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**EUROPEAN UNION AND ITS MEMBER STATES – CARBON BORDER
ADJUSTMENT MECHANISM****COMMUNICATION FROM THE EUROPEAN UNION**

The following communication, dated 22 September 2026, was received from the delegation of the European Union with the request that it be circulated to the Dispute Settlement Body (DSB).

The European Union takes note that the Russian Federation has placed a request for the establishment of a panel in dispute DS639 European Union and its Member States – Carbon Border Adjustment Mechanism on the agenda of the meeting of the Dispute Settlement Body ("DSB") on 25 September 2026.

This request creates an extraordinary situation in which a panel may be established to assess the international law compatibility of a regulatory, climate-oriented, environmental measure of the European Union at the request of the Russian Federation – a Member that for more than four and a half years continues to wage a war of aggression against another Member, in violation of the most fundamental rules of international law.

The European Union reiterates its condemnation in the strongest possible terms of the Russian Federation's war of aggression against Ukraine and reaffirms its unwavering support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders. The European Union further recalls that the obligation of all States under Article 2 of the Charter of the United Nations ("UN Charter") to refrain in their international relations from the threat or use of force is a peremptory norm.

The Russian Federation's unprovoked, premeditated attack against a sovereign democratic state is an egregious violation of international law, the UN Charter, and fundamental principles of international peace and security.¹ Its attacks on civilians and civilian infrastructure, the unlawful deportation and transfer of Ukrainian children and other civilians and further unspeakable atrocities committed by Russian forces are all war crimes that must stop immediately.

Despite having failed to achieve its military and strategic objectives, the Russian Federation has not ended its unlawful and brutal war of aggression. Instead, it has intensified its systemic and deliberate missile and drone attacks against Ukrainian cities and energy infrastructure. The recent serious escalation by the Russian Federation includes large-scale missile and drone attacks against civilians in Ukraine, as well as an increasingly aggressive behaviour towards European Union Member States, including foreign information manipulation and interference, attacks on its infrastructure on European Union soil and threats against the European diplomatic presence in Ukraine. The Russian Federation's ongoing military operations are in violation of the order of the International Court of

¹ Resolution of the General Assembly of 2 March 2022, "Aggression against Ukraine", A/ES-11/L.1; Resolution of the General Assembly of 7 October 2022 "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations", A/ES-11/L.5; Resolution of the General Assembly of 24 February 2025, "Advancing a comprehensive, just and lasting peace in Ukraine", A/RES/ES-11/7; Resolution 2774 (2025) / adopted by the Security Council at its 9866th meeting, on 24 February 2025.

Justice of March 2022, granting Ukraine provisional measures and, in particular, ordering the Russian Federation to stop the military operations.²

The European Union remains committed to ensuring full accountability for war crimes and the other most serious crimes committed in connection with the Russian Federation's war of aggression against Ukraine. Further, the European Union strongly supports a comprehensive, just, and lasting peace in Ukraine, based on the principles of the UN Charter and international law and underpinned by robust and credible security guarantees for Ukraine.

The Russian Federation's war of aggression on the European continent is an existential challenge for the European Union and its Member States. It is undermining not only European but also global security and stability. It has also had a profound impact on the trading relations between the European Union and the Russian Federation, leading to more than 80% reduction in imports from Russia.

In view of the extraordinary circumstances created by the Russian Federation's war of aggression against Ukraine, the European Union declined the Russian Federation's request to enter into consultations in this dispute (WT/DS639/2). While reiterating its attachment to the principles, rules and procedures of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), the European Union took the view that the consultations requested by the Russian Federation cannot be fruitful and cannot lead to a mutually satisfactory solution of the matter at hand.

At the same time, the European Union has been and remains a firm supporter of the rules-based multilateral trading system, underpinned by a binding, two-tier and independent dispute settlement mechanism dedicated to settling trade disputes among Members.

