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Page: 1/4

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## UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

### REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA

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

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On 5 April 2018, China requested 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 XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), and Article 14 of the *Agreement on Safeguards* with respect to certain measures by the United States to adjust imports of steel into the United States and to adjust imports of aluminum into the United States, including but not limited to, imposing additional ad valorem rate of duty on imports of certain steel and aluminum products and exempting certain selected WTO Members from the measures.

China held consultations with United States on 19 July 2018. These consultations failed to resolve the dispute.

As a result, in order to resolve the dispute, China requests the establishment of a Panel pursuant to Articles 4 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the Agreement on Safeguards.

#### **A. Measures at Issue**

On 23 March 2018, the United States imposed 25 percent and 10 percent of additional import duty respectively on certain steel products and aluminum products, from all countries except Canada, Mexico, Australia, Argentina, Korea, Brazil and the European Union.

Subsequently, a series of revisions were made by the United States to the measures originally imposed, including but not limited to:

- On 1 May 2018, the United States introduced quota on imports of steel products from Korea, and removed the exemption from the additional import duty on imported aluminum products from Korea;
- On 1 June 2018, the United States removed the exemption from the additional import duty on imported steel products from Canada, Mexico and European Union, and removed the exemption from the additional import duty on imported aluminum products from Brazil, Canada, Mexico, and European Union. The United States also introduced quota on imports of steel products from Argentina and Brazil, and quota on imports of aluminum products from Argentina.
- In addition, the United States has also provided for and implemented the exclusion of certain products from certain sources, upon applications, from the additional import duties.

The measures at issue include, but are not limited to, the following instruments of the United States in relation to the above-referenced actions on the importation of certain steel products and aluminum products:

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- *Adjusting Imports of Steel Into the United States*, including the Annex, *To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States* (Presidential Proclamation 9705, issued on 8 March 2018)<sup>1</sup>
  - *Adjusting Imports of Aluminum Into the United States*, including the Annex, *To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States* (Presidential Proclamation 9704, issued on 8 March 2018)<sup>2</sup>
  - *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9711, issued on 22 March 2018)<sup>3</sup>
  - *Adjusting Imports of Aluminum into the United States* (Presidential Proclamation 9710, issued on 22 March 2018)<sup>4</sup>
  - *Adjusting Imports of Steel Into the United States*, including the Annex, *To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States* (Presidential Proclamation 9740, issued on 30 April 2018)<sup>5</sup>
  - *Adjusting Imports of Aluminum Into the United States*, including the Annex, *To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States* (Presidential Proclamation 9739, issued on 30 April 2018)<sup>6</sup>
  - *Adjusting Imports of Steel Into the United States*, including the Annex (Presidential Proclamation 9759, issued on 31 May 2018)<sup>7</sup>
  - *Adjusting Imports of Aluminum Into the United States*, including the Annex, *To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States* (Presidential Proclamation 9758, issued on 31 May 2018)<sup>8</sup>
  - *Adjusting Imports of Steel Into the United States*, including the Annex, *To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States* (Presidential Proclamation 9772, issued on August 10 2018)<sup>9</sup>
  - *Adjusting Imports of Steel Into the United States*, including the Annex, *To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States* (Presidential Proclamation 9777, issued on August 29 2018)<sup>10</sup>
  - *Adjusting Imports of Aluminum Into the United States*, including the Annex, *To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States* (Presidential Proclamation 9776, issued on August 29 2018)<sup>11</sup>
  - Interim Final Rule regarding *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)<sup>12</sup>
  - Interim Final Rule regarding *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (the Bureau of Industry and Security, U.S. Department of Commerce)<sup>13</sup>

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<sup>1</sup> 83 FR 11625-11630, March 15, 2018

