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**EUROPEAN UNION – COST ADJUSTMENT METHODOLOGIES AND
CERTAIN ANTI-DUMPING MEASURES ON IMPORTS FROM RUSSIA**

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE RUSSIAN FEDERATION

The following communication, dated 4 June 2014, 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.

1. On 23 December 2013 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 (the "DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "AD Agreement"), and Article 30 of the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement") with regard to the EU's cost adjustment methodologies and certain anti-dumping measures on imports from the Russian Federation.

2. The above mentioned consultations were held by the Russian Federation with the EU on 13-14 February 2014 and on 25 April 2014. Unfortunately, the matter has not been resolved during the consultations.

3. Hereby, the Russian Federation requests the establishment of a Panel for examination of the matter in accordance with Article 6 of the DSU, Article XXIII of the GATT 1994 and Article 17.4 of the AD Agreement.

4. This request is, in particular but not exclusively, with respect to the following laws, regulations, administrative procedures, methodologies and practices as such:

- 4.1 Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ ("the Basic Regulation"), in particular Articles 2(3) and 2(5) of the Basic Regulation, as well as any subsequent amendments, replacements or additions thereof;
- 4.2. the "cost adjustment" administrative procedures, methodologies or practices of the EU for the calculation of the dumping margin in anti-dumping investigations and reviews by which the EU:

¹ OJ L 343/51 of 22.12.2009, as amended by Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 (OJ L 237/1, 3.9.2012), Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 (OJ L 344/1 of 14.12.2012) and Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 (OJ L 18/1, 24.01.2014) and corrected by the corrigendum published in OJ L 7/22 of 12.1.2010. This Regulation replaced Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56/1, 6.3.1996) and its subsequent amendments including in particular Council Regulation (EC) No 2331/96 (OJ L 317/1, 6.12.1996); Council Regulation (EC) No 905/98 (OJ L 128/18, 30.4.1998); Council Regulation (EC) No 2238/2000 (OJ L 257/2, 11.10.2000); Council Regulation (EC) No 1972/2002 (OJ L 305/1, 7.11.2002); Council Regulation (EC) No 461/2004 (OJ L 77/12, 13.3.2004); and Council Regulation (EC) No 2117/2005 (OJ L 340/17, 23.12.2005).

- rejects actual cost data of foreign producers or exporters that are recorded in the records of the foreign producers or exporters in accordance with generally accepted accounting principles of the country of exportation and that reasonably reflect the costs associated with the production and sale of the product under consideration; and
 - replaces the foreign producers' or exporters' actual cost data with purported "market" cost data, including the use of input prices outside of the country of origin and exportation, to determine whether sales were made in the ordinary course of trade and subsequently for constructing normal value²;
- 4.3. the "cost adjustment" administrative procedures, methodologies or practices of the EU of rejecting as the basis for the normal value determination prices of sales of the like product in the country of origin and exportation because of a "particular market situation" such as when prices for the product under consideration or for an input used in the production of the subject merchandise are considered "artificially low", "out of line with world-market prices or prices in other representative markets", or otherwise distorted because of an alleged "market impediment" like government price regulation or the application of export duties.
5. This request also concerns the continued use by the EU of the above described "cost adjustment" in successive anti-dumping investigations and reviews in relation to, among others:
- 5.1. imports of ammonium nitrate originating in the Russian Federation³;
 - 5.2. imports of certain welded tubes and pipes of iron or non-alloy steel originating in the Russian Federation⁴;
 - 5.3. imports of certain seamless steel pipes, of iron or steel, originating, inter alia, in the Russian Federation⁵.

² This methodology is confirmed as a "principle of law" in Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ L 315/2, 26 November 2013, recital 42, referring to the Judgment of the General Court of 7 February 2013 in case T-235/08 *Acron OAO and Dorogobuzh OAO v. Council of the EU*).

³ An overview of all of the relevant actions and proceedings is reflected in Commission Decision 2012/629/EU of 10 October 2012 amending Decision 2008/577/EC accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia (OJ L 277/8, 11.10.2012), as amended by Commission Decision of 10 October 2012 amending Decision 2008/577/EC (OJ L 277/8, 11.10.2012). See, in particular, Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ L 185/10, 12.7.2008), as amended by Council Regulation (EC) No 989/2009 of 19 October 2009 (OJ L 278/1, 23.10.2009) and corrected by OJ L 339/59, 22.12.2009.

