BEVERAGES FROM UKRAINE AND CLAIMS MADE AS REGARDS THOSE MEASURES**

#### **3.1 Measures at issue**

23. Since 15 August 2014, Rospotrebnadzor has banned the importation into the Russian Federation of alcoholic beverages, beer and beer beverages produced by three Ukrainian producers.<sup>3</sup> This producer-specific import ban affects the majority (up to 70%) of the Ukrainian beer, beer-based beverages and other alcoholic beverages which are exported to the Russian Federation.

24. The reason given by Rospotrebnadzor for imposing that import ban is that "while carrying out state surveillance over circulation of food products, examination of vodka, beer and beer beverages of Ukrainian production has revealed numerous violations of legislative requirements in the field of consumer protection (inconsistency of requirements to products labelling)".<sup>4</sup>

25. Repeated requests for information and consultations regarding the producer-specific import ban were sent to Rospotrebnadzor and other government bodies of the Russian Federation by Ukrainian producers and Ukrainian state agencies. The information requested concerned, *inter alia*, the precise grounds for imposing the import ban and copies of the results of the inspection of the Ukrainian products. It appears that neither Rospotrebnadzor nor any other government body provided a substantiated and adequate response to these requests.

26. The Russian Federation fails to take into account that the Ukrainian beer, beer-based beverages and other alcoholic beverages are certified by the necessary certificates of conformity and state registration. It also appears that the export of such beverages produced by Ukrainian producers to the other member states of the Eurasian Economic Union is not prohibited.

27. Rospotrebnadzor did not specify the legal basis under Russian law for the producer-specific import ban on beer, beer-based beverages and other alcoholic beverages from Ukraine and related measures and for the inspection procedures that were carried out. It also seems that Rospotrebnadzor failed to elaborate sufficiently on the reasons for non-compliance with the labelling requirements and failed to publish the import ban and related measures in a manner that is consistent with the Russian Federation's obligations under the WTO covered agreements.

28. Ukraine understands that the Russian Federation imposes, makes effective and/or administers the producer-specific import ban on Ukrainian, beer, beer-based beverages and other alcoholic beverages and related measures through, *inter alia*:

- Letter of Rospotrebnadzor No. 01/8654-14-23 dated 1 August 2014 "On the prohibition of the import of Ukrainian products";
- Letter of Rospotrebnadzor No. 01/9231-14-23 dated 13 August 2014 "On the prohibition of the import of Ukrainian products";
- Notice of Rospotrebnadzor dated 13 August 2014 "On the suspension of importation of alcoholic beverages, beer and beer beverages produced in Ukraine";

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<sup>3</sup> See Notice of Rospotrebnadzor dated 13 August 2014 "On the suspension of importation of alcoholic beverages, beer and beer beverages produced in Ukraine"; the Letter of Rospotrebnadzor No. 01/8654-14-23 dated 1 August 2014 "On the prohibition of the import of Ukrainian products" (Rospotrebnadzor decided to "suspend import of alcoholic beverages, beer and beer beverages produced in Ukraine from 15 August 2014 (HS codes 2203, 2209 60, 2208 90)") and the Letter of Rospotrebnadzor No. 01/9231-14-23 dated 13 August 2014 "On the prohibition of the import of Ukrainian products" (Rospotrebnadzor "suspended the importation into the territory of the Russian Federation of alcoholic beverages (HS code 2208 60, 2208 90) only produced by [a Ukrainian producer], and beer and beer beverages (HS Code 2203) produced by [two Ukrainian producers]").

<sup>4</sup> Notice of Rospotrebnadzor dated 13 August 2014 "On the suspension of importation of alcoholic beverages, beer and beer beverages produced in Ukraine".

- Letter of Rospotrebnadzor No. 01/14112-14-39 to the Ministry of Economic Development and Trade of Ukraine dated 28 November 2014 "Regarding limitation of import of the products manufactured in Ukraine to the Russian Federation"; and
- Letter of Rospotrebnadzor No. 01/14093-14-39 to PJSC "Obolon" dated 28 November 2014.

