
TRILATERAL TALKS ON EU-UKRAINE DCFTA

DISTINGUISHING BETWEEN MYTHS & REALITY

The EU remains committed and open to achieving practical solutions to Russia's concerns on the implementation of the EU-Ukraine Deep and Comprehensive Free Trade Area (DCFTA).

The trilateral consultation process at ministerial level was launched in July 2014. Up to end of 2015, 13 trilateral meetings, including 4 at ministerial level, have taken place to this end.

This document sheds some light on certain myths related to this process.

Myth 1: Russia can change CIS-FTA customs rules without having to hold consultations with all other CIS-FTA countries.

Reality: Russia claims it adheres to CIS-FTA rules and the resulting obligation of mutual consultations. It disregards the same CIS-FTA rules, however, when it comes to unilaterally withdrawing trade preferences towards Moldova (July 2014) and now Ukraine.

Under CIS-FTA safeguards rules (annex 6), in order to increase import tariffs against another CIS-FTA member (e.g. Ukraine), Russia must:

- consult the other countries of the CIS-FTA;
- demonstrate product by product that the changed circumstances (i.e. the provisional application of the EU-Ukraine DCFTA as of 1 January 2016) would lead to 'an increase in imports from the Party in such quantities as to cause damage or threaten to harm the industry of Custom Union'.

Currently, Russia neither demonstrated such an increase in imports or related negative effects stemming from the implementation of the DCFTA because the DCFTA has not yet come into force.

The Commission has offered to continue the consultations after 1 January 2016. The Commission's offer to continue is however conditional on Russia's revocation of the Presidential decree that suspends its CIS FTA obligations towards Ukraine.

Myth 2: The EU demands that all goods sold on the Ukrainian market should comply with European technical standards. This excludes Russian products from the Ukrainian market.

Reality: In fact, the DCFTA foresees that only 27 Ukrainian sectorial technical regulations for industrial products will be aligned with EU regulations, such as those applying to toys, lifts, refrigerators etc. So far, Ukraine has already brought 24 sectorial technical regulations for industrial products in line with EU regulations.

Russia's request for transition periods postponing the alignment of Ukraine's regulations with those of the EU would effectively force Ukraine to roll back already transposed EU legislation. This would violate provisions of the DCFTA (Art. 56).

Furthermore, to our knowledge no Russian company has yet complained that it faced difficulties in exporting its products to Ukraine due to technical regulations. After looking more closely into recent trade figures, we see rather an increase in Russian exports to Ukraine in the sectors where Ukrainian regulations have been aligned with EU standards. The share of Russian exports to Ukraine of goods falling under EU-based harmonisation of technical regulations, in line with commitments under the DCFTA, out of overall Ukraine-Russia bilateral trade in goods increased from 8.8% to 12.3% between 2012 and 2014.

This is probably due to the fact that Russia generally has an interest in harmonising its technical regulations and standards with those of the EU in various sectors, as it wants to attract EU investors and to be able to export to the EU in the future. For many years the EU has conducted projects with Russia concerning harmonisation of technical regulation for industrial products.

As such, since 2013, the Commission has been financing a project on 'Approximation of EU and Russian Federation technical regulation and standardisations systems'. This project seems to be fruitful regarding work with the Russian authorities on the approximation of technical regulations, even if in practice some of the legislation is not applied on the ground. The Customs Union (the Eurasian Economic Union since 2015) has adopted 35 technical regulations, a number of which are

based on and broadly in line with EU regulations (for example toys, machinery, low voltage, electromagnetic compatibility, personal protective equipment).

In line with the flexibilities foreseen in the DCFTA, the EU is ready to consider longer transition periods for technical regulations linked to certain sectors/goods if Russia demonstrates the need for it. However, until now, Russia has not provided figures on its exports to Ukraine in specific sectors where Ukraine has already aligned or is supposed to align its legislation with that of the EU. Instead, Russia has designated seven sectors to be of particular economic importance for Russia, however, without any factual evidence or clear justification. Ukraine has already approximated its regulations with those of the EU in six out of these seven sectors concerned.

Myth 3: The EU wants to force Russia to change customs rules set in the Free Trade Agreement of the Commonwealth of Independent States (CIS-FTA).

Reality: Russia considers the current CIS-FTA rules of origin as too permissive. According to Russia, under the current rules certain goods imported by Ukraine could easily get Ukrainian origin and be exported to Russia without customs duties.

In fact, in the trilateral talks, the Commission simply said that Russia is free to initiate a procedure to change its CIS-FTA rules if it considers that the CIS-FTA rules of origin lead to problems each time a CIS-FTA member signs a Free Trade Agreement (FTA) with another country.

The EU's position is based on its belief that customs rules should be functional and respect the rule that FTAs do not lead to mutual exclusivity of involved partners.

Myth 4: The EU obliges Russia to adopt the EU phytosanitary control system.

Reality: The EU never forced Russia to adopt European SPS standards. It is clear, however, that Russian exports to the EU have to conform to EU SPS standards. In the context of the trilateral talks, the EU has responded to Russian SPS-related concerns about customs cooperation with Ukraine and proposed an updated bilateral process of acceptance of veterinary certificates, the mutual evaluation of SPS systems, a revision of rules of origin within the CIS-FTA, and deeper customs service cooperation to fight fraud.

Myth 5: Russia's proposal to introduce a 'transition period of no more than ten years for a limited number of trade sectors' is not a problem.

Reality: This proposal may appear innocuous at first sight but it would mean prohibiting large parts of the EU-Ukraine DCFTA from being applied for many years.

At the same time, it is doubtful that this would have a positive impact for Russian exports. This Russian proposal is an example of Russia's misinterpretation of the Commission's mandate 'to elaborate practical solutions to Russian concerns linked to the implementation of the DCFTA'.

Myth 6: Extensive data on prices and customs valuation for each and every single transaction on goods exported to Ukraine would be essential for Russia. The EU needs to provide it.

Reality: This would not provide Russia with verifiable information about the origin of the goods imported by Russia from Ukraine. In addition, it would be in contradiction of EU privacy legislation to protect the confidentiality of business information.