<sup>2</sup> 83 FR 11619-11624, March 15, 2018

<sup>3</sup> 83 FR 13361-13365, March 28, 2018

<sup>4</sup> 83 FR 13355-13359, March 28, 2018

<sup>5</sup> 83 FR 20683-20705, May 7, 2018

<sup>6</sup> 83 FR 20677-20682, May 7, 2018

<sup>7</sup> 83 FR 25857-25877, June 5, 2018

<sup>8</sup> 83 FR 25849-25855, June 5, 2018

<sup>9</sup> 83 FR 40429-40432, August 15, 2018

<sup>10</sup> 83 FR 45025-45030, September 4, 2018

<sup>11</sup> 83 FR 45019-45023, September 4, 2018

<sup>12</sup> 83 FR 12106-12112, March 19, 2018

<sup>13</sup> 83 FR 46026-46065, September 11, 2018

- Multiple *BIS Decision Document – Steel Duty Exclusion Request* and *BIS Decision Document – Aluminum Duty Exclusion Request* in response to various exclusion requests submitted to the Bureau of Industry and Security (the Bureau of Industry and Security, U.S. Department of Commerce)<sup>14</sup>
- *Section 232 Tariffs on Aluminum and Steel, Additional Duty on Imports of Steel and Aluminum Articles under Section 232 of the Trade Expansion Act of 1962* (U.S. Customs and Border Protection)<sup>15</sup>
- Section 232 of the *Trade Expansion Act of 1962*, as amended (19 U.S.C. §1862), cited in the Presidential Proclamations above for vesting authorities in the President of the United States to take the actions therein
- *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, 11 January 2018)
- *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, 17 January 2018)

In addition to the measures cited above, this request also covers any amendments, supplements, extensions, replacement measures, renewal measures, related measures, or implementing measures.

## **B. Legal Basis For the Complaint**

The measures at issue of the United States were purportedly taken because of national security reasons. It appears to China that the measures at issue, in their content and substance, were taken because the imports of steel products and aluminum products were deemed to be in such increased quantities and under such conditions as to cause or threaten injury to domestic producers of the products. And the suspension of the obligations or withdrawal or modification of the concessions by the measures at issue was to relieve such injury or threat to ensure that the relevant domestic industries are economically viable.

China considers the measures at issue, operating separately or together, are inconsistent with the United States' obligations under:

- Article XIX:1(a) of the GATT 1994, because the United States has suspended tariff concessions 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 XIX:2 of the GATT 1994, because the United States has failed, before taking the action, 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 Safeguard, because the United States 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 United States does not apply the safeguard measures to imported products irrespective of their sources;

<sup>14</sup> <https://www.regulations.gov/docket?D=BIS-2018-0006> and <https://www.regulations.gov/docket?D=BIS-2018-0002>

<sup>15</sup> <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel>

- 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;
- 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, 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 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 liberalization 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 Articles XIX of the GATT 1994, without such action conforming with the provisions of that Article applied in accordance with the Agreement on Safeguards;
- Article 12.1, 12.2 and 12.3 of the Agreement on Safeguards, because the United States has failed to comply with any of the notification and consultation obligations set out in these provisions;
- Article II:1(a) and (b) of the GATT 1994, because the United States has imposed import duties on certain steel and aluminum products in excess of the duties set forth and provided in the United States' Schedule of Concessions and Commitments annexed to the GATT 1994, and has failed to exempt products originating in China subject to the measures at issue from ordinary customs duties in excess of those set forth and provided in the United States' Schedule of Concessions and Commitments annexed to the GATT 1994, 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 I:1 of the GATT 1994, because the selective application by the United States of the additional import duties on certain steel and aluminum products originating in different Members, including providing exemption or applying alternative means, has failed to extend immediately and unconditionally to products originating in China any "advantage, favor, 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 territory of other Members, as well as with respect to "the method of levying such duties and charges" and the "rules and formalities in connection with importation".
- Article X:3(a) of the GATT 1994, because the United States has failed to administer its laws, regulations, decisions and rulings in relation to the measures at issue in a uniform, impartial and reasonable manner.

China considers the measures at issue individually and/or collectively, nullify or impair benefits accruing to China directly or indirectly under the cited agreements.

Accordingly, China requests the Dispute Settlement Body to establish a Panel with the standard terms of reference set out in Article 7.1 of the DSU.

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