29. In addition, this request also covers, in whatever form, any related measures of the Russian Federation that guide, modify, supplement, extend, renew, replace, administer, implement and/or are otherwise closely connected to the above-mentioned measures. This is particularly important given the fundamental lack of transparency on the part of the Russian Federation with regard to the measures at issue including, in particular, the lack of identification of the reasons justifying the measures as well as the lack of a statement of the legal basis of those measures.

### **3.2 Legal basis of the complaint**

30. First, those measures of the Russian Federation impose restrictions on the importation of beer, beer-based beverages and other alcoholic beverages from Ukraine and appear to discriminate amongst Ukrainian products and domestic like products and like products originating in third countries. Furthermore, the measures have not been published and administered properly, and information on the measures is not easily accessible or often unavailable.

31. As a result, Ukraine considers that those measures of the Russian Federation are inconsistent with several provisions of the GATT 1994, the TFA and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles I:1, X:1, X:2, X:3(a), X:3(b) and XI:1 of the GATT 1994;
- Articles 1.1.1(a), 1.1.1(f), 1.1.1(h), 1.3.1, 2.1.1 and 2.1.2 of the TFA; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 1426, 1427 and 1428 of the Working Party Report.

32. Second, insofar as the measures of the Russian Federation fall within the scope of the TBT Agreement, Ukraine considers that they are inconsistent with several provisions of that agreement. Indeed, these measures appear to create unnecessary obstacles to international trade and discriminate between, on the one hand, (suppliers of) Ukrainian products and, on the other hand, (suppliers of) like products of national origin and (suppliers of) like products originating in any other country. The Russian Federation has failed to base those measures on international standards and has failed to adequately explain the justification for those measures. Furthermore, the Russian Federation has failed to undertake its conformity assessment procedures in an expeditious manner and in a no less favourable manner for Ukrainian products than for like domestic products. The Russian Federation also failed to transmit adequately the results of such assessments to the applicants and ensure that, whenever possible, results of conformity assessment procedures in other Members are accepted. In addition, the Russian Federation failed to provide sufficient information about the measures and to respond to reasonable enquiries from Ukraine and Ukrainian producers.

33. As a result, Ukraine considers that the measures of the Russian Federation are inconsistent with several provisions of the TBT Agreement and the Accession Protocol of the Russian Federation, including but not limited to:

- Article 2.1, 2.2, 2.4, 2.5, 2.11, 5.1.1, 5.1.2, 5.2.1, 5.2.2, 5.2.8, 6.1 and 10.1 of the TBT Agreement; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 714, 715, 719, 728, 745, 784, 799, 803, 804 and 813 of the Working Party Report.

## **4. MEASURES AFFECTING TRADE IN CONFECTIONERY PRODUCTS FROM UKRAINE AND CLAIMS MADE REGARDING THOSE MEASURES**

### **4.1 Import bans on Ukrainian confectionery products and related measures**

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#### 4.1.1 Measures at issue

34. Since 31 July 2013, Rospotrebnadzor has banned "the import of the confectionery products, produced by [factories of a Ukrainian confectionery producer] into the territory of the Russian Federation".<sup>5</sup>

35. Subsequent to the imposition of that import ban, Rospotrebnadzor carried out inspections at the factories concerned. It appears that the purpose of those inspections was to verify compliance with technical regulations governing food safety and the labelling of food products, though the precise object of the inspections remains uncertain. A representative of the main Russian competitor of the Ukrainian confectionery producer participated in the inspections, causing the inspection process to be administered in a partial manner. Although the inspectors refused to sign the final inspection report, Rospotrebnadzor nonetheless announced that the confectionery products did not meet the applicable requirements for microbiological safety and product quality indicators.

