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Committee on Safeguards

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**NOTIFICATION UNDER ARTICLE 12.1(B) OF THE AGREEMENT ON
SAFEGUARDS ON FINDING A SERIOUS INJURY OR THREAT
THEREOF CAUSED BY INCREASED IMPORTS**

NOTIFICATION OF A PROPOSAL TO IMPOSE A MEASURE

**NOTIFICATION PURSUANT TO ARTICLE 9, FOOTNOTE 2
OF THE AGREEMENT ON SAFEGUARDS**

UKRAINE

Certain nitrogen fertilizers

The following communication, dated 21 May 2020, is being circulated at the request of the Delegation of Ukraine.

Pursuant to Articles 12.1(b) of the Agreement on Safeguards, Ukraine submits a notification on finding a serious injury or threat thereof, to the domestic industry producing certain nitrogen fertilizers and a notification on proposed safeguard measures. This notification contains all pertinent information relating to the proposed safeguard measures in accordance with Article 12.2 of the Agreement on Safeguards and a request for consultations pursuant to Article 12.3 of the Agreement on Safeguards.

On 21 August 2019 the Interdepartmental Commission on International Trade ("Commission") took the decision "On initiation and conduction of safeguard investigation on imports into Ukraine of certain nitrogen fertilizers (including: ammonium nitrate and lime-ammonium nitrate, urea and urea-ammonia mixture), regardless of country of origin and export" № SP - 425/2019/4411-03 (G/SG/N/6/UKR/14 of 5 September 2019). On 28 August 2019 the abovementioned decision was published in the official newspaper "Uryadovyi Courier" № 163.

The investigation had been initiated pursuant to the application of the domestic industry in particular by PJSC "Azot", PJSC "Rivneazot", PJSC "Severodonetsk Association Azot", LLC "Status-Trade" and JSC "DniproAzot" ("the Applicant").

**1 TO PROVIDE EVIDENCE, CITING RELEVANT DATA AND THE APPLICABLE PERIOD OF
INVESTIGATION OF SERIOUS INJURY OR THREAT THEREOF CAUSED BY INCREASED
IMPORTS**

The period of investigation: 2016, 2017, 2018, 1 July 2018-30 June 2019.

The results of the analysis of the applicant's economic situation show that in the recent period, compared to the first period:

- production volumes decreased by 16.83%;
- production capacity increased by 0.78% and utilization decreased by 17.48%;
- the sales of the product on the domestic market decreased by 5.08%;

- the applicant's share in consumption decreased by 9.13% while the consumption increased by 4.45%;
- stocks in warehouses at the end of the period increased by 7.72%;
- employment rate decreased by 15.28%;
- the average monthly salary increased by 59.50%;
- the loss of the company decreased by 79.04%, but the activity of the Applicant remains unprofitable;
- profitability from the sale of the product in the domestic market is negative, but this indicator has improved by 80,22%;
- liquidity conditions decreased by 18.56%;
- investments in production of the product decreased by 43,96% compared to the base period.

The cumulative assessment of the above factors led to establishment of the material injury to the national producer.

2 TO PROVIDE INFORMATION ON WHETHER THERE IS AN ABSOLUTE INCREASE IN IMPORTS OR AN INCREASE IN IMPORTS RELATIVE TO DOMESTIC PRODUCTION

According to the customs statistics (data) of the State Customs Service during the investigation period:

- in absolute terms import volumes increased by 36.87%;
- with regard to production of goods in Ukraine import volumes increased by 101.61%, relative to consumption of goods increased by 31.04%.

On the basis of the above, it was established that during the investigation period there was a significant increase in the volume of imports of goods into Ukraine.

In accordance with Article XIX:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the investigating authority has considered unforeseen circumstances that led to a significant increase in the volume of import of goods, which caused significant injury to the domestic industry producing the like product.

According to the Food and Agriculture Organization of the United Nations, the volume of possible production of nitrogen fertilizers in the world for the period from 2010 to 2019 increased by almost 20% (from 134.75 million tons to 161.50 million tons). At the same time, the demand for nitrogen fertilizers in the world increased by only 3.4% (from 103.88 million tons to 107.42 million tons). It is obvious that the production capacity of nitrogen fertilizers significantly exceeds the demand. Thus, in recent years, there has been a large gap between nominal global production capacity and demand, which has led to an unprecedented excess potential in the global nitrogen fertilizer market, which persists despite measures taken to reduce it. In addition, as of 2019 in the global nitrogen fertilizer market, the balance between supply and demand is constantly growing in surplus.

