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## UKRAINE – ANTI-DUMPING MEASURES ON AMMONIUM NITRATE

### REQUEST FOR CONSULTATIONS BY THE RUSSIAN FEDERATION

The following communication, dated 7 May 2015, from the delegation of the Russian Federation to the delegation of Ukraine and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

On behalf of the Government of the Russian Federation, I hereby request consultations with the Government of Ukraine ("Ukraine") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT") and Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "Anti-Dumping Agreement") with respect to Ukraine's measures imposing anti-dumping duties on imports of ammonium nitrate originating in the Russian Federation in connection with the expiry and interim reviews<sup>1</sup>.

These measures concern definitive anti-dumping duties imposed pursuant to the Decisions of the Intergovernmental Commission on International Trade No. AD-294/2013/4423-06 of 24 May 2013 and No. AD-315/214/4421-06 of 1 July 2014, as set forth therein, including any and all annexes, notices and reports of the Ministry of Economic Development and Trade of Ukraine<sup>2</sup>, and any amendments thereof.

The measures at issue appear to be inconsistent with Ukraine's WTO obligations, in particular, under the following provisions of the Anti-Dumping Agreement and the GATT 1994:

1. Articles 2.1 and 2.2 of the Anti-Dumping Agreement because Ukraine did not determine the existence of dumping by comparing the export price of ammonium nitrate exported from the Russian Federation to the normal value of the like product destined for consumption in the Russian Federation.

<sup>1</sup> The definitive anti-dumping measures were imposed through the Decision of the Intergovernmental Commission on International Trade No. AD-176/2008/143-47 of 21 May 2008 "On the Application of the Definitive Anti-Dumping Measures on Import into Ukraine of Ammonium Nitrate (Amiachnoy Selitry) Originating in the Russian Federation", as amended by the Decision No. AD-245/2010/4403-47 of 25 October 2010. The expiry review was initiated pursuant to the Decision of the Intergovernmental Commission on International Trade No. AD-294/2013/4423-06 of 24 May 2013. According to this Decision, the anti-dumping duties on import of ammonium nitrate originating in the Russian Federation were to remain in force pending the outcome of the review. The interim review was initiated pursuant to the Decision of the Intergovernmental Commission on International Trade No. AD-296/2013/4423-06 of 2 July 2013. As a result of the simultaneously conducted expiry and interim reviews, the definitive anti-dumping duty rates on imports of ammonium nitrate from the Russian Federation, that were initially imposed by the Decision No. AD-176/2008/143-47 of 21 May 2008, were substantially increased and extended for the duration of five years by the Decision of the Intergovernmental Commission on International Trade No. AD-315/214/4421-06 of 1 July 2014. This Decision came into force on 8 July 2014.

<sup>2</sup> In particular, Communication of the Ministry of Economic Development and Trade of Ukraine No. 4421-10/21367-07 of 25 June 2014 with the attached main findings of the Ministry of Economic Development and Trade of Ukraine in the course of the interim and expiry reviews of anti-dumping measures on imports of ammonium nitrate from the Russian Federation.