36. The producer-specific import ban was followed by a general ban on importation of all Ukrainian confectionery products into the territory of the Russian Federation, which was imposed by Rospotrebnadzor on 5 September 2014 and applied as of that date. On 3 September 2014, Rospotrebnadzor announced that "with effect from 5 September 2014, importation into the territory of the Russian Federation of confectionery products (FEACN 1704, 1806, 1905) produced in Ukraine is suspended".<sup>6</sup> An additional notice was published on 5 September 2014. That announcement was also confirmed by the Federal Customs Service of the Russian Federation on 6 April 2016. The letter and notice of Rospotrebnadzor dated, respectively, 3 and 5 September 2014 suggest that the importation of all Ukrainian confectionery products was banned because such products of two producers were found to violate requirements of consumer protection legislation.

37. Repeated requests for information regarding the general ban on importation of Ukrainian confectionery products were sent to Rospotrebnadzor and other government bodies of the Russian Federation by Ukrainian producers and the Ministry of Economic Development and Trade of Ukraine. The information requested concerned, *inter alia*, an official notification of the import ban, the grounds for imposing the import ban, the results of laboratory tests, references to applicable legislation and the sampling procedure(s) used. It appears that neither Rospotrebnadzor nor any other government body provided a substantiated and adequate response to the Ukrainian requests for information.

38. The reasons given by Rospotrebnadzor for imposing the producer-specific and general import ban on confectionery products from Ukraine appear to be uncertain, incomplete, changing and contradictory. Some reasons are advanced in the measures themselves; others are to be found in public statements made by Rospotrebnadzor or other representatives of the Government of the Russian Federation.

39. Rospotrebnadzor did not specify the legal basis under Russian law for the measures affecting the importation of confectionery products from Ukraine and for the inspection procedures that were carried out. Moreover, it seems that Rospotrebnadzor did not publish the import bans and related measures in a manner that is consistent with the Russian Federation's obligations under the WTO covered agreements.

40. Ukraine understands that the Russian Federation imposes, makes effective and/or administers the import bans on Ukrainian confectionery products and related measures through, *inter alia*:

- Letter of Rospotrebnadzor No. 01/8612-13-23 to the Head of the Federal Customs Service of the Russian Federation dated 29 July 2013 "On ban on imports of confectionery goods produced at the factories of [a Ukrainian producer]";

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<sup>5</sup> Notice of Rospotrebnadzor dated 31 July 2013 "On ban on imports of confectionery goods produced at the factories of [a Ukrainian producer]".

<sup>6</sup> Letter of Rospotrebnadzor No. 01/10288-14-23 dated 3 September 2014 "On prohibition on import of confectionery products originating from Ukraine".

- Notice of Rospotrebnadzor dated 31 July 2013 "On ban on imports of confectionery goods produced at the factories of [a Ukrainian producer]";
- Notice of Rospotrebnadzor dated 6 August 2013 "On evaluation of confectionery goods produced at factories of [a Ukrainian producer]";
- Notice of the Administration of the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing in the Chuvash Republic dated 31 October 2013 "On products of [a Ukrainian producer]";
- Letter of Rospotrebnadzor No. 01/10288-14-23 dated 3 September 2014 "On prohibition on import of confectionery products originating from Ukraine";
- Notice of Rospotrebnadzor dated 5 September 2014 "On suspension of importation of confectionery products from Ukraine";
- Letter of the Federal Customs Service of the Russian Federation to the regional customs departments and customs bodies No. 14-82/42477 dated 5 September 2014;
- Letter of Rospotrebnadzor No. 01/14112-14-39 to the Ministry of Economic Development and Trade of Ukraine dated 28 November 2014 "Regarding limitation of import of the products manufactured in Ukraine to the Russian Federation";
- Letter of the Federal Customs Service of the Russian Federation No. 01-11/15777 dated 6 April 2016 "On submission of information";
- Letter of the Representation of the Customs Service of the Russian Federation in Ukraine to the State Fiscal Service of Ukraine No. 05-12/84 dated 27 April 2016; and
- Letter of the Federal Customs Service of the Russian Federation No. 01-18/21260 to the Embassy of Ukraine in the Russian Federation dated 5 May 2016.

