

NOTICES OF APPEAL AND OTHER APPEALS

Annex A-1	Indonesia's Notice of Appeal	4
Annex A-2	The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu's Notice	

NOTICES OF APPEAL AND OTHER APPEALS

Annex A-1	Indonesia's Notice of Appeal	4
Annex A-2	The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu's Notice of Other Appeal	6
Annex A-3	Viet Nam's Notice of Other Appeal	7

INDONESIA'S NOTICE OF APPEAL*

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 (WT/DS490/R, WT/DS496/R), which was circulated on 18 August 2017 (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:¹

Indonesia contends that the Panel erred in finding that suspension of MFN obligation couldn't be the basis of safeguard imposition since it is not necessary to remedy or prevent serious injury to the domestic producers or due to the existence of the General Interpretative Note to Annex 1A of the WTO Agreement. This finding is in contradiction with an adopted panel report.² In addition, this issue is not under the Panel's term of reference and during the course of panel proceeding no party to the dispute has ever challenged that Regulation No. 137.1/PMK.011/2014 is not a safeguard measure.³

Since Regulation No. 137.1/PMK.011/2014 is a safeguard measure, the Panel erred in finding that Regulation No. 137.1/PMK.011/2014 is inconsistent with Article I:1 of the GATT 1994. In addition, the Panel also erred in concluding that the complainants also make the same claim on the basis of the same arguments against the specific duty as a stand-alone measure. Indonesia requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.11, 7.31, 7.38, 7.40, 7.41, 7.43 and 7.44. In addition, Indonesia requests the Appellate Body to reverse the Panel's findings in paragraph 8.1 of its Report.

Indonesia submits that the panel erred in making findings that is outside its term of reference because of two reasons. First, the Panel has made a finding relating to Article 1 of the Agreement on Safeguards and Article XIX:1(a) last sentence relating to the definition of a safeguard measure which was not included in its term of reference nor has ever been raised by any party to the dispute. Second, the Panel has erred in making a finding of the consistency of Regulation 137.1/PMK.011/2014 as a stand-alone measure (not as a safeguard measure) which is outside the measure at issue in the Panel's request. In the Panel request, complainants have

* This document, dated 28 September 2017, was circulated to Members as document WT/DS490/5, WT/DS496/6.

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.

² Panel Report, para. 7.30.

³ Panel Report, para. 7.10.

THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN
AND MATSU'S NOTICE OF OTHER APPEAL*

Pursuant to Articles 16.4 and 17 of the DSU, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute (WT/DS490; WT/DS496). Pursuant to Rule 23(1) of the Working Procedures for Appellate Review, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu simultaneously files this Notice of Other Appeal, the Other Appellant Submission and the executive summary thereof with the Appellate Body Secretariat.

For the reasons to be further elaborated in its submissions to the Appellate Body, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu appeals, and requests that the Appellate Body **re**ve the findings and conclusions of the Panel, with respect to the following

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

ARGUMENTS OF THE PARTICIPANTS

Annex B-1 Executive summary of Indonesia

EXECUTIVE SUMMARY OF INDONESIA'S APPELLANT'S SUBMISSION

1. This appeal is very important for Indonesia and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the Socialist Republic of Viet Nam (Viet Nam) (referred as "the co-complainants") as well as for all WTO Members. The Appellate Body as the highest adjudicatory body in the WTO dispute settlement is required to step in when there are two panel findings that are in contradiction with each other. In addition, this appeal also raised some important issues to clarify Panel's term of reference as well as whether the Panel has made an objective assessment when making its finding.

