WORLD TRADE ORGANIZATION

G/ADP/Q1/RUS/4
G/SCM/Q1/RUS/4
G/SG/Q1/RUS/4

22 October 2013

(13-5847) Page: 1/15

Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures
Committee on Safeguards

Original: English

NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS

REPLIES TO QUESTIONS POSED BY THE UNITED STATES[1] REGARDING THE NOTIFICATION OF THE RUSSIAN FEDERATION[2]

The following communication, dated 18 October 2013, is being circulated at the request of the Delegation of the Russian Federation.

General Statement

The Russian Federation thanks the United States for their questions regarding the legislative notification outlining the specific aspects of the legal norms applicable in the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation in connection with the application of trade remedies. This provides the Russian Federation with an opportunity to comment in greater detail on the particularities of the trade defense system of the Customs Union and ensure greater transparency in the conduct of investigations. Moreover, this is an occasion for the Russian Federation to shed light on the developments that have taken place in the framework of the integration within the Eurasian Economic Community (EurAsEC) since the relevant parts of the Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization were completed.

For all the U.S. questions two comments are of particular necessity.

First, based on the nature of questions, the Russian Federation would like to note that a number of them clearly demonstrate that some misunderstandings are due primarily to issues of translation.

Second, a number of questions specifically refer to the ways in which consistency of the relevant provisions of the legislation adopted in the framework of the CU – in forms of international agreements and/or decisions of the CU bodies – with the relevant provisions of the WTO Agreements is to be ensured. In this regard we highlight Article 2(1) of the Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System, signed on 19 May 2011. This article provides that the Parties shall take measures in order to bring the legal system of the Customs Union and the decisions of its bodies in conformity with the WTO Agreement, insofar as it is stipulated in the Protocol on Accession of each of the Parties, including the obligations of each Party taken as one of the conditions of its accession to the WTO. Until such measures are taken, the provisions of the WTO Agreement, including the obligations taken by the Parties as conditions of their accession to the WTO, have priority over the corresponding provisions of international agreements concluded within the framework of the Customs Union, and the decisions adopted by its bodies.

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[1] G/ADP/Q1/RUS/1-G/SCM/Q1/RUS/1-G/SG/Q1/RUS/1.
[2] G/ADP/N/1/RUS/1-G/SCM/N/1/RUS/1-G/SG/N/1/RUS/1 (dated 3 October 2012).

Question 1

With regard to the 2008 Agreement, please clarify the relationship between the Eurasian Economic Commission (EEC) and the Customs Union Commission (Commission). Please identify the differences in structure, responsibility and decision-making capability between the two entities.

Reply

The Commission of the Customs Union was established pursuant to the Treaty on the Commission of the Customs Union of 6 October 2007 (the CCU Treaty) as the single permanent regulatory body of the Customs Union. The Commission consisted of three Members who represented each of the Member-States and were deputy heads of government of the respective Member-States. According to Article 7 of the CCU Treaty, decisions of the CCU were to be adopted by a two-thirds majority vote, whereby the Russian Federation had 57 votes, and the Republic of Belarus and the Republic of Kazakhstan had 21,5 votes each.

The Eurasian Economic Commission (hereinafter, the Commission, the EEC) is a permanent regulatory body of the Customs Union and the Single Economic Space, established pursuant to the Treaty on the Eurasian Economic Commission (signed on 18 November 2011, took effect on 2 February 2012, hereinafter – the EEC Treaty), comprised by the Board of the Commission and the Council of the Commission.

Pursuant to Article 39, on the day the EEC Treaty entered into force, the CCU ceased to exist. The competences that had been conveyed to the CCU in accordance with international agreements forming the legal basis of the Customs Union (hereinafter – CU) and the Single Economic Space (hereinafter – SES) and the Decisions of the EurAsEC Interstate Council, were transferred to the EEC. On the same day, the CCU Treaty was terminated. Nevertheless, Article 38 of the EEC Treaty established that Decisions of the CCU that were in force as of 1 January 2012 preserved their legal force.

In accordance with Article 14 of the EEC Treaty, the Board of the Commission is made up of nine Members, whereby each of the Member-States of the Customs Union nominates three officials to serve on the Board. The Board officials are independent of the governments of the CU Member-States by virtue of Article 15 of the Treaty. The Board exercises its functions within the limits of its competence as specified in Article 18 of the Treaty. The Council of the Commission consists of three Members who represent each of the Member-States and are deputy heads of government of the respective Member-States. The Council exercises its functions within the limits of its competence as circumscribed in Article 9 of the Treaty.

Under Article 6 of the EEC Treaty, the Commission is empowered to execute the international agreements forming the legal basis of the CU and the SES.

The Agreement on the Application of Safeguard, Antidumping and Countervailing Measures With Regard to Third Countries of 25 January 2008 (hereinafter, the Basic Agreement) and the Agreement on the Application of Safeguard, Antidumping and Countervailing Measures in Transitional Period of 19 November 2010 (hereinafter, the Transitional Agreement) both pertain to the agreements forming the legal basis of the CU, and hence, they define, together with the EEC Treaty, the competence of the Commission in the area of trade remedies.