41. In addition, this request covers, in whatever form, any related measures of the Russian Federation that guide, modify, supplement, extend, renew, replace, administer, implement and/or are otherwise closely connected to the above-described measures. This is particularly important, given the fundamental lack of transparency on the part of the Russian Federation with regard to the measures at issue including, in particular, the lack of identification of the reasons justifying the measures as well as the lack of a statement of the legal basis of those measures.

#### 4.1.2 Legal basis of the complaint

42. First, those measures of the Russian Federation impose restrictions on the importation of confectionery products from Ukraine and appear to discriminate amongst Ukrainian products and domestic like products and like products from third countries. Furthermore, the measures have not been published and administered properly, and information on the measures is not easily accessible or often unavailable.

43. As a result, Ukraine considers that those measures of the Russian Federation are inconsistent with several provisions of the GATT 1994, the TFA and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles I:1, X:1, X:2, X:3(a), X:3(b) and XI:1 of the GATT 1994;
- Articles 1.1.1(a), 1.1.1(f), 1.1.1(h), 1.3.1, 2.1.1 and 2.1.2 of the TFA; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 1426, 1427 and 1428 of the Working Party Report.

44. Second, insofar as the measures of the Russian Federation fall within the scope of the TBT Agreement, Ukraine considers that they are inconsistent with several provisions of that



agreement. Indeed, through those measures, the Russian Federation appears to create unnecessary obstacles to international trade and discriminate between, on the one hand, (suppliers of) Ukrainian products and, on the other hand, (suppliers of) like products of national origin and (suppliers of) like products originating in any other country. The Russian Federation has failed to base those measures on international standards and to adequately explain the justification for those measures. Furthermore, the Russian Federation has failed to undertake and complete its conformity assessment procedures in an expeditious manner and in a no less favourable manner for Ukrainian products than for like domestic products. The Russian Federation also failed to transmit the results of such assessments to the applicants and ensure that, whenever possible, results of conformity assessment procedures in other Members are accepted. In addition, the Russian Federation failed to provide sufficient information about the measures and to respond to reasonable enquiries from Ukraine and Ukrainian producers.

45. Consequently, Ukraine considers that the measures at issue are inconsistent with several provisions of the TBT Agreement and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles 2.1, 2.2, 2.4, 2.5, 2.11, 5.1.1, 5.1.2, 5.2.1, 5.2.2, 5.2.8, 6.1 and 10.1 of the TBT Agreement; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 714, 715, 719, 728, 745, 784, 799, 803, 804 and 813 of the Working Party Report.

46. Third, insofar as the measures of the Russian Federation fall within the scope of the SPS Agreement, Ukraine considers that they are inconsistent with several provisions of that agreement. Indeed, the measures of the Russian Federation are applied beyond the extent necessary to protect human life and health, are not based on an appropriate risk assessment and are maintained without sufficient scientific evidence. These measures also appear to discriminate arbitrarily or unjustifiably between Members where identical or similar conditions prevail and are applied in a manner which constitutes a disguised restriction on international trade. The Russian Federation also failed to undertake and complete the procedure to check the fulfilment of the sanitary and phytosanitary measures in a fair and timely manner and failed to transmit the results of any such procedure to the applicants.

47. As a result, Ukraine considers that the measures at issue are inconsistent with several provisions of the SPS Agreement and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 7 (read together with paragraph 1 of Annex B) and 8 (read together with paragraphs 1(a) and 1(b) of Annex C) of the SPS Agreement; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 926, 955, 1009, 1031, 1033, 1055, 1060 and 1062 of the Working Party Report.

