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Committee on Anti-Dumping Practices

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ARTICLE 16.4 OF THE AGREEMENT

QUESTIONS OF UKRAINE TO ARMENIA, KAZAKHSTAN, THE KYRGYZ REPUBLIC AND THE RUSSIAN FEDERATION REGARDING ANTI-DUMPING INVESTIGATIONS CONCERNING IMPORTS OF BARS AND RODS AND FERROSILICOMANGANESE ORIGINATING IN UKRAINE TO THE TERRITORY OF THE EURASIAN ECONOMIC UNION

The following communication, dated 20 April 2016, is being circulated at the request of the delegation of Ukraine.

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On 20 November 2013, the Eurasian Economic Commission (EEC) initiated an anti-dumping investigation concerning imports of bars and rods originating in and/or exported from Ukraine to the Eurasian Economic Union (EAEU).

On 26 December 2014 the Eurasian Economic Commission initiated an anti-dumping investigation concerning imports of ferrosilicomanganese originating in and/or exported from Ukraine.

Ukraine hereby would like to ask Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation to clarify the following.

Question 1

According to the Recommendation of the Committee on Anti-Dumping Practices and the Protocol on Application of Safeguard, Anti-Dumping and Countervailing Measures to Third Countries, Annex No. 8 to the Treaty on the Eurasian Economic Union of 29.05.2014 (hereinafter – the Protocol of EAEU) the period of data collection for dumping investigations in EAEU normally should be twelve months, and in any case not less than six months.

Along with this, period for dumping investigation for the case on bars and rods was established from 01.01.2013 to 30.09.2013, i.e. 9 months and for the case on ferrosilicomanganese the period was from 01.01.2013 to 30.06.2014, i.e. 18 months.

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation clarify what methodology is usually used for establishing the periods for a dumping investigation and how it complies with the Recommendation of the Committee on Anti-Dumping Practices of 16 May 2000? In addition, what factors were taken into account within these particular cases when the periods of dumping investigations were established?

Question 2

Initiation date of the anti-dumping investigation concerning imports of bars and rods is 20 November 2013.

Taking into consideration provisions of Article 5.10 of the Agreement on Implementation of Article VI of the GATT 1994 (hereinafter - the Antidumping Agreement) as well as provisions of Article 217.2 of the Protocol of EAEU the final date of this investigation should be 20 May 2015, but the final decision was taken on 29.03.2016.

Pursuant to the Protocol of the EAEU the date of conclusion of the antidumping investigation is the date of consideration of the report on the results of the investigation by the EEC and draft of the relevant decision. The final report was considered by the EEC on 29.03.2016, which means that investigation was being conducted during 28 months.

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation clarify what was the legal base for 28-month period of conducting the antidumping investigation on bars and rods?

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation also explain how conclusion of the antidumping investigation on bars and rods on 29.03.2016 complies with Article 5.10 of the Antidumping Agreement?

Question 3

Article 3.1 of the Anti-Dumping Agreement requires, inter alia, that the injury determination "shall be based on positive evidence". The conditions for imposing anti-dumping measures, if dumped imports are causing injury, have to be present at the time of imposition of the measure, to the extent practically possible.

The data considered concerning dumping, injury and the causal link should include, to the extent possible, the most recent information, taking into account the inevitable delay caused by the need for an investigation, as well as any practical problems of data collection in any particular case.

Panel Report, Mexico – Anti-Dumping Measures on Rice concluded that given the passage of time (nearly three-year) between the period of investigation and the date of imposition of the measures, the information lacks credibility and reliability, thereby failing to meet the criterion of "positive evidence" pursuant to Article 3.1 of the Anti-Dumping Agreement.

The injury investigation period on bars and rods was established from 1 January 2010 to 30 September 2013, and by April 2016 there is a 2.5-year gap between the investigation period and imposition of the measure. Therefore, information provided in the report on bars and rods lacks credibility and reliability.

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation clarify how the decision to impose antidumping measures on bars and rods complies with Article 3.1 of the Anti-Dumping Agreement in particular the requirement that the injury determination should be "based on positive evidence"?

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation also explain in what way the EEC as the authority responsible for conducting the antidumping investigation ensures that injury determination complies with Article 3.1 of the Anti-dumping Agreement in particular the requirement that the injury determination should be "based on positive evidence"?

If there are some particular provisions in the EAEU antidumping legislation stipulating principle of "positive evidence" during injury determination within the meaning of its interpretation by WTO would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation please clarify it.

Question 4

According to footnote 2 of the Antidumping Agreement, sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5% or more of the sales of the product under consideration to the importing Member.

In the framework of the case on bars and rods, 5% test was made on the month-by-month basis within the established 9-month period for dumping investigation instead of making the calculation for the whole 9-month period.

Could Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation clarify if there are some particular provisions in the EAEU antidumping legislation stipulating principle of making 5% test on month-by-month basis?

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation clarify what methodology or which periods are usually used by competent authorities for making 5% test during period for dumping investigation?

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation also explain how the used methodology in bars and rods case complies with Article 2.2 of the Antidumping Agreement and in particular with footnote 2 of the Antidumping Agreement?

Question 5

According to Article 2.4.2 of the Antidumping Agreement, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis.

In the framework of the case on bars and rods, dumping margins were calculated on the month-by-month basis within the established 9-month period for dumping investigation instead of making the calculation for the whole 9-month period or on a transaction-to-transaction basis.

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation clarify what methodology in this case was used for making dumping determinations?

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation also explain how the used methodology of dumping margin calculation in bars and rods case complies with Article 2.4.2 of the Antidumping Agreement?

Question 6

In bars and rods case as well as in ferrosilicomanganese case it was stipulated in reports that there were many indicators showing the dynamic development of companies and the positive state of the overall market. In particular, the main indicators that could be influenced by imports such as sales volumes on the EAEU market and revenues from sales on the EEU market had positive trend.

Given that at the same time, there also was influence of other factors injuring the domestic industry such as competition between the domestic producers, growth of the production costs, imports from other countries and volume of export, the authorities, pursuant to Article 3.5 of the Anti-dumping Agreement, had to examine these other factors.

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation please explain what methodology is used by the EEC to consider separate and aggregate influence of all other factors on the domestic industry?

Would Armenia, Kazakhstan, the Kyrgyz Republic and the Russian Federation also clarify how the conclusions of the EEC on the "other factors" established in reports on both cases comply with Article 3.5 of the Anti-dumping Agreement in particular with the requirement that injuries caused by these other factors must not be attributed to the dumped imports?

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