



EUROPEAN UNION – ANTI-DUMPING MEASURES ON BIODIESEL FROM ARGENTINA

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 20 May 2016, 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 Union – Anti-Dumping Measures on Biodiesel from Argentina* (WT/DS473). 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:¹

- a. the Panel erred when finding that the European Union acted inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement by "failing to calculate the cost of production of the product under investigation on the basis of the records kept by the producers". As a result, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.247, 7.248, 7.249 and 8.1(c)(i) of its Report, which are based on its legally erroneous reasoning in paragraphs 7.220-7.246;²
- b. the Panel erred when finding that the European Union violated Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 by "using a "cost" that was not the cost prevailing "in the country of origin", namely, Argentina, in the construction of the normal value". As a result, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.260 and 8.1(c)(ii) of its Report, which are based on its legally erroneous reasoning in paragraphs 7.255-7.259;

¹ 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.

² Only for the avoidance of doubt, we clarify that we include in the scope of our appeal the statement in the second sentence of paragraph 7.296 of the Panel Report, to the effect that, supposedly, nothing in Article 2.4 provides guidance when it comes to considering how normal value and export price should be determined, including the question of whether or not a standard of reasonableness informs not just the term reflect but also the determination of the costs associated with production and sale. We provide this clarification without prejudice to our right to refer to and disagree with other aspects of the Panel's reasoning in our submissions.

- c. the Panel erred when finding that the European Union acted inconsistently with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 by "imposing anti-dumping duties in excess of the margin of dumping that should have been established under Article 2 of the Anti-Dumping Agreement". In view of those errors, the European Union requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.367 and 8.1(c)(vii) of its Report, which are based on its legally erroneous reasoning in paragraphs 7.357- 7.366.