In this regard, the Commission adopts decisions which are binding on the Member-States, form part of the legal basis of the CU and are to be directly applied in the territories of the Member-States. Decisions on the application of anti-dumping, countervailing and safeguard measures are taken by a two-third majority vote whereby, in accordance with Article 7.2 of the Treaty, each Member of the Council and the Board of the Commission has one vote.

Under Article 3.4 of the Basic Agreement, the investigating authority is designated by the CCU. On 23 September 2011, the CCU adopted Decision N 802 "On Certain Issues Pertinent to the Application of Safeguard, Antidumping and Countervailing Measures in the Single Customs Territory of the Customs Union" that defined the Department for Trade Defense Measures in External Trade of the CCU as the investigating authority in accordance with the provisions of the Basic Agreement. As noted above, the competences of the CCU were transferred to the EEC by

virtue of Article 39 of the EEC Treaty. It is in this regard that the Board of the Commission adopted Decision N 1 "On Certain Issues Pertinent to Internal Market Defense" of 7 March 2012, which entrusted the Department for Internal Market Defense (hereinafter, the DIMD) with the powers of the investigating authority, previously vested in the Department for Trade Defense Measures in External Trade of the CCU.

Question 2

Article 2 of the 2008 Agreement contains a definition of the term "material injury to an industry of the States Parties." Articles 13(1), 13(2), 23(1), and 23(2) of the 2008 Agreement also purport to define material injury in the context of antidumping and countervailing duty proceedings. The general definition in Article 2, on the one hand, and the more specific definitions in Articles 13 and 23, on the other hand, do not fully correspond to each other. Please clarify which definition(s) are controlling in antidumping and countervailing duty investigations and what the significance is of the definition in Article 2.

Reply

Articles 13 and 23 define the steps the investigating authority follows in its determination of injury to the industry of the States Parties in the context of antidumping and countervailing investigations. Article 13 and 23 set out the requirements to be followed in any injury investigation, as well as certain specific requirements for threat of injury investigations. However, the word "injury" in these two provisions is used as a vehicle to encompass "material injury", "threat of material injury" and "material retardation". In this regard, the Russian Federation considers that the translation may need rectification to reflect this understanding, whereby Article 13(2) and 23(2) should read as follows: "For the purposes of this section, injury to the industry of the States Parties is understood to mean material injury to the industry of States Parties, threat of such injury or material retardation of the creation of an industry of the States Parties".

Question 3

Article 2 of the 2008 Agreement contains a definition of the term "industry of the States Parties. Article 2 defines "industry" to include, for the purposes of safeguard investigations, as all the producers of the like or directly competitive product "in the States Parties." Please explain how the Commission would conduct an investigation that involves producers in multiple states, including whether the Commission would have authority to compel producers in the various states to submit information and whether the Commission would seek to verify or otherwise confirm the information submitted.

Article 2 further defines the term "industry" to mean all producers in the States Parties of the like or directly competitive product or those whose share of total production "constitutes a significant part, but not less than 25 per cent." Please explain how the term "significant part" is consistent with the definition of domestic industry in Article 4.1(c) of the WTO Agreement on Safeguards, which states that, "in determining injury or threat thereof, a 'domestic industry' shall be understood to mean the producers as a whole of the like or directly competitive products... or those whose collective output of the like or directly competitive products constitutes a major portion of the total domestic production of those products" (emphasis added). Please also explain the basis for concluding that producers accounting for as little as 25% of production might constitute a "major proportion" of production of the like or directly competitive products and how the Commission would consider producers accounting for the remaining 75% of domestic production. Finally, please explain whether this 25% rule would apply in the case of producers in each of the States Parties, and whether a petition would be considered properly filed if it accounted for less than 25% of the production of certain States Parties.

Reply

The investigating authority collects information from producers in the States Parties regardless of their location. At the complaint stage, in accordance with Article 29(12) the investigating authority

examines the accuracy and adequacy of the evidence and information contained therein. In this regard, the investigating authority may request additional information from the complainant (in accordance with Article 29(12) or seek information from the States Parties (in accordance with the "Protocol on the provision of information, including, inter alia, confidential information, to the investigating authority for the purposes of investigations prior to the introduction of safeguard, antidumping and countervailing measures in relation to third countries" of 19 November 2010, hereinafter – the Protocol on the provision of information). In case the evidence or information contained in the complaint is deemed inaccurate, the investigating authority declines the complaint under Article 29(10) of the Basic Agreement. At the investigation stage, the investigating authority, in accordance with Article 35(4) of the Basic Agreement, ascertains that the information provided by interested parties in the course of the investigation is adequate and accurate. Article 35(4) empowers the investigating authority to conduct verifications for the purpose of confirming such information.

As regards the definition of the industry of the States Parties contained in Article 2, we would like to note that this provision of the Basic Agreement is not concerned with the industry in *each* of the States Parties. Instead, the definition speaks of the producers of the like (like or directly competitive) product *in the CU as a whole*. In this regard, applications that are filed by the industry will be required to pass the 25% threshold measured in relation to the total volume of production of the product in the territory of the CU, regardless of the volumes of production or shares in particular States Parties.

