

**NOTIFICATION UNDER PARAGRAPH 9 OF THE UNDERSTANDING
ON THE BALANCE-OF-PAYMENTS PROVISIONS OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Communication from Ukraine

The following communication, dated 4 March 2009, is being circulated at the request of the Delegation of Ukraine.

1. Ukraine hereby notifies, on the basis of Paragraph 9 of the Understanding on the Balance-of-Payments Provisions of GATT 1994, the existing measures maintained on imports for the balance-of-payments purposes.
2. The legal basis for introduction of a temporary surcharge is the Law of Ukraine "On Introducing Changes to Some Laws of Ukraine to Improve the Balance-of-Payments of Ukraine in Connection with the Global Financial Crisis" No. 923-VI (attached).
3. Pursuant to the above-mentioned Law Ukraine has introduced a temporary surcharge up to 13 per cent of the customs value of goods brought into the customs territory of Ukraine as imports, except for critical imports.
4. Critical imports include any imports except for the following (by groups or UKTZED¹ codes): "0202, 0203, 0206 - 0210, 0504 - 0506, 0509, 0511 (except item 0511 10 00 00), 0808, 1601 - 1605, 1701, 1702 (except for starch treacle in item 1702 30 99 00), 2204 - 2208, 2701, 4203, 4303, 57, 60 - 65, 6806, 6901, 7201, 7301, 7321, 8401, 8414, 8418, 8501, 8516, 8702, 8703, 8704."
5. Such temporary surcharge will be effected from 7 March 2009.
6. A temporary surcharge has been introduced in the situation of significant reduction in foreign currency reserves only with a view to restore the balance-of-payments.
7. The temporary surcharge has been introduced for a term of up to six calendar months following the month, in which it takes effect. Based on assessment of the state and prospects of the balance-of-payments the Cabinet of Ministers of Ukraine is entitled to reduce the amount of the temporary surcharge, abolish or prolong it but for no longer than another six months by issuing an appropriate decree ².

¹ UKTZED is the Ukrainian Foreign Economic Activity Commodity Classification, based on Harmonized System 2002.

² The President of Ukraine challenged this authority of the Cabinet of Ministers to the Constitutional Court of Ukraine.

8. At the same time, the Verkhovna Rada of Ukraine is entitled to resolve at any time on suspending the temporary procedure through abolishing the law on its introduction.

9. Ukraine is ready to enter into consultations in the WTO Committee on Balance-of-Payments Restrictions under Article XII of the GATT 1994 and all applicable provisions and procedures.

ANNEX

UKRAINE

Law of Ukraine

LAW OF UKRAINE

On Introducing Changes to Some Laws of Ukraine to Improve the Balance-of-Payments of Ukraine in Connection with the Global Financial Crisis

With regard to the critical state of Ukraine's balance-of-payments, the Verkhovna Rada of Ukraine hereby decrees:

I. To introduce changes to the following laws of Ukraine:

1. The Law of Ukraine "On Foreign Economic Activity" (Bulletin of the Verkhovna Rada of Ukrainian Soviet Socialist Republic, 1991, No. 29, page 377; Bulletin of the Verkhovna Rada of Ukraine, 1995, No. 14, page 93; 1999, No. 7, page 49; 2003, No. 7, page 62; 2005, No. 3, page 78; 2007, No. 3, page 29):

1) Article 1 shall be supplemented by a new passage with the following content:

"A temporary mark-up over current import duty rate – a mark-up over import duty introduced only with a view to restore the balance-of-payments, whose condition is considered critical in accordance with current rules, will be equal to the import duty in the sense of the Law of Ukraine "On Unified Customs Tariff of Ukraine";

2) part two of Article 9, after passage seven, shall be supplemented by a new passage eight with the following content:

"within the scope of their authority, shall be entitled to reduce and abolish the temporary mark-up over current import duty rates on certain goods in accordance with the procedure stipulated by international treaties of Ukraine."

In this connection, passages eight and nine shall be considered, respectively, passages nine and ten;

3) in Article 19:

a) part one shall be supplemented by passage four with the following content:

"in case Ukraine's balance-of-payments reaches a critical state, a temporary mark-up over current import duty rates on certain goods shall be introduced";

b) it shall be supplemented by part eight with the following content:

"In case Ukraine's balance-of-payments reaches a critical state, the procedure for introducing, changing and abolishing a temporary mark-up over current import duty rates on certain goods shall be introduced as an exception, the said procedure being based upon rules of the relevant Articles of the General Agreement on Tariffs and Trade 1994 (GATT 1994)."

2. Article 3 "Final Provisions" of the Law of Ukraine "On Customs Tariff of Ukraine" (Bulletin of the Verkhovna Rada of Ukraine, 2007, No. 36 - 43, Art. 508) shall be supplemented by paragraph 3 with the following content:

3. In case Ukraine's balance-of-payments reaches a critical state, the procedure for introducing, changing and abolishing a temporary mark-up over current import duty rates on certain goods shall be introduced as an exception (the "temporary procedure").

