



20 September 2018

(18-5818)

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## UNITED STATES – TARIFF MEASURES ON CERTAIN GOODS FROM CHINA

### REQUEST FOR CONSULTATIONS BY CHINA

#### *Addendum*

The following communication, dated 18 September 2018, from the delegation of China to the delegation of the United States, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the Government of the United States pursuant to Article 4 of *the Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXIII of *the General Agreement on Tariffs and Trade 1994* (GATT 1994) concerning the finalized tariffs measures that the United States accords to certain goods with the estimated trade value of approximately \$200 billion originating from China. This addendum supplements and does not replace China's request for consultations dated 4 April 2018<sup>1</sup>, the supplemental request for consultations dated 6 July 2018<sup>2</sup> and the supplemental request for consultations dated 16 July 2018<sup>3</sup>.

Subsequent to the above mentioned request for consultations and supplemental requests for consultations, the United States published a list of products of Chinese origin<sup>4</sup> on 17 September 2018, as identified in the final tariff list attached to the announcement *USTR Finalizes Tariffs on \$200 Billion of Chinese Imports in Response to China's Unfair Trade Practice*<sup>5</sup>, that an additional ad valorem duty of 10 percent is to be imposed on starting 24 September, 2018 and the level of the additional ad valorem duty will increase to 25 percent starting 1 January, 2019. The above mentioned duties of 10% and 25% are to be only applied to China's products and in excess of the United States's bound rates in its Schedule of Concessions and Commitments annexed to the GATT 1994.

The legal documents through which the United States implements this tariff measures include:

1. Section 301-310 of the Trade Act of 1974, as amended (19 U.S.C., paragraphs 2411-2420).
2. Findings of the investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974.<sup>6</sup>
3. Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation.<sup>7</sup>

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<sup>1</sup> The request for consultations was circulated on 5 April 2018 in document WT/DS543/1, G/L/1219.

<sup>2</sup> The supplemental request for consultations was circulated on 9 July 2018 in document WT/DS543/1/Add.1, G/L/1219/Add.1.

<sup>3</sup> The supplemental request for consultations was circulated on 17 July 2018 in document WT/DS543/1/Add.2, G/L/1219/Add.2.

<sup>4</sup> [https://ustr.gov/sites/default/files/enforcement/301Investigations/Tariff%20List\\_09.17.18.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Tariff%20List_09.17.18.pdf)

<sup>5</sup> See <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/ustr-finalizes-tariffs-200>

<sup>6</sup> See <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>

<sup>7</sup> See <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>

4. Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.<sup>8</sup>
5. Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.<sup>9</sup>
6. Extension of Public Comment Period Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.<sup>10</sup>
7. USTR Finalizes Tariffs on \$2000 Billion of Chinese Imports in Response to China's Unfair Trade Practices.<sup>11</sup>

This supplemental request for consultations also concerns any modification, replacement or amendments to the measures identified above, and any closely connected, subsequent or implementing measures.

These measures appear to be inconsistent with the relevant provisions of the WTO covered agreements including:

1. Article I.1 of the GATT 1994, because the measures at issue fail to extend immediately and unconditionally to the products originating in China an "advantage, favour, privilege or immunity" granted by the United States "[w]ith respect to customs duties and charges of any kind imposed on or in connection with" the importation of products originating in the territories of other Members.
2. Article II.1(a) and (b) of the GATT 1994, because the measures at issue fail to accord to the products originating in China identified in the above-mentioned documents the treatment no less favourable than that provided for in the United States's Schedule of Concessions and Commitments annexed to the GATT 1994.
3. Article 23 of the DSU, because United States made a determination to the effect that a violation has occurred without recourse to the dispute settlement in accordance with the DSU and the measures at issue fail to recourse to, and abide by, the rules and procedures of the DSU, when the United States seeks the redress of a violation of obligation or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements.

In addition, and as a consequence of the foregoing, the measures at issue appear to nullify or impair benefits accruing to China directly or indirectly under the cited agreements.

China reserves the right to raise additional claims and legal matters regarding the above-mentioned measures during the course of the consultations.

China looks forward to receiving your reply to the present consultations request and to scheduling a mutually convenient date for consultations.

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<sup>8</sup> See <https://ustr.gov/sites/default/files/files/Press/Releases/301FRN.pdf>. See also Federal Register / Vol. 83, No. 67 / Friday, April 6, 2018 / Notices [Docket No. USTR-2018-0005]

<sup>9</sup> See <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july /statement-us-trade-representative>. See also [https://ustr.gov/sites/default/files/301 /2018-0026%20China%20FRN%207-10-2018\\_0.pdf](https://ustr.gov/sites/default/files/301 /2018-0026%20China%20FRN%207-10-2018_0.pdf)

<sup>10</sup> See <https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-16919.pdf>. See also <https://www.gpo.gov/fdsys/pkg/FR-2018-08-07/pdf/2018-16919.pdf>

<sup>11</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september /ustr-finalizes-tariffs-200>