

Russia's Punitive Trade Policy Measures towards Ukraine, Moldova and Georgia

**Denis Cenuša, Michael Emerson,
Tamara Kovziridse and Veronika Movchan**

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Abstract

While EU and US sanctions against Russia over its aggression in Ukraine, and Russia's counter-sanctions, are much discussed due to their evident political significance, less attention has been given to Russia's punitive sanctions against the three Eastern European states – Ukraine, Moldova and Georgia – that have signed with the EU Association Agreements (AA), which include Deep and Comprehensive Free Trade Area (DCFTA) provisions. This paper therefore documents these trade policy restrictions and embargoes imposed by Russia, and provides some first indications of their impact. The immediate impact on trade flows, especially for agri-food products, has been substantial, albeit with some leakage through Belarus. The main instrument for the Russian measures has been allegations of non-conformity with Russian technical standards, although the correlation of these allegations with movements in Russia's geopolitical postures makes it obvious that the Russian technical agencies are following political guidelines dressed up as scientific evidence. These measures also push the three states into diversifying their trade marketing efforts in favour of the EU and other world markets, with Georgia already having taken significant steps in this direction, since in its case the Russian sanctions date back to 2006. In the case of Ukraine, Russia's threat to cancel CIS free trade preferences infiltrated trilateral talks between the EU, Ukraine and Russia, leading on 12 September to their proposed postponement until the end of 2015 of the 'provisional' implementation of a large part of the AA/DCFTA. This was immediately followed on 16 September by ratification of the AA/DCFTA by both the Rada in Kyiv and the European Parliament, which will lead to its full and definitive entry into force when the 28 EU member states have also ratified it. However Putin followed the day after with a letter to Poroshenko making an abusive interpretation of the 12 September understanding.

Denis Cenuša is Associated Expert at Expert-Grup, Chisinau; Michael Emerson is Associate Senior Research Fellow at CEPS, Brussels; Tamara Kovziridse is Professor at the Free University of Tbilisi and affiliated scholar with the Free University of Brussels (VUB); Veronika Movchan is Academic Director at the Institute for Economic Research and Policy Consulting (IER), Kyiv. The authors thank Guillaume Van der Loo of Ghent University and Sierz Naurodski of CASE, Minsk, for helpful contributions.

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Introduction

Russia has adopted a policy of punishing, or threatening to punish, the three Eastern European states that have signed Association Agreements (AAs) with the European Union, which include Deep and Comprehensive Free Trade Areas (DCFTAs).

The present note documents these measures and discusses the trade policy issues.

Currently, Russia's punitive measures mostly affect Ukraine and Moldova, whereas Georgia experienced similar measures some years ago, but they have been only partly lifted. The measures against Ukraine and Moldova have been demonstrably timed in order to put progressive pressure in relation to the initialling, signing and ratification of the AAs/DCFTAs with the EU.

1. Ukraine

Russia has been extremely active in mounting a series of punitive trade measures against Ukraine from the time that the signing of the AA/DCFTA with the EU was approaching in the course of 2013 (see Box 1). The measures taken from July to October 2013 contributed to the decision by President Yanukovich to renege on signing the AA/DCFTA at the Vilnius summit of the EU in November 2013. Further measures were taken after Yanukovich fled Ukraine and an interim pro-European government was installed on 27 February 2014. They were substantially intensified in the period from April to August 2014, after the election on 27 May of President Poroshenko, who signed the AA/DCFTA on 27 June.

Most measures concern agri-food produce, for which the Russian regulatory agency produced allegations of non-conformity with required standards. However, Russia also stopped for several weeks the import from Ukraine of railcars on grounds of alleged technical defects. This is a major, long-standing category of Ukrainian manufactured exports to Russia.

In addition, gas supplies from Russia were completely stopped in June 2014 and to date have not been resumed. Here there is a more complex set of issues concerning price and debt for past supplies, to which might be added the case for Russia to compensate Ukraine for its seizure of significant Ukrainian gas fields in Crimea and its territorial waters.

