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**EUROPEAN UNION – ANTI-DUMPING MEASURES ON IMPORTS OF
CERTAIN FATTY ALCOHOLS FROM INDONESIA**

**NOTIFICATION OF AN APPEAL BY INDONESIA
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 10 February 2017, from the delegation of Indonesia, is being circulated to Members.

Pursuant to Articles 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures for Appellate Review, Indonesia hereby notifies the Dispute Settlement Body of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the Panel Report entitled *European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia* (WT/DS442), which was circulated on 16 December 2016 (the "Panel Report"). Pursuant to Rules 20(1) and 21(1) of the Working Procedures for Appellate Review, Indonesia is simultaneously filing this Notice of Appeal and its Appellant's Submission with the Appellate Body Secretariat.

For the reasons to be further elaborated in its submission to the Appellate Body, Indonesia appeals and requests the Appellate Body to reverse the findings, conclusions, and recommendations of the Panel, with respect to the following errors contained in the Panel Report:¹

I. The Panel's finding under Article 2.4 of the Anti-Dumping Agreement

1. The Panel erred in the interpretation and application of Article 2.4 of the Anti-Dumping Agreement when finding that Indonesia had not demonstrated that, in its determinations in the anti-dumping investigation at issue in this dispute, the EU Commission had not acted inconsistently with this provision by making an adjustment to the export price for one of the investigated producer/exporters to account for intra-company transfers between the producer and its closely affiliated sales entity.²

2. In particular, and without prejudice to the arguments developed in Indonesia's appellant's submission, the Panel incorrectly interpreted and applied Article 2.4 by not addressing Indonesia's arguments or taking into account the need to determine whether a closely affiliated sales entity is in a sufficiently close relationship to the producing entity to warrant being treated as a single producer/exporter for the purpose of its price comparison analysis.³

¹ 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 Indonesia's right to refer to other paragraphs of the Panel Report in the context of its appeal.

² Panel Report, paras. 7.96-7.97, 7.160-7.161, and 8.1(b)(i).

³ Panel Report, paras. 7.54-7.97.

3. The Panel also incorrectly interpreted and applied Article 2.4 by concluding that the relationship between closely affiliated entities is not relevant to the determination of price adjustments and a fair comparison between export price and normal value under Article 2.4.⁴

4. The Panel also incorrectly interpreted and applied Article 2.4 by concluding that it is permissible to deduct the profits and indirect selling expenses of a closely affiliated sales entity from the export price under Article 2.4.⁵

5. The Panel also incorrectly interpreted and applied Article 2.4 by finding that the deduction of certain indirect selling expenses and profit from the export price while no corresponding deductions were made from the normal value did not result in an asymmetrical, unfair comparison under Article 2.4.⁶

6. The Panel also incorrectly interpreted and applied Article 2.4 by finding that it was permissible to make deductions from the export price for indirect selling expenses and, in particular, profit on the basis of what the investigating authority considered to be reasonable for the sector at issue.⁷

7. The Panel also incorrectly interpreted and applied Article 2.4 by dismissing the relevance of the Commission's decision to treat the producer and its closely affiliated sales entity as a single entity for the purpose of identifying the starting price for the dumping analysis.⁸

II. The Panel's duties under Article 17.6 of the Anti-Dumping Agreement and Article 11 of the DSU

8. The Panel also acted inconsistently with Articles 17.6(i) and 17.6(ii) of the Anti-Dumping Agreement, as well as Article 11 of the DSU, by reaching a conclusion that the measures at issue were consistent with Article 2.4 of the Anti-Dumping Agreement without first considering Indonesia's arguments and evidence.⁹ Specifically, the Panel acted inconsistently with Articles 17.6(ii) of the Anti-Dumping Agreement, as well as Article 11 of the DSU, by failing to consider Indonesia's legal arguments and failing to interpret Article 2.4 in accordance with customary rules of interpretation of public international law, thereby failing to make an objective assessment of the matter, including the applicability and the conformity of the measures at issue. The Panel also acted inconsistently with Articles 17.6(i) and 17.6(ii) of the Anti-Dumping Agreement, as well as Article 11 of the DSU, by applying the legal standard that it articulated without considering Indonesia's arguments and evidence, reaching a conclusion of WTO consistency on that basis and subsequently imposing on Indonesia the burden of disproving the Panel's finding.¹⁰

9. The Panel also acted inconsistently with Articles 17.6(i) and 17.6(ii) of the Anti-Dumping Agreement, as well as Article 11 of the DSU, by engaging in prohibited *de novo* review of the evidence, and by ignoring or summarily dismissing material arguments and evidence that favoured Indonesia's case.¹¹

III. Request for findings and completion of the analysis

10. For the above reasons, Indonesia, therefore, respectfully requests the Appellate Body to reverse the Panel's finding contained in paragraphs 7.96-7.97, 7.160-7.161, and 8.1(b)(i) of the Panel Report, that the EU Commission did not act inconsistently with Article 2.4 of the Anti-Dumping Agreement.

⁴ Panel Report, paras. 7.99-7.111.

⁵ Panel Report, paras. 7.112-7.117.

⁶ Panel Report, paras. 7.118-7.125.

⁷ Panel Report, paras. 7.126-7.130.

⁸ Panel Report, footnote 366.

⁹ Panel Report, paras. 7.54-7.97.

¹⁰ Panel Report, paras. 7.97, 7.110, and 7.149.

¹¹ Panel Report, paras. 7.84 and footnote 277 and paras. 7.85, 7.119, and 7.120.

11. Indonesia also respectfully requests the Appellate Body to find that the Panel acted inconsistently with Article 11 of the DSU and Article 17.6(ii) of the Anti-Dumping Agreement for the reasons provided in section II of this Notice of Appeal.

12. Finally, Indonesia requests the Appellate Body to complete the legal analysis and find that the EU Commission acted inconsistently with Article 2.4 of the Anti-Dumping Agreement in its determination of dumping margins in the underlying investigation. The factual findings contained in the Panel Report, as well as the undisputed facts on the record in the determinations of the EU Commission, constitute a sufficient basis to conclude that the measures at issue were inconsistent with Article 2.4 of the Anti-Dumping Agreement.
