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UKRAINE – ANTI-DUMPING MEASURES ON AMMONIUM NITRATE

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE RUSSIAN FEDERATION

The following communication, dated 29 February 2016, from the delegation of the Russian Federation to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 7 May 2015, the Government of the Russian Federation ("the Russian Federation") requested 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 ("DSU"), Article XXIII:I of the General Agreement on Tariffs and Trade 1994 ("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 expiry and interim reviews.¹ These measures are set forth in the Decision of the Intergovernmental Commission on International Trade No. AD-315/2014/4421-06 of 1 July 2014 and Notice "On the changes and extension of anti-dumping measures in respect of import to Ukraine of ammonium nitrate, origin from the Russian Federation", published on 8 July 2014 in "Uryadoviy Courier", No 120, including any and all annexes, notices, communications and reports of the Ministry of Economic Development and Trade of Ukraine and any amendments thereof.²

The Russian Federation held consultations with Ukraine on 25 June 2015. These consultations did not resolve the dispute.

The Russian Federation considers that the measures at issue are inconsistent with Ukraine's obligations under the following provisions of the Anti-Dumping Agreement and the GATT:

1. Articles 5.8, 11.1, 11.2 and 11.3 of the Anti-Dumping Agreement, because Ukraine failed to exclude a certain Russian exporter whose dumping margin was *de minimis* from the anti-dumping measures³ and because Ukraine subjected this exporter to expiry and interim reviews;

¹ Request for Consultations by the Russian Federation, 7 May 2015, WT/DS493/1.

² 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 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 increased and extended for the duration of five years by the Decision of the Intergovernmental Commission on International Trade No. AD-315/2014/4421-06 of 1 July 2014, which came into force on 8 July 2014.

³ The following decisions of Ukrainian authorities determined that in the original investigation a dumping margin of JSC MHK EuroChem was *de minimis*: 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

2. Articles 6.1, 6.2 and 6.4 of the Anti-Dumping Agreement, because Ukraine failed to grant Russian exporters and producers a full opportunity to defend their interests and failed to provide timely opportunities for all interested parties to see all non-confidential information;

3. Article 6.5.1 of the Anti-Dumping Agreement, because 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;

4. Article 6.8 and Annex II, in particular paragraphs 3, 5 and 6, of the Anti-Dumping Agreement, because:

(i) Ukraine failed to take into account all information pertaining to the determination of the dumping margins which was verifiable, supplied in a timely fashion and appropriately submitted so that it could be used in the investigation without undue difficulties;

(ii) Ukraine failed to inform the Russian exporters and producers of the reasons why the supplied information and evidence were not accepted;

(iii) Ukraine failed to give the Russian exporters and producers an opportunity to provide further explanations within a reasonable period of time;

5. Articles 6.2 and 6.9 of the Anti-Dumping Agreement, because Ukraine failed to adequately disclose the essential facts under consideration which formed the basis for the decision to apply anti-dumping measures, including the essential facts underlying the determinations of the existence of dumping, the calculation of the dumping margins, including relevant data and formula applied, the determination of injury and causation, including the price comparisons and the underlying data, information on import and domestic prices used therein.

6. Article 6.9 of the Anti-Dumping Agreement, because the disclosure of the documents with results of expiry and interim reviews issued on 25 June 2014 was not made by Ukraine in sufficient time for the interested parties to defend their interests.

7. Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement, because Ukraine failed to provide in sufficient detail in the Decision of the Intergovernmental Commission on International Trade No. AD-315/2014/4421-06 of 1 July 2014, as referred to in Notice "On the changes and extension of anti-dumping measures in respect of import to Ukraine of ammonium nitrate, origin from the Russian Federation", and in the Communication of the Ministry of Economic Development and Trade of Ukraine No. 4421-10/21367-07 of 25 June 2014 the findings and conclusions reached on all issues of fact and law it considered in making its preliminary and final determinations and failed to provide all relevant information and reasons, which have led to the imposition of the measure. Ukraine did not provide the calculations used to determine the dumping margins in the final determination and the data it relied upon in order to make the calculations.

8. Articles 2.1 and 2.2 of the Anti-Dumping Agreement, because Ukraine failed to determine the dumping margins by comparing the export price of ammonium nitrate exported from the Russian Federation to Ukraine with the normal value of the like product destined for consumption in the Russian Federation.

9. Articles 2.2 and 2.2.1 of the Anti-Dumping Agreement, because Ukraine improperly treated domestic sales of ammonium nitrate in the Russian Federation as not being in the ordinary course of trade and disregarded these sales in determining the normal value.

10. Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement, because Ukraine, in determining the constructed normal value, failed to calculate costs on the basis of records kept by the Russian producers and exporters, even though the costs associated with the production and sale of ammonium nitrate were accurately and reasonably reflected in Russian exporters' and producers' records that were in accordance with the generally accepted accounting principles of the country of origin and exportation.

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, the Decision of the Intergovernmental Commission on International Trade No. AD-245/2010/4403-47 of 25 October 2010 "On reversal of 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 Originating in the Russian Federation" in respect of JSC MHK EuroChem".

11. Articles 2.2 and 2.2.1.1 of the Anti-Dumping Agreement, because Ukraine replaced and adjusted the cost of gas actually borne by the Russian producers and exporters for production of ammonium nitrate with data on the gas prices outside the Russian Federation, in particular at the border with Germany, that did not reflect the cost of production in the country of origin, and used such prices subsequently for constructing the normal value.

12. Article 2.4 of the Anti-Dumping Agreement because Ukraine failed to make a fair comparison between the export price and the constructed normal value by improperly calculating constructed normal value for ammonium nitrate produced in the Russian Federation.

13. Articles 11.1, 11.2 and 11.3 of the Anti-Dumping Agreement because Ukraine calculated and relied on dumping margins for ammonium nitrate which were not established in accordance with Articles 2.1, 2.2, 2.2.1, 2.2.1.1, 2.4 of the Anti-Dumping Agreement.

14. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because Ukraine's determination on injury was not based on positive evidence and did not involve an objective examination of the volume of the allegedly dumped imports and the effect of those imports on prices in the domestic market for like products.

15. Articles 3.1 and 3.4 of the Anti-Dumping Agreement because Ukraine failed to base findings on injury on positive evidence and to conduct an objective examination of all relevant factors and indices having a bearing on the state of the domestic industry.

16. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because Ukraine failed to conduct an objective examination of factors other than the allegedly dumped imports and attributed the alleged injury to the allegedly dumped imports.

17. Articles 11.1, 11.2 and 11.3 of the Anti-Dumping Agreement because Ukraine determined and relied on injury which was not established in accordance with Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement.

18. Article 11.2 and Article 11.3 of the Anti-Dumping Agreement because Ukraine initiated the interim and expiry reviews without duly substantiated information on the need for such reviews.

19. Articles 1, 18.1 of the Anti-Dumping Agreement and Article VI of the GATT as a consequence of the breaches of the Anti-Dumping Agreement described above.

The measures at issue appear to nullify or impair benefits accruing to the Russian Federation directly or indirectly under the cited agreements.

Accordingly, the Russian Federation respectfully requests pursuant to Articles 4.7 and 6 of the DSU and Article 17.4 of the Anti-Dumping Agreement, that the Dispute Settlement Body establishes a panel to examine this matter, with the standard terms of reference as set forth in Article 7.1 of the DSU.

The Russian Federation asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 23 March 2016.
