



31 August 2017

(17-4668)

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**EUROPEAN UNION – COUNTERVAILING MEASURES ON CERTAIN  
POLYETHYLENE TEREPHTHALATE FROM PAKISTAN**

**NOTIFICATION OF AN APPEAL BY THE EUROPEAN UNION 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 30 August 2017, from the delegation of the European Union, is being circulated to Members.

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Pursuant to Articles 16.4 and Article 17 of the DSU the European Union 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 *European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan* (WT/DS486). Pursuant to Rule 20(1) of the Working Procedures for Appellate Review, the European Union simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

The European Union is restricting its appeal to those errors that it believes constitute serious errors of law and legal interpretation that need to be corrected. Non-appeal of an issue does not signify agreement therewith.

For the reasons to be further elaborated in its submissions to the Appellate Body, the European Union appeals, and requests the Appellate Body to reverse the findings and conclusions of the Panel, with respect to the following errors contained in the Panel Report: <sup>1</sup>

- The Panel failed to comply with its tasks under Article 11 of the DSU, as informed by Article 3 of the DSU, when wrongly deciding to make findings on Pakistan's claims in this case.<sup>2</sup> Since even Pakistan agreed that the countervailing duties at issue had ceased to have legal effects when the Panel was in a position to commence its work, and absent any lingering effects and an imminent risk of re-imposing the same or a similar measure in the near future, the panel proceedings lost their purpose, i.e. there was no longer a need to adjudicate on the matter in order to "secure a positive solution to the dispute". Thus, the Panel issued a mere "advisory opinion". Therefore, the European Union requests the Appellate Body to *reverse* the entirety of the Panel's findings and conclusions in its report (as summarised in Section 8 of the Panel Report) and declare moot and with no legal effect any of the findings and legal interpretations contained therein.
- If the Appellate Body does not grant the relief requested in the preceding bullet point, the European Union respectfully submits that the Panel erred in the interpretation of Article 1(1)(a)(1)(ii), footnote 1, and Annexes I to III of the SCM Agreement with respect to the EU's determination regarding the MBS.<sup>3</sup> By finding that investigating authorities have

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<sup>1</sup> Pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of the European Union to refer to other paragraphs of the Panel Report in the context of its appeal.

<sup>2</sup> Panel Report, para. 7.13.

<sup>3</sup> Panel Report, paras. 7.33 – 7.56.

the burden to determine, on the basis of the available evidence, the excess remission in case of duty drawback systems – even where the exporting Member has no proper monitoring system or procedure in place and did not carry out a further examination based on the actual transactions involved – the Panel rendered the relevant provisions of the SCM Agreement, and in particular the elements included in Annexes II and III for duty drawback systems, moot and without legal effect. As a result, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.33 – 7.56 of its Report. Since the measures at issue were withdrawn a long time ago, and with a view to limiting the Appellate Body's review, the European Union does not request the Appellate Body to complete the analysis in the present case; rather, the European Union requests the Appellate Body to declare moot and with no legal effect the entirety of the Panel's findings with respect to the MBS, since the Panel applied the wrong legal standard.<sup>4</sup>

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<sup>4</sup> Panel Report, paras. 7.57 – 7.60 and 8.1(b)(i) and 8.1(b)(ii).