3.1. The temporary procedure shall be based on rules of relevant Articles XII - XIII, XV, XVIII GATT 1994 as well as on the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

3.2. To determine the severity of the situation with Ukraine's balance-of-payments, an international methodology shall be used to assess the state and prospects of the balance-of-payments and alternative measures to restore the balance, as well as a significant reduction in foreign currency reserves or their reaching a critical level.

3.3. The list of goods for which the temporary mark-up to current import duty rates is introduced, the amount of this mark-up, changes to the said list and the amount of the temporary mark-up shall be established and introduced by the Verkhovna Rada of Ukraine based on a submission by the Cabinet of Ministers of Ukraine. Draft laws on introducing, changing and abolishing the temporary procedure submitted by the Cabinet of Ministers of Ukraine shall be considered by the Verkhovna Rada as urgent. Draft laws on introducing, changing and abolishing the temporary procedure submitted by other subject of legislative initiative shall be considered by the Verkhovna Rada, provided there is an opinion of the Cabinet of Ministers of Ukraine.

A temporary mark-up over current import duty rates shall be introduced only to restore the balance-of-payments and may not be used as a restrictive measure to protect a specific industry or good (a group of goods).

A temporary mark-up over current import duty rates shall be considered an import duty in the sense of the Law of Ukraine "On Unified Customs Tariff of Ukraine."

3.4. During 30 days after taking effect by the law on introducing a temporary procedure or, based on it, by a decree on prolonging the term of such temporary procedure, the Cabinet of Ministers of Ukraine shall notify the WTO Committee on Balance-of-Payment Restrictions in accordance with the procedure established by sections 5 - 13 of the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

3.5. If, as a result of consultations held pursuant to established rules under the WTO Committee on Balance-of-Payment Restrictions, it should become necessary to reduce the amount of the temporary mark-up over current import duty rates or abolish it, the Cabinet of Ministers of Ukraine shall be entitled to effect such reduction (abolition) by issuing an appropriate decree that will take effect on the tenth calendar day after its official publication and is invalidated on the day when the temporary procedure is discontinued.

3.6. The temporary procedure shall be introduced for a term of up to six calendar months following the month, in which it takes effect. If an assessment of the state and prospects of the balance-of-payments shows that there are grounds to prolong the temporary procedure (Ukraine's balance-of-payments situation remains critical), the Cabinet of Ministers of Ukraine may resolve upon such prolongation but for no longer than another six months. Such resolution shall be formalized in the appropriate decree that must be officially publicized at least 30 calendar days in advance of the end of the first six-month period. In this case, the procedure is resumed of notifying the WTO Committee on Balance-of-Payment Restrictions and holding consultations within its framework, unless otherwise resolved in the course of preliminary consultations with this Committee.

3.7. Regardless of the provisions of subparagraph 3.6 hereof, the Verkhovna Rada of Ukraine shall be entitled to resolve at any time on suspending the temporary procedure through abolishing the law on its introduction with due regard to the fact that such resolution takes effect 30 days after the official publication of the relevant law.

II. Final provisions

1. This Law shall take effect 10 days after its publication.
2. As an exception from the procedure for drafting and submitting the draft law stipulated in the first sentence of subparagraph 3.3 of paragraph 3 of "Final Provisions" of the Law of Ukraine "On Unified Customs Tariff of Ukraine" (as revised by the present Law), part two of Article 2 as well as Article 3 of this Law, from the day of taking effect by this Law and for the term established by subparagraph 3.6 of paragraph 3 of "Final Provisions" of the Law of Ukraine "On Unified Customs Tariff of Ukraine," but no less than six months, a temporary purpose-oriented mark-up over import duty rates effective before the taking effect of this Law shall be introduced in the amount of 13 per cent of the customs value of goods brought into the customs territory of Ukraine as imports, except for critical imports.

Critical imports shall include any imports except for the following (by groups or UKTZED codes): "0202, 0203, 0206 - 0210, 0504 - 0506, 0509, 0511 (except item 0511 10 00 00), 0808, 1601 - 1605, 1701, 1702 (except for starch treacle in item 1702 30 99 00), 2204 - 2208, 2701, 4203, 4303, 57, 60 - 65, 6806, 6901, 7201, 7301, 7321, 8401, 8414, 8418, 8501, 8516, 8702, 8703, 8704."
3. Revenues resulting from the introduction of a temporary mark-up in accordance with this Law, shall be recognized as revenues to the Stabilization Fund established in accordance with Article 1 of the Law of Ukraine of October 31, 2008, No. 639-VI "On Priority Measures to Prevent Negative Impact of the Financial Crisis and on Introducing Changes to Some Legislative Acts of Ukraine."
4. The Cabinet of Ministers of Ukraine shall bring its normative acts into compliance with this Law.

President of Ukraine
City of Kyiv
February 4, 2009
No. 923-VI

V. YUSCHENKO
