



The Turkish “additional customs duties”

Are safeguard measures not compatible with the WTO

What to do against the Turkish additional customs duties?

Yves Melin, Steptoe & Johnson LLP

ymelin@steptoe.com

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Demonstration

- Presentation of the Turkish measures (textile)
- What is a safeguard measure under the WTO?
- Are the Turkish measures safeguard measures?
 - Yes
- Are these Turkish safeguard measures WTO-compatible?
 - No
- Even assuming that the additional duties are not safeguard measures but customs duties or equivalent charges, would they be compatible with the customs union?
 - No
- What can adversely affected industries do?
 - EU: Lodge a complaint with the EU Commission under the Trade Barrier Regulation
 - Elsewhere: Other WTO Members bringing Turkey before the WTO's DSB
 - Bringing the matter before the Turkish Courts

Presentation of Turkish measures

The Turkish measures

- At the time of initiation, in January 2011, Turkey says that (Communiqués 2011/1 and 2011/2, Letter to the EU Commission):
 - It is initiating a **safeguard investigation** under the provisions of the Turkish Decree on Safeguard Measures for Imports No.2004/7305 of 10 May 2004
 - Following a complaint lodged by the Turkish textile industry alleging a surge in imports causing serious injury, and asking for the imposition of **safeguard measures**.
 - But says that this investigation is **not covered by the WTO Safeguards Agreement**
- On 24 March 2011 (Decree 2011/1476), Turkey imposes provisional “additional duties” under the general Import Regime Decree (No: 95/7606)
- On 10 June 2011, answering a letter from the EU Commission, Turkey
 - explains that the measures (imposed by Decree 2011/1476) are “**additional duties which are introduced for safeguarding purposes**”
 - and links these duties to the safeguard investigations initiated in January 2011
- On 15 September 2011 (Decree 2011/2203), Turkey
 - imposes definitive “additional customs duties”
 - collects the provisional duties imposed by Decree 2011/1476
 - the additional duties are to be collected “*separately from the customs duties levied on imports*”

The Turkish measures (continued)

- Duties are imposed against only some countries:
 - No additional duty on goods with EU origin or originating in countries in a FTA with Turkey.
 - Additional duties on goods with other origins, whether imported directly into Turkey or after having been released for free circulation in the EU
- **Different treatments, depending on the origin**
- ➔ The additional duties receive a treatment different from ordinary customs duties:
 - Non-EU or FTA goods in free circulation in the EU are subject upon importation into Turkey to the additional duties, but not to the “*Common Customs Duty*” (clarifications provided by Turkey to the Commission in a letter of 10 June 2011)
- ➔ **The additional duties are not ordinary customs duties**

What is a safeguard measure under the WTO?

What is a safeguard measure under the WTO ?

- A safeguard measure is the **suspension of a concession** made by a WTO member under the WTO Agreement (Article XIX of the GATT)
- A concession will be suspended (and hence a safeguard measure will be imposed) anytime a WTO Member imposes **a duty or charge that is not an “ordinary customs duty”**, normally prohibited under Article II:1(b) of the GATT
[see for instance Report of the WTO Panel in Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabrics (WT/DS415~418/R), paras 7.74 and following]
- What is an ordinary customs duty? –An ordinary customs duty is a “*customs duty in the strict sense of the term*”
 - A duty that is “*extraordinary*” or “*exceptional*” is not an ordinary customs duty
 - It does not matter that the duty is collected by customs

Are the Turkish measures safeguard measures?

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- The additional duties are not ordinary customs duties:
 - The duties are the result of an investigation initiated by Turkey under the Decree on Safeguard Measures for Imports No.2004/7305 of 10 May 2004, which is the law Turkey notified to the WTO secretariat as being its legislation implementing the WTO Agreement on Safeguards (G/SG/N/1/TUR/3)
 - The investigation was based on a complaint by the Turkish textile industry alleging that it was suffering serious injury caused by a significant increase in imports
 - The additional duties are collected by customs “separately from the customs duties levied on imports” (Decree 2011/2203)
 - Non-EU or FTA goods transiting in the EU are subject upon importation into Turkey to the additional duties, but not to the “Common Customs Duty” (Turkey’s letter to the EU Commission)

- Non-ordinary customs duties cannot normally be imposed (Article II:1(b) of the GATT).

- A measure imposing such duties is therefore a “suspension of a concession” in the sense of Article XIX of the GATT, **i.e., a safeguard measure**

Are the Turkish safeguard measures WTO-compatible?

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- Safeguard measures cannot be discriminatory (Article 2.2 of the Agreement on Safeguards)
 - EU and FTA countries are exempted breach
- Safeguard measures can only be imposed if there is a finding that products are imported in such increased quantities that they cause or threaten to cause serious injury
 - No evidence of a massive increase in imports causing or threatening to cause injury breach
- Unsurprisingly, no notification of the investigation to the WTO, and general disregard for the procedural framework of the Agreement on Safeguards
breach

Even assuming that the additional duties are not safeguard measures but customs duties or equivalent charges, would they be compatible with the customs union?

Are the Turkish measures compatible with the customs union?

- No customs duty or any other “charges having equivalent effect” can be imposed on goods originating in the EU, or **“coming from third countries and in free circulation” in the EU** (Articles 3 and 4 of Decision 1/95 of the Association Council)
 - ➔ Goods in free circulation in the EU cannot be the subject of customs duties or equivalent charges upon importation into Turkey, irrespective of their origin
 - Transitory regime of Article 16 of Decision 1/95 does not allow Turkey to impose the additional duties on non-originating products in free circulation in the EU
 - Obligation for Turkey to align its non-preferential customs regime with the EU’s Common Customs Tariff (Article 13). Similar obligation exists for preferential origin (Article 16)



– **Breach**

What can adversely affected industries do?

What can adversely affected industries do? The Trade Barrier Regulation

- The TBR is a means for EU enterprises and associations affected by a foreign measure to have the EU bring the matter before
 - the WTO Dispute Settlement Body (DSB) and/or
 - the arbitration procedure of the EU-Turkey customs Union (**none exists**)
- Complaint procedure handled by the European Commission - investigation - public report
- The TBR is available against
 - measures that are incompatible with the WTO or a bilateral trade agreement and
 - cause adverse trade effects to EU enterprises (Distortion of trade flows, Additional costs imposed, Material impact on the complainant)
 - provided acting is in the interest of the EU as a whole
- Initiation 45 days after the lodging of a complaint. Investigation completed 5-7 months after initiation. TBR Committee decides whether to pursue based on report from the Commission (no deadline)
- Main purpose is to exert pressure on the third country to settle with the threat of dispute settlement action
- Join forces with other industries

What can adversely affected industries do? The Trade Barrier Regulation (continued)

- Litigate in Turkey:
 - Action for annulment before the State Council
 - All duties collected will be reimbursed (10 year limitation)
 - Possibility of Trojan horse – chose your warrior / decoy
 - Only possible 60 days from adoption, or by companies never subject to the duties before (new importers)
 - Claim for the reimbursement of the duties before customs and tax courts, with reference to State Council
 - For imports made in the past three years, and the future.
 - The claim for reimbursement needs to be made by every single importer (you can't hide)
 - Long term: it takes several years (3-8 years)

Questions or Comments?

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