



15 February 2019

(19-0899)

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Original: English

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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THAILAND

The following communication, dated 14 February 2019, from the delegation of Thailand to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 4 December 2018, the Government of the Kingdom of Thailand ("Thailand") requested 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.

Consultations were held on 8 January 2019 with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute.

Therefore, Thailand respectfully requests, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994, and Article 14 of the Agreement on Safeguards, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

Pursuant to Article 6.2 of the DSU, Thailand proceeds below to identify the specific measures at issue and to provide a brief summary of the legal basis of the complaint.

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.

¹ G/L/1183; G/SG/N/12/TUR5; See Regulation 2017/10798 imposing the additional duty on imports from Thailand, as published in Turkey's Official Journal on 22 November 2017, <http://www.resmigazete.gov.tr/eskiler/2017/11/20171122-3.pdf>.

² G/L/1183; G/SG/N/12/TUR5.

³ G/L/1183; G/SG/N/12/TUR5.

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.

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

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, without considering other information such as for example the 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 would 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.

⁴ G/L/1183; G/SG/N/12/TUR5.

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/TUR5.

¹⁰ G/L/1183; G/SG/N/12/TUR5.

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 imposed by Turkey is inconsistent with the obligations of Turkey under the GATT 1994 and the Agreement on Safeguards.

In particular, Thailand considers that the safeguard measure fails to comply with the following provisions:

- a. Articles 8.2 and 12.3 of the Agreement on Safeguards and Article XIX:3 and XIX:2 of the GATT 1994 because Turkey is not an "affected exporting Member" with a "substantial interest" in the safeguard measure on the Steel Products, given the low level of imports from Turkey as a share of total imports of the Steel Products covered by Thailand's safeguard measure. Turkey was thus 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.
- b. Article 8.2 of the Agreement on Safeguards and Article XIX:3 of the GATT 1994 because even assuming that Turkey had the right to suspend concessions, *quod non*, the Additional Duty exceeds what constitutes "substantially equivalent" concessions, among others since Turkey unduly relied exclusively on import levels for the year preceding the imposition for the measure and maintains the Additional Duty even after the expiry of Thailand's safeguard measure.
- c. Article I:1 of the GATT 1994 because 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.
- d. Article II:1(a) and II:1(b) of the GATT 1994 because 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 particular, Turkey acted in violation of Article II:1(a) of the GATT 1994, because by imposing the Additional Duty, Turkey fails to accord treatment no less favourable to products originating in Thailand than that provided for in Turkey's schedule of concessions. The Additional Duty imposed by Turkey is inconsistent with Article II:1(b) of the GATT 1994 because Turkey imposes ordinary customs duties in excess of those set forth in Turkey's schedule or in the alternative fails to exempt products from Thailand from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of the GATT 1994 or those directly and mandatorily required to be imposed thereafter by legislation in force in Turkey on that date.

D. CONCLUSION

Turkey's Additional Duty nullifies or impairs benefits accruing to Thailand, directly or indirectly, under the cited agreements.

Therefore, Thailand respectfully requests, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994, and Article 14 of the Agreement on Safeguards, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

Thailand further asks that this request for the establishment of a panel be placed on the agenda of the next meeting of the Dispute Settlement Body to be held on 25 February 2019.