## **4.2 Transit ban on Ukrainian confectionery products**

### **4.2.1 Measures at issue**

48. Since March 2016, the Russian Federation has prohibited traffic in transit, through its territory, of Ukrainian confectionery products that may not be imported. The specific ground invoked for imposing that transit ban is the fact that the importation of Ukrainian confectionery products (classified under FEACN 1704, 1806 or 1905) has been prohibited since 5 September 2014. The transit ban, which is applied as a result of the import ban, applies to all confectionery products of Ukrainian origin, regardless of the border at which the products enter the territory of the Russian Federation.

49. Thus, the transit ban on Ukrainian confectionery products challenged in these proceedings appears to apply separately and in addition to the bans on and restrictions of traffic in transit

introduced by Decree No. 1 and Decree No. 319, which are part of the measures at issue in WT/DS512 *Russia – Measures Concerning Traffic in Transit*.

50. It appears that the transit ban on Ukrainian confectionery products has not been published and administered in a manner that is consistent with the Russian Federation's obligations under the WTO covered agreements. For example, there appears to be no explanation of the reasons for applying the transit ban in 2016, despite the fact that the import ban was already in place as of 5 September 2014.

51. Ukraine understands that the Russian Federation imposes, makes effective and/or administers this transit ban on Ukrainian confectionery products through, *inter alia*:

- Notice of the Magaramkentsky customs office dated 3 April 2016;
- Letter of the Federal Customs Service of the Russian Federation No. 01-11/15777 dated 6 April 2016, "On submission of information";
- Letter of the Federal Customs Service of the Russian Federation No. 04-40/20037 to [a Ukrainian producer of confectionery products] dated 26 April 2016;
- Letter of the Representation of the Customs Service of the Russian Federation in Ukraine to the State Fiscal Service of Ukraine No. 05-12/84 dated 27 April 2016;
- Letter of the Ministry of Transport of the Russian Federation No. 9-517 to the Deputy Minister of Infrastructure of Ukraine dated 4 May 2016;
- Letter of the Federal Customs Service of the Russian Federation No. 01-18/21260 to the Embassy of Ukraine in the Russian Federation dated 5 May 2016;
- Articles 152(2) and 216 of the Customs Code of the Customs Union; and
- Articles 5 and 12(1)(6) of the Federal Law of the Russian Federation No. 311-FZ dated 27 November 2010, "On Customs Regulation in the Russian Federation".

52. In addition, this request also covers, in whatever form, any related measures of the Russian Federation that guide, modify, supplement, extend, renew, replace, administer, implement and/or are otherwise closely connected to the above-described measures. This is particularly important given the fundamental lack of transparency on the part of the Russian Federation with regard to the measures at issue including, in particular, the lack of identification of the reasons justifying the measures as well as the lack of a statement of the legal basis of those measures.

#### 4.2.2 Legal basis of the complaint

53. Through those measures, the Russian Federation denies freedom of transit through its territory to traffic in transit of Ukrainian products, discriminates amongst traffic in transit, and subjects traffic in transit from Ukraine to unnecessary delays and restrictions. Furthermore, those measures have not been published and administered properly, and information on those measures is not easily accessible or often unavailable.

54. As a result, Ukraine considers that those measures of the Russian Federation are inconsistent with several provisions of the GATT 1994, the TFA and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles V:2, V:3, V:5, V:6; X:1, X:2, X:3(a) and X:3(b) of the GATT 1994;
- Article 1.1.1(a), 1.1.1(f), 1.1.1(h), 2.1.1, 2.1.2, 11.1(a), 11.1(b) and 11.8 of the TFA; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 1161, 1426, 1427 and 1428 of the Working Party Report.

## **5. MEASURES AFFECTING TRADE IN WALLPAPER AND SIMILAR WALL COVERINGS FROM UKRAINE AND CLAIMS MADE AS REGARDS THOSE MEASURES**

### **5.1 Measures at issue**

55. Since 13 April 2015, Rospotrebnadzor has banned "the importation into the territory of the Russian Federation of wallpaper and similar wall coverings produced by [four Ukrainian producers], FEACN code 4814".<sup>7</sup> This producer-specific import ban affects the majority (up to 80%) of the Ukrainian wallpaper which is exported to the Russian Federation.

