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RUSSIAN FEDERATION – RECYCLING FEE ON MOTOR VEHICLES

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 10 October 2013, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 9 July 2013, the European Union requested consultations with the Government of the Russian Federation ("Russia"), pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 8 of the Agreement on Trade-Related Investment Measures (the "TRIMs Agreement") regarding Russia's measures relating to a charge, the so called "recycling fee", imposed on motor vehicles.

The European Union held consultations with Russia on 29 and 30 July 2013. Those consultations unfortunately did not resolve the dispute.

As a result, the European Union respectfully requests that a Panel be established to examine this matter pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994 and Article 8 of the TRIMs Agreement.

Russia imposes a "recycling fee" on imported motor vehicles. In contrast, domestic vehicles are exempted from that payment, under certain conditions. An exemption is also available to vehicles imported from Belarus and Kazakhstan.

In addition, Russia subjects the availability of the exemption to domestic producers to certain conditions –including inter alia local content requirements – that favour the purchase and/or use of parts and components produced in Russia, Belarus or Kazakhstan over parts and components produced and imported from other WTO Members, including the European Union.

Furthermore, the "recycling fee" steeply increases for certain categories of vehicles and for vehicles "produced more than three years ago". This structure of the "recycling fee" appears to discriminate in favour of domestic vehicles.

The European Union understands that these Russian measures are reflected in the following:

- Federal Law No 89-FZ on production and consumption wastes, as amended by Federal Law No 128-FZ on introduction of amendments to the Federal Law No 89-FZ on production and consumption wastes and Article 51 of the Budget code of the Russian Federation published in Rossiyskaya Gazeta (Российская газета) No 5845 of 30 July 2012;
- Resolution of the Government of the Russian Federation No 870 of 30 August 2012 on recycling fee for wheeled transport vehicles (Постановление Правительства РФ от 30 августа 2012 г. No 870 "Об утилизационном сборе в отношении колесных

транспортных средств"), and Rules ("Правила") annexed thereto, published in Rossiyskaya Gazeta No 5873 of 31 August 2012.

For each of these measures, this request also covers any amendments, replacements, extensions, implementing measures or other related measures, including any act of Russia's Parliament or Russia's executive that would confirm, extend, amend, or otherwise affect the measures in question.

The European Union considers that these measures are inconsistent with Russia's obligations under the following WTO provisions:

- Article I:1 of the GATT 1994 because Russia has failed to accord any advantage, favour, privilege or immunity granted to products originating in any other countries immediately and unconditionally to the like products originating in the territories of all other Members, notably the European Union;
- Article II:1 (a) and (b) of the GATT 1994 because Russia failed to accord to commerce of another Member treatment no less favourable than that provided for in the appropriate Part of the Schedule annexed to the GATT 1994; because Russia has failed to exempt products which are the products of territories of another Member, on their importation into Russia's territory, from ordinary customs duties in excess of those set forth and provided in Russia's Schedule, and because Russia has failed to exempt such products from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date;
- Article III:2 of the GATT 1994 because Russia subjects the products of the territory of other Members imported to the territory of Russia, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Russia has also applied internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1 of Article III of the GATT 1994;
- Article III:4 of the GATT 1994 because the measures accord less favourable treatment to imported products than that accorded to like products originating in Russia in respect of all laws, regulations, and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use;
- Article 2.1 and 2.2 of the TRIMs Agreement in conjunction with paragraphs 1(a) and/or 2(a) of the Illustrative List annexed to the TRIMs Agreement because the measures are trade related investment measures, compliance with which is necessary to obtain an advantage and which require the purchase or use by an enterprise of products of domestic origin or from any domestic source and/or which restrict the importation by an enterprise of products used in or related to its local production.

Accordingly, the European Union respectfully requests the establishment of a Panel with standard terms of reference in accordance with Article 7.1 of the DSU.

The European Union asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 22 October 2013.