⁴ Council Regulation (EC) No 1256/2008 of 16 December 2008 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel - originating in Belarus, the People's Republic of China and Russia following a proceeding pursuant to Article 5 of Regulation (EC) No 384/96, - originating in Thailand following an expiry review pursuant to Article 11(2) of the same Regulation, - originating in Ukraine following an expiry review pursuant to Article 11(2) and an interim review pursuant to Article 11(3) of the same Regulation, - and terminating the proceedings in respect of imports of the same product originating in Bosnia and Herzegovina and Turkey (OJ L 343/1, 19.12.2008), as corrected by OJ L 352/88, 24.12.2013.

⁵ Council Implementing Regulation (EU) No 585/2012 of 26 June 2012 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009, and terminating the expiry review proceeding concerning imports of certain seamless pipes and tubes, of iron or steel, originating in Croatia (OJ L 174/5, 4.7.2012), as amended by Council Implementing Regulation (EU) No 795/2012 of 28 August 2012 amending Implementing Regulation (EU) No 585/2012 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 238/1, 4.9.2012) and Council Implementing Regulation (EU) No 1269/2012 of 21 December 2012 amending Implementing Regulation (EU) No 585/2012 imposing a definitive anti-dumping duty on imports of certain seamless steel pipes, of iron or steel, originating, inter alia, in Russia, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 357/2, 28.12.2012).

6. This request further concerns the following measures as applied:

- 6.1. definitive anti-dumping measures imposed on imports of ammonium nitrate originating in the Russian Federation⁶;
- 6.2. definitive anti-dumping duties imposed on imports of ammonium nitrate from the Russian Federation beyond the five year period as a result of the initiation of an expiry review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia (2013/C 200/09), dated 12 July 2013⁷;
- 6.3. definitive anti-dumping measures imposed on imports of certain welded tubes and pipes of iron or non-alloy steel originating in the Russian Federation⁸;
- 6.4. definitive anti-dumping duties imposed on imports of certain welded tubes and pipes of iron or non-alloy steel originating in the Russian Federation beyond the five year period as a result of the initiation of an expiry review of the anti-dumping measures applicable to imports of certain welded tubes and pipes of iron or non-alloy steel originating in, among others, the Russian Federation (2013/C 372/10), dated 19 December 2013⁹; and
- 6.5. definitive anti-dumping measures on imports of certain seamless steel pipes, of iron or steel originating, inter alia, in the Russian Federation.¹⁰

7. This request covers as well any amendments, replacements, extensions, related and implementing measures and any act of the EU authorities that would affect the measures at issue.

8. The Russian Federation is of the view that the measures listed above, as such and as applied, are not in conformity with the obligations of the EU under the AD Agreement, the GATT 1994 and the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), in particular on the following grounds:

- 8.1. Articles I, VI:1 and VI:2 of the GATT 1994, Articles 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2 and 2.4 of the AD Agreement because the EU:

⁶ Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/9 (OJ L 185/10, 12.7.2008), as amended by Council Regulation (EC) No 989/2009 of 19 October 2009 (OJ L 278/1, 23.10.2009) and corrected by OJ L 339/59, 22.12.2009, including Commission Decision 2012/629/EU of 10 October 2012 amending Decision 2008/577/EC accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia, OJ L 277. The anti-dumping duties and price undertakings were extended pending the outcome of the expiry review initiated further to the notice of initiation of an expiry review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia (2013/C 200/09), OJ C 200/12, 12.7.2013.

⁷ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of ammonium nitrate originating in Russia (2013/C 200/09), OJ C 200, 12.7.2013, p. 12.

⁸ Council Regulation (EC) No 1256/2008 of 16 December 2008 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes of iron or non-alloy steel - originating in Belarus, the People's Republic of China and Russia following a proceeding pursuant to Article 5 of Regulation (EC) No 384/96, - originating in Thailand following an expiry review pursuant to Article 11(2) of the same Regulation, - originating in Ukraine following an expiry review pursuant to Article 11(2) and an interim review pursuant to Article 11(3) of the same Regulation, - and terminating the proceedings in respect of imports of the same product originating in Bosnia and Herzegovina and Turkey OJ L 343/1, 19.12.2008.. The anti-dumping duties were extended pending the outcome of expiry review initiated further to the notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China, Russia and Ukraine (2013/C 372/10), OJ C/372/21, 19.12.2013.

⁹ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain welded tubes and pipes of iron or non-alloy steel originating in Belarus, the People's Republic of China, Russia and Ukraine (2013/C 372/10), OJ C/372/21, 19.12.2013.

¹⁰ Council Implementing Regulation (EU) No 1269/2012 of 21 December 2012 amending Implementing Regulation (EU) No 585/2012 imposing a definitive anti-dumping duty on imports of certain seamless steel pipes, of iron or steel, originating, inter alia, in Russia, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 OJ L 357/1, 28.12.2012.

