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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 AUSTRALIA¹
REGARDING THE NOTIFICATION OF THE RUSSIAN FEDERATION²**

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

The Russian Federation thanks Australia for the questions it raised in connection with the Notification of Laws and Regulations that Russia submitted under Articles 18.5, 12.6 and 32.6 of the Agreements and is pleased to take this opportunity to clarify certain issues pertaining to the trade defense system of the Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation.

Question 1

Article 2 defines the "previous period" as three calendar years immediately preceding the date of filing of an application for an investigation. Please explain whether this means three complete calendar years or a three year period prior to lodgment of an application. Please also explain whether this definition relates to the injury assessment. Article 30.4-1 notes that the period of investigation prior to the application of safeguard, anti-dumping or countervailing duty is established by the investigating authority. Please explain the period of investigation for the purposes of determining dumping or subsidization.

Reply

The definition of "previous period" contained in Article 2 of the Agreement on the Application of Safeguard, Antidumping and Countervailing Measures With Regard to Third Countries of 25 January 2008 (hereinafter, the Basic Agreement) should be understood as meaning three complete calendar years prior to the lodging of an application. As regards the determination of serious injury in the case of safeguard proceedings, such injury, in accordance with another definition contained in the same Article, is "*usually* determined for the previous period", that is, in cases when the investigating authority establishes a period of investigation in a safeguard proceeding pursuant to Article 30(4-1) of the Basic Agreement, it is guided by the definition of serious injury contained in Article 2.

The period of investigation for dumping established pursuant to Article 30(4-1) would, in accordance with Article 9(3), as a rule, be of 12 months preceding the date of lodging of the application, but in any case no less than 6 months. Material injury in an anti-dumping proceeding, pursuant to Article 13(3) of the Agreement, is determined for the period of investigation. At the same time, the investigating authority considers market trends for 3 years preceding the date of

¹ G/ADP/Q1/RUS/2-G/SCM/Q1/RUS/2-G/SG/Q1/RUS/2.

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

lodging of the application for the purpose of establishing material injury. In accordance with Article 23(2-1), material injury in a countervailing proceeding is determined for the period of investigation.

Question 2

Article 2 defines "threat of material injury" as one that is 'inevitable'. Please clarify whether this is the same standard as set down in Article 3.7 of the WTO Anti-Dumping Agreement, Article 15.7 of the WTO Subsidies and Countervailing Measures Agreement and Article 4.1(b) of the WTO Safeguards Agreement.

Question 3

Article 6.1 refers to serious injury "which would be difficult to eliminate later". Please clarify whether this is the same standard as set down in Article 6.1 of The WTO Safeguards Agreement which refers to "damage which it would be difficult to repair".

Replies to Questions 2, 3

We believe that the misunderstanding of the following terms:

- Inevitable // imminent
- Eliminate // prevent

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. The legal standards implied in the text of the Basic Agreement in these cases, nevertheless, reflect the standards of the corresponding provisions of the WTO Agreements.

Question 4

Article 6.4 refers to consultations that should be initiated after adoption of the decision to impose a provisional safeguard measure. Please explain the timeframe for such consultations and whether these are held "immediately" after the measures is taken as set down in the WTO Safeguards Agreement.

Reply

Consultations under Article 6(3) would be held immediately upon receipt of a request by an authorized body of an exporting country, when such request is made at any point after the adoption of the decision to apply a provisional measure. This provision transposes the requirement of Article 12.4 of the Safeguards Agreement into the Basic Agreement.

Question 5

Article 11.1 provides for the determination of the normal value as based on "the ordinary course of trade for use in the customs territory of the exporting foreign country in a competitive environment". Please explain how "competitive environment" is defined or assessed.

Reply

Certain cases when the environment is considered uncompetitive (namely, when prices are directly regulated by the state or there is a state monopoly on foreign trade) are defined in Article 11(11). Absent the conditions stipulated in this provision, the investigating authority would not conduct any additional analysis as regards the competitiveness of the environment, unless it receives, during the course of the investigation, indications to the contrary.

