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**INDONESIA – MEASURES CONCERNING THE IMPORTATION OF CHICKEN MEAT
AND CHICKEN PRODUCTS**

RECOURSE TO ARTICLE 21.5 OF THE DSU BY BRAZIL

**NOTIFICATION OF AN APPEAL BY INDONESIA 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 17 December 2020, from the delegation of Indonesia, is being circulated to Members.

Pursuant to Articles 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures for Appellate Review, Indonesia hereby notifies the Dispute Settlement Body of its decision to appeal to the Appellate Body on certain issues of law and legal interpretation covered in the compliance Panel Report entitled *Indonesia – Measures Concerning the Importation Of Chicken Meat and Chicken Products – Recourse to Article 21.5 of the DSU by Brazil* (WT/DS484/RW), which was circulated on 10 November 2020 (the "Compliance Panel Report"). Pursuant to Rules 20(1) and 21(1) of the Working Procedures for Appellate Review, Indonesia is simultaneously filing this Notice of Appeal to the Appellate Body Secretariat.

For the reasons to be further elaborated in its submission to the Appellate Body, Indonesia appeals, and requests the Appellate Body to modify or reverse legal interpretations leading to the legal findings and conclusions of the compliance Panel, with respect to the following errors contained in the compliance Panel Report:¹

I. The Compliance Panel's findings and conclusions under Article 8 and Annex C(1)(a) of the SPS Agreement

Indonesia submits that the compliance Panel's findings leading to its conclusion that the only way for Indonesia to comply with Article 8 and Annex C(1)(a) of the SPS Agreement solely by completing the approval procedure is a legal error. In addition, Indonesia believes that the compliance Panel's findings leading to its conclusion on non-compliance, irrespective of the events that occurred after compliance Panel establishment since there was a finding of undue delay in the period leading up to compliance Panel establishment and given the non-completion of the procedure, is also a legal error especially in compliance proceeding. Thus, the compliance Panel has erred to find that Indonesia has caused further undue delay in the approval of the veterinary health certificate that is inconsistent with Article 8 and Annex C(1)(a) of the SPS Agreement.

Indonesia, therefore, requests the Appellate Body to reverse or modify the compliance Panel's findings and conclusions contained, *inter alia*, in paragraphs 7.49 – 7.51, 7.53 – 7.54, and as well

¹ Pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Indonesia's right to refer to other paragraphs of the Panel Report in the context of its appeal.

as paragraphs 7.89 – 7.91. In addition, Indonesia also requests the Appellate Body to reverse or modify the compliance Panel's conclusions and recommendations in paragraphs 8.1 of its Report.

II. The Compliance Panel's failure to make an objective assessment under Article 8 and Annex C(1)(a) of the SPS Agreement

Indonesia submits that the compliance Panel failed to conduct an objective assessment by not taking into account post-compliance Panel establishment developments. The compliance Panel did not examine the post-compliance Panel establishment developments only because Brazil has requested review of events after compliance Panel establishment only in the alternative.

In addition, the compliance Panel also failed to conduct an objective assessment by not following its own working procedure as well as its own approach consistently towards all measures at issue in the dispute. Thus, the compliance Panel failed to conduct an objective assessment when assessing Indonesia's compliance with Article 8 and Annex C(1)(a) of the SPS Agreement.

Indonesia, therefore, requests the Appellate Body to reverse the compliance Panel's findings and conclusions contained, *inter alia*, in paragraphs 7.45 – 7.46, 7.89 – 7.91 as well as paragraphs 7.72-7.88. In addition, Indonesia also requests the Appellate Body to reverse the compliance Panel's conclusions and recommendations in paragraphs 8.1 of its Report.

III. The Compliance Panel erred in determining the cold storage requirement is inconsistent with Article III:4 of the GATT 1994

Indonesia submits that the compliance Panel has erred in determining that the sanction provisions stipulated in Article 28(a) and Article 31 of MoT 29/2019 as amended are inconsistent with Article III:4 of the GATT 1994 due to the compliance Panel errors in its interpretation of Indonesia's regulation. In addition, Indonesia also submits that the compliance Panel has erred in applying the legal provisions to the facts of the case.

Indonesia, therefore, requests the Appellate Body to reverse the compliance Panel's conclusions and the compliance Panel's legal interpretations and findings contained in paragraphs, *inter alia*, 7.160, 7.162 – 7.164, 7.168 – 7.171, 7.178 – 7.180, 7.194 and 7.206 of the compliance Panel Report. In addition, Indonesia also requests the Appellate Body to reverse the compliance Panel's conclusions and recommendations in paragraphs 8.1 of its Report.

IV. The Compliance Panel's failure to make an objective assessment under Article III:4 of the GATT 1994

Indonesia submits that the compliance Panel has failed to make an objective assessment before it because the compliance Panel failed to ensure Indonesia's due process rights during the compliance proceeding by accepting Brazil's new arguments concerning sanction provisions relating to a breach of cold storage requirement in very late stage of the compliance proceeding.

Indonesia also submits that the compliance Panel failed to make an objective assessment by allowing Brazil to introduce arguments on measures that have been in existence in the original proceeding but, on the contrary, not allowing Indonesia to invoke Indonesia's regulation that was already in existence during the original panel proceeding as a defence.

Indonesia, therefore, requests the Appellate Body to reverse the compliance Panel's findings and conclusions contained, *inter alia*, in paragraphs 7.172 – 7.174, 7.194, and 7.206. Indonesia also requests the Appellate Body to reverse the compliance Panel's conclusions and recommendations in paragraphs 8.1 of its Report.