56. The import ban was announced by Rospotrebnadzor on 10 April 2015 and was subsequently confirmed by various letters of Rospotrebnadzor. According to Rospotrebnadzor, "while carrying out examination of wallpapers of Ukrainian production within the framework of federal state sanitary and epidemiological surveillance, violations of legislative requirements in the field of welfare of the population were revealed".<sup>8</sup> More precisely, it was found that the products of four Ukrainian wallpaper producers "were not consistent with the requirements for migration of formaldehyde and sterol into air".

57. The Ukrainian wallpaper producers did not receive from the Russian authorities any official notification or additional information on the import ban, or relating to the official inspections of their products conducted by the Russian authorities, prior to the imposition of the import ban.

58. The producer-specific import ban on Ukrainian wallpaper and similar wall coverings was imposed on the basis of alleged violations of hygienic requirements, which appear to be detected by the Expert Conclusion of 1 April 2015, issued by the Federal State Budgetary Institution of Healthcare "Centre of Hygiene and Epidemiology in Moscow". According to the Expert Conclusion, the tested wallpaper did not comply with Section 6 of Chapter II of the Common Sanitary Epidemiological and Hygienic Requirements in terms of formaldehyde and sterol emissions. However, there are discrepancies between the test results and the conclusions of the Expert Conclusion. The results of the Expert Conclusion have been repeatedly contradicted by laboratory testing undertaken by the Ukrainian producers of wallpaper, territorial administrations of Rospotrebnadzor in different regions of the Russian Federation and relevant authorities in Belarus.

59. Repeated requests for information regarding the producer-specific import ban were sent to Rospotrebnadzor and other government bodies of the Russian Federation by Ukrainian producers and Ukrainian state agencies. The information requested concerned, *inter alia*, the precise grounds for imposing the import ban, the results of laboratory testing and the reasons for the non-recognition of certificates of conformity. It appears that neither Rospotrebnadzor nor any other government body provided a substantiated and adequate response to these requests.

60. The Russian Federation fails to take into account that the Ukrainian wallpaper and similar wall coverings were (both before and after imposing the import ban) certified by the necessary conformity assessment certificates, and that inspections performed by different institutions (e.g. territorial administrations of Rospotrebnadzor and relevant authorities in Belarus) all resulted in the conclusion that the wallpaper and similar wall coverings complied with the relevant sanitary and epidemiological requirements, including the permitted concentrations of formaldehyde and sterol.

61. Rospotrebnadzor did not specify the legal basis under Russian law for the measures affecting the importation of Ukrainian wallpaper and similar wall coverings and for the inspection procedures that were carried out. It also seems that Rospotrebnadzor did not publish the import bans and related measures in a manner that is consistent with the Russian Federation's obligations under the WTO covered agreements.

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<sup>7</sup> Letter of Rospotrebnadzor No. 01/3820-15-32 "Regarding ban on the importation of Ukrainian products" to its regional offices dated 10 April 2015. Also see the letter of Rospotrebnadzor No. 01/5717-15-39 "On the ban on importation of [a Ukrainian producer's] wallpaper" to a Ukrainian wallpaper producer dated 26 May 2015.

<sup>8</sup> Letter of Rospotrebnadzor No. 01/3820-15-32 "Regarding ban on the importation of Ukrainian products" to its regional offices dated 10 April 2015.