Fertilizer companies continue to be financially vulnerable as structural imbalances persist in the sector. These imbalances are highlighted by distorting subsidies and government support measures. Due to uninterrupted production, many fertilizer producers, especially in countries where the state distorts the normal position of market forces, maintained capacity utilization at high levels and flooded the third country markets with their products at low prices, when it is impossible, to use domestic consumption fully.

All of this has led to an increase in imports into Ukraine and a general decline in prices. It should be noted that such a scenario became possible because of the fact that due to the development of the agricultural sector of Ukraine, the fertilizer market in Ukraine has become a premium one for foreign suppliers. This factor has also become a key given the growth of imports.

In addition, the above effect was intensified by restrictive practices in the third country markets. In particular, the WTO official website states that from 2010 to 2019, 329 anti-dumping measures were applied in the chemical industry. And 170 of them were applied only for the period of 2015-2018. This indicator is the second in the world for the application of measures after the metallurgical complex.

Considering the above, the investigating authority concluded that these factors led to an unpredictable increase in imports into Ukraine and, as a consequence, an imbalance in favor to foreign producers-suppliers of goods.

The major exporting countries of imports of the product involved.

Country	1 st year period	2 nd year period	3 rd year period	4 th year period
Amount of imports by country of origin, tons				
1st group - ammonium nitrate and limestone ammonia mixture				
The Republic of Bulgaria		15 353,4	24 425,4	146 992,0
Georgia		37 294,0	89 997,0	188 894,9
The Russian Federation	292 902,2	829 708,4	200 420,4	38 761,4
The Republic of Uzbekistan	24 071,6	176 170,6	141 187,1	57 254,3
The Republic of Kazakhstan	44 832,0	63 361,0	74 219,5	67 154,0
The Republic of Poland	1 359,0	15 330,3	50 009,7	81 165,0
The Republic of Turkey		10 020,0	63 009,4	209 731,3
2nd group - urea and urea ammonium nitrate				
The Republic of Belarus	95 566,1	144 191,7	117 979,7	128 259,2
The Arab Republic of Egypt		45 474,9	21 900,0	56 183,2
The Republic of Lithuania	11 975,8	88 524,5	140 177,0	117 849,8
The Republic of Uzbekistan	3 434,0	28 379,9	81 060,5	36 952,6
The Russia Federation	476 137,5	427 595,6	24 413,7	53,3
The Republic of Poland	7 302,3	24 534,5	33 219,6	58 177,2

3 TO PROVIDE PRECISE DESCRIPTION OF THE PRODUCT INVOLVED

- 1st group – solid fertilizers and other mineral or chemical products, nitrogen (not in aqueous solution): uncontaminated ammonium nitrate; ammonium nitrate with calcium carbonate or other inorganic substances other than fertilizers; mixtures of fertilizers and other products based on ammonium nitrate (ammonium nitrate) containing two or more nutrients, in which the total mass fraction of nitrate and ammonium nitrogen in terms of nitrogen in the dry matter is not less than 28 wt. %, irrespective of their intended use, classified in accordance with UKTZED under the codes 3102 and 3105;
- 2nd group – urea, including in aqueous solution, and a mixture of urea and ammonium nitrate in aqueous or ammonia solution, classified in accordance with UKTZED under the codes 3102 10 and 3102 80 00 00 respectively.

4 TO PROVIDE PRECISE DESCRIPTION OF THE PROPOSED MEASURE

In order to take into account the interests of supporting traditional goods flows and to avoid a possible deficit of goods on the market of Ukraine, the quota was calculated considering obligations of Ukraine under free trade agreements and types of goods.

Country	1 st year period	2 nd year period	3 rd year period
1st group - ammonium nitrate and limestone ammonia mixture			
The European Union	105 115,87	107 218,19	109 362,55
The Republic of Uzbekistan	77 916,22	79 474,55	81 064,04
Georgia	69 456,41	70 845,54	72 262,45
The Republic of Kazakhstan	54 687,15	55 780,90	56 896,51
Other countries	50 000,00	51 000,00	52 020,00
TOTAL	357 175,66	364 319,17	371 605,55
2nd group - urea and urea ammonium nitrate			
The European Union	216 422,25	220 750,69	225 165,71
The Republic of Belarus	167 079,25	170 420,83	173 829,25
The Republic of Uzbekistan	55 177,17	56 280,72	57 406,33
Other countries	82 981,02	84 640,64	86 333,46
TOTAL	521 659,69	532 092,89	542 734,74

5 TO PROVIDE PROPOSED DATE OF INTRODUCTION OF THE MEASURE

June of 2020.

