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Page: 1/6

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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY SWITZERLAND

The following communication, dated 8 November 2018, from the delegation of Switzerland to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 9 July 2018, Switzerland requested consultations with the Government of the United States, pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 14 of the Agreement on Safeguards with respect to certain measures imposed by the United States to adjust imports of steel and aluminium into the United States, including imposing additional *ad valorem* rates of duty on imports of certain steel and aluminium products and exempting certain selected WTO members from the measures. These measures adversely affect exports of such products from Switzerland to the United States. The request was circulated to WTO Members on 12 July 2018 as document WT/DS556/1, G/L/1251 and G/SG/D59/1.

Switzerland held consultations with the United States on 30 August 2018. Unfortunately, those consultations failed to resolve the dispute.

1. CLAIMS WITH RESPECT TO MEASURES RELATING TO STEEL AND ALUMINIUM IMPORTS

Through Presidential Proclamations 9705 and 9711 dated 8 and 22 March 2018, the United States imposed an additional import duty of 25% on certain steel products from all countries except Argentina, Australia, Brazil, Canada, the European Union, Korea and Mexico, taking effect on 23 March 2018. The steel products concerned are defined at the US Harmonized Tariff Schedule (HTS) 6-digit level as: 7206.10 through 7216.50, 7216.99 through 7301.10, 7302.10, 7302.40 through 7302.90, and 7304.11 through 7306.90, including any subsequent revisions to these HTS classifications.

Through Presidential Proclamations 9704 and 9710 dated 8 and 22 March 2018, the United States imposed an additional import duty of 10% on certain aluminium products from all countries except Argentina, Australia, Brazil, Canada, Korea, the European Union and Mexico, taking effect on 23 March 2018. The aluminium products concerned are defined in the US Harmonized Tariff Schedule (HTS) as: (a) unwrought aluminum (HTS 7601); (b) aluminum bars, rods, and profiles (HTS 7604); (c) aluminum wire (HTS 7605); (d) aluminum plate, sheet, strip, and foil (flat rolled products) (HTS 7606 and 7607); (e) aluminum tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and (f) aluminum castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70), including any subsequent revisions to these HTS classifications.

Through Presidential Proclamations 9739 and 9740 dated 30 April 2018, the President of the United States exempted imports from Argentina, Australia, Brazil and Korea from the additional duties on certain steel products and exempted imports from Argentina, Australia and Brazil from the additional duties on certain aluminium products. The United States also extended the exemption from the additional duties for imports from Canada, the European Union and Mexico until 31 May 2018.

As of 1 June 2018, the additional duties on certain steel products apply to imports from all countries except Argentina, Australia, Brazil and Korea, and the additional duties on certain aluminium products apply to imports from all countries except Argentina and Australia. The United States has introduced quotas limiting the quantities of steel imports from Argentina, Brazil and Korea, pursuant to an agreement with those countries, and quotas limiting the quantities of aluminium imports from Argentina, pursuant to an agreement with that country.

Presidential Proclamations 9704 and 9705 of 8 March 2018 have authorized the Secretary of Commerce to provide relief from the additional duties upon request of affected parties located in the United States if the steel or aluminium articles are determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or based upon specific national security considerations.

On 19 March 2018, the Department of Commerce issued an interim final rule introducing supplements No. 1 and No. 2 to 15 CFR Part 705 which set forth the requirements and process for how a directly affected party located in the United States may submit requests for product exclusions and how parties in the United States may submit objections to submitted exclusion requests. The Department of Commerce issued on 11 September 2018 an interim final rule revising supplements No. 1 and No. 2 to 15 CFR Part 705.

Through Presidential Proclamations 9777 and 9776 of 29 August 2018, the President of the United States has authorized the Secretary of Commerce to provide relief from the quotas applicable to steel products and aluminium products from those countries subject to quotas, in certain circumstances, including where they are determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, or upon specific national security considerations. The procedures for such requests for exclusion are included in the interim final rule as published on 11 September 2018.

The measures at issue are the import adjustments on certain steel products and certain aluminium products. They consist of the additional import duties and quotas as well as the exemptions and exclusions from such duties and quotas. They have been imposed by and are evidenced by the following documents, considered alone and in any combination:

1. Presidential Proclamation 9705 of 8 March 2018 on Adjusting Imports of Steel Into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States¹
2. Presidential Proclamation 9704 of 8 March 2018 on Adjusting Imports of Aluminum Into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States²
3. Presidential Proclamation 9711 of 22 March 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States³
4. Presidential Proclamation 9710 of 22 March 2018 on Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁴
5. Presidential Proclamation 9740 of 30 April 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁵

¹ Federal Register Volume 83, Issue 51 (March 15, 2018), pp. 11625-11630.

² Federal Register Volume 83, Issue 51 (March 15, 2018), pp. 11619-11624.

