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

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

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

On 5 June 2018, Mexico requested consultations with 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 by the United States to adjust imports of steel and aluminium, including but not limited to applying an additional *ad valorem* customs duty on imports of certain steel products, applying an additional *ad valorem* customs duty on imports of certain aluminium products, and exempting certain selected Members of the World Trade Organization (WTO) from the measures.<sup>1</sup>

In a communication dated 15 June, the United States agreed to enter into consultations with Mexico.<sup>2</sup> The consultations between the two countries were held on 20 July 2018. Unfortunately, these consultations failed to settle the dispute.

Accordingly, Mexico respectfully 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.

#### I. BACKGROUND

On 8 March 2018, the President of the United States of America issued Presidential Proclamations 9704 and 9705, imposing an *additional import tariff* of 10% on certain aluminium products and an *additional import tariff* of 25% on certain steel products from all countries except Canada and Mexico.<sup>3</sup> These measures were effective as from 23 March 2018. On 22 March, the United States issued Presidential Proclamations 9710 and 9711, which continued to impose these additional import tariffs and, in addition to Canada and Mexico, exempted Australia, Argentina, South Korea, Brazil and the European Union from the measures. These countries would remain exempt from the tariffs until 1 May 2018.<sup>4</sup>

On 30 April 2018, the President of the United States issued Presidential Proclamations 9739 and 9740. These Proclamations excluded Argentina, Australia and Brazil from the additional tariffs on aluminium and steel products.<sup>5</sup> Proclamation 9740 excluded South Korea, on a long-term basis, from the additional tariffs on steel.<sup>6</sup> Pursuant to these Proclamations, Canada, Mexico and the European Union would remain exempt from the additional tariffs until 1 June.<sup>7</sup>

<sup>1</sup> *United States - Certain Measures on Steel and Aluminium Products* (DS551), Request for Consultations by Mexico, WT/DS551/1, circulated on 7 June 2018.

<sup>2</sup> Communication from the United States, WT/DS551/10, circulated on 6 July 2018.

<sup>3</sup> Proclamation 9704, paragraphs 7 and 9; Proclamation 9705, paragraphs 8 and 10.

<sup>4</sup> Proclamation 9710, paragraphs 4 and 11; Proclamation 9711, paragraphs 4 and 11.

<sup>5</sup> Proclamation 9739, paragraphs 4-6 (pursuant to clause (1), South Korea would not be covered by the exemption for aluminium as from 1 May); Proclamation 9740, paragraph 5.

<sup>6</sup> Proclamation 9740, paragraph 4.

<sup>7</sup> Proclamation 9739, paragraph 6; Proclamation 9740, paragraph 7.

Lastly, on 31 May 2018, Presidential Proclamations 9758 and 9759 were issued. Pursuant to these Proclamations, as from 1 June 2018, only Argentina and Australia were exempt, on a long-term basis, from the additional tariffs on aluminium products, and only Argentina, Australia and Brazil, from the additional tariffs on steel products.<sup>8</sup>

Therefore, as from 1 June 2018, the United States imposed an additional customs duty of 10% on imports of aluminium products and an additional customs duty of 25% on imports of certain steel products, originating in Mexico.

The establishment of additional import taxes for steel and aluminium products is intended to protect the United States industry from the economic effects of imports. At the same time, as a result of the Proclamations issued, the additional tariffs are not administered in a uniform manner since, in the case of steel, Argentina, Australia, Brazil and South Korea are exempted, while in the case of aluminium, Argentina and Australia are exempted. Moreover, pursuant to these Proclamations, quotas have been established for Argentina, Brazil and South Korea in the case of imports of steel products, and for Argentina in the case of imports of aluminium products.

