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## INDIA – CERTAIN MEASURES ON IMPORTS OF IRON AND STEEL PRODUCTS

### REQUEST FOR THE ESTABLISHMENT OF A PANEL BY JAPAN

The following communication, dated 9 March 2017, from the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 20 December 2016, the Government of Japan ("Japan") requested consultations with the Government of India ("India") 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 (the "GATT 1994") and Article 14 of the *Agreement on Safeguards*, with respect to certain measures imposed by India on imports of iron and steel products into India. The request was circulated on 9 January 2017 as document WT/DS518/1, G/L/1172, G/SG/D49/1.

Japan held consultations with India on 6 and 7 February 2017. Unfortunately, those consultations failed to resolve the dispute.

#### 1. Background and Measures at Issue

On 7 September 2015, the Directorate General of Safeguards published in the Gazette of India "Notice of Initiation of a Safeguard Investigation" F.No.D-22011/26/2015/Pt-I/ whereby it initiated an investigation with a view to the application of safeguard measures on imports of "hot-rolled flat products of non-alloy and other alloy steel in coils of a width of 600 mm or more" falling under tariff heading 7208 or tariff item 7225 30 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the "the products concerned") into India.

On 14 September 2015, the Ministry of Finance (Department of Revenue) published in the Gazette of India Notification No. 2/2015-Customs (SG) whereby a provisional safeguard measure was imposed on imports into India of the products concerned, in the form of a duty of twenty per cent *ad valorem*. This measure entered into force on the same day. The Notification provides for the duration of the measure of two hundred days.

On 29 March 2016, the Ministry of Finance (Department of Revenue) published Notification No. 1/2016-Customs (SG) (hereinafter referred to as "the initial notification imposing the definitive safeguard measures") whereby definitive safeguard measures were imposed on the products concerned, in the form of the following duties:

- twenty per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 14th September, 2015 to 13th September, 2016 (both days inclusive);
- eighteen per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 14th September, 2016 to 13th March, 2017 (both days inclusive);

- fifteen per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 14th March, 2017 to 13th September, 2017 (both days inclusive); and
- ten per cent *ad valorem* minus anti-dumping duty payable, if any, when imported during the period from 14th September, 2017 to 13th March, 2018 (both days inclusive).

The initial notification imposing the definitive safeguard measures states that the safeguard duty shall not be imposed on the products concerned which are imported at or above the Minimum Import Price listed in Notification No. 38/2015-2020 of Ministry of Commerce & Industry (Department of Commerce) (Directorate General of Foreign Trade), dated 5 February 2016.

On 5 August 2016, the Ministry of Finance (Department of Revenue) published Notification No. 2/2016-Customs (SG) which amends paragraph 2 of the initial notification imposing the definitive safeguard measures. It provides that the safeguard duty shall not be imposed on the products concerned which are imported at or above the prices listed in Notification No. 2/2016-Customs (SG).

The measures at issue in this dispute cover all decisions and notifications of the authorities mentioned above as well as any related measures and amendments or replacement measures taken by the authorities in relation to this investigation and/or the imposition of the safeguard measures at issue.

## 2. Legal Basis for the Claims

Japan considers that the safeguard measures cited above which India has imposed and the underlying investigation that led to the imposition of those safeguard measures are inconsistent with the following provisions of the GATT 1994 and the Agreement on Safeguards:

- (1) Articles 3.1, 4.2(c) and 11.1(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, because India failed to make reasoned and adequate findings and conclusions in its determination with respect to the alleged unforeseen developments, as well as to how those alleged unforeseen developments resulted in increased imports of the products concerned causing or threatening serious injury to domestic producers;
- (2) Articles 3.1, 4.2(c) and 11.1(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, because India failed to make reasoned and adequate findings and conclusions in its determination as to the alleged effect of the obligations incurred by India under the GATT 1994, as well as to how that effect resulted in increased imports of the products concerned causing or threatening serious injury to domestic producers;
- (3) Articles 2.1, 3.1, 4.2(a), 4.2(c) and 11.1(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, because India failed to make reasoned and adequate findings and conclusions in its determination with respect to the alleged increase in imports of the products concerned, in absolute terms or relative to domestic production;
- (4) Articles 2.1, 3.1, 4.1(a), 4.1(b), 4.1(c), 4.2(a), 4.2(b), 4.2(c) and 11.1(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, because India failed to make reasoned and adequate findings and conclusions in its determination of the domestic industry;
- (5) Articles 2.1, 3.1, 4.1(a), 4.1(b), 4.2(a), 4.2(b), 4.2(c) and 11.1(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, because India failed to make reasoned and adequate findings and conclusions in its determination as to the existence of an alleged serious injury and threat of serious injury to the domestic industry;
- (6) Articles 2.1, 3.1, 4.1(a), 4.1(b), 4.2(a), 4.2(b), 4.2(c) and 11.1(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, because India failed to make

reasoned and adequate findings and conclusions in its determination as to the causal link between the alleged increase in imports and the alleged serious injury and threat of serious injury to the domestic industry. In particular, there are no reasoned and adequate findings and conclusions substantiating the causal relationship between the alleged increased imports and the alleged serious injury and threat of serious injury to the domestic industry nor explanations as to how the alleged serious injury and threat of serious injury to the domestic industry caused by factors other than imports was not attributed to the increased imports;

- (7) Articles 3.1, 4.2(c), 5.1, 7.1 and 11.1(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, because India imposes the safeguard measures beyond the extent and the period of time necessary to prevent or remedy serious injury and to facilitate adjustment;
- (8) Article 3.1 and Article 4.2(c) of the Agreement on Safeguards, because India failed to present, in its published report, its findings and reasoned conclusions reached on all pertinent issues of fact and law and a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined;
- (9) Article 3.1 of the Agreement on Safeguards, because India failed to provide reasonable public notice to all interested parties and appropriate means in which interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views;
- (10) Articles 12.4 of the Agreement on Safeguards, because India failed to make a notification to the Committee on Safeguards before taking a provisional safeguard measure;
- (11) Articles 12.1 of the Agreement on Safeguards, because India failed to notify immediately the Committee on Safeguards upon (a) initiating an investigation relating to serious injury or threat thereof and the reasons for it; (b) making a finding of serious injury or threat thereof caused by increased imports; and (c) taking a decision to apply or extend a safeguard measure;
- (12) Article 12.2 of the Agreement on Safeguards, because India failed, in making the notifications referred to in paragraphs 1(b) and 1(c) of Article 12 of the Agreement on Safeguards to the Committee on Safeguards, to provide all pertinent information including, but not limited to, evidence of the causal link between the increased imports and the serious injury and threat thereof, a precise description of the products involved, a precise description of the proposed measures and the proposed date of introduction of the measures at issue;
- (13) Article 12.3 of the Agreement on Safeguards and Article XIX:2 of the GATT 1994, because India failed to provide adequate opportunities for prior consultations with Members having a substantial export interest of the products concerned;
- (14) Article II:1(b) of the GATT 1994, because through the safeguard measures, India imposes other duties or charges contrary to the second sentence of that provision; and
- (15) Article I:1 of the GATT 1994, because the measures are not applied to the products concerned originating in certain countries, and this constitutes an advantage that has not been accorded immediately and unconditionally to the like products originating in other WTO Members.

As a result, Japan considers that India's measures nullify and impair benefits accruing to Japan under the Agreement on Safeguards and the GATT 1994.

Accordingly, Japan respectfully requests that, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the Agreement on Safeguards, 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.

Finally, Japan notes that the duration of the safeguard measures at issue which were imposed is two and a half years, ending on 13 March 2018.

Japan requests that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 21 March 2017.

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