2. Articles 2.2 and 2.2.1 of the Anti-Dumping Agreement because Ukraine failed to conduct unbiased and objective evaluation of facts when it determined that domestic sales of ammonium nitrate in the Russian Federation did not take place in the ordinary course of trade and rejected prices of sales of the like product in the ordinary course of trade in the country of origin and exportation as the basis for determining the normal value.
3. Articles 2.2 and 2.2.1 of the Anti-Dumping Agreement because Ukraine treated domestic sales of ammonium nitrate in the Russian Federation as not being in the ordinary course of trade by reason of price and disregarded these sales in determining the normal value, without prior determination that these sales were made: (a) within an extended period of time; (b) in substantial quantities; and (c) at prices which did not provide for the recovery of all costs within a reasonable period of time.
4. Articles 2.2, 2.2.1 and 2.2.1.1 of the Anti-Dumping Agreement because Ukraine failed to calculate costs on the basis of records kept by the exporters and producers under investigation, which were recorded in accordance with the generally accepted accounting principles of the exporting country and reasonably reflected the costs associated with the production and sale of ammonium nitrate. Ukraine rejected the price of natural gas actually paid by Russian producers of ammonium nitrate, replaced it with the adjusted export price of natural gas that is delivered at the German border. This adjusted price is not associated with the production and sale of the product under consideration. Then Ukraine used such price to "adjust" the costs of production of ammonium nitrate in order to determine whether domestic sales of ammonium nitrate in the Russian Federation were in the ordinary course of trade and to construct normal value.
5. Article 2.2 of the Anti-Dumping Agreement because Ukraine failed to determine the margin of dumping by using one of the alternative bases provided for the calculation of "normal value", i.e. the export price of the like product exported to a third country or constructed normal value.
6. Article 2.4 of the Anti-Dumping Agreement because Ukraine failed to make a fair comparison between the export price and the normal value by, for instance, improperly calculating constructed normal value for ammonium nitrate produced in the Russian Federation.
7. Articles 5.8, 11.1, 11.2, 2.2, 2.4, 11.3, 9.2 and 9.3 of the Anti-Dumping Agreement because Ukraine failed to completely exclude the Russian exporter, for which a *de minimis* margin of dumping was determined in the course of judicial review<sup>3</sup>, from the scope of the decision establishing original anti-dumping duties, the interim and expiry reviews and newly imposed anti-dumping duties.
8. Articles 6.1, 6.2, 6.4 and 6.5.1 of the Anti-Dumping Agreement because Ukraine failed to grant interested parties a full opportunity to defend their interests, and failed to provide timely opportunities for all interested parties to see all non-confidential information relevant to the defense of their interests. In particular, Ukraine failed to require the applicants providing confidential information to furnish non-confidential summaries thereof and to prepare such summaries in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence by the applicants.
9. Article 6.8 and Annex II of the Anti-Dumping Agreement because Ukraine disregarded the information provided by Russian exporters and producers with respect to the costs associated with the production and sale of ammonium nitrate which was verifiable, appropriately submitted, and supplied in a timely manner and replaced it with information from alternative sources including third-party organizations, even when producers and exporters under investigation neither refused access or otherwise failed to provide necessary information, nor significantly impeded the investigation.

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<sup>3</sup> The Decision of the District Administrative Court of the City of Kiev of 6 February 2009 No 5/411, the Decision of the Kiev Appellate Administrative Court of 26 August 2009 No. 2-a-8850/08 and the Decision of the Higher Administrative Court of Ukraine of 20 May 2010 No. K-42562/09 and No. K-42568/09.

10. Article 6.9 of the Anti-Dumping Agreement because Ukraine failed to adequately disclose the essential facts under consideration which form the basis for the decision to impose anti-dumping measures, including the essential facts underlying the determinations of the existence of dumping and the calculation of the margins of dumping, the determination of injury, and the causal link. Ukraine failed to provide sufficient time for all interested parties to review and response to the essential facts under consideration in order to defend their interests.
11. Articles 9.2 and 9.3 of the Anti-Dumping Agreement because Ukraine imposed the anti-dumping duties that exceed the margins of dumping which were determined by comparison with constructed normal value of ammonium nitrate calculated by Ukraine on the basis of cost and price information that does not reflect costs or prices of the like product in the country of origin and exportation.
12. Article 11.2 and Article 11.3 of the Anti-Dumping Agreement because Ukraine initiated the interim and expiry reviews without sufficient evidence substantiating the need for such reviews.
13. Articles 6.6 and 11.2 of the Anti-Dumping Agreement because Ukraine failed to properly establish facts and to conduct an unbiased and objective evaluation of these facts in its determination that the continued imposition of the duty is necessary to offset dumping and that the injury would be likely to continue or recur if the duties were removed or varied.
14. Articles 6.6 and 11.3 of the Anti-Dumping Agreement because Ukraine failed to properly establish facts and to conduct an unbiased and objective evaluation of these facts in its determination that the expiry of the anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury. Ukraine did not have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence.
15. Articles 1, 18.1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 as a consequence of the breaches of the Anti-Dumping Agreement described above.

Ukraine's measures, therefore, appear to nullify or impair benefits accruing to the Russian Federation, directly or indirectly, under the cited agreements.

The Russian Federation reserves the right to address additional measures, claims and matters in the course of the consultations.

The Russian Federation looks forward to receiving Ukraine's reply to this request and to determining a mutually convenient date for these consultations.

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