



21 September 2016

(16-5034)

Page: 1/7

Original: English

**RUSSIA – MEASURES CONCERNING TRAFFIC IN
TRANSIT OF UKRAINIAN PRODUCTS**

REQUEST FOR CONSULTATIONS BY UKRAINE

The following communication, dated 14 September 2016, from the delegation of Ukraine to the delegation of Russia and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the Russian Federation pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII 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").

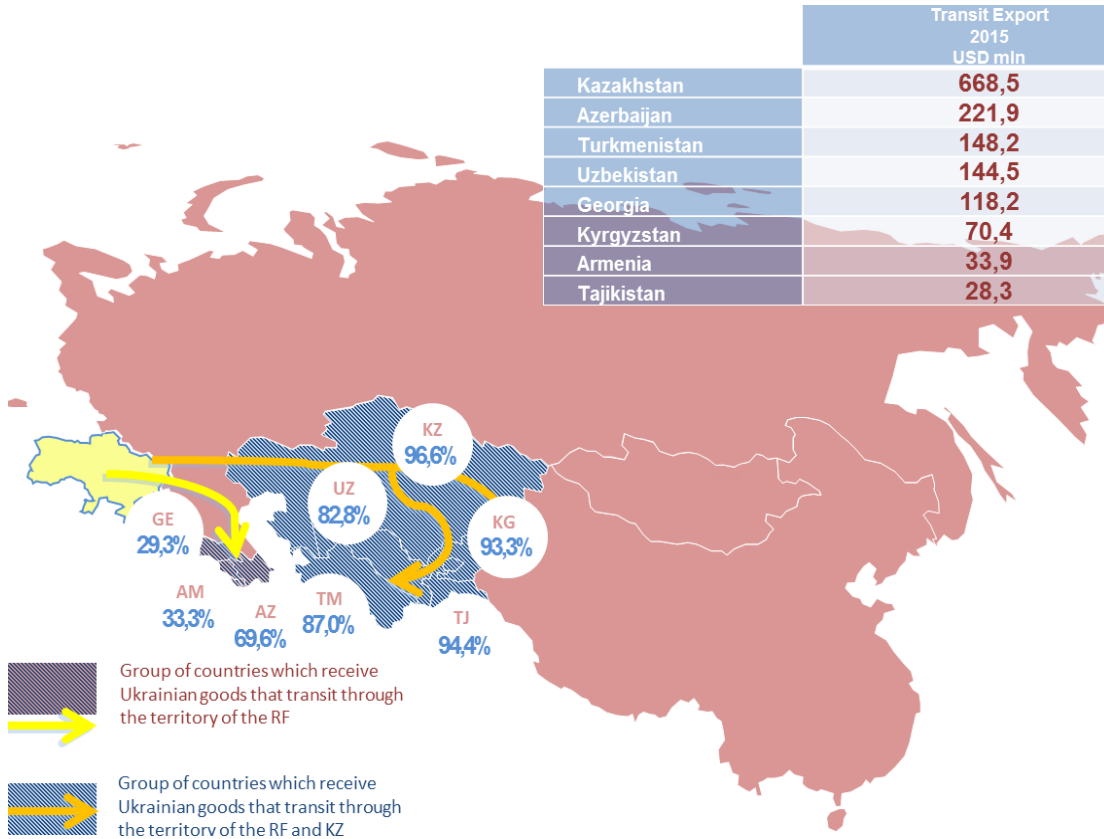
I. Background

The restrictions on traffic in transit that the Russian Federation has recently adopted and implemented following Ukraine's decision to start the implementation of the Deep and Comprehensive Free Trade Area with the European Union on 1 January 2016 constitute measures inconsistent with the Russian Federation's WTO obligations.

Ukrainian exports to countries in Central/Eastern Asia and Caucasus have been significant and growing. In order to reach those markets, most Ukrainian exports have traditionally transited from the territory of Ukraine through the territory of the Russian Federation to those countries (See picture 1).

Picture 1

Transit through the territory of the Russian Federation (mln. USD)



Source: National statistics 2015, State Fiscal Service of Ukraine.

