



22 October 2018

(18-6588)

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Original: English

KYRGYZ REPUBLIC – ANTI-DUMPING MEASURES ON STEEL PIPES

REQUEST FOR CONSULTATIONS BY UKRAINE

The following communication, dated 17 October 2018, from the delegation of Ukraine to the delegation of the Kyrgyz Republic, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the Kyrgyz Republic pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 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 the anti-dumping measures applied to certain types of steel pipes on the customs territory of the Kyrgyz Republic according to the results of sunset review as applied on unjustified level which exceeds the established margin of dumping because of the failure of the Eurasian Economic Commission ("EEC") to adopt to date a decision to implement findings of the investigating authority under interim review initiated in light of changed circumstances.

The current measures, that are applied pursuant to the Decision of the Collegium of the EEC No. 48 of 2 June 2016 as a result of 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, are higher than necessary, erroneous and based on deficient rulings, procedures and provisions pertaining to 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 to the date of initiation of the investigation;
- 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;
- assess relevant economic factors and indices as well as other factors which at the same time were injuring domestic industry;
- 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;
- provide to exporters the reasons for non-acceptance of the undertakings submitted by Ukrainian producers and to give Ukrainian exporters an opportunity to make comments thereon; and
- 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 etc.

Moreover, on 17 October 2016 an interim review was initiated¹ with a view to revise level of individual anti-dumping duties in light of changed circumstances. As a result of the interim review, investigating authority issued a Report with subsequent calculations and evidences concluding that anti-dumping duties should be decreased. However, the EEC has failed to adopt to date a decision to implement findings of the investigating authority, contained in its Report, within an established time frame for interim reviews.

II. Measures at issue

The measures at issue are the following:

- the Decision of the Collegium of the EEC 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"²;
- the findings of the EEC Department for Internal Market Defence in the Report (Notice No. 2017/89/AD1R3 of 4 October 2017) "On the results of the interim review of anti-dumping duties on certain types of steel pipes originating in Ukraine with a view to review level of individual anti-dumping duties in light of changed circumstances"³.

Ukraine considers that the current anti-dumping measures on certain types of steel pipes originating in Ukraine together with the EEC's failure to comply with procedural requirements are inconsistent with Article VI of the GATT 1994 and 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.

III. Legal basis for the complaint

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

1. Article 9.1 of the Anti-Dumping Agreement because the anti-dumping duties, which are currently in place, exceed the adequate level that could remove injury to the domestic industry;
2. Article 9.3 of the Anti-Dumping Agreement and paragraph 2 of Article VI of the GATT 1994, because the anti-dumping duties, which are currently in place, exceed the margin of dumping determined by the EEC Department for Internal Market Defence within the interim review;
3. Article 11.1 of the Anti-Dumping Agreement because the anti-dumping duties are still in force in the amount that exceeds the level of duty necessary to counteract dumping that is causing injury although findings of the EEC Department for Internal Market Defence under the interim review, contained in its Report dated 4 October 2017, proved that the anti-dumping duties should be decreased;
4. Article 11.2 of the Anti-Dumping Agreement because the measure that is no longer warranted is still in force despite of the findings of the EEC Department for Internal Market Defence within the interim review that the anti-dumping duties should be decreased;
5. Article 11.4 of the Anti-Dumping Agreement because the EEC failed to conclude the interim review expeditiously and has been carrying out such review for almost 24 months;

¹ Notice of initiation of the interim review dated 17 October 2016 is available at http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD1R3_notice_initiation.pdf

² https://docs.eaeunion.org/docs/ru-ru/01410363/clcd_03062016_48

³ http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD1R3_report.pdf

6. Article 12.2.2 of the Anti-Dumping Agreement because the EEC failed to give a public notice of conclusion or suspension of the interim review as the decision has not been adopted yet;
7. 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 claims and legal matters during the course of the consultations and in any future request for panel proceedings.

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