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INDONESIA – MEASURES RELATING TO RAW MATERIALS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 14 January 2021, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 22 November 2019, the European Union requested consultations with Indonesia pursuant to Articles 1 and 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) and Article 4.1 of the Agreement on Subsidies and Countervailing Measures (ASCM) with regard to various measures concerning certain raw materials necessary for the production of stainless steel, as well as a cross-sectoral import duty exemption scheme conditional upon the use of domestic over imported goods.¹

The consultations took place on 30 January 2020 in Geneva with a view to reaching a satisfactory settlement of the matter. Unfortunately, they failed to settle the dispute. The European Union therefore requests that a panel be established pursuant to Articles 4.7 and 6 of the DSU and Article XXIII of the GATT 1994, to examine the matter based on the standard terms of reference, as set out in Article 7.1 of the DSU.

The measures at issue in this request are the export prohibition of nickel ore and the domestic processing requirements on minerals, in particular nickel ore and iron ore.

The export prohibition of nickel ore

Indonesia has restricted exports of nickel ore to different extents and under different rules since at least 2014. In January 2014 nickel was excluded from the regime on the necessary processing and purification of mining commodities for export, which effectively outlawed exports of nickel ore. From January 2017 to December 2019 exports of nickel ore with a concentration below 1.7% were permitted subject to certain conditions, while those of nickel ore with a higher concentration remained prohibited. Since January 2020 all exports of nickel ore, regardless of its concentration, are banned.

The legal instruments through which this measure is implemented include i.a., considered alone or in any combination:

- Law Number 4/2009 on Coal and Mining.
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 7/2012 concerning increasing added value of minerals through processing and refining of minerals activities of 6 February 2012.

¹ WT/DS592/1, G/L/1345, G/SCM/D127/1.

- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 11/2012 amending Regulation of the Minister of Energy and Mineral Resources Number 7/2012 of 16 May 2012.
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 20/2013 amending Regulation of the Minister of Energy and Mineral Resources Number 7/2012 of 1 August 2013.
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 1/2014 concerning increasing added value of minerals through domestic processing and refining of minerals activities of 11 January 2014.
- Regulation of the Minister of Trade of the Republic of Indonesia Number 1/2017 concerning export provisions for processed and purified mining products of 9 January 2017.
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 25/2018 concerning mineral and coal mining business of 3 May 2018.
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 11/2019 amending Regulation of the Minister of Energy and Mineral Resources Number 25/2018 of 28 August 2019.
- Regulation of the Minister of Trade of the Republic of Indonesia Number 96/2019 on export provisions for processed and purified mining products of 30 December 2019.

This request also covers any annexes thereto, notices, preliminary findings, reviews, amendments, supplements, replacements, renewals, extensions, implementing measures or any other related measures.

The export prohibition of nickel ore bans all exports of nickel ore from Indonesia. It is therefore inconsistent with Article XI:1 of the GATT 1994 which provides that no prohibitions or restrictions shall be instituted or maintained on the exportation or sale for export of any product destined for the territory of any other contracting party.

The domestic processing requirements

Indonesia applies domestic processing requirements with regard to certain raw materials, notably nickel ore and iron ore, prior to them being exported. Domestic processing requirements oblige mining companies to enhance the value of the relevant raw materials through the conduct of certain processing and/or purification operations in Indonesia before exporting them.

The legal instruments through which this measure is implemented include i.a., considered alone or in any combination:

- Law Number 4/2009 on Coal and Mining.
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 25/2018 concerning mineral and coal mining commercialisation of 3 May 2018.
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 50/2018 amending Regulation of the Minister of Energy and Mineral Resources Number 25/2018 of 5 December 2018.
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 11/2019 amending Regulation of the Minister of Energy and Mineral Resources Number 25/2018 of 28 August 2019.

This request also covers any annexes thereto, notices, preliminary findings, reviews, amendments, supplements, replacements, renewals, extensions, implementing measures or any other related measures.

The domestic processing requirements have the consequence of preventing exports of the raw materials concerned unless they have been duly processed and/or purified. For that reason, it is inconsistent with Article XI:1 of the GATT 1994 which provides that no prohibitions or restrictions shall be instituted or maintained on the exportation or sale for export of any product destined for the territory of any other contracting party.

As a result of the inconsistencies described above, Indonesia's measures nullify or impair the benefits accruing to the European Union, directly or indirectly, under the covered agreements.

The European Union asks that this request for the establishment of a panel be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 25 January 2021.