Such rules-based multilateral trading system is based on the fundamental tenet of public international law that disputes should be resolved peacefully and in accordance with the law governing the relations between States, if necessary, through adjudication. However, by continuing to wage its war of aggression against Ukraine, the Russian Federation is blatantly disregarding those same core principles. The actions of the Russian Federation cannot be reconciled with it having respect for international institutions, disciplines, and norms. Importantly, these actions bring into serious question the Russian Federation's motives for bringing this dispute in the WTO under international law. Recalling that, under the DSU, Members are required to have recourse to and engage in WTO dispute settlement proceedings in good faith, it is highly questionable whether the Russian Federation's recourse to WTO dispute settlement in this dispute can genuinely be regarded by the WTO Membership as legitimate.

The purpose of WTO dispute settlement is to secure positive solutions to trade disputes. However, the European Union stresses that as long as the Russian Federation is waging its war of aggression against Ukraine, it cannot expect to be able to rely on WTO rules for improved access for its exports to the market of the European Union. The Russian Federation's war of aggression against Ukraine has had a profound impact on the trading relationship between the European Union and the Russian Federation, including because of the trade-restrictive measures that the European Union has had to take to protect its essential security interests.³ In that regard, the European Union refers in particular to the Joint Statement on Aggression by the Russian Federation against Ukraine with the support of Belarus, dated 14 March 2022 (WT/GC/244). As indicated therein, to protect its essential security interests, the European Union has effectively suspended its concessions or other obligations with respect to the Russian Federation under the WTO rules.

For those reasons, the European Union objects to the Russian Federation's request for the establishment of a panel.

² *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of the International Court of Justice of 16 March 2022, paragraph 86.

³ It is in that context that the European Union had previously suspended its dispute against the Russian Federation (DS604) and not further pursued another dispute after having launched consultations (DS608). The Russian Federation on its side had also suspended and let the authority of the panel lapse in its dispute against the European Union (DS521).

That said, if a panel is established by the DSB pursuant to Article 6.1 of the DSU at the upcoming meeting, consistent with the principle of negative consensus, the European Union will participate in the proceedings before the panel. The European Union has decided to participate in the proceedings before the panel not because it considers the Russian Federation's actions legitimate but because of its firm support for the rules-based multilateral trading system. Moreover, the European Union is confident that the Carbon Border Adjustment Mechanism ("CBAM") and free allocation under the European Union Emissions Trading System ("EU ETS") are WTO-compatible and has, therefore, a strong interest in ensuring an objective assessment of the matter by the panel, consistently with the DSU.

The CBAM is a climate-oriented, environmental policy tool designed in compliance with WTO rules and applied in a non-discriminatory and even-handed manner. It aims to reduce the risk of the European Union's climate objectives being undermined by European production relocating to countries with less ambitious decarbonisation policies (so-called 'carbon leakage'), which would fail to reduce global carbon emissions as set out in the Paris Agreement, in general, and the EU ETS, in particular. It puts a carbon price equivalent to the EU ETS on carbon intensive products placed on the EU market. It, thus, supports climate mitigation efforts, in line with the European Union's international commitments under the UNFCCC and the Paris Agreement. At the same time, free allocation under the EU ETS, the European Union's existing WTO-compliant measure addressing the risk of carbon leakage, is phased out in parallel with the introduction of the CBAM for CBAM-covered goods. Moreover, where an importer can show that a carbon price has been effectively paid in a third country, the CBAM allows for that carbon price to be deducted when calculating the number of CBAM certificates required for the CBAM goods in question, recognising the relevance of effective carbon pricing schemes applied by our trading partners.

The European Union will engage in these panel proceedings only to the extent necessary to ensure an adequate defence and proper representation of its measures. The European Union will only engage with the panel and not directly with the Russian Federation.

The European Union's participation in these proceedings should not be construed as acknowledgment that the Russian Federation's actions, including this particular request, are legitimate.
