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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 CANADA

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

1. On 1 June 2018, Canada requested consultations with the United States of America 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 by the United States to adjust imports of steel and aluminum into the United States, including imposing additional *ad valorem* rates of duty on imports of certain steel and aluminum products and exempting certain selected WTO Members from the measures.

2. Canada held consultations with the United States on 20 July 2018, with a view to reaching a satisfactory resolution of the matter. Unfortunately, these consultations failed to settle the dispute. Canada therefore requests that the Dispute Settlement Body establish a panel pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the Agreement on Safeguards to examine this matter with standard terms of reference as set out in Article 7.1 of the DSU.

3. The measures at issue in this request include:

- a. Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. §1862);
- b. Section 705 of the Code of Federal Regulations, Effect of Imported Articles on the National Security (15 CFR 705)<sup>1</sup>;
- c. 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 March 8, 2018)<sup>2</sup>;

<sup>1</sup> 47 FR 14693, April 6, 1982.

<sup>2</sup> 83 FR 11625-11630, March 15, 2018.

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- d. 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 March 8, 2018)<sup>3</sup>;
  - e. 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 9711, issued on March 22, 2018)<sup>4</sup>;
  - f. 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 9710, issued on March 22, 2018)<sup>5</sup>;
  - g. 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 (US Department of Commerce)<sup>6</sup>;
  - h. Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum (US Department of Commerce)<sup>7</sup>;
  - i. 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 (US Department of Commerce, January 11, 2018)<sup>8</sup>;
  - j. 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 (US Department of Commerce, January 17, 2018)<sup>9</sup>;
  - k. 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 April 30, 2018)<sup>10</sup>;
  - l. 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 April 30, 2018)<sup>11</sup>;

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<sup>3</sup> 83 FR 11619-11624, March 15, 2018.

<sup>4</sup> 83 FR 13361-13365, March 28, 2018.

<sup>5</sup> 83 FR 13355-13359, March 28, 2018.

<sup>6</sup> 83 FR 12106-12112, March 19, 2018.

<sup>7</sup> 83 FR 46026-46065, September 11, 2018.

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[https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_steel\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180111.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf).

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[https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_aluminum\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180117.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf)

<sup>10</sup> 83 FR 20683-20705, May 7, 2018.

<sup>11</sup> 83 FR 20677-20682, May 7, 2018.

- m. Adjusting Imports of Steel into the United States, including the Annex (Presidential Proclamation 9759, issued on May 31, 2018)<sup>12</sup>;
- n. 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 May 31, 2018)<sup>13</sup>;
- o. 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>14</sup>;
- p. 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>15</sup>;
- q. 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>16</sup>;
- r. The US policy, practice, composite measure, rule or norm, or ongoing conduct as described in paragraph 7 below;

and any amendments, successor, replacement or implementing measures and any exemptions applied or other related measures.

4. On 8 March 2018, the United States imposed a 25 percent additional import duty on certain steel products and a 10 percent additional import duty on certain aluminum products from all countries exempting Canada, Mexico, Australia, Argentina, South Korea, Brazil and the European Union, which took effect on 23 March 2018. On 30 April 2018, a proclamation was issued by the President of the United States exempting imports from South Korea, Argentina, Australia and Brazil from the additional import duties. The United States also extended the exemption from the additional import duties for Canada, Mexico and the European Union until 31 May 2018. The exemption expired on 31 May 2018, resulting in the imposition of the additional import duties on these three Members including Canada. The measures also indicated possible further adjustments to the measure, in the form of additional import duties or implementation of a quota.

5. Canada considers the measures at issue, operating separately or together, to be inconsistent with the United States' obligations under:

- a. Article I:1 of the GATT 1994, because the United States has selectively applied additional import duties on certain steel and aluminum products originating in the territory of different Members, including providing exemptions to certain countries or applying alternative means, and has failed to extend immediately and unconditionally to Canada any advantage, favour, privilege or immunity granted by the United States with respect to customs duties and charges of any kind imposed on or in connection

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<sup>12</sup> 83 FR 25857-25877, June 5, 2018.

<sup>13</sup> 83 FR 25849-25855, June 5, 2018.

<sup>14</sup> 83 FR 40429-40432, August 15, 2018.

<sup>15</sup> 83 FR 45019-45023, September 4, 2018.

<sup>16</sup> 83 FR 45025-45030, September 4, 2018.