In cases where industry is defined as those producers whose share in total production of the product in the States Parties constitutes a major proportion (in the sense of Article 2), and information is available about other producers not included in the domestic industry, such information will be used in the analysis of market trends in the Customs Union.

The Russian Federation would like to note further that the Agreement on Safeguards does not contain quantitative indications as to what is to be considered a minimal threshold to determine "a major proportion of the total domestic production". The Russian Federation is of the view that the definition contained in Article 2 satisfies the pertinent requirements of the Agreements

Question 4

Article 2 of the 2008 Agreement defines the threat of serious injury to mean "the inevitability" of serious injury to the domestic industry, while Article 4.1(b) of the WTO Agreement on Safeguards states that the term should be understood to mean "serious injury that is clearly imminent." The term "inevitability" is defined to mean an event that is "impossible to evade or prevent" (Merriam-Webster Dictionary, accessed at http://www.merriam-webster.com/dictionary/inevitability on14 February 2013), but does not convey the sense of when that event will occur. The term "clearly imminent," coupled with the requirement in Article 4.1(b) of the WTO Agreement on Safeguards that the finding of threat be based "on facts and not merely on allegation, conjecture or remote possibility," suggests an event "ready to take place" as in "hanging threateningly over one's head" (Merriam-Webster Dictionary, accessed at http://www.merriam-webster.com/dictionary/imminent on 14 February 2013). Please explain how the use of the term "inevitability" is consistent with "clearly imminent" in Article 4.1(b) of the Safeguards Agreement.

Question 5

Article 3.1 of the 2008 Agreement states that an investigation "should be conducted" before the introduction of a safeguard measure. The use of the word "should" suggests that an investigation would be optional. This is in contrast to Article 4.1 of the 2008 Agreement which indicates that such an investigation *would be* a prerequisite to introduction of a safeguard measure. Please explain how Article 3.1 of the 2008 Agreement is consistent with Article 3.1 of the WTO Safeguards Agreement, which states: "A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previous established and made public in consonance with Article X of GATT 1994". Please explain whether any law notified by the Russian Federation would allow the Commission, in specific instances, to apply a safeguard measure without conducting an investigation (such as a

provisional safeguard measure that meets the requirements of Article 6 of the WTO Safeguards Agreement).

Question 9

Article 7.1 of the 2008 Agreement states that the safeguard measure applied would be in the amount and "within" the time required for "elimination" of the serious injury or threat of serious injury. Please explain how this provision is consistent with the requirement in Article 5.1 of the WTO Agreement on Safeguards, which requires that the measure applied be "only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment" and similar wording in Article 7.1 of the WTO Safeguards Agreement. In particular, please explain how the word "elimination" (or "eliminate") is consistent with the WTO Safeguard Agreement term "prevent or remedy" serious injury. Please also explain how Russia would "eliminate" a threat of serious injury.

Question 14

Article 17.3 and Article 27.3 of the 2008 Agreement indicate that in conducting an expiry review, the investigating authority will consider "the possibility of renewal of continuation of [dumped or subsidized] imports and injury" to the industry of the States Parties at the termination of the measure. Please explain how the "possibility" standard is consistent with the standards of Article 11.3 of the Anti-Dumping Agreement and Article 21.3 of the Subsidies and Countervailing Measures Agreement that "expiry of the duty would be likely to lead to continuation or recurrence" of dumping or subsidization, on the one hand, and injury, on the other.

Question 20

Article 30 of the 2008 Agreement states that during the course of an investigation, interested parties may "familiarize themselves with" non-confidential written submissions of other interested parties and "get acquainted with" other non-confidential information relevant to the investigation. Please explain the meaning of the terms "familiarize themselves with" and "get acquainted with" in the context that they are used in Article 30. Please also explain whether Article 30.9 is consistent with Article 6.4 of the Anti-Dumping Agreement, which requires authorities to provide opportunities to interested parties to "see" all relevant non-confidential information and "to prepare presentations on the basis of this information."

Replies to Questions 4, 5, 9, 14, 20

We believe that the misunderstandings of the following terms:

- Familiarize themselves with, get acquainted with // see
- Inevitable // imminent
- Should // shall
- Eliminate // prevent
- Possibility // likelihood

is caused by translation issues. We note in this regard that many concepts enshrined in the Basic Agreement indeed originate and were drawn from the relevant WTO Agreements and were transposed into the Russian language as close to their original English meaning as was practically possible. Due to the backwards translation of these concepts into the English language that had to be made in order to make the present notification, some of the meanings may seem further away from the original. Nevertheless, we confirm that for some of the concepts the Russian language simply does not allow a possibility to distinguish between meanings (for instance, inevitable-imminent-neizbezhnyi).

