



**UNITED STATES – ANTI-DUMPING AND COUNTERVAILING MEASURES ON  
CERTAIN COATED PAPER FROM INDONESIA**

**REQUEST FOR THE ESTABLISHMENT OF A PANEL BY INDONESIA**

The following communication, dated 9 July 2015, from the delegation of Indonesia to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On March 13, 2015, the Government of Indonesia requested consultations with the United States of America pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 17 of the Agreement on Implementation of Article IV of the General Agreement on Tariffs and Trade 1994 ("AD Agreement") and Article 30 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), with respect to the United States' measures and determinations imposing anti-dumping duties and countervailing duties on certain coated paper products from Indonesia.<sup>1</sup> Indonesia and the United States held the consultations on June 25, 2015 with a view of reaching a mutually acceptable resolution. Unfortunately, these consultations failed to resolve the dispute.

**Measures at Issue**

Indonesia requests the establishment of a panel to examine the preliminary and final anti-dumping duty and countervailing duty measures in Appendix 1. The measures at issue were instituted by the United States Department of Commerce ("USDOC") and the United States International Trade Commission ("USITC").

The measures include the determinations by the USDOC and USITC to initiate certain anti-dumping duty and countervailing duty investigations, the conduct of those investigations, any preliminary or final anti-dumping duty and countervailing duty determinations issued in those investigations, any definitive anti-dumping duties and countervailing duties imposed as a result of those investigations, including any notices, annexes, orders, decision memoranda, or other instruments issued by the United States in connection with the anti-dumping duty and countervailing duty measures identified in Appendix 1.

Indonesia considers the following determinations<sup>2</sup> by the USDOC and USITC, and the corresponding anti-dumping duties and countervailing duty measures<sup>3</sup> to be inconsistent with the United States' obligations under the following provisions of the AD Agreement, SCM Agreement, and GATT 1994:

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<sup>1</sup> WT/DS491/1.

<sup>2</sup> Including the conduct of the investigations, any notices, annexes, decision memoranda, orders, amendment, or other instruments issued by the United States in connection with the anti-dumping and countervailing duty measures.

<sup>3</sup> The measures at issue have been identified in Appendix 1.

**"As Applied" Claims**Subsidy Determinations

(1) Indonesia considers that the determinations made, and the countervailing measures imposed, by the United States are inconsistent with Articles 2, 12, and 14 of the SCM Agreement and with the following obligations:

- (a) In connection with the alleged provision of standing timber for less than adequate remuneration:
  - (i) Article 2.1 of the SCM Agreement because USDOC did not identify whether the entity allegedly providing the purported subsidy was the national, regional or local government, and therefore, failed to properly examine whether the purported subsidy was "specific to an enterprise . . . within the jurisdiction of the granting authority."
  - (ii) Article 2.1(c) of the SCM Agreement because USDOC improperly failed to demonstrate that Indonesia's alleged provision of standing timber constituted a subsidy program specific to an enterprise or industry or group of enterprises or industries. USDOC did not cite to evidence establishing the existence of a plan or scheme sufficient to constitute a "subsidy programme."
  - (iii) Article 14(d) of the SCM Agreement because USDOC improperly found that Indonesia conferred a benefit by allegedly providing standing timber for less than adequate remuneration using a per se determination of price distortion based on purported government intervention. USDOC failed to determine the adequacy of remuneration "in relation to prevailing market conditions for the good . . . in question in the country of provision."
- (b) In connection with the alleged benefit conferred by the Government of Indonesia's log export ban:
  - (i) Article 2.1 of the SCM Agreement because USDOC did not identify whether the entity allegedly providing the purported subsidy was the national, regional or local government, and therefore, failed to properly examine whether the purported subsidy was "specific to an enterprise . . . within the jurisdiction of the granting authority."
  - (ii) Article 2.1(c) of the SCM Agreement because USDOC improperly failed to demonstrate that Indonesia's ban on log exports constituted a subsidy program specific to an enterprise or industry or group of enterprises or industries. USDOC did not cite to evidence establishing the existence of a plan or scheme sufficient to constitute a "subsidy programme."
  - (iii) Article 14(d) of the SCM Agreement because USDOC improperly found that Indonesia conferred a benefit by banning log exports using a per se determination of price distortion based on purported government intervention. USDOC failed to determine the adequacy of remuneration "in relation to prevailing market conditions for the good . . . in question in the country of provision."
- (c) In connection with the Government of Indonesia's alleged forgiveness of debt:
  - (i) Article 2.1 of the SCM Agreement because USDOC did not identify whether the entity allegedly providing the purported subsidy was the national, regional or local government, and therefore, failed to properly examine whether the purported subsidy was "specific to an enterprise . . . within the jurisdiction of the granting authority."
  - (ii) Article 2.1(c) of the SCM Agreement because USDOC improperly failed to demonstrate that Indonesia's alleged debt forgiveness constituted a subsidy

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program specific to an enterprise or industry or group of enterprises or industries. USDOC did not cite to evidence establishing the existence of a plan or scheme sufficient to constitute a "subsidy programme."

