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AUSTRALIA – ANTI-DUMPING MEASURES ON A4 COPY PAPER

UNDERSTANDING BETWEEN AUSTRALIA AND INDONESIA REGARDING PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU

The following communication, dated 2 October 2020, from the delegation of Australia and the delegation of Indonesia to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

On 27 January 2020, the Dispute Settlement Body (DSB) adopted its recommendations and rulings in the dispute *Australia – Anti-Dumping Measures on A4 Copy Paper* (WT/DS529). Pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Indonesia and Australia agreed that the period of time to implement the DSB recommendations and rulings would be eight months, expiring on 27 September 2020, with an extension of one month in the event of unavoidable delays. During the implementation period, Australia has conducted a review of the anti-dumping measures at issue in this dispute, within the framework of Australia's anti-dumping system, taking into account the recommendations and rulings of the DSB.

Indonesia and Australia (collectively "the Parties") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes and are without prejudice to either Party's views on the correct interpretation of the DSU:

1. Should Indonesia consider that the situation described in Article 21.5 of the DSU exists, Indonesia will request that Australia enter into consultations with Indonesia. The Parties agree to hold such consultations within 20 days from the receipt of the request. After this 20-day period has elapsed, Indonesia may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time.
2. At the first DSB meeting at which Indonesia's request for the establishment of an Article 21.5 panel appears on the agenda, Australia will accept the establishment of that panel.
3. The Parties will cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either Party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days but within 60 days after the circulation of the report to the Members, unless either Party appeals the report.
5. In the event of an appeal of the Article 21.5 panel report, the Parties will cooperate to enable the Appellate Body to circulate its report to the Members within no more than 90 days from the date of notification of the appeal to the DSB.

6. The Parties agree that if, on the date of the circulation of the panel report under Article 21.5 of the DSU, the Appellate Body is composed of fewer than three Members available to serve on a division in an appeal in these proceedings (hereinafter referred to as "non-functioning Appellate Body"), either Party may appeal the Article 21.5 panel report through resort to the arbitration mechanism outlined in Article 25 of the DSU. In these circumstances, the Parties will agree to Article 25 arbitration procedures to be used in the event of an appeal, before the Article 21.5 panel report is issued to the Parties (but noting the Parties would only resort to Article 25 arbitration if there was a non-functioning Appellate Body on the date of circulation of the Article 21.5 panel report). The Parties will notify all Members of their agreement to resort to arbitration sufficiently in advance of the actual commencement of the arbitration process. In the event of an appeal through resort to arbitration pursuant to Article 25 of the DSU, the Parties will cooperate to enable the arbitrators to notify the award to the DSB and the Council or Committee of any relevant agreement within no more than 90 days from the date of notification of the appeal to the DSB.
 7. Indonesia may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU only in the event that the DSB rules as a result of a proceeding under Article 21.5 of the DSU that a measure taken to comply does not exist or is inconsistent with a covered agreement. Australia will not assert that Indonesia is precluded from obtaining such DSB authorization because its request was made outside the time period specified in the first sentence of Article 22.6 of the DSU. This is without prejudice to Australia's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
 8. If Indonesia requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, Australia will have the right to object under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed. In the event of such objection, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU.
 9. The Parties will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
 10. If any of the original panelists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), or any person serving in such proceedings becomes unavailable to serve, the Parties will promptly consult on a replacement, and either Party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, or a person serving in such proceeding becomes unavailable to serve, the Parties will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
 11. The Parties will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the Parties consider that a procedural aspect has not been properly addressed in these procedures, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.
 12. These agreed procedures are of less-than-treaty status, and in no way prejudice other rights of either Party to take any action or procedural step to protect its rights and interests, including recourse to any of the provisions of the DSU.
 13. This document will be executed in 2 (two) original copies. Each Party will receive 1 (one) original copy, all of which will be equally valid.
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