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

REQUEST FOR CONSULTATIONS BY THE RUSSIAN FEDERATION

The following communication, dated 23 December 2013, 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.

1. On behalf of the Government of the Russian Federation, I hereby request 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"), 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").
2. This request is, in particular but not exclusively, with respect to the following laws, regulations, administrative procedures, methodologies and practices as such:
 - 2.1. 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, as well as any subsequent amendments, replacements or additions;
 - 2.2. the "cost adjustment" administrative procedures, methodologies or practices of the European Union for the calculation of the dumping margin in anti-dumping investigations and reviews by which the European Union:
 - 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 producers' and exporters' actual cost data with purported "market" cost data, including prices outside of the country of origin and exportation, to determine

¹ OJ L 343, 22.12.2009, p. 51 (corrigendum OJ 2010 L 7, p. 22) codifying 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, 6.3.1996, p. 1) and its subsequent amendments including in particular Council Regulation (EC) No 2331/96 (OJ L 317, 6.12.1996, p. 1); Council Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18); Council Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2); Council Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1); Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12); and Council Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

whether sales were made in the ordinary course of trade and subsequently for constructing normal value²;

- 2.3. the "cost adjustment" administrative procedures, methodologies or practices of the European Union 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.
3. This request also concerns the continued use by the European Union of the above described "cost adjustment" in successive anti-dumping proceedings in relation to, among others:
 - 3.1. Imports of ammonium nitrate originating in the Russian Federation³;
 - 3.2. Imports of certain welded tubes and pipes of iron or non-alloy steel originating in the Russian Federation⁴;
 - 3.3. 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 Judgment T-235/08 Of The General Court, 7 February 2013 (Acron OAO and Dorogobuzh OAO v. Council of the EU) and Judgment T-459/08 Of The General Court, 7 February 2013 (EuroChem MCC 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, 11.10.2012. See, in particular, Council Regulation (EC) No 236/2008 of 10 March 2008 concerning terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia, OJ L 75, 18.3.2008, p. 1; 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, 12.7.2008, p. 10; 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, 12.7.2008, p. 10.

⁴ See 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, 19.12.2008, p. 1.

⁵ An overview of all of the relevant actions and proceedings is reflected in 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. See, in particular, Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine, repealing Council Regulations (EC) No 2320/97 and (EC) No 348/2000, terminating the interim and expiry reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and terminating the interim reviews of the anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating, inter alia, in Russia and Romania and in Croatia and Ukraine, OJ L 175, 29.6.2006, p. 4; Council Regulation (EC) No 812/2008 of 11 August 2008 amending Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating, inter alia, in Russia, OJ L 220, 15.8.2008, p. 1; 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, 28.12.2012, p. 1.

4. This request further concerns the following measures as applied:
 - 4.1. definitive anti-dumping duties on imports of ammonium nitrate fertilizer originating in the Russian Federation⁶ imposed following 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 Russia⁷;
 - 4.2. 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 2013⁸;
 - 4.3. definitive anti-dumping duties imposed on imports of certain welded tubes and pipes of iron or non-alloy steel originating in the Russian Federation⁹;
 - 4.4. 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 2013¹⁰; and
 - 4.5. definitive anti-dumping duties on imports of certain seamless steel pipes, of iron or steel originating, inter alia, in the Russian Federation.¹¹
5. The matters that the Russian Federation would like to raise in the course of the consultations include, but are not limited to, the following:
 - 5.1. the rejection of the costs 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;
 - 5.2. the replacement and "adjustment" of the costs of manufacturing 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 costs of production in the country of origin and exportation and the use of 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;

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 384/96 OJ L 185, 12.7.2008, p. 1.

⁷ 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 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.

⁹ 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, 19.12.2008, p. 1.

¹⁰ 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, p. 21, 19.12.2013.

¹¹ 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, 28.12.2012, p. 1.

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- 5.3. the rejection of 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 because of a "particular market situation" such as when 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 and their replacement with constructed normal values based on prices outside the country of origin and exportation;
 - 5.4. the rejection of cost and price information of 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;
 - 5.5. the effect of dumping margins based on the European Union'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, on the determination of injury caused by dumped imports;
 - 5.6. the imposition, continuation or collection of anti-dumping duties that exceed the margin of dumping as a result of determination of dumping margins based on the European Union's rejection of accurate and reliable cost and price data and their replacement by cost and price information that does not reflect costs and prices in the country of origin and exportation;
 - 5.7. the determination of dumping margins above *de minimis* as a result of dumping margins based on the European Union'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 and the consequent unwarranted imposition, continuation or collection of anti-dumping duties;
 - 5.8. the failure to review the need for the continued imposition of anti-dumping duties following the accession of the Russian Federation to the WTO;
 - 5.9. the initiation of an expiry review without sufficient evidence of a likelihood of recurrence or continuation of dumping and without a duly substantiated request; and
 - 5.10. the use of anti-dumping duties as a specific action against alleged governmental subsidies.
6. The Russian Federation is concerned that the measures listed above appear to be, in several respects, not in conformity with the obligations of the European Union under the AD Agreement, the SCM Agreement, the GATT 1994 and the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), in particular with respect to:
 - Articles 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2 and 2.4 of the AD Agreement;
 - Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement;
 - Article 5.8 of the AD Agreement;
 - Article 6.8 and Annex II of the AD Agreement;
 - Articles 9.2 and 9.3 of the AD Agreement;
 - Articles 11.1, 11.2 and 11.3 of the AD Agreement;
 - Articles 18.1 and 18.4 of the AD Agreement;
 - Articles 10 and 32.1 of the SCM Agreement;

- Articles I and VI of the GATT; and
 - Article XVI:4 of the WTO Agreement.
7. The Russian Federation reserves the right to raise additional claims and legal matters during the course of the consultations.
 8. The Russian Federation is ready to consider with the European Union a mutually convenient date for consultations.
 9. The Russian Federation looks forward to receiving a reply of the European Union to this request. Article 4.3 of the DSU provides that the Member to which the request for consultations is addressed shall reply within 10 days of its receipt, unless otherwise mutually agreed. In this regard, in view of the end of the year holiday period, the Russian Federation can agree to receive a reply of the European Union by 9 January 2014.
