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MOROCCO - ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL FROM TURKEY

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY TURKEY

The following communication, dated 12 January 2017, from the delegation of Turkey to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 3 October 2016, Turkey requested consultations with Morocco pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 6 of the Agreement on Import Licensing Procedures (Import Licensing Agreement). These consultations were related to the imposition of definitive anti-dumping measures by Morocco on imports of certain hot-rolled steel products from Turkey, and with respect to certain aspects of the investigation underlying those measures.

Consultations were held on 18 and 28 November 2016 with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute. Therefore, in accordance with Articles 4.7 and 6 of the DSU, Article 17.4 of the Anti-Dumping Agreement, Article XXIII of the GATT 1994, and Article 6 of the Import Licensing Agreement, Turkey requests that the Dispute Settlement Body (DSB) establish a panel to examine this matter. Pursuant to Article 6.2 of the DSU, Turkey proceeds *infra* to identify the specific measures at issue and to provide a brief summary of the legal basis of the complaint.

A. THE MEASURES AT ISSUE

The measures at issue are:

- The definitive anti-dumping measures imposed on imports of certain hot-rolled steel products from Turkey, as a result of the investigation initiated by Morocco's Ministry of Industry, Trade, Investment and Numerical Economy (Investigating Authority) on 21 January 2013.¹ The definitive measures were published in Morocco's Official Journal No. 6294 of 25 September 2014, and came into force on 26 September 2014²; and
- Import restrictions imposed by Morocco pursuant to Article 63 of the Decree implementing Morocco's trade remedies legislation (*Décret n° 2-12-645 du 13 safar 1434 (27 décembre 2012) pris pour l'application de la loi n° 15-09 relative aux*

¹ This is also the date of initiation listed by Morocco in its Semi-Annual Report to the WTO Committee on Anti-Dumping Practices under Article 16.4 of the Anti-Dumping Agreement, G/ADP/N/259/MAR, dated 15 October 2014, p. 3.

² The Investigating Authority's Definitive Determination is found in the *Rapport final de l'enquête antidumping sur les importations de tôles d'acier laminées à chaud originaires de l'Union Européenne et de la Turquie, Détermination finale de l'existence du dumping, du dommage et du lien de causalité* (Definitive Determination). The definitive measures were notified to the WTO Committee on Anti-Dumping Practices in G/ADP/N/272/MAR, dated 6 October 2015, at 5. This request includes the Preliminary Determination on the existence of dumping, injury and causal link of 30 October 2013, to the extent that the Investigating Authority based its findings on that document.

mesures de défense commerciale) ("Décret n° 2-12-645") in the form of the requirement of a "prior import declaration" for goods subject to anti-dumping duties.³

In addition, this request covers any amendments, extensions, related instruments or practices, including methodologies, the results of any review proceedings, whether initiated prior to or following this panel request or the establishment of the panel, as well as implementing measures.

B. LEGAL BASIS FOR THE COMPLAINT

The measures at issue are inconsistent with Morocco's obligations under the Anti-Dumping Agreement, the GATT 1994, and the Import Licensing Agreement for the following reasons:

1. Duration of the investigation: The Investigating Authority failed to conclude the investigation at issue within the maximum 18-month deadline contained in Article 5.10 of the Anti-Dumping Agreement and therefore acted inconsistently with this provision.
2. Use of facts available to determine dumping margins: The Investigating Authority rejected all of the Turkish exporters' reported sales, cost and other data and instead determined dumping margins on the basis of "facts available". The Investigating Authority's stated reason for doing so was that, in their questionnaire responses, the Turkish exporters had failed to report all of their sales of the investigated products to Morocco during the investigation period, due to alleged discrepancies between Morocco's import statistics and the exporters' submissions to the Investigating Authority. The Investigating Authority's decision to reject the above-mentioned data in the exporters' questionnaire responses and to determine dumping margins on the basis of "facts available" is inconsistent with Article 6.8 and paragraphs 1, 3, 5, 6, and 7 of Annex II to the Anti-Dumping Agreement.

