

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- a. in respect of Russia's preliminary ruling request:
 - i. the Panel finds that Russia has failed to establish that Ukraine's panel request is inconsistent with Article 6.2 of the DSU;
- b. in respect of the instructions suspending certificates:
 - i. the Panel finds that Ukraine has failed to establish, in respect of each of the 14 instructions at issue, that Russia has acted inconsistently with its obligations under Article 5.1.1 of the TBT Agreement;
 - ii. the Panel finds that Ukraine has failed to establish, in respect of each of the 14 instructions at issue, that Russia has acted inconsistently with its obligations under Article 5.1.2, first and second sentence, of the TBT Agreement;
 - iii. the Panel finds that Ukraine has established, in respect of 13 out of 14 instructions at issue that Russia has acted inconsistently with its obligations under Article 5.2.2, third obligation, of the TBT Agreement;
 - iv. the Panel finds that Ukraine has failed to establish, in respect of the other instruction at issue that Russia has acted inconsistently with its obligations under Article 5.2.2, third obligation, of the TBT Agreement;
- c. in respect of the decisions rejecting applications for certificates:
 - i. the Panel finds that Ukraine has failed to establish, in respect of the two decisions through which the FBO "returned without consideration" applications for certificates submitted by Ukrainian producers under CU Technical Regulation 001/2011, and in respect of the decision through which the FBO "annulled" applications for certificates submitted by a Ukrainian producer under CU Technical Regulation 003/2011, that Russia has acted inconsistently with its obligations under Article 5.1.1 of the TBT Agreement;
 - ii. the Panel finds that Ukraine has established, in respect of one of the decisions through which the FBO "returned without consideration" applications for certificates submitted by a Ukrainian producer under CU Technical Regulation 001/2011 (decision 1 insofar as it relates to applications A1 and A2 and one of the products covered by application A3), that Russia has acted inconsistently with its obligations under Article 5.1.2, first and second sentence, of the TBT Agreement;
 - iii. the Panel finds that Ukraine has failed to establish, in respect of both decisions through which the FBO "returned without consideration" applications for certificates submitted by a Ukrainian producer under CU Technical Regulation 001/2011 (decision 1 insofar as it relates to one of the products covered by application A3 and application A4, and decision 2), and in respect of the decision through which the FBO "annulled" applications for certificates submitted by a Ukrainian producer under CU Technical Regulation 003/2011, that Russia has acted inconsistently with its obligations under Article 5.1.2, first and second sentence, of the TBT Agreement;
 - iv. the Panel finds that Ukraine has failed to establish, in respect of the two decisions through which the FBO "returned without consideration" applications for certificates submitted by Ukrainian producers under CU Technical Regulation 001/2011, and in respect of the decision through which the FBO "annulled" applications for certificates submitted by a Ukrainian producer under CU Technical Regulation 003/2011, that Russia has acted inconsistently with its obligations under Article 5.2.2, second obligation, of the TBT Agreement;

- v. the Panel finds that Ukraine has established, in respect of the two decisions through which the FBO "returned without consideration" applications for certificates submitted by Ukrainian producers under CU Technical Regulation 001/2011, that Russia has acted inconsistently with its obligations under Article 5.2.2, third obligation, of the TBT Agreement;
 - vi. the Panel finds that Ukraine has failed to establish, in respect of the decision through which the FBO "annulled" applications for certificates submitted by a Ukrainian producer under CU Technical Regulation 003/2011 that Russia has acted inconsistently with its obligations under Article 5.2.2, third obligation, of the TBT Agreement;
- d. in respect of the non-recognition of certificates issued in CU countries other than Russia:
- i. the Panel finds that the non-recognition requirement is properly before the Panel;
 - ii. the Panel finds that Ukraine has failed to establish that the non-recognition requirement falls within the scope of application of Article 2.1 of the TBT Agreement;
 - iii. the Panel made no findings regarding Ukraine's claims under Articles 5.1.1 and 5.1.2 of the TBT Agreement because these claims concern aspects of the non-recognition requirement that are not properly before the Panel;
 - iv. the Panel finds that Ukraine has established, in respect of the non-recognition requirement, that Russia has acted inconsistently with Article I:1 of the GATT 1994;
 - v. the Panel finds that Ukraine has established, in respect of the non-recognition requirement, that Russia has acted inconsistently with Article III:4 of the GATT 1994; and
 - vi. the Panel exercises judicial economy in respect of Ukraine's claims of inconsistency with Article X:3(a) of the GATT 1994;
- e. in respect of the systematic import prevention:
- i. the Panel finds that Ukraine has failed to establish its claims of inconsistency with Articles I:1, XI:1, and XIII:1 of the GATT 1994, because it did not demonstrate the existence of the systematic import prevention.

8.2. Pursuant to Article 19.1 of the DSU, the Panel recommends that the Dispute Settlement Body request that Russia bring its measures at issue into conformity with its obligations under the TBT Agreement and the GATT 1994.