- (iii) Article 12.7 of the SCM Agreement because USDOC improperly applied adverse facts available without examining information Indonesia provided, and without examining whether Indonesia "refuse[d] access to, or otherwise [did] not provide" the information.<sup>4</sup>

#### USITC Threat of Injury Determination

- (2) Article 3.5 of the AD Agreement and Article 15.5 of the SCM Agreement because:
- (a) USITC did not demonstrate the existence of a causal relationship between the imports and the purported threat of injury to the domestic industry. USITC failed to sufficiently examine known factors other than the allegedly dumped and subsidized imports which at the same time were in fact injuring the domestic injury.
- (3) Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement because:
- (a) USITC based its threat of injury findings on "allegation, conjecture [and] remote possibility." The findings on which the determinations were based conflicted with the record and were not based on record evidence.
- (b) USITC findings that formed the basis for its threat of injury determination did not indicate a change in circumstances that was "clearly foreseen and imminent." Furthermore, USITC failed to demonstrate that the totality of the factors considered lead to the conclusion that material injury would have occurred unless protective action was taken.
- (4) Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement because:
- (a) USITC did not exercise or consider "special care" in its threat of injury determination.

#### **"As Such" Claims**

##### Threat of Injury Determination

- (5) The requirement contained in 19 U.S.C. § 1677(11)(B) that a tie vote in a threat of injury determination must be treated as an affirmative USITC determination is inconsistent with Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement because the requirement does not consider or exercise special care.
- (6) In addition to the foregoing claims set forth, Indonesia asserts that the United States has also consequently acted inconsistent with Article 1 of the AD Agreement, Article 10 of the SCM Agreement, and Article VI of the GATT 1994.
- (7) The determinations and measures also nullify and impair the benefits accruing to Indonesia under the cited agreements directly and indirectly.

#### **Request for the Establishment of a Panel**

- (8) Accordingly, Indonesia respectfully requests, pursuant to Articles 4 and 6 of the DSU and Article 17.4 of the AD Agreement, that the Dispute Settlement Body establish a panel to examine this manner with standard terms of reference as set out in Article 7.1 of the DSU.

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<sup>4</sup> This claim includes all of the instances in which USDOC used facts available and/or applied adverse facts available in support of its investigations and determinations listed in Appendix 1.

The request for the establishment of a Panel is enclosed with this communication. Indonesia respectfully asks that this request be placed on the agenda of the Dispute Settlement Body meeting scheduled to take place on 20 July 2015.

Please circulate the enclosed notification to the Dispute Settlement Body. We also request the Secretariat to notify the Council for Trade in Goods and the Committee on Anti-Dumping Practices.

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**Appendix 1**

- Certain Coated Paper from Indonesia: Initiation of Countervailing Duty Investigation, 74 Fed. Reg. 53707 (Oct. 20, 2009) (USDOC initiation of CVD investigation);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China: Initiation of Antidumping Duty Investigations, 74 Fed. Reg. 53710 (Oct. 20, 2009) (USDOC initiation of AD investigation);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia, 74 Fed. Reg. 50243 (Sept. 30, 2009) (USITC institution of investigation);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia, 74 Fed. Reg. 61174 (Nov. 23, 2009) (USITC preliminary injury determination);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 75 Fed. Reg. 10761 (Mar. 9, 2010) (USDOC preliminary CVD determination);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 Fed. Reg. 24885 (May 6, 2010) (USDOC preliminary AD determination);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination, 75 Fed. Reg. 59209 (Sept. 27, 2010) (USDOC final CVD determination);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value 75 Fed. Reg. 59223 (Sept. 27, 2010) (USDOC final AD determination);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia, 75 Fed. Reg. 70289 (Nov. 17, 2010) (USITC final threat of injury determination);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Countervailing Duty Order, 75 Fed. Reg. 70206 (Nov. 17, 2010) (CVD order);
  - Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Antidumping Duty Order, 75 Fed. Reg. 70205 (Nov. 17, 2010) (AD order); and
  - Section 771(11)(B) of the Tariff Act of 1930, as amended, codified at Title 19 of the United States Code, Section 1677(11)(B).
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