- 8.1.1. rejects the cost of manufacturing the product under consideration, including the costs of energy inputs such as gas and electricity, that accurately and reasonably reflect the costs associated with the production and sale of the product under consideration and that are recorded in exporters' or producers' records on the basis of generally accepted accounting principles of the country of origin and exportation;
- 8.1.2. replaces and "adjusts" the cost of manufacturing of the product under consideration actually borne by the foreign producers and exporters, including the costs of energy inputs such as gas and electricity, by using prices including those outside the country of origin and exportation that do not reflect the cost of production in the country of origin and exportation and by using such prices as the basis for a construction of the costs for determining whether sales were made in the ordinary course of trade and subsequently for constructing normal value;
- 8.1.3. "adjusts" the normal value for differences not affecting price comparability when it rejects and "adjusts" the cost of manufacturing of the product under consideration actually borne by the foreign producers and exporters, including the costs of energy inputs such as gas and electricity, thereby adjusting normal value for a factor that is used in the production of products for export as well as domestic sale and failing to ensure a fair comparison between normal value and export sales;
- 8.1.4. rejects prices of sales of the like product in the ordinary course of trade in the country of origin and exportation as the basis for determining the normal value and unduly considers that a "particular market situation" exists as soon as an export duty, price regulation or other alleged "market impediment" exists in the country of origin and exportation with respect to an input or the product under consideration or when their prices are "out of line with world-market prices" or prices in other representative markets;
- 8.1.5. rejects cost and price information of foreign producers and exporters in the country of origin and exportation in combination with the continued use of unadjusted profitability data of such foreign producers or exporters for purposes of determining whether sales were made in the ordinary course of trade and for constructing normal value, and the failure to apply another reasonable method for determining the profit;
- 8.1.6. rejects and replaces costs that are reasonably related to the production of the product under consideration for natural-resource inputs only or disproportionately thus disadvantaging resource-rich Members like the Russian Federation compared with the treatment accorded to producers or exporters of other Members;
- 8.2. Article VI:6 of the GATT 1994, Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement since the EU fails to determine properly the material injury caused by dumped imports due to the effect on the injury determination of dumping margins established on the basis of the EU's rejection of accurate and reliable cost and price data, and their replacement by cost and price information that does not reflect costs or prices in the country of origin and exportation;
- 8.3. Articles VI:2 of the GATT 1994, 5.8, 8.1, 9.2, 9.3, 11.1, 11.2, 11.3 of the AD Agreement as the EU has failed to terminate the investigation or the measure and has unduly imposed or continued the imposition of anti-dumping measures when this was not necessary, collected anti-dumping duties in more than the appropriate amounts and in excess of the margin of dumping or accepted price undertakings higher than necessary to eliminate the margin of dumping as a result of dumping margins based on the EU's rejection of accurate and reliable cost and price data from foreign producers and exporters and their replacement by cost and price data other than costs in the country of origin and exportation;

- 8.4. Article 11.2 and 18.1 of the AD Agreement due to the failure of the EU to review the need for the continued imposition of the anti-dumping measures on imports from the Russian Federation when this was warranted as a result of the accession of the Russian Federation to the WTO and the consequent adoption of specific actions against dumping on products from the Russian Federation that were not in accordance with the provisions of the AD Agreement;
 - 8.5. Article 11.3 of the AD Agreement because the EU initiated expiry reviews of the anti-dumping measures applicable to imports of ammonium nitrate and certain welded tubes and pipes of iron or non-alloy steel originating in Russia without sufficient evidence of a likelihood of recurrence or continuation of dumping and injury and without duly substantiated requests;
 - 8.6. Articles 6.8 and Annex II of the AD Agreement because the EU rejects accurate cost information and replaces it with information from alternative sources including that provided by the applicants, even when the foreign producers and exporters do not refuse access to or otherwise fail to provide the necessary information, or significantly impede the investigation;
 - 8.7. Articles 18.4 of the AD Agreement and Article XVI:4 of the WTO Agreement due to the failure of the EU to ensure the consistency of its Basic Regulation and related regulations, administrative procedures, methodologies, and practices with the provisions of the AD Agreement and the GATT 1994 following accession of the Russian Federation; and
 - 8.8. Article X:3 (a) of the GATT 1994 because the administration of the Basic Regulation and related regulations, administrative procedures, methodologies, and practices by the EU in the above-referenced anti-dumping proceedings concerning imports from the Russian Federation violates the obligation to administer laws and regulations in a uniform, impartial and reasonable manner.
9. The Russian Federation requests the establishment of the Panel with standard terms of reference as provided for by Article 7.1 of the DSU.
 10. The Russian Federation asks this request to be placed on the agenda of the meeting of the Dispute Settlement Body that is to be held on 18 June 2014.
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