Russia has stated the banned Ukrainian products could be substituted by products of other countries, in particular those of Belarus (statement of the Ministry of Agriculture of the Russian Federation Nikolai Federov, February 2014).

Russia has made several announcements about import substitution policies regarding the two most important machine building products for Ukrainian exports, notably in the military sphere and in rail transport. Such measures are, however, not contestable on trade policy grounds. Nor do they seem to be effective so far.

Box 1. Russia's punitive trade measures against Ukraine, 2013-14

- **Ban on imports of Ukrainian confectionary producer Roshen (July 2013).** The Russian safety control service Rospotrebnadzor declared that the sweets failed to satisfy food safety checks and later accused the producer of violating labelling requirements. Ukraine has contested the justification of these measures at meetings of WTO Committees on technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) regulations.
- **Enhanced border controls for imports from Ukraine (August 2013).** The Russian customs office classified all Ukrainian exports as belonging to a 'high risk category' that provoked extensive border controls and de facto stopped exports for several weeks. Later on, exports resumed but ad hoc enhanced control measures have been occasionally reported by exporters.
- **Ban on imports of Ukrainian railcars (September-October 2013).** Russia banned imports of Ukrainian railcars, refusing to recognise certificates of conformity for some types of railcars from three producers. It was claimed that producers use defective steel casting. In several weeks, certificates were reactivated for about half of these products.
- **Ban on imports from a large Ukrainian poultry producer (February 2014).** Rospotrebnadzor suspended the certificate for MHP, one of Ukraine's largest poultry producers. In 2013 MHP became one of two companies to receive permission to supply poultry meat to the EU. After the Russian ban, the company reported that it successfully redirected exports to other markets, including the Middle East, Africa and other CIS countries, as well as to the EU (using autonomous trade preferences provided by the EU since April 2014).
- **Ban on imports of selected cheeses from Ukraine (April 2014).** Rospotrebnadzor prohibited imports of cheeses produced by five Ukrainian companies due to alleged food safety concerns.
- **Ban on imports of potatoes from Ukraine (June 2014).** Rospotrebnadzor prohibited imports of potatoes from Ukraine due to alleged food safety concerns.
- **Stoppage of gas supplies to Ukraine (June 2014).** This is by far the most important action economically, but it is in a quite different category, since it is tied up with disputes over the price and payments for gas, and debt for past supplies. Energy security risks are now of a very high order, since the gas supply stoppage is coupled with endangered access to coal stocks due to the military conflict in parts of the Donbass region.
- **Ban on imports of raw milk and dairy products from Ukraine (July 2014).** Rospotrebnadzor prohibited imports of Ukrainian milk and dairy products due to alleged food safety concerns.
- **Ban on imports of alcohol products of three Ukrainian companies (August 2014).** Rospotrebnadzor prohibited imports of Ukrainian alcoholic products, mainly beer, produced by three large Ukrainian companies. The ban is explained by alleged violation of labelling requirements.

In July the Russian government published a draft regulation¹ regarding the possible revocation of the tariff-free trade preferences that exist under the Russia-Ukraine CIS Free Trade Agreement (CIS FTA), which would lead to the introduction of most favoured nation (MFN) duties for selected categories of Ukrainian exports, i.e. the same non-preferential tariff levels as for regular WTO member states. The decree listed 612 product subheadings that

¹ http://regulation.gov.ru/project/17072.html?point=view_project&stage=3&stage_id=10941.

correspond to approximately 25% of Ukrainian exports to Russia in 2013,² including a wide range of agricultural and industrial products including meat, dairy products and vegetables, chemical industry products, textile products, machinery and equipment.

According to Ryzhenkov, et al. (2013), the impact of a complete revocation of CIS FTA preferences by Russia could result in a \$3 billion reduction in exports from Ukraine, which would represent 17% of its total exports to Russia, and corresponds to approximately 1.7% of GDP.³ This assessment was done using a (partial equilibrium) model methodology. The decision to implement this regulation has not yet been taken.

