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**RUSSIA – ANTI-DUMPING DUTIES ON LIGHT COMMERCIAL VEHICLES
FROM GERMANY AND ITALY**

**NOTIFICATION OF AN APPEAL BY THE RUSSIAN FEDERATION
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),
AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 20 February 2017, from the Delegation of Russia, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17.1 of the DSU, the Russian Federation hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *Russia – Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy* (WT/DS479) ("Panel Report"). Pursuant to Rule 20(1) of the Working Procedures for Appellate Review (WT/AB/WP/6, 16 August 2010) ("Working Procedures"), the Russian Federation simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

2. For the reasons further elaborated in its submissions to the Appellate Body, the Russian Federation appeals, and requests the Appellate Body to reverse or modify, certain issues of law covered in the Panel Report and legal interpretations developed by the Panel in this dispute.

3. Pursuant to Rule 20(2)(d)(iii) of the Working Procedures, the present Notice of Appeal provides an indicative list of the paragraphs of the Panel Report containing the alleged errors of law and legal interpretation, without prejudice to the ability of the Russian Federation to refer to other paragraphs of the Panel Report in the context of its appeal.

I. Appeal of the Panel's legal interpretation of Article 4.1 of the Anti-Dumping Agreement

4. The Russian Federation seeks review by the Appellate Body of the Panel's interpretation of Article 4.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement").

5. The Panel's interpretation is in error, *inter alia*, because:

- the Panel erred in its legal interpretation of Article 4.1 of the Anti-Dumping Agreement by failing to take into account the requirement of "positive evidence" in the meaning of Article 3.1 of the Anti-Dumping Agreement;
- the Panel erred in its legal interpretation of Article 4.1 of the Anti-Dumping Agreement by not adhering to the principles of harmonious and effective interpretation;
- the Panel erred by finding the risk of material distortion in the injury analysis on the basis of the "sequence of events" concerning the definition of the domestic industry;

- the Panel's findings of violation of Articles 4.1 and 3.1 of the Anti-Dumping Agreement are not in conformity with Article 17.6 (ii) of the Anti-Dumping Agreement.

6. Accordingly, the Russian Federation requests the Appellate Body:

- to reverse or modify the Panel's findings in paragraphs 7.21 (b), 7.21 (c) of its Report, as well as paragraph 7.15 (c) together with the footnote 85 and paragraphs 7.27 and 7.26 (a) of its Report;
- to reverse the Panel's findings in paragraphs 7.15 (a) and 7.21 (d), 8.1 (a) of its Report.

7. If the Appellate Body finds that the Panel erred in its conclusions regarding the interpretation of Article 4.1 of the Anti-Dumping Agreement, the Russian Federation respectfully requests to reverse the findings of the Panel in paragraphs 7.16, 7.22, 7.27 and 8.1 (b) of its Report that refer to consequential violation of Article 3.1 of the Anti-Dumping Agreement.

II. Appeal of the Panel's error in interpreting and applying Articles 3.1 and 3.2 of the Anti-Dumping Agreement

8. The Panel erred in concluding that the DIMD acted inconsistently with Articles 3.1 and 3.2 of the Anti-Dumping Agreement by failing to take into account the impact of the financial crisis in determining the appropriate rate of return in its consideration of price suppression because the Panel erred in its application of the legal standard under Articles 3.1 and 3.2 of the Anti-Dumping Agreement to the facts before it.

9. Accordingly, the Russian Federation respectfully requests the Appellate Body to reverse the Panel's findings in paragraphs 7.64–7.67 and 8.1 (d)(i).

10. If the Appellate Body finds that the Panel erred in its legal findings related to the determination by the DIMD of the rate of return for price suppression analysis, the Russian Federation respectfully requests to reverse the findings of the Panel in paragraphs of 7.181–7.182 and 8.1 (f)(i) of its Report that refer to violation of Article 3.1 and Article 3.2 of the Anti-Dumping Agreement.

