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Page: 1/4

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MOROCCO – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL FROM TURKEY

NOTIFICATION OF AN APPEAL BY MOROCCO 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 20 November 2018, from the delegation of Morocco, is being circulated to Members.

1. 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 (WT/AB/WP/6, 16 August 2010) ("Working Procedures"), Morocco hereby notifies the Dispute Settlement Body ("DSB") of its decision to appeal certain issues of law and legal interpretations in the Panel Report in *Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey* (WT/DS513/R) ("Panel Report").

2. Pursuant to Rules 21 of the Working Procedures, Morocco files this Notice of Appeal together with its Appellant Submission with the Appellate Body Secretariat.

3. Pursuant to Rule 20(2)(d)(iii) of the Working Procedures, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Morocco's ability to rely on other paragraphs of the Panel Report in its appeal.

4. Morocco seeks review by the Appellate Body of the Panel's findings regarding its terms of reference. In particular, the Panel erred in finding that Turkey's claims under Articles 3.1 and 3.4 of the Anti-Dumping Agreement fell within its terms of reference.¹ Accordingly, Morocco requests that the Appellate Body reverse the Panel's findings in, *inter alia*, paragraphs 7.27-7.29 and 7.66, and find that Turkey's claims under Articles 3.1 and 3.4 were not within the Panel's terms of reference. Morocco additionally requests the Appellate Body to reverse all of the Panel's substantive findings under Articles 3.1 and 3.4 of the Anti-Dumping Agreement, including, *inter alia*, the findings in paragraphs 7.166, 7.175, 7.191, 7.198, 7.207, 7.218, 7.219, 7.222, 7.235, 7.245, 7.250, 7.254, 7.262, 7.274, 7.277, 7.278, 7.283, 7.285, 7.287, 7.288, 7.289, and 8.3 d-f.

5. Morocco seeks review by the Appellate Body of the Panel's findings under Article 6.8 of the Anti-Dumping Agreement. The Panel erred in the interpretation and application of Article 6.8, and also failed to make an objective assessment of the matter, including an objective assessment of the facts of the case, under Article 11 of the DSU. The Panel's errors include, *inter alia*:

- finding that the MDCCE had not made an affirmative determination of non-cooperation in the final determination.² The Panel also acted inconsistently with Article 11 of the DSU in reaching its finding;

¹ See, for example, Panel Report, para. 7.29.

² See, for example, Panel Report, para. 7.91.

- finding that the MDCCE was required to "engage meaningfully" with the producers and that the MDCCE failed to do so;³
- finding that the MDCCE could not have reasonably applied facts available as a result of the MDCCE's inability to verify export sales information at third-party traders;⁴
- finding that the MDCCE did not have a proper basis to determine that the two producers had themselves failed to report the export sales;⁵ and,
- finding that MDCCE could not reject and replace all the sales information that the producers had reported.⁶

6. Morocco also seeks review by the Appellate Body of the Panel's treatment of Exhibit MAR-11 (BCI) in the context of the Panel's assessment of Turkey's claim under Article 6.8 of the Anti-Dumping Agreement. The Panel's treatment of MAR-11 is not consistent with the obligation under Article 11 of the DSU to make an objective assessment of the matter, including an objective assessment of the facts of the case.⁷

7. As a result of the errors indicated in paragraphs 5 and 6 above, Morocco requests that the Appellate Body reverse the Panel's findings, *inter alia*, in paragraphs 7.92, 7.93, 7.94, 7.95, 7.97, 7.99, 7.100, 7.101, 7.102, 7.103, 7.104, 7.107, and 8.3 b., that the MDCCE's recourse to facts available in respect of the producers' alleged failure to report the entirety of their export sales was inconsistent with Article 6.8.

8. Morocco seeks review by the Appellate Body of the Panel's findings under Article 3.1 of the Anti-Dumping Agreement. The Panel erred in the interpretation and application of Article 3.1, and also failed to make an objective assessment of the matter under Article 11 of the DSU. The Panel's errors include:

- finding that Article 3.1 can be violated independently when an erroneous act or omission, such as an erroneous finding that the domestic industry in question is unestablished, taints the overall injury analysis;⁸
- finding that it need not rule on whether the Anti-Dumping Agreement requires an investigating authority to determine that the domestic industry is unestablished in the context of making a determination that the establishment of that industry is materially retarded;⁹
- undertaking an assessment and making findings under Article 3.1 in the abstract without regard to whether an obligation to determine "unestablishment" exists or the contours of that obligation;¹⁰
- finding that the MDCCE did not assess, based on positive evidence and an objective examination, whether the domestic industry was established;¹¹
- finding that the MDCCE did not properly examine the question of the domestic industry's establishment;¹²

³ See, for example, Panel Report, paras. 7.92, 7.93, 7.99, and 7.101.

⁴ See, For example, Panel Report, paras. 7.94-7.95.

⁵ See, for example, Panel Report, paras. 7.95, 7.97, 7.99, 7.100, 7.101, and 7.102.

⁶ See, for example, Panel Report, para. 7.103.

⁷ See, for example, Panel Report, para. 7.101.

⁸ See, for example, Panel Report, paras. 7.148 and 7.151.

⁹ See, for example, Panel Report, fn 213 to para. 7.148.

¹⁰ See, for example, Panel Report, paras. 7.151, 7.166, 7.175, 7.191, 7.198, 7.207, 7.218, 7.219, and 8.3 d.

¹¹ See, for example, Panel Report, para. 7.219.

