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Page: 1/3

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**EUROPEAN UNION – ANTI-DUMPING MEASURES ON IMPORTS OF  
CERTAIN FATTY ALCOHOLS FROM INDONESIA**

**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 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 15 February 2017, from the delegation of the European Union, is being circulated to Members.

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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 Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia* (WT/DS442). 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 modify, reverse and/or declare moot and with no legal effect the findings and conclusions of the Panel and complete the analysis with respect to the following errors of law and legal interpretations contained in the Panel Report.<sup>1</sup>

- As a preliminary issue the European Union respectfully submits that Indonesia's appeal is inconsistent with Articles 3(1), 3(2), 3(3), 3(4), 3(5), 3(7), 3(8), 3(9) and 3(10) of the DSU, or any combination thereof, and that the Appellate Body should find that it is unnecessary to rule on the substance of the matters raised by Indonesia as the contested measure has expired, and indeed ceased to exist before the termination of the panel proceedings. If the Appellate Body grants this relief the European Union withdraws all other aspects of its cross-appeal, pursuant to Rule 30 of the Working Procedures for Appellate Review.

However, where the Appellate Body does not grant the relief requested in the preceding paragraph, the EU respectfully submits that:

- First, by failing to engage with and address the EU communication concerning expiry of the measure and by making recommendations with regard to a measure, which had ceased to exist before the termination of the Panel's proceedings – a fact that was uncontroversial and

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<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.

not contested by Indonesia – the Panel violated Articles 11 and 19.1 of the DSU<sup>2</sup>, and for that reason the European Union requests the Appellate Body to reverse paragraph 8.3 of the Panel Report;

- Second, the Panel erred in interpreting and applying Article 12(12) of the DSU, by considering that the panel authority had not lapsed. In this respect, it erroneously referred to the standard (or guidance) provided by the Appellate Body in *EC – Bananas III*, which concerns a different situation. It also erroneously interpreted and applied Articles 8 and 12(12) of the DSU, by finding, expressly or by implication, that they are in some unspecified respect mutually exclusive, as opposed to containing concurrent obligations. Moreover, the panel violated Article 11 of the DSU because, in addition to the preceding errors: it did not take into account all of the evidence submitted to the panel to demonstrate that the panel work was indeed suspended for more than twelve months; by finding that there was no request by Indonesia within the meaning of Article 12(12); by characterizing as findings of facts matters that concern the legal characterisation of those facts; by adopting a formalistic and erroneous analysis relying on the absence in Indonesia's request of any express reference to Article 12(12), a false distinction between "work" and "meeting", and the addressee of Indonesia's request; and by failing to properly address the question of the relationship between Articles 8 and 12(12) of the DSU, which was raised by the parties (and thereby also violating those provisions of the DSU). Any one of the foregoing errors or any combination thereof would justify reversal. Accordingly, the EU requests the Appellate Body to reverse the Panel's findings and conclusion on these matters<sup>3</sup>, and respectfully requests the Appellate Body to complete the legal analysis, by finding that, with respect to these panel proceedings, the DSB's authority lapsed pursuant to Article 12(12) of the DSU. Consequently, we ask the Appellate Body to reverse all of the Panel's findings and recommendations, or declare them moot and of no legal effect.
- Third, the panel erred in the interpretation and application of Article 6.7 ADA, by considering that the European Union had not disclosed the results of the investigation to PTMM, *inter alia*, by imposing, in practice, an obligation to disclose a description of the investigation process rather than the results of the verification visit, requiring moreover that such a description should be sufficiently detailed so as to enable the Panel to trace back any correction that was made to the information supplied to specific evidence that was verified or not during the investigation or other events, and by setting out a list of items that must always be disclosed in order to comply with Article 6.7 ADA, regardless of the specific facts of each case. Accordingly, the European Union requests the Appellate Body to reverse the Panel's findings and conclusion with regard to the interpretation and application of Article 6.7 ADA.<sup>4</sup>
- Fourth, the panel erred in the interpretation and application of the DSU, particularly Article 12.1 of the DSU, and its Additional Working Procedures Concerning Business Confidential Information, because it bracketed information that was already in the public domain and failed to require Indonesia to advance justifications for its requests for specific instances of bracketing and to provide non-confidential summaries of the bracketed information sufficient to permit a reasonable understanding of the matter. At the same time the Panel also violated Article 12.7 of the DSU because by unduly over-bracketing it submitted an incomplete report to the DSB. For the same reasons, the Panel acted inconsistently with Article 10.1 of the DSU, which requires that the interests of other Members be fully taken into account during the panel process. Finally, by failing to require the necessary justifications and make the appropriate adjudications, and by failing to comply

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<sup>2</sup> As a separate matter, in the event that the Panel did not include that communication concerning expiry of the measure on the Panel's record, the EU appeals that action or omission as a violation of Article 11 of the DSU, since keeping a complete record of the panel proceedings and transmitting that complete record to the Appellate Body in the event of an appeal, pursuant to Article 17(9) of the DSU and Rule 25 of the Working Procedures for Appellate Review, is a necessary corollary to the Panel's obligations under Article 11 of the DSU to assist the DSB in discharging its responsibilities, by making an objective assessment of the matter before it, including an objective assessment of the facts of the case; and make such other findings as will assist the DSB in making the appropriate recommendations or rulings.

<sup>3</sup> Panel Report, paras. 8.1.a.i-iii, paras. 1.9-1.11, and paras. 7.17-7.29.

<sup>4</sup> Panel Report, paras. 7.224-7.229, 7.235-7.236, and 8.1(d).

with its own BCI Procedures, the Panel acted inconsistently with its obligation to make an objective assessment, pursuant to Article 11 of the DSU.<sup>5</sup>

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<sup>5</sup> Panel Report, paras. 7.64, 7.74 and 7.80, 7.82, 7.83.