Since the measures at issue are applied to Ukrainian products, trade to countries in Central/Eastern Asia and Caucasus in January-June 2016 decreased by 35,1 % in comparison with the same months of 2015.

Almost all the trade affected by the Russian Federation's restrictions on traffic in transit takes place by means of road and railway and passes through the territory of the Russian Federation.

The commitments undertaken by the countries that have joined the WTO which are receiving Ukrainian goods in transit through the Russian Federation, in particular the commitments made by the Republic of Kazakhstan and the Kyrgyz Republic, created additional market access opportunities for Ukrainian producers. The actions of the Russian Federation, in particular the transit restrictions covered by this Request for Consultations, seriously undermine the active efforts of the Ukrainian Government and businesses to open those markets and will impede Ukraine's ability to seize the new opportunities obtained through the WTO accession negotiations.

On 1 January 2016, the Decree of the President of the Russian Federation No.1¹ was issued "in connection with the suspension from 1 January 2016 of the Treaty on a Free Trade Area ... with regard to Ukraine". It is set forth that "in accordance with the Federal Law of the Russian Federation No. 281-FZ of 30 December 2006 "On the Special Economic Measures" it is resolved "to establish that the international road and railway transit of goods from the territory of Ukraine to the territory of the Republic of Kazakhstan through the territory of the Russian Federation ...can be

¹ Decree of the President of the Russian Federation of 1 January 2016 No. 1 "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 Kazakhstan through the territory of the Russian Federation" (through the Decree of the President of the Russian Federation of 1 July 2016 No. 319, the title of the Decree of the President of the Russian Federation of 1 January 2016 No. 1 was amended by adding the words "or to the Kyrgyz Republic" after the words "to the territory of the Republic of Kazakhstan").

carried out only from the territory of the Republic of Belarus...". The above-mentioned Decree No.1 also requires the application of special identification means (seals) using the technology of global satellite navigation system GLONASS to cargo areas (compartments) and requires drivers to obtain certain registration cards when entering the territory of the Russian Federation, which must be kept during the trip and returned when leaving the territory of the country. This Decree "shall enter into force from the date of its publication (on 1 January 2016) and is valid until 1 July 2016".

On 3 July 2016, two days after the restrictive measures set forth in the Decree of the President of the Russian Federation of 1 January 2016 No. 1 were scheduled to expire, the Decree of the President of the Russian Federation of 1 July 2016 No. 319 "On amendments to the Decree of the President of the Russian Federation of 1 January 2016 No. 1 "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 Kazakhstan through the territory of the Russian Federation" was published.

This Decree prolonged the original restrictions set forth in the Decree of the President of the Russian Federation of 1 January 2016 No. 1 until 31 December 2017 and imposed additional measures as follows:

- transit of goods not only to the territory of the Republic of Kazakhstan but also to the territory of Kyrgyz Republic shall be carried out according to the requirements of the Decree of the President of the Russian Federation of 1 January 2016 No. 1;
- ban of transit of goods affected by the tariffs rates higher than zero according to the Common Customs Tariff of the Eurasian Economic Union;²
- ban of transit of goods which are under embargo pursuant to the Resolution of the Government of the Russian Federation No. 778 of 7 August 2014 "On measures for implementation of the Decree of the President of the Russian Federation No. 560 of 6 August 2014 and No. 320 of 24 June 2014".³

The Government of the Russian Federation issued Resolution No. 1 of 1 January 2016⁴ in which it designates "the permanent and mobile checkpoints and the checkpoints which are located at the railway stations and used in the road and railway transit of goods from the territory of Ukraine to the territory of the Republic of Kazakhstan through the territory of the Russian Federation" and requires that "the Federal Service for Supervision of Transport shall ensure the use by the vehicles performing transit of the goods, as per paragraph 1 of this Resolution, identification means (seals), including those functioning on the basis of the technology of global satellite navigation system GLONASS". The annex lists two checkpoints in the Russian Federation – Republic of Belarus border and three in the Russian Federation – Republic of Kazakhstan border (See picture 2). This Resolution also entered into force on 1 January 2016.

