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KAZAKHSTAN – ANTI-DUMPING MEASURES ON STEEL PIPES

REQUEST FOR CONSULTATIONS BY UKRAINE

The following communication, dated 19 September 2017, from the delegation of Ukraine to the delegation of Kazakhstan and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Kazakhstan pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-Dumping Agreement).

I. Background

This request is with respect to anti-dumping measures applied to certain types of steel pipes on the customs territory of Kazakhstan. The measures were imposed pursuant to the Decision of the Collegium of the Eurasian Economic Commission No. 48 of 2 June 2016 on imports of certain types of steel pipes originating in Ukraine in connection with the sunset review of the anti-dumping measures on imports of certain types of steel pipes originating in Ukraine and imported on the customs territory of the Eurasian Economic Union ("EAEU").

II. Measures at issue

The measures at issue are the following:

- the Decision of the Collegium of the Eurasian Economic Commission No. 48 of 2 June 2016 "On prolongation of anti-dumping measures on certain types of steel pipes originating in Ukraine and imported into the customs territory of the Eurasian Economic Union"¹;
- the findings of the Eurasian Economic Commission in the Report (Notice No. 2016/55/AD1R2 of 3 June 2016) "On the results of the sunset review of anti-dumping duties on certain types of steel pipes originating in Ukraine"².

Ukraine considers that the findings of the EAEC in the Report followed by the Decision No. 48 of 2 June 2016 are erroneous and based on deficient rulings, procedures and provisions pertaining to the Anti-Dumping Agreement.

In addition, this Request for Consultations also covers in whatever form: any amendments, supplements, or extensions to or of the measures referred to in this Section; any measures replacing, renewing or implementing the measures referred to in this Section; and, any measures related to the measures referred to in this Section.

¹ https://docs.eaeunion.org/docs/ru-ru/01410363/clcd_03062016_48

² http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD1R2_report_final.pdf

III. Legal basis for the complaint

Ukraine considers that the measures referred to in Section II above are inconsistent with several of Kazakhstan's WTO obligations, including, but not limited to:

1. Articles 11.1, 11.3 of the Anti-Dumping Agreement because the Eurasian Economic Commission's determination that expiry of the measure is likely to lead to a continuation of dumping and injury was made in violation of the following Articles of the Anti-Dumping Agreement:
 - Article 3.1 of the Anti-Dumping Agreement because the investigating authority when conducting examination of likelihood of continuation or recurrence of dumping and injury failed to rely upon information pertaining to a period as close as practicable the date of initiation of the investigation as well as to assess positive evidence and provide the objective examination with respect to the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products;
 - Article 3.4 of the Anti-Dumping Agreement because the investigating authority failed to assess relevant economic factors and indices when conducting examination of likelihood of continuation or recurrence of dumping and injury;
 - Article 3.5 of the Anti-Dumping Agreement because the investigating authority failed to examine other factors which at the same time were injuring domestic industry when conducting examination of likelihood of continuation or recurrence of dumping and injury;
2. Articles 5.2 and 5.3 of the Anti-Dumping Agreement because the investigating authority failed to examine accuracy and adequacy of the complaint and initiated the sunset review on the basis of complaint which was lack of the evidence that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury;
3. Articles 6.1, 6.2 and 8.3 of the Anti-Dumping Agreement because the investigating authority failed to grant to certain Ukrainian producers a full opportunity to defend their interests. For instance, the investigating authority failed to provide to exporters the reasons for non-acceptance of the undertaking from Ukrainian producers and to give Ukrainian exporters an opportunity to make comments thereon;
4. Articles 6.1, 6.2, 6.8 and paragraph 3 of Annex II to the Anti-Dumping Agreement because the investigating authority failed to take into account the information which was verifiable, appropriately submitted by Ukrainian exporters so that it could be used in the investigation without undue difficulties and which was supplied in on time;
5. Articles 6.1, 6.2, 6.8 and paragraph 6 of Annex II to the Anti-Dumping Agreement because the investigating authority failed to inform Ukrainian producers of the reasons why the evidence and information supplied by Ukrainian producers was not accepted and to give Ukrainian producers an opportunity to provide further explanations and to provide for published determinations of the reasons for the rejection of such evidence or information;
6. Article 11.1 of the Anti-Dumping Agreement because measures were extended although positive evidence of such necessity was not provided;
7. Article 11.3 of the Anti-Dumping Agreement because during the review the investigating authority failed to prove by the positive evidence and following the objective examination that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury;
8. Article 12.2 of the Anti-Dumping Agreement because the investigating authority failed to give public notice on the affirmative or negative decision to accept an undertaking;
9. Article VI of the GATT 1994 as a consequence of a breach of the Anti-Dumping Agreement described above.

These violations appear to nullify or impair benefits accruing to Ukraine directly or indirectly under the cited agreements.

Ukraine reserves the right to raise additional measures, claims and legal matters during the course of the consultations and in any future request for panel proceedings.

Ukraine looks forward to receiving Kazakhstan's reply to this request and to fixing a mutually convenient date for consultations.