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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 18 October 2018, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 1 June 2018 the European Union (EU) requested consultations with the United States of America (US) 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, concerning the import adjustments that the US recently introduced on certain steel and aluminium products in the form of additional import duties and quantitative restrictions, as explained below, purportedly taken because of national security reasons. These measures adversely affect exports of these goods from the EU to the US.

The consultations took place on 19 July 2018 in Geneva with a view to reaching a satisfactory settlement of the matter. Unfortunately, they failed to settle the dispute. The EU therefore requests that a panel be established pursuant to Articles 4 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the Agreement on Safeguards to examine the matter based on the standard terms of reference, as set out in Article 7.1 of the DSU.

With respect to certain steel products, the measures at issue are the import adjustments on certain steel products in the form of additional import duties and quantitative restrictions, as explained below. They consist of and are evidenced by the following documents considered alone and in any combination:

- Presidential Proclamation 9705 of 8 March 2018, Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States;[1]
- Presidential Proclamation 9711 of 22 March 2018, Adjusting Imports of Steel into the United States, amending Proclamation 9705 of 8 March 2018;[2]
- Presidential Proclamation 9740 of 30 April 2018, Adjusting Imports of Steel into the United States, amending Proclamation 9705 of 8 March 2018, as amended by Proclamation 9711 of 22 March 2018;[3]
- Presidential Proclamation of 31 May 2018, Adjusting Imports of Steel into the United States, amending Proclamation 9705 of 8 March 2018, as amended by Proclamation 9711 of 22 March 2018 and Proclamation 9740 of 30 April 2018;[4]
- 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 (19 U.S.C. 1862), U.S.

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[1] Federal Register Vol. 83, No. 51, pp. 11625-11630, 15 March 2018.
[2] Federal Register Vol. 83, No. 60, pp. 13361-13365, 28 March 2018.
[3] Federal Register Vol. 83, No. 88, pp. 20683-20705, 7 May 2018.
[4] https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-4/

Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, 11 January 2018.[5]

On 23 March 2018, the US through these measures introduced additional import duties of 25 per cent ad valorem on steel articles imported from countries other than Canada, Mexico, Australia, Argentina, Korea, Brazil and the EU and 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 7304.10 through 7306.90, including any subsequent revisions to these HTS classifications. On 1 June 2018, the US through these measures introduced additional import duties of 25 per cent ad valorem also on these steel articles imported from Canada, Mexico and the EU (Australia, Argentina, Brazil and Korea remaining exempt). For Korea, based on an agreement, the US on 1 May 2018 introduced quotas limiting the quantities of imported steel articles by weight per calendar year starting from 2018. On 1 June 2018, also based on an agreement, the US introduced quotas limiting the quantities of imported steel articles by weight per calendar year starting from 2018 for Argentina and Brazil.

With respect to certain aluminium products, the measures at issue are the import adjustments on certain aluminium products in the form of additional import duties and quantitative restrictions, as explained below. They consist of and are evidenced by the following documents considered alone and in any combination:

- Presidential Proclamation 9704 of 8 March 2018, Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States;[6]
- Presidential Proclamation 9710 of 22 March 2018, Adjusting Imports of Aluminum into the United States, amending Proclamation 9704 of 8 March 2018;[7]
- Presidential Proclamation 9739 of 30 April 2018, Adjusting Imports of Aluminum into the United States, amending Proclamation 9704 of 8 March 2018, as amended by Proclamation 9710 of 22 March 2018;[8]
- Presidential Proclamation of 31 May 2018, Adjusting Imports of Aluminum into the United States, amending Proclamation 9704 of 8 March 2018, as amended by Proclamation 9710 of 22 March 2018 and Proclamation 9739 of 30 April 2018;[9]
- 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, Bureau of Industry and Security, Office of Technology Evaluation, 18 January 2018.[10]

On 23 March 2018, the US through these measures introduced additional import duties of 10 per cent ad valorem on aluminium articles imported from countries other than Canada, Mexico, Australia, Argentina, Korea, Brazil and the EU and defined in the US Harmonized Tariff Schedule (HTS) as: (a) unwrought aluminium (HTS 7601); (b) aluminium bars, rods, and profiles (HTS 7604); (c) aluminium wire (HTS 7605); (d) aluminium plate, sheet, strip, and foil (flat rolled products) (HTS 7606 and 7607); (e) aluminium tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and (f) aluminium castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70), including any subsequent revisions to these HTS classifications. On 1 May 2018, the US through these measures introduced additional import duties of 10 per cent ad valorem also on these aluminium articles imported from Korea (Argentina, Australia, Brazil, Canada, Mexico and the EU remaining exempt). On 1 June 2018, the US through these measures introduced additional import duties of 10 per cent ad valorem also on these aluminium articles imported from Brazil, Canada, Mexico and the EU (Australia and

[5] https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

[6] Federal Register Vol. 83, No. 51, pp. 11619-11624, 15 March 2018.

