



21 September 2023

(23-6284)

Page: 1/3

Original: English

## **POLAND – MEASURES CONCERNING AGRICULTURAL PRODUCTS FROM UKRAINE**

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

The following communication, dated 18 September 2023, from the delegation of Ukraine to the delegation of Poland, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

---

I have been instructed by my authorities to request consultations with the Republic of Poland pursuant to Article XXIII of the General Agreement on Tariffs and Trade of 1994 ("GATT 1994"), Article 19 of the Agreement on Agriculture, and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") concerning measures of the Republic of Poland affecting the importation of certain agricultural products from Ukraine. These measures adversely affect exports that are of key significance for Ukraine's economy, at the time when Russia's illegal, unjustifiable, and unprovoked war of aggression has had a devastating impact on Ukraine's economy and its ability to trade with other WTO Members.

Pursuant to Article 4.4 of the DSU, Ukraine describes below the reasons for this request, including the identification of the measures at issue and an indication of the legal basis for the complaints.

#### **I. BACKGROUND TO THE DISPUTE**

On April 15, 2023, Minister of Economic Development and Technology of the Republic of Poland adopted Order 717, which imposed a ban on the importation of a wide range of agricultural products from Ukraine, apparently including a ban on the transit of these goods via Poland's territory.<sup>1</sup> This Order was replaced with Order 751 of April 21, 2023, which applied, until June 30, 2023, an import prohibition on the same broad list of agricultural goods of Ukrainian origin, while exempting goods in transit from this ban.<sup>2</sup>

These measures of the Republic of Poland were subsequently replaced by certain import prohibitions at the EU level. In particular, on May 2, 2023, the EU Commission decided to prohibit the importation of four categories of Ukrainian agricultural products into the Republic of Poland, Hungary, the Slovak Republic, Romania, and the Republic of Bulgaria until June 5, 2023, with the possibility of extending this measure. This prohibition was introduced through Article 1 of Regulation (EU) 2023/903 of May 2, 2023, which stated as follows:

---

<sup>1</sup> The goods at issue were: cereals, sugar, dried fodder, seeds, hops, flax and hemp, fruit and vegetables, processed fruit and vegetable products, wine, beef and veal, milk and milk products, pork, mutton and goat meat, eggs, poultry meat, ethyl alcohol of agricultural origin, bee products, and other products, such as various live animals, fresh or chilled carcasses of meat, and edible offal, within the meaning of Parts I, III-VI, VIII-X, XII, XV-XXII, and XXIV of Annex to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347/671, 20.12.2013. See Annex to Regulation 717 of 15 April 2023 at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20230000717>.

<sup>2</sup> See Regulation 751 of 21 April 2023 of Minister of Economic Development and Technology of the Republic of Poland, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20230000751>.

Except for the execution of contracts that were signed before the entry into force of this Regulation, the release for free circulation or placing under the customs warehousing, free zone or inward processing procedures of the products listed in the Annex to this Regulation originating in Ukraine, shall only be allowed in Member States other than Bulgaria, Hungary, Poland, Romania or Slovakia.<sup>3</sup>

The EU Commission subsequently extended this prohibition until September 15, 2023 through Regulation (EU) 2023/1100 of June 5, 2023.<sup>4</sup>

The EU's import prohibition is not currently in force. On September 16, 2023, the EU Commission concluded that the temporary measures introduced on May 2, 2023 had contributed sufficiently to the elimination of the market distortions in the five EU Member States bordering Ukraine. The EU authorities thus decided not to extend the measure.<sup>5</sup>

However, despite the decision of the EU Commission the Republic of Poland announced on September 16, 2023, that its own ban on Ukrainian grain came into force on September 15, 2023, through Order 1898, which extended a ban on the importation of the products prohibited previously by the EU Commission Implementing Regulation 2023/1100 of June 5, 2023, adding to the list wheat flour (11010015) and meal/bran (23021090, 23023010, 23023090, 23064100, 23064900)<sup>6</sup>.

## II. IDENTIFICATION OF THE MEASURES AT ISSUE

The measure at issue is the import prohibitions on various agricultural goods originating in Ukraine, as described in Section I above, whether applied by the national authorities of the Republic of Poland through the instruments referred to in Section I above or any other applicable instruments.

Ukraine's request for consultations also concerns any other instrument, modifying, supplementing, complementing, developing, or in any manner relating to the measures at issue. This request is intended to address current laws, regulations, policies and practices, as well as any changes or amendments to those laws, regulations, policies or practices that may be in process or may be implemented in the future by the Republic of Poland, or at the EU level.

## III. LEGAL BASIS FOR THE COMPLAINT

The measures at issue, as described in Section II above, appear to be inconsistent with several provisions of the Agreement Establishing the World Trade Organization ("WTO Agreement"). In particular, these measures would appear to be inconsistent with:

- (i) Article XI:1 of the GATT 1994, as they prohibit or restrict the importation of agricultural goods from Ukraine to the territories of the Republic of Poland;
- (ii) Article V:2 of the GATT 1994 to the extent that the measure of the Republic of Poland either *de jure* or *de facto* restricts freedom of transit of Ukrainian agricultural goods through the territory of Poland to other EU Member States;
- (iii) Article X:1 of the GATT 1994, as the Republic of Poland failed to publish its regulations at issue promptly in such a manner as to enable the Government of Ukraine and traders to become acquainted with them;
- (iv) Article 4.2 of the Agreement on Agriculture, as the Republic of Poland have maintained, resorted to, or reverted to measures of the kind which have been required to be

<sup>3</sup> The goods at issue are: wheat and meslin (1001), maize (corn) (1005), rape or colza seeds (1205), and sunflower seeds (1206). See Article 1 and Annex of Commission Implementing Regulation (EU) 2023/903 of 2 May 2023 introducing preventive measures concerning certain products originating in Ukraine, OJ L 114 I/1, 2.5.2023 (Regulation 2023/903).

<sup>4</sup> Commission Implementing Regulation (EU) 2023/1100 of 5 June 2023 introducing preventive measures concerning certain products originating in Ukraine, OJ L 144/1, 5.6.2023 (Regulation 2023/1100).

<sup>5</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_4497](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4497).

<sup>6</sup> <https://dziennikustaw.gov.pl/DU/2023/1898>.

converted into ordinary customs duties, such as import prohibitions and restriction on Ukrainian agricultural goods; and

- (v) Article 5 of the Agreement on Agriculture to the extent that it is applicable, because, *inter alia*, neither the EU, nor the Republic of Poland does not appear to have reserved their right to apply measures that fall under the scope of this provision to most of the products at issue in their Schedule of Concessions under the GATT 1994; these measures take the form of a ban instead of a duty; and these measures are discriminatory as they apply only to Ukrainian imports and not also to other WTO Members' imports.

Ukraine notes that these consultations might give rise to other matters having legal implications that are not expressly stated in this request but relate to other WTO obligations of the Republic of Poland. With a view to facilitating a wide-ranging exchange of views, Ukraine notes that, if such were to be the case, these matters would also be covered by the scope of this request for consultations.

Ukraine remains a reliable and predictable trading partner. Despite destruction of traditional agricultural supply chains due to the Russia's war of aggression against Ukraine, it is poised to continue guaranteeing Europe's and global food security and providing European and world consumers with high-quality Ukrainian products. In this context, it is critical that the Republic of Poland do not take any steps to restrain or restrict trade and continues to pursue an open and predictable trade policy, based on the provisions and principles of the WTO Agreement.

I look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations.

---