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TURKEY – ADDITIONAL DUTIES ON IMPORTS OF AIR CONDITIONING MACHINES FROM THAILAND

REQUEST FOR CONSULTATIONS BY THAILAND

The following communication, received on 5 December 2018, from the delegation of Thailand to the delegation of Turkey, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

Upon instructions from my authorities, and on behalf of the Government of the Kingdom of Thailand ("Thailand"), I hereby request consultations with the Government of the Republic of Turkey ("Turkey") 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 14 of the *Agreement on Safeguards* concerning the additional duty imposed by Turkey on imports of air-conditioning machines from Thailand.

A. Identification of the measure

The measure at issue is the additional duty of 9.27% imposed by Turkey on imports of air conditioning machines from Thailand under HS Code 8415.10 (the "Additional Duty").¹

On 3 August 2017, Turkey notified the Additional Duty to the Council for Trade in Goods and the Committee on Safeguards (the "Committee") as a proposed suspension of concessions and other obligations under Article 8.2 of the Agreement on Safeguards.² The Additional Duty went into effect on 5 September 2017 for three years.

The notification from Turkey clarifies that the Additional Duty applies to "Air-conditioning machines (of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained or 'split-system')"³ (the "Air Conditioning Machines").

Turkey applies the Additional Duty to imports of Air Conditioning Machines from Thailand alone.

B. Background

In imposing the Additional Duty, Turkey purportedly acted in response to the extension of a safeguard measure adopted by Thailand on imports of non-alloy hot rolled steel flat products in coils and not in coils (the "Steel Products").⁴

¹ G/L/1183-G/SG/N/12/TUR 5.

² G/L/1183-G/SG/N/12/TUR 5.

³ G/L/1183-G/SG/N/12/TUR 5.

⁴ G/L/1183-G/SG/N/12/TUR 5.

Thailand's safeguard measure on the Steel Products was adopted on 7 June 2014, as a provisional measure.⁵ On 13 January 2015, Thailand notified the Committee of its decision to impose a definitive safeguard measure on the Steel Products for a period of three years.⁶

On 19 June 2017, Thailand notified the Committee of its decision to extend its safeguard measure on the Steel Products.⁷ Thailand's extended safeguard measure is being applied in the form of a tariff increase on these products for three years, from 7 June 2017 until 6 June 2020:⁸

Extended Duration	Extended Safeguard Duty
7 June 2017 – 6 June 2018	21.00% of C.I.F. price
7 June 2018 – 6 June 2019	20.87% of C.I.F. price
7 June 2019 – 6 June 2020	20.74% of C.I.F. price

The three-year average safeguard duty on the Steel Products is thus 20.87%.

Turkey's share of the Steel Products imported into Thailand in 2014 was 5.14%.

The 3 August 2017 notification by Turkey of the Additional Duty asserts that the application by Thailand of the increased duty of 21% on the Steel Products would result in US \$6.5 million in duty collection by Thailand from Turkey's exports of these products, "based on the export value in 2013; 31 million US dollars".⁹

According to Turkey, to maintain the equivalent level of concessions and other obligations under the GATT 1994, it was entitled to impose an additional duty of 9.27% on imports of air conditioning machines from Thailand. It explained that this suspension of concessions would affect US \$70.1 million worth of imports of Air Conditioning Machines from Thailand, based on 2013 import values, and would result in US \$6.5 million in duty collection by Turkey.¹⁰

Turkey thus relied on import data from 2013, the year of the surge in imports that led to Thailand's imposition of the safeguard measure on the Steel Products, rather than on a three-year average of import value preceding the original measure. The application of a three-year average safeguard duty of 20.87% on the Steel Products should result in only US \$3.2 million in duty collected by Thailand with regard to Turkish exports of these products, based on an average of the import value from June 2011 – May 2014, *i.e.*, less than half of the US \$ 6.5 million relied on by Turkey to determine the level of concessions.

Moreover, Turkey's Additional Duty will apply until 4 September 2020, even though Thailand's extended safeguard measure on the Steel Products will expire on 6 June 2020.

C. Legal basis of the complaint

The Additional Duty appears to be inconsistent with Turkey's obligations under the GATT 1994 and the Agreement on Safeguards, including but not limited to the following:

- a. Turkey is not an "affected" WTO Member with a "substantial interest" in the safeguard measure on the Steel Products, and thus was not entitled to suspend the application of substantially equivalent concessions or other obligations under the GATT 1994 by imposing the Additional Duty on Air Conditioning Machines from Thailand. Turkey is in violation of Articles 8.2 and 12.3 of the Agreement on Safeguards and Article XIX:3 and XIX:2 of the

⁵ G/SG/N/7/THA/3/Suppl.1-G/SG/N/11/THA/3/Suppl.1.

⁶ G/SG/N/8/THA/3-G/SG/N/10/THA/3-G/SG/N/11/THA/4.

⁷ G/SG/N/8/THA/3/Suppl.2-G/SG/N/10/THA/3/Suppl.2.

⁸ G/SG/N/8/THA/3/Suppl.2-G/SG/N/10/THA/3/Suppl.2.

⁹ G/L/1183-G/SG/N/12/TUR 5.

¹⁰ G/L/1183-G/SG/N/12/TUR 5.

GATT 1994 because only affected exporting Members are free to suspend substantially equivalent concessions.

- b. The Additional Duty exceeds what constitutes "substantially equivalent" concessions, and thus in any case Turkey has acted in violation of Article 8.2 of the Agreement on Safeguards and Article XIX:3 of the GATT 1994.
- c. Turkey discriminates between Air Conditioning Machines originating in Thailand and the like products originating in other WTO Members by imposing the Additional Duty only on imports from Thailand, in violation of Article I:1 of the GATT 1994.
- d. Turkey has not ensured that Air Conditioning Machines from Thailand are exempt from ordinary customs duties and all other duties or charges of any kind imposed on or in connection with the importation of Air Conditioning Machines, in violation of Article II.1(a) and (b) of the GATT 1994.

The Additional Duty thus appears to nullify or impair the benefits accruing to Thailand directly or indirectly under the GATT 1994 and the Agreement on Safeguards.

This request also concerns any modification, review, replacement or amendment to the Additional Duty, as well as any underlying reports, memoranda and other documents supporting the Additional Duty.

Thailand reserves the right to raise additional factual and legal issues, and to address additional measures and claims regarding the above matter, in the course of the consultations and in any request for the establishment of a panel.

Thailand looks forward to receiving Turkey's reply to this request and to determining a mutually acceptable date and venue for consultations.
