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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 THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

The following communication, dated 20 August 2015, from the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 12 February 2015, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu 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 with respect 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.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and Indonesia held consultations on 16 April 2015 with a view to reaching a mutually satisfactory solution. However, these consultations failed to settle 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, The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu requests the Dispute Settlement Body to establish a Panel to examine the matter and the claims set forth below.

I. BACKGROUND AND MEASURES AT ISSUE

A. Background

The measures at issue were imposed pursuant to an investigation conducted by Indonesia's investigating authority on safeguard measures, Komite Pengamanan Perdagangan Indonesia (KPPI).

1. Initiation of the safeguard investigation

On 19 December 2012, KPPI 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

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. Final determination

The relevant determination is contained in the investigating authority's Final Disclosure Report. 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 On 28 July 2014, WTO Members were notified of the actual imposition of the safeguard measure against 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, 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, No. 978.³

The safeguard measure consists of a specific duty to be applied from 22 July 2014, and reduced onwards 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

B. Measures at issue

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 1.2mm, under HS code 7210.61.11.00, as referred to in section I.A.1 above.⁴
- b. The notification of the finding of threat of serious injury caused by increased imports and of the regulation imposing the safeguard measure, as referred to in section I.A.2 above.

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.

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 appears to have narrowed the scope of the subject product to which the measures at issue apply to 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. 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.

- 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.

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 measures.

II. LEGAL BASIS FOR THE COMPLAINT

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu 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, and is applied in accordance with the Agreement on Safeguards. In this respect, The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that:

- a. With respect to the **specific duty** imposed as a safeguard measure:
 1. 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 increased imports that caused or threatened to cause serious injury to the domestic industry. Indonesia, therefore, acted inconsistently with Article XIX:1(a) of the GATT 1994 and Article 3.1 of the Agreement on Safeguards.
 2. Indonesia failed to provide a 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 and 3.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
 3. Indonesia failed to provide a reasoned and adequate explanation of how the analysis of the different serious injury indicators at issue led to the conclusion of 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, 4.2(a), and 4.2(c) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.
 4. Indonesia failed to provide a 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.
 5. Indonesia failed to ensure the required parallelism between the scope of imports considered for the purposes of the underlying investigation and the scope of 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.
 6. In any event, 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 has acted inconsistently with Article 12.2 of the Agreement on Safeguards as the notification does not contain all pertinent information, including the proposed measure, the proposed date of introduction, or a timetable for the progressive liberalization of the measure.
- c. With respect to Indonesia's **failure to provide an opportunity for consultations prior to the imposition of the safeguard measure**, this action is inconsistent with Article XIX:2 of the GATT 1994 and Article 12.3 of the Agreement on Safeguards.

The measures at issue, therefore, nullify and impair benefits accruing to the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu directly or indirectly under the Agreement on Safeguards and the GATT 1994.

Accordingly, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu respectfully requests that, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT and Article 14 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.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 31 August 2015.
