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

REPORT OF THE PANEL

**TABLE OF CONTENTS**

<b>1 COMPLAINT BY CANADA.....</b>	<b>3</b>
<b>2 PANEL ESTABLISHMENT AND COMPOSITION .....</b>	<b>3</b>
<b>3 NOTIFICATION OF MUTUALLY AGREED SOLUTION.....</b>	<b>5</b>

## 1 COMPLAINT BY CANADA

1.1. On 1 June 2018, Canada 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 into the United States, including imposing additional *ad valorem* duties on imports of the steel and aluminium products and exempting certain selected WTO Members from the measures.<sup>1</sup>

1.2. Canada alleged that the United States imposed a 25% additional import duty on certain steel products and a 10% additional import duty on certain aluminium products from Canada and other countries, while exempting imports from Argentina, Australia, Brazil, and South Korea from the additional import duties. According to Canada, the measures identified in its request for consultations, operating 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, 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) and (b), 12.1, 12.2, 12.3, and 12.5 of the Agreement on Safeguards.

1.3. In addition, Canada alleged that Section 232 of the Trade Expansion Act of 1962 and its associated regulations appeared to be inconsistent "as such" with Articles I:1 and II:1 of the GATT 1994 and they did 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 Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

1.4. In the alternative, Canada alleged that 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. According to Canada, this constitutes a measure attributable to the United States that is 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, Canada asserted that it constitutes ongoing conduct or a rule or norm of general and prospective application that is inconsistent with the United States' WTO obligations.

1.5. Consultations were held on 20 July 2018.

## 2 PANEL ESTABLISHMENT AND COMPOSITION

2.1. On 18 October 2018, Canada requested the establishment of 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.<sup>2</sup>

2.2. In its request for the establishment of a panel, Canada identified the measures at issue as including:

- 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);
- 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);

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<sup>1</sup> Request for consultations by Canada, WT/DS550/1.

<sup>2</sup> Request for the establishment of a panel by Canada, WT/DS550/11.

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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);
  - 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);
  - 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);
  - 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);
  - h. Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum (US Department of Commerce);
  - 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);
  - 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);
  - 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);
  - 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);
  - m. Adjusting Imports of Steel into the United States, including the Annex (Presidential Proclamation 9759, issued on May 31, 2018);
  - 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);
  - 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);
  - 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);
  - 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);
  - r. The US policy, practice, composite measure, rule or norm, or ongoing conduct as described in paragraph 2.4 below; and
  - s. any amendments, successor, replacement or implementing measures and any exemptions applied or other related measures.

2.3. Canada considered the measures at issue, operating separately or together, 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 and Articles 2.1, 2.2, 3.1, 4.1, 4.2, 5.1, 7, 8.1, 11.1(a) and (b), 12.1, 12.2, 12.3, and 12.5 of the Agreement on Safeguards. In addition, Canada alleged that Section 232 of the Trade Expansion Act of 1962 and its associated regulations are inconsistent "as such" with the obligations of the United States under these provisions of the covered agreements 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 not necessary for the protection of its essential security interests. Canada thus alleged that the United States has failed to ensure the conformity of its laws, regulations, and administrative procedures with its obligations under the WTO Agreement as required under Article XVI:4 of the WTO Agreement.

2.4. In addition, Canada challenged the policy or practice of the United States of interpreting and applying Section 232 based on reasons related to economic welfare and other factors that are not necessary for the protection of the United States' essential security interests. In Canada's view, this measure consists of the items listed in paragraph 2.2 above as well other Section 232 investigations, declarations, statements, and decisions made by the United States government and its officers in their official capacity related to Section 232. In the alternative, Canada alleged that 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 them for economic reasons. In the further alternative, Canada alleged that the measure constitutes the ongoing conduct or a rule or norm of general and prospective application. Canada submitted that the measure is inconsistent with the provisions of the covered agreements set out in paragraph 2.3 above and with Article XXI(b) of the GATT 1994.

2.5. At its meeting on 21 November 2018, the Dispute Settlement Body (DSB) established a panel pursuant to Canada's request in document WT/DS550/11, in accordance with Article 6 of the DSU.<sup>3</sup>

2.6. 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 Canada in document WT/DS550/11 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.<sup>4</sup>

2.7. On 7 January 2019, Canada 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

2.8. The Kingdom of Bahrain; Brazil; China; Colombia; Egypt, the European Union; Guatemala; Hong Kong, China; Iceland; India; Indonesia; Japan; Kazakhstan; Malaysia; Mexico; New Zealand; Norway; Qatar; the Russian Federation; the Kingdom of Saudi Arabia; Singapore; 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 23 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/DS550/13 on 27 May 2019. Also on 27 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'".

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

<sup>4</sup> Constitution note of the Panel, WT/DS550/12.

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.

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