



29 August 2018

(18-5388)

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**RUSSIA – MEASURES AFFECTING THE IMPORTATION OF RAILWAY EQUIPMENT AND  
PARTS THEREOF**

**NOTIFICATION OF AN APPEAL BY UKRAINE  
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES  
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),  
AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 27 August 2018, from the Delegation of Ukraine, is being circulated to Members.

Pursuant to Article 16.4 of the DSU Ukraine hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *Russia – Measures Affecting the Importation of Railway Equipment and Parts thereof* (WT/DS499/R). Pursuant to Rule 20(1) of the Working Procedures for Appellate Review, Ukraine simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

For the reasons to be further elaborated in its submissions to the Appellate Body, Ukraine appeals, and requests the Appellate Body to reverse the findings, conclusions and recommendations of the Panel, with respect to the following errors contained in the Panel Report:<sup>1</sup>

- a. the Panel failed to make an objective assessment of the matter before it due to the incorrectly applied standard and order of review, burden of proof partially allocated to the parties, biased review of the arguments,<sup>2</sup> and therefore violated Article 11 of the DSU which resulted in finding that there was no systematic prevention of Ukrainian railway products from being imported into the Russian Federation. Thus, Ukraine requests the Appellate Body to reverse the relevant Panel's findings in paragraphs 7.960, 7.965, 7.972, 7.974, 7.993, 7.994, 7.995 and 8.1 (e) of its Report;
- b. the Panel failed to make an objective assessment of the matter before it due to burden of proof partially allocated to the parties and the incorrect standard of review,<sup>3</sup> and therefore violated Article 11 of the DSU which resulted in finding that Ukraine did not establish that the situation in Ukraine was comparable in the meaning of Article 5.1.1 of the TBT Agreement. Thus, Ukraine requests the Appellate Body to reverse the relevant Panel's findings in paragraphs 7.393, 7.394 and 8.1. b(i), c(i) of its Report;
- c. the Panel failed to make an objective assessment of the matter before it due to burden of proof partially allocated to the parties and the incorrect standard of review,<sup>4</sup> and therefore violated Article 11 of the DSU which resulted in finding that there were no less

<sup>1</sup> Pursuant to Rule 20(2)(d)(iii) of the *Working Procedures for Appellate Review*, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of Ukraine to refer to other paragraphs of the Panel Report in the context of its appeal.

<sup>2</sup> See, for example, Panel Report, paras. 7.969-7.972, 7.974, 7.976.

<sup>3</sup> See, for example, Panel Report, paras. 7.285, 7.336, 7.371-7.388, 7.393-7.394, 7.623-7.625, 7.628.

<sup>4</sup> See, for example, Panel Report, paras. 7.450, 7.468, 7.470, 7.476, 7.482, 7.521-7.544, 7.653, 7.656, 7.671, 7.676, 7.704, 7.712, 7.718, 7.719, 7.721, 7.722, 7.226, 7.228, 7.742, 7.745, 7.760.

trade-restrictive alternatives available to the Russian Federation, in the meaning of Article 5.1.2 of the TBT Agreement, instead of suspension of certificates and rejection to issue new certificates. Thus, Ukraine requests the Appellate Body to reverse the relevant Panel's findings in paragraphs 7.470, 7.476, 7.482, 7.537 and 8.1 (b)(ii), (c)(iii) of its Report; and

- d. the Panel erred in the interpretation and application of Article 5.1.1 of the TBT Agreement when finding that the situation in Ukraine was not comparable to that in other countries;<sup>5</sup> and thus Ukraine requests the Appellate Body to reverse the relevant Panel's findings in paragraphs findings 7.387 and 8.1 (b)(i), (c)(i) of its Report.
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<sup>5</sup> See, for example, Panel Report, paras. 7.283, 7.285, 7.371-7.388 and 7.394, 7.615-7.616, 7.623, 7.628.