2. In this dispute, the co-complainants challenged Indonesia safeguard measure on certain flat-rolled products of iron or non-alloy steel ("galvalume") to be inconsistent with Article XIX of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and various provisions of the WTO

11. Assuming *arguendo* that Regulation 137.1/PMK.011/2014 does not result in the suspension of any obligation under the GATT 1994, Indonesia is still of the view that it would still be safeguards within the meaning of Article XIX because the use of the words "shall be free" in the last sentence of Article XIX:1(a) of the GATT 1994 implies that a Member has the discretion to or not to suspend a WTO concession or obligation when imposing a safeguard measure to remedy serious injury that does not suspend a concession or obligation. In addition, Regulation 137.1/PMK.011/2014 was initiated, investigated, notified and imposed in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards. Recitals of Regulation 137.1/PMK.11/2014 clearly stipulates that basis of the imposition of the safeguard measure is to

safeguard measure or not.²¹ The other 10 WTO panel reports on safeguard measures, the panel never started their assessment by assessing whether the measure at issue is a safeguard measure within the meaning of Article 1 of the Agreement on Safeguards or not.

18. The Panel has erred in making a finding of the consistency of Regulation 137.1/PMK.011/2014 as a stand-alone measure (not as a safeguard measure) which is outside the measure at issue identified in the Panel's request. Indonesia always relates its defense for the co-complainants' MFN claim in connection with its safeguard measure but never as a stand-alone measure.²² This is because in the Panel Request, the co-complainants have explicitly identified the measure at issue as "the specific duty imposed as .²³ If the co-complainants intended to submit a separate claim of inconsistency with the MFN obligation as a stand-alone measure, the co-complainants must make it clear in the Panel Request so Indonesia could also properly defend itself. The Panel in its questions also relates the MFN claim to the safeguard measure and not as stand-alone measure.²⁴ The only time the co-complainants have ever proposed the MFN claim as a stand-alone measure was at the later stage of the Panel proceeding, when the co-complainants answered the Panel's question No. 51 and co-complainants' comments on Indonesia's second written submission, as an alternative argument.²⁵ The Appellate Body in has made it very clear that a party's submissions during panel proceedings cannot cure a defect in a panel request.

19.

23. Based on the foregoing reasons, Indonesia requests the Appellate Body to reverse the Panel's specific conclusions and findings as set out above.

EXECUTIVE SUMMARY OF THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU,
KINMEN AND MATSU'S OTHER APPELLANT'S SUBMISSION

1. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu seeks reversal by the Appellate Body of a number of findings made by the Panel in this dispute.
2. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu's first ground of appeal is that the Panel erred in finding that the specific duty imposed by Indonesia is not a safeguard measure within the meaning of Article 1 of the Agreement on Safeguards, because the Panel's proposed definition is erroneous in that it (i) confuses the issue of the legal characterization of a safeguard measure with36(me)-3(u)6(ard (g)-3a47.177t4ye)-3()-246sU(saf)7

EXECUTIVE SUMMARY OF VIET NAM'S OTHER APPELLANT'S SUBMISSION

1.1. Viet Nam files this other appeal for systemic and commercial reasons.

1.2. From a systemic perspective, Viet Nam disagrees with the Panel's interpretation of Article XIX GATT 1994 and the Agreement on Safeguards and its finding that the measures at issue do not constitute "safeguard measures" for purposes of WTO law for the following reasons.

1.3. The Panel's approach would exclude from the multilateral disciplines of Article XIX and the Agreement on Safeguards a wide array of measures that are clearly intended to prevent or remedy serious injury to the domestic industry; that are imposed as a result of domestic safeguard investigations; that are notified to the WTO Committee on Safeguards and to all other WTO Members as "safeguard measures"; that involve the participation of exporters, importers and other interested parties and exporting Governments in complex and time-consuming investigations; that give rise to consultations required under the auspices of the Agreement on Safeguards; and that have substantial effects on the commercial interests of exporters and the trading community at large.

1.4. The Panel's interpretation of what is a "safeguard measure" conveys an improper message to governments. Under the Panel's approach, governments may – perhaps under pressure from domestic producers – initiate and conduct safeguard investigations, requiring the involvement of exporters and exporting governments in financially and administratively burdensome investigations and then avoid any consequences under WTO law simply by tweaking the measure they impose at the end of the process. There may be many reasons wh

2.2. Viet Nam submits that this finding is based on the Panel's erroneous interpretation and application of Article XIX, multiple provisions of the Agreement on Safeguards, including Articles 1, 9.1, as well as the General Interpretative Note to Annex 1A of the WTO Agreement (General Interpretative Note to Annex 1A). The Panel based its position on two reasons:

, the Panel stated that the discrimination that is called for by Article 9.1 of the Agreement on Safeguards is not intended to prevent or remedy serious injury, but rather to ensure certain market access for developing country imports.

it met the requirements of both Article 9.1 of the Agreement on Safeguards and its domestic legislation implementing that provision.

