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**EUROPEAN UNION – ANTI-DUMPING MEASURES ON CERTAIN  
COLD-ROLLED FLAT STEEL PRODUCTS FROM RUSSIA**

**REQUEST FOR CONSULTATIONS BY THE RUSSIAN FEDERATION**

The following communication, dated 27 January 2017, from the delegation of the Russian Federation to the delegation of the European Union 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 European Union pursuant to Articles 1 and 4 of the *Understanding of Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII: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* ("AD Agreement") with respect to the anti-dumping measures imposed by the European Union on imports of certain cold-rolled flat steel products originating in the Russian Federation pursuant to the following:

- (a) Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation,<sup>1</sup>
- (b) Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation,<sup>2</sup>
- (c) Commission Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation,<sup>3</sup>

as well as other related acts,<sup>4</sup> and the underlying investigation.

These measures appear to be inconsistent with the European Union's obligations under the following provisions of the GATT 1994 and the AD Agreement:

1. Articles 2.1, 2.2 and 2.2.1.1 of the AD Agreement because the European Union failed to calculate the costs on the basis of the records kept by certain Russian producers under investigation, although these records were in accordance with the generally accepted accounting principles ("GAAP") of the Russian Federation and reasonably reflected the costs associated with the production and sale of the product under consideration.

<sup>1</sup> OJ L 37, 12.2.2016, p. 1-39.

<sup>2</sup> OJ L 210, 4.8.2016, p. 1-26.

<sup>3</sup> OJ L 210, 4.8.2016, p. 27-42.

<sup>4</sup> For instance, Notice of initiation of an anti-dumping proceeding concerning imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation of 14 May 2015 (OJ C 161, 14.5.2015, p. 9-19); and Commission Implementing Regulation (EU) 2015/2325 of 11 December 2015 making imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation subject to registration (OJ L 328, 12.12.2015, p. 104-107).

2. Articles 2.2, 2.2.1 and 2.2.1.1 of the AD Agreement because the European Union treated the majority of domestic sales of the like product of the Russian producer considered as partially non-cooperating ("the first Russian producer") as not being in the ordinary course of trade due to upward adjustments which artificially inflated costs actually incurred.

3. Articles 2.1, 2.2 and 2.2.1 of the AD Agreement because the European Union failed to take into account, within the ordinary course of trade test, all domestic sales of the like product of the first Russian producer.

4. Articles 2.1, 2.2 and 2.2.1.1 of the AD Agreement because the European Union failed to determine the normal value for the Russian producer treated as entirely non-cooperating ("the second Russian producer") on the basis of the data provided by that producer on actual sales of the like product in the ordinary course of trade when destined for consumption in the exporting country.

5. Articles 2.2 and 2.2.1.1 of the AD Agreement because the European Union failed to determine a correct normal value for the first Russian producer due to an upward adjustment to the costs of manufacturing and the selling, general and administrative ("SG&A") costs.

6. Articles 2.2 and 2.2.2 of the AD Agreement because the European Union failed to use any of the grounds allowed under these provisions in order to determine SG&A costs by not basing them on actual data and by artificially inflating them for the amount of alleged difference in value resulting from the re-evaluation of loans in foreign currency reflected in the records kept by certain Russian producers in their statutory accounting currency (the Russian Rouble) and because the European Union failed to use a reasonable amount for profits based on actual data.

7. Articles 2.1 and 2.3 of the AD Agreement because the European Union failed to properly determine the export price for the second Russian producer although this producer had made available for the investigating authority all the necessary data on the actual export price, which had been verified by the investigating authority of the European Union.

8. Articles 2.3 and 2.4 of the AD Agreement because the European Union did not make a fair comparison between the export price and the normal value, for instance due to downward adjustment of the export price for reasonable SG&A costs and profit of a hypothetical unrelated importer applied to the price at which the intra-group trading arms of certain Russian producers located outside the European Union sold the product under consideration to unrelated customers in the European Union, which exceeded the allowance for costs incurred between importation and resale, and for profits accruing allowed under those provisions.