Question 6

Article 3.6 and Article 40 of the *2008 Agreement* state that in arriving at a final determination the investigating authority provides the Commission with a report suggesting the appropriateness of the imposition and application of a safeguard, antidumping or countervailing measure. The Commission then considers these recommendations in light of other factors including public interest, the state of competition and state of the domestic industry, all of which raise the following questions:

- **How are the recommendations of the investigating authority taken into account when formulating the ultimate decision in the investigation issued by the Commission?**

- **Are the decisions of the Commission final or are they subject to approval by the individual States Parties?**

- **Do the States Parties need to vote or otherwise signal their approval of the decision of the Commission before a trade remedy measure can be imposed?**

- **What role do the States Parties and interested parties play once the technical recommendations of the investigating authority have been submitted to the Commission?**

- **What opportunities are provided for interested parties to comment and otherwise express their views about the report to the Commission prior to its final determination?**

Please also explain the process and timeline by which decisions of the Commission are passed to individual States Parties. Does each States Party issue its own notification of an antidumping, countervailing duty or safeguard measure? If so, through what means does each States Party issue its notification?

Reply

In accordance with Article 40(2) of the Basic Agreement, the conclusions that are submitted to the Commission in order to take a decision pursuant to Article 40(1) by the investigating authority shall be based on a cumulative assessment of the interests of the industry of the States-Parties, the industrial users of the product under investigation and their associations in the States-Parties, public associations of consumers and importers of the product. In preparing the conclusions, the investigating authority devotes particular attention to the distorting influence of the increased, dumped or subsidized imports on the normal course of trade and the state of competition on the relevant product market of the States-Parties.

The report (in other words, the conclusions) of the investigating authority contains an analysis of all the relevant factors, including, where appropriate, the public interest and the state of competition (in accordance with Article 40(2) of the Basic Agreement).

- As one of the Departments of the Commission, the DIMD is defined as the investigating authority authorized to conduct investigations and take all procedural actions within the limits of the Basic Agreement – both in relation to the import side (increased imports, dumping, subsidization) and the injury side. In accordance with Article 3(3) of the Basic Agreement, the decisions to apply safeguard, antidumping or countervailing measures are taken by the Commission. By virtue of Article 3(6) of the Basic Agreement, the investigating authority, as a result of its investigation, provides the Commission with a report suggesting the appropriateness of the introduction and application of a measure, or a review or termination of a measure, and attaches a draft decision of the Commission. In this way, the recommendations of the investigating authority are directly embedded into the draft decision of the Commission. After the Commission adopts a decision, such decision would be final and binding on the States-Parties without a need for them to signal approval.

- In accordance with Clauses 2.4 and 2.6 of the Regulation on Decision-Making and Preparation of Draft Decisions of the Eurasian Economic Commission on Safeguard, Antidumping and Countervailing Measures (item 6. of the list of laws and regulations in the initial notification), the draft decisions of the Commission are prepared by the investigating authority, then sent to the authorized bodies of the States-Parties and are considered at a meeting of an advisory body on trade issues before such draft decisions are submitted to the decision-making bodies of the Commission. Under the current practice, the draft decisions are sent out to the States-Parties for consideration at the meeting of the advisory body together with the report containing the findings of the investigating authority. The States-Parties can make their views known at this stage of the process, and such views are submitted to the Commission together with the conclusions of the investigating authority. The States do not need to vote or signal their approval in any other way before a trade remedy measure can be imposed.

- According to Articles 31(3) and 32(3) the investigating authority sends out the non-confidential version of its final conclusions (report) to the participants in the investigation and provides them with an opportunity to give their comments. The participants may comment on the findings of the investigating authority at this stage. Such comments are taken into account and are incorporated into the final report of the investigating authority that is then submitted to the decision-making bodies of the Commission along with the draft decision. In accordance with Article 30(15) the investigation is completed on the day the Commission considers the report of the investigating authority and the draft decision.

In accordance with Article 5(6) of the EEC Treaty, the decisions of the Commission are published on the official website of the Commission and are sent to the States-Parties no later than three days after their adoption. The entry into force of the decisions of the Commission is independent of whether such decisions are published by any of the States-Parties, and in accordance with Article 5(3) of the EEC Treaty, occurs no sooner than after 30 days from the date of the publication of the decision on the official website of the Commission. The notifications on the conclusion of investigations are issued by the investigating authority in accordance with Articles 39(4) and 39(5) of the Basic Agreement.

Question 7

Article 6.1 of the 2008 Agreement refers to a preliminary determination regarding imports of a product "under investigation" and to continuation of the "investigation" after the preliminary determination. Please explain the kind and duration of the investigation that would be undertaken in order to make a preliminary determination, and the procedures that would be followed, including the extent to which such procedures would be of the type described in Article 3.1 of the WTO Agreement on Safeguards (e.g. publication of a notice, a public hearing, and opportunity for interested parties, including importers and exporters, to present evidence and their views).

