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**EUROPEAN UNION – COUNTERVAILING DUTIES ON IMPORTS OF BIODIESEL FROM
INDONESIA**

**NOTIFICATION OF AN APPEAL BY THE EUROPEAN UNION UNDER ARTICLE 16.4 AND
ARTICLE 17.1 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 26 September 2025, 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 *European Union – Countervailing Duties on Imports of Biodiesel from Indonesia* (WT/DS618/R).

In commencing this appeal, in accordance with Article 16(4) of the DSU and Rule 20(1) of the Working Procedures for Appellate Review, the European Union is aware that, as a matter of fact, the Appellate Body is currently unable to hear this appeal due to an insufficient number of its members since December 2019. In those circumstances, the European Union has repeatedly invited Indonesia, in the context of this dispute and other disputes, to join the Multi-party appeal arbitration arrangement ("MPIA")¹ or to agree to similar appeal arbitration procedures on a bilateral and reciprocal basis. This would have allowed the European Union and Indonesia to preserve the main principles and features of the WTO dispute settlement system in disputes between them, despite the persisting blockage of appointments to the Appellate Body. That includes the parties' right to a binding resolution of trade disputes in the WTO and to an independent and impartial appeal review of panel reports.

The European Union regrets that, to date, Indonesia has not taken up these offers. In the absence of appeal arbitration being available to review the legal errors contained in the panel report, the European Union has no choice but to exercise its right to appeal pursuant to Article 16(4) of the DSU.

In so doing, the European Union is restricting its appeal to those errors that it believes constitute serious errors of law or legal interpretation that need to be corrected. Non-appeal of an issue does not signify agreement therewith.

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, modify, or declare moot and of no legal effect, the finding, conclusions, rulings and recommendations of the Panel with respect to the following errors of law or legal interpretations contained in the Panel Report:²

¹ JOB/DSB/1/Add.12, 30 April 2020.

² Paragraph numbers provided in the following description of the legal errors of the Panel are intended to indicate the primary instance of the errors. These errors may also be reflected in or have consequences for other parts of the Panel Report, and the European Union also appeals all findings and conclusions deriving from or relying on the appealed errors. The European Union also emphasises that the paragraphs listed in this Notice of

1. The Panel erred in the interpretation and application of Article 1.1(a)(iv) of the SCM Agreement when finding that the Commission acted inconsistently with this provision by determining that, through a set of measures, including an export tax and export levy, and by *de facto* acting as a price setter in the domestic Crude Palm Oli (CPO) market, the Government of Indonesia (GOI) induced the domestic CPO producers to sell CPO locally and thereby "entrusted" or "directed" private CPO suppliers to provide CPO to biodiesel producers in Indonesia for less than adequate remuneration.³
2. The Panel erred in the interpretation and application of Article 1.1(a)(2) of the SCM Agreement, and in making a consequential finding of violation of Article 32.1 of the SCM Agreement, when finding that the Commission acted inconsistently with those provisions by determining that, through a set of measures, including an export tax and export levy, and by *de facto* acting as a price setter in the domestic CPO market, the GOI provides income or price support to the biodiesel industry.⁴
3. The Panel erred in the interpretation and application of Article 12.7 of the SCM Agreement when finding that the Commission acted inconsistently with this provision by resorting to facts available in respect of independent CPO suppliers on the ground that the GOI purportedly failed to ensure submission of independent CPO suppliers' Appendix B responses.⁵
4. The Panel erred in the interpretation and application of Articles 15.1 and 15.2 of the SCM Agreement when finding that the Commission acted inconsistently with those provisions when failing to make an objective examination, on the basis of positive evidence, of the effect of Indonesian imports on the prices of domestic like products and improperly found significant price depression.⁶
5. The Panel erred in the interpretation and application of Articles 15.1 and 15.4 of the SCM Agreement when finding that the Commission acted inconsistently with those provisions by failing to make an objective examination, on the basis of positive evidence, of the factors having a bearing on the state of the domestic industry.⁷
6. The Panel erred in the interpretation and application of Articles 15.1 and 15.7 of the SCM Agreement when finding that the Commission acted inconsistently with those provisions by concluding that the totality of threat factors that the Commission examined indicated that "the fragile economic condition of the Union industry is likely to be aggravated by the imminent and continuing subsidised imports of biodiesel from Indonesia".⁸
7. The Panel erred in the interpretation and application of Article 15.7 of the SCM Agreement when finding that the Commission acted inconsistently with those provisions by failing to properly consider the existence of a change in circumstances in its threat of injury determination.⁹

Finally, in these exceptional circumstances, and in the interests of fairness and orderly procedure in the conduct of the appeal, in accordance with Rule 16(1) and (2) of the Appellate Body Working Procedures, the European Union will await further instructions from the division, when it may eventually be composed, or the Appellate Body, regarding any further steps to be taken by the European Union in this appeal.

In the event of a cross-appeal by Indonesia, the European Union reserves the right, in addressing any such cross-appeal, to disagree with any statement in the Panel Report made in the context of a matter on which the European Union prevailed.

Appeal comprise only an "indicative list", pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review.

³ Panel Report, paras. 7.143 – 7.171, 7.282 and 8.1(b)(i).

⁴ Panel Report, paras. 7.185 – 7.200, 7.282 and 8.1(b)(ii).

⁵ Panel Report, paras. 7.246 – 7.277, 7.284 and 8.1(b)(vii).

⁶ Panel Report, paras. 7.359 – 7.377, 7.544 and 8.1(c)(ii).

⁷ Panel Report, paras. 7.398 – 7.417, 7.545 and 8.1(c)(iii).

⁸ Panel Report, paras. 7.424 – 7.464, 7.508 – 7.514, 7.545 and 8.1(c)(iv).

⁹ Panel Report, paras. 7.515 – 7.524, 7.545 and 8.1(c)(v).

Pursuant to Rule 20(2)(c) of the *Working Procedures for Appellate Review* the service address, telephone and facsimile numbers of the European Union are:

European Commission
Permanent Mission of the European Union to the World Trade Organization
Rue du Grand-Pré 64-66
CH-1211
Switzerland
Telephone number: +41(0)22.918.22.61
Facsimile number: +41(0)22.734.22.36
