



15 March 2019

(19-1676)

Page: 1/5

Original: English

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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE RUSSIAN FEDERATION

The following communication, dated 13 March 2019, from the delegation of the Russian Federation to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 27 January 2017, the Government of the Russian Federation requested consultations with the European Union (EU) pursuant to Articles 1 and 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 ("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") 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 ("measures at issue") 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,¹
- (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,²
- (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,³

as well as other related acts⁴, and the underlying investigation.

This request covers the measures set out above, as well as any and all amendments, replacements, extensions, related and implementing measures and any act of the European Union authorities that would affect the measures at issue. This request also concerns any and all notices, disclosures, decisions and reports of the European Commission, the Court of Justice of the European Union and other European Union institutions, and any amendments thereof, produced or to be produced in the

¹ OJ L 37, 12.2.2016, p. 1–39.

² OJ L 210, 4.8.2016, p. 1–26.

³ OJ L 210, 4.8.2016, p. 27–42.

⁴ 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).

future, in connection with any of the measures at issue including, but not limited to, all interim reviews, expiry reviews and other proceedings that have taken place to date.

The Russian Federation held consultations with the European Union on 8 June 2017. These consultations failed to settle the dispute.

The Russian Federation considers that the measures at issue are inconsistent with the European Union's obligations under the following provisions of the GATT 1994 and the Anti-Dumping Agreement:

1. Articles 2.1, 2.2, and 2.2.1.1 of the Anti-Dumping Agreement because the European Union failed to calculate the costs on the basis of the records kept by Public Joint Stock Company "Novolipetsk Steel" ("NLMK"), and by Public Joint Stock Company Severstal ("Severstal") (two Russian producers under investigation, the products of which are subject to the measures at issue), although these records were in accordance with the generally accepted accounting principles of the Russian Federation and reasonably reflected the costs associated with the production and sale of the product under consideration.
2. Articles 2.2, 2.2.1 and 2.2.1.1 of the Anti-Dumping Agreement because the European Union treated the majority of domestic sales of the like product of Severstal as not being in the ordinary course of trade due to upward adjustments which artificially inflated costs actually incurred, and this resulted in disregarding the majority of domestic sales of the like product in the ordinary course of trade for the purpose of determination of the normal value.
3. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement because the European Union failed to determine the normal value for NLMK on the basis of the data provided by that producer on actual sales and prices for the like product in the ordinary course of trade when destined for consumption in the exporting country.
4. Articles 2.1, 2.2 and 2.2.1.1 of the Anti-Dumping Agreement because the European Union failed to determine the correct normal value for Severstal due to an upward adjustment to costs of production and selling, general and administrative ("SG&A") costs.
5. Articles 2.2 and 2.2.2 of the Anti-Dumping Agreement because the European Union failed to use a reasonable amount of SG&A costs for Severstal, and in particular:
 - the European Union failed to determine SG&A costs for Severstal based on actual data pertaining to production and sales in the ordinary course of trade of the like product; and
 - the European Union artificially inflated the SG&A costs for the amount of alleged difference in value resulting from the re-evaluation of long-term loans in foreign currency, reflected in the records of Severstal as provisions for financial losses in the statutory accounting currency (the Russian Rouble), and considering those provisions as part of the SG&A costs.
6. Articles 2.1 and 2.3 of the Anti-Dumping Agreement because the European Union failed to properly determine the export price for NLMK although the investigating authority of the European Union ("investigating authority") had all the necessary and reliable data on the actual export price of NLMK.
7. Articles 2.3 and 2.4 of the Anti-Dumping Agreement because the European Union failed to make a fair comparison between the export price and the normal value for Severstal. In particular, the European Union applied an excessive downward adjustment of the export price for reasonable SG&A costs and profit of a hypothetical unrelated importer to the price at which the intra-group trading company of Severstal located outside the European Union sold the product under consideration to unrelated customers in the European Union. This resulted in exaggerating the allowance for costs incurred between importation and resale, and for profits accruing, and led to an unfair comparison with normal value. These violations consequentially led to improper price comparison for

NLMK, since the data used in the price comparison for Severstal were also used in relation to NLMK.

8. Articles 6.1, 6.8 and paragraphs 1, 2, 3, 5 and 6 of Annex II of the Anti-Dumping Agreement because the European Union failed to give NLMK and Severstal 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 to NLMK and Severstal when making its preliminary and final determinations. In doing so, the European Union:
 - (a) failed to take into account all the information which was verifiable, appropriately submitted and supplied in a timely fashion;
 - (b) improperly applied facts available with respect to NLMK and Severstal, among other shortcomings, due to:
 - failure to give notice to NLMK and Severstal at an appropriate stage of the investigation of the information required by the investigating authority and of its evolving concerns with regard to the information provided;
 - failure to inform NLMK of the manner in which the requested information was to be provided;
 - failure to conduct unbiased and objective verifications at NLMK's and Severstal's premises in the Russian Federation;
 - failure to inform NLMK forthwith of the reasons for not accepting submitted evidence after it was informed of new reasons for the application of Article 6.8 of the Anti-Dumping Agreement by way of the provisional disclosure;
 - failure to properly assess Severstal's evidence;
 - failure to provide NLMK and Severstal with an opportunity to provide further explanations within a reasonable period.
9. Articles 6.1, 6.8 and paragraph 7 of Annex II of the Anti-Dumping Agreement, because the European Union failed to base its findings with respect to normal value and export price for NLMK, and normal value for Severstal on information from a secondary source with special circumspection.
10. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because in its determination of injury to the EU industry the European Union failed to make an objective examination based on positive evidence of the volume of the dumped imports, of the effect of those imports on prices in the domestic market for like products, and of the consequent impact of the dumped imports on EU producers of such products. With regard to the volume of the dumped imports, the European Union failed to properly consider whether there had been:
 - (a) significant increase in dumped imports; and
 - (b) significant price undercutting by the dumped imports as compared with the price of a like domestic product, or whether the effect of such imports was otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

