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**RUSSIA - TARIFF TREATMENT OF CERTAIN AGRICULTURAL
AND MANUFACTURING PRODUCTS**

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 26 February 2015, 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.

My authorities have instructed me to request the establishment of a panel pursuant to Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") regarding the tariff treatment the Russian Federation ("Russia") accords to certain goods in both agricultural and manufacturing sectors.

On 31 October 2014, the European Union requested consultations with Russia, pursuant, *inter alia*, to Articles 1 and 4 of the DSU and Article XXII of the GATT 1994.

The European Union held consultations with Russia on 28 November 2014. Unfortunately, the consultations failed to settle the dispute.

As a result, the European Union respectfully requests that a Panel be established pursuant to Articles 4 and 6 of the DSU and Article XXIII of the GATT 1994 to examine this matter on the basis of the standard terms of reference, as set out in Article 7.1 of the DSU.

Russia subjects a number of goods to import duties inconsistent with its Schedule of Concessions and Commitments annexed to the GATT 1994 ("Schedule"). In particular, Russia applies customs duties that are in excess of those set forth and provided for in its Schedule as regards the goods concerned.

Firstly, for certain goods (paper and paperboard products), Russia applies *ad valorem* duty rates – as provided for in the legal instruments referred to below – that exceed the *ad valorem* bound rates. This specifically concerns five measures at issue: five tariff lines (4810 22 900 0, 4810 29 300 0, 4810 92 300 0, 4810 13 800 9 and 4810 19 900 0), for which the applied duty of 15% or 10%, depending on the tariff line, clearly exceeds the bound rate which is set at 5%. In addition, with respect to tariff line 4810 92 100 0, despite the fact that the currently applicable duty rate appears to be equal to the bound rate (5%), the legal instruments referred to below provide for a duty rate of 15%, and therefore exceeding the bound rate, applicable as from 1 January 2016 (sixth measure at issue).

Secondly, for certain other goods (including palm oil and its fractions, refrigerators and combined refrigerator – freezers), the legal instruments referred to below provide for a type/structure of duty that varies from the type/structure of duty recorded in the Schedule. The structure and design of those specific variations results in duties being levied in excess of those provided for in the Schedule for these goods whenever the customs value is below a certain level.

In some of those instances, Russia applies combined duty rates (combining an *ad valorem* and a specific element; for instance "3% but not less than 0,09 EUR/kg") in relation to goods for which the Schedule provides for *ad valorem* rates (for instance "3%"). In such cases, the specific

element of the applied rate determines the minimum amount of duty to be levied. As a result, duties are imposed in excess of the bound rate in cases where the customs value of the good is below a certain level. Russia accords such treatment to the following tariff lines: 1511 90 190 2, 1511 90 990 2 (palm oil) and 8418 10 200 1 (combined refrigerator – freezers). The duties applied to those three tariff lines constitute the seventh, eighth and ninth measure at issue.

In certain other instances, Russia applies combined duty rates (combining an *ad valorem* and a specific element; for instance "16%, but not less than 0,156 EUR/L") in relation to goods for which the Schedule provides for a formula that requires Russia to impose the lower of the amounts of duty: either the amount based on the application of an *ad valorem* rate or of the amount based on the application of a combined rate (for instance "16,7%; or 16%, but not less than 0,156 EUR/L; whichever is the lower"). As a result, duties are imposed in excess of the bound rate in cases where the customs value of the good is below a certain level. Russia accords such treatment to the following tariff lines: 8418 10 800 1 and 8418 21 100 0 (refrigerators and combined refrigerator – freezers). The duties applied to those two tariff lines constitute the tenth and eleventh measure at issue respectively.

In relation to the seventh to eleventh measures at issue, Russia provides for no mechanism, such as a "ceiling" on the level of the applied duty, that would prevent the *ad valorem* equivalents of the duties actually applied from exceeding the level of the bound duties.

In addition, it appears that the legal instruments referred to below systematically provide, in relation to a significant number of tariff lines, for a type/structure of duty that varies from the type/structure of duty recorded in the Schedule in a way that leads to the application of duties in excess of those provided for in the Schedule for those goods whenever the customs value is below a certain level, in one of the two ways described above (in relation to the seventh, eighth, ninth, tenth and eleventh measure at issue), without providing for a mechanism that would prevent the *ad valorem* equivalents of the applied duties from exceeding the level of the bound duties. This general practice constitutes the twelfth measure at issue.

On the basis of the information obtained in the course of consultations, the European Union understands that Russia imposes these measures through, inter alia, the following legal instruments¹:

- Common Customs Tariff of the Customs Union of the Republic of Belarus, Kazakhstan and Russian Federation, approved by Decision No. 54 of the Board of the Eurasian Economic Commission of 16 July 2012 "On the Common Customs Tariff Regulation of the Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation" (entered into force on 23.08.2012), as amended by subsequent acts, including by:
 - Decision No. 9 of the Board of the Eurasian Economic Commission of 29 January 2014 "On the determination of the import customs duty rates in the Common Customs Tariff of the Customs Union with regard to certain types of paper and paperboard";
 - Decision No. 77 of the Board of the Eurasian Economic Commission of 26 May 2014 amending the Single Commodity Nomenclature of Foreign Economic Activities of the Customs Union and the Common Customs Tariff of the Customs Union in respect of certain goods in accordance with the WTO accession commitments of the Russian Federation and approving the draft Decision of the Council of Eurasian Economic Commission;
 - Decision No. 52 of the Council of the Eurasian Economic Commission of 16 July 2014 "On the determination of the import customs duty rates in the Common Customs Tariff

¹ The European Union understands that those legal instruments continue to apply within the context of the Eurasian Economic Union. The European Union also understands that after the entry into force of the Treaty on the Eurasian Economic Union between the Republic of Belarus, the Republic of Kazakhstan and Russia, the Common Customs Tariff is referred to as the "Common External Tariff of the Eurasian Economic Union" (see inter alia Decision No 112 of the Council of the Eurasian Economic Commission of 10 December 2014). This request also covers any amendments, replacements, extensions, implementing measures or other related measures that would result from the entry into force of the Treaty on the Eurasian Economic Union between the Republic of Belarus, the Republic of Kazakhstan and Russia.

of the Customs Union in respect of certain goods in accordance with the obligations of the Russian Federation in the WTO";

- Decision No. 47 of the Council of the Eurasian Economic Commission of 23 June 2014 "Amending the Single Commodity Nomenclature of Foreign Economic Activity of the Customs Union and the Common Customs Tariff of the Customs Union in respect of certain goods in accordance with the obligations of the Russian Federation to the WTO";
- Decision No. 103 of the Board of the Eurasian Economic Commission of 7 July 2014, Moscow "On the determination of the import customs duty rates in the Common Customs Tariff of the Customs Union with regard to certain types of tires and retreaded tires and certain types of footwear in accordance with the obligations of the Russian Federation in the WTO and on the approval of the draft decision of the Council of the Eurasian Economic Commission".

For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures adopted by the bodies of the Eurasian Economic Commission and/or by the bodies of the Eurasian Economic Union and/or by the legislative or executive authorities of Russia.

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

- 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 its 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.

These measures adversely affect exports of goods from the European Union to Russia, and they nullify or impair the benefits accruing to the European Union directly or indirectly under the covered agreements.