Reply

The investigation referred to in Article 6(1) is a single uninterrupted process of collecting and analyzing evidence. The mechanism for the application of provisional measures enshrined in Article 6 is used only where in the early stage of the investigation there is clear evidence that increased imports have caused or are threatening to cause serious injury, and there are critical circumstances where delay would cause serious injury which it would be difficult to repair. Any decision to apply a provisional safeguard measure shall be preceded by a formal initiation of the investigation and the publication of the relevant notice in accordance with Article 39(2) of the Basic Agreement. However, the Agreement does not establish a particular timeframe for making a preliminary determination leading to the imposition of a provisional safeguard measure, other than stipulating that such a decision may be taken "before the conclusion of the investigation". As the investigation process is not interrupted even in case a decision to apply a provisional measure is taken, the rights of the interested parties to request a public hearing and/or present evidence and their views are not prejudiced. In case a decision to apply a provisional safeguard measure is taken, the investigating authority is under an obligation, pursuant to Article 39(3), to publish a notice thereof, containing an explanation of its preliminary determination and stating the facts that form the basis for such a decision. Interested parties may comment and present their views based on such notice and their submissions in this regard, duly filed to the investigating authority, will be

taken into consideration in the investigation process. During the period of application of the provisional safeguard measures all pertinent requirements of Articles 2 through 7 of the Agreement on Safeguards shall be met.

Question 8

Article 6.1 of the 2008 Agreement also refers to "*serious injury*... which would be difficult to eliminate later." Please explain how this wording is consistent with Article 6 of the WTO Agreement on Safeguards, which refers to "*damage* which it would be difficult to repair"?

Reply

With regard to the consistency of the wording of Article 6(1) with Article 6 of the Agreement on Safeguards, we note that "damage" is not elsewhere defined in the Agreement, and it appears indeed to be a concept directly linked to the one of serious injury. We thus believe that the wording of the Basic Agreement that establishes a very high standard and refers "damage" to a specific concept is not inconsistent with the provisions of Article 6.

Question 10

Article 7.2 of the 2008 Agreement states that when the safeguard measure is in the form of an import quota, the quota will not be lower than the average annual level of imports of the product under investigation "during a previous period" except when "necessary" to "eliminate" serious injury or the threat of serious injury. Please explain how this wording is consistent with Article 5.1 of the WTO Safeguards Agreement, which requires that the measure "not reduce the quantity of imports below the level of a recent period which shall be the average of imports *in the last three representative years for which statistics are available*, unless clear justification is given...." (emphasis added).

Reply

In answering this question, we would like to refer to the definition contained in Article 2 of the Basic Agreement, which defines "previous period" as "3 calendar years, immediately preceding the date of the filing of application for the initiation of an investigation, for which necessary statistics are available". As regards the second element of this provision, we note that it should correctly read "except in cases where a lower level is necessary to prevent or remedy serious injury or threat thereof to the industry of the States-Parties". In this context, we believe that the wording of Article 7(2) of the Basic Agreement is not inconsistent with the requirement of Article 5.1 of the Agreement on Safeguards.

Question 11

Article 10.6 of the 2008 Agreement states that in the comparison of export price with normal value any required conversion from one currency to another is made using the official exchange rate on the date of the sale of the product. Please identify the source of the exchange rate data and whether that data is available to the public.

Reply

Required conversions are usually made by using the exchange rate data provided by the interested parties in their responses to questionnaires, verified against information on exchange rates that would be available in official sources (such as web-sites of central banks of the countries of origin). In cases where official information is not available, the investigating authority would use other open sources.

Question 12

Article 16.2 of the 2008 Agreement states that the Commission may decide to impose an antidumping duty at a rate lesser than the rate of the calculated margin of dumping if such rate is sufficient to repair the injury to the industry of the Parties. Likewise, Article 26.4 of the 2008 Agreement states that the Commission may decide to impose a

lower CVD rate than the calculated per unit rate of subsidization, if the rate is sufficient to repair the injury to the industry of the Parties. Please explain whether the Commission examines whether the application of such lesser duty is appropriate in every antidumping and countervailing duty investigation. If lesser duty is applied, please describe the steps by which the amount of the lesser duty is calculated in each type of investigation. Please also explain the opportunities provided to interested parties to evaluate the calculation of the lesser duty and provide comments to the Commission.

Reply

The Commission has not so far made a decision to impose an anti-dumping or countervailing duty lower than the margins calculated for dumping or subsidization pursuant to Articles 16(2) or 26(4) of the Basic Agreement. Should the investigating authority deem it appropriate to calculate such "lesser duty" in an anti-dumping or countervailing investigation, the interested parties shall have all procedural rights as specified in the relevant provisions of the Basic Agreement.

Question 13

Article 17.2 of the 2008 Agreement states that the duration of the antidumping measure shall not exceed 5 years from the date of initiation or conclusion of review. Likewise, Article 27.2 of the 2008 Agreement states that the duration of the countervailing measure shall not exceed 5 years from the date of initiation or conclusion of review. Please clarify:

- **In expiry reviews, does any extension of the measure for an additional five year period begin on the date the review is completed or the date the prior five year period expired?**

- **In expiry reviews, in the event the Commission determines to extend a measure, does the extension apply for a five-year period or does the Commission have discretion to determine the duration of the extension in its review?**

Reply

In accordance with Articles 17(2) and 27(2) of the Basic Agreement, the duration of an anti-dumping or countervailing measure shall not exceed 5 years from the date of the conclusion of the expiry review investigation. This means the following:

- The duration of the extended measure shall be calculated from the date of the conclusion of the expiry review investigation.

