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

REQUEST FOR CONSULTATIONS BY THE RUSSIAN FEDERATION

Addendum

The following communication, dated 29 March 2016, from the delegation of the Russian Federation to the delegation of the European Union and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

With reference to the document WT/DS494/1, G/L/1115, G/ADP/D110/1, G/SCM/D107/1 issued on 19 May 2015, my authorities have instructed me to request further consultations with the European Union pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994"), Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "AD Agreement").

Subsequent to the results of the first round of consultations held with the European Union on 26 June 2015 the Russian Federation has identified additional aspects with respect to the measures at issue. Therefore the Russian Federation respectfully requests further consultations with the European Union with a view to reaching a mutually satisfactory solution.

This request supplements and does not replace the request for consultations circulated as document WT/DS494/1, G/L/1115, G/ADP/D110/1, G/SCM/D107/1 issued on 19 May 2015.

This request is with respect to, although not exclusively, the Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014¹ adopted following the expiry review proceeding extending the duration of anti-dumping measures on imports of ammonium nitrate originating in Russia. This request is also with respect to currently applied anti-dumping measures, which were originally imposed, levied and reviewed, pursuant to:

- Council Regulation (EC) No 2022/95 of 16 August 1995 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia, OJ L 198, 23.8.1995, p. 1–14;
- Council Regulation (EC) No 663/98 of 23 March 1998 amending Regulation (EC) No 2022/95 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia, OJ L 93, 26.3.1998, p. 1–7;

¹ Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 280, 24.9.2014, p. 19–51).

- Council Regulation (EC) No 658/2002 of 15 April 2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia, OJ L 102, 18.4.2002, p. 1–11;
- Council Regulation (EC) No 993/2004 of 17 May 2004 amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ammonium nitrate originating in Poland and Ukraine, and terminating the anti-dumping proceeding in respect of imports originating in Lithuania, OJ L 182, 19.5.2004, p. 28–33;
- Council Regulation (EC) No 945/2005 of 21 June 2005 amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in, *inter alia*, Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96, OJ L 160, 23.6.2005, p. 1–9;
- Council Regulation (EC) No 236/2008 of 10 March 2008 concerning terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia, OJ L 75, 18.3.2008, p. 1–7;
- Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96, OJ L 185, 12.7.2008, p. 1–34;
- Council Regulation (EC) No 989/2009 of 19 October 2009 amending Regulation (EC) No 661/2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia, OJ L 278, 23.10.2009, p. 1–2;
- Commission Decision 2012/629/EU of 10 October 2012 amending Decision 2008/577/EC accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia, OJ L 277, 11.10.2012, p. 8–10;
- Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, OJ L 280, 24.9.2014, p. 19–51;
- Judgment of the Court of First Instance of 10 September 2008, Case T-348/05, JSC Kirovo-Chepetsky Khimichesky Kombinat v Council of the European Union, [2008] ERC II-159; and
- Judgment of the Court of First Instance (Fourth Chamber) of 9 July 2009, Case T-348/05 INTP, JSC Kirovo-Chepetsky Khimichesky Kombinat v Council of the European Union, application for interpretation of the judgment of the Court of First Instance of 10 September 2008 in Case T-48/05, [2009] ERC II-00116.

In addition, this request concerns any and all notices, disclosures and reports of the European Commission, Council of the European Union, the Court of Justice of the European Union and other EU institutions, and any amendments thereof, produced or to be produced in the future, in connection with the anti-dumping proceedings relating to imports of ammonium nitrate from the Russian Federation, including, but not limited to, all interim reviews, expiry reviews and other proceedings that have taken place to date.

The Russian Federation considers that the measures at issue are inconsistent with the obligations of the European Union under the AD Agreement and the GATT 1994, including, but not limited to, the following provisions:

