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INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

UNDERSTANDING BETWEEN INDONESIA AND CHINESE TAIPEI REGARDING PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU

The following communication, received on 11 April 2019, from the delegation of Indonesia and the delegation of Chinese Taipei to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

Indonesia and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to inform the Dispute Settlement Body of the attached Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding between Indonesia and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu with respect to the dispute *Indonesia – Safeguard on Certain Iron or Steel Products* (DS490).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

Understanding between the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and Indonesia on the Sequencing of Proceedings

The Dispute Settlement Body (DSB) adopted its recommendations and rulings in the dispute *Indonesia — Safeguard on Certain Iron or Steel Products* (DS490) on 27 August 2018.

Pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Indonesia, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and Viet Nam agreed that the reasonable period of time (RPT) during which Indonesia would have to implement the recommendations and rulings of the DSB in this dispute would be seven months, which will expire on 27 March 2019 (WT/DS490/12 and WT/DS496/13).

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and Indonesia (collectively, "the parties") hereby agree on the following procedures for the exclusive purpose of this dispute. They are designed to facilitate a satisfactory resolution to the dispute in a cooperative manner and to reduce the scope for procedural disagreements, without prejudice to either party's views on the correct interpretation and application of the DSU.

1. The parties agree to follow the procedures provided in Articles 21.5, 22.2 and 22.6 of the DSU, in the manner set out below, in case of any disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings of the DSB in this dispute.
2. The parties agree to resolve any disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings in this dispute in accordance with the procedures set out in Article 21.5 of the DSU, as modified and elaborated in this Understanding. The parties agree to hold informal consultations within 20 days before the end of the RPT to discuss Indonesia's progress regarding its compliance with the recommendations and rulings of the DSB in this dispute.
3. The Parties agree to hold consultations under Article 21.5 of the DSU within 20 days from the date of receipt of the request. The request for such consultations can only be submitted after the expiry of the RPT.
4. If the consultations as stipulated under paragraph 3 fail to resolve the issues, either party may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time it deems it appropriate. At the first DSB meeting at which any request for the establishment of an Article 21.5 panel is considered, the parties agree not to object to the establishment of that panel.
5. The parties to the dispute shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding any such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU. To this end, the parties agree that the Article 21.5 proceedings will comprise two written submissions filed consecutively by the parties (double briefing) and the panel will convene only one meeting with the parties.
6. The parties agree that any Article 21.5 panel must be composed of the original panelists unless any of them is unavailable. If so, the parties shall seek agreement on the composition of the panel within 10 days after the establishment of the panel. In the absence of that agreement, either party may request the Director-General of the WTO to compose the panel in accordance with the procedures set out in Article 8.7 of the DSU. In the event that the Director-General is requested to compose the panel, the parties agree to request that, in doing so, the Director-General shall seek to compose the panel of persons who will be available to act in both the Article 21.5 and Article 22.6 proceedings.
7. The parties agree that if, on the date of the circulation of the panel report under Article 21.5 of the DSU, the Appellate Body is composed of fewer than three Members available to serve on a division in an appeal in these proceedings, they will not appeal that report under Articles 16.4 and 17 of the DSU.

8. In the event that the DSB finds, pursuant to Article 21.5 of the DSU, that a measure taken to comply does not exist or that Indonesia has failed to bring the measure found to be inconsistent with a covered agreement into compliance therewith the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu may request negotiations with Indonesia with a view to developing mutually acceptable compensation or may request authorization to suspend concessions or other obligations pursuant to Article 22 of the DSU after the adoption by the DSB of the Article 21.5 panel report and, where relevant, the Appellate Body report.
 9. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu may request authorization to suspend concessions or other obligations pursuant to Articles 22.2 and 22.6 of the DSU only if the procedures laid out in Article 21.5, as modified and elaborated in this Understanding, have been followed. Indonesia shall not object to any request made by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in accordance with these provisions on the basis of the fact that the request was made outside the time period specified in the first sentence of Article 22.6 of the DSU. This provision is without prejudice to Indonesia's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
 10. The parties to the dispute will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
 11. In the event that the parties reach a mutually agreed solution to this dispute during the course of the Article 21.5 compliance panel or the Article 22.6 arbitration proceedings, and upon notification of such a mutually agreed solution, the parties will jointly request the panel or the arbitrator to suspend its work (including the circulation of its report or award).
 12. The parties to this dispute will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties to the dispute consider that a procedural aspect has not been properly addressed in these procedures, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.
 13. These agreed procedures in no way prejudice other rights of either party to take any action or procedural step to protect its rights and interests, including recourse to the DSU.
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