

The trilateral talks on DCFTA implementation

The EU Trade Commissioner Cecilia Malmström, Ukrainian Foreign Minister Pavlo Klimkin and the Russian Minister for Economic Development Alexei Ulyukayev met on 21 December 2015 in the framework of the trilateral talks to find practical solutions to the concerns raised by Russia in relation to the implementation of the EU/Ukraine Deep and Comprehensive Free Trade Area (DCFTA). Before today's meeting, the parties to these talks have already met 22 times, both at technical and political level.

This meeting was the last chance to find a common understanding ahead of the provisional entry into force of the DCFTA between the EU and Ukraine on 1 January 2016. The European Commission has engaged in trilateral talks to find practical solutions to the concerns expressed by Russia on the impact of the EU-Ukraine DCFTA on its economy. The talks are part of the wider efforts to defuse tensions over Ukraine and to help achieve a peaceful crisis settlement in the context of Minsk process. The objective was to address Russian concerns in the context of the implementation of the DCFTA, which starts to apply on 1 January 2016. As EU leaders have made clear on numerous occasions, the DCFTA will neither be reopened nor re-negotiated.

The European Commission has shown great openness and presented a range of constructive proposals for practical solutions and expected that on this basis a common understanding could be found on Russia's concerns. Throughout the process the EU and Ukraine were confronted with requests by the Russian side, in particular to formalise mutual obligations that were neither related to specific concerns nor aimed at obtaining practical solutions. Russia furthermore insisted on a legally binding trilateral agreement that would result in substantive changes to the DCFTA with the effect of nullifying parts of its content. The decision taken by Russia to suspend the CIS FTA obligations towards Ukraine added an element of pressure that violated conditions agreed by Ministers to engage in the trilateral talks.

Any threats or retaliatory measures by Russia contradict the mandate, objective and spirit of these talks. The Commission has offered to keep talking in a trilateral working group after 1 January 2016 to find practical solutions to specific concerns raised by Russia during the implementation of the agreement, on the condition that Russia did not take further retaliatory measures. Therefore, the EU regrets the decree by President Putin on 16 December that suspended all Russia's obligations vis-à-vis Ukraine - including the trade preferences- under the Commonwealth of Independent States (CIS) FTA. This is a breach on the part of Russia of the Ministerial agreement from September 2014 on the implementation of Minsk provisions.

Constructive engagement by the EU

The European Commission fully and constructively engaged in the trilateral talks with Ukraine and Russia on the implementation of the EU-Ukraine DCFTA. We have continued to look for practical solutions to concerns raised by Russia with the aim of reaching a joint understanding at ministerial level on 21 December 2015.

The Commission has shown great openness and made concrete proposals in the three agreed areas that relate to the implementation of the DCFTA, namely *Technical Barriers to Trade (TBT)*, *Sanitary and Phytosanitary (SPS) rules*, and *Customs cooperation*.

The Commission has always aimed at discussing substantiated specific concerns and at presenting proposals on paper shared with Ukraine and Russia before the meetings. For example, in line with the flexibilities foreseen in the DCFTA, the EU is ready to consider longer transition periods for technical regulations linked to certain sectors/goods if Russia demonstrates the need for it. To date, Russia has not provided a list of affected Russian products underpinned by export numbers nor nailed down its concerns to tangible issues. The EU has responded to Russian concerns about customs cooperation with Ukraine and proposed an updated bilateral process of acceptance of veterinary certificates, the mutual evaluation of SPS systems, a revision of rules of origin within the CIS-FTA, and deeper customs service cooperation to fight fraud.

During the technical meetings on 9-10 November, 8 December and 15-16 December 2015 in Brussels, Russia showed no flexibility and stuck to its original position concerning inter alia the following three areas:

- **TBT** - Russia wants Ukraine to maintain acceptance of Russian GOST industrial standards for 10 more years, even in sectors where Russia has no exports to Ukraine. This would lead to unfair competition in the Ukrainian market between goods produced according to EU standards and goods produced according to Russian standards.
- **SPS** - Russia insists that Ukraine, as a matter of principle, recognizes Russia's SPS rules for Russia's food exports, which would prevent Ukraine to apply the DCFTA in this regard. Russia demanded also that Ukraine implement the Russian bans and restrictions on certain animal products and plants vis-à-vis the EU. This could mean that Ukraine would have to apply the Russian food embargo against the EU.
- **Customs cooperation** - Russia requests that the EU provide extensive data on prices and customs valuation information to Russia for each and every single transaction on goods exported to Ukraine. This is in contradiction with the EU privacy legislation, protecting the confidentiality of business information. Furthermore, this would not provide Russia assurance about the origin of the goods imported by Russia.

In addition, Russia formulated demands in other areas that are unconnected to the DCFTA, such as:

- **Energy** – Russia claims that Ukraine would have to adopt the EU's energy legislation because of the DCFTA.
 - However, what is provided for in the DCFTA in this area is only a reiteration of Ukraine's commitments undertaken in the framework of the Energy Community Treaty, to which Ukraine adhered in February 2011 (negotiations concluded in 2009). Russia also alleges that by separating its energy system from Russia, Ukraine threatens the functioning of the entire system.
 - This claim is technically unfounded and has no connection with the DCFTA, which does not prescribe any rules or recommendations in this respect. Technically and practically, the electricity connection (and thus trade) is possible regardless of which grid synchronisation is chosen. For example, the Baltic States are synchronised with the Russian electricity grid while the UK or the Nordic States are not synchronised with the grid of Continental Europe. At the same time, all of these countries are still being connected with the EU electricity market.
- **Investment** – Russia has never explained why it wants to include investment issues in the trilateral talks. There are no investment provisions in the DCFTA. Russian requests for higher investment protection for Russian companies in Ukraine are thus outside the scope of these

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discussions. Russian investors and their investments are subject to the bilateral investment treaty between Russia and Ukraine.

