

## Russia suspends CIS trade deal after EU-Ukraine Pact

The next chapter in the ongoing hostilities between Russia and the Ukraine is about trade and, more fundamentally, about the Ukraine becoming friendlier with the West.[1] The EU-Ukraine Deep and Comprehensive Free Trade Area ("DCFTA") came into existence on January 1.[2] As of that same date, Russia put retaliatory trade bans and tariffs on the Ukraine and hinted at a legal justification in the terms of an earlier free-trade relationship between the two countries.[3]

The DCFTA, created by Title IV of the 2,100-page "Association Agreement" between the EU and the Republic of Ukraine, "offer[s] Ukraine a framework for modernising its trade relations and for economic development by the opening of markets." [4] The free-trade agreement between the two resulted in an "immediate abolition of import dut[ies] for more than 97% of all goods exported from Ukraine to the EU." [5] The deal allows producers in the Ukraine to have "access to a wide range of cheaper industrial products, components and equipment." [6] Furthermore, Ukrainian consumers will have access to a wider array of products, which will also be available at lower prices. [7]

As a member of the Commonwealth of Independent States ("CIS") and party to the CIS free-trade agreement ("FTA"), [8] the Ukraine had benefited from duty-free trade with Russia. [9] That gets at the main problem with the EU-Ukrainian free-trade deal: Russia does not like it. The DCFTA has been delayed for nearly a year [10] in the hopes that talks among Russia, the Ukraine, and the EU would help to sway Russia from imposing retaliatory tariffs and satisfy Russian concerns over any harm that could come to its economy. [11] "Russia has repeatedly said that Ukraine can[not] simultaneously be a part of the free-trade zone with the EU and within the CIS," [12] as well as "continually insist[ing] on a legally binding agreement, which would amount to a reopening of the bilateral agreement." [13] However, these talks failed, leading Putin to end the free trade that Ukraine enjoyed with Russia [14] and "ban the import of agricultural products, raw materials, and foodstuffs . . ." [15]

Russian authorities stated that the "[i]mplementation of the [EU-Ukraine] Agreement impinges on our interests and creates risk to our economic security." [16] Russia announced it has an obligation to guard its "market and producers," and therefore must make Ukraine "pay customs duties." [17] Under the CIS FTA, Article 8, Parties to the agreement may "apply special safeguard measures." [18] Furthermore, Article 19 states that if a "Part[y] considers that another party is not fulfilling its obligations under this Agreement and such non-fulfillment . . . causes or threatens to cause harm to the economic interests of the First Party . . ." then the two parties are to "hold consultations in order to achieve a mutually acceptable resolution . . ." [19] Both the Ukraine and Russia have met along with the EU in order to attempt to reach some sort of agreement. The same Article of the CIS FTA also states that, if no agreement can be reached, then "at the option of the First Party," here Russia, the parties "may" enter into other formal dispute resolution mechanisms. [20] It does not seem as though Russia has chosen to enter into any of the other formal dispute resolution mechanisms provided in the CIS FTA, and instead has decided to end its own agreement with Ukraine.

The two economies have been "intertwined for decades." [21] Kiev exports a large amount of food to Russia, leading Ukrainian officials to "expect[] to lose . . . \$600 million," from these new bans and tariffs. [22] The recent tension between the two countries has already caused a "significant" decline in trade between the countries, with Ukrainian exports to Russia falling nearly four times as steeply as during earlier periods of discord. [23] Time will tell which side the Ukraine is better off dealing with, the EU or Russia, but one thing is certain: The tensions between Russia and the Ukraine are not going away anytime soon.



"Russian President Vladimir Putin (left) and Ukrainian President Petro Poroshenko (right) confer with German Chancellor Angela Merkel (foreground) and French President François Hollande (rear) at the ASEM summit meeting in October 2014.

[1] Max Biedermann, *Ukraine: Between Scylla and Charybdis*, 40 N.C. J. INT'L. L. & COM. REG. 219, 231–35 (2014). Ukraine "has long divided its loyalties and economy between Europe and longtime ruler Moscow, giving it huge strategic importance to Russia, Europe, and the United States." *Id.* at 231 (quoting Maria Danilova & Yuras Karmanau, *Ukraine: East-West Tensions; Protesters Take Kiev*, YAHOO! NEWS (Feb. 22, 2014, 9:05 AM), <http://news.yahoo.com/ukraine-east-west-tensions-protesters-kiev-125513810.html>).

[2] Valentina Pop, *Russia Hits Ukraine with Tariffs Over Imminent Trade Deal with EU*, WALL ST. J., Dec. 21, 2015, <http://www.wsj.com/articles/russia-penalizes-ukraine-because-of-its-imminent-trade-deal-with-eu-1450725567> [perma.cc/5ARJ-Z8FS]; see also O.J. L 289 P. 0001 (Council Decision 2014/691/EU, 29 Sept. 2014) (setting timeline for various parts of Association Agreement to come into force), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0691&from=EN>.

