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RUSSIAN FEDERATION – MEASURES CONCERNING THE EXPORTATION OF WOOD PRODUCTS

REQUEST FOR CONSULTATIONS BY THE EUROPEAN UNION

The following communication, dated 20 January 2022, from the delegation of the European Union to the delegation of the Russian Federation, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Russian Federation pursuant to Articles 4 and 1.1, first sentence, of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), in conjunction with Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 1.1, second sentence, of the DSU with regard to measures adopted by the Russian Federation restricting the exportation of wood products. Those measures adversely affect exports of wood products from the Russian Federation to the European Union.

1. The measures at issue

The Russian Federation has adopted several measures which form part of a broader policy aiming to ban or restrict the exportation of certain wood products, in line with the instructions issued publicly to the Russian Government by the President of the Russian Federation.¹

The measures at issue can be summarised as follows.

a. Termination of tariff-rate quotas on exports of wood products

Under its Protocol of Accession (WT/MIN(11)/24, WT/L/839), the Russian Federation undertook tariff concessions also with respect to export duties. These export duty bindings are recorded in Part V of the Russian Federation's Schedule of Concessions and Commitments on Goods ("Schedule"), which was also annexed to the GATT 1994. As part of these tariff concessions, the Russian Federation undertook the commitment to apply an export duty of no more than 13% and 15% *ad valorem*, respectively, to certain quantities of certain rough wood exports, that is tariff-rate quotas ("TRQs"), with also scheduled allocations of quantities for exportation to the European Union. These TRQs for exportation are specified in the Annex to Part V of the Russian Federation's Schedule as follows:

¹ On 30 September 2020, the President of the Russian Federation instructed the Russian Government to prepare a complete ban on exports of certain unprocessed coniferous and other round-wood, starting from 1 January 2022. President Putin is quoted by the Russian News Agency as having stated: "I request imposing complete ban on shipment of unprocessed or roughly processed conifer and valuable hardwood out of Russia starting January 1, 2022," and as having tasked the Government with "preparing the legislative base to solve the task of preventing uncontrolled outflow of unprocessed timber." See TASS, Russian News Agency, Putin instructs government to stop uncontrolled export of unprocessed timber, 30 September 2020, <https://tass.com/economy/1206747>.

Annex to Part V

Aggregate of HS 4403 20 110 and 4403 20 190

Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared of spruce of the species 'Picea abies Karst' or silver fir (Abies alba Mill)

Global volume of TRQ, thousand cubic metre	In-quota duty	Out-of-quota duty
6 246, 5 Including: EU – 5 960,6; others - 285,9	13%	To be established in accordance with the tariff applied by the Russian Federation

Aggregate of HS 4403 20 310 and 4403 20 390

Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared of pine of the species "Pinus sylvestris L."

Global volume of TRQ, thousand cubic metre	In-quota duty	Out-of-quota duty
16 038,2 Including: EU – 3 645,9; others - 12 392,3	15%	To be established in accordance with the tariff applied by the Russian Federation

The Russian Federation implemented these concessions by introducing corresponding TRQ quantities and their allocation into its legislation through Government Resolution² 779 of 30 July 2012 (Government Resolution 779)³ and in-quota tariff rates of 13% or 15%, respectively, through Government Resolution 754 of 30 August 2013 (Government Resolution 754)⁴ for an indefinite period of time. Government Resolution 779 defined the product scope for these TRQs as follows, with reference to the Eurasian Economic Union (EAEU) commodity nomenclature:

- EAEU TN VED⁵ codes 4403 23 110 0, 4403 23 190 0, and 4403 24 100 0) European spruce or European silver fir;
- EAEU TN VED codes 4403 21 110 0, 4403 21 190 0 and 4403 22 100 0) Scotch pine or 'common spruce and pine'.

Government Resolution 779 further provided that "the tariff quota distribution shall be performed as provided by the respective international treaty of the Russian Federation".⁶ The export volumes in cubic meters covered by the TRQs indicated in Government Resolution 779 are the same as the volumes of TRQs provided in the Annex to Part V of the Russian Federation's Schedule.

² Although "regulation" might be suitable, "resolution" is the term used as translation of the Russian term *postanovleniye* in this request for consultations, as this corresponds best to the practice of the Russian Federation's official legislative websites, as well as, with significant variation, in WTO documents.

³ Resolution of the Government No. 779 of 30 July 2012 On the tariff quotas for certain types of coniferous timber exported from the territory of the Russian Federation and the Customs Union member states.

⁴ Resolution of the Government No. 754 of 30 August 2013 On the approval of export customs duty rates for goods exported from the Russian Federation outside the member states of the agreement on the Customs Union, and on the abrogation of several acts of the Government of the Russian Federation.

⁵ TN VED stands for *tovarnaya nomenklatura vneshneekonomicheskoy deyatel'nosti*, that is: commodity nomenclature of foreign economic activity.

⁶ Paragraph 2 of the Rules of distribution between foreign trade operators of the tariff quotas for European spruce, European silver fir or Scotch pine exported from the territory of the Russian Federation and the territories of the member states of the Customs Union to the European Union (approved through Government Resolution No. 779 of 30 July 2012).

The Russian Federation has stopped applying these TRQs on certain wood products since 1 January 2022: Government Resolution 396⁷ repealed, as of 1 January 2022, Government Resolution 779, thereby terminating the TRQs in question. A significant part of these TRQs used to be, and had to be, allocated to exports to the European Union. Following the termination of these TRQs, the export duties applied by the Russian Federation on the products at stake are "80% of customs value, but not less than 55.2 euro per 1 cubic meter", according to the out-of-quota tariff rates established in Government Resolution 754.