[7] Federal Register Vol. 83, No. 60, pp. 13355-13359, 28 March 2018.

[8] Federal Register Vol. 83, No. 88, pp. 20677-20682, 7 May 2018.

[9] https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states-4/

[10] https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminium_on_the_national_security_-_with_redactions_-_20180117.pdf

Argentina remaining exempt). For Argentina, based on an agreement, the US on 1 June 2018 introduced quotas limiting the quantities of imported aluminium articles by weight per calendar year starting from 2018.

For each of these measures referred to above, this request also covers any further amendments, supplements, replacements, extensions, implementing measures or other related measures, including any adjustments as between tariffs, tariff quotas or quotas.

Each of the measures listed above appears to be inconsistent with the US' obligations under the following provisions of the covered agreements:

- Article I:1 of the GATT 1994, because, 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, the US fails to accord certain advantages, favours, privileges or immunities granted by the US to products originating in certain other countries immediately and unconditionally to the like products originating in the territories of all other Members;
- Article II:1(a) and (b) of the GATT 1994, because through the measures the US does not accord to the commerce of most other Members, including the EU, treatment no less favourable than that provided for in the appropriate part of the US' Schedule. They do not exempt the products at issue imported from most other Members, including the EU, from ordinary customs duties and all other duties or charges of any kind imposed on or in connection with importation in excess of those provided for in the US' Schedule and the GATT 1994;
- Article X:3(a) of the GATT 1994, because the US has failed 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 the US 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 US has suspended tariff concessions without the products at issue being imported into the territory of the US in such increased quantities and under such conditions as to cause or to threaten serious injury to domestic producers in the US 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 XIX:2 of the GATT 1994, because the US has failed to give notice in writing to the WTO as far in advance as may be practicable and has failed to afford the WTO and WTO Members having a substantial interest as exporters of the products concerned an opportunity to consult with it in respect of the proposed action;
- Article 2.1 of the Agreement on Safeguards, because the US applies safeguard measures to the products in question 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 US does not apply the safeguard measures to imported products irrespective of their source;
- Article 3.1 of the Agreement on Safeguards, because the US applies safeguard measures to the products in question without first properly conducting an investigation and publishing a report that sets forth its findings and reasoned conclusions on all pertinent issues of fact and law;
- Article 4.1 of the Agreement on Safeguards, because the US has not properly determined that there is serious injury, or threat thereof, to a domestic industry;
- Article 4.2 of the Agreement on Safeguards, because the US 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, including by not attributing injury caused by factors other than 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 US 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 US 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 9.1 of the Agreement on Safeguards, because the US is applying safeguard measures against products originating in developing country Members whose share of imports of the products concerned in the US does not exceed 3 per cent, without developing country Members with less than 3 per cent import share collectively accounting for more than 9 per cent of total imports of the products concerned;
- Article 11.1(a) of the Agreement on Safeguards, because the US 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 that Article applied in accordance with the Agreement on Safeguards;
- Article 11.1(b) of the Agreement on Safeguards, because the US has sought, taken or maintained voluntary export restraints, orderly marketing arrangements or any other similar measures on the import side, in violation of the provisions of the Agreement on Safeguards;
- Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards, because the US has failed to comply with any of the notification and consultation obligations set out in these provisions; and
- Articles I:1, II:1(a) and (b), X:3(a) and XI:1 of the GATT 1994, as a consequence of each of the above inconsistencies with the provisions of Article XIX of the GATT 1994 and the Agreement on Safeguards.

In addition, the EU considers that Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. §1862), as repeatedly interpreted by the US' administrative and judicial authorities in the above and other measures (including Section 705 Code of Federal Regulations, Effect of Imported Articles on the National Security (15 CFR 705, 47 FR 14693)), is "as such" inconsistent with the US' obligations and rights set out in the WTO Agreement. Section 232, so interpreted, provides for the US' Secretary of Commerce and President to determine, ostensibly because of an alleged threat to the national security of the US, that additional import duties or other trade restrictive measures be imposed because imports of certain products (such as steel or aluminium), in particular quantities and/or at particular prices, cause or threaten injury to domestic commercial production facilities, which are therefore to be protected against competition from imports in order to ensure that they are economically viable. As such, Section 232, so interpreted, is inconsistent with the balance of obligations and rights set out in the WTO Agreement, such that it is inconsistent with each of the provisions of the covered agreements set out above, for the same reasons, and fails to ensure the conformity of US laws, regulations and administrative procedures with the US' obligations under the WTO Agreement, in a manner that is also inconsistent with Article XVI:4 of the WTO Agreement.

These measures appear to nullify or impair the benefits accruing to the EU directly or indirectly under the covered agreements.

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Accordingly, the European Union respectfully requests that, pursuant to Article 6 of the DSU, 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.