

**TURKEY – SAFEGUARD MEASURES ON IMPORTS OF COTTON YARN
(OTHER THAN SEWING THREAD)**

Request for Consultations by India

The following communication, dated 13 February 2012, from the delegation of India to the delegation of Turkey and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Republic of Turkey ("Turkey") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994") and Article 14 of the *Agreement on Safeguards* [hereinafter "AoS"] with respect to, but not limited to, the following measures of Turkey:

- (a) Definitive Safeguard Measures on imports of cotton yarn (other than sewing thread) from all origins classified under heading 52.05 of the Harmonised System (HS) Codes imposed by Turkey with effect from 15 July 2008 for a period of three years in pursuance to investigation report published in the Turkish Official Gazette on 11 August 2008 and the related Decree of the Council of Ministers;¹
- (b) Provisional Safeguard Measures imposed by Turkey as per Decree /notification No. 2011/2041 dated 4 August 2011 retroactively with effect from 15 July 2011;²
- (c) Extension of the period of application of definitive Safeguard Measures referred at (a) above on 28 January 2012 retroactively with effect from 15 July 2011 vide Council of Ministers' Decree No.2012/2721 dated 28 January 2012 pursuant to the definitive findings in a review vide Communique No.2012/2 published in Official Gazette No.28184 dated 25 January 2012;³
- (d) As well as the underlying investigation, any amendments, replacements, related or implementing acts or measures to the above.

¹ WTO Document No. G/SG/N/8/TUR/11, G/SG/N/9/TUR/5, G/SG/N/10/TUR/11, G/SG/N/11/TUR/12 dated 22 August 2008.

² WTO Document G/SG/N/6/TUR/14/Suppl.1, G/SG/N/7/TUR/10 and G/SG/N/11/TUR/17 dated 24 June, 2011.

³ WTO Document No. G/SG/N/11/TUR/17/Suppl.1 and G/SG/N/14/TUR/7 dated 31 January 2012.

2. Turkey imposed definitive safeguard measures on imports of cotton yarn with effect from 15 July 2008 for a period of 3 years. The said measures were to expire on 14 July 2011. Turkey initiated a review on 11 June, 2011 to consider extension of the period of application of the said measure. Turkey imposed provisional safeguard measures on 4 August 2011 with retroactive effect from 15 July, 2011 without making the required determination in the said review. Upon conclusion of the review, Turkey issued the definitive findings on 25 January 2012 recommending continuation of the measures. The safeguard measures as recommended in the definitive findings were imposed on 28 January 2012 retroactively with effect from 14 July 2011.

3. India considers that as Turkey initiated a review to extend the safeguard measures, it is under an obligation as per the provision of Article 7.2 of the AoS to make a determination before the extension of measures, in conformity with the procedures set out in Articles 2, 3, 4 and 5 of the AoS that the safeguard measures continue to be necessary to prevent or remedy serious injury to its domestic industry, that there is evidence that the industry is adjusting and the pertinent provisions of Articles 8 and 12 have been observed. Without making a determination as required under Article 7.2, Turkey imposed provisional safeguard measures on 4 August 2011 with retroactive effect from 15 July, 2011 as per Decree /notification No.2011/2041 dated 4 August 2011. India considers that the extension of safeguard measures by imposing provisional measures is inconsistent with the AoS as Turkey cannot take recourse to provisional measures under Article 6 of the AoS while undertaking a review of existing measures. At the time of applying initial safeguard measures in 2008, Turkey had also applied safeguard measures on provisional basis for 200 days which were followed by definitive safeguard measures. India considers that imposition of provisional safeguard measures is permitted under Article 6 of the AoS for a maximum period of 200 days only in an original investigation and not in a review for extension of existing measures.

4. India considers that the measures in question are inconsistent with Turkey's obligations under the following provisions of the GATT 1994 and the AoS in, at least, the following aspects:

- (a) With regard to the definitive Safeguard Measures imposed with effect from 15 July 2008, Turkey acted inconsistently with the provisions of -
 - (i) Article XIX:1(a) of GATT 1994 and Articles 3.1 and 4.2(c) of the AoS as Turkey did not establish that increased imports causing serious injury to the domestic industry were as a result of unforeseen developments and of the effect of GATT obligations;
 - (ii) Articles 2.1, 3.1, 4.1(c), 4.2(c) of the AoS as Turkey did not consider data relating to domestic producers whose collective output constituted a 'major proportion' of total domestic production of like or directly competitive articles;
 - (iii) Articles 2.1, 3.1, 4.2(b) and 4.2(c) of the AoS as Turkey failed to demonstrate, on the basis of objective evidence, the existence of causal link between increased imports and serious injury;
 - (iv) Article XIX:1(a) of the GATT 1994 and Articles 3.1, 4.2 (c), 5.1 and 7.1 of the AoS as Turkey failed to establish that the measure was necessary for a period of three years to 'facilitate adjustment' as the investigation report did not consider this aspect at all;

