



UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR CONSULTATIONS BY CANADA

The following communication, dated 1 June 2018, from the delegation of Canada to the delegation of the United States, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request 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*, 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 aluminium into the United States, including imposing additional *ad valorem* rates of duty on imports of the certain steel and aluminum products and exempting certain selected WTO members from the measures.

A. "As applied" measures

On 8 March 2018, the United States imposed a 25 per cent additional import duty on certain steel products and a 10 per cent 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 resulting in the imposition of the additional import duties on these 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.

The measures at issue in this request include:

1. 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)¹
2. 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)²
3. 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)³

¹ 83 FR 11625-11630, March 15, 2018

² 83 FR 11619-11624, March 15, 2018

³ 83 FR 13361-13365, March 28, 2018

4. 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)⁴
5. 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)⁵
6. 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
7. 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)⁶
8. 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)⁷
9. Section 705 Code of Federal Regulations, Effect of Imported Articles on the National Security (15 CFR 705)⁸
10. 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 9740, issued on April 30, 2018)⁹
11. 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 9739, issued on April 30, 2018)¹⁰
12. Adjusting Imports of Steel into the United States, including any annexes (Presidential Proclamation, issued on May 31, 2018)¹¹
13. Adjusting Imports of Aluminum into the United States, including any annexes (Presidential Proclamation, issued on May 31, 2018)¹²

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

The measures at issue, operating separately or together, appear to be inconsistent with the United States' obligations under:

1. 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 of Canada subject to the measures at issue from ordinary customs duties in excess of those set forth and provided in the United

⁴ 83 FR 13355-13359, March 28, 2018

⁵ 83 FR 12106-12112, March 19, 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

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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

⁸ 47 FR 14693

⁹ 83 FR 20683-20705, May 7, 2018

¹⁰ 83 FR 20677-20682, May 7, 2018

¹¹ <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-4/>

¹² <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states-4/>

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.

2. Articles XIX:1 and XIX:2 of the GATT 1994 and Articles 2.1, 2.2, 3.1, 4.1, 4.2, 5.1, 7, 8.1, 11.1(a), 12.1, 12.2, 12.3, and 12.5 of the Agreement on Safeguards because the measures at issue appear to constitute or amount to emergency actions or safeguard measures adopted and implemented in a manner inconsistent with the substantive and procedural obligations of the Agreement on Safeguards and the GATT 1994.
3. Article 11.1(b) of the Agreement on Safeguards to the extent that the United States seeks any voluntary export restraints, orderly marketing arrangements, or any other similar measures on the export or the import side through the measures at issue.
4. 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 exemptions to certain countries or applying alternative means, has failed to extend immediately and unconditionally to Canada 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".
5. Article XI:1 of the GATT 1994, because the measures operate as a quantitative restriction on imports of 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 steel and aluminum products into the United States.
6. Article X:3(a) of the GATT 1994 as 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.

B. "As such" and ongoing conduct measures

In addition, Section 232 of the Trade Expansion Act of 1962 and its associated regulations¹³ appear to be "as such" inconsistent with Articles I:1 and II:1 of the GATT 1994 and does not appear to be justifiable under Article XXI:(b) of the GATT 1994 because they require the United States to account for economic welfare and other factors that are not necessary for the protection of its essential security interests, in a manner that is inconsistent with Article XVI:4 of the WTO Agreement.

In the alternative, the United States has applied Section 232 of the Trade Expansion Act of 1962 and its associated regulations for reasons related to economic welfare and other factors that are not necessary for the protection of its essential security interests. This measure is inconsistent with Articles I:1 and II:1 of the GATT 1994 and does not appear to be justifiable under Article XXI:(b) of the GATT 1994. This measure is evidenced, *inter alia*, by the measures at issue identified in Section A above, and by prior Section 232 investigations done on the basis of economic considerations, including the recently initiated investigation on the effect of imports of automobiles, including SUVs, vans and light trucks, and automotive parts on the national security.

This measure is attributable to the United States, consists of the content identified and described above and in Section A, and is presently occurring and likely to be continued in the future in a manner inconsistent with Articles I:1 and II:1 of the GATT 1994 and not justifiable under Article XXI:(b) of the GATT 1994. Alternatively, it constitutes ongoing conduct or a rule or norm of general and prospective application that are inconsistent with the United States' WTO obligations.

¹³ Including Section 705 Code of Federal Regulations, Effect of Imported Articles on the National Security (15 CFR 705) 47 FR 14693.

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

Canada reserves the right to address additional measures, factual and legal claims in the course of consultations and in any future request for panel proceedings.

Canada looks forward to receiving the United States' reply to this request and to determining a mutually convenient date for consultations.