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;

- b. Article II:1(a) and (b) of the GATT 1994, because the United States has imposed duties on imports of 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 of Canada 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;
- c. 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 with respect to their application on certain steel and aluminum products;
- d. Article XI:1 of the GATT 1994, because the measures operate as a quantitative restriction on imports of certain steel and aluminum products into the United States by exempting certain Members from the additional import duties on the basis of alternative measures, such as quotas, that restrict the quantity of imports of certain steel and aluminum products into the United States;
- e. Article XIX:1(a) of the GATT 1994, because the United States took emergency actions on imports of certain steel and aluminum products that suspended tariff concessions where such imports were not, as a result of unforeseen developments and of the effect of the obligations incurred under the GATT 1994, being imported into the United States in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in the United States of like or directly competitive products;
- f. Article XIX:2 of the GATT 1994, because the United States took emergency actions on imports of certain steel and aluminum products that suspended tariff concessions without giving notice as far in advance as may be practicable and without giving Members having a substantial interest as exporters of the products concerned an opportunity to consult with it prior to taking its actions;
- g. Article 2.1 of the Agreement on Safeguards, because the United States has applied safeguard measures on imports of certain steel and aluminum products without having properly determined, pursuant to the provisions of the Agreement on Safeguards, that certain steel and aluminum 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 its domestic industry that produces like or directly competitive products;

- h. Article 2.2 of the Agreement on Safeguards, because the United States has not applied its safeguard measures on imports of certain steel and aluminum products irrespective of their source;
- i. Article 3.1 of the Agreement on Safeguards, because the United States has applied safeguard measures on imports of certain steel and aluminum products without properly conducting an investigation and without publishing a report properly setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law;
- j. Article 4.1 of the Agreement on Safeguards, because the United States did not properly determine the existence of serious injury or threat of serious injury to its domestic steel and aluminum industries;
- k. Article 4.2 of the Agreement on Safeguards, because the United States did not properly evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the steel and aluminum industries, did not properly determine the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof on the basis of objective evidence, and did not publish promptly a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined;
- l. Article 5.1 of the Agreement on Safeguards, because the United States did not apply its safeguard measures on imports of certain steel and aluminum products only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment;
- m. Article 7 of the Agreement on Safeguards, because the United States did not apply its safeguard measures on imports of certain steel and aluminum products only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment;
- n. Article 8.1 of the Agreement on Safeguards, because the United States failed to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members affected by its measures on imports of certain steel and aluminum products;
- o. Article 11.1(a) of the Agreement on Safeguards, because the United States has taken emergency actions on imports of certain steel and aluminum products in a manner that does not conform with the provisions of Article XIX applied in accordance with the Agreement on Safeguards;
- p. 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 import side with respect to certain WTO Members;
- q. Articles 12.1, 12.2, and 12.5 of the Agreement on Safeguards, because the United States failed to provide the notifications to the Committee on Safeguards and the Council for Trade in Goods required by these provisions; and

- r. Article 12.3 of the Agreement on Safeguards, because the United States failed to provide opportunity for consultations prior to applying its measures.

6. In addition, Section 232 of the Trade Expansion Act of 1962 and its associated regulations<sup>17</sup> are "as such" inconsistent with the obligations of the United States under the provisions of the covered agreements set out in paragraph 5 and with Article XXI:(b) of the GATT 1994 because they require the United States to account for an industry's economic interests, welfare or protection, or other factors that are not necessary for the protection of its essential security interests. Thus, the United States has failed to ensure the conformity of its laws, regulations and administrative procedures with its obligations under the WTO Agreement, in a manner that is inconsistent with Article XVI:4 of the WTO Agreement.

7. In addition, the United States has applied and continues to apply Section 232 of the Trade Expansion Act of 1962 and its associated regulations by imposing restrictions on imports for reasons related to an industry's economic interests, welfare or protection, or other factors that are not necessary for the protection of its essential security interests. The measure at issue is the policy or practice of the United States of interpreting and applying Section 232 on the basis of such reasons, resulting in the imposition of additional import duties, quotas, or similar restrictions. This measure is attributable to the United States as it concerns the determinations and practices of the United States Department of Commerce, the President of the United States, and other government decisions, determinations and practices. The precise content of the measure consists of the items listed in paragraph 3 above, as well as other Section 232 investigations, and declarations, statements and decisions made by the United States government and its officers in their official capacity related to Section 232. This measure has been applied by the United States and it is likely that it will continue to be applied in the future. In the alternative, the measure is a composite measure consisting of Section 232 and its associated regulations along with the policy or practice of the United States of applying these for economic reasons as described above in this paragraph. In the further alternative, the measure constitutes ongoing conduct or a rule or norm of general and prospective application. Canada submits that the measure is inconsistent with the provisions of the covered agreements set out in paragraph 5 and with Article XXI:(b) of the GATT 1994.

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8. The United States' measures described above nullify or impair benefits accruing to Canada directly or indirectly under the cited agreements.

9. Canada also asks that this request be placed on the agenda of the next meeting of the Dispute Settlement Body scheduled to be held on 29 October 2018.

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<sup>17</sup> Including Section 705 of the Code of Federal Regulations, Effect of Imported Articles on the National Security (15 CFR 705) 47 FR 14693.