

***TURKEY – ADDITIONAL DUTIES ON IMPORTS OF AIR CONDITIONING
MACHINES FROM THAILAND***

(DS573)

**THIRD PARTY EXECUTIVE SUMMARY
OF THE UNITED STATES OF AMERICA**

February 7, 2020

EXECUTIVE SUMMARY OF THE U.S. RESPONSES TO PANEL QUESTIONS TO THIRD PARTIES

1. Response to Question 1.1a-b: The text and structure of the relevant provisions of both Article XIX of the GATT 1994 and the Safeguards Agreement suggest that the term “substantial interest” found both in Article XIX:2 of the GATT 1994 and Article 12.3 of the Safeguard Agreement qualifies which Members are considered “affected” Members as that term is used in Article XIX:3 of the GATT 1994 and Articles 8.1 and 8.2 of the Safeguard Agreement.
2. According to GATT XIX:2, “[b]efore any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having *a substantial interest* as exporters of the product concerned an opportunity to consult with it in respect of the proposed action.” (emphasis added).
3. Article 12.3 of the Safeguards Agreement states that a “Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having *a substantial interest* as exporters of the product concerned, with a view to, inter alia, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.” (emphasis added).
4. This text highlights the emphasis on Members having a “substantial interest” taking part in the consultations process and the importance of the consultation provision. In fact, Article 8.1 instructs that the application of a safeguard measure be made “in accordance with the provisions of paragraph 3 of Article 12.” The consultation provision comes first in the safeguards adoption process. The consultations alert the Member taking the measure whether it can reach an accommodation with Members, or whether the Member will face the suspension of substantially equivalent concessions.
5. The consultations are only held with Members with a substantial interest. It would not make sense if a Member went through the consultation process, satisfied all members in the consultation process (which is those with a substantial interest), but then faced suspension of concessions with other Members, who did not have a substantial interest.
6. Response to Question 1.2a-b: The structure of the paragraph [Article 8.1] indicates that “Members concerned” in the second sentence refers back to “affected” Members in the second sentence. As explained in the prior answer, that term should be understood to mean Members with a substantial interest. Reading Articles 8.1 and 12.3 together, the class of Members entitled to “trade compensation” are those Members who have a “substantial interest” as identified in Article 12.3.
7. Response to Question 1.4: The context provided by Article XXVIII of GATT 1994 supports the above interpretation that “affected” Members are those with a substantial interest.
8. Response to Question 1.5: The United States does not agree that one of the purposes of the suspension of concessions is to deter Members from imposing or extending safeguard measures and to induce the withdrawal of such measures. Such objectives are not found in the

text of the Safeguards Agreement. The purpose of the right to suspend concessions under Article 8.2 is to allow the affected exporting Member to offset adverse effects from the application of the safeguard measure.

9. Response to Question 2.3: Article XXVIII of GATT 1994 uses the same term “substantial interest,” and would appear to provide relevant context. Under the rules of interpretation reflected in the Vienna Convention, other portions of an agreement can serve as relevant context for interpretive issues. The following agreement text concerning Article XXVIII of GATT 1994 provides helpful guidance.

10. According to *Ad Article XXVIII of GATT 1994*, paragraph 1, note 7: “[t]he expression ‘substantial interest’ is not capable of a precise definition and accordingly may present difficulties for the CONTRACTING PARTIES. It is, however, intended to be construed to cover only those contracting parties which have, or in the absence of discriminatory quantitative restrictions affecting their exports could reasonably be expected to have, a significant share in the market of the contracting party seeking to modify or withdraw the concession.”

11. The Understanding on the Interpretation of Article XXVIII of GATT 1994 states: “[w]hen a tariff concession is modified or withdrawn on a new product [i.e. a product for which three years’ trade statistics are not available] the Member possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The determination of principal supplying and *substantial interests* and the calculation of compensation shall take into account, inter alia, production capacity and investment in the affected product in the exporting Member and estimates of export growth, as well as forecasts of demand for the product in the importing Member.” (Emphasis added.)

12. Response to Question 3.3: The purpose of the right to suspend concessions under Article 8.2 is to allow the affected exporting Member to offset adverse effects from the application of the safeguard measure. The reference period for calculating the level of suspension of concessions should result in the affected exporting Member withdrawing a “substantially equivalent” amount in concessions.

13. Response to Question 3.5: The fact that a safeguard measure is to be used under “exceptional” circumstances does not inform the determination of the relevant reference period for calculating the level of substantially equivalent concessions. As discussed above, the relevant reference period chosen should yield a suspension of concessions substantially equal to the effect of the safeguard measure.

14. Response to Question 3.6: The dictionary defines “apply” as “put to use, employ.” “Applying” suggests an ongoing or active application. Therefore, once a safeguard has expired, that Member would no longer be “applying” the safeguard measure and thus, the rebalancing measure cannot extend beyond the end of the expiration of the safeguard measure.