



16 June 2016

(16-3305)

Page: 1/4

Committee on Regional Trade Agreements

Original: English/Spanish

FREE TRADE AGREEMENT BETWEEN THE RUSSIAN FEDERATION AND SERBIA (GOODS)

QUESTIONS AND REPLIES

The following communication, dated 15 June 2016, is being circulated at the request of the delegations of the Russian Federation and Serbia.

This document reproduces the questions addressed to the Parties and the responses submitted.

Questions from the delegation of Chile

Global safeguards

1.1. Paragraph 3.31: "Once a decision is taken by a Party to start investigation procedures, it shall inform the other Party and provide information required by the laws of the Party that initiated the investigation. If the Parties fail to reach a mutually acceptable solution within 30 days from the beginning of consultations in the Working Group, the Party initiating the investigation will have the right to apply measures required to eliminate the damage caused by increased imports from the other Party. It must inform the other Party of its decision. The volume and period of application of the measure should be limited, according to Article 16 of the Agreement, to remedy the damage. The Parties are to give preference to measures which would cause least damage to the achievement of the objectives of the Agreement. In exceptional cases, when a delay in the adoption of measures might lead to damage that is hard to remedy, the Party initiating the investigation may impose interim measures prior to consultations with the other Party in the Working Group. This must be on condition that the consultations in the Working Group take place immediately after the application of the interim measures."

- a. The text states that "the Party initiating the investigation will have the right to apply measures required to eliminate the damage caused by increased imports from the other Party". Chile would like to know whether such measures are provisional or definitive.

Article 15 of the Agreement which specifically deals with the application of safeguard measures provides for an opportunity of a Party to apply safeguard measures in case of imports of goods into the territory of that Party in such quantities and under such conditions as to cause or threaten to cause substantial injury to the national producers of like or directly competitive product in the importing country. According to Article 15 of the Agreement, safeguard measures are to be applied in accordance with national legislation of the Parties and with the procedure established in Article 16 of the Agreement. According to Article 16 of the Agreement, in exceptional cases where delay in application of the measures envisaged in Article 15 of the Agreement would cause damage which it would be difficult to repair, a Party that initiated a procedure of application of the measures may apply provisional measures. Hence, in accordance with the Agreement, both provisional and definitive measures can be applied depending on the circumstances.

- b. Since the measure is calculated to achieve a level "without damage", and the damage used for this purpose is that caused by imports from the other Party, please clarify whether the measure is applied globally.**

There are no provisions on bilateral safeguard measures, in the Agreement, therefore all safeguard measures are to be applied globally. It should be noted that the provisions of the genuine text of the Agreement which deal with the application of safeguard measures do not include any wording that would indicate the source of imports. Article 16 of the Agreement provides for a mechanism of consultations between the Parties before the application of the measures in order to find mutually acceptable solution. If the Parties fail to find such solution within 30 days from the beginning of the consultations, the Party initiating the investigation has the right to apply measures required to eliminate material (serious) injury or threat of material (serious) injury, having informed the other Party thereof. The Agreement does not provide for application of "measures required to eliminate the damage caused by increased imports from the other Party" as it is stated in the Report of the WTO Secretariat (WT/REG326/1, para 3.31).

- c. If the measure is applied solely to the other Party, please explain how Russia and Serbia ensure that this does not run counter to Article 2.2 of the Agreement on Safeguards, which establishes that measures shall be applied to a product irrespective of its source.**

As it was previously stated, nowhere among the provisions of the Agreement which deal with the application of safeguard measures is an indication of the source of imports. Besides, the Agreement does not provide for application of bilateral safeguard measures. Therefore no safeguard measures can be applied solely to a product of the other Party.

Question from the delegation of Singapore

1.2. The Eurasian Economic Union (comprising Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan) entered into force on 1 January 2015. We are interested in learning more about how this development will affect the implementation of the Russia-Serbia FTA. Will the scope of the FTA be expanded to include the 4 other Member States?

Following the establishment of the Customs Union (CU) between Russia, Kazakhstan and Belarus CU members had decided to unify trade regime in goods with Serbia. For that purpose in 2011 CU members concluded bilateral free trade agreements with the Republic of Serbia.

Due to the transformation of CU into Eurasian Economic Union and adherence of new members (Armenia and Kyrgyzstan) in May 2016 for the purpose of unification of the trade regime the Supreme Eurasian Economic Council at the level of the Heads of the States under Article 102 of the Treaty on Eurasian Economic Union passed a decision to launch free trade negotiations between Eurasian Economic Union and its members from one side and the Republic of Serbia from the other side.

Questions from the delegation of the United States

General Question

1.3. The Free Trade Agreement (Agreement) under review is between the Russian Federation (Russia) and Serbia. Since the signature and provisional entry into force of the Agreement, however, Russia has become a member of the Eurasian Economic Union (EAEU). The United States is interested in knowing how Russia's membership in the EAEU impacts the rights and obligations under the Agreement. Do all the rights and obligations assumed by Russia under the Agreement automatically accrue to the EAEU? Does Serbia now have a free trade agreement with all five member States of the EAEU?

Following the establishment of the Customs Union (CU) between Russia, Kazakhstan and Belarus CU members had decided to unify trade regime in goods with Serbia. For that purpose in 2011 CU members concluded bilateral free trade agreements with the Republic of Serbia.

