WORLD TRADE ORGANIZATION

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

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

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

The following communication, dated 3 October 2016, is being circulated at the request of the Delegation of the United States.

The United States thanks Russia for its notification of (1) Articles 48, 49, 50 of the Treaty on the Eurasian Economic Union of 29 May 2014 (hereinafter – "Treaty"), and (2) Annex No. 8 to the Treaty on the EAEU (Protocol on Application of Safeguard, Anti-Dumping and Countervailing Measures with respect to Third Countries) (hereinafter – Protocol) and poses the following questions:[2]

Question 1

Paragraph 42(3) of the Protocol states that the margin of dumping may be determined through a comparison of the weighted average normal value of the product with prices of individual export transactions provided that prices of the product differ significantly among different purchasers, regions, or time periods. Has the investigating authority applied this methodology in an antidumping duty proceeding? If so, please identify the specific proceeding(s).

Question 2

Paragraph 52 of the Protocol states that, "{a}long with the determination of an individual margin of dumping for each known exporter and (or) producer of the product who has submitted necessary information permitting the determination of an individual margin of dumping, the investigating authority may determine a single margin of dumping for all other exporters and (or) producers of the product subject to investigation based on the highest margin of dumping determined during the course of the investigation." Given this, please explain how the all others rate is calculated.

Question 3

Paragraph 59 of the Protocol states that, "Per unit costs of production of the like product plus administrative, selling and general costs shall be calculated on the basis of records submitted by the exporter or producer of the product, provided that such records are in accordance with the generally accepted accounting principles and rules of the exporting third country and <u>completely</u> reflect the costs associated with the production and sale of the product". (emphasis added). Please explain how this comports with Article 2.2.1.1 of the Antidumping Agreement, which states that, "costs shall normally be calculated on the basis of records kept by the exporter or producer under

[1] G/ADP/N/1/RUS/2-G/SCM/N/1/RUS/2-G/SG/N/1/RUS/2 (dated 10 May 2016).
[2] For the sake of efficiency, the United States suggests that committee review for these questions be conducted in the Committee on Anti-Dumping Practices.

investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration" (emphasis added).

Question 4

The Protocol defines "material injury" without reference to the volume or impact of subject imports, while paragraphs 67-77 of the Protocol separately discuss an examination of subject import volumes and impact. However, it is unclear how these provisions interact. Please explain (1) the purpose of the definition for "material injury," and how it relates to the referenced provisions in the Protocol on volume and impact; (2) how this definition is consistent with Articles 3.1, 3.2, and 3.4 of the Antidumping Agreement and Articles 15.1, 15.2, and 15.4 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement); and (3) whether the definition of "material injury" would preclude a finding of injury in instances where the negative effects of subject imports are inconsequential, immaterial, or unimportant.

Question 5

Paragraph 76 of the Protocol mandates consideration of the following factors in a threat determination in antidumping investigations:

a. the rate of increase of the dumped imports indicating the likelihood of further increased importation;
b. sufficient freely disposable, or an imminent increase in, capacity of the exporter which indicates the likelihood of increased dumped imports of this product, taking into account the availability of other export markets to absorb any additional exports of this product;
c. the level of prices for the product subject to investigation, if such level of prices may have a depressing or suppressing effect on domestic prices for the like product in the Member States, and would likely further increase demand for the product subject to investigation;
d. the exporter's inventories of the product subject to investigation.

Similarly, paragraph 139 of the Protocol mandates consideration of the following factors in a threat determination in countervailing duty investigations (emphasis added):

a. nature, the amount of the subsidy or subsidies and the trade effects likely to arise therefrom;
b. the rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation;
c. sufficient freely disposable, or an imminent increase in, capacity of the exporter indicating the likelihood of increased subsidized imports of this product, taking into account the availability of other export markets to absorb any additional exports;
d. prices for the product subject of subsidized imports, whether such prices will have depressing or suppressing effect on the prices of the like product at the domestic market of the Member States, and would likely increase demand for further subsidized imports;
e. the exporter's inventories of the imported subsidized product.

By contrast, Article 3.7 of the Antidumping Agreement and Article 15.7 of the SCM Agreement specify that in a threat analysis an authority should consider whether there is "a significant rate of increase of dumped imports", "substantially increased importation", "an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports", and "prices that will have a significant depressing or suppressing effect on domestic prices" (emphasis added). In only one instance, paragraph 130(2) underlined above, does such language appear to be incorporated into the Protocol. Please explain whether paragraphs 76 and 130 of the Protocol are consistent with Article 3.7 of the Antidumping Agreement and Article 15.7 of the SCM Agreement, respectively.

Question 6

Paragraph 78 of the Protocol indicates that the Commission shall impose provisional measures if there are preliminary determinations of dumping and injury. Does the Commission have discretion to not impose provisional measures or is it bound by the affirmative preliminary findings of the administering authority to impose provisional measures?

Question 7

If the Commission imposes provisional measures, are the duties normally set at the level of dumping found in the preliminary determination or at a lesser amount? How does the Commission determine at what level to set the provisional duties?

Question 8

When a report is submitted to the Commission by the investigating authority that contains proposals on the imposition or application of a provisional safeguard, or antidumping or countervailing measures, is there a deadline by which the Commission must make a decision? Also, please explain whether the Commission is able to modify a proposal from the investigating authority, or if it is required to either approve or deny the proposal as presented.

Question 9

Paragraph 109 of the Protocol states that the investigating authority may self-initiate an expiry review. Please explain the circumstances under which the investigating authority would self-initiate an expiry review when there has been no written application submitted by the domestic industry.

Question 10

Paragraph 186 of the Protocol indicates that the investigating authority may self-initiate antidumping and countervailing duty investigations. Has the investigating authority ever self-initiated an antidumping or countervailing duty investigation? If so, what were the circumstances that led to the decision to initiate an investigation without an application from the domestic industry? Please explain the information provided to interested parties regarding the basis for the authority's decision to self-initiate an investigation.

Question 11

Paragraph 189 of the Protocol describes the industry support required for a written application for the initiation of safeguards, antidumping, or countervailing duty investigations.

a. Please confirm whether paragraph 189(1) of the Protocol applies to safeguard investigations alone and establishes a percentage threshold of domestic industry support for the initiation of safeguard investigations, which we note is not required under the Agreement on Safeguards.
b. Paragraph 189(1) also states that evidence showing a "major proportion" of domestic producers supporting an application shall be sufficient to establish support of domestic producers. Please define "major proportion."

Question 12

Paragraph 209 of the Protocol notes "Interested parties shall have the right to state their intention to participate in the investigation in writing within the period established by this Protocol. They are recognized as participants in the investigation from the date of the registration of <u>their statement of intent to participate in the investigation</u> by the investigating authority" (emphasis added). However, not all interested parties in an investigation are necessarily parties that will participate in an investigation, and may be, for example, industry associations, foreign governments, etc. Please clarify whether parties that do not directly participate in an investigation, such as by providing questionnaire responses, will still be considered interested parties to the investigation and may have access to the public case record.

Question 13

Paragraph 213 of the Protocol notes "… the investigating authority shall provide an opportunity for the participants in the investigation to see other information relevant to the investigation…" (emphasis added, 'participants' is also used in paragraphs describing notification and access to non-confidential case documents). However, this paragraph does not address the access that "interested parties" will have to the information relevant to the investigation. Please confirm that all interested parties will have access to the information relevant to the investigation, and if there is a distinction in access between participants and interested parties. Please also explain how access to this information is provided to participants or interested parties, e.g., by access to case file in a reading room, via online case file, etc.