

**CHINA – MEASURES RELATED TO THE EXPORTATION
OF VARIOUS RAW MATERIALS**

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 notification, dated 6 September 2011, from the Delegation of the European Union, is being circulated to Members.

Pursuant to Article 16.4 and Article 17 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 Report of the Panel and certain legal interpretations developed by the Panel in its Report in the dispute *China – Measures relating to the exportation of various Raw Materials* (WT/DS395/R). 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 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.¹

I. THE EUROPEAN UNION NEVER REQUESTED THE PANEL "NOT TO MAKE FINDINGS OR RECOMMENDATIONS ON THE LEGAL INSTRUMENTS TAKING EFFECT ON 1 JANUARY 2010". THE EUROPEAN UNION NEVER "NARROWED THE PANEL'S TERMS OF REFERENCE DURING THE COURSE OF THE PROCEEDINGS".

- (a) In paragraph 7.21 of its Report, the Panel found that the European Union requested the Panel not to make findings or recommendations on the legal instruments taking effect on 1 January 2010. In paragraph 7.22 of its Report, the Panel found that the European Union narrowed the Panel's terms of reference during the course of the proceedings. The Panel makes reference to these erroneous findings in various other paragraphs of its Report, such as paragraph 7.24.

¹Pursuant 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.

- (b) In reaching these erroneous legal interpretations and findings, the Panel acted inconsistently with its obligations under Articles 7.1, 11 and 19.1 of the DSU.
 - (c) The European Union appeals these erroneous Panel legal interpretations and findings and requests the Appellate Body to reverse them. The European Union also requests the Appellate Body to complete the analysis and find that the relevant measures are inconsistent with China's obligations under the covered agreements and to recommend that China brings its measures into compliance with its WTO obligations.
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