Due to the transformation of CU into Eurasian Economic Union and adherence of new members (Armenia and Kyrgyzstan) in May 2016 for the purpose of unification of the trade regime the Supreme Eurasian Economic Council at the level of the Heads of the States under Article 102 of the Treaty on Eurasian Economic Union passed a decision to launch free trade negotiations between Eurasian Economic Union and its members from one side and the Republic of Serbia from the other side.

Characteristic elements of the Agreement **Background Information**

1.4. Section 2.1 & footnote 1: According to the Secretariat's Report, the Agreement is being provisionally applied and the Parties "indicate that the date of full implementation is not applicable". Could the Parties please explain what the legal significance is of "provisional" application, and why "full implementation is not applicable"? Are there plans for full implementation? Please also indicate if all parts of the agreement have been implemented (even if only provisionally), and if not, which parts have been implemented and which have not? If any parts of the agreement have not yet been provisionally implemented, please indicate whether there are plans to provisionally implement them at any time before full implementation of the agreement.

The application of the FTA provisionally does not affect bilateral trade since it is applied in the same manner as if there would be the full implementation. All parts of the FTA are fully applied where it is possible as for Russia as a member of EAEU the rights to revise the import tariff are limited.

Provisions on trade in goods **Import duties and charges, and quantitative restrictions** **General provisions**

1.5. How are products from Serbia treated in non-Russian member States of the EAEU? If the EAEU has eliminated border controls, once a product enters the EAEU, it should, in theory, be able to travel freely to other EAEU member States. Are goods of Serbian origin that have entered duty-free into Russia allowed to proceed to Armenia, Belarus, Kazakhstan and the Kyrgyz Republic without further customs interference? How are Serbian-origin goods treated that are transshipping Russia bound for Armenia, Belarus, Kazakhstan and the Kyrgyz Republic? How are Serbian-origin goods treated that enter Armenia, Belarus, Kazakhstan and the Kyrgyz Republic without going through Russian territory?

Under existing bilateral FTAs between some EAEU members (Belarus, Kazakhstan and Russian) and Serbia the goods originating in Serbia are granted the same preferences and such goods are eligible for traveling freely to mentioned EAEU members. Regarding Armenia and Kyrgyzstan the same preferential treatment is expected to be granted as soon as EAEU harmonize trade regime between EAEU and its member states from one side and the Republic of Serbia from other side.

1.6. Section 3.1: The Secretariat's Report notes that Article 4 of the Agreement provides that the Parties "shall endeavor" to phase out import duties on bilateral trade within five years.

- a. What happens if either Party does not phase out its tariffs after five years?**

- b. Does the agreement contain legally binding commitments to eliminate all tariffs? If so, what is the time period? If not, does the agreement contain legally binding commitments to eliminate tariffs on any products? If so, for which products have the parties made tariff-elimination commitments, and what is the tariff-elimination schedule for each covered product? For any such commitments, please identify the relevant text in the agreement.

Under Article 4 the Parties have the right to launch such negotiations. The list of goods which are not granted the preferential treatment was amended by the Protocol of June 22, 2011. Taking into account that in 2011 the same trade regime for the importations of goods originating in Serbia was set forth through bilateral FTA with Belarus and Kazakhstan any further elimination of EAEU import tariff would require the introduction of the same amendments in all three FTAs simultaneously.

Rules of Origin

1.7. Paragraph 3.14: The Secretariat's Report notes that the Agreement allows cumulation of material originating in Russia, Serbia, Belarus or Kazakhstan. Has the Agreement been modified to allow cumulation of materials from Armenia and the Kyrgyz Republic following those countries' accession to the EAEU?

There are no provisions which stipulate the cumulation of materials originating in Armenia and Kyrgyz Republic. However, the cumulation is expected to be provided for once the unification of trade regime between EAEU and its member states from one side and the Republic of Serbia from other side is complete.

Regulatory Provisions of the Agreement

Standards

Sanitary and phytosanitary measures

1.8. Sections 3.24 & 3.25: This section of the Secretariat's Report refers to "State regulations in the area of veterinary, quarantine and plant protection..." In the case of Russia, are the "State regulations" those of the Russian Federation or the EAEU?

Under Article 6 of the Agreement "State regulations" means the Russian legislation. Herewith, it should be taken into account that in accordance with Article 15.4 of the Constitution of the Russian Federation international treaties of the Russian Federation form an integral part of the Russian legal system. So, the Russian legislation relating to SPS measures incorporates legal acts of EAEU and is in effect to the extent that it does not contradict the EAEU one.

Technical barriers to trade

1.9. Section 3.27: The Secretariat's Report refers to plans by the Parties to "conclude agreements on mutual recognition of testing, conformity certificates or other documents" relating to technical barriers to trade. Would such agreements be concluded between Serbia and Russia or between Serbia and the EAEU? How would such efforts comport with Serbia's efforts to achieve conformity with the EU regime governing technical regulations and conformity assessment?

The Russian Federation has no agreements on mutual recognition of testing, conformity certificates or other documents with Serbia. Russia's rights to conclude such agreements are limited by its obligations under the Treaty on the Eurasian Economic Union.
