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HUNGARY – 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 Hungary, 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 Hungary 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 Hungary 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 18, 2023 Hungary introduced a temporary import ban on various agricultural goods originating in Ukraine through Government Decree 130/2023 (IV. 18.). This temporary measure was in effect from April 19, 2023 and applied to 24 four-digit tariff subheadings for the following products: meat products, eggs, honey, vegetables, grains (such as wheat, rye, barley, maize, etc), flour, oily seeds, sugar and wine. This Decree expired on September 16, 2023.¹

These measures of Hungary was subsequently replaced by 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:

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

¹ This measure applied to common wheat (excluding seed) (ex 1001 99 00), maize (excluding seed) (1005 90 00), oil seeds of rape or colza, whether or not broken (excl. seeds) (1205 10 90; ex 1205 90 00), and sunflower seeds, whether or not broken (excl. seeds) (1206 00 91, 1206 00 99). See Government Decree 130/2023 (IV. 18.) of 18 April 2023, including its Annex 1.
https://net.jogtar.hu/jogszabaly?docid=A2300130.KOR&dbnum=1&fbclid=IwAR1DYrjZ2MgFZNTeir0eh_gJzQNfT7m8sOpU3ZQ3H4otDMPVEY6UV6b3Uxc.

Annex to this Regulation originating in Ukraine, shall only be allowed in Member States other than Bulgaria, Hungary, Poland, Romania or Slovakia.²

The EU Commission subsequently extended this prohibition until September 15, 2023, through Regulation (EU) 2023/1100 of June 5, 2023.³

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.⁴

However, despite the decision of the EU Commission, Hungary announced on September 16, 2023, that its own ban on Ukrainian products came into force on September 15, 2023, through the Government Decree 430/2023 (IX. 15.) on the amendment of the Government Decree 130/2023 (IV. 18.), imposing an import ban on 25 Ukrainian products such as grains, rapeseed and sunflower seeds, certain meat products, wheat, rye, barley, corn (and products made of them), vegetables, sugar, wine, honey, and eggs (tariff subheadings 0201, 0202, 0203, 0204, ex 0207, 0407, 0409, 0710, ex 1001 99 00, 1002, 1003, 1005 90 00, 1008, 1101, 1102 00, 1104, 1205 10 90, 1205 90, 1206 00 91; 1206 00 99, 1512, 1514, 1701, 1905 10 00, 2005, 2204)⁵.

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 Hungary 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 Hungary, 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 territory of Hungary;
- (ii) Article V:2 of the GATT 1994 to the extent that Hungary's measure either *de jure* or *de facto* restricts freedom of transit of Ukrainian agricultural goods through the territory of Hungary to other EU Member States;
- (iii) Article X:1 of the GATT 1994, as Hungary 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 Hungary has maintained, resorted to, or reverted to measures of the kind which have been required to be converted into ordinary

² 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).

³ 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).

⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4497.

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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 Hungary 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 Hungary. 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, Ukraine 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 Hungary does not take any steps to restrain or restrict trade and continues to pursue an open and predictable trade policy vis-à-vis Ukraine, 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.
