

**Comments of the Russian side on particular market situation allegations
in frames of transition review TD0011 - cold rolled flat steel**

The Ministry of Economic Development of the Russian Federation and the Ministry of Industry and Trade of the Russian Federation ('the Russian side') have carefully studied the allegations of a particular market situation ('PMS') with regards to the Russian economy as part of transition review TD0011 - cold rolled flat steel and would like to draw Trade Remedies Authority's (TRA) attention to the following considerations.

According to the abovementioned allegations made during the review, Russian companies are vertically integrated and highly efficient. As a result, according to the authors of these allegations, situation in the Russian industry is specific. As a result, they urge the TRA not to use the costs recorded in the accounting records of vertically integrated companies, namely Severstal and NLMK. In support of its argument, they provide a reference to the European "Commission Staff Working Document on significant distortions in the economy of the Russian Federation for the purposes of trade defense investigations" ('Working Document'), thereby alleging the existence of "significant distortions" in the Russian market as an excuse for disregarding the recorded costs.

We strongly disagree with such an approach. We would like to draw the attention of the TRA to provisions of Article 2.2.1.1 of the Anti-Dumping Agreement which prescribes, in order to calculate the costs, to normally use the records of the exporting producers which are in accordance with generally accepted accounting principles in the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Besides, Article 2.2 of the Anti-Dumping Agreement requires to use "the cost of production in the country of origin" for determination of the normal value.

What is more, the WTO Appellate Body found in EU – Biodiesel (Argentina) that the EU acted inconsistently with Article 2.2.1.1 of the WTO Anti-Dumping Agreement, having determined that the domestic prices for the main raw material to produce biodiesel (soybeans) were artificially lower than international prices due to a distortion created by the Argentinian export tax system, so that the costs of the main raw materials were not reasonably reflected in

the records of the exporting producers, and therefore having replaced those costs with reference prices published by the Argentinian authorities in order to establish the normal value.¹

The WTO Appellate Body clarified that the requirement that the records kept by the exporter or producer under investigation reasonably reflect the costs associated with the production and sale of the product under consideration under Article 2.2.1.1 of the WTO Anti-Dumping Agreement “relates to whether the records of the exporter or producer suitably and sufficiently correspond to or reproduce the costs that have a genuine relationship with the production and sale of the specific product under consideration”.²

Thus, the WTO Appellate Body did “not consider that there is an additional or abstract standard of ‘reasonableness’ that governs the meaning of ‘costs’”, and ruled that Article 2.2.1.1 does not permit an investigating authority to enquire into whether the records of the producer reasonably reflect international prices.³

Moreover, references to the Working Document and any urges to use the costs’ data from outside the country of origin must be disregarded by TRA. Using such data would be contrary to the requirements of Article 2.2 of the Anti-Dumping Agreement, as further explained in the relevant WTO jurisprudence.

Thus, in light of this clear and repeated case-law, the Russian side respectfully urges the TRA to disregard the requests to deviate from using the exporters’ records, which in the present case would run afoul to the WTO norms.

¹ WTO Appellate Body Report, *EU – Biodiesel (Argentina)*, para. 7.2.7.

² WTO Appellate Body Report, *EU – Biodiesel (Argentina)*, para 6.26 and 6.56.

³ WTO Appellate Body Report, *EU – Biodiesel (Argentina)*, para 6.30.