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## **BRAZIL – CERTAIN MEASURES CONCERNING TAXATION AND CHARGES**

### **NOTIFICATION OF AN OTHER 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 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 3 October 2017, from the delegation of the European Union, is being circulated to Members.

Pursuant to Article 16.4 and Article 17.1 of 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 *Brazil – Certain Measures Concerning Taxation and Charges* (WT/DS472). Pursuant to Rule 23(1) of the Working Procedures for Appellate Review, the European Union simultaneously files this Notice of Other 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 or modify the findings and conclusions of the Panel with respect to the errors of law and legal interpretations contained in the Panel Report described below, and where indicated to complete the analysis on the basis of the Panel's findings and uncontested facts on the record:<sup>1</sup>

1. The Panel failed to make an objective assessment of the matter before it in accordance with Article 11 of DSU by exercising false judicial economy in relation to the European Union's request to make findings also on the in-house scenario in the context of the ICT and INOVAR-AUTO programmes.<sup>2</sup> Thus, the European Union requests the Appellate Body to *reverse* the Panel's findings, to *complete the legal analysis* with regard to the in-house scenario and to *find* that the production-step requirements contained in the ICT and INOVAR-AUTO programmes are inconsistent with Articles III:4 of GATT 1994, Article 2.1 of TRIMS Agreement and Article 3.1(b) of SCM Agreement also under the in-house scenario.
2. In the alternative, were the Appellate Body to consider that the Panel correctly exercised judicial economy when failing to make specific findings on the in-house scenario, the European Union requests the Appellate Body to *review*, pursuant to Article 17.6 of DSU, the legal interpretations developed by the Panel and modify, pursuant to Article 17.13 of DSU, the findings contained in paragraphs 7.298-7.314 and 7.746-7.751 of its Report, so as to *make it clearer* that the Panel indeed did not need to rule twice on the production step requirements (in the in-house and in the outsourcing scenarios) because the Panel had already found that those steps are *per se* inconsistent with the covered agreements, since they make an advantage/subsidy contingent upon the use of domestic over imported goods,

<sup>1</sup> Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures for Appellate Review this Notice of Other 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, paras. 6.10, 6.11 and 6.13, 7.314, 7.749, and 8.5.

regardless of whether those domestic goods are manufactured by the accredited company or a third party.<sup>3</sup>

3. Finally, the European Union makes a subordinate claim of error, subject to the Appellate Body rejecting both the first claim of error formulated by the European Union (that the Panel exercised false judicial economy) and the alternative claim of appeal. In that case, the European Union requests the Appellate Body to find that the Panel, by failing to consider the European Union's claims under Article III:4 of GATT 1994, Article 2.1 of TRIMS Agreement and Article 3.1(b) of SCM Agreement in light of all the relevant facts of the case (which included both the in-house and outsourcing scenarios), erred in the application of those provisions.<sup>4</sup> Accordingly, the European Union requests the Appellate Body *to reverse* the Panel's findings, *to complete the legal analysis* with regard to the in-house scenario and *to find* that the production-step requirements contained in the ICT and INOVAR-AUTO programmes are inconsistent with Articles III:4 of GATT 1994, Article 2.1 of TRIMS Agreement and Article 3.1(b) of SCM Agreement also under the in-house scenario.

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<sup>3</sup> See Panel Report, paras. 6.11, final sentence, 7.292, footnote 683, 7.319, penultimate sentence, 7.500 and 8.5.

<sup>4</sup> Panel Report, paras. 6.10, 6.11 and 6.13, 7.314, 7.749, and 8.5.