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- a) Article 11.3 of the AD Agreement because the European Union failed to examine whether the expiry review request was duly substantiated;
 - b) Articles 11.3, 4.1 and 5.4 of the AD Agreement because the European Union initiated the expiry review in the absence of a duly substantiated request made by or on behalf of the properly defined domestic industry;
 - c) Articles 1, 2.1, 2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 5.3, 5.4, 9.1, 9.3, 11.1, 11.3 and 18.1 of the AD Agreement because the European Union initiated a single expiry review with regard to anti-dumping measures having different product scopes of application, combined within such review the likelihood of recurrence of injury and dumping determinations with regard to products subject to anti-dumping measures having different scopes of application and extended the measures applicable to JSC Kirovo-Chepetsky Khimichesky Kombinat based on the likelihood of injury and dumping determinations for the product other than that which formed the basis for the anti-dumping measures applied on products of this company;
 - d) Articles 11.3, 2.6, 3.1, 3.2, 3.4, 4.1, 5.3, 5.4, 6.8 and paragraphs 3, 5 and 7 of Annex II of the AD Agreement because the European Union initiated an expiry review and made the recurrence of injury determination based on erroneous and incomplete data provided by the domestic industry and because the European Union incorrectly defined the domestic industry;
 - e) Articles 11.3 and 2.1 of the AD Agreement and Article VI:1 of the GATT 1994 because the European Union failed to make a likelihood of continuation or recurrence of dumping determination based on a sufficient factual basis allowing it to draw reasoned and adequate conclusions concerning such likelihood by failing to examine the impact of the absence of dumping by the largest Russian exporters during the period of review;
 - f) Articles 11.3, 2.1, 2.2 and 2.4 of the AD Agreement and Article VI:1 of the GATT 1994 because the European Union in the context of a determination of likelihood of continuation or recurrence of dumping relied upon dumping margins that had not been determined in conformity with the disciplines of the said provisions of Article 2 of the AD Agreement;
 - g) Articles 11.3, 2.1 and 2.4 of the AD Agreement and Article VI:1 of the GATT 1994 because the European Union failed to perform a fair comparison between the export price and the normal value when determining the likelihood of recurrence of dumping;
 - h) Articles 11.3, 2.1, 2.3, 6.8 and paragraphs 3, 5, 6 and 7 of Annex II of the AD Agreement and Article VI:1 of the GATT 1994 because the European Union, when performing the dumping determination, improperly rejected data on export prices provided by the Russian exporters and based its findings on the existence of dumping on the facts available;
 - i) Articles 1, 2.1, 2.2, 9.3 and 11.3 of the AD Agreement, Articles I:1, VI:1, VI:2 of the GATT 1994 and the second Supplementary Provision to Article VI:1 in Annex I to the GATT 1994 because the European Union imposed and continues levying anti-dumping duties on imports of ammonium nitrate from the Russian Federation based on a country-wide dumping margin calculated pursuant to a methodology that did not conform to the said provisions of Article 2 of the AD Agreement and of the GATT 1994;
 - j) Articles 11.3, 3.1 and 3.2 of the AD Agreement because the European Union failed to perform proper undercutting and underselling calculations;
 - k) Articles 11.3, 3.1, 3.2, 3.4 and 4.1 of the AD Agreement because the European Union based its likelihood of recurrence of injury determination on data relating to a non-representative sample of the domestic industry and because the European Union made the likelihood of injury determination based on the incomplete, non-representative and erroneous data provided by the sampled companies and failed to examine and explain

the significantly divergent economic performance between the sampled and non-sampled EU producers;

- l) Articles 11.3, 3.1, 3.2 and 3.4 of the AD Agreement because the European Union erroneously concluded that there were no indications that the non-injurious situation of the European Union industry would be sustainable;
- m) Articles 11.3, 3.1 and 3.4 of the AD Agreement because the European Union, in determining that the expiry of the measure would be likely to lead to recurrence of injury and recurrence or continuation of dumping, failed to base that determination on positive evidence and an objective examination of the relevant factors, including the level of production capacities available in Russia and the ability of third country markets to absorb Russian exports;
- n) Articles 1, 2.1, 2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 5.3, 5.4, 9.1, 9.3, 11.1, 11.3 and 18.1 of the AD Agreement and Articles I:1, II:1 (a) and (b), VI:1 and VI:2 of the GATT 1994 because the European Union initiated an expiry review, made likelihood of recurrence of injury and dumping determinations, extended the anti-dumping measures, levied and continues levying anti-dumping duties on imports of stabilized ammonium nitrate for which no anti-dumping investigation was ever conducted and no dumping and material injury determinations were ever made;
- o) Articles 6.1.2 and 6.4 of the AD Agreement because on numerous occasions the European Union delayed granting the interested parties access to the non-confidential file of the review;
- p) Articles 6.1.3 and 6.4 of the AD Agreement because the European Union failed to provide to the interested parties the full text of the written application received on 28 March 2013, on the basis of which the European Union initiated the expiry review;
- q) Article 6.5 of the AD Agreement because the European Union treated as confidential, without any good cause shown, information supplied by the domestic industry;
- r) Article 6.5.1 of the AD Agreement because the European Union failed to require the domestic industry to furnish a sufficiently detailed non-confidential summary of the data submitted in confidence, including the European Union domestic industry submission of 12 May 2014, which the European Union relied upon as the basis for determining that dumping and injury were likely to recur;
- s) Article 6.8 and paragraphs 3, 5, 6 and 7 of Annex II of the Anti-Dumping Agreement because, despite the cooperation of the Russian exporters and producers under the investigation and their appropriate submission of verifiable information in a timely fashion so that it could be used in the investigation without undue difficulties, the European Union rejected this information and based its determinations on information from alternative sources;
- t) Article 6.9 of the AD Agreement because the European Union failed to inform the interested parties of the essential facts under consideration which formed the basis for the decision to extend the anti-dumping measures;
- u) Articles 12.2 and 12.2.2 of the AD Agreement because the European Union failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authority and to explain the reasons which led to the acceptance or rejection of the arguments of the interested parties;
- v) Articles 1, 18.1 and 18.4 of the AD Agreement as well as Article VI of the GATT 1994 because an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of the GATT 1994 and in accordance with the provisions of the AD Agreement, which the European Union did not observe with regard to the anti-dumping measures on imports of ammonium nitrate originating in the Russian Federation; and

- w) Article XVI:4 of the WTO Agreement because the European Union failed to ensure the conformity of the anti-dumping measures on imports of ammonium nitrate originating in the Russian Federation with its obligations as provided in the AD Agreement and GATT 1994.

The Russian Federation reserves the right to raise additional factual and legal issues during the course of the consultations.

The Russian Federation looks forward to receiving a reply of the European Union to this Request, and is ready to consider with the European Union a mutually convenient date for consultations.