6 TO PROVIDE EXPECTED DURATION OF THE MEASURE

Safeguard measures are planned to be imposed for a period of 3 years.

7 TO PROVIDE FOR A MEASURE WITH A DURATION OF MORE THAN THREE YEARS THE PROPOSED DATE FOR THE REVIEW (UNDER ARTICLE 7.4) TO BE HELD NOT LATER THAN THE MID-TERM OF THE MEASURE, IF SUCH A DATE FOR THE REVIEW HAS ALREADY BEEN SCHEDULED

Not applicable.

8 IF THE EXPECTED DURATION IS OVER ONE YEAR, TO PROVIDE EXPECTED TIMETABLE FOR PROGRESSIVE LIBERALIZATION OF THE MEASURE

The level of the quota should be increased by 2% annually during measures validity.

9 TO PROVIDE INFORMATION RELATING TO THE EXTENSION OF A SAFEGUARD MEASURE

Not applicable.

10 EXCLUSION OF CERTAIN COUNTRIES FROM THE SCOPE OF THE DEFINITIVE MEASURES

According to the Article 9.1 of the Agreements on Safeguards (List of the Least Developed Countries of the United Nations), Free Trade Agreement between the EFTA States and Ukraine dated 24.06.2010, Free Trade Agreement between the Government of Ukraine and the Government of Montenegro dated 18.11.2011, Free Trade Agreement of the Commonwealth of Independent States, dated 18.10.2011 and taking into account Chapter 8 of the Article XXIV of the GATT 1994 imports of goods described in paragraph 3 of this notification into Ukraine originating from the following countries should be excluded from the application of the definitive measures: the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Republic of Montenegro, the Republic of Azerbaijan, the Republic of Armenia, the Republic of Kyrgyzstan, the Republic of Moldova, the Republic of Tajikistan, the Republic of Turkmenistan, the Islamic Republic of Afghanistan, the Republic of Angola, the People's Republic of Bangladesh, the Republic of Benin, the Kingdom of Bhutan, the Republic of Burkina Faso, the Republic of Burundi, the Kingdom of Cambodia, the Central African Republic, the Republic of Chad, the Union of the Comoros, the Democratic Republic of the Congo, the Republic of Djibouti, the State of Eritrea, the Federal Democratic Republic of Ethiopia, the Islamic Republic of Gambia, the Republic of Guinea, the Republic of Guinea-Bissau, the Republic of Haiti, the Republic of Kiribati, the Lao People's Democratic Republic, the Kingdom of Lesotho, the Republic of Liberia, the Republic of Madagascar, the Republic of Malawi, the Republic of Mali, the Islamic Republic of Mauritania, the Republic of Mozambique, the Republic of the Union of Myanmar, the Federal Democratic Republic of Nepal, the Republic of Niger, the Republic of Rwanda, the Democratic Republic of Sao Tome and Principe, the Republic of Senegal, the Republic of Sierra Leone, Solomon Islands, the Federal Republic of Somalia, the Republic of South Sudan, the Republic of the Sudan, the Democratic Republic of Timor-Leste, the Republic of Togo, Tuvalu, the Republic of Uganda, the United Republic of Tanzania, the Republic of Yemen, the Republic of Zambia.

11 PROCEDURES RELEVANT TO THE DECISION ON APPLICATION OF THE MEASURES AND INFORMATION REGARDING PROCEDURES FOR PRIOR CONSULTATIONS WITH THOSE MEMBERS HAVING A SUBSTANTIAL INTEREST AS EXPORTERS OF THE PRODUCT CONCERNED

As a measure to prevent the extension of COVID-19, Ukraine proposes, if necessary, to held the consultations in the form of an exchange of views by providing the information in writings or by means of videoconference.

Members having a substantial interest as exporters of the product subject to the investigation that would like to consult with Ukraine shall send their position papers to the meconomy@me.gov.ua (for official registration) and to the email addresses of the responsible for the investigation persons zaiets@me.gov.ua and suhanov@me.gov.ua before **04.06.2020** or request videoconference to be hold till **04.06.2020**.