With regard to the effect of the dumped imports on prices and price undercutting, among other shortcomings, the European Union failed to conduct an objective examination as it did not properly take into account in its analysis the free and captive market consumption, as well as aggregate market trends.

11. Articles 3.1 and 3.4 of the Anti-Dumping Agreement because in the course of its injury determination the European Union failed to make an objective examination, based on positive evidence, of the impact of the dumped imports on the EU industry, and failed to make a proper evaluation of all relevant economic factors and indices having a bearing on the state of the EU industry, in particular: market share, capacity and capacity utilisation. 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. Among other shortcomings, the European Union failed to make a proper evaluation of the overall developments, the interaction among the injury factors and indices, and the state of the EU industry, taken together.

12. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because the European Union's determination of a causal relationship between dumped imports and injury did not involve an objective examination based on positive evidence before the investigating authority, in particular the European Union:
 - (a) failed to examine properly all known factors other than the dumped imports causing injury to the domestic industry; and
 - (b) failed to meet the requirement that injury caused by other known factors should not be attributed to the dumped imports.
13. Article 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement because the European Union failed to examine the accuracy and adequacy of the evidence provided in the application for initiation of the investigation which did not include sufficient evidence of dumping, injury or a causal relationship to justify the initiation of the investigation. Among other shortcomings, the European Union initiated the investigation without properly determining whether the request contained sufficient evidence to justify its initiation, and without having properly examined the accuracy and adequacy of the information provided in the application which is required under items (i) and (iv) of Article 5.2 of the Anti-Dumping Agreement.
14. Articles 9.2 and 9.3 of the Anti-Dumping Agreement, and Article VI:2 of the GATT 1994 because the European Union failed to impose and collect duties in the appropriate amounts in each case, and failed to assess them at an amount not exceeding the margin of dumping that should have been established in accordance with the requirements of Article 2 of the Anti-Dumping Agreement. The European Union failed to name all suppliers involved by failing to name NLMK, when this was not impracticable.
15. Articles 10.6 and 3.3 of the Anti-Dumping 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.
16. Article 10.6 of the Anti-Dumping Agreement because the European Union levied anti-dumping duties on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, even though the conditions for levying definitive anti-dumping duties retroactively set out in Article 10.6 of the Anti-Dumping Agreement, including the condition in Article 10.6(i) of the Anti-Dumping Agreement were not met and/or not supported by sufficient evidence, either individually or taken together.
17. Article 6.5.1 of the Anti-Dumping 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.
18. Article 6.2 of the Anti-Dumping Agreement because the European Union failed to grant NLMK and Severstal a full opportunity to defend their interests throughout the investigation, in particular, the European Union:
 - (a) failed to provide timely opportunities to NLMK and Severstal to examine the information that was relevant to the presentation of their cases, and denied their right to submit in time further information for the defence of their interests, including such that would be necessary for Severstal to defend against double-counting of certain costs of manufacturing;

- (b) failed to disclose the initial reasons for the application of facts available to NLMK in full when the producer was still able to defend itself;
 - (c) made preliminary and final determinations and conducted the investigation in a way to disregard any new or additional information from NLMK and Severstal that could give them full opportunity to defend themselves;
 - (d) placed NLMK in a substantial procedural disadvantage vis-à-vis the opportunities granted to the complaining EU producers, when it denied NLMK an opportunity to hold a follow-up verification visit, and granted such follow-up visits to the parties with adverse interests.
19. Article 6.9 of the Anti-Dumping 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 NLMK; in particular, the essential facts underlying the determinations of the existence of dumping and the calculation of the margins of dumping, and those underlying the rejection of NLMK's data in the final determinations.
20. Article 6.13 of the Anti-Dumping Agreement because the European Union failed to take due account of difficulties experienced by NLMK and Severstal in supplying the information requested and to provide any practicable assistance prior to, during the on-spot verification visits and thereafter. Failure by the European Union to take due consideration of such difficulties had an adverse impact on the investigation and on the decision of the investigating authority to apply facts available to NLMK and Severstal.
21. Articles 12.2, 12.2.1 and 12.2.2 of the Anti-Dumping 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 authority considered material, as well as all relevant information on the matters of fact and law and reasons which have led to the imposition of provisional and definitive anti-dumping duties.
22. Articles 1 and 18.1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 as a consequence of the above-mentioned inconsistencies with the Anti-Dumping Agreement and the GATT 1994.

The violations stated above with regard to the measures at issue nullify or impair benefits accruing to the Russian Federation, directly or indirectly, under the covered agreements.

Therefore, the Russian Federation respectfully requests, pursuant to Article 6 of the DSU and Article 17.4 of the Anti-Dumping Agreement, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

The Russian Federation asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 26 March 2019.
