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Page: 1/4

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INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY VIET NAM

The following communication, dated 15 September 2015, from the delegation of Viet Nam to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 1 June 2015, Viet Nam requested consultations with Indonesia pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 14 of the Agreement on Safeguards. These consultations related to the imposition of a safeguard measure on imports of certain flat-rolled product of iron or non-alloy steel, the investigation and determinations leading thereto, and other aspects related to the notification requirements and consultations required under Article XIX:2 of the GATT 1994 and Article 12 of the Agreement on Safeguards.

Viet Nam and Indonesia held consultations on 28 July 2015 in Bali, Indonesia, with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute. Accordingly, pursuant to Articles 4.7 and 6 of the DSU, Article 14 of the Agreement on Safeguards, and Article XXIII of the GATT 1994, Viet Nam requests the Dispute Settlement Body to establish a Panel to examine the matter. Pursuant to Article 6.2 of the DSU, Viet Nam identifies below the specific measures at issue and provides a brief summary of the legal basis of the complaint.

BACKGROUND

1.1. On 19 December 2012, Indonesia's investigating authority on safeguard measures, *Komite Pengamanan Perdagangan Indonesia/KPPI* (the investigating authority), initiated a safeguard investigation on imports of flat-rolled product of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated with aluminium-zinc alloys, containing by weight less than 0,6% of carbon, with a thickness not exceeding 1,2mm, under HS code 7210.61.11.00.¹ As a result of the investigation process, KPPI issued its final determinations in a document entitled Final Disclosure Report.

1.2. On 27 May 2014, WTO Members were notified of the investigating authority's positive findings of threat of serious injury caused by increased imports.² However, Indonesia's "Notification of a Proposal to Impose a Measure" does not contain a description of the proposed measure or its proposed date of introduction.

1.3. On 28 July 2014, WTO Members were notified of the actual imposition of the safeguard measure pursuant to Regulation Number 137.1/PML.011/2014 of Indonesia's Minister of Finance,

¹ Committee on Safeguards, *Notification under Article 12.1(a) of the Agreement on Safeguards on Initiation of an Investigation and the reasons for it, Indonesia, (Flat-Rolled Product of Iron or Non-Alloy Steel)*, G/SG/N/6/IDN/22, 8 January 2013; and the supplement, G/SG/N/6/IDN/22/Suppl.1, 24 April 2013.

² Committee on Safeguards, *Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, Notification of a Proposal to Impose a Measure, Indonesia, (Flat-Rolled Product of Iron or Non-Alloy Steel under HS code 7210.61.11.00)*, G/SG/N/8/IDN/16, G/SG/N/10/IDN/16, 27 May 2014.

dated 7 July 2014 and promulgated on 15 July 2014, in the *Berita Negara* of Indonesia Year 2014 Number 978 (safeguard measure). The notification also contains the list of 120 countries that are excluded from the application of the safeguard measure.³

1.4. The safeguard measure consists of a specific duty to be applied from 22 July 2014, and subsequently reduced in accordance with the following timetable:

Timetable of the Safeguard Duty

Period	Safeguard Duty
22 July 2014 - 21 July 2015	Rp 4,998,784 per ton
22 July 2015 - 21 July 2016	Rp 4,314,161 per ton
22 July 2016 - 21 July 2017	Rp 3,629,538 per ton

THE MEASURES AT ISSUE

1.5. The measures at issue in this dispute are the following:

- a. The specific duty imposed as a safeguard measure, as a result of the investigation initiated on 19 December 2012 and concluded by the Final Disclosure Report, on imports of flat-rolled product of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated with aluminium-zinc alloys, containing by weight less than 0,6% of carbon, with a thickness not exceeding 0,7mm, under HS code 7210.61.11.00.⁴ This duty was imposed pursuant to Regulation Number 137.1/PML.011/2014 of Indonesia's Minister of Finance, dated 7 July 2014 and promulgated on 15 July 2014, in the *Berita Negara* of Indonesia Year 2014 Number 978.
- b. The notification of the finding of threat of serious injury caused by increased imports and of a proposal to impose a safeguard measure, and the notification on taking a decision to apply a safeguard measure.⁵

³ Committee on Safeguards, *Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, Notification under Article 12.1(c) of the Agreement on Safeguards on Taking a Decision to Apply a Safeguard Measure, Notification pursuant to Article 9, footnote 2, of the Agreement on Safeguards, Indonesia, (Flat-Rolled Product of Iron or Non-Alloy Steel under HS code 7210.61.11.00)*, G/SG/N/8/IDN/16/Suppl.1, G/SG/N/10/IDN/16/Suppl.1, G/SG/N/11/IDN/14, 28 July 2014.

⁴ Indonesia conducted the investigation on the basis of a product with a thickness not exceeding 1,2mm. However, when it imposed the safeguard measure, Indonesia narrowed the scope of the subject product to a thickness not exceeding 0,7mm. This change in the scope of the subject product is reflected in the document: Committee on Safeguards, *Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, Notification under Article 12.1(c) of the Agreement on Safeguards on Taking a Decision to Apply a Safeguard Measure, Notification pursuant to Article 9, footnote 2, of the Agreement on Safeguards, Indonesia, (Flat-Rolled Product of Iron or Non-Alloy Steel under HS code 7210.61.11.00)*, G/SG/N/8/IDN/16/Suppl.1, G/SG/N/10/IDN/16/Suppl.1, G/SG/N/11/IDN/14, 28 July 2014, p. 1; and Regulation Number 137.1/PML.011/2014 of Indonesia's Minister of Finance, dated 7 July 2014 and promulgated on 15 July 2014, in the *Berita Negara* of Indonesia Year 2014 Number 978, Article 1.2.