Only on 27 February 2016, i.e. approximately two months after the entry into force of the Decree No. 1 and its related Resolution, the Government of the Russian Federation issued a Resolution No. 147 "approv[ing] [...] requirements to the identification means (seals) including those functioning on the basis of the technology of the global satellite navigation system GLONASS"⁵.

² <http://www.eurasiancommission.org/ru/act/trade/catr/ett/Pages/default.aspx>.

³ Resolution of the Government of the Russian Federation No.778 of 7 August 2014 "On measures for implementation of the Decree of the President of the Russian Federation No.560 of 6 August 2014 and No.320 of 24 June 2014" concerning the application of certain special economic measures in order to protect the national security of the Russian Federation.

⁴ Resolution of the Government of the Russian Federation No.1 of 1 January 2016 "On the measures related to the implementation of the Decree of the President of the Russian Federation of 1 January 2016 No. 1 "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 Kazakhstan through the territory of the Russian Federation".

⁵ Resolution of the Government of the Russian Federation No.147 of 27 February 2016 "On approval of the requirements to the identification means (seals) including those functioning on the basis of the technology of the global satellite navigation system GLONASS". This Resolution was adopted "in compliance with the Decree of the President of the Russian Federation of 1 January 2016 No. 1 "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 Kazakhstan through the territory of the Russian Federation".

The transit route imposed by the above-referred normative acts through the Republic of Belarus increases considerably the length and duration of trips as well as costs. Administrative procedures have also become more cumbersome as a result of having to cross an additional border (Ukraine – Republic of Belarus). The need to obtain additional transit permits for Ukrainian trucks to enter into the territory of the Republic of Belarus further limits the ability to access the territory of the Russian Federation for traffic in transit. Moreover, the new measures imposed through Decree No. 319 effectively ban the transit of the majority of goods from the territory of Ukraine.

Picture 2

Checkpoints of international freight as per Resolution No.1



According to the Instruction of the Federal Service for Veterinary and Phytosanitary Surveillance of the Ministry of Agriculture of the Russian Federation (Rosselkhoz nadzor) of 11 November 2014, the transit of goods subject to the application of the Resolution of the Government of the Russian Federation No.778 of 7 August 2014 cannot be carried out "through the checkpoints of the Republic of Belarus".⁶ It also requires that "such goods in transit through the territory of the Russian Federation to the Republic of Kazakhstan and to third countries as of 30 November 2014, can cross the border of the Russian Federation only through the checkpoints located in the Russian part of the external border of the Customs Union: [list of checkpoints] and Russian ports". Pursuant to the provisions of this act, transit is subject to an additional requirement: "the transit of such goods ... to third countries shall take place upon Rosselkhoz nadzor permits" with indication of the Russian checkpoints on the external border of the Customs Union. Evidence collected by the Ukrainian state bodies shows that since the start of 2016 the Russian Federation applies restrictions set forth under these instructions to goods shipped by Ukrainian producers, through the territory of the Russian Federation, to third countries.

Furthermore, traffic in transit from the territory of Ukraine through the territory of the Russian Federation to countries in Central/Eastern Asia and Caucasus is subject to restrictions beyond those contained in the above-referred normative acts. Restrictions referred to in this paragraph include, as a matter of example:

- the application of the restrictions set forth in Decree No. 1 and Resolution No. 1 to traffic in transit from the territory of Ukraine to international transit of goods to countries in

⁶ Instruction of the Federal Service for Veterinary and Phytosanitary Surveillance of the Ministry of Agriculture of the Russian Federation ("Rosselkhoz nadzor") No.FS-NV-7/22886 of 21 November 2014.

- Central/Eastern Asia and Caucasus, other than the Republic of Kazakhstan and the Kyrgyz Republic;
- the requirement that trucks in transit from the territory of Ukraine move in caravan and that they be accompanied by a convoy through the whole territory the Russian Federation. Such caravans move twice a week and payment of a fee is required;
 - the obstacles posed (or the refusal to allow) Ukrainian drivers to access the territory of the Russian Federation via the Republic of Belarus–Russian Federation border.