Ukraine's response has been multidimensional. The authorities announced the stoppage of military cooperation with Russia, implying cessation of the supply of military goods. This decision was announced by the government in early April 2014 and reinforced by the decision of the Security and Defence Council to stop exporting dual-purpose products. At the end of August, the president signed the decree prohibiting exports of military and double-purpose products to Russia.⁴ As of September, it seems that the ban on exports of military and double-purpose products has not been completely obeyed, in particular by private entities.

In June, Ukraine's national oil and gas company Naftogaz filed a case against Russia's state-owned energy company Gazprom regarding gas price and debt issues for arbitration in Stockholm.

In September 2014, the president signed a law on sanctions that could be used to cease economic relations with Russia.⁵ The list contains 25 possible measures including but not limited to freezing assets, trade and transit restrictions, suspending economic and financial liabilities, revoking licenses and permits, and visa bans.

Ukraine has been using the WTO instruments to put pressure on Russia. Since autumn 2013 Ukraine has been regularly raising specific trade concerns at the WTO regarding Russian actions. Valeriy Pyatnitsky, appointed Trade Representative of Ukraine on 21 August 2014, stated that Ukraine would continue to use WTO-compliant instruments to compensate incurred losses.

Also, a volunteer movement with slogan "Don't buy Russian" has emerged in the country. According to opinion polls, the movement was successful in reducing consumer demand for Russian products.

Reorientation of exports towards the EU. The combination of Russia's punitive actions and the EU's unilateral opening of its market by introducing autonomous trade preferences pushes exports towards the EU. According to the State Statistics Services of Ukraine,⁶ exports to the EU grew by 14.9% in the first half of 2014 compared to a year earlier, while exports to Russia dropped by 23.3% over the same period. Consequently, the share of exports to the EU reached 33.1% of total exports compared to 27.3% a year before, while the share of exports to Russia dropped to 19.9% compared to 24.7% in 2013.

² M. Ryzhenkov, "Impact assessment of the increase in Russian import duties", mimeo, 2014.

³ M. Ryzhenkov, V. Movchan and R. Giucci (2013), "Impact assessment of a possible change in Russia's trade regime vis-à-vis Ukraine", Policy Brief 04/2013, Institute for Economic Research and Policy Consulting, Kyiv (www.ier.com.ua/en/publications/policy_briefing_series/archive_2013/?pid=4549).

⁴ www.president.gov.ua/documents/18028.html.

⁵ <http://zakon4.rada.gov.ua/laws/show/1644-vii>

⁶ www.ukrstat.gov.ua.

Future prospects. The likelihood that Russia will implement its threat to revoke its CIS Free Trade Agreement with Ukraine was temporarily abated at the tripartite meeting in Brussels of the EU, Ukraine and Russia on 12 September 2014. At this meeting it was decided to postpone the ‘provisional implementation’ of large parts of the Association Agreement, including the DCFTA, until 1 January 2016. At the same time, the EU pledged to prolong its autonomous trade preferences for Ukraine over the same period. The intervening period of over a year is expected to see continuing talks with Russia over its trade concerns, including technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) regulations, customs procedures and other issues.

Russia had drawn up a long paper on its requests for the tripartite meeting, with the full text appearing in the Ukrainian media beforehand.⁷ The TBT and SPS issues are, in the present authors’ opinion, matters for constructive discussion if the overall political context becomes sufficiently conducive. However, other Russian requests in the paper are regarded as being out of the question by the EU and Ukrainian sides, including the idea that the text of the agreement that has been signed and is in the course of being ratified⁸ could be changed, and in particular the proposal that approximately 700 products in the trade nomenclature be deleted from the tariff liberalisation schedule. Similarly, the proposal that Ukraine should be permitted to join a customs union with third parties, e.g. the customs union of Belarus, Russia and Kazakhstan, is obviously incompatible with Ukraine having a DCFTA with the EU. These issues were not taken up at the meeting of 12 September.

