

7.140. Chinese Taipei requested Article 12.3 consultations on 30 April 2013, during the course of KPPI's investigation<sup>282</sup>, after having reminded KPPI of its "pre-consultations" obligations under Article 12.3 on 11 January 2013.<sup>283</sup> Chinese Taipei also requested Article 12.3 consultations at a meeting of the Committee on Safeguards of 22 October 2013.<sup>284</sup> KPPI did not specifically contact Chinese Taipei following its requests for consultations, and Chinese Taipei did not subsequently approach KPPI or any other Indonesian government entity again after 22 October 2013 to request consultations. Chinese Taipei obtained the Final Disclosure Report on 7 October 2014 after requesting it on 6 October 2014, more than six months after it had been issued.<sup>285</sup>

7.141. There is no evidence that KPPI adopted a "provisional safeguard" within the meaning of Article XIX:2 of the GATT 1994 or Article 6 of the Agreement on Safeguards, or that such a measure, assuming *arguendo* that it ever actually existed, was justified on the basis of "critical circumstances".

## 8 CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set out in this Report, we conclude as follows:

- a. the specific duty applied by Indonesia on imports of galvalume by means of Regulation No. 137.1/PMK.011/2014 *does not* constitute a safeguard measure within the meaning of Article 1 of the Agreement on Safeguards; and
- b. the application of the specific duty on imports of galvalume originating in all but the 120 countries listed in Regulation No. 137.1/PMK.011/2014 *is inconsistent* with Indonesia's obligation to afford MFN-treatment under Article I:1 of the GATT 1994.

8.2. Having concluded that the specific duty does not constitute a safeguard measure within the meaning of Article 1 of the Agreement on Safeguards, there is *no legal basis* to support the complainants' claims under the Agreement on Safeguards and the GATT 1994 with respect to the specific duty *as a safeguard measure*. Accordingly, we dismiss the entirety of those claims.

8.3. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. Thus, to the extent that we have found the measures at issue to be inconsistent with Article I:1 of the GATT 1994, they have nullified or impaired benefits accruing to Chinese Taipei and Viet Nam under that agreement.

8.4. The complainants have requested that were we to confirm the full extent of their complaint against the specific duty *as a safeguard measure*, we should go on to exercise the discretion accorded to panels under Article 19.1 of the DSU and suggest that Indonesia bring its safeguard measure into conformity with its WTO obligations by immediately withdrawing it.<sup>286</sup> Having found that there is no legal basis to support the complainants' claims against the specific duty *as a safeguard measure*, there is no need to consider the complainants' request. Accordingly, in the light of our finding that the application of the specific duty is inconsistent with Indonesia's obligations under Article I:1 of the GATT 1994, we recommend, pursuant to Article 19.1 of the DSU, that Indonesia bring its measure into conformity with its obligations under the GATT 1994.

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<sup>282</sup> Letters dated 11 January 2013 and 30 April 2013 from Chinese Taipei to KPPI, (Exhibit TPKM/VNM-14).

<sup>283</sup> Letters dated 11 January 2013 and 30 April 2013 from Chinese Taipei to KPPI, (Exhibit TPKM/VNM-14).

<sup>284</sup> Committee on Safeguards, Minutes of the regular meeting held on 22 October 2013, circulated 27 March 2014, G/SG/M/44, (Exhibit TPKM/VNM-34), para. 53.

<sup>285</sup> Email exchange dated 6 and 7 October 2014 between Chinese Taipei and KPPI, (Exhibit TPKM/VNM-17).

<sup>286</sup> Complainants' opening statement at the first meeting of the Panel, para. 9.3; second written submission, para. 3.2; and opening statement at the second meeting of the Panel, paras. 10.1-10.3.