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(18-5347)

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UKRAINE – ANTI-DUMPING MEASURES ON AMMONIUM NITRATE

**NOTIFICATION OF AN APPEAL BY UKRAINE
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),
AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 23 August 2018, from the Delegation of Ukraine, is being circulated to Members.

Pursuant to Article 16.4 of the DSU Ukraine hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *Ukraine – Anti-Dumping Measures on Ammonium Nitrate* (WT/DS493). Pursuant to Rule 20(1) of the Working Procedures for Appellate Review, Ukraine simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

For the reasons to be further elaborated in its submissions to the Appellate Body, Ukraine appeals, and requests the Appellate Body to reverse the findings, conclusions and recommendations of the Panel, with respect to the following errors contained in the Panel Report:¹

- a. the Panel erred when finding that Russia's Panel Request identified the 2008 and the 2010 Decisions as measures at issue within the meaning of Article 6.2 of the DSU and that these measures consequently fell within the Panel's terms of reference. As a result, Ukraine requests the Appellate Body to reverse the Panel's findings in paragraphs 7.24, 7.26, 7.27, 7.28 and 8.1 (a);
- b. the Panel violated Article 7.1 and Article 11 of the DSU by making findings on a claim that Russia never made in its Panel Request, First Written Submission and Russia's Opening Statement at the First Substantive Meeting with the Panel. As a result, Ukraine requests the Appellate Body to reverse the Panel's findings in paragraphs 7.147, 7.149, 7.150, 7.151, 7.152 and 8.3 (a)(i) and 8.3 (a)(ii);
- c. the Panel erred when finding that Ukraine acted inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement by failing to calculate the cost of production of the product under investigation on the basis of the records kept by the producers. As a result, Ukraine requests the Appellate Body to reverse the Panel's findings in paragraphs 7.89, 7.90, 7.91, 7.92 and 8.2 (a) which are based on its legally erroneous reasoning in paragraphs 7.85-7.88;
- d. the Panel erred in the interpretation and application of Article 2.2 of the Anti-Dumping Agreement when finding that Ukraine violated Article 2.2 of the Anti-Dumping Agreement by not using the actual costs "in the country of origin" when calculating the cost of production of the investigated Russian producers. As a result, Ukraine requests

¹ Pursuant to Rule 20(2)(d)(iii) of the *Working Procedures for Appellate Review*, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of Ukraine to refer to other paragraphs of the Panel Report in the context of its appeal.

the Appellate Body to reverse the Panel's findings in paragraphs 7.99, 7.101, 7.102, 7.103 and 8.2 (b);

- e. the Panel erred in the application of Article 2.2.1. of the Anti-Dumping Agreement by finding that MEDT of Ukraine relied on the costs that were calculated inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement for the purpose of performing the ordinary-course-of-trade test. As a result, Ukraine requests the Appellate Body to reverse the Panel's findings in paragraphs 7.114, 7.116, 7.117, 7.118 and 8.2 (c); and
 - f. the Panel failed to make an objective assessment of the matter before it, and thus violated Article 11 DSU, when examining the scope, meaning and content of the 2010 Decision and the judgments of the Ukrainian Courts, and in particular the decision of the Kiev Administrative District Court and the Panel erred when concluding that the Ukrainian authorities acted inconsistently with Article 5.8 of the Anti-Dumping Agreement. As a result, Ukraine requests the Appellate Body to reverse the Panel's findings in paragraphs 7.147, 7.149, 7.150, 7.151, 7.152, 7.154, 7.157 and 8.3 (a).
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