³ Federal Register Volume 83, Issue 60 (March 28, 2018), pp. 13361-13365.

⁴ Federal Register Volume 83, Issue 60 (March 28, 2018), pp. 13355-13359.

⁵ Federal Register Volume 83, Issue 88 (May 7, 2018), pp. 20683-20705.

6. Presidential Proclamation 9739 of 30 April 2018 on Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁶
7. Presidential Proclamation 9759 of 31 May 2018 on Adjusting Imports of Steel into the United States, including the Annex⁷
8. Presidential Proclamation 9758 of 31 May 2018 on Adjusting Imports of Aluminum into the United States, including the Annex⁸
9. Presidential Proclamation 9772 of 10 August 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁹
10. Presidential Proclamation 9777 of 29 August 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States¹⁰
11. Presidential Proclamation 9776 of 29 August 2018 on Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States¹¹
12. The Effect of Imports of Steel On the National Security, An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended (U.S. Department of Commerce, January 11, 2018)¹²
13. The Effect of Imports of Aluminum On the National Security, An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended (U.S. Department of Commerce, January 17, 2018)¹³
14. Interim Final Rule regarding the Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum (U.S. Department of Commerce)¹⁴
15. Interim Final Rule regarding Submissions of Exclusions Requests and Objections to Submitted Requests for Steel and Aluminum (U.S. Department of Commerce)¹⁵

This request also covers any additional measures amending, superseding, supplementing, updating, extending, replacing or implementing the measures referred to above as well as any exemptions or exclusions applied.

Switzerland considers that these measures are inconsistent with the United States' obligations under several provisions of the GATT 1994 and the Agreement on Safeguards and, in particular:

- Article I:1 of the GATT 1994, because, by applying selectively the additional import duties on certain steel and aluminium products originating in different Members, including by providing exemptions or applying alternative means to certain countries, the United States

⁶ Federal Register Volume 83, Issue 88 (May 7, 2018), pp. 20677-20682.

⁷ Federal Register Volume 83, Issue 108 (June 5, 2018), pp. 25857-25877.

⁸ Federal Register Volume 83, Issue 108 (June 5, 2018), pp. 25849-25855.

⁹ Federal Register Volume 83, Issue 158 (August 15, 2018), pp. 40429-40432.

¹⁰ Federal Register Volume 83, Issue 171 (September 4, 2018), pp. 45025-45030.

¹¹ Federal Register Volume 83, Issue 171 (September 4, 2018), pp. 45019-45023.

¹² https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

¹³ https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf

¹⁴ Federal Register Volume 83, Issue 53 (March 19, 2018) pp. 12106-12112.

¹⁵ Federal Register Volume 83, Issue 176 (September 11, 2018), pp. 46026-46065.

fails, with respect to customs duties and charges of any kind imposed on or in connection with importation and with respect to all rules and formalities in connection with importation, to accord immediately and unconditionally any advantage, favour, privilege or immunity granted to products originating in other countries to like products originating in Switzerland;

- Article II:1(a) and (b) of the GATT 1994, because, through the measures at issue, the United States fails to accord to the commerce of most other WTO Members, including Switzerland, treatment no less favourable than that provided for in the appropriate part of the United States' Schedule of Concessions. The United States also fails to exempt the products at issue from most WTO Members, including Switzerland, from ordinary customs duties in excess of those set forth and provided for in the United States' Schedule of Concessions and from all other duties or charges in excess of those imposed on the date of the GATT 1994 or those directly and mandatorily required to be imposed thereafter by legislation in force in the United States on that date;
- Article X:3(a) of the GATT 1994 because the United States has failed and fails to administer its laws, regulations, decisions and rulings in relation to the measures at issue in a uniform, impartial and reasonable manner;
- Article XI:1 of the GATT 1994, because, through the measures at issue, the United States has instituted restrictions other than duties, taxes or other charges, made effective through quotas, on the importation of products of the territory of other Members;
- Article XIX:1(a) of the GATT 1994, because the United States has suspended tariff concessions and other obligations without the products at issue being imported into the territory of the United States in such increased quantities and under such conditions as to cause or to threaten serious injury to domestic producers in the United States of like or directly competitive products, as a result of unforeseen developments and of the effect of the obligations incurred under the GATT 1994;
- Article 2.1 of the Agreement on Safeguards, because the United States applies safeguard measures to the products at issue without first having determined, pursuant to the subsequent provisions of the Agreement on Safeguards, that such products are being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products;
- Article 2.2 of the Agreement on Safeguards, because the United States does not apply the safeguard measures to imported products irrespective of their source;
- Article 3.1 of the Agreement on Safeguards, because the United States applies safeguard measures to the products in question without having properly conducted an investigation and published a report that sets forth findings and reasoned conclusions on all pertinent issues of fact and law;
- Article 4.1 of the Agreement on Safeguards, because the United States has not properly determined that there is serious injury, or threat thereof, to a domestic industry as provided for in that provision;
- Article 4.2 of the Agreement on Safeguards, because the United States has failed to properly evaluate all relevant factors having a bearing on the situation of the domestic industry; has failed to demonstrate the existence of a causal link between increased imports and serious injury or the threat thereof; has failed to ensure that the injury caused by factors other than increased imports was not attributed to increased imports; and has failed to publish a detailed analysis and demonstration of its conclusions;
- Article 5.1 of the Agreement on Safeguards, because the United States is applying safeguard measures beyond the extent necessary to prevent or remedy serious injury and to facilitate adjustment;