¹² See, for example, Panel Report, para. 7.219.

- finding that the MDCCE acted inconsistently with Article 3.1 of the Anti-Dumping Agreement in determining that the domestic industry was unestablished;¹³ and
- additionally, the Panel acted inconsistently with Article 11 of the DSU in finding that the MDCCE's analysis of "establishment" violated the Anti-Dumping Agreement without finding that the Anti-Dumping Agreement requires an investigating authority to determine that the domestic industry is "unestablished".¹⁴ In reaching this finding, the Panel failed to make an objective assessment of the matter, including an objective assessment of the applicability of and conformity with the relevant covered agreements.

9. Based on the above, Morocco requests that the Appellate Body reverse the Panel's findings in, *inter alia*, footnote 213 to paragraph 7.148 and paragraphs 7.148, 7.151, 7.166, 7.175, 7.191, 7.198, 7.207, 7.218, 7.219, and 8.3 d. of the Panel Report. Morocco also requests that the Appellate Body find that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter under Article 11 of the DSU.

10. Morocco seeks review by the Appellate Body of the Panel's findings under Articles 3.1 and 3.4 of the Anti-Dumping Agreement with respect to "material retardation of the establishment of the domestic industry". The Panel's finding regarding the MDCCE's decision to conduct the injury analysis in the form of "material retardation of the establishment of the domestic industry" is entirely premised on its finding under Article 3.1 regarding "unestablishment".¹⁵ Accordingly, as a consequence of reversing the Panel's finding under 3.1 regarding the finding of "unestablishment"¹⁶, Morocco requests that the Appellate Body also reverse the Panel's findings in, *inter alia*, paragraphs 7.222 and 8.3 e., that the MDCCE acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement by conducting the injury analysis in the form of "material retardation of the establishment of the domestic industry".

11. Morocco seeks review by the Appellate Body of the Panel's findings under Articles 3.1 and 3.4 of the Anti-Dumping Agreement with regard to its assessment of the captive market. The Panel erred in the interpretation and application of Articles 3.1 and 3.4. The Panel's errors include, *inter alia*:

- finding that, in failing to evaluate each of the two parts that made up the hot-rolled steel domestic industry in Morocco, the MDCCE failed to even-handedly evaluate the domestic industry as a whole, and therefore failed to meet the requirement of objectivity set out in Article 3.1 of the Anti-Dumping Agreement;¹⁷
- finding that the requirement of objectivity in Article 3.1 applies to the MDCCE's evaluation of each injury factor that formed part of its injury analysis, and therefore required the MDCCE to evaluate data pertaining to the captive market in its evaluation of each of those injury factors;¹⁸
- finding that MDCCE's conclusion that captive sales do not compete directly with imports did not serve as a satisfactory explanation based on which the MDCCE could exclude the captive market from its injury analysis;¹⁹ and,
- finding that the MDCCE acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement in disregarding the captive market in its injury analysis.²⁰

12. Accordingly, Morocco requests that the Appellate Body reverse the Panel's findings in, *inter alia*, paragraphs 7.273, 7.274, 7.277, 7.278, 7.289 b., and 8.3 f(ii) of the Panel Report.

13. Morocco also seeks review by the Appellate Body of the Panel's interpretation and application of Articles 3.1 and 3.4 of the Anti-Dumping Agreement with regard to its assessment of the

¹³ See, for example, Panel Report, paras. 7.166, 7.175, 7.191, 7.198, 7.207, 7.218, 7.219, and 8.3 d.

¹⁴ See, for example, Panel Report, fn. 213 to para. 7.148.

¹⁵ See, for example, Panel Report, para. 7.222 and 8.3 e.

¹⁶ See, for example, Panel Report, paras. 7.166, 7.175, 7.191, 7.198, 7.207, 7.218, 7.219, and 8.3 d.

¹⁷ See, for example, Panel Report, para. 7.274.

¹⁸ See, for example, Panel Report, para. 7.274.

¹⁹ See, for example, Panel Report, para. 7.277.

²⁰ See, for example, Panel Report, paras. 7.278, 7.289 b., and 8.3 f(ii).

McLellan Report. The Panel erred in its interpretation and application of Articles 3.1 and 3.4. The Panel's errors include, *inter alia*:

- faulting the MDCCE for relying on the McLellan report because some of the projections in the report did not turn out to be entirely accurate;²¹
- finding that the MDCCE did not base its injury determination on an objective examination²² because it dismissed the significance of the inaccuracies in the Business Plan without further investigating the impact of those inaccuracies on Maghreb Steel's actual and projected performance levels based on explanations that were not reasoned and adequate;²³ and,
- finding that that the MDCCE's reliance on the McLellan Report was improper, and that the MDCCE's overall injury analysis, which was based on that report, was inconsistent with Articles 3.1 and 3.4 of the Anti-Dumping Agreement.²⁴

14. Accordingly, Morocco requests that the Appellate Body reverse the Panel's findings in, *inter alia*, paragraphs 7.283, 7.285, 7.287, 7.288, 7.289 c., and 8.3 f(iii) of the Panel Report.

²¹ See, for example, Panel Report, paras. 7.283, 7.285, 7.287, and 7.288.

²² See, for example, Panel Report, para. 7.289 c.

²³ See, for example, Panel Report, paras. 7.283, 7.285, 7.287, 7.288, 7.289 c., 8.3 f.(iii).

²⁴ See, for example, Panel Report, paras. 7.288, 7.289 c., and 8.3 (f)(iii).