The restrictions covered by this paragraph are the result of actions which are directly attributable to the Government of the Russian Federation or to governmental bodies and agencies from the Russian Federation.

Those restrictions are discriminatory in nature and appear to be applied only to traffic in transit from the territory of Ukraine. Moreover, they are applied in an unpredictable manner; the legal bases for these actions and restrictions have not been notified to the Ukrainian Government and, at least in some instances, do not appear to have been published promptly.

Traffic in transit – i.e. the traffic covered in this Request for Consultations – is subject to the rules provided on the provisions of Chapter 32 of the Customs Code of the Customs Union.⁷ The Report of the Working Party on the Accession of the Russian Federation sets forth that "goods in customs transit were exempted from any customs taxes and duties or application of any economic restrictions or prohibitions..."and "any foreign merchandise could be subject to international customs transit...".⁸ The Russian Federation committed broadly to apply its "laws, regulations and other measures governing transit of goods ... in conformity with the provisions of Article V of the GATT 1994 and other relevant provisions of the WTO Agreement".⁹ This commitment is reflected in Article 31 of the Federal Law No 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity".¹⁰

Ukraine has endeavoured, in good faith, to address the matter raised in this Request for Consultations through numerous bilateral contacts with the Russian Federation as well as within relevant WTO bodies (Communications submitted by Ukraine on this matter were distributed by the WTO Secretariat on 13 January 2016 and on 11 July 2016; this issue was moreover raised in the following meetings of WTO bodies: General Council of 24 February 2016, Committee on Agriculture of 9 March 2016, Council for Trade in Goods of 15 April 2016, Committee on Technical Barriers to Trade of 15-16 June 2016, Council for Trade in Goods of 14 July 2016, General Council of 27 July 2016).

II. Measures at issue

The measures at issue are the following:

- II.1. Decree of the President of the Russian Federation of 1 January 2016 No. 1 "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 Kazakhstan through the territory of the Russian Federation" as amended by the Decree of the President of the Russian Federation of 1 July 2016 No. 319 "On amendments to the Decree of the President of the Russian Federation of 1 January 2016 No. 1 "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 Kazakhstan through the territory of the Russian Federation";

⁷ Document WT/ACC/RUS/70 and WT/MIN(11)/2, para. 1146. Procedures on trade in transit are developed through national legislation. The Customs Code of the Customs Union is available at:<http://bit.ly/1Q6TSN1>.

⁸ Document WT/ACC/RUS/70 and WT/MIN(11)/2, para. 1147. The Protocol on the Accession of Kazakhstan contains the same description of the currently applicable normative framework (Document WT/ACC/KAZ/93, para. 952).

⁹ Document WT/ACC/RUS/70 and WT/MIN(11)/2, para. 1161. In this regard, Kazakhstan committed to ensure that "all goods, ..., entering the [Eurasian Economic Union] territory for import in Kazakhstan would benefit from the rules on transit as they are set out in the WTO Agreement, including Article V of the GATT 1994, irrespective of prohibitions or restrictions of imports into its own territory that a specific [Eurasian Economic Union] member may apply" (Document WT/ACC/KAZ/93, para. 307).

¹⁰ Procedures on freedom of transit are developed through national legislation. Document is available at:<http://economy.gov.ru/minec/activity/sections/foreigneconomicactivity/fz164>.

- II.2. Resolution of the Government of the Russian Federation No. 1 of 1 January 2016 "On the measures related to the implementation of the Decree of the President of the Russian Federation of 1 January 2016 No. 1 "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 Kazakhstan through the territory of the Russian Federation";
- II.3. 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";
- II.4. The Federal Law No. 281-FZ of 30 December 2006 "On the special economic measures";
- II.5. Instruction of the Federal Service for Veterinary and Phytosanitary Surveillance of the Ministry of Agriculture of the Russian Federation ("Rosselkhoz nadzor") No. FS-NV-7/22886 of 21 November 2014;
- II.6. The restrictions on traffic in transit from the territory of Ukraine to countries other than the Republic of Kazakhstan through the territory of the Russian Federation applied by the Russian Federation since January 2016, as evidenced by the information available to the Government of Ukraine referred to in Section I;
- II.7. The failure to publish promptly the measures made effective by the Russian Federation restricting traffic in transit from the territory of Ukraine through the territory of the Russian Federation to countries other than Kazakhstan;
- II.8. The failure to officially publish the measure or measures restricting traffic in transit from the territory of Ukraine through the territory of the Russian Federation to countries other than the Republic of Kazakhstan before such measures are enforced.