III. Appeal of the Panel's legal interpretation of Articles 6.9 and 6.5 of the Anti-Dumping Agreement and their application to the facts of the case

11. The Panel erred in the legal interpretation and application of Article 6.9 of the Anti-Dumping Agreement in conjunction with Article 6.5 of the Anti-Dumping Agreement by finding a consequential violation of Article 6.9 of the Anti-Dumping Agreement and failing to examine how the investigating authority disclosed the essential facts at issue.

12. Accordingly, the Russian Federation requests the Appellate Body:

- to modify the Panel's legal findings with regard to the relationship between Article 6.9 and Article 6.5 of the Anti-Dumping Agreement;¹
- to modify the Panel's legal findings relating to the confidential treatment of the actual figures for the actual import volumes and the weighted average import price² of LCVs produced by each German exporting producer³ and find that the DIMD did not act inconsistently with Article 6.9 of the Anti-Dumping Agreement by providing the interested parties with summaries of omitted actual figures⁴;

¹ Panel Report, paras. 7.268–7.270 and 7.278.

² As well as the weighted average export price for LCVs exported by each German exporting producer into the CU.

³ Panel Report, paras. 7.270 and 7.278 (including information listed in items (d), (e), (f), (i), (j) of Table 12).

⁴ Panel Report, para. 7.278 (information listed in items (d) to (o) of Table 12).

- to find that the Panel erred when finding that the DIMD acted inconsistently with Article 6.9 by not providing the interested parties with (i) the actual figures for the actual import volumes and the weighted average import price of LCVs produced by each German exporting producer⁵; and (ii) the actual figures that show the domestic consumption and production volumes of LCVs in the CU⁶;
- to reverse the Panel's findings in paragraphs 7.268-7.270, 7.278 and 8.1(h)(ii) of its Report.

13. The Panel violated Article 15.2 of the DSU by adding in the final report a new legal finding in paragraph 7.270 that had not appeared in the Panel's interim report. In addition, the Panel violated Article 7 of the DSU by exceeding its terms of reference by making the legal finding in paragraph 7.270 of its Report because the conformity of confidential treatment of data from the electronic customs database was not specifically challenged by the European Union. The Russian Federation respectfully requests the Appellate Body to reverse this finding of the Panel.

14. The Panel erred in finding that the actual import volumes and the weighted average import price of LCVs produced by Daimler AG and Volkswagen AG, respectively, were not properly treated as confidential because the Panel made an erroneous finding that the data from the electronic customs database were not properly treated as confidential.

15. Accordingly, the Russian Federation respectfully requests the Appellate Body:

- to modify the Panel's legal findings under Article 6.5 of the Anti-Dumping Agreement relating to the requirements to show "good cause" with respect to electronic customs database that was submitted to the DIMD under the national law and the CU law and find that under Article 6.5 of the Anti-Dumping Agreement the requirement of the "good cause" shown by the national customs authorities is fulfilled through the reference to the legislation requiring to treat the information at issue as confidential;
- to modify the Panel's legal finding that the actual import volumes and the weighted average import price of LCVs produced by each German exporting producer⁷ were not properly treated as confidential under Article 6.5 of the Anti-Dumping Agreement⁸;
- to find that the Panel erred by not taking into account that the DIMD met the requirements of Article 6.9 of the Anti-Dumping Agreement by providing the interested parties with summaries of omitted actual figures for actual import volumes and the weighted average import price of LCVs produced by each German exporting producer⁹;
- to reverse the Panel's findings in paragraphs 7.241-7.247, insofar as these findings refer to disclosure of essential facts, paragraphs 7.269-7.270, 7.278 and 8.1(h)(ii) of its Report.

⁵ Ibid.

⁶ Panel Report, paras. 7.269 and 7.278.

⁷ As well as the weighted average export price for LCVs exported by each German exporting producer into the CU.

⁸ Including information listed in items (d), (e), (j) of Table 12.

⁹ Panel Report, para. 7.278.