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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REPORT OF THE PANEL

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1 COMPLAINT BY MEXICO

1.1. 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 applying an additional *ad valorem* customs duty on imports of certain steel and aluminium products, and exempting certain selected WTO Members from the measures.¹

1.2. Mexico alleged that, as from 1 June 2018, the United States imposed an additional customs duty of 25% on imports of certain steel products and an additional customs duty of 10% on certain aluminium products from Mexico, while exempting and/or establishing quotas for imports from Argentina, Australia, Brazil, and South Korea. According to Mexico, the measures identified in its request for consultations, separately or together, appeared to be inconsistent with the United States' obligations under Articles I:1, II:1(a) and (b), X:3(a), XI:1, XIX:1(a), and XIX:2 of the GATT 1994, Articles 2.1, 2.2, 3.1, 4.1, 4.2, 5.1, 7, 9, 11.1(a) and (b), 12.1, 12.2, 12.3, and 12.5 of the Agreement on Safeguards, and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

1.3. In addition, Mexico considered that Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862), including its regulations, could be inconsistent "as such" with the provisions cited in paragraph 1.2 above. Mexico also alleged that this measure constituted a general rule of prospective application likely to continue being applied in future in a manner inconsistent with the United States' obligations under the WTO covered agreements. Mexico further considered that the measures at issue could not be justified under Article XXI(b) of the GATT 1994 since, *inter alia*, they required the United States to take account of economic welfare and other factors not necessary for the protection of its essential security interests.

1.4. Consultations were held on 20 July 2018.

2 PANEL ESTABLISHMENT AND COMPOSITION

2.1. On 18 October 2018, Mexico requested 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.²

2.2. In its request for the establishment of a panel, Mexico identified the measures at issue as those through which the United States had adjusted imports of steel and aluminium products, including but not limited to:

- a. Additional tariffs of 25% and 10% on imports of steel and aluminium products respectively, as well as the exclusion of certain WTO Members from these tariffs as established through the following series of legal instruments, operating separately or collectively:
 - i. "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;
 - ii. "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;
 - iii. "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;
 - iv. "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;

¹ Request for consultations by Mexico, WT/DS551/1 and WT/DS551/1/Corr.1.

² Request for the establishment of a panel by Mexico, WT/DS551/11.

- v. "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;
- vi. "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;
- vii. "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;
- viii. "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;
- ix. US Department of Commerce, "The Effect of Imports of Steel on the National Security", 11 January 2018;
- x. US Department of Commerce, "The Effect of Imports of Aluminum on the National Security", 17 January 2018;
- b. "Section 232 of Trade Expansion Act of 1962", codified in Title 19, United States Code § 1862;
- c. Code of Federal Regulations, Title 15, Section 705, "Effect of Imported Articles on the National Security"; and
- d. any additional measures that amend, supersede, update or replace the measures at issue.

2.3. Mexico considered that the measures at issue constitute safeguard measures which, separately or together, appeared to be inconsistent with the United States' obligations under Articles 2.1, 2.2, 3.1, 4.1, 4.2, 5.1, 7.1, 7.4, 8.1, 9.1, 11.1(a) and (b), 12.1, 12.2, 12.3, and 12.5 of the Agreement on Safeguards and Articles I:1, II:1(a) and (b), XI:1, XIX:1(a), and XIX:2 of the GATT 1994. Mexico also alleged that violations appeared to nullify or impair the benefits accruing to it under the cited provisions.

2.4. At its meeting on 21 November 2018, the Dispute Settlement Body (DSB) established a panel pursuant to Mexico's request in document WT/DS551/11, in accordance with Article 6 of the DSU.³

2.5. The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by Mexico in document WT/DS551/11 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁴

2.6. On 7 January 2019, Mexico requested the Director-General to determine the composition of the Panel, pursuant to Article 8.7 of the DSU. On 25 January 2019, the Director-General accordingly composed the Panel as follows:

Chairperson: Mr Elbio Rosselli

Members: Mr Esteban B. Conejos, Jr
Mr Rodrigo Valenzuela

2.7. The Kingdom of Bahrain; Brazil; Canada; China; Colombia; Egypt; the European Union; Guatemala; Honduras; Hong Kong, China; Iceland; India; Indonesia; Japan; Kazakhstan; Malaysia; New Zealand; Norway; Qatar; the Russian Federation; the Kingdom of Saudi Arabia; Singapore;

³ DSB, Minutes of the meeting held on 21 November 2018, WT/DSB/M/421.

⁴ Constitution note of the Panel, WT/DS551/12.

South Africa; Switzerland; Chinese Taipei; Thailand; Turkey; Ukraine; and the Bolivarian Republic of Venezuela reserved their rights to participate in the Panel proceedings as third parties.

3 NOTIFICATION OF MUTUALLY AGREED SOLUTION

3.1. By a letter dated 28 May 2019, pursuant to Article 3.6 of the DSU, the parties notified the DSB that they had reached a mutually agreed solution. This was circulated as document WT/DS551/13 on 3 June 2019. On 28 May 2019, the parties jointly wrote to the Panel advising it of their mutually agreed solution and "recall[ing] that Article 12.7 of the [DSU] provides that '[w]here a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached'".

3.2. The Panel takes note of the mutually agreed solution between the parties to the dispute and of Article 3.7 of the DSU, which provides that "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred."

3.3. The Panel also takes note of Article 12.7 of the DSU, which provides that "[w]here a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached." Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.