From a simple economic standpoint the delay gives Ukraine more time to prepare for tariff liberalisation towards the EU and to adopt many EU regulations. In any case, these commitments for Ukraine have in most cases quite long implementation delays, often of three, five, or seven years, and in a few cases even 10 years. Meanwhile, the EU’s tariff liberalisation in favour of Ukraine is already in force and will not be changed. At the same time the Russian side agreed not to go ahead with its threatened suspension of the CIS Free Trade Agreement.⁹

However at the same time the Russian media has been prompted to declare that this was a great breakthrough for Russian interests. Presumably the Russian side feels it has an opportunity now to negotiate an agenda of substantial importance, and/or that in the intervening period new political circumstances may emerge that could provide opportunities to undermine the whole Association Agreement and DCFTA. This interpretation is supported by the continuing pressures by Russia on Ukraine. On 16 September, when Ukraine and the EU Parliaments simultaneously ratified the Association Agreement, Oleksey Ulyukayev, Head of Ministry of Economic Development of the Russian Federation, announced that Russia’s government would pass the resolution revoking the tariff-free trade preferences for some of Ukraine’s exports. He stated that the resolution’s implementation could be postponed till the end of 2015, if the EU and Ukraine provide guarantees that they will maintain commitments made in Brussels and will not implement the DCFTA in 2015. The resolution was signed by Prime Minister Dmitri Medvedev on 22 September, and says precisely that a decision to implement it will be taken within 10 days of Ukraine beginning to implement the

⁷ ZN, UA leaked the text of Russia’s proposals for the DCFTA revision aimed to meet its trade concerns (see http://zn.ua/static/file/russian_proposal.pdf). The document contains the list of tariff lines proposed to be removed from the DCFTA liberalisation schedule, as well as other changes protecting Russia’s interest in the spheres of TBT, SPS, energy and customs procedures.

⁸ While the Rada and European Parliament both ratified together on 16 September, it will take some time before all the 28 member state parliaments complete their ratifications.

⁹ [http://europa.eu/rapid/press-release STATEMENT-14-276_en.htm](http://europa.eu/rapid/press-release_STATEMENT-14-276_en.htm).

DCFTA.¹⁰ Furthermore, information now reaches the media that Putin had written to Poroshenko on 17 September, saying that any measures taken by Ukraine before the end of 2015 to prepare for implementation of the DCFTA will entail “immediate and adequate retaliatory measures from the Russian side”.¹¹ Since the DCFTA links to virtually the entire economic reform agenda that Ukraine engages upon, this demand by Putin is a categorically unacceptable intrusion into Ukrainian sovereign policy-making.

It is also now for the EU side to reflect on the 12 September agreement, which is being abusively reinterpreted by the Russian side. From the standpoint of formal EU legislative procedures the decision to postpone the provisional application of the DCFTA has to be made by the Council upon proposal of the Commission. This decision is not yet made at the time of writing. It is also questionable from the Ukrainian standpoint how far the removal of CIS trade preferences would have binding effect, given all the other restrictive trade measures that Russia has already been taking.

2. Moldova

From September 2013 to September 2014, Russia deployed a series of trade restrictions with Moldova (see Box 2). The majority of these measures has concerned agri-food products and were based on allegations of non-conformity with Russian safety requirements. The first measures in September 2013 were timed to discourage Moldova from initialling the AA/DCFTA with the EU, which actually took place at the Vilnius summit in November 2013. Similar measures followed in April and July 2014, i.e. shortly before and after the signing of the AA/DCFTA on 27 June.

On 31 August, Russia broadened its punitive measures by suspending the tariff-free preferences under the 2011 Russia-Moldova CIS Free Trade Agreement for 19 categories of mainly agri-food products. It is notable that there were no technical justifications, but Russia apparently claimed recourse to a general provision in Annex no. 6 to the CIS FTA agreement that states conditions “damaging or threatening to damage” industries of the Russian-led customs union may be used to justifying scrapping the tariff preferences and to impose the MFN tariffs applied to WTO members.