[3] Pop, *supra* note 2; Указ Президента Российской Федерации от 16.12.2015 № 628 "О приостановлении Российской Федерацией действия Договора о зоне свободной торговли в отношении Украины" (RUSSIAN FEDERATION PRESIDENT'S DEC. 16, 2015, DECREE NO. 628, "ON THE RUSSIAN FEDERATION'S SUSPENSION OF THE FREE-TRADE AREA WITH RESPECT TO THE UKRAINE"), RUSSIAN FEDERATION, available at <http://publication.pravo.gov.ru/Document/GetFile/0001201512160035?type=pdf> [https://perma.cc/KJ2Z-FWEE].

[4] Overview of the key elements of the EU-Ukraine Deep and Comprehensive Free Trade Area, EUR. UNION, [http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\\_150981.pdf](http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150981.pdf) [https://perma.cc/P53K-ZDGC] ("[T]he opening of markets [will be achieved by] . . . the progressive removal of customs tariffs and quotas, and by an extensive harmonisation of laws, norms and regulations in various trade-related sectors, creating the conditions for aligning key sectors of the Ukrainian economy to EU standards."); see O.J. L 161 P. 0003 (Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, signed March 21, 2014, as to Titles I, II, and VII), 21 May 2014, available at [http://eeas.europa.eu/ukraine/docs/association\\_agreement\\_ukraine\\_2014\\_en.pdf](http://eeas.europa.eu/ukraine/docs/association_agreement_ukraine_2014_en.pdf).

[5] Natalia Osadcha, *Provisions of the EU-Ukraine Association Agreement*, HG.ORG LEGAL RESOURCES, Dec. 15, 2015, <http://www.hg.org/article.asp?id=37207> [perma.cc/8WGW-9LXY].

[6] *Id.*

[7] *Id.*

[8] FREE TRADE AGREEMENT OF THE COMMONWEALTH OF INDEPENDENT STATES (translated and annotated), U.S. DEPT AGRICULTURE, available at [http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Commonwealth%20of%20Independent%20States%20FTA%20\\_Moscow\\_Russian%20Federation\\_4-5-2012.pdf](http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Commonwealth%20of%20Independent%20States%20FTA%20_Moscow_Russian%20Federation_4-5-2012.pdf) [perma.cc/Y3C8-V8TQ] [hereinafter CIS FTA].

[9] *Russia Suspends Free Trade Agreement with Ukraine*, MOSCOW TIMES, Dec. 16, 2015, <http://www.themoscowtimes.com/business/article/russia-suspends-free-trade-agreement-with-ukraine/553074.html> [perma.cc/2SZE-S3U3].

[10] *EU-Ukraine Trade Deal Sparks Moscow-Kyiv Trade War*, DEUTSCHE WELLE, Jan. 1, 2016, <http://dw.com/p/1HWhw>.

[11] Pop, *supra* note 2.

[12] *Russia Suspends Free Trade Agreement with Ukraine*, *supra* note 9.

[13] Pop, *supra* note 2.

[14] *Id.*; see also, *Russia Suspends Free Trade Agreement with Ukraine*, *supra* note 9.

[15] О внесении изменения в пункт 1 постановления Правительства Российской Федерации от 7 августа 2014 г. No. 778 [On Amending Resolution of the Government, paragraph 1, The Russian Federation dated August 7, 2014, No. 778], postanovleniia palat Federal'nogo Sobra[ni]ia [resolutions of the Duma and Federal Council of the Federal Assembly] 2015, No. 1397, <http://government.ru/media/files/cARbqItpZCqHLkIdHair1Y7kCpdLEMiA.pdf> [perma.cc/6QJL-YGZA].

[16] Dmitry Medvedev, Prime Minister, Russian Federation, Speech from Meeting with Deputy Prime Ministers, Dec. 21, 2015, <http://government.ru/en/news/21184> [perma.cc/NE6S-8G4N].

[17] *Id.*

[18] CIS FTA, *supra* note 8, Art. 8, para. 1. "Such measures in respect of industrial and agricultural goods shall be applied only in accordance with Article XIX of GATT 1994, WTO Agreement on Safeguards and this Agreement." *Id.*

[19] *Id.*

[20] *Id.*

[21] Lydia Tomkiw, *New Russia-Ukraine Economic War Over Import Bans Expected in 2016*, INT'L BUS. TIMES, Dec. 28, 2015, <http://www.ibtimes.com/new-russia-ukraine-economic-war-over-import-bans-expected-2016-2241465> [perma.cc/A9V3-ME5B].

[22] *EU-Ukraine Trade Deal Sparks Moscow-Kyiv Trade War*, DEUTSCHE WELLE, Jan. 1, 2016, <http://dw.com/p/1HWhv> [<http://perma.cc/XW36-KGEH>]. "After Russia, the Ukrainian republic was the most important economic component of the former Soviet Union, producing about four times the output of the next-ranking republic." Biedermann, *supra* note 1, at 229-30 (quoting *Ukraine: The World Factbook*, CENT. INTELLIGENCE AGENCY, *Introduction*, <https://www.cia.gov/library/publications/the-world-factbook/geos/up.html> [<https://perma.cc/V9YZ-ZRQ4>] (last visited Jan. 18, 2016)).

[23] Tomkiw, *supra* note 21.

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Posted by Kari M. Loomer on Tue. January 19, 2016 10:29 AM

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## COMMENTS

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