2.8. Furthermore, in the Panel's view, "

2.14. In light of the foregoing, the Panel erred in finding that the discriminatory application of a safeguard measure in accordance with Article 9.1 does not constitute a "suspension" of Article I:1, because of the application of the General Interpretative Note to Annex 1A.

2.15. Consequently, the Panel's general finding that the suspension of Article I:1 to exclude certain imports from the application of the specific duty, i.e. imports from developing countries pursuant to Article 9.1, does not constitute a "suspension" for purposes of Article XIX:1(a) and the Agreement on Safeguards has no legal basis.

EXECUTIVE SUMMARY OF VIET NAM'S APPELLEE'S SUBMISSION

1.1. Viet Nam agrees with Indonesia's first ground of appeal. Viet Nam provided its views on this matter in paragraphs 3.1-3.61 of its other appellant's submission. Thus, Viet Nam requests the Appellate Body to reverse the Panel's finding that the measure at issue is not a safeguard measure. However, contrary to Indonesia's position, Viet Nam requests the Appellate Body to complete the Panel's legal analysis with respect to its safeguard-related claims.

1.2. Viet Nam disagrees with Indonesia's second ground of appeal. Indonesia's appeal does not clearly set out the Panel's errors, as required by Rules 20(2)(d) and 21(2)(b)(i) of the Appellate Body's Working Procedures, and this lack of clarity prevents Viet Nam from articulating a proper defence of the Panel's finding. Indonesia seems to suggest that the only basis for the Panel's finding of inconsistency with Article I:1 was the finding that the measure was not a safeguard measure and, therefore, that a reversal of this characterization should logically lead to a reversal of the inconsistency with Article I:1. However, the mere characterization of the measure was not determinative of whether the measure was inconsistent with Article I:1 of the GATT 1994. Rather, to find the inconsistency of the measure with Article I:1, the Panel analyzed the Article I:1 claim on the basis of its merits, in the light of the requirements of that provision.

1.7. While Viet Nam has not made a claim under Article 11 of the DSU, it agrees with Indonesia's general proposition that the Panel did not conduct the treatment of the threshold question in a manner that would ensure an objective assessment of the question before it.

1.8. Viet Nam requests the Appellate Body to:

- a. Reverse the Panel's finding that Indonesia's measure is not a safeguard measure and to declare of no legal effect the Panel's legal interpretations provided in paragraph 7.10 of the Panel's Report.

6. Indonesia submits that should the Appellate Body were to decide to complete the legal

EXECUTIVE SUMMARY OF JAPAN'S THIRD PARTICIPANT'S SUBMISSION¹

1. In Japan's view, the Panel improperly examined as a preliminary issue whether the duty at issue was a "safeguard measure" defined as a measure suspending, withdrawing or modifying a GATT obligation or concession in order to prevent or remedy serious injury.
2. Japan notes that Article XIX:1(a) of the GATT 1994 does not contain a definition of what is a "safeguard measure". At best, it can be deduced from the text of Article XIX:1(a) of the GATT 1994 that this provision can be invoked by a Member when it is necessary to justify a measure that is inconsistent with (e.g., GATT Articles I, II or XI) provided that the measure meets the requirements laid down in Article XIX of the GATT 1994 and the Agreement on Safeguards.
3. Thus, Japan understands that the only requirement in order for a panel to examine whether a measure is consistent/inconsistent with Article XIX:1(a) of the GATT 1994 and the Agreement on Safeguards is whether a GATT obligation is suspended and/or a concession is withdrawn/modified