WORLD TRADE ORGANIZATION

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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 THE UNITED STATES[1] REGARDING THE NOTIFICATION OF THE RUSSIAN FEDERATION[2]

The following communication, dated 21 April 2017, is being circulated at the request of the Delegation of the Russian Federation.

The Russian Federation thanks the United States for its questions and replies as follows:

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).

Reply

The Department for Internal Market Defence of the Commission has not applied the mentioned methodology of calculation of the margin of dumping in the anti-dumping proceedings.

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.

Reply

The "all others" rate may be calculated on the basis of best information available. For example, in some cases the "all others" rate may be equivalent to the highest margin of dumping determined among exporters or producers for whom an individual margin of dumping was determined.

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[1] G/ADP/Q1/RUS/7-G/SCM/Q1/RUS/7-G/SG/Q1/RUS/7.
[2] G/ADP/N/1/RUS/2-G/SCM/N/1/RUS/2-G/SG/N/1/RUS/2 (dated 10 May 2016).

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

<u>Reply</u>

The Russian Federation notes that the term "completely" was used in the Protocol in the process of its translation from Russian into English. The concept contained in paragraph 59 of the Protocol should be understood as provided under Article 2.2.1.1 of the Anti-Dumping Agreement.

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.

<u>Reply</u>

The definition of material injury provides that the deterioration in the position of a domestic industry is confirmed by positive evidence and specifies a non-exhaustive list of economic indicators that could prove the existence of such deterioration. The purpose of this definition is to clarify the term "material injury" that is used in the text of the Protocol. Paragraphs 67-77 of the Protocol specifically deal with the determination of the material injury, including examination of volume and price effects of dumping and the establishment of the causal link between dumping and injury in a manner consistent with Articles 3.1, 3.2, and 3.4 of the Anti-Dumping Agreement. Parallel provisions contained in paragraphs 132-142 concerning *determination* of injury to the domestic industry of Member States of the Eurasian Economic Union by subsidized imports in the context of countervailing duty investigations reflect the requirements under Article 15 of the SCM Agreement.

As regards part (3) of question 4, the Russian Federation notes that the Anti-Dumping Agreement, Article VI of the GATT 1994, as well as the SCM Agreement do not contain requirements concerning a specific determination on whether 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 <u>substantially</u> 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 <u>significant</u> rate of increase of dumped imports", "<u>substantially</u> increased importation", "an imminent, <u>substantial</u> increase in, capacity of the exporter indicating the likelihood of <u>substantially</u> increased dumped exports", and "prices that will have a <u>significant</u> depressing or suppressing effect on domestic prices" (emphasis added). In only one instance, paragraph 139(2) underlined above, does such language appear to be incorporated into the Protocol. Please explain whether paragraphs 76 and 139 of the Protocol are consistent with Article 3.7 of the Antidumping Agreement and Article 15.7 of the SCM Agreement, respectively.

<u>Reply</u>

Paragraphs 76 and 139 of the Protocol oblige an investigating authority to consider certain factors in making a determination regarding the existence of a threat of material injury in a manner consistent with Article 3.7 of the Anti-Dumping Agreement and Article 15.7 of the SCM Agreement, respectively. The words "significant" and "substantial" in the language of Article 3.7 of the Anti-Dumping Agreement and Article 15.7 of the SCM Agreement specify the volume, size or amount of a certain indicator that contributes to the overall conclusion of the investigating authority. In the process of consideration of the factors listed in paragraphs 76 and 139 of the Protocol the investigating authority evaluates the mentioned factors in terms of significance (significant rate of increase of dumped imports, significant depressing or suppressing effect on domestic prices) and concludes whether certain factors are substantial (substantially increased importation, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports).

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?

Reply

In case where the evidence received by the investigating authority before the conclusion of the investigation indicates that there are dumped imports and injury caused by dumped imports to a domestic industry of the EAEU Member States, the Commission, on the basis of the report of the investigating authority, shall take a decision to apply a preliminary anti-dumping measure to prevent injury being caused to the domestic industry of the Member States by the dumped imports.

Pursuant to Article 18 of the Treaty on the Eurasian Economic Union the Commission takes decisions by a qualified majority or consensus. With regard to decisions concerning imposition of anti-dumping measures a qualified majority rule is applied.

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?

Reply

Normally provisional duties are set at the level of the preliminary margin of dumping that is determined in the preliminary report of the investigating authority that contains a recommendation of the investigating authority to the Commission to impose a provisional measure as well as the form of the measure and the amount of the anti-dumping duty provisionally estimated.

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.

Reply

The Treaty on the Eurasian Economic Union does not establish specific deadlines for the Commission to adopt decisions to impose provisional safeguard, anti-dumping or countervailing measures. Therefore, the timing in which such decisions are adopted as a rule flows from the usual procedure of adoption of the decisions by the Commission. The Commission holds weekly meetings and considers a list of items for discussion and supporting materials (including draft decisions) that are included into the agenda in 30 days prior to the meeting.

In practice the Commission takes decisions on imposition of provisional safeguard, anti-dumping or countervailing measures at the level determined in the report of the investigating authority.

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.

Reply

Up to the present moment there have been no cases of self-initiation of expiry reviews by the Department for Internal Market Defence of the Commission. An expiry review of an anti-dumping measure can be self-initiated in case when there is evidence before the investigating authority that the dumped imports and the injury to the domestic industry of the Member States would be likely to recur or continue if the anti-dumping measure were removed.

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.

Reply

Up to the present moment the Department for Internal Market Defence of the Commission has not self-initiated an anti-dumping or countervailing duty 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."**

Reply

The Russian Federation confirms that paragraph 189(1) of the Protocol applies to safeguard investigations and establishes a percentage threshold of 25% of the total domestic production for domestic industry support for the initiation of safeguard investigations.

"Major proportion" is interpreted in the meaning of Article 4(c) of the WTO Agreement on Safeguards and the WTO jurisprudence, and it shall not be less than 25% of total domestic production.

"Major proportion" requirement is aimed at ensuring the representativeness of the domestic industry that supports the application.

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 <u>participants</u> 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.

Replies to Questions 12 and 13

Paragraph 259 of the Protocol provides a definition of interested parties. Specifically, it states as follows:

> For the purposes of an investigation, interested parties shall be:
>
> 1. producer of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;
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> 2. an association of producers a majority of the members of which are producers of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;
>
> 3. an association of producers the members of which account for more than 25 percent of the total volume of production of the like or directly competitive product (in the case of a safeguard investigation) or the like product (in the case of an anti-dumping or countervailing investigation) in the Member States;
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> 4. an exporter, foreign producer or the importer of the product subject to investigation, and an association of foreign producers, exporters or importers of products a significant part of the members of which are producers, exporters or importers of the product in question from the exporting third country or the country of origin of the product;
>
> 5. an authorized body of the exporting third country or of the country of origin of the product;
>
> 6. consumers of the product subject to investigation (if they use such product in production) and associations of such consumers in the Member States;
>
> 7. public associations of consumers (if the product is mainly consumed by natural persons).

Interested parties, including industry associations and foreign governments, that did not state their intention to participate in an investigation are still considered interested parties pursuant to paragraph 259 of the Protocol. All interested parties have the right to participate in an investigation and to register in order to be recognized as participants in an investigation. Participants to an investigation are granted online access to non-confidential electronic file upon request.