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

Executive Summary of Australia’s Third Participant Written Submission

19 October 2017
I. EXECUTIVE SUMMARY

1. Australia considers that the Panel did not err in finding that Indonesia's specific duty did not constitute a safeguard measure for the purpose of Article XIX:1(a) of the GATT 1994.2

2. Article XIX:1(a) establishes that a "safeguard measure" is a measure that:

   (i) suspends a Member's GATT obligation or withdraws or modifies a Member's scheduled tariff concession (this comprises the substantive content of a safeguard measure); and

   (i) suspends that obligation, or withdraws or modifies that concession, with 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 (this comprises the substantive objective of a safeguard measure).

3. Importantly, the content and objective of a safeguard measure are linked – i.e., in order to constitute a safeguard measure, the obligation that is suspended must be suspended with the aim of addressing an injurious surge of imports caused or threatened by complying with that obligation.3

4. While Australia agrees with Vietnam and Chinese Taipei that the Panel's definition of a safeguard measure improperly imported conditions related to a measure's valid imposition, this erroneous definition did not taint the Panel's substantive finding. Rather, the Panel found that Indonesia's specific duty did not suspend any relevant GATT obligation for the purpose of Article XIX:1(a).4

5. While the text of Article XIX:1(a) does not explicitly limit the obligations that can relevantly be suspended for the purpose of the provision, it establishes that the obligation at issue must be capable of being suspended to address an injurious surge of imports caused or threatened by complying with that obligation.

6. In Australia's view, the participants' argument that the specific duty suspended Article I:1 for the purpose of Article XIX:1(a) fails to demonstrate that the discriminatory application of the duty had the requisite objective of a safeguard measure; and ignores the requisite link between a safeguard measure's two constituent elements.

7. Since the Panel's finding that Indonesia's specific duty is not a safeguard measure is supported by a proper interpretation of Article XIX:1(a), Australia submits that the participants' claims should be rejected.

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1 This executive summary totals 432 words (including footnotes). Australia's third participant submission totals 4326 words (including footnotes).
2 Panel Report, Indonesia – Iron or Steel Products, para. 7.40.
3 Appellate Body Reports, Argentina – Footwear (EC), para. 93; and Korea – Dairy, para. 86.