62. Ukraine understands that the Russian Federation imposes, makes effective and/or administers the producer-specific import ban on Ukrainian wallpaper and similar wall coverings and related measures through, *inter alia*:

- Expert Conclusion of the Federal State Budgetary Institution of Healthcare "Centre of Hygiene and Epidemiology in Moscow" dated 1 April 2015;
- Letter of Rospotrebnadzor No. 01/3820-15-32 "Regarding ban on the importation of Ukrainian products" to its regional offices dated 10 April 2015;
- Notice of the Rospotrebnadzor Administration of the Belgorod District No. 2 to a transporter of wallpaper produced by a Ukrainian producer dated 21 April 2015;
- Letter of Rospotrebnadzor No. 01/5717-15-39 "On the ban on importation of [a Ukrainian producer's] wallpaper" to a Ukrainian wallpaper producer dated 26 May 2015;
- Letter of Rospotrebnadzor No. 01/6529-15-31 "On the ban on importation of [a Ukrainian producer's] wallpaper" to a Ukrainian wallpaper producer dated 9 June 2015; and
- Letter of Rospotrebnadzor No. 01/7855-15-39 "On the ban on importation of [a Ukrainian producer's] wallpaper" to a Ukrainian wallpaper producer dated 7 July 2015.

63. In addition, this request also covers, in whatever form, any related measures of the Russian Federation that guide, modify, supplement, extend, renew, replace, administer, implement and/or are otherwise closely connected to the above-described measures. This is particularly important given the fundamental lack of transparency on the part of the Russian Federation with regard to the measures at issue including, in particular, the lack of identification of the reasons justifying the measures as well as the lack of a statement of the legal basis of the measures.

## **5.2 Legal basis of the complaint**

64. First, those measures of the Russian Federation impose restrictions on the importation of wallpaper and similar wall coverings from Ukraine and appear to discriminate amongst Ukrainian products and domestic like products and like products of third countries. Furthermore, the measures have not been published and administered properly, and information on these measures is not easily accessible and often unavailable.

65. As a result, Ukraine considers that those measures of the Russian Federation are inconsistent with several provisions of the GATT 1994, the TFA and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles I:1, X:1, X:2, X:3(a), X:3(b) and XI:1 of the GATT 1994;
- Articles 1.1.1(a), 1.1.1(f), 1.1.1(h), 1.3.1, 2.1.1 and 2.1.2 of the TFA; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 1426, 1427 and 1428 of the Working Party Report.

66. Second, insofar as the measures of the Russian Federation fall within the scope of the TBT Agreement, Ukraine considers that they are inconsistent with several provisions of that agreement. Indeed, these measures appear to create unnecessary obstacles to international trade and discriminate between, on the one hand, (suppliers of) Ukrainian products and, on the other hand, (suppliers of) domestic like products and (suppliers of) like products originating in any other country. The Russian Federation has failed to base those measures on international standards and has failed to adequately explain the justification for those measures. Furthermore, the Russian Federation has failed to undertake and complete its conformity assessment procedures in an expeditious manner and in a no less favourable manner for Ukrainian products than for like domestic products. The Russian Federation also failed to adequately transmit the results of such

assessments to the applicants thereof and to ensure that, whenever possible, results of conformity assessment procedures in other Members are accepted. In addition, the Russian Federation failed to provide sufficient information about the measures and to respond to reasonable enquiries from Ukraine and Ukrainian producers.

67. As a result, Ukraine considers that the measures of the Russian Federation are inconsistent with several provisions of the TBT Agreement and the Accession Protocol of the Russian Federation, including but not limited to:

- Articles 2.1, 2.2, 2.4, 2.5, 2.11, 5.1.1, 5.1.2, 5.2.1, 5.2.2, 5.2.8, 6.1 and 10.1 of the TBT Agreement; and
- Paragraph 2 of Part I of the Accession Protocol, which incorporates the commitments in paragraphs 714, 715, 719, 728, 745, 784, 799, 803, 804 and 813 of the Working Party Report.

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The above-described measures appear to 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 reserves the right to request the Russian Federation to produce additional information and documents regarding the measures at issue. Ukraine also reserves its right to raise further factual and legal claims regarding the measures in the course of the consultations and in any future request for the establishment of a panel.

Ukraine looks forward to the Russian Federation's reply to this request and to fixing a mutually convenient date for consultations.

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