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 Protocol of Accession, this Request for Consultations also covers: legal instruments or any other form of a measure adopted and/or implemented by the Russian Federation aimed at restricting, inconsistently with paragraphs 2 to 5 of Article V of the GATT 1994 and commitments undertaken in the Protocol on the Accession of the Russian Federation, traffic in transit from the territory of Ukraine to countries in Central/Eastern Asia and Caucasus through the territory of the Russian Federation, whether of, *inter alia*, a legislative, regulatory, administrative, executive or judicial nature; and, notices or guidance issued to Governmental bodies and agencies or importers in the Russian Federation to assist them with the implementation and/or application of all legal instruments or any other form of measure adopted and/or implemented by the Russian Federation aimed at restricting traffic in transit.

In addition, this Request also covers in whatever form: any amendments, supplements, or extensions to or of the measures referred to in this Section; any measures replacing, renewing or implementing the measures referred to in this Section; and, any measures related to the measures referred to in this Section.

III. Legal basis for the complaint

Ukraine considers that the measures referred to in section II above are inconsistent with several of the Russian Federation's WTO obligations, including, but not limited to:

- III.1. Article V:2 of the GATT 1994 because, after the adoption and application of the measures at issue, the Russian Federation denies freedom of transit through the territory of the Russian Federation, via the routes most convenient for international transit, for traffic in transit from the territory of Ukraine and because the Russian Federation makes distinctions based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport;
- III.2. Article V:3 of the GATT 1994 because, as a result of the adoption and application of the measures at issue, traffic in transit coming from Ukraine is subject to unnecessary delays and restrictions;

- III.3. Article V:4 of the GATT 1994 because the charges and regulations imposed by the Russian Federation on traffic in transit from the territory of Ukraine through the measures at issue are not reasonable and have no regard to the conditions of the traffic;
- III.4. Article V:5 of the GATT 1994 because, as a result of adoption and application of the measures at issue, the Russian Federation fails to accord no less favourable treatment to traffic in transit from the territory of Ukraine than the treatment accorded to traffic in transit to or from any third country;
- III.5. Article X:1 of the GATT 1994 because laws, regulations, judicial decisions and administrative rulings of general application, 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;
- III.6. Article X:2 of the GATT 1994 because the Russian Federation is enforcing a measure or measures of general application imposing new or more burdensome requirements, restrictions or prohibitions on imports before such measure or measures have been officially published;
- III.7. 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 of the kind described in Article X:1 of the GATT 1994;
- III.8. Article XI:1 of the GATT 1994 because the measures at issue establish quantitative restrictions;
- III.9. Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization because the Russian Federation, through the adoption and application of the measures at issue, is not ensuring the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements; and
- III.10. 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 paragraphs 1161, 1426 (first sentence), 1427 (first and third sentences), and 1428 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").

These violations nullify or impair benefits accruing to Ukraine directly or indirectly under the covered agreements and impede the attainment of objectives thereunder, within the meaning of Article XXIII:1 of the GATT 1994. In addition to violating covered agreements, the measures of the Russian Federation referred to in section II are frustrating Ukraine's legitimate market access expectations to countries other than the Russian Federation.

Ukraine reserves the right to request the Russian Federation to produce further information and documents regarding the measures in question. In light of the lack of transparency on the adoption and implementation of measures affecting, limiting, restricting, impeding or banning traffic in transit from the territory of Ukraine, Ukraine also reserves its right to raise additional facts and claims and address additional measures during the course of these consultations and in any future request for panel proceedings.

Ukraine looks forward to the Russian Federation's reply to this request, and to fixing a mutually acceptable date to hold consultations.
