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Russia, its ban on agricultural and food imports, and its obligations deriving from WTO agreements

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At mid-August 2014, press agencies worldwide typed the news that Russia would ban fruit, vegetables, meat, fish, milk and dairy imports from the US, the European Union, Australia, Canada and Norway, as a reaction to international sanctions applied to Russia because of its support to rebels in Ukraine.

As the media noted, “Russia is Europe’s second-largest market for food and drink and has been an important consumer of Polish pig meat and Dutch fruit and vegetables. Exports of food and raw materials to Russia were worth €12.2bn (£9.7bn) in 2013, following several years of double-digit growth”¹.

From the US perspective, some commented that “the ban will likely hurt Russia more than the US”². This kind of minimization seems to be very common and widespread in the US³, and maybe – who knows? – they’re right. It will be interesting, for example, to verify whether the Russian upper class, so attracted by the Italian luxury also about food, is willing to give it up.

But economic media note that “Following last week’s order from Moscow to sanction European food imports, Russia is now turning to Brazil, New Zealand and even China is courting them. ‘This (ban) could

provide a major opportunity for Latin American economies, especially for Argentina, Brazil, Chile, Ecuador, Paraguay and Uruguay,” said Robert Wood, an analyst for The Economist Intelligence Unit. Last week, Wood wrote for his subscribers that Russian companies have agreed to ‘generous business deals’ with agribusiness power houses Argentina and Brazil.”⁴.

But maybe, in the EU perspective, this could turn into a major problem than in US. Furthermore, what about those EU countries (like Italy, for example) where the average food businesses normally have small or medium size? Small and medium enterprises are weaker, particularly in the agro-food sector, and less able to diversify market risks. For this reason, on the Eastern side of the Atlantic Ocean (and even more on the Mediterranean shores) nobody could simply mock the Russian announcement, excluding that it may prove a difficult test to pass for the EU farmers and food businesses.

Well, are there legal instruments to force Russia to backtrack? Let’s say: “Yes, there are some: the WTO agreements”. Maybe, they wouldn’t be so totally effective, because of their too long timing (as Neal Fortin has noted, with a very practical approach: “a complaint almost certainly would be tied up in dispute resolution for a long time”, adding that “this is far beyond what WTO was designed to handle”). But – since all the involved countries are WTO members – it doesn’t seem possible to doubt that the Russian decision violates straight and fully its legally binding obligations under the WTO Agreements, urging recourse to the Dispute Settlement Mechanism.

No legal exception seem to allow Russia to simply ban its imports with such arguments: not in the GATT

(¹) See e.g. J. Rankin, *Russia responds to sanctions by banning western food imports*, *The Guardian* 07/08/2014: <http://www.theguardian.com/world/2014/aug/07/russia-retaliates-western-sanctions-ban-food-imports> .

(²) N. Fortin, *Is the Russian Ban on US and EU Food Imports a Violation of the WTO Agreements?*, *Food Law Blog (US)*: <http://foodlawblog.foodlaw.org/2014/08/is-russian-ban-on-us-and-eu-food.html>

(³) Sometimes even described with a sort of derision: T. Worstall, *The Quite Hilarious Russian Propaganda About The Ban On EU Food Imports*, *Forbes*, 08/08/2014: <http://www.forbes.com/sites/timworstall/2014/08/08/the-quite-hilarious-russian-propaganda-about-the-ban-on-eu-food-imports/>

(⁴) K. Rapoza, *Following Food Ban, Russia Moving On From Europe*, *Forbes* 18/08/2014, <http://www.forbes.com/sites/ken-rapoza/2014/08/18/following-food-ban-russian-moving-on-from-europe/>

(where Article XI provides for some derogations, only if based on economic or on food security reasons); nor in the Agreement on agriculture (whose rules on market access can be waived only on a similar basis). Some may say that Russia would certainly defend its ban basing on a security interest; but, for a WTO Panel, it shouldn't be too difficult to unmask such a misleading argument.

The overtly political nature of the ban announced by the Russian Prime Minister seem to fall outside any justification permitted by the WTO system. Tackling this problem apart from the WTO framework and logic could perhaps result in a more rapid solution. Yet, on one hand, going also the diplomatic channels at once, while using the WTO instruments, wouldn't be prohibited at all: a double track would indeed be maybe the

most desirable approach (without considering that the Dispute Settlement procedure in the WTO begins with consultations, so that the first stage normally has a diplomatic nature). But, on the other hand, tackling this problem leaving completely aside the WTO means of dispute resolution could result in a wrong option, in a long-term perspective.

It would turn into a voluntary and express de-legitimization of the WTO: perhaps a sort of seal on the decline of the multilateral approach (a decline that many scholars have long complained⁵, due to multiple factors, such as the more fragmented international context in general, the increased preference for regional trade agreements). After the UNO wreck, the failure of yet another utopia?

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⁽⁵⁾ C.B. Picker, *Regional Trade Agreements v. The WTO: A Proposal for Reform of Article XXIV to Counter This Institutional Threat*, 26 U. PA. J. INT'L ECON. L. 267 (2005), considers "how RTAs drain states' enthusiasm for multilateral trade negotiations, create conflicts between RTAs and the WTO, and divert resources from the WTO to the RTA process".