

To the Arbitration Panel

established pursuant to Article 306 of the
**Association Agreement between
the European Union and the European Atomic Energy
and their Member States**
and
Ukraine

in the dispute

Ukraine – Export prohibitions on wood products

**Closing Statement of
the European Union**

23 September 2020

Mr Chairman, distinguished Members of the Panel

1. On behalf of the European Union, we would like, once again, to express our gratitude for your availability to serve in this panel. We extend our gratitude to the Panel's assistants.
2. The hearing has been very fruitful. Thanks to the list of issues communicated by the Panel in July, and to the oral questions today, the positions of the parties have become clearer, and the outstanding factual and legal issues are now well circumscribed.
3. In this regard, we would like to emphasise once again that the present case is not about whether Ukraine is entitled, by exercising its right to regulate, to adopt measures for protecting its forests. That right is beyond question.
4. The European Union does support Ukraine's efforts to protect its forests. Indeed, the European Union has constantly encouraged Ukraine to strengthen those efforts, in particular by ensuring an adequate enforcement of its forest management regime. The EU acknowledges the persistent challenges faced by Ukraine, including illicit felling activities and systemic corruption. The European Union has fully cooperated with Ukraine in order to support Ukraine's efforts to meet those challenges and protect effectively its forests. The EU is committed to provide additional cooperation.
5. To repeat, however, this case is not about whether Ukraine has a right to protect its forests.
6. The issue in dispute between the parties is a narrow one. In essence, the parties disagree about whether the two specific measures in dispute, the 2005 and the 2015 export bans can be regarded as adequate measures to achieve the alleged objective of protecting Ukraine's forests.
7. It is beyond dispute that the measures at issue provide expressly for a complete prohibition of all exports of the wood products concerned to the EU, regardless of whether the wood was logged legally or illegally. They are designed to ban any

exports and, in practice, they have had the effect of halting exports to the EU. In view of this, Ukraine's position that the measures at issue are not export prohibitions or restrictions incompatible with Article 35 AA is untenable and disingenuous.

8. The only genuine question before the Panel is whether that breach of Article 35 AA can be justified under other provisions of the Agreement.
9. As we have explained, the various provisions of Chapter 14 cited by Ukraine do provide relevant context for the interpretation of Article 35 and 36 AA. But they are not self-standing exceptions allowing Ukraine to derogate from Article 35. In particular, whereas Article 290 recognises the right to regulate of the parties in the field of environmental protection, such recognition cannot be reasonably construed as an unlimited and unqualified right to derogate from any other provision of the agreement. We cannot believe that Ukraine really agrees with that interpretation outside the scope of this dispute. Chapter 13 can and must be interpreted harmoniously with the parties' obligations under other provisions of the agreement, including with Article 35.
10. The crux of this case, therefore, is whether the export bans can be justified under the only relevant exceptions invoked by Ukraine in this dispute, that is Article XXb) and Article XXg).
11. Ukraine insists that the 2015 export ban on unprocessed timber represents a legitimate measure of environmental protection covered by Ukraine's right to regulate.
12. However, it is quite striking to argue – as Ukraine appears to do – that while Ukrainian domestic authorities are still unable to stop those illegal activities at home, there is no need to put an effective cap on domestic timber consumption and, moreover, to let domestic timber processing and export of processed wood products go ahead as usual.
13. The contradiction is in our eyes obvious. Ukraine cannot convincingly argue that :
 - (1) it is unable to address illegal felling

- (2) set a limit to domestic consumption higher than the amount of wood ever harvested in Ukraine even before 2014 when Ukraine authority could control a greater forest area
- (3) note that the main users of illegal logs are local unrecorded sawmills (I refer to the reports of the Forest Agency)
- (4) allow for the export of any processed timber,
- (5) at the same time argue that export of unprocessed timber needs to be stopped to protect the forests.

It is thus clear that the only thing protected by the 2015 export bans is the Ukraine wood processing industry.

14. Also with regard to the 2005 export ban, the contradictions are many and manifest. Only 2 species of wood listed in the 2005 ban are also listed in the Red Book of Ukraine (or maybe five), there is no concrete data to show that they are threatened by extinction, they cannot be exported but they can still be cut and processed in Ukraine (even though a permission is needed), they are unsuitable for industrial production but it is necessary to prohibit the export to prevent industrial exploitation (UKR OR 118), and in any event if they are processed in UKR they can be exported without restriction.
15. The EU would welcome Ukraine to enact measures genuinely related to the conservation of Ukraine forests and is ready to help Ukraine in that respect. The EU cannot accept that measures whose essential objective is to protect a domestic industry be shielded from scrutiny under the guise of environmental measures.
16. We see that Mr Kachka the head of the Ukraine delegation published yesterday an on line article commenting on this hearing, accusing the EU of economic imperialism, and concluding that Ukraine's "main priority - to develop trade and integrate into the EU internal market". We can assure the Panel that this dispute is not about economic imperialism. We also wonder how export ban can help reaching this priority. In an integrated market, by definition there are no import and export bans.