9. Articles 3.1 and 3.2 of the AD Agreement because the European Union's determination of injury to the Union industry failed to make an objective examination, on the basis of positive evidence, of the volume of the allegedly dumped imports, of the effect of those imports on prices in the domestic market for like products, and of the consequent impact of the allegedly dumped imports on domestic producers of such products. For instance, the European Union failed to conduct an objective examination as it did not properly take into account in its analysis with regard to the effect of the dumped imports on prices and price undercutting, the free and captive market consumption, as well as aggregate market trends; the European Union's analysis did not take into account the volume of the allegedly dumped imports purchased by the Union industry itself; the European Union failed to establish a significant increase in the allegedly dumped imports, and any significant effect on prices of the Union industry; the European Union failed to properly consider whether the effect of the imports under investigation was to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

10. Articles 3.1 and 3.4 of the AD Agreement because in the course of injury determination the European Union failed to make an objective examination, based on positive evidence, of the impact of the allegedly dumped imports on domestic producers of like products. For instance, the European Union's findings regarding a three-way assessment of the free, captive and aggregate markets were not based on an objective examination of the evidence on the record; the European Union failed to make a proper evaluation of all relevant

economic factors and indices having a bearing on the state of the Union industry, in particular, market share, capacity and capacity utilisation; the European Union failed to make a proper evaluation of the state of the domestic industry, overall developments and interaction among the injury factors and indices taken together.

11. Articles 3.1 and 3.5 of the AD Agreement because the European Union failed to make an objective examination based on positive evidence before the authorities, that the dumped imports were causing injury. Specifically, the European Union failed to demonstrate that the imports under investigation were, through the effects of dumping, causing injury to the domestic industry; the European Union failed to base the examination of the alleged causal relationship between the imports under investigation and the alleged injury to the domestic industry on all relevant evidence before the authorities; the European Union failed to examine properly all known factors other than the imports under investigation that were injuring the Union industry at the same time, and therefore incorrectly attributed the injuries caused by these other factors to the imports under investigation.

12. Articles 5.2, 5.3 and 5.8 of the AD Agreement because the European Union failed to examine the accuracy and adequacy of the evidence provided in the application to initiate the investigation which did not include sufficient evidence of dumping, injury and causal link as required by Article 5.2 of the AD Agreement, the European Union failed to determine whether there was sufficient evidence to justify the initiation of the investigation; the European Union failed to examine the accuracy and adequacy of the information provided in the application relative to items (i) and (iv) of Article 5.2, and, by doing so, failed to reject the application and to promptly terminate the investigation.

13. Article 6.5.1 of the AD Agreement because: (a) the European Union failed to require the applicant to furnish non-confidential summaries of the information submitted in confidence; and (b) where such summaries were provided, the European Union did not ensure that they were in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

14. Article 6.2 of the AD Agreement because the European Union failed to grant to certain Russian producers a full opportunity to defend their interests. For instance, the European Union failed to require the applicant to provide adequate non-confidential summaries of allegedly confidential information; the European Union failed to provide timely opportunities to certain Russian producers to examine the information that was relevant to the presentation of their cases, and denied certain Russian producers' right to submit further information for the defence of their interests, including such that would be necessary to defend against double counting of certain costs of manufacturing; the European Union denied certain Russian producers an opportunity to hold follow-up verification visits, while follow-up verification visits were granted to the parties with adverse interests.

