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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY TURKEY

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

On 15 August 2018, Turkey 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 imposed by the United States affecting imports of steel and aluminium into the United States. These consultations related to certain measures imposed by the US affecting imports of steel and aluminium into the US. These measures impose, *inter alia*, additional *ad valorem* rates of duty on imports of the certain steel and aluminium products, and exempt certain selected WTO members from the measures. These measures adversely affect exports of such products from Turkey to the United States.

Consultations were held on 10 October 2018 with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute.

In accordance with Articles 4.7 and 6 of the DSU, Article 14 of the Agreement on Safeguards and Article XXIII:2 of the GATT 1994, therefore, Turkey requests that the Dispute Settlement Body (DSB) establish a panel to examine this matter. Pursuant to Article 6.2 of the DSU, Turkey proceeds *infra* to identify the specific measures at issue and to provide a brief summary of the legal basis of the complaint.

I. Background to the dispute

The chronology and factual background to the measures at issue are as follows. In two sets of presidential proclamations, dated 8 and 22 March 2018, the President of the United States announced an additional import duty of 25 per cent on certain steel products and an additional import duty of 10 per cent on certain aluminium products from all countries, with the exception of Australia, Argentina, Brazil, Canada, the European Union, Korea, and Mexico. These measures took effect on 23 March 2018.

Subsequently, on 30 April 2018, the President of the United States issued two further presidential proclamations exempting imports from Argentina, Australia, Brazil, and Korea from the additional duties on certain steel products, and exempting imports from Argentina, Australia and Brazil from the additional duties on certain aluminium products. These exemptions appear to apply indefinitely. The President of the United States also extended the exemption from the additional import duties for Canada, the European Union and Mexico until 31 May 2018.

As of 1 June 2018, the additional duties on certain steel products appear to apply to all countries of origin, except Argentina, Australia, Brazil and Korea. The additional duties on certain aluminium products appear to apply to all countries of origin except Argentina and Australia. Quotas appear to have been introduced concerning steel imports from Argentina, Brazil and Korea, and concerning aluminium imports from Argentina. These exemptions appear to have been granted to these

countries in exchange for certain measures that, for at least some of these countries, appear to include voluntary quantitative restrictions on exports of steel and aluminium.

On 10 August 2018, the President of the United States amended the additional duties for certain steel products as applicable to Turkey, by increasing them from 25 to 50 per cent, effective as of 13 August 2018. Moreover, on 10 August 2018, the President of the United States announced that he would amend the additional duties for certain aluminium products as applicable to Turkey, by increasing them from 10 to 20 per cent.

These measures appear to have been taken on the basis of Section 232 of the United States Trade Expansion Act of 1962 and were preceded by two investigations on steel and aluminium products, respectively, conducted by the United States Department of Commerce (USDOC) under that provision, as well as on the basis of Section 705 of the United States Code of Federal Regulations (15 CFR 705). In both investigations, the USDOC determined that present quantities and circumstances of steel and aluminium imports were weakening the United States' internal economy and threatened to impair the national security as defined in Section 232.

II. The measures at issue

The measures at issue are the above-described import measures concerning certain steel products and certain aluminium products. These measures consist of, have been imposed by, are reflected and evidenced in, or are based on the following documents, whether considered alone and/or in any combination:

1. Presidential Proclamation 9705 of 8 March 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States¹;
2. Presidential Proclamation 9704 of 8 March 2018 on Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States²;
3. Presidential Proclamation 9711 of 22 March 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States³;
4. Presidential Proclamation 9710 of 22 March 2018 on Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁴;
5. Presidential Proclamation 9740 of 30 April 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁵;
6. Presidential Proclamation 9739 of 30 April 2018 on Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁶;
7. Presidential Proclamation 9759 of 31 May 2018 on Adjusting Imports of Steel into the United States, including the Annex⁷;

¹ Federal Register Volume 83, Issue 51 (March 15, 2018), pp. 11625 – 11630.

² Federal Register Volume 83, Issue 51 (March 15, 2018), pp. 11619 – 11624.

³ Federal Register Volume 83, Issue 60 (March 28, 2018), pp. 13361 – 13365.

⁴ Federal Register Volume 83, Issue 60 (March 28, 2018), pp. 13355 – 13359.

⁵ Federal Register Volume 83, Issue 88 (May 7, 2018), pp. 20683 – 20705.

⁶ Federal Register Volume 83, Issue 88 (May 7, 2018), pp. 20677 – 20682.

⁷ Federal Register Volume 83, Issue 108 (May 7, 2018), pp. 25857 – 25877.

8. Presidential Proclamation 9758 of 31 May 2018 on Adjusting Imports of Aluminum into the United States, including the Annex⁸;
9. Presidential Proclamation 9772 of 10 August 2018 on Adjusting Imports of Steel into the United States, including the Annex⁹;
10. Presidential Proclamation 9777 of 29 August 2018 on Adjusting Imports of Steel into the United States, including the Annex¹⁰;
11. Presidential Proclamation 9776 of 29 August 2018 on Adjusting Imports of Aluminum into the United States, including the Annex¹¹;
12. 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 (USDOC, 11 January 2018)¹²;
13. 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 (USDOC, 17 January 2018)¹³;
14. Section 232 of the United States Trade Expansion Act of 1962, as amended¹⁴;
15. Code of Federal Regulations, Title 15, Section 705, Effect of Imported Articles on the National Security¹⁵;
16. 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)¹⁶; and
17. Requirements for Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum (U.S. Department of Commerce).¹⁷

This request also covers any additional measures that may amend, supersede, supplement, add to, update, extend, replace or implement the measures listed above, on their own or in any combination, as well as any exclusions or exemptions from those measures. This includes in particular any Presidential Proclamation or other legal instruments amending and/or increasing the additional duties on certain aluminium products as applicable to Turkey, as announced by the President of the United States on 10 August 2018.¹⁸

III. The legal basis for the complaint

The measures at issue 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:

⁸ Federal Register Volume 83, Issue 108 (May 7, 2018), pp. 25849 – 25855.

⁹ Federal Register Volume 83, Issue 158 (August 15, 2018), pp. 40429 – 40432.

¹⁰ Federal Register Volume 83, Issue 171 (September 