Box 2. Russia's punitive trade measures against Moldova, 2013-14

- **Ban on imports of Moldovan wine (September 2013).** Since September 2013, wine exports to Russia have been prohibited, allegedly because of non-compliance with quality rules set by Rospotrebnadzor. This decision was taken a few months before – and thus intended as a warning not to carry out – the AA/DCFTA initialling at the Eastern Partnership Summit in Vilnius (27-28 November).
- **Ban on imports of processed pork meat products (8 April 2014).** Rosselkhoznadzor, the Russian agricultural health surveillance authority, blocked supplies from the Moldovan meat producing company “CARNE SUD” on the grounds that the products derived from materials with stamps issued by the EU countries. Russia had previously restricted imports of all pork meat produced in Europe because of reported African swine fever infections.

¹⁰ Resolutions on Introduction of Imports Duties for Products Originating in Ukraine (<http://government.ru/media/files/1dG08nzgoEE.pdf>).

¹¹ <http://www.reuters.com/article/2014/09/23/us-ukraine-crisis-trade-idUSKCN0HI1T820140923>

- **Ban on imports of canned vegetables (July 2014).** The closing to the Russian market for canned vegetables followed soon after Moldova signed the AA/DCFTA with the EU on 27 June. Non-compliance with Russian quality requirements was invoked.
- **Ban on fruit imports (July 2014).** Apples, pears, quinces, apricots, cherries and sour cherries, peaches, nectarines, plums and blackthorn were banned, owing to the alleged discovery of pests by Russian phytosanitary experts, beginning 21 July.
- **Cancellation of trade preferences for imports of 19 categories of products (31 August 2014).** A Russian government resolution cancels zero duties on Moldovan products for 19 categories of commodities, including wine, meat, vegetables, fruit and grains, thus suspending provisions of the Russia-Moldova CIS Free Trade Agreement signed on 18 October 2011.

The restrictive measures applied by Russia have created problems for Moldovan producers dependent on the Russian market, which leads the latter to examine the potential of the European market. However, any major changes have not yet proved possible, because Moldovan producers are often not competitive, have difficulties in promoting their products on the very demanding European market, and are experiencing financial liquidity problems. Moreover, it takes time and financial resources to comply with European regulations (one to two years at minimum), and companies need urgent investment to bring their products into conformity with European standards and technical regulations. As regards the EU's decision in August to cut tariffs for fruit products, and to increase the tariff-free quotas for fruit, it is too early to assess their effectiveness.

Due to the free movement of goods within the Belarus-Russian-Kazakh customs union, there were attempts to re-export Moldovan apples to Russia through Belarus. According to the Russians, these deliveries were made on the basis of Belarus phytosanitary service documents that certified the products originated in Belarus.¹² However, the Belarus phytosanitary service together with Rosselkhoznadzor subsequently agreed to increase control over re-exporting products prohibited by Russia, and as a result these attempts to deliver Moldovan apples as Belarus products to Russia were stopped. Even if Moldovan fruit is not allowed in Russia, it is exported freely to Belarus, which, as in the case of Kazakhstan, has not agreed to follow Russia's restrictive trade policies regarding either DCFTA states or the EU itself.

Russia has also applied its restrictive measures in favour of the pro-Russian Moldovan autonomous region of Gagauzia, enabling it to export alcoholic products to the Russian market.¹³ Moscow may be expected to keep its market open to fruit and other products from Gagauzia, regardless of the embargo on Moldovan exports. Gagauzia authorities are conducting negotiations with Moscow with this objective in mind.