Questions and answers

[What could stop the DCFTA from being implemented on 1 Jan?](#)

Nothing can stop the DCFTA from entering into force. The decision of its provisional application as of 1 January 2016 has already been taken by the Council on 29 September 2014. The Association Agreement has been ratified by the European Parliament and the Ukrainian Rada. All 28 Member States have already ratified the agreement, 23 MS have notified their ratification to the Council.

On 5 December the notice concerning the provisional application as of 1 January 2016 of the EU-Ukraine DCFTA was published in the Official Journal.

[The DCFTA was negotiated between 2008 and 2012. Did Russia ever express any opposition to it?](#)

The EU never received any complaint or any question on the EU-Ukraine negotiations. The full text of the AA/DCFTA is available on the Council website since March 2013. No complaints from the Russian side during the EU-Russia summit held in June 2013.

[Why does the EU reject a "legally binding solution" as suggested by Russia?](#)

As a bilateral treaty between the EU and Ukraine (a sovereign country), the DCFTA does not include any veto right for third parties. From a political and legal point of view, amending the DCFTA is not an option. As President Juncker reminded (16/12), "the DCFTA (...) cannot be amended - neither directly nor indirectly". Instead the EU has proposed a *political* commitment to address any concrete practical concerns that the implementation of the DCFTA may bring for Russia.

[Does Ukraine have to choose between an FTA with the EU or with Russia?](#)

No, this contradicts the gist of free trade, to which all the WTO members agree: free-trade agreements are complementary to each other. The EU has already agreed 88 FTAs, the EU/Ukraine DCFTA would be the 89th. Moreover other preferential trading partners of Russia have both an FTA with the EU and with Russia. Serbia is an example. There are no inherent economic or legal obstacles for a country to conclude FTAs with different trading partners.

[Russia has decided to suspend CIS FTA preferences and may also take further retaliatory measures. What would be the economic impact of these retaliatory measures?](#)

Despite the already significant drop in the bilateral trade relations between Ukraine and Russia, the suspension of the CIS FTA obligations and the application by Russia of the MFN treatment of all imports from Ukraine trade means that in the short term the bilateral trade flow may fall even further. Independent analysis have put the figure at USD 0.9 billion. For Ukraine today this can be quite significant, especially in the short term. But exporters will also diversify towards other markets, and there will be an even greater incentive to adopt European standards that will allow an increase of the marketability of products made in Ukraine to the EU and to other high-value markets. With time the impact of the Russian measure should become less severe.

Timeline and facts

Association Agreement/DCFTA timeline

- 2008-2102: AA/DCFTA negotiations conducted transparently in parallel to negotiations for a EU-Russia New Agreement.
- March 2013: Publication of the full text of the AA/DCFTA on the Council website.
- June 2013: EU-Russia summit (Russia does not complain about the EU-Ukraine AA/DCFTA).
- July/August 2013: Russia starts to block Ukrainian trucks at the Russian border.
- October 2013: Putin meets Yanukovych on Russian loan and gas price concessions.
- November 2013: Ukraine changes its position at the last minute and refuses to sign AA/DCFTA at Vilnius Eastern Partnership Summit.
- After the February 2014 events in Ukraine and the elections in May 2014, the new Ukrainian President signs AA/DCFTA on 27 June 2014.
- 16 September 2014: European Parliament assent and Ukrainian Rada ratification. 23 EU Member State ratifications notified to the Council to date.
- 1 November 2014: AA entry into force (provisional application).
- 1 January 2016: DCFTA, trade part of the AA, entry into force (provisional application).

Trilateral talks between EU, Ukraine and Russia on the EU-Ukraine DCFTA

- Since November 2013, 23 meetings (including 6 ministerial meeting, 21/12 meeting included, all hosted by the Commission in Brussels).
- Until June 2014, bilateral EU-Russia meetings; then extended to Ukraine in a trilateral format (according to the decision by Presidents Barroso, Putin, Poroshenko).
- 10-20 EU experts involved for each of the technical meetings.
- The Commission has consistently put concrete proposals on paper and shared them with Ukraine and Russia before the meetings, and informed Member States in a timely and transparent manner about these proposals.

Mandate

- Commissioner Malmström and Ministers Klimkin (UA) and Ulyukayev (RU) agreed on the mandate for the work of the experts in joint statement on 18/5/2015.
- This mandate covers three areas in particular (no other concern was referred to explicitly in the experts' mandate): technical barriers to trade (TBT), sanitary and phytosanitary issues (SPS), customs cooperation.
- The Commission has always listened to Russia's additional concerns even though they are not related to the implementation of the DCFTA and, as such, are not part of the agreed mandate. These additional concerns are related to tariffs, energy and investment.