BEFORE THE
WORLD TRADE ORGANIZATION
APPELLATE BODY

Indonesia – Safeguard on Certain Iron or Steel Products (DS490/DS496)
AB-2017-6

Third Participant Oral Statement of Australia

8 May 2018
Members of the Division,

1. Thank you for the opportunity to present the views of Australia.

2. We have set out our detailed arguments on a number of core interpretative issues raised by this appeal in our written submission, and will not restate those here today. Instead, we wish to highlight four key, interrelated legal questions with respect to Article XIX:1(a) of the GATT 1994 that are directly before the Appellate Body in this dispute.

3. **First**, can a measure constitute a safeguard measure if it does not suspend a Member's obligation under the GATT 1994 (nor withdraw or modify a Member's scheduled tariff concession)?

4. **Second**, can a measure constitute a safeguard measure if it suspends a GATT obligation but *not with the aim of* addressing serious injury to the Member's like domestic industry caused or threatened by a surge of imports resulting from that obligation?

5. **Third**, can a measure constitute a safeguard measure if it suspends a GATT obligation and an aspect of the measure – but *not the suspension of the obligation itself* – has the aim of addressing such injury?

6. **Finally**, can a GATT obligation that does not have the effect of giving rise to a surge of imports that causes or threatens serious injury to a Member's like domestic industry relevantly be suspended for the purpose of Article XIX:1(a)?

7. In Australia's view, the Appellate Body's answer to each of these questions should be "No".

8. The text of Article XIX:1(a) indicates that a safeguard measure has two linked constituent elements:

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1 Or withdraws or modifies a concession.
2 Or concession.
3 Or withdraws or modifies a concession.
4 Or withdrawal or modification.
5 Or concession.
6 Or withdrawn or modified.
(i) the requisite content – that is, the suspension of a GATT obligation (or withdrawal or modification of a concession); and

(ii) the requisite objective – that is, that the suspension (or withdrawal or modification) has the aim of addressing serious injury to the Member's like domestic industry caused or threatened by a surge of imports resulting from the obligation or concession at issue.

9. In light of these linked elements, in Australia's view, it is not sufficient that a Member suspends a GATT obligation and that the measure – but not the suspension itself – is taken with a view to preventing or remediing serious injury to a Member's domestic industry. Rather, to constitute a safeguard measure under Article XIX:1(a), it is the suspension of the GATT obligation that must have the aim of addressing the relevant injury.

10. While the text of Article XIX:1(a) does not limit the GATT obligations that can relevantly be suspended for the purpose of the provision, it contemplates that:

- the effect of the obligation to be suspended is that a product is being imported into a Member's territory in such increased quantities and under such conditions as to cause or threaten serious injury to that Member's like domestic producers; and

- the suspension of that obligation must be capable of preventing or remediing such injury.

11. Australia therefore fails to see that a GATT obligation can relevantly be suspended for the purpose of Article XIX:1(a) unless: the obligation is capable of resulting in the injurious surge contemplated by Article XIX:1(a); and the suspension of the obligation is capable of providing the "remedy" or relief that Article XIX:1(a) is intended to provide.

12. In Australia's view, interpreting Article XIX:1(a) in a manner that gives proper effect to the constituent elements of a safeguard measure that the provision lays down neither adds to nor diminishes the rights of Members.
13. It does not provide a means for Members to evade their WTO obligations, as any purported suspension of a GATT obligation that is not for the purpose provided in Article XIX:1(a) would instead constitute a breach of the relevant obligation and would be actionable as such by another Member.

14. At the same time, it does not impose additional WTO obligations on Members, as it refrains from extending the disciplines related to safeguard measures to measures that do not involve any suspension of a GATT obligation and that Members are therefore free to impose.

15. We again thank you for the opportunity to present – and for your consideration of – Australia's views on these key interpretative questions before you in this dispute.