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INDONESIA – SAFEGUARD ON CERTAIN IRON OR STEEL PRODUCTS

NOTIFICATION OF AN OTHER APPEAL BY VIET NAM UNDER ARTICLES 16.4 AND 17 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following communication, dated 3 October 2017, from the delegation of Viet Nam, 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 23(1) of the Working Procedures for Appellate Review, Viet Nam 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 – Safeguard on Certain Iron or Steel Products* (WT/DS496/R), which was circulated on 18 August 2017 (the "Panel Report").

Pursuant to Rules 23(1) and 23(3) of the Working Procedures for Appellate Review, Viet Nam is simultaneously filing this notice of other appeal and its other appellant's submission with the Appellate Body Secretariat. Viet Nam is providing as well an executive summary of the other appellant's submission, in accordance with the Guidelines in Respect of Executive Summaries of Written Submissions in Appellate Proceedings (WT/AB/23).

For the reasons further elaborated in its other appellant's submission, Viet Nam appeals and requests the Appellate Body to reverse the findings and conclusions of the Panel with respect to the errors contained in the Panel Report described below.¹

I. THE PANEL ERRED IN FINDING THAT INDONESIA'S MEASURE IS NOT A "SAFEGUARD MEASURE"

1. The Panel erred in its interpretation and application of Article XIX:1(a) of the GATT 1994, various provisions of the Agreement on Safeguards, including Articles 1 and 9.1, as well as the General Interpretative Note to Annex 1A of the WTO Agreement, when it found that Indonesia's measure is not a safeguard measure.²

2. In particular, and without prejudice to the arguments developed in Viet Nam's other appellant's submission, the Panel erred in finding that the suspension of the most-favoured-nation treatment (MFN) obligation under Article I:1 does not constitute a "suspension" of "the obligation" under Article XIX:1(a) of the GATT 1994. This error includes:

- The Panel's erroneous finding that Indonesia's suspension of the MFN obligation under Article 9.1 of the Agreement on Safeguards did not intend to prevent or remedy serious injury;³ and

¹ Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures for Appellate Review, this Notice of Other Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Viet Nam's right to refer to other paragraphs of the Panel Report in the context of its other appeal.

² Panel Report, paras. 7.40-7.41, 8.1(a) and 8.2.

³ Panel Report, paras. 7.25-7.28.

- The Panel's erroneous finding that the discriminatory application of a safeguard measure in accordance with Article 9.1 of the Agreement on Safeguards does not constitute a "suspension" of the MFN obligation, because the question of "suspension" does not arise due to the application of the General Interpretative Note to Annex 1A of the WTO Agreement.⁴

II. REQUEST FOR FINDINGS, COMPLETION OF THE ANALYSIS, AND SUGGESTION FOR IMPLEMENTATION

3. Viet Nam requests the Appellate Body to reverse the Panel's finding contained in paragraphs 7.40-7.41, 8.1(a) and 8.2 of the Panel Report that Indonesia's specific duty applied pursuant to Regulation No. 137.1/PMK.011/2014 is not a safeguard measure, and to find instead that this measure is a safeguard measure within the meaning of Article XIX of the GATT 1994 and the Agreement on Safeguards. Viet Nam further requests the Appellate Body to declare moot and of no legal effect the Panel's legal interpretations provided in paragraphs 7.12-7.41 of the Panel Report, and paragraphs 2.9-3.7 of Annex A-3 of the Addendum to the Panel Report.

4. Viet Nam requests the Appellate Body to complete the legal analysis and find that the measures at issue in this dispute are inconsistent with the following provisions:

a. With respect to the specific duty imposed as a safeguard measure:

- Article XIX:1(a) of the GATT 1994 and Article 3.1 of the Agreement on Safeguards, because KPPI failed to explain in a reasoned and adequate manner the existence of both "unforeseen developments" and "the effect of the [GATT] obligations", as well as the logical connection of these elements with the increase in imports that allegedly caused serious injury;
- Article XIX:1(a) of the GATT 1994, and Articles 2.1, 3.1, 4.2(a) and 4.2(c) of the Agreement on Safeguards, as KPPI failed to explain in a reasoned and adequate manner why the alleged increase in imports was "recent enough";
- Article XIX:1(a) of the GATT 1994 and Articles 2.1, 3.1, 4.1(a), 4.1(b), 4.2(a) and 4.2(c) of the Agreement on Safeguards, as KPPI failed to provide a reasoned and adequate explanation of how the facts support its threat of serious injury determination, including the evaluation of all relevant serious injury indicators;
- Article XIX:1(a) of the GATT 1994, and Articles 2.1, 3.1, 4.2(b), and 4.2(c) of the Agreement on Safeguards as KPPI failed to explain in a reasoned and adequate manner a causal link, and to conduct a proper non-attribution analysis in accordance with those provisions;
- Articles 2.1, 3.1, 4.2(a) and 4.2(b) of the Agreement on Safeguards, because Indonesia applied the safeguard duty to a product that is different from the product that was investigated, and thus failed to observe the requirement of parallelism;

b. With respect to Indonesia's notifications of the finding of threat of serious injury and of the decision to impose a safeguard measure:

- Article 12.2 of the Agreement on Safeguards, because Indonesia failed to provide "all pertinent information" in the relevant notification; and

c. With respect to the obligation to provide an opportunity to hold consultations:

- Article XIX:2 of the GATT 1994 and Article 12.3 of the Agreement on Safeguards, because Indonesia failed to provide Members having a substantial interest as exporters with a meaningful opportunity to hold consultations prior to the imposition of a safeguard measure.

⁴ Panel Report, para. 7.29.

5. In addition, Viet Nam requests the Appellate Body to leave the Panel's finding contained in paragraphs 7.42-7.44 and 8.1(b) of the Panel Report that Indonesia's specific duty is inconsistent with Indonesia's MFN-treatment obligation under Article I:1 of the GATT 1994 undisturbed.

6. Finally, Viet Nam requests the Appellate Body to exercise its discretion under Article 19.1 of the DSU and suggest that Indonesia bring its measure, and any extension of it, into conformity with its WTO obligations by immediately withdrawing the specific duty at issue.
