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**EUROPEAN UNION AND ITS MEMBER STATES – CERTAIN MEASURES RELATING
TO THE ENERGY SECTOR**

**NOTICE OF AN OTHER APPEAL BY THE RUSSIAN FEDERATION UNDER
ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU), AND
UNDER RULE 23 OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 26 September 2018, from the Delegation of the Russian Federation, is being circulated to Members.

Notice of Other Appeal

Pursuant to Article 16.4 and 17 of the DSU, the Russian Federation hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered and certain legal interpretations developed by the Panel in *European Union – Certain Measures Relating to the Energy Sector* (WT/DS476) ("Panel Report"). Pursuant to Rule 23 of the Working Procedures for Appellate Review, the Russian Federation simultaneously files this Notice of Other Appeal with the Appellate Body Secretariat.

For the reasons further elaborated in its submissions to the Appellate Body, the Russian Federation appeals, and requests the Appellate Body to reverse, modify or declare moot and of no legal effect the findings and conclusions of the Panel as summarized in paragraphs 8.1 (a) (i), (b), (c), and (e) of the Panel Report, with respect to the following errors of law and legal interpretations, and to complete the analysis¹:

- **Unbundling Measure: Article 11 of the DSU**

the Panel erred in finding that the Russian Federation had not "substantiated its notion of the unbundling measure in the Directive and the unbundling measure in the national implementing laws of Lithuania being 'a single measure', or its alternative notion of the unbundling measure in the Directive and the unbundling measures in the national implementing laws of all EU member States being 'a single measure'". Thereby the Panel failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements in violation of Article 11 of the DSU. The Russian Federation requests the Appellate Body to reverse the Panel's findings in paragraph 7.383, and to complete the analysis of the Russian Federation's claims under the GATS and the GATT 1994 pertaining to the Unbundling Measure based on the conclusion that the combined application of the Directive and the implementing laws of individual EU member States constitutes 'a single measure', for the purpose of determining whether treatment no less favourable was accorded by the European Union, to Russian services, service suppliers, and goods.

¹ Pursuant to Rule 23(2)(c)(ii) of the Working Procedures, this Notice of Other Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Russia's ability to refer to other paragraphs of the Panel Report in the context of this appeal.

- **Unbundling Measure: Article II:1 of the GATS**

the Panel erred in finding that Russia had failed to demonstrate "that the unbundling measure in the Directive accords less favourable treatment to Russian pipeline transport services and service suppliers in comparison with that accorded to pipeline transport services and service suppliers of any other non-EU country. The Russian Federation requests the Appellate Body to reverse the Panel's findings in paragraphs 7.497, 7.508, and 7.514, as they are based on the Panel's erroneous finding in paragraph 7.383, and the Panel's ultimate conclusion in paragraph 8.1(a)(i). The Russian Federation requests the Appellate Body to complete the analysis, based on an appropriate determination of the effect of the single measure, consisting of the combined application of the Directive and the implementing laws of the EU member states and to find that the Unbundling Measure is inconsistent with Article II:1 of the GATS.

- **Public Body Measure: Article XVII:1 of the GATS**

the Panel erred in finding that the Russian Federation had failed to demonstrate that the public body measure in the national implementing laws of Croatia, Hungary and Lithuania modifies the conditions of competition to the detriment of service suppliers of other Members in comparison to like domestic service suppliers. The Russian Federation requests the Appellate Body to reverse the Panel's findings in paragraphs 7.741, 7.823, and 7.787, and the erroneous analysis on which it is based, as well as the Panel's conclusion in paragraph 8.1(b), and to find that by exempting EU Government-Owned Suppliers from the unbundling requirements, the public body measure modifies the conditions of competition to the detriment of Russian service suppliers, in violation of Article XVII:1 of the GATS.

- **LNG Measure: Article I:1 of the GATT 1994**

the Panel erred in finding that the Russian Federation had failed to demonstrate that natural gas from Russia and LNG imported from other countries are like products within the meaning of Article I:1 of the GATT 1994. The Russian Federation requests the Appellate Body to reverse the Panel's findings in paragraph 7.855 and the erroneous analysis on which it is based in paragraphs 7.834-7.854, as well as the Panel's conclusion in paragraph 8.1(c). The Russian Federation requests the Appellate Body to complete the analysis, based on an appropriate determination of the nature and extent of the competitive relationship between natural gas imported from Russia and LNG, and to find that the LNG measure is inconsistent with Article I:1 of the GATT 1994.

- **UPN Measure: Articles I:1 and III:4 of the GATT 1994**

the Panel erred in finding that the Russian Federation had failed to demonstrate that the upstream pipeline networks measure grants an advantage to natural gas of any particular origin, and that the Russian Federation had failed to demonstrate that the upstream pipeline networks measure is inconsistent with Article III:4 of the GATT 1994. The Russian Federation requests the Appellate Body to reverse the Panel's findings in paragraphs 7.1044 and 7.1047, and the erroneous analysis on which it is based in paragraphs 7.1007-7.1043 and 7.1045-7.1046, as well as the Panel's conclusion in paragraph 8.1(e), and to find that the upstream pipeline networks measure is inconsistent with Articles I:1 and III:4 of the GATT 1994.
