



[BILLING CODE 3290-F6]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS491]

WTO Dispute Settlement Proceeding Regarding *United States - Anti-Dumping and Countervailing Measures on Certain Coated Paper from Indonesia*

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that the Republic of Indonesia has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* and the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). That request may be found at www.wto.org contained in a document designated as WT/DS491/3. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before December 18, 2015, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to www.regulations.gov, docket number **USTR-2015-0005**. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: Micah Myers, Associate General Counsel, or Juli Schwartz, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (“URAA”) (19 U.S.C. §3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a dispute settlement panel has been requested pursuant to the DSU. The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by Indonesia

On November 17, 2010, the U.S. Department of Commerce (“DOC”) published antidumping (“AD”) and countervailing duty (“CVD”) orders (75 Fed. Reg. 70205; 75 Fed. Reg. 70206) on certain coated paper from Indonesia. On March 13, 2015, Indonesia requested WTO dispute settlement consultations regarding some of DOC’s determinations in the CVD investigation, as well as the U.S. International Trade Commission’s (“ITC”) threat of material injury determinations in both the AD and CVD proceedings. Indonesia and the United States held

consultations in Geneva on June 25, 2015.

Indonesia filed a request for the establishment of a WTO dispute settlement panel in this matter on July 9, 2015. USTR notified, and solicited comments from, the public in connection with that request on August 11, 2015 (*see* 80 Fed. Reg. 48,134). Subsequently, on August 20, 2015, Indonesia filed a new request for the establishment of a WTO dispute settlement panel in this matter. The WTO Dispute Settlement Body established a panel on September 28, 2015.

In its panel request, Indonesia contends that the DOC's findings of countervailable subsidies with respect to a number of government practices in the logging and paper industries are inconsistent with Article VI of the *General Agreement on Tariffs And Trade 1994* ("GATT 1994") and the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). Indonesia also contends that the ITC's affirmative threat determinations in both the AD and CVD investigations breach Article VI of the GATT 1994, the *Agreement on Implementation of Article VI of the General Agreement on Tariffs And Trade 1994* ("AD Agreement"), and the SCM Agreement. In addition, Indonesia raises an "as such" challenge to the statutory tie-vote provision set out in Section 771(11)(B) of the Tariff Act of 1930 (*codified at* 19 U.S.C. §1677(11)(B)), claiming that this provision breaches Article VI of the GATT 1994, Articles 1 and 3.8 of the AD Agreement, and Articles 10 and 15.8 of the SCM Agreement.

Indonesia also lists in its panel request the following items as part of its challenge: "the determinations by the [DOC] and [ITC] 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.”

Indonesia contends DOC’s determination that Indonesia provided standing timber for less than adequate remuneration breaches Article 2.1 of the SCM Agreement because DOC failed to properly examine whether the purported subsidy was “specific to an enterprise . . . within the jurisdiction of the granting authority” and did not cite to evidence establishing the existence of a “plan or scheme sufficient to constitute a ‘subsidy programme.’” Indonesia also alleges DOC breached Article 14(d) of the SCM Agreement because it failed to determine the adequacy of remuneration “in relation to prevailing market conditions for the good . . . in question in the country of provision.” Indonesia alleges that these provisions were also breached through DOC’s determinations that Indonesia’s log export ban and debt forgiveness practices each conferred a benefit which constitutes a countervailable subsidy. With respect to debt forgiveness, Indonesia alleges that DOC 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, in breach of Article 12.7 of the SCM Agreement.

Indonesia alleges that the ITC’s threat determinations in the investigations at issue breach Article 3.5 of the AD Agreement and Article 15.5 of the SCM Agreement because the ITC did not

demonstrate “the existence of a causal relationship between the imports and the purported threat of injury to the domestic industry” and 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.” In addition, Indonesia alleges the ITC’s threat determinations breach Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement because the threat findings were based on “allegation, conjecture [and] remote possibility”; were not supported by record evidence; and did not indicate a change in circumstances that was “clearly foreseen and imminent.”

Further, Indonesia alleges the ITC’s threat determinations breach Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement because the ITC 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.” Indonesia alleges the ITC did not apply or consider “special care” in its threat of injury determinations, in contravention of Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement.

Indonesia also claims 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 ... [ITC] determination,” is, “as such,” 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.”

Finally, Indonesia alleges that these actions are inconsistent with Article 1 of the AD Agreement, Article 10 of the SCM Agreement, and Article VI of the GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number **USTR-2015-0005**. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number **USTR-2015-0005** on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Comment Now!” (For further information on using the www.regulations.gov website, please consult the resources provided on the website by clicking on “How to Use This Site” on the left side of the home page.)

The www.regulations.gov website allows users to provide comments by filling in a “Type Comments” field, or by attaching a document using an “Upload File” field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comments” field.

A person requesting that information contained in a comment that he/she submitted, be treated as confidential business information must certify that such information is business confidential and

would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter:

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. § 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number **USTR-2015-0005**,

accessible to the public at www.regulations.gov .

The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at www.ustr.gov: the United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, the panel report and, if applicable, the report of the Appellate Body, will also be available on the website of the World Trade Organization, at www.wto.org. Comments open to public inspection may be viewed at www.regulations.gov .

Juan Millan,

Acting Assistant United States Trade Representative

for Monitoring and Enforcement.

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