- In expiry reviews, the investigating authority may propose to extend the application of an anti-dumping duty for a period not exceeding five years.

Question 15

Article 18.3 of the 2008 Agreement states that an application for a circumvention investigation must contain, among other things, evidence of dumped imports. Please clarify whether the application for a circumvention investigation must contain new evidence of dumped imports for products currently subject to an anti-dumping duty measure. In addition, please explain the relevance of the requirement that there be dumped imports to the circumvention investigation.

Reply

In accordance with Article 18(3) of the Basic Agreement, the application for a circumvention investigation must contain, inter alia, evidence of the existence of dumping of a product (parts or derivatives thereof) as a result of circumvention of an anti-dumping measure. The normal value used to determine the existence of dumping in this case shall be the normal value established in the original investigation that led to the imposition of the anti-dumping measure. In our view, evidence of the existence of dumping is relevant in proving that

there is circumvention, since such a determination would be contingent on the fact that dumping is not being offset (e.g. by trading via a third territory).

Question 16

Article 28-1.3 of the 2008 Agreement discusses how States Parties will collect special antidumping, countervailing duty and safeguard duties. It is not clear from the description provided whether States Parties have the ability to change or modify the antidumping, countervailing duty and safeguard measures that are put in place, and their subsequent collection, refund or distribution. Can the Russian Federation please clarify whether or not States Parties will have the ability to modify or alter the measure imposed by the Commission and, if so, will interested parties have an opportunity to comment?

Reply

Article 28-1 of the Basic Agreement provides technical guidance to the national authorities responsible for the collection, refund and distribution of the duties collected as a result of the application of trade remedies measures (e.g. Customs, Treasury), whereby the competence remains at the national level. This, however, does not imply that States Parties and/or their authorities that are responsible for enforcing the measure adopted by the Commission would have the ability to modify or alter such a measure.

Question 17

With regard to Article 29.5 of the 2008 Agreement, could the Russian Federation confirm whether the investigating authority considers employment when determining whether there is evidence of serious injury or threat of serious injury caused by imports in the course of a safeguard investigation?

Reply

In analyzing applications filed under Article 29 of the Basic Agreement and evaluating the accuracy and adequacy of the evidence contained therein, the investigating authority is guided by the definitions and requirements contained in other relevant provisions of the Basic Agreement. In accordance with Article 5(1)(5) of the Basic Agreement, in determining serious injury to the industry of the States-Parties, the investigating authority in the course of a safeguard investigation evaluates factors of an objective and quantifiable nature having a bearing on the situation of the industry of the States-Parties, including the change in the level of employment in the industry of the States-Parties. Accordingly, evidence of serious injury contained in the application is considered in light of the other provisions of the Basic Agreement relating to the determination of serious injury. This implies that employment is analyzed by the investigating authority when determining whether there is evidence of serious injury.

Question 18

Article 29.5(3) of the 2008 Agreement describes the information necessary to be included in an application to initiate a CVD investigation. The list includes "the availability and nature of specific subsidies or a particular foreign country and, if possible, its volume, evidence of material injury, threat of such injury…" among other things. Please explain whether, for each subsidy alleged, an application must contain evidence regarding each element of a countervail able subsidy – financial contribution, benefit and specificity and that the investigating authority will review the accuracy and adequacy of this evidence to determine whether the evidence is sufficient to justify the initiation of an investigation.

Reply

The requirements for the content of an application contained in Article 29 of the Basic Agreement should be read in conjunction with the other relevant provisions that the Agreement contains. In this regard, the definition of subsidy contained in Article 20 of the Basic Agreement is relevant. The information about the existence and nature of a *specific subsidy* of a particular exporting

country must include both information on the elements of an alleged subsidy listed in Article 20, and its specificity in the sense of Article 21 of the Basic Agreement. The investigating authority reviews all evidence and information contained in applications filed under Article 29, including applications for countervailing investigations, in accordance with Article 29(12) of the Basic Agreement.

Question 19

Article 29.14 of the 2008 Agreement states that the information in the application "is not subject to public disclosure" before the decision is made to initiate an investigation. However, Article 29.9 requires the applicant to file a non-confidential version of the application if the application contains confidential information. Article 3.2 of the WTO Agreement on safeguards generally requires that non-confidential information (or non-confidential summaries of confidential information) be disclosed. Please explain why the non-confidential version of the application, once formally filed, would be withheld from disclosure until the decision to initiate is made. We note in this regard that prompt disclosure of the formally filed application would provide interested parties, including interested importers and exporters and foreign governments, with the opportunity to examine the application and to advise the investigating authority of possible errors in the application. Any such errors so identified might prove helpful to the investigating authority in deciding whether to initiate an investigation, including the appropriate scope of the investigation.