- Article 7 of the Agreement on Safeguards, because the United States is applying safeguard measures without making provision for their application only for the period necessary to prevent or remedy serious injury and to facilitate adjustment, without limitation to four years, and without making provision for progressive liberalisation at regular intervals;
- Article 11.1(a) of the Agreement on Safeguards, because the United States has taken emergency action on imports of particular products as set forth in Article XIX of the GATT 1994, without such action conforming with the provisions of Article XIX applied in accordance with the Agreement on Safeguards;
- Article 11.1(b) of the Agreement on Safeguards, because the United States has sought, taken or maintained voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side; and
- Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards and Article XIX:2 of the GATT 1994, because the United States has failed to comply with any of the notification and consultation obligations set out in these provisions.

2. CLAIMS WITH RESPECT TO SECTION 232 OF THE TRADE EXPANSION ACT OF 1962 AS REPEATEDLY INTERPRETED BY THE UNITED STATES' AUTHORITIES AND THE ONGOING USE OF SECTION 232

In addition, Switzerland considers that Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. §1862), as repeatedly interpreted by the United States' authorities, including in the context of the above and other measures¹⁶, is inconsistent with the United States' obligations under the covered agreements, particularly those listed below.

Indeed, Section 232, so interpreted by the United States' authorities, provides for the imposition of measures (such as additional import duties or quotas) that restrict imports from other WTO Members to shield the domestic production in the United States from competition with foreign products on the grounds of an alleged threat to the national security in a manner inconsistent with the disciplines set out in the GATT 1994 and the Agreement on Safeguards.

Switzerland considers that this measure has no basis in the covered agreements and is therefore inconsistent with the balance of rights and obligations set out in the WTO Agreement and, in particular, that the measure violates:

- Articles I:1, II:1(a) and (b) and XI:1 of the GATT 1994 since the measure at issue provides for the imposition of import restrictions in a manner inconsistent with the disciplines set out in those provisions;
- Article XIX:1 of the GATT 1994 and Articles 2.1, 4.1 and 4.2 of the Agreement on Safeguards since the measure at issue provides for the imposition of restrictions on imports of products in order to protect the domestic industry, without examining whether the products at issue are being imported into the territory of the United States in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the US domestic producers of like or directly competitive products, as a result of unforeseen developments and of the effect of the obligations incurred under the GATT 1994;
- Article 3.1 of the Agreement on Safeguards since the measure at issue provides for the imposition of safeguard measures without conducting an investigation and publishing a report that sets forth findings and reasoned conclusions on all pertinent issues of fact and law;
- Articles 5.1 and 7 of the Agreement on Safeguards since the measure at issue does not provide for the imposition of safeguard measures only to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment and since

¹⁶ Including Section 705 Code of Federal Regulations, Effect of Imported Articles on the National Security (15 CFR 705) 47 FR 14693.

it fails to provide that those measures cannot exceed four years and that they shall be progressively liberalised at regular intervals;

- Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards and Article XIX:2 of the GATT 1994 since the measure at issue does not provide for the notifications required under Articles 12.1 and 12.2 of the Agreement on Safeguards and does not provide for an opportunity for prior consultations as required under Article 12.3 of the Agreement on Safeguards and Article XIX:2 of the GATT 1994;
- Article 11.1(a) of the Agreement on Safeguards since the measure at issue constitutes a mechanism of "emergency action" as set forth in Article XIX of the GATT 1994 that does not conform with the provisions of that Article and is not applied in accordance with the Agreement on Safeguards;
- Article XVI:4 of the WTO Agreement since, through the measure at issue, the United States fails to ensure the conformity of its laws, regulations and administrative procedures with its obligations under the WTO Agreement.

In the alternative, Switzerland submits that the ongoing use of Section 232 by the United States' authorities so as to afford protection to the domestic production by restricting imports from other WTO Members on the grounds of an alleged threat to the US national security is inconsistent with the United States' obligations under the covered agreements, particularly those listed above.

As a result, Switzerland considers that the above-mentioned measures nullify or impair the benefits accruing to Switzerland directly or indirectly under the covered agreements.

Therefore, Switzerland respectfully requests that, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the Agreement on Safeguards, the Dispute Settlement Body establish a Panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

Switzerland requests that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 21 November 2018.