The Russian measures are currently aimed at influencing the outcome of the parliamentary elections to be held in Moldova at the end of November. Reports are circulating that the AA/DCFTA could be renegotiated (although in practice it is virtually certain that the EU would not agree to renegotiate the text of the agreement), or even that Moldova's signature of it could be withdrawn (which would mean also revoking the 2 July ratification of the agreement). Some pro-Russian local actors perceive that the forthcoming elections could lead to a change of government and thus an opportunity to scrap the DCFTA. In fact, the Russian embargoes create confusion and doubt for the Moldovan population, approximately half of

¹² 25 August 2014 (www.fsvps.ru/fsvps/news/10881.html)

¹³ In the first six months of 2014 Russia imported 185,699 litres of beverages from Transnistria and 229,338 litres from Gagauzia; see Rospotrebnadzor, 20 June 2014 (<http://rospotrebnadzor.ru>).

which see the Eurasian Economic Union as a solution to their economic needs and a means of avoiding becoming another Ukraine.

Resulting reorientation of exports towards the EU. In the first five months of 2014 exports to the EU grew by 22.5% compared to the same period of 2013, while the share of exports to CIS countries shrank dramatically, by 18.8%. As a result the share of exports going to the EU reached 53.8% (44.8% in 2013), while the CIS share dropped to 31.8% (39.9% in 2013). In addition, the composition of the exports changed, with large increases in cereal products, animal feed, vegetal oil and fats, and organic chemicals.¹⁴ This shows that Moldovan exporters are effectively targeting the EU market and understand the sectors where they are most competitive.

3. Georgia

Russia started to introduce trade restrictions on Georgian agricultural products at the end of 2005. By the first half of 2006 there was a complete embargo on all Georgian agricultural products. Using pretexts of sanitary and phytosanitary standards and health concerns, Russia introduced a manifestly political embargo on all agricultural products, which lasted for more than six years. The Russian trade embargo was its first reaction in a series to Georgia's overtly declared objective after the Rose Revolution to become part of the EU's political and economic space and a member of NATO. While Russia was claiming that Georgian agricultural produce was damaging the health and safety of Russian citizens – without producing any proof, as WTO SPS rules require – citizens in the EU, US, Central Asia and other parts of the world consumed growing quantities of Georgian products.

Thus, overall, the Russian embargo contributed to a healthy trend of diversification in Georgian exports. In the years of the Russian embargo Georgia's total agricultural exports grew by 90%. Whereas before the embargo Georgian wine was exported to 36 countries, by 2011 Georgian producers had entered 15 new markets, including China, Poland, Germany and Singapore. Georgia's agricultural sector also continued to remain attractive to foreign direct investment (FDI) despite the Russian embargo. All this happened in the context of economic and financial crisis, and before concluding the DCFTA with the EU.

Georgia did not retaliate against Russia's punitive actions. Despite mounting tension between the two countries and their 2008 war, which resulted in Russia's occupation of roughly 20% of Georgia, Georgia never introduced restrictions in trade or investment. Even in the absence of diplomatic relations between the two countries after the war, imports and FDI from Russia never faced sanctions from the Georgian side. Georgia wanted to demonstrate that it is a rule-abiding trade partner that, as a completely open economy, acts according to international and WTO norms and principles.

The Georgian case could be a positive example for Moldova and Ukraine, showing the advantages of not changing course in their foreign and trade policy even when confronted with unilateral sanctions imposed by Russia. Georgia never asked Russia to lift the trade embargo, even in the framework of its WTO accession negotiations with Russia. Talks over lifting it began only after the change of government in Tbilisi in 2012. Although the Russian embargo is counter to WTO rules and the Georgian-Russian FTA, its full lifting has not been achieved and trade is not yet back to normal. After Russia partially lifted the embargo on Georgian agricultural products, some agricultural exports resumed in 2013.

¹⁴ Expert Grup, "Economic Reality", July 2014 (<http://expert-grup.org/ro/biblioteca/item/999-re-luile2014-47&category=7>).

The lifting of the embargo is partial because Russia has not reopened its market for all agricultural products at once. The process has rather been gradual. It started with wine, followed by mineral water and some fruits and vegetables. As of now not all agricultural products can be exported to Russia. The lifting of the embargo has been proceeding product by product, and company by company. This means that if Georgian companies want to export a new (previously banned) agricultural product to Russia, they have to formally address the respective Russian authorities and obtain permission to enter the market. Not all companies are being granted market access.