Reply

The specified provisions of Article 29(14) of the Basic Agreement draw from the meaning of Article 5.5 of the Anti-Dumping Agreement and 11.5 of the Subsidies and Countervailing Measures Agreement, which establish that the authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. Neither the Basic Agreement, nor the Agreement on Safeguards provide for a formal public action on behalf of the investigating authority upon receipt of an application. Moreover, upon receiving the application, the investigating authority is obliged, under Article 29(12) of the Basic Agreement, to examine the accuracy and adequacy of the evidence submitted, and also whether the non-confidential summaries of the information submitted are in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. We note here that the period for such screening is limited by the provisions of Article 29, and the decision whether or not to initiate an investigation is made as soon as this examination is completed. As soon as the decision to initiate an investigation is made, a public notice is given, and interested parties are invited to register as participants in the investigation, which allows them to access the non-confidential file of the case, including the application, and provide their comments.

Question 21

Article 30.9, 37, and other provisions of the 2008 Agreement authorize the investigating authority to withhold "confidential information" from participants in the investigation. Please explain how the Commission would define confidential information.

Reply

The investigating authority defines "confidential information" in accordance with the provisions of Article 37 of the Basic Agreement. Article 37(1) establishes that information is to be regarded confidential if it is submitted by an interested party in confidence together with justifications, demonstrating, inter alia, that the disclosure of such information would accord a competitive advantage to a third party or would lead to adverse consequences for the party that provided such information or for the party that such information was received from.

Question 22

Article 30.11 of the 2008 Agreement states that during the course of the investigation all interested parties will have the opportunity to defend their interests, including the opportunity to meet in order to be able to provide opposing points of view and to offer rebuttal. Please describe the procedures that will be followed, including whether

interested parties will have the opportunity to file briefs and other documents containing information and arguments.

Question 24

With regard to Article 34.2 of the 2008 Agreement, please confirm that the Russian Federation will inform all interested parties, not only those participating in the investigation, of the time and agenda of the hearing. Could the Russian Federation also confirm that a record of the hearing, as well as any non-confidential submissions submitted subsequent to the hearing, will be accessible in the public case file?

Please also indicate whether this article applies to safeguard investigations. If it does, please indicate whether interested foreign producers, importers, exporters, and foreign governments may "petition" for public hearings and whether such petitions for hearings are automatically granted.

Replies to Questions 22 and 24

The purpose of meetings under Article 30.11 has so far successfully been served by the practice of organizing public hearings conducted under Article 34. The investigating authority, in accordance with Article 34(2) is under an obligation to send out a notice to all participants in the investigation containing information on the time and place of the public hearing and a list of issues to be considered at the hearing. To ensure transparency and universal access to such information, the investigating authority publishes the notice of public hearing on the official website of the Commission. In accordance with Article 34(2), a hearing cannot be scheduled for a date earlier than fifteen days after sending out the notice to the participants in the investigation. Information delivered at the public hearing is taken into account in the investigation if it is presented in written form to the investigating authority no later than fifteen days after the date of the public hearing. In accordance with Article 30(9) during the investigation the investigating authority, subject to the requirement to protect confidential information, allows the participants in an investigation, at their request, to see any information presented in written form by any interested party as evidence pertinent to the subject of investigation. This practice applies to the submissions received after the public hearings, insofar as they are "information presented by interested parties in written form".

The pertinent requirements of Article 34 are identical for antidumping, countervailing and safeguard proceedings.

In accordance with Article 39(2)(10) and Article 34(1) public hearings are conducted at the request of a participant in an investigation filed within the time limit specified in the notice of initiation of an investigation. Any interested party, as defined in Article 36, can, in accordance with Article 30(5), express their wish to participate in an investigation. Article 36 covers, inter alia, exporters, foreign producers, importers of the product under consideration [36(4)] and authorized bodies of an exporting country or country of origin of the product [36(5)]. In other words, in case interested exporters, importers or the government of the exporting country or country of origin duly applied for participant status, their requests to hold public hearings are automatically granted by virtue of Article 34(1).

Question 23

Article 31.3 of the 2008 Agreement states that, before making a decision on the results of an antidumping or a countervailing duty investigation, the investigating authority shall send interested parties a non-confidential version of the final conclusions and provide an opportunity to comment. How many days, on average, before the final determination, will this statement of essential facts be issued? Please identify how much time will be made available to parties to submit comments on this report and explain how these comments will be addressed by the investigating authority in the final determination.

Reply

The investigating authority sends out the non-confidential version of its final determination to allow participants in an investigation on average two weeks to provide their comments. Comments

received by the investigating authority within this timeframe are analyzed and included, where appropriate, in the final report of the investigating authority that it submits to the Commission in accordance with Article 3(6) and (7) of the Basic Agreement.

Question 25

With regard to Article 35.4 of the 2008 Agreement, could the Russian Federation explain how experts who are not part of the investigating authority will be chosen and the typical circumstances when such expertise would be necessary? Additionally, please clarify whether such experts would be required to submit a non-disclosure form and describe the sanctions for violation of confidentiality.

Reply

The investigating authority may engage external experts in the process of verification when the necessary competence is not present internally (e.g. translation/interpretation from/into a foreign language). In choosing the experts, the investigating authority will apply a competence-based approach and evaluate whether the competence of the candidates is sufficient to successfully support the verification process. External experts will be required to submit a non-disclosure form. In accordance with Article 35.4, such experts cannot be engaged unless there is a practical opportunity to sanction them for potential breaches of confidentiality.

