

**EUROPEAN COMMUNITIES¹ – DEFINITIVE ANTI-DUMPING MEASURES
ON CERTAIN IRON OR STEEL FASTENERS FROM CHINA**

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 notification, dated 25 March 2011, from the Delegation of the European Union, is being circulated to Members.

Pursuant to Article 16.4 and Article 17.1 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 Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (WT/DS397). 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.

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 and/or modify the findings, conclusions and recommendations of the Panel, with respect to the following errors of law and legal interpretations contained in the Panel Report.

I. COUNCIL REGULATION NO. 1225/2009 ("THE BASIC AD REGULATION")

The Panel erred in its interpretation and application of Articles 6.10, 9.2 and 18.4 of the *Anti-Dumping Agreement*, Article I:1 of the *GATT 1994* and Article XVI:4 of the *WTO Agreement* and failed to make an objective assessment pursuant to Article 11 of the *DSU* when it concluded that Article 9(5) of the Basic AD Regulation is, as such, inconsistent with those provisions.² In particular:

¹On 1 December 2009, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the WTO received a Verbal Note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the Treaty of Lisbon, as of 1 December 2009, the "European Union" replaces and succeeds the "European Community". On 13 July 2010, the World Trade Organization received a Verbal Note (WT/Let/679) from the Council of the European Union confirming that, with effect from 1 December 2009, the European Union replaced the European Community and assumed all the rights and obligations of the European Community in respect of all Agreements for which the Director-General of the World Trade Organization is the depositary and to which the European Community is a signatory or a contracting party.

²Panel Report, para. 8(2)(a).

- (a) the Panel erred in the application of Article 6.10 of the *Anti-Dumping Agreement* when finding that Article 9(5) of the Basic AD Regulation concerns not only the imposition of anti-dumping duties but also the calculation of margins of dumping.³ Based on its incorrect understanding of the scope of Article 9(5) of the Basic AD Regulation, the Panel wrongly concluded that Article 9(5) of the Basic AD Regulation, as such, is inconsistent with Article 6.10 of the *Anti-Dumping Agreement*⁴;
- (b) the Panel erred in the interpretation and application of Article 6.10 of the *Anti-Dumping Agreement* and also violated Article 11 of the *DSU* when finding that Article 9(5) of the Basic AD Regulation is, as such, inconsistent with Article 6.10 of the *Anti-Dumping Agreement* in that it conditions the calculation of individual margins for producers from non-market economy countries on the fulfilment of the Individual Treatment (IT) test⁵;
- (c) the Panel erred in the interpretation and application of Article 9.2 of the *Anti-Dumping Agreement* and also violated Article 11 of the *DSU* when finding that Article 9(5) of the Basic AD Regulation is, as such, inconsistent with the obligation laid down in Article 9.2 of the *Anti-Dumping Agreement*, which does not allow the imposition of a single country-wide anti-dumping duty in an investigation involving a non-market economy country⁶;
- (d) the Panel erred in the interpretation and application of Article I:1 of the *GATT 1994* and also violated Article 11 of the *DSU* when finding that Article 9(5) of the Basic AD Regulation violates the MFN obligation of Article I:1 of the *GATT 1994*.⁷ Moreover, the Panel erred when concluding that the *Anti-Dumping Agreement* does not allow for the different treatment of imports from non-market economy countries provided for in Article 9(5) of the Basic AD Regulation⁸; and
- (e) the Panel erred when finding that the EU acted inconsistently with Article XVI:4 of the *WTO Agreement* and Article 18.4 of the *Anti-Dumping Agreement* by failing to ensure the conformity of its laws, regulations and administrative procedures with its obligations under the relevant agreements.⁹

II. COUNCIL REGULATION NO. 91/2009 (FASTENERS INVESTIGATION)

The Panel erred in the interpretation and application of Articles 6.2, 6.4, 6.5, 6.5.1, 6.10 and 9.2 of the *Anti-Dumping Agreement* and also violated Articles 6.2, 7.1 and 11 of the *DSU* when it concluded that the EU acted inconsistently with those provisions of the *Anti-Dumping Agreement* in the fasteners investigation.¹⁰ In particular:

- (a) the Panel erred in its interpretation and application of Articles 6.10 and 9.2 of the *Anti-Dumping Agreement* when finding that, having found that Article 9(5) of the Basic AD Regulation is, as such, inconsistent with those provisions, its application in

³Panel Report, para. 7.77.

⁴Panel Report, para. 7.98.

⁵Panel Report, paras. 7.96 and 7.98.

⁶Panel Report, para. 7.112 and footnote 278.

⁷Panel Report, paras. 7.124, 7.126 and 7.127.

⁸Panel Report, para. 7.125 and footnote 307.

⁹Panel Report, para. 7.137.

¹⁰Panel Report, paras. 8(2)(b), 8(2)(e) and 8(2)(f).

the fasteners investigation was, for the same reasons, inconsistent with these two provisions¹¹;

- (b) the Panel erred in the interpretation and application of Articles 6.2 and 6.4 of the *Anti-Dumping Agreement* and violated Article 11 of the *DSU* when finding that the EU violated these provisions by not providing a timely opportunity for Chinese producers to see information regarding the product types on the basis of which normal value was established, information relevant to the presentation of their case¹²;
- (c) the Panel erred in the interpretation and application of Article 6.5.1 of the *Anti-Dumping Agreement* when finding that the European investigating authorities had violated that provision in that they failed to ensure Agrati's and Fontana Luigi's compliance with the requirements of Article 6.5.1¹³;
- (d) the Panel acted inconsistently with Articles 6.2, 7.1 and 11 of the *DSU* when addressing in substance China's claim under Article 6.5 of the *Anti-Dumping Agreement* in connection with Pooja Forge¹⁴;
- (e) the Panel erred in the interpretation and application of Article 6.5 of the *Anti-Dumping Agreement* when it considered that, absent a showing of "good cause", the European investigating authorities were not entitled to grant confidential treatment to information submitted by Pooja Forge, the analogue country producer¹⁵; and
- (f) the Panel acted inconsistently with Article 6.2 of the *DSU* when considering that the issue of "the identity of the complainants and supporters" was properly identified in China's Panel Request under its claims referring to Article 6.2 and 6.4 of the *Anti-Dumping Agreement*.¹⁶

¹¹Panel Report, para. 7.148.

¹²Panel Report, paras. 7.494 and 7.495.

¹³Panel Report, paras. 7.516 and 7.517.

¹⁴Panel Report, paras. 7.518-7.526.

¹⁵Panel Report, para. 7.525.

¹⁶Panel Report, para. 7.458.