Question 6

Article 16.2 provides for recourse to the lesser duty rule. Please explain whether there are any specific circumstances where the lesser duty rule may apply. Please also explain the methodology for this assessment. Please explain whether the lesser duty rule is normally applied in investigations.

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).

Question 7

Article 16.4 (and Article 10.11 where there is sampling) notes that an anti-dumping duty for all other exporters or foreign producers is based on the highest margin of dumping calculated during the investigation. Please explain whether the margins for non-cooperating exporters and foreign producers are disregarded for this purpose if there is sampling.

Reply

The investigating authority does not calculate individual margins of dumping for non-cooperating exporters and producers. In cases where sampling is applied pursuant to Article 10(8), individual margins of dumping may be calculated for non-sampled but cooperating producers.

Question 8

Article 17.3 and 17.4 outline the procedures for reviews of anti-dumping measures. Please explain whether the investigating authority issues a public notice alerting interested parties to the expiry of the measure in order to generate a request for a review.

Reply

Currently, the investigating authority does not practice to issue notices of impending expiry of anti-dumping measures.

Question 9

Article 17.4 outlines the evidentiary requirements for a review including that an "existing antidumping measure is not sufficient to counteract dumped imports and to eliminate the injury to the industry of the Parties as a result of dumped imports". Please explain whether 'sufficiency' of a measure reflects the standard of Article 11.2 of the WTO Anti-Dumping Agreement.

Reply

Article 17(4) specifies the evidentiary requirements in which a review investigation may be carried out. At the same time, Article 17(1) establishes that an antidumping measure is to be applied to the extent and for as long as it is necessary to offset injury to the industry of the States Parties caused by dumped imports. In this regard, any review carried out pursuant to Article 17(4) shall be guided by the general standard set out in Article 17(1). Hence, the standard of Article 11.2 of the WTO Anti-Dumping Agreement is reflected in the requirements for a review.

Question 10

Article 18.1 defines circumvention as "the change of the supply process to avoid paying antidumping duty". Article 18.3 outlines the evidentiary requirements for a circumvention review, including evidence of "neutralization of the antidumping measure as a result of circumvention and the influence of this factor on the production and (or) sale and (or) the prices of the like product".

Please explain whether this would include evidence of no movement in the resale prices of the dumped goods following the imposition of an anti-dumping measure.

Reply

The evidentiary basis required to make a determination of neutralization of the measure as a result of circumvention may include evidence of no movement of resale prices following the imposition of an antidumping measure.

Question 11

Article 20 defines a subsidy as any kind of income or price support giving "an additional advantage" or a financial contribution that gives "additional benefits" to the recipients. Please explain whether a 'benefit' or 'advantage' is sufficient to meet the requirements of defining a subsidy. Please explain the scope of "granting authority".

Reply

The apparent distinction between the concepts of "advantage" and "benefit" in the two sub-clauses of Article 20 is due to translation issues. The original Russian-language version of the text of the Basic Agreement uses the word "преимущества" ("benefit") in both cases. This is in line with the subsidy definition contained in Article 1 of the Agreement on Subsidies and Countervailing Measures.

The "granting authority" is defined in Article 2 of the Basic Agreement as "a government body or the local authority of the exporting foreign state or an entity acting on behalf of the appropriate state authority or local authority or authorized by the appropriate government agency or a local authority in accordance with the legal act, or on the basis of the facts".

Question 12

Please explain the scope of "other parties" in Article 30.12 and whether this differs from the definition of interested parties in Article 36.

Reply

The scope of parties defined in Article 30(12) of the Basic Agreement is indeed broader than the exhaustive list in Article 36 (namely, it encompasses "state authorities (governments), local authorities, as well as other parties"). Under Article 30(12), a broad number of parties can provide the authority with information relevant to the investigation. However, if such other parties are not mentioned in the exhaustive list of Article 36, they will not be able to exercise rights pertinent to "interested parties" (for instance, to register as participants in the investigation pursuant to Article 30(5) of the Agreement).