## II. SPECIFIC MEASURES AT ISSUE

The measures at issue in this request are those through which the United States has adjusted imports of steel and aluminium products. These measures include, but are not limited to:

- Additional tariffs of 10% and 25% on imports of steel and aluminium products, as well as the exclusion of certain WTO Members from these tariffs.<sup>9</sup> These measures have been established through a series of legal instruments, operating separately or collectively:
  - "Proclamation 9704 of March 8, 2018 Adjusting Imports of Aluminum Into the United States", Fed. Reg. Vol. 83, No. 51, 11619-11624, 15 March 2018, including the Annex thereto;
  - "Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Into the United States", Fed. Reg. Vol. 83, No. 51, 11625-11630, 15 March 2018, including the Annex thereto;
  - "Proclamation 9710 of March 22, 2018 Adjusting Imports of Aluminum Into the United States", Fed. Reg. Vol. 83, No. 60, 13355-13359, 28 March 2018;
  - "Proclamation 9711 of March 22, 2018 Adjusting Imports of Steel Into the United States", Fed. Reg. Vol. 83, No. 60, 13361-13365, 28 March 2018;
  - "Proclamation 9739 of April 30, 2018 Adjusting Imports of Aluminum Into the United States", Fed. Reg. Vol. 83, No. 88, 20677-20682, 7 May 2018, including the Annex thereto;
  - "Proclamation 9740 of April 30, 2018 Adjusting Imports of Steel Into the United States", Fed. Reg. Vol. 83, No. 88, 20683-20705, 7 May 2018, including the Annex thereto;
  - "Proclamation 9758 of May 31, 2018 Adjusting Imports of Aluminum Into the United States", Fed. Reg. Vol. 83, No. 108, 25849-25855, 5 June 2018, including the Annex thereto;

<sup>8</sup> Proclamation 9758, paragraph 5; Proclamation 9859, paragraphs 4-6.

<sup>9</sup> US Customs and Border Protection, *Section 232 Tariffs on Aluminum and Steel Duty on Imports of Steel and Aluminum Articles under Section 232 of the Trade Expansion Act of 1962, Update: Additional Duty on Imports of Steel and Aluminum Articles under Section 232*, <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel> (last modified on 14 August 2018.) See also: Related CSMS: 18-000240, 18-000249, 18-000257, 18-000258, 18-000296, 18-000317, 18-000352, 18-000372, 18-000377, 18-000378, 000412, 18-000477, on the same website.

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- "Proclamation 9759 of May 31, 2018 Adjusting Imports of Steel Into the United States", Fed. Reg. Vol. 83, No. 108, 25857-25877, 5 June 2018, including the Annex thereto;
  - US Department of Commerce, "The Effect of Imports of Steel on the National Security", 11 January 2018<sup>10</sup>;
  - US Department of Commerce, "The Effect of Imports of Aluminum on the National Security", 17 January 2018<sup>11</sup>;
  - "Section 232 of Trade Expansion Act of 1962", codified in Title 19, United States Code § 1862;
  - Code of Federal Regulations, Title 15, Section 705, "Effect of Imported Articles on the National Security".

This consultation request relates to the measures at issue and to any additional measures that amend, supersede, update or replace them.

### III. BRIEF SUMMARY OF THE LEGAL BASIS OF THE COMPLAINT

Mexico considers that the measures at issue, *in fact* and *in substance*, constitute safeguard measures. These measures, separately or together, appear to be inconsistent with the United States' obligations under the following provisions:

#### A. Agreement on Safeguards

- Article 2.1, given that the United States failed to determine, pursuant to the provisions of the Agreement on Safeguards, that aluminium and steel products are being imported 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, when implementing its provisions on national security, conducting investigations within the framework thereof, and applying measures that, *in fact* and *in substance*, constitute safeguard measures.
- Article 2.2, inasmuch as the United States does not apply safeguard measures to steel and aluminium products being imported irrespective of their source.
- Article 3.1, given that the United States applied safeguard measures without having conducted the relevant investigation pursuant to the established procedure for safeguards, and failed to publish a report setting forth the findings and conclusions reached on pertinent issues of fact and law.
- Article 4.1, inasmuch as the United States failed to determine serious injury or threat thereof to the domestic industry, in accordance with this provision.
- Article 4.2, to the extent that in the investigation that gave rise to the safeguard measures, the United States failed to evaluate all factors of an objective and quantifiable nature having a bearing on the domestic industry; failed to determine, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof; failed to ensure that injury caused by other factors was not attributed to imports; and failed to publish a detailed analysis as well as a demonstration of the relevance of the factors examined.

