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UKRAINE – DEFINITIVE SAFEGUARD MEASURES ON CERTAIN PASSENGER CARS

REQUEST FOR CONSULTATIONS BY JAPAN

The following communication, dated 30 October 2013, from the delegation of Japan to the delegation of Ukraine 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 Ukraine pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994") and Article 14 of the *Agreement on Safeguards* regarding the definitive safeguard measures imposed by Ukraine on imports of certain passenger cars and the investigation that led to the imposition of those measures.

On 30 June 2011, the Inter-Departmental Commission for International Trade (hereinafter referred to as "the Commission") adopted decision No. SP-259/2011/4402-27 whereby it initiated an investigation with a view to the application of safeguard measures on imports of certain passenger cars to Ukraine regardless of their country of origin or their country of export. The Commission decision was taken further to a complaint lodged by the Association of Ukrainian Vehicle Manufacturers "UkrAvtoprom" on behalf of three Ukrainian automobile manufacturers. The Commission decision of initiation was published in the "Uryadoviy Kuryer" No. 118 of 2 July 2011. On 28 April 2012, the Commission approved decision No. SP-275/2012/4423-08 (hereinafter referred to as the "Decision") according to which safeguard measures would be imposed on imports of the product concerned to Ukraine, in the form of the following two additional duties:

- for cars of a cylinder capacity exceeding 1000 cm³ but not exceeding 1500 cm³: 6.46%
- for cars of a cylinder capacity exceeding 1500 cm³ but not exceeding 2200 cm³: 12.95%

The product concerned involved motor cars and other motor vehicles principally designed for the transport of persons (category M1 – vehicles with no less than 4 wheels and no more than 8 sitting places except driver sitting place), with spark-ignition internal combustion engine and crank gear of a cylinder capacity exceeding 1000 cm³ but not exceeding 2200 cm³, new, classified under UKTZE codes 8703 22 10 00 and 8703 23 19 10.

The Notice concerning the Decision was published in the "Uryadoviy Kuryer" No. 48 on 14 March 2013.

These measures entered into force 30 days after the Notice's publication. It provides for a duration of the measures of three years.

By decision No. SP-288/2013/4423-06 adopted on 11 April 2013, the safeguard measures have been amended so as to provide for the temporary non-application of the special measures to cars which have hybrid propulsion unit (electric motor with a drive on vehicle wheels). The decision

has been published in the "Uryadoviy Kuryer" No. 75 of 20 April 2013 and applies from 20 April 2013 until 28 February 2014.

Japan is deeply concerned about the safeguard measures imposed by Ukraine and the underlying investigation that led to the imposition of those measures. Specifically, Japan considers that:

- (1) Ukraine failed to comply with Articles 12.1 and 12.2 of the Agreement on Safeguards which directs Members to immediately notify the Committee on Safeguards of all safeguard actions and with Article 12.3 of the Agreement on Safeguards which directs Members to provide adequate opportunity for prior consultations with Members having a substantial export interest of the product concerned.
- (2) Ukraine failed to comply with Article 8.1 of the Agreement on Safeguards since it did not endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under the GATT 1994 between it and Japan in accordance with Article 12.3 of the Agreement on Safeguards.
- (3) Ukraine failed to publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law and a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined, thereby acting inconsistently with Article 3.1 and Article 4.2(c) of the Agreement on Safeguards.
- (4) Ukraine applied the safeguard measures two years after the end of the investigation period, thereby acting inconsistently with Article 2.1, Article 3.1, and Article 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
- (5) Ukraine imposes the safeguard measures beyond the extent necessary to prevent or remedy serious injury and to facilitate adjustment as it did not provide for a progressive liberalization, *inter alia*, in its determination and its WTO notification, at regular intervals during the period of application, thereby acting inconsistently with Articles 3.1, 4.2(c), 5.1, 7.1, 7.4 and 12.2 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
- (6) Ukraine failed to make reasoned and adequate findings and conclusions in its determination with respect to the alleged unforeseen developments and explanation of how those alleged unforeseen developments resulted in increased imports of the specific products covered by the safeguard measures. Therefore Ukraine acts inconsistently with Articles 3.1, 4.2(c) and 11.1(a) of the Agreement on Safeguards and with Article XIX:1(a) of the GATT 1994.
- (7) Ukraine failed to make reasoned and adequate findings and conclusions in its determination as to the alleged effect of obligations incurred under the GATT 1994, and how that effect has resulted in increased imports of the specific products covered by the safeguard measures. Therefore Ukraine acts inconsistently with Articles 3.1, 4.2(c) and 11.1(a) of the Agreement on Safeguards and with Article XIX:1(a) of the GATT 1994.
- (8) Ukraine failed to make reasoned and adequate findings and conclusions in its determination with respect to the alleged increase in imports of the specific products under investigation, in absolute terms or relative to domestic production. Therefore Ukraine acts inconsistently with Articles 2.1, 3.1, 4.2(a), 4.2(c) and 11.1(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
- (9) Ukraine failed to make reasoned and adequate findings and conclusions in its determination as to the existence of an alleged serious injury and/or threat of serious injury. Therefore Ukraine acts inconsistently with Articles 2.1, 3.1, 4.1(a), 4.1(b), 4.2(a), 4.2(b) and 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.

- (10) Ukraine failed to make reasoned and adequate findings and conclusions in its determination as to the causal link between the alleged increase in imports and the alleged serious injury and/or threat of serious injury of the domestic industry. Therefore Ukraine acts inconsistently with Articles 2.1, 3.1, 4.1(a), 4.1(b), 4.2(a), 4.2(b) and 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
- (11) Through the safeguard measures, Ukraine imposes duties which are in excess of those set forth in its schedule, thereby violating Article II:1(b) of the GATT 1994.

The Government of Japan reserves the right to raise additional factual claims and legal matters during the course of the consultations.

We look forward to receiving your reply to this request for consultations and to agreeing upon a mutually acceptable date for the consultations.