Question 26

Articles 39.2 – 39.5 of the 2008 Agreement describe the content of reports published by the investigating authority concerning the initiation, preliminary and final determinations of trade remedy investigations. Please explain at what point in the investigation each of these reports are typically issued. Please also describe all documentation that is provided to interested parties at the time of the preliminary and final determinations. Such items could include, but not be limited to the text of the official published notice, detailed calculations, and the underlying analysis and supporting evidence for the Commission's decisions.

Reply

Article 39 contains requirements for the public notices given of decisions concerning investigations. All such notices are, in accordance with Article 39(1), published on the official website of the Commission. The publication of the notice of initiation described in Article 39(2) marks the day on which the investigation starts by virtue of Article 30(3-1). Thus, the notice of initiation is available to the public from the first day of the investigation. The notice of conclusion of an investigation, in case a measure is applied, is published in accordance with Article 39(4) for safeguards and 39(5) for anti-dumping and countervailing measures in the three days following the conclusion of investigation. In accordance with Article 30(15) the investigation is concluded on the day the Commission considers the report and the draft decision submitted by the investigating authority. A similar practice is used for the notice of imposition of provisional measures – it is published in the three days following the date of the decision of the Commission. Moreover, for safeguard measures, the investigating authority is under the obligation, pursuant to Article 6(2), to notify the authorized body of the exporting country and other interested parties known to it, of the possible introduction of a provisional safeguard duty.

In accordance with Article 39(1) the notices described in the Article, in addition to their publication on the official website, are sent to the authorized body of the exporting country and other interested parties known to the investigating authority. The conclusions of the investigating authority, including underlying analysis, calculations, consideration of the arguments made during the investigation etc. are set out in the report it submits to the Commission in accordance with Article 3(6) and (7). The notice of imposition of provisional measures described in Article 39(3) is in practice published on the official website of the Commission together with the non-confidential version of the report submitted to the Commission under Article 3(7). Similarly, the notice of conclusion of the investigation is published on the official website of the Commission together with the non-confidential version of the report submitted to the Commission under Article 3(6).

Question 27

Article 40.1 of the 2008 Agreement states that a decision of non-application of a safeguard, antidumping or countervailing measure may be taken "if such measure could harm the interests of States Parties, and revised if the causes that led to its application have changed." Please clarify whether this provision allows the Commission the authority to revisit a previously determined anti-dumping or countervailing duty measure and to revise it. If so, under what circumstances would the Commission revisit a previously-determined measure, and where does the Agreement outline a formal process for doing so?

Reply

We note that in the text of Article 40(1) the words "revised" should be read as relating to the words "this decision". In this sense, the only decisions that the Commission would have the authority to revisit based on this Article would be the decisions it has previously taken in accordance with *the same article*, i.e. decisions of non-application. Article 40(1) does not establish a formal process for the revision of previously-determined measures.

Question 28

With respect to the 2010 Transitional Agreement:

- **Have all antidumping, countervailing duty and safeguard measures initially imposed by individual States Parties been reviewed and determined either to be applicable to the entire Customs Union or only to a specific States Party? It is our understanding that measures found to be applicable only to a particular States Party will expire at the end of the initial five year period. Is this understanding correct?**

- **If a measure initially imposed by an individual States Party is found to be applicable to the entire Customs Union, please confirm that, absent a review, the measure would also expire five years from the original date of imposition.**

- **Does the Commission have the ability to change or modify the original terms, rates or duties of measures originally imposed by the States Parties? If so, please describe the process by which such changes would be made.**

Reply

Antidumping, countervailing and safeguard measures initially imposed by individual States Parties have been reviewed in accordance with the Transitional Agreement. As 22 April 2013, only two measures that have undergone the review and were found to be applicable in a particular State Party remain in force in accordance with its national legislation (by virtue of Article 5 of the Transitional Agreement) – the safeguard measures applied by the Republic of Kazakhstan. These measures are set to expire in September 2014. The list of the measures applied by individual Member-States that remain in force is available on the official website of the Commission (http://www.eurasiancommission.org/ru/act/trade/podm/mery/Pages/zaschitaStran.aspx).

In accordance with Article 2 of the Transitional Agreement, measures that have been found applicable in the Single Customs Territory of the CU are applied pursuant to decisions of the Commission until the date of expiry of the initial measure introduced by the State-Party. The understanding of the United States is correct in as much as those measures will expire on the dates stipulated in the relevant decisions of the Commission, if no review is conducted.

Changes of the original terms, rates of duties of measures originally imposed by the States Parties may be made by the Commission only pursuant to a review conducted in accordance with the provisions of the Basic Agreement. The review process provided by the Transitional Agreement does not foresee such changes.

Question 29

With regard to *Decision, 16 May 2012, No. 44, Moscow, On some issues of protection of the domestic market*, could the Russian Federation clarify that for measures imposed by individual States Parties prior to July 2012, whether any future reviews of the measures will be conducted by the relevant State Party or the EEC instead?

Reply

For all national trade remedy measures that have passed the review under the Transitional Agreement and have been found to be applicable in the Single Customs Territory of the CU, all future reviews are to be conducted by the EEC.

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