Russia has expressed concerns several times that the EU-Georgia DCFTA would be a threat to the Russian market as EU products could end up there via Georgia, and thus there would be an influx of such products into Russia counter to the interests of Russian producers (similar arguments have been made vis-à-vis Ukraine and Moldova). Russia requested a meeting with Georgian officials to discuss possible implications of the DCFTA for Georgian-Russian trade. One such meeting took place in Prague in early July 2014 at the senior official level. At the end of July there were reports in the Russian press that Russia was planning to unilaterally suspend the Free Trade Agreement with Georgia, which has been in force since 1994. No specific actions followed, and so far the government of Georgia has not received any notification regarding the suspension.

Future developments are quite uncertain. One scenario could resemble Moldovan experience of the past couple of years, whereby the Russian market is opened and closed depending on its political leadership and Russia's desire to show strength. Russia may revert to such measures when it wants to exert greater political leverage on Georgia. Currently, it is busy with Ukraine and Moldova. Official Georgia is 'quiet' at present and even very mild in its statements on Russian behaviour in Ukraine, so as not to offend the Russian leadership. In parallel, former Georgian government officials and party elites are being prosecuted and jailed, which Russia sees as being in its interest so that they do not return to power. Unlike Ukraine and Moldova, at the moment Russia exerts no strong trade pressure on Georgia, but this may change.

4. Belarus

Despite being in the customs union with Russia, Belarus has not followed Russian sanctions against Moldova, Ukraine and Georgia. Moreover, the Belarusian government clearly indicates that it is not going to do so in the near future. As an example, there were bilateral trade talks between Belarus and Moldova in Chisinau on 21-22 July, just one week before Russia introduced tariffs on Moldovan goods. At the meeting, both sides decided "to remove all trade barriers between their countries", as well as "continue bilateral trade talks in Minsk on October 24-25, 2014". Later, in September, the Moldovan prime minister in a television interview expressed his gratitude to Belarusian authorities that helped to increase Moldovan food exports to Belarus in the situation when Russian market had been closing, highlighting that Belarus had become the largest importer of Moldovan wines and the second-largest importer of vegetables.

As a result, Belarus is becoming a hub for trade in food products from Moldova and Ukraine. These products are imported to Belarus in accordance with CIS free trade bilateral agreements, processed, and later exported to Russia with Belarus as 'country of origin'. This scheme of re-export does not contradict the principles of the common customs territory of Belarus and Russia, and Russia has officially recognised this as long as the 'rules of origin' are followed properly. As a result of this 'legalisation', one can expect short-term benefits for the Belarusian

economy, but at the same time there may well be an increase in the illegal re-export of restricted goods to Russia and of black market financial flows.

Belarus foreign trade data for January-June 2014 indicates substantial increases in imports from Moldova and Ukraine to Belarus over a year earlier of many basic vegetable and food products. This is confirmed by Moldovan trade statistics that register a 37% increase in agri-food products to Belarus over this period. However, Ukrainian trade data tell a contradictory story, with some decline in exports to Belarus.

It is so far unclear whether these developments will lead to lasting changes in the customs union of Russia, Belarus and Kazakhstan.

Conclusions

Russia's policies in these three cases lend themselves to the following general assessments.

A recent article on this subject appearing in the Russian press was entitled "European Choice: Crime and Punishment".¹⁵ Evidently the crime committed by these three countries has been to refuse to join the Russian-led customs union and to sign instead the AAs/DCFTAs with the European Union.

The punishment has been a range of trade restricting measures under the heading of non-tariff barriers such as health and safety regulations, up to and including outright bans, or cancellation of free trade preferences (or threats to do so).

The non-tariff barriers have been deployed with deceit. It is not credible that the technical conformity of products from these three countries should oscillate in correlation with Russian geopolitical postures. The technical agencies are thus performing political tasks dressed up as technical-scientific issues.

