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INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

REQUEST FOR CONSULTATIONS BY THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

The following communication, dated 12 February 2015, from the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the delegation of Indonesia and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request 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.

Pursuant to Article 4.4 of the DSU, the reasons for this request for consultations, including identification of the measures at issue and of the legal bases for this complaint, are provided below.

BACKGROUND

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
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 precise description of the proposed measure and its proposed date of introduction.
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, 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

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.

excluded from the application of the safeguard measure.³ The relevant determination is contained in an investigating authority's final disclosure report.

4. 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

MEASURES AT ISSUE

5. The measures at issue in this dispute are the following:
- The specific duty imposed as a safeguard measure 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 paragraphs 3 and 4 above.
 - The notification of the finding of threat of serious injury caused by increased imports and of a proposal to impose a safeguard measure, as referred to in paragraph 2 above.
 - 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.

LEGAL BASIS

6. 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 applied in accordance with the Agreement on Safeguards. In this respect, this complaint is based on the following legal grounds:

- With respect to the specific duty, imposed as a safeguard measure:
 - Article XIX:1(a) of the GATT 1994 and Article 3.1, last sentence, of the Agreement on Safeguards, as the safeguard measure appears not to be based on proper determination or a reasoned and adequate explanation of any **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.
 - Article XIX:1(a) of the GATT 1994 and Articles 2.1, 3.1, last sentence, 4.1(a), 4.2(a), 4.2(b) and 4.2(c) of the Agreement on Safeguards, as the safeguard measure appears not to be based on a proper determination or a reasoned and adequate explanation of any **increased imports**.

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.

- iii. Article XIX:1(a) of the GATT 1994 and Articles 2.1, 3.1, last sentence, 4.1(a), 4.1(b), 4.1(c), 4.2(a), 4.2(b) and 4.2(c) of the Agreement on Safeguards, as the safeguard measure appears to be based on a determination of **serious injury** that does not reflect a situation of significant overall impairment in the position of the domestic industry, or of threat of serious injury, i.e. serious injury that is clearly imminent. Furthermore, there is no reasoned and adequate explanation of serious injury (or threat thereof) with respect to certain products (zincalume products) despite the fact that the safeguard measure also applies to these products.
 - iv. Article XIX:1(a) of the GATT 1994 and Articles 2.1, 3.1, last sentence, 4.2(b) and 4.2(c) of the Agreement on Safeguards, as the safeguard measure is not supported by a reasoned and adequate explanation of how the wide range of investigated imports **cause or threaten to cause** serious injury to the domestic industry. Furthermore, despite the existence of "other factors" that may have had a bearing on the situation of the domestic industry, there is no reasoned and adequate explanation of how the non-attribution analysis was conducted.
 - v. Article I:1 of the GATT 1994, in that in any event, the specific duty is a measure that is not applied to products originating in or consigned from particular origins, and this constitutes an advantage that has not been accorded immediately and unconditionally to other Members.
- b. With respect to the notification of the finding of threat of serious injury and of the proposal to impose a safeguard measure, Article 12.2 of the Agreement on Safeguards, in that the notification at issue does not contain all pertinent information, including the proposed measure, the proposed date of introduction, or a timetable for progressive liberalization of the measure.
 - c. With respect to the failure to provide an opportunity for consultations prior to the imposition of the safeguard measure, Article XIX:2 of the GATT 1994 and Article 12.3 of the Agreement on Safeguards, as Indonesia did not provide an opportunity to hold consultations on relevant matters (e.g., the proposed safeguard measure and its date of introduction), and the information relating to these matters was only released after the actual imposition of the measure.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu advises that these consultations may give rise to other matters having legal implications that are not expressly stated in this request but relate to other obligations of Indonesia under the GATT 1994 and the Agreement on Safeguards. With a view to facilitating a wide-ranging exchange of views, it is emphasized that, if such were to be the case, these legal matters would also be covered by the scope of this request for consultations.

Likewise, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu notes that while it is requesting consultations concerning the safeguard measure, as imposed in the aforementioned Indonesian legal instrument and the final disclosure, this request also covers any other legal instrument and/or relevant document containing any determination, method of determination or calculation, or supplementing, complementing, developing, or in any case relating to the normative instrument expressly referred to in this request for consultations.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu looks forward to receiving the response of Indonesia to this request. It is also proposed that consultations be held in Geneva, on a date to be mutually agreed.
