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**RUSSIA – ANTI-DUMPING DUTIES ON LIGHT COMMERCIAL VEHICLES
FROM GERMANY AND ITALY**

**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 27 February 2017, from the delegation of the European Union, is being circulated to Members.

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 *Russia – Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy* (WT/DS479). 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 declare moot and of no legal effect 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.¹

I. ERRORS RELATING TO THE PANEL'S FINDINGS ON THE DIMD'S INJURY DETERMINATION

The European Union submits that the legal findings and conclusions of the Panel concerning the DIMD's injury analysis are legally erroneous and requests that the Appellate Body reverse them, specifically with respect to the following:

1. The Panel failed to make an objective assessment of the matter before it in accordance with Article 11 of the *DSU* and failed to determine whether the DIMD's establishment of the facts was proper and whether its evaluation of those facts was unbiased and objective as provided by Article 17.6 of the *AD Agreement*, by basing its assessment of the EU's claims under Article 3.1 and 3.4 of the *AD Agreement* relating to three mandatory injury factors (return on investments, actual and potential effects on cash flow, and the ability to raise capital or investments) on the alleged confidential version of DIMD's Final Report. As a consequence, the Panel's finding that the EU had not established that the DIMD acted inconsistently with Article 3.1 and 3.4 of the *AD Agreement* with respect to these three injury factors is also in error. Thus, the European Union requests the Appellate Body to reverse paragraphs 7.165-7.172, 7.173(i) and 8.1(e)(x), complete the analysis on the basis of the Panel's findings and uncontested facts on the record and find that the DIMD acted inconsistently with Articles 3.1 and 3.4 of the *AD Agreement* by failing to examine those three mandatory injury factors.

¹ 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.

2. The Panel failed to make an objective assessment of the matter before it in accordance with Article 11 of the DSU, by finding that the DIMD properly considered (i) whether the price suppression was the effect of dumped imports ("explanatory force"), as well as (ii) whether the price suppression was "to a significant degree", when the Panel had already found that the DIMD's selection of the very basis of its price suppression analysis – the 2009 rate of return without any adjustments – was inconsistent with Articles 3.1 and 3.2 of the AD Agreement. Thus, the European Union requests the Appellate Body to reverse paragraphs 7.77-7.81, footnote 197, paragraphs 7.104-7.107, and paragraphs 8.1(d)(iii) and 8.1(d)(iv) of the Panel Report and declare the Panel's findings and conclusions on the "explanatory force" of subject imports and the "significant degree" of the price suppression moot and of no legal effect.

3. Should the Appellate Body consider that the Panel did not make a reversible error under Article 11 of the DSU as described in the previous paragraph, the European Union submits that the Panel failed to properly interpret and apply Articles 3.1 and 3.2 of the AD Agreement, when finding that the DIMD's methodology for establishing price suppression – which compares the actual domestic prices to the target domestic prices – will necessarily and automatically show that the dumped imports have "explanatory force" for the suppression of domestic prices. Thus, the European Union requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.77-7.78 and 8.1(d)(iii) and complete the analysis on the basis of the Panel's findings and uncontested facts on the record by finding that the DIMD acted inconsistently with Articles 3.1 and 3.2 of the AD Agreement when failing to consider whether the subject imports have "explanatory force" for the occurrence of significant price suppression.

4. The Panel erred in the interpretation and consequent application of Articles 3.1 and 3.2 of the AD Agreement when rejecting the European Union's argument that the DIMD failed to examine whether the market would accept any additional domestic price increases on the basis of a requirement that interested parties must have explicitly questioned the ability of the market to absorb additional price increases, even if there was evidence before the investigating authority of significant price increases in the past as well as significant increases in costs of production. Thus, the European Union requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.87-7.91 and 8.1(d)(iii) and complete the analysis on the basis of the Panel's findings and uncontested facts on the record by finding that the DIMD acted inconsistently with Articles 3.1 and 3.2 of the AD Agreement by failing to examine whether the market would accept additional domestic price increases.

5. The Panel erred in the interpretation and application of Articles 3.1 and 3.4 of the AD Agreement by finding that the DIMD was not required to examine the information about stocks provided by Turin Auto (Sollers' related trader) as part of the mandatory factors belonging to the state of the domestic industry.² The European Union requests the Appellate Body to reverse the Panel's findings in paragraphs 7.122, 7.123, 7.173(b) and 8.1(e)(ii) and declare them moot and with no legal effect.

II. ERRORS RELATING TO THE PANEL'S FINDINGS ON THE EU'S CLAIM UNDER ARTICLE 6.9 OF THE AD AGREEMENT

The European Union submits that the legal findings and conclusions of the Panel concerning the disclosure of essential facts by the DIMD listed below are legally erroneous and requests that the Appellate Body reverse them, specifically with respect to the following:

1. The Panel incorrectly interpreted Article 6.9 by finding, in general terms, that a "methodology" is not a fact, or an essential fact.³
2. The Panel incorrectly interpreted Article 6.9 by finding that "not every "essential fact" is required to be disclosed", but rather that Article 6.9 applies only to those essential facts which are additionally shown to be "under consideration".⁴
3. The Panel incorrectly interpreted and applied Article 6.9 by finding that the source of data cannot be an essential fact under consideration, and/or that the source of the

² Panel Report, paras. 7.122, 7.123, 7.173(b) and 8.1(e)(ii).

³ Panel Report, para. 7.256.

⁴ Panel Report, para. 7.256.

data concerning import volumes and values on which the DIMD's dumping and injury analyses were based is not an essential fact under consideration.⁵

With respect to these errors, the European Union requests the Appellate Body to reverse these findings, complete the analysis on the basis of the Panel's findings and uncontested facts on the record and find that, by failing to disclose the source of information concerning import volumes and values in the context of its dumping and injury analyses, the DIMD acted inconsistently with Article 6.9 of the AD Agreement.

⁵ Panel Report, paras. 6.42, 7.256-7.257, 7.278 and 8.1(h).