(b) With regard to the provisional safeguard measures imposed on 4 August 2011 retroactively with effect from 15 July 2011, Turkey acted inconsistently with the provisions of-

- (i) Articles 7.1 and 7.2 of the AoS by extending the period of initial application of measures after their expiry and by retroactively applying the provisional measures;
- (ii) Articles 3.1, 4.2(c), and 7.2 of the AoS as Turkey extended the measures on 4 August 2011 with retroactive effect from 15 July 2011 without making any determination that the safeguard measure continues to be necessary to prevent or remedy serious injury and that the domestic industry is adjusting;
- (iii) Article 7.2 of the AoS, read with Articles 3.1, 4.2(a), (b) and (c), as Turkey did not make the required determination based on an evaluation of all relevant factors and Turkey did not demonstrate on the basis of objective evidence, the existence of causal link;
- (iv) Articles 3.1, 4.2(c) and 6 of the AoS as Turkey did not make a preliminary determination establishing the critical circumstances and that there was clear evidence of increased imports causing or threatening to cause serious injury, whereas Turkey imposed provisional safeguard measures by stating "*..... provisional safeguard measure is proposed to eliminate uncertainty that could come out with the ongoing investigation on the necessity of the extension of the current measures*"⁴;
- (v) Article 6 of the AoS as Turkey imposed provisional measures in excess of 200 days by imposing these measures on two occasions in 2008 and on 4 August, 2011 for 200 days on each occasion;
- (vi) Article 6 of the AoS, read with Article 7.1, 7.2 and 7.3, as imposition of provisional measures is permitted only at the time of original investigation before initial application of definitive measures but not permitted in a review meant for extending the period of initial application of measures;
- (vii) Article 6 of the AoS, read with Article 7.2, as Turkey imposed the provisional measures retroactively and not prospectively;
- (viii) Article 7.5 of the AoS as the initial application period of safeguard measures expired on 14 July 2011 and Turkey made the fresh application of measures on the same product without waiting for the mandatory period as required under Article 7.5 of the AoS;
- (ix) Articles 3.1 and 4.2(c) of the AoS as Turkey neither made a determination nor published any report of its findings as required under Article 6 or 7, as the case may be;

⁴ WTO Document G/SG/N/6/TUR/14/Suppl.1, G/SG/N/7/TUR/10 and G/SG/N/11/TUR/17 dated 24 June, 2011.

- (x) Article 5.1 of the AoS, read with Article 6 and 7.1, which provides for the application of a safeguard measure only for remedying serious injury and to facilitate adjustment and not with a view to eliminate uncertainty;
 - (xi) Article 12.1 (c) of the AoS, which provides for notifying the Committee on Safeguards upon taking a decision to apply or extend a safeguard measure.
- (c) With regard to the definitive measures applied on 28 January 2012 retroactively with effect from 15 July 2011, Turkey acted inconsistently with the provisions of-
- (i) Article XIX:1(a) of the GATT 1994 and Articles 3.1 and 4.2(c) of the AoS as Turkey did not establish that increased imports causing serious injury to the domestic industry were as a result of unforeseen developments and of the effect of GATT obligations;
 - (ii) Article 7.2 of the AoS as Turkey extended the period of application of measures on 28 January 2012 after the expiry of the measures on 14 July 2011, and without making a prior determination in conformity with the procedures set out in Articles 2, 3, 4 and 5 of the AoS that the safeguard measures continue to be necessary to prevent or remedy serious injury to its domestic industry, that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 having been observed.
 - (iii) Article 7.5 of the AoS as the initial application period of safeguard measures expired on 14 July 2011 and Turkey made the fresh application of measures on the same product on 28 January 2012 without waiting for the mandatory period as required under Article 7.5 of the AoS;
 - (iv) Article 7.2 of AoS as the determination made by Turkey did not meet the requirements of Articles 2, 3, 4 and 5 of AoS regarding determinations with respect to domestic industry, like or directly competitive articles, serious injury or threat thereof, causal link and that the safeguard measures continued to be necessary to prevent or remedy serious injury and that there was evidence that the industry was adjusting.

5. India considers further that the measures at issue have a serious adverse impact on the export of cotton yarn from India to Turkey. India also reserves its right to raise additional claims and legal matters that may arise during the consultations in relation to the measures at issue and their application under the Agreement on Safeguards and the GATT 1994.

6. In view of the above, India looks forward to receiving Turkey's reply to this request within the prescribed time limit. India proposes that the date and venue of these consultations may be mutually agreed.
