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

**RECOURSE TO ARTICLE 21.5 OF THE DSU BY 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 communication, dated 9 September 2015, from the Delegation of the European Union, is being circulated to Members.

Pursuant to Article 16.4 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, Recourse to Article 21.5 of the DSU by 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 the findings, conclusions and recommendations of the Panel, with respect to the following errors contained in the Panel Report:<sup>1</sup>

- (a) the Panel erred when finding that China's claims under Articles 6.5, 6.4, 6.2, 6.1.2, 2.4, 4.1 and 3.1 of the AD Agreement fell within its terms of reference. The Panel erred with respect to the correct legal interpretation and application of Article 21.5 of the DSU and failed to comply with its functions as required by Article 11 of the DSU. As a result, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.34, 7.80, 7.114, 7.115, 7.171, 7.291, as well as 8.1(i)-(iii) and (v) of its Report;
- (b) the Panel incorrectly interpreted and applied Article 6.5 of the AD Agreement to the facts of the case, and also failed to comply with its functions as required by Article 11 of the DSU when finding that the European Union violated Article 6.5 of the AD Agreement by treating as confidential the information submitted by Pooja Forge regarding the list and characteristics of its products. As a result, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.50, 7.51 and 8.1(i) of its report;
- (c) the Panel erred in the interpretation and application of Article 6.4 of the AD Agreement when finding that the Commission violated this provision by failing to provide the Chinese producers with timely opportunities to see the information on the list and characteristics of Pooja Forge's products, which information was not confidential within the meaning of Article 6.5, and which was relevant to the presentation of the Chinese producers'

<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.

cases and used by the Commission. The European Union further submits that the Panel erred in the interpretation and application of Article 6.2 of the AD Agreement when finding that the Commission violated this provision by not allowing the Chinese producers to see the information on the file regarding the list and characteristics of Pooja Forge's products. In view of those errors, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.92, 7.96 and 8.1(ii) of its Report;

- (d) the Panel erred in the interpretation and application of Article 2.4 of the AD Agreement when finding that the Commission violated this provision by failing to provide the Chinese producers with specific product data regarding the characteristics of Pooja Forge's products that were used in determining normal values in the investigation at issue. As a result, the European Union requests the Appellate Body to *reverse* the Panel's findings of violation in paragraphs 7.148, 7.149 and 8.1(iii) of the Panel Report;
  - (e) the Panel erred in the interpretation and application of Article 2.4.2 of the AD Agreement when finding that the Commission violated this provision by not taking into consideration, in its dumping determinations, Chinese producers' exports of models that did not match any of the models sold by the Indian analogue country producer Pooja Forge. As a result, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.276 and 8.1(iv) of its Report; and
  - (f) the Panel erred in the interpretation and application of Articles 4.1 and 3.1 of the AD Agreement when finding that, by defining the domestic industry on the basis of domestic producers that came forward in response to a notice of initiation which stated that only those producers willing to be included in the injury sample would be considered as cooperating, the Commission acted inconsistently with Article 4.1 of the AD agreement and consequently with Article 3.1 of the AD Agreement. As a result, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.299 and 8.1(v) of its Report.
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