This manipulation of technical standards is counter to WTO rules, which require that any such trade restrictions be supported by transparent presentation to the trade partners of their scientific bases.

Russia's measures are already having a material impact, reducing trade flows with Russia and pushing the three DCFTA states to make intensified marketing efforts in the EU and other world markets. This is likely to lead to enduring changes in trade structures, since the reputational negatives being accumulated by Russia as a trade partner will be lasting.

The redirection of trade flows towards the EU has to overcome the strict technical standards that apply. These standards are strict in a proper technical sense, and are administered free of political intervention. Exporters from these three countries have to make big efforts in quality upgrading and branding of their products to succeed in this diversification. The EU, for its part, has to consider where it could take off-setting measures to help the three countries, for example, through compensatory increases in tariff quotas for various agri-food products in the cases of Ukraine and Moldova (for Georgia these restrictions no longer exist).

Notwithstanding the punitive measures described, Russia has free trade agreements with Ukraine and Moldova under the aegis of the CIS dating from 2011, according to which most trade is duty-free, and with Georgia a free trade agreement that dates back to 1994 is still legally in force. However, the newer CIS agreements contain an Annex 6, which allows Russia and other members of the customs union to suspend free trade preferences in the event that they damage, or threaten to damage, Russian economic interests. As regards these

¹⁵ Alexei Alexashenko, *Gazeta*, 6 July 2014.

hypothetical damages, President Putin has personally been arguing that EU exports could be routed through these countries and flood the Russian market, thus implying that false identification of origin would also take place. There is no evidence of such practices developing. Moreover, the scenario is implausible, since EU exports to Russia have largely consisted of high value branded products that could not suddenly become 'made in Ukraine' (or Moldova or Georgia) in large quantities. Furthermore, 'threats' of damage can be of the most subjective and speculative nature, and for this reason they have to be proved if invoked under the WTO Safeguards Agreement.

At a trilateral meeting of the EU, Ukraine and Russia in Brussels on 12 September it was agreed to postpone the 'provisional application' of large parts of the AA/DCFTA by Ukraine. In exchange Russia agreed not to go ahead with revoking its CIS Free Trade Agreement. However Russia explicitly says it will take a decision on this point as soon as Ukraine may start to implement the DCFTA, with Putin apparently following up on 17 September in a letter to Poroshenko that any measure taken in the meantime to prepare for implementation of the AA/DCFTA would trigger immediate retaliation.

The full implications of the decision to delay the provisional application of the Association Agreement and DCFTA by a year are not yet evident. What initially was seen as a low-cost cooperative gesture by the EU and Ukraine, now appears more like an act of appeasement, through which a concession once pocketed by Russia is abusively reinterpreted and followed up by pressure for yet further concessions. This raises the question whether the EU Council should adopt the decision of the 12 September trilateral meeting, at which the Commission was only empowered to agree to make a proposal to the Council.

While much of this paper has been relatively technical in content, it should not conclude without due reflection on the gravity of the conflict to which these trade policy alternatives, of free trade versus customs union, have led. Yanukovich's reneging on signing the AA/DCFTA with the EU under pressure from the Kremlin was the trigger for the Ukrainian civil tensions that were tragically exacerbated by Russia's inter-state aggression against Ukraine. Russia's forcing a choice between free trade with the EU and the Russian-led customs union was a totally unnecessary and economically disadvantageous construction. It is perfectly possible for the common neighbours of the EU and Russia to have high quality free trade with both the EU and Russia. The mantra from Moscow that 'they have to choose' is not warranted as either an economic or political proposition, and can only be read as a unilateral statement of crude realpolitik. For Ukraine, Moldova and Georgia, their political and economic interests in having good trade relations with both the EU and Russia are absolutely clear and rational. The EU would surely welcome these countries having high quality (upgraded) CIS Free Trade Agreements with Russia and its customs union. By contrast, Putin's calamitous choice was not only to make the customs union issue a litmus test, but also to escalate the conflict around it with propaganda and military intervention to the point of war, with tragic consequences.



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