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<sup>10</sup>[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)

<sup>11</sup>[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)

- Article 5.1, given that the United States has applied safeguard measures beyond the extent necessary to prevent or remedy serious injury and to facilitate adjustment.
- Article 7.1 and 7.4, to the extent that in applying the safeguard measures, the United States has failed to establish such a period of time for application, not exceeding four years, as may be necessary to prevent or remedy serious injury and to facilitate adjustment, or progressive liberalization at regular intervals.
- Article 8.1, inasmuch as the United States has applied safeguard measures without having endeavoured to maintain a substantially equivalent level of concessions and other obligations, as envisaged in this provision.
- Article 9.1 of the Agreement on Safeguards, given that the United States applies its measures to products originating in developing country Members whose share of imports does not exceed 3%, whereas developing country Members with less than 3% import share collectively account for not more than 9% of total imports of the product.
- Article 11.1(a), to the extent that the United States has adopted safeguard measures that are not in conformity with Article XIX of the GATT 1994 and the Agreement on Safeguards.
- Article 11.1(b), inasmuch as the United States, through the application of the safeguard measures, has sought and taken voluntary export restraints or other similar measures on the import side, in violation of this provision. The foregoing is evidenced by the alternative measures applied to certain WTO Members, as well as by the objective set out in the aforementioned Proclamations.
- Article 12.1, 12.2, 12.3 and 12.5, given that the United States, during the process it followed under Section 232 to apply the safeguard measures, failed to make the relevant notifications concerning the investigation relating to serious injury or threat thereof, the existence of serious injury or threat thereof caused by increased imports, and the decision to apply a safeguard measure. It also failed to provide the Committee on Safeguards with pertinent information that was to include evidence of serious injury or threat thereof, description of the product and the measure, date of introduction, duration and timetable for liberalization. Furthermore, the United States did not provide adequate opportunity for prior consultations with a view to reaching an understanding on the objective of maintaining a substantially equivalent level of concessions and other obligations, nor did it notify any form of compensation.

## **B. GATT 1994**

- Article I:1, given that with respect to customs duties and charges of any kind imposed on or in connection with importation, the United States is failing to accord any advantage, favour, privilege or immunity granted to certain Members, immediately and unconditionally to the like product originating in the territories of all other Members. The United States has selectively applied additional customs duties to imports of steel and aluminium products and has exempted certain WTO Members from these duties. These exemptions constitute advantages related to quotas and other alternative measures that are applied only to certain WTO Members.
- Article II:1(a) and (b), inasmuch as the United States has made imports of steel and aluminium products subject to additional customs duties in excess of those set forth and provided in its Schedule, and consequently, accorded less favourable treatment than that provided for in its Schedule of Concessions.
- Article XI:1, given that through the application of selective exemptions on the basis of alternative measures, including quotas, the United States has applied restrictions by reducing or limiting imports of steel and aluminium products in relation to prior trade levels, or inhibiting their potential for growth.
- Article XIX:1(a), inasmuch as the United States applied emergency measures in respect of steel and aluminium products without these products having been imported 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, as a result of unforeseen developments and of the effect of the obligations incurred. The United States has suspended obligations or modified concessions without doing so to the extent and for such time as may be necessary to prevent or remedy the injury.

- Article XIX:2, given that the United States applied emergency measures without giving notice in writing to WTO Members as far in advance as may be practicable, and failed to afford an opportunity to consult with it in respect of its proposed action.

The aforementioned violations appear to nullify or impair the benefits accruing to Mexico under the WTO provisions cited above.

For the foregoing reasons, Mexico respectfully 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, to examine this matter in accordance with the standard terms of reference set out in Article 7.1 of the DSU.

Mexico also requests that this matter be placed on the agenda of the next regular DSB meeting, which is to be held on 29 October 2018.

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