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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR CONSULTATIONS BY NORWAY

The following communication, dated 12 June 2018, from the delegation of Norway 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 (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 imposed by the United States to adjust imports of steel and aluminum into the United States, including through imposing additional *ad valorem* rates of duty on imports of certain steel and aluminium products and exempting certain selected WTO Members from the measures.

A. Claims regarding US measures at issue relating to steel and aluminium

The United States imposed 25 per cent and 10 per cent of additional import duty on certain steel products and aluminium products respectively from all countries except Canada, Mexico, Australia, Argentina, Korea, Brazil and the European Union, which took effect from 23 March 2018. These measures have restricted Norwegian exports of such steel and aluminium products to the United States from 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 on certain steel products. Furthermore, a Presidential Proclamation was issued on 30 April exempting imports of certain aluminium products from Argentina, Australia and Brazil from the additional import duties, while such duties were introduced on imports of certain aluminium products from Korea. The United States also extended the exemptions from the additional import duties for Canada, Mexico and the European Union until 31 May 2018. The exemptions expired on 31 May resulting in the imposition of the additional import duties on these Members. On 1 June 2018, the United States through these measures introduced additional import duties of 10 per cent *ad valorem* also on aluminium articles imported from Brazil. For Korea, the United States introduced on 1 May 2018 quotas limiting the quantities of imported steel articles by weight per calendar year starting from 2018. On 1 June 2018, the United States introduced quotas limiting the quantities of imported steel articles by weight per calendar year starting from 2018 also for Argentina and Brazil. For Argentina, the United States on 1 June 2018 introduced quotas limiting the quantities of imported aluminium articles by weight per calendar year starting from 2018.

The measures at issue in this part of the request include, but are not limited to:

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 8 March 2018)¹

¹ 83 FR 11625-11630, March 15, 2018.

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 8 March 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 22 March 2018)³
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 22 March 2018)⁴
5. 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 30 April 2018)⁵
6. 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 30 April 2018)⁶
7. Adjusting Imports of Aluminum into the United States, including any annexes (Presidential Proclamation 9758, issued on 31 May 2018)⁷
8. Adjusting Imports of Steel into the United States, including any annexes (Presidential Proclamation 9759, issued on 31 May 2018)⁸
9. 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, 11 January 2018)⁹
10. 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, 17 January 2018)¹⁰

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

Norway considers that these United States' measures appear to be inconsistent with the United States' obligations under several provisions of the GATT 1994 and the Agreement on Safeguards, in particular, but not necessarily exclusively, of:

- a) Article I:1 of the GATT 1994, because, with respect to customs duties and charges of any kind imposed on or in connection with importation, and with respect to all rules and formalities in connection with importation, the United States fails to accord any advantage, favour, privilege or immunity granted by the United States to certain other countries immediately and unconditionally to the like product originating in the territories of all other Members;
- b) 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

² 83 FR 11619-11624, March 15, 2018.

³ 83 FR 13361-13365, March 28, 2018.

⁴ 83 FR 13355-13359, March 28, 2018.

⁵ 83 FR 20683-20705, May 7, 2018.

⁶ 83 FR 20677-20682, May 7, 2018.

⁷ 83 FR 25849-25855, June 5, 2018.

⁸ 83 FR 25857-25877, June 5 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.

provided in the United States' Schedule of Concessions and Commitments annexed to the GATT 1994, and has failed to exempt products of Norway 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;
- d) Article XI:1 of the GATT 1994, because the United States has instituted restrictions other than duties, taxes or other charges, made effective through quotas, on the importation of products of the territory of other Members;
- e) 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;
- f) Article XIX:2 of the GATT 1994, because the United States has failed 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;
- g) Article 2.1 of the Agreement on Safeguards, 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;
- h) Article 2.2 of the Agreement on Safeguards, because the United States does not apply the safeguard measures to imported products irrespective of their source;
- i) Article 3.1 of the Agreement on Safeguards, because the United States applies safeguard measures to the products in question without first properly conducting an investigation and publishing a report that sets forth findings and reasoned conclusions on all pertinent issues of fact and law;
- j) 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;
- k) 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;
- l) 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;
- m) 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 liberalisation at regular intervals;

- n) 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 Article XIX of the GATT 1994, without such action conforming with the provisions of that Article applied in accordance with the Agreement on Safeguards;
- o) Article 11.1(b) of the Agreement on Safeguards to the extent that the United States seeks or has sought any voluntary export restraints, orderly marketing arrangements, or any other similar measures on the export or the import side through the measures at issue.
- p) Articles 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; and
- q) Articles I:1, II:1(a) and (b), X:3(a) and XI:1 of the GATT 1994, as a consequence of each of the above inconsistencies with the provisions of Article XIX of the GATT 1994 and the Agreement on Safeguards.

B. Claims regarding US measures at issue to protect US industry from import competition

Norway also considers that Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. §1862), as repeatedly interpreted by the United States' administrative and judicial authorities in the above and other measures,¹¹ is inconsistent with the United States' obligations and rights set out in the WTO Agreement. Section 232, so interpreted, provides for the United States' Secretary of Commerce and President to determine, ostensibly because of an alleged threat to the national security interests of the United States, that a US domestic industry (or part thereof) producing identified products (e.g., automotive vehicles, automotive parts, steel or aluminum) is to be protected from import competition, to ensure the industry's continuing economic viability in the United States, through the imposition of additional import duties, quotas, or similar restrictions, applied to products from some or all sources, because those products are imported in quantities and/or at prices that cause or threaten to cause economic injury to the domestic industry, in particular its US commercial production facilities. Section 232, so interpreted, is inconsistent with the obligations set out in the covered agreements, particularly those set out in the previous section above, and fails to ensure the conformity of United States laws, regulations and administrative procedures with the United States' obligations under the WTO Agreement in a manner that is also inconsistent with Article XVI:4 of the WTO Agreement.

In the alternative, Norway considers that a measure that is not merely an individual instance of application, and that is attributable to the United States, with the content described in the previous paragraph, has been taken, continues on an ongoing basis, and is likely to apply in the future. This measure is inconsistent with the obligations in the covered agreements set out above.

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

The Government of Norway reserves its right to raise further factual claims and legal issues during the course of consultations and in any future request for panel proceedings.

The Government of Norway also reserves all its rights regarding the pursuit of rights and remedies provided for under the WTO Agreements.

We look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations. We suggest that these consultations, if practicable, be conducted jointly with consultations requested by other WTO Members having requested consultations regarding the same measures imposed by the United States under Article 4 of the DSU.

¹¹ Including Section 705 Code of Federal Regulations, Effect of Imported Articles on the National Security (15 CFR 705) 47 FR 14693.