



21 February 2017

(17-1024)

Page: 1/2

Original: English

**INDONESIA – IMPORTATION OF HORTICULTURAL PRODUCTS,  
ANIMALS AND ANIMAL PRODUCTS**

**NOTIFICATION OF AN APPEAL BY INDONESIA  
UNDER ARTICLE 16.4 AND ARTICLE 17 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 February 2017, 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 certain issues of law and legal interpretation covered in the Panel Report entitled *Indonesia – Importation of Horticultural Products, Animals and Animal Products* (WT/DS477/R, WT/DS478/R), which was circulated on 22 December 2016 (the "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 with 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 Panel, with respect to the following errors contained in the Panel Report:<sup>1</sup>

**I. The Panel's findings and conclusions under Article XI:1 of the GATT 1994**

The Panel erred in law in finding that Article XI:1 of the GATT 1994 deals more specifically with quantitative import restrictions on agricultural goods than Article 4.2 of the Agreement on Agriculture. In particular, the Panel failed to apply the principle of *lex specialis derogat lege generali* as reflected in Article 21.1 of the Agreement on Agriculture.

Indonesia, therefore, requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.31-7.33 of the Panel Report. In addition, Indonesia requests the Appellate Body to reverse the Panel's findings in paragraphs 7.92, 7.112, 7.134, 7.156, 7.179, 7.200, 7.227, 7.243, 7.270, 7.299, 7.327, 7.349, 7.375, 7.398, 7.428, 7.451, 7.478, and 7.501 as well as paragraph 8.1.b of its Report.

**II. The Panel's findings and conclusions under Article 4.2 of the Agreement on Agriculture**

The Panel further erred in law in allocating the burden of proof to Indonesia under the second element in footnote 1 to Article 4.2 of the Agreement on Agriculture. To make a *prima facie* case under Article 4.2 of the Agreement on Agriculture, a complainant must demonstrate both elements

<sup>1</sup> 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.

set out in footnote 1 to Article 4.2 of that agreement. It must show that the measure at issue is of the type required to be converted into ordinary customs duties, such as a quantitative import restriction, and that it is not maintained under, *inter alia*, any of the public policy exceptions set out in Article XX of the GATT 1994.

Indonesia, therefore, requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.34 and 7.833 of the Panel Report. In addition, Indonesia requests the Appellate Body to reverse the Panel's finding in paragraph 8.2.

### **III. The Panel's failure to make an objective assessment under Article 11 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)**

The Panel failed to conduct an objective assessment of the applicability of the covered agreements or of the conformity of the Indonesian measures at issue with the covered agreements, as required by Article 11 of the DSU. The Panel did not examine the co-complainants' claims under Article 4.2 of the Agreement on Agriculture, which was the applicable agreement. The Panel failed to conduct an objective assessment of the applicability of Article 4.2 of the Agreement on Agriculture and to allocate the proper burden of proof under the second element of footnote 1 to Article 4.2 of the Agreement on Agriculture.

Indonesia, therefore, requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.31-7.34 and 7.833 of the Panel Report. In addition, Indonesia requests the Appellate Body to reverse the Panel's findings in paragraphs 7.92, 7.112, 7.134, 7.156, 7.179, 7.200, 7.227, 7.243, 7.270, 7.299, 7.327, 7.349, 7.375, 7.398, 7.428, 7.451, 7.478, 7.501, as well as paragraphs 8.1.b and 8.2 of its Report.

### **IV. The Panel's conclusion under Article XI:2(c) of the GATT 1994**

Indonesia considers that the Panel's conclusion that Article XI:2(c) of the GATT 1994 has been rendered inoperative by Article 4.2 of the Agreement on Agriculture has systemic implications for all WTO Members. If the Panel were correct that Article XI:1 of the GATT 1994 is the agreement that deals specifically with quantitative import restrictions on agricultural products, Indonesia submits an alternative claim of legal error that the Panel erred in its conclusion under Article XI:2(c) of the GATT 1994.

Indonesia, therefore, requests the Appellate Body to reverse the Panel's conclusion and the Panel's legal interpretation contained in paragraphs 7.59 and 7.60 of the Panel Report.

### **V. The Panel's findings and conclusions under Article XX of the GATT 1994**

With respect to Measures 9 through 17, Indonesia submits that the Panel assessed only the requirements under the chapeau to Article XX of the GATT 1994. It did not assess any of the defences put forward by Indonesia under the applicable subparagraphs of Article XX before making its findings that "Indonesia has failed to demonstrate that Measures 9 to 17 are justified under Article XX(a), (b) or (d) of the GATT, as appropriate".

Indonesia, therefore, requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.824, 7.826, 7.827 and 7.829 of the Panel Report. In addition, Indonesia notes that the above grounds of appeal are without prejudice to the arguments developed in Indonesia's Appellant's Submission.

---