This request also covers any amendment, supplement, replacement, renewal, extension, implementing measure or other measures related to the measure by which the Russian Federation has stopped applying TRQs, including any adjustments as to its form, level, product scope or otherwise.

b. Reduction of the number of border crossing points for the exportation of wood products

The Russian Federation has reduced the number of border crossing points permitted for the exportation of certain wood products falling under the following EAEU tariff lines from almost one hundred road, railway, maritime and inland waterway border crossing points, of which 20 road and 13 railway crossing points on the land border with the European Union,⁸ to only two railway border crossing points, of which one with the European Union and one with North Korea:

- 4403 11 000,
- 4403 12 000 1,
- 4403 12 000 2,
- 4403 12 000 3,
- 4403 21,
- 4403 22,
- 4403 23,
- 4403 24,
- 4403 25,
- 4403 26 000 0,
- 4403 91,
- 4403 93,
- 4403 94 000 0, and
- 4403 99 000 1.

The Russian Federation has put into effect this measure through, *inter alia*, Government Resolution No. 1225 of 20 July 2021 On the designation of the points for crossing through the state border of the Russian Federation for the exportation from the territory of the Russian Federation of goods classified in commodity code 4403 of the common Commodity nomenclature of foreign economic activity of the Eurasian Economic Union, and on amendments to Government Resolution No. 521 of the Government of the Russian Federation of 15 July 2010. The restrictions do not appear to apply to exports to other member states of the EAEU.

This request also covers any schedule or annex to the measures by which the Russian Federation has reduced the number of land border crossing points, as well as any amendment, supplement, replacement, renewal, extension, implementing measure or other related measures, including any adjustments as to its form, level, product scope or otherwise.

⁷ Resolution of the Government No. 396 of 18 March 2021 On amendments to several acts of the Government of the Russian Federation and the revocation of several acts and individual provisions of several acts of the Government of the Russian Federation.

⁸ See Resolution of the Government of the Russian Federation of 15 July 2010 No. 521 On the designation of the points for crossing through the state border of the Russian Federation for the exportation of certain types of goods from the territory of the Russian Federation.

2. Legal basis for the complaint in respect of the Russian measures

The measures described above appear to be inconsistent with the Russian Federation's obligations under the covered agreements, in particular:

a. Termination of TRQs on exports of certain wood products

The termination of TRQs on exports of certain wood products appears to be inconsistent with the obligations of the Russian Federation under the covered agreements and, in particular, with:

- Article II:1(a) of the GATT 1994, because, through this measure, the Russian Federation accords to the commerce of the European Union in certain wood products treatment less favourable than that provided for in the appropriate part of the appropriate Schedule annexed to the GATT 1994, namely that provided for in Part V and the Annex to Part V of the Russian Federation's Schedule.
- Paragraph 2, second sentence, of the Protocol on the Accession of the Russian Federation (WT/MIN(11)/24, WT/L/839) in conjunction with paragraphs 638 and 1450 of the Report of the Working Party on the accession of the Russian Federation to the WTO (WT/ACC/RUS/70, WT/MIN(11)/2), because the Russian Federation does not exempt products described in Part V and the Annex to Part V of the Schedule, namely certain wood products under tariff heading 4403, from export duties in excess of those set-forth and provided in Part V and the Annex to Part V of its Schedule; because the Russian Federation does not implement its tariff concessions and commitments contained in Part V and the Annex to Part V of the Schedule; and because the Russian Federation does not apply export duties in conformity with the WTO Agreement.

b. Reduction of the number of border crossing points for the exportation of wood products

The reduction of the number of border crossing points for the exportation of certain wood products appears to be inconsistent with the obligations of the Russian Federation under the covered agreements and, in particular, with:

- Article XI:1 of the GATT 1994, because, through this measure, the Russian Federation has instituted and is maintaining restrictions other than duties, taxes or other charges on the exportation of certain wood products destined for the territory of the European Union and other Members;
- Article XIII:1 of the GATT 1994, because, through this measure, the Russian Federation applies restrictions on the exportation of certain wood products destined for the territory of the European Union and other Members, while the Russian Federation has not similarly restricted the exportation of the like products to all third countries.
- Article I:1 of the GATT 1994, because, with respect to rules and formalities in connection with exportation, the Russian Federation fails to accord an advantage, favour, privilege or immunity granted by the Russian Federation to products destined for another country immediately and unconditionally to the like products destined for the territories of the European Union and other Members.
- Paragraph 2, second sentence, of the Protocol on the Accession of the Russian Federation (WT/MIN(11)/24, WT/L/839)⁸ in conjunction with paragraphs 668 and 1450 of the Report of the Working Party on the accession of the Russian Federation to the WTO (WT/ACC/RUS/70, WT/MIN(11)/2), because the Russian Federation applies to certain wood products quantitative restrictions on exports or restrictions on the sale for export or measures having equivalent effect that cannot be justified under the provisions of the WTO Agreement.

The above measures of the Russian Federation appear to nullify or impair the benefits accruing to the European Union directly or indirectly under the GATT 1994.

The European Union reserves the right to address additional measures and claims, including under other provisions of the covered agreements, regarding the above matters during the course of the consultations in light of the information that the Russian Federation may provide. The European Union looks forward to receiving the Russian Federation's reply to this request and expresses its readiness to consider a mutually convenient format and date for the consultations.