15. Articles 6.1, 6.8 and paragraphs 1, 2, 3, 5 and 6 of Annex II to the AD Agreement because the European Union failed to give certain Russian producers ample opportunity to present all evidence they considered relevant in respect of the investigation, and failed to establish properly any of the grounds allowed under these provisions in order to apply facts available when making its preliminary and final determinations. In doing so, the European Union failed to take into account all the information which was verifiable, appropriately submitted, and supplied in a timely fashion by those Russian producers. With respect to certain Russian producers, the European Union improperly applied facts available, *inter alia*, due to: failure to conduct unbiased and objective verification visits; failure to give notice to certain Russian producers at an appropriate stage of the investigation of the information required by the authority and of its evolving concerns with regard to the information provided; non-acceptance of evidence submitted by certain Russian producers after they were informed of new reasons for the application of Article 6.8 of the AD Agreement by way of the provisional disclosure; failure to provide certain Russian producers with an effective opportunity to provide additional information within a reasonable period.

16. Article 6.1, 6.8 and paragraph 7 of Annex II to the AD Agreement because the European Union improperly based its findings with respect to normal value and export price for certain Russian producers on facts available and failed to base its findings on information from a secondary source with special circumspection.

17. Article 6.9 of the AD Agreement because the European Union failed to inform all interested parties of the essential facts under consideration which formed the basis for the decision to impose definitive anti-dumping measures in respect of certain Russian producers, including the essential facts underlying the determinations of the existence of dumping and the calculation of the margins of dumping and the determinations on injury and causation.

18. Article 6.13 of the AD Agreement because the European Union failed to take due account of difficulties experienced by certain Russian producers in supplying the information requested and to provide any practicable assistance during the on-spot verification visits and thereafter. These omissions had an impact on the investigation and on the decision of the authority to apply facts available to certain Russian producers.

19. Articles 9.1, 9.2 and 9.3 of the AD Agreement and Article VI:2 of the GATT 1994 because the European Union failed to impose and to collect duties in the appropriate amounts in each case, by assessing them at an amount that exceeds the margin of the dumping that should have been established under Article 2 of the AD Agreement and failed to impose and to collect lesser duties adequate to remove the injury to the domestic industry; the European Union failed to name all suppliers involved by failing to name the second Russian producer when this was not impracticable.

20. Articles 10.6 and 3.3 of the AD Agreement because the European Union's cumulative assessment of imports from the Russian Federation and the People's Republic of China for the purposes of imposing duties retroactively was inappropriate in light of the conditions of competition between the imported products and like domestic products.

21. Article 10.6 of the AD Agreement because the European Union imposed definitive anti-dumping duties retroactively, even though the conditions for levying definitive anti-dumping duties retroactively set out in that provision, including the condition in Article 10.6(i) which the European Union chose to rely upon, were not met and/or not supported by sufficient evidence, either individually or taken together.

22. Articles 12.2, 12.2.1 and 12.2.2 of the AD Agreement because the European Union failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law that the investigating authorities considered material, as well as all relevant information on the matters of fact and law and reasons which have led to the imposition of definitive measures. The European Union failed, *inter alia*, to include in relation to the assessed anti-dumping duties (1) a full explanation of the reasons for the methodology used in the establishment and comparison of the dumping margin, the export price and normal value required under Article 12.2.1(iii) of the AD Agreement, (2) considerations relevant to the injury determination required under Article 12.2.1(iv) of the AD Agreement; and (3) the main reasons leading to the European Union's determination required under Article 12.2.1(v) of the AD Agreement.

23. Articles 1 and 18.1 of the AD Agreement and Article VI of the GATT 1994 as a consequence of the above-mentioned inconsistencies with the AD Agreement and the GATT 1994.

The above-mentioned anti-dumping measures of the European Union in relation to certain cold-rolled flat steel products originating in the Russian Federation, therefore appear to nullify or impair, directly or indirectly, the benefits accruing to the Russian Federation under the mentioned agreements.

The Russian Federation reserves the right to address additional measures and claims in respect of the mentioned issues, including any amendments, replacements, extensions, implementing measures or other related measures, in the course of the consultations.

The Russian Federation awaits the response of the European Union to this request in order to coordinate a mutually convenient date and place for the consultations.

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