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

REQUEST FOR CONSULTATIONS BY THE RUSSIAN FEDERATION

The following communication, dated 7 May 2015, 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 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"), Articles 17.2 and 17.3 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 their records in accordance with the generally accepted accounting principles of the exporting country and that reasonably reflect the costs associated with the production and sale of the product under consideration; and
 - replaces the foreign producers' and exporters' actual cost data with purported "market" cost data, including the use of input prices outside of the country of

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).

origin and exportation, to determine 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.
 - 2.4 the administrative procedures, methodologies or practices of determination of the likelihood of continuation and/or recurrence of dumping and injury neither based on foreign producers' and exporters' records and actual data nor justified by verifiable legal and economic grounds.
3. This request also concerns the continued use of the above mentioned administrative procedures, methodologies or practices by the European Union for dumping margin calculation 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 pipes and tubes, of iron or steel, originating, inter alia, in the Russian Federation⁵.

² The "cost adjustment" 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, 11.10.2012, p. 8, and Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, OJ L 280, 24.9.2014, p. 19. 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 384/9, 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.; Commission Implementing Regulation (EU) 2015/110 of 26 January 2015 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 and terminating the proceeding for imports of certain welded tubes and pipes of iron or non-alloy steel originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, OJ L 20, 27.1.2015, p. 6.

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 as corrected by OJ L 298/63, 16.10.2014. See, in particular, Council Regulation (EC) No 954/2006 of 27 June 2006 imposing definitive anti-dumping duty on imports of certain

4. This request further concerns the following measures as applied:
- 4.1 definitive anti-dumping measures imposed on imports of ammonium nitrate originating in the Russian Federation⁶;
 - 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 2013⁷;
 - 4.3 definitive anti-dumping measures imposed on imports of ammonium nitrate from the Russian Federation following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009⁸;
 - 4.4 definitive anti-dumping measures imposed on imports of certain welded tubes and pipes of iron or non-alloy steel originating in the Russian Federation⁹;
 - 4.5 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

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 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, as corrected by OJ L 298/63, 16.10.2014.

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, 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, 11.10.2012, p.8. 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 Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, OJ L 280, 24.9.2014, p. 19.

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. 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.

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.

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- 4.6 definitive anti-dumping measures imposed on imports of certain welded tubes and pipes of iron or non-alloy steel originating in the Russian Federation following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009¹¹.
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 production of the product under consideration, actually born by foreign producers and exporters including the costs of energy inputs such as gas and electricity, that are recorded in exporters' or producers' records on the basis of the generally accepted accounting principles of the country of origin and exportation that reasonably reflect the costs associated with the production and sale of the product under consideration;
 - 5.2 the replacement and "adjustment" of the costs of production of the product under consideration actually borne by 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 actually born;
 - 5.3 the use of input prices of the product under consideration not associated with costs actually born by foreign producers and exporters, including those outside of the country of origin and exportation, as the basis for construction of normal value;
 - 5.4 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 any 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 not actually born by foreign producers and exporters, including those outside the country of origin and exportation;
 - 5.5 the rejection of duly documented and based on evidence cost and price data of foreign producers and exporters 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;
 - 5.6 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;
 - 5.7 the imposition, continuation or collection of anti-dumping duties that exceed the margins of dumping as a result of determination of dumping margins based on the European Union's administrative procedures, methodologies or practices described in paragraphs 5.1- 5.6 of this Request 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 expiry reviews without sufficient evidence of a likelihood of recurrence or continuation of dumping and without duly substantiated requests;

¹¹ Commission Implementing Regulation (EU) 2015/110 of 26 January 2015 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 and terminating the proceeding for imports of certain welded tubes and pipes of iron or non-alloy steel originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation. (EC) No 1225/2009, OJ L 20, 27.1.2015, p. 6.

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- 5.10 the failure to carry out an appropriate and hence objective analysis of the likelihood of continuation or recurrence of dumping and injury under the expiry review procedures;
- 5.11 the failure to take all the necessary measures to ensure conformity of its laws, regulations and administrative procedures, methodologies and practices with the provisions of the WTO Agreement, GATT 1994, the AD Agreement and the SCM Agreement;
- 5.12 the failure to establish the facts properly and evaluate them in an unbiased and objective manner;
- 5.13 WTO-inconsistent open-ended and loose interpretation and subsequent application of the notions of the "ordinary course of trade" and "particular market situation" leading to the nullification of foreign producers' comparative advantages and consequently to the impediment of the attainment of the objectives enshrined in the WTO Agreement and the GATT;
- 5.14 the use of anti-dumping duties as a specific action against alleged governmental subsidies;
- 5.15 the conclusion made on the existence of a limited risk of likelihood of recurrence of dumping of certain welded tubes and pipes of iron or non-alloy steel originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009¹².
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* (the "WTO Agreement"), in particular set forth in:
- Article 1 of the AD Agreement;
 - Articles 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.3 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, 11.3 and 11.4 of the AD Agreement;
 - Article 17.6 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, VI:1, VI:2, VI:6 and X:3(a) of the GATT 1994; and
 - Article XVI:4 of the WTO Agreement.

¹² Commission Implementing Regulation (EU) 2015/110 of 26 January 2015 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 and terminating the proceeding for imports of certain welded tubes and pipes of iron or non-alloy steel originating in Ukraine following an expiry review pursuant to Article 11(2) of Council Regulation. (EC) No 1225/2009, OJ L 20, 27.1.2015, p. 6.

The EU's measures, therefore, appear to nullify or impair benefits accruing to the Russian Federation, directly or indirectly, under the cited agreements.

7. The Russian Federation reserves the right to raise additional claims and legal matters during the course of the consultations.
 8. The Russian Federation looks forward to receiving a reply of the European Union to this Request, and is ready to consider with the European Union a mutually convenient date for consultations.
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