



INDIA - CERTAIN MEASURES ON IMPORTS OF IRON AND STEEL PRODUCTS

REQUEST FOR CONSULTATIONS BY JAPAN

The following communication, dated 20 December 2016, from the delegation of Japan to the delegation of India 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 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 as further described below.

1. Safeguard Measures on Imports of Certain Steel Products And the Investigation That Led to the Imposition of Those Measures

On 7 September 2015, the Directorate General of Safeguards published "Notice of Initiation of a Safeguard Investigation" F.No.D-22011/26/2015/Pt-I/ in the Gazette of India 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 Notification No. 2/2015-Customs (SG) in the Gazette of India 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 a 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") in the Gazette of India 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) in the Gazette of India 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 certain price listed in the notification.

The Government of Japan ("Japan") is deeply concerned about the safeguard measures imposed by India and the underlying investigation that led to the imposition of those measures. Specifically, those measures appear to be in violation of India's obligations under the GATT 1994 and the Agreement on Safeguards, in particular, but not limited to:

- (1) Articles 3.1, 4.2(c) and 11.1(a) of the Agreement on Safeguards and with 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, and 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 with 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 under the GATT 1994, and how that effect has 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/or 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/or threat of serious injury to the domestic industry;
- (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 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 and failed to initiate consultations immediately after the measure was taken;
- (11) Articles 12.1 and 12.2 of the Agreement on Safeguards, because India failed to immediately notify the Committee on Safeguards upon taking actions identified in Article 12.1 and to provide all pertinent information;
- (12) Article 12.3 of the Agreement on Safeguards, because India failed to provide adequate opportunity for prior consultations with Members having a substantial export interest of the products concerned;
- (13) 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
- (14) 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.
- (15) Article XI:1 of the GATT 1994, because the measures impose a restriction on the importation of the products concerned through the minimum import price requirements by virtue of paragraph 2 of Notification No. 2/2016-Customs (SG).

2. The Minimum Import Price System on Iron and Steel Products

On 5 February 2016, the Ministry of Commerce & Industry (Department of Commerce) published Notification No. 38/2015-2020 in the Gazette of India whereby, pursuant to the Foreign Trade (D&R) Act 1992 and the Foreign Trade Policy 2015-2020, it imposed a Minimum Import Price on iron and steel products. Those products cannot be imported unless their import prices are at or above the minimum import prices listed in Notification No. 38/2015-2020. The Minimum Import Price was applied against iron and steel products falling within 173 Harmonized System (HS) Codes under Chapter 72 of Indian Trade Classification (ITC), 2012 – Schedule -1 (Import Policy) during six months.

By Notification No. 20/2015-2020 of the Ministry of Commerce & Industry (Department of Commerce), dated 4 August 2016, the Minimum Import Price was extended for two additional months ending on 4 October 2016. The said notification also amended the scope of application, limiting the application to iron and steel products falling within 66 HS Codes under Chapter 72 of ITC, 2012 – Schedule -1 (Import Policy). The Minimum Import Price was further extended until 4 December 2016 by Notification No. 30/2015-2020 of the Ministry of Commerce & Industry (Department of Commerce) dated 4 October 2016.

By Notification No. 31/2015-2020 of the Ministry of Commerce & Industry (Department of Commerce), dated 3 December 2016, the Minimum Import Price was extended for two additional months until 4 February 2017. The said notification also amended the scope of application, limiting the application to iron and steel products falling within 19 HS Codes under Chapter 72 of ITC, 2012 – Schedule -1 (Import Policy).

Japan is deeply concerned about the Minimum Import Price system. The legal instruments through which India operates the Minimum Import Price system on imports of iron and steel products include the following:

- the Foreign Trade (D&R) Act 1992;
- the Foreign Trade Policy 2015-2020;

- the Customs Act 1962;
 - Notification No. 38/2015-2020 of 5 February 2016;
 - Notification No. 20/2015-2020 of 4 August 2016;
 - Notification No. 30/2015-2020 of 4 October 2016;
 - Notification No. 31/2015-2020 of 3 December 2016; and
- any amendments, extensions, renewal measures, continuation measures, supplements, replacement measures, related measures and implementing measures taken by India in relation to the Minimum Import Price system on iron and steel products based on laws or regulations including but not limited to those listed above.

Specifically, Japan considers that through this Minimum Import Price system on iron and steel products, India appears to prohibit or restrict the importation of iron and steel products, thereby acting inconsistently with Article XI:1 of the GATT 1994.

Japan reserves the right to raise additional factual claims and legal matters during the course of the consultations.

We look forward to receiving your reply to this request for consultations and to agreeing upon a mutually acceptable date for the consultations.