⁵ Committee on Safeguards, *Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, Notification of a Proposal to Impose a Measure, Indonesia, (Flat-Rolled Product of Iron or Non-Alloy Steel under HS code 7210.61.11.00)*, G/SG/N/8/IDN/16, G/SG/N/10/IDN/16, 27 May 2014; Committee on Safeguards, *Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, Notification under Article 12.1(c) of the Agreement on Safeguards on Taking a Decision to Apply a Safeguard Measure, Notification pursuant to Article 9, footnote 2, of the Agreement on Safeguards, Indonesia, (Flat-Rolled Product of Iron or Non-Alloy Steel under HS code 7210.61.11.00)*, G/SG/N/8/IDN/16/Suppl.1, G/SG/N/10/IDN/16/Suppl.1, G/SG/N/11/IDN/14, 28 July 2014

- c. Indonesia's failure to provide an opportunity for consultations on relevant information related to the safeguard measure, including on the proposed measure and its date of introduction prior to the actual imposition of the measure.

1.6. The measures at issue in this dispute cover all decisions and notices of the authorities mentioned above as well as any related measures and amendments or replacement measures taken by the authorities in relation to this investigation and/or the imposition of the safeguard measure.

LEGAL BASIS

1.7. Viet Nam notes that according to Article 11.1(a) of the Agreement on Safeguards, a Member shall not take or seek a safeguard action unless such action conforms with the provisions of Article XIX of the GATT 1994 applied in accordance with the Agreement on Safeguards. In this respect, Viet Nam considers that:

- a. With respect to the specific duty imposed as a safeguard measure:
- i. Indonesia failed to provide reasoned and adequate findings and conclusions regarding the alleged unforeseen developments and the effect of GATT obligations that led to the situation of serious injury (or threat thereof) caused by increased imports. Indonesia, therefore, acted inconsistently with Article XIX:1(a) of the GATT 1994 and Article 3.1 of the Agreement on Safeguards.
 - ii. Indonesia failed to provide reasoned and adequate explanation of how the investigated imports had increased given the fact that its analysis is based on outdated import data (i.e. data of a period ending 17 months before Indonesia's decision to impose the measure, and 19 months before the imposition of the measure). Indonesia thus acted inconsistently with Articles 2.1, 3.1, 4.1(a), 4.2(a) and 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
 - iii. Indonesia failed to provide reasoned and adequate explanation of how the analysis of the different serious injury indicators at issue led to the conclusion of an overall impairment in the situation of the domestic industry. Nor did Indonesia provide a reasoned and adequate explanation of how the KPPI determined the existence of threat of serious injury. Moreover, there was no reasoned and adequate explanation of serious injury (or threat thereof) with respect to certain products, such as zincalume products, that do not appear to have been produced domestically, despite the fact that the safeguard measure applies to these products. These omissions are inconsistent with Articles 2.1, 3.1, 4.1(a), 4.1(b), 4.1(c), 4.2(a), and 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
 - iv. Indonesia failed to provide reasoned and adequate explanation of how the investigated imports caused serious injury to the domestic industry. Nor did it provide an explanation of how the injurious effects of factors other than the investigated imports, which also caused serious injury to the domestic industry, were not attributed to the investigated imports. Indonesia, therefore, acted inconsistently with Articles 2.1, 3.1, 4.2(b), and 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
 - v. Indonesia failed to ensure the required consistency between the imported products examined for the purposes of the underlying investigation and the scope of the products to which the safeguard measure is applied. Indonesia, therefore, acted inconsistently with Articles 2.1, 3.1, 4.2(a) and 4.2(b) of the Agreement on Safeguards.
 - vi. The specific duty imposed by Indonesia is inconsistent with Article I:1 of the GATT 1994 in that it applies to products originating only in certain countries, and

this constitutes an advantage that has not been accorded immediately and unconditionally to the like products originating in all WTO Members.

- b. With respect to the notification of the finding of threat of serious injury and of the proposal to impose a safeguard measure, Indonesia failed to provide in its notifications all pertinent information, including the proposed measure, the proposed date of introduction, and a timetable for progressive liberalization of the measure. Indonesia, therefore, acted inconsistently with Article 12.2 of the Agreement on Safeguards.
- c. Furthermore, with respect to the obligation to provide an opportunity to hold consultations prior to the imposition of a safeguard measure, Indonesia failed to provide an opportunity to hold consultations on relevant matters (e.g. the proposed safeguard measure and its date of introduction) and released the information relating to these matters only after the actual imposition of the measure. Indonesia, therefore, acted inconsistently with Article XIX:2 of the GATT 1994 and Article 12.3 of the Agreement on Safeguards.

1.8. Pursuant to Article 3.8 of the DSU, therefore, the measures at issue nullify and impair benefits accruing to Viet Nam directly or indirectly under the Agreement on Safeguards and the GATT 1994.

1.9. Accordingly, Viet Nam requests that, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT and Article 14 of the Agreement on Safeguards, a Panel be established to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

1.10. Viet Nam asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 28 September 2015.