In particular, the Investigating Authority improperly determined that the Turkish exporters had failed to provide, or otherwise impeded access to, necessary information within the meaning of Article 6.8 and, in doing so, failed to comply with the following requirements of Annex II: (i) paragraph 1, which requires the investigating authority to specify in detail the information required from an exporter; (ii) paragraph 3, which provides that all verifiable information submitted by an exporter shall be taken into account when determinations are made; (iii) paragraph 5, which provides that investigating authorities may not disregard information simply because it is not ideal in all respects; (iv) paragraph 6, which provides that an exporter should have an opportunity to provide further explanations when information is rejected; and (v) paragraph 7, which details the steps to be followed with respect to the use of information from secondary sources.

3. Disclosure of essential facts regarding the dumping analysis: The Investigating Authority acted inconsistently with Article 6.9 (first sentence) of the Anti-Dumping Agreement by failing to disclose all essential facts with respect to the decision to use facts available, including the precise basis for the authority's decision to resort to facts available, the steps the Investigating Authority took to determine whether the information submitted by the exporters was not reliable, and the manner in which the Investigating Authority used information from secondary sources. Moreover, the Investigating Authority failed to disclose to the exporters its decision to reject the export sales data and to use facts available. Instead, the Investigating Authority provided that information only in its Definitive Determination, which was too late to enable the exporters to defend themselves within the meaning of Article 6.9 (second sentence) of the Anti-Dumping Agreement.

³ The requirements of Article 63 of *Décret n° 2-12-645* were imposed in this instance pursuant to *Royaume du Maroc, Ministère de l'Industrie, du Commerce et des Nouvelles Technologies, Département du Commerce Extérieur, Direction de la Politique des Echanges Commerciaux, Avis aux Importateurs, N° 11/13* ; *Royaume du Maroc, Ministère de l'Industrie, du Commerce et des Nouvelles Technologies, Département du Commerce Extérieur, Direction de la Politique des Echanges Commerciaux, Avis aux Importateurs, N° 19/14*. All of these instruments of Moroccan law form part of the measures at issue in this dispute.

4. Injury determination: The Investigating Authority failed to conduct an appropriate examination of injury to the domestic industry. In particular:
- a. The Investigating Authority acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement and Article VI:6(a) of the GATT 1994 by finding that the domestic industry was not "established"⁴, and by determining that the establishment of that industry was retarded⁵;
 - b. The Investigating Authority acted inconsistently with Article 3.4 of the Anti-Dumping Agreement by failing to assess all the relevant injury factors set out in that provision. Moreover, the Investigating Authority failed to conduct an appropriate examination of each of the factors it analysed, as well as an objective and unbiased assessment of all these factors collectively.
 - c. The Investigating Authority also acted inconsistently with Article 6.9 of the Anti-Dumping Agreement by failing properly to provide the "profitability threshold" used for its finding of material retardation of the establishment of the domestic industry, or alternatively a non-confidential summary of that information.
 - d. The Investigating Authority acted inconsistently with Articles 6.5 and 6.5.1 of the Anti-Dumping Agreement by failing to require the applicant to submit a non-confidential summary of the "profitability threshold" used for its finding of material retardation of the establishment of the domestic industry, or an explanation of why it could not be summarized.
5. Import restrictions: The requirement under Article 63 of *Décret n° 2-12-645* that importers must provide "prior import declarations" for goods subject to anti-dumping investigations constitutes additional, impermissible, "specific action against dumping" that is inconsistent with Article 18.1 of the Anti-Dumping Agreement. Furthermore, these measures are inconsistent with Articles I:1, X:3(a), and XI:1 of the GATT 1994 and Articles 3.2 and 3.3 of the Import Licensing Agreement.

It appears to Turkey that Morocco's investigation and definitive measures cannot be reconciled with Article VI of the GATT 1994, Articles 1 and 18 of the Anti-Dumping Agreement, as well as the specific provisions cited above.

Turkey considers that the measures described above nullify and impair benefits accruing to Turkey under the Anti-Dumping Agreement, the GATT 1994, and the Import Licensing Agreement.

C. REQUEST FOR THE ESTABLISHMENT OF A PANEL

In the light of the above, in accordance with Articles 4.7 and 6 of the DSU, Article 17.4 of the Anti-Dumping Agreement, Article XXIII of the GATT 1994, and Article 6 of the Import Licensing Agreement, Turkey requests that the DSB establish a panel to examine this matter. Turkey further requests that the panel have the standard terms of reference, as set forth in Article 7.1 of the DSU.

Turkey asks that this request be placed on the agenda of the DSB meeting to be held on 25 January 2017.

⁴ Definitive Determination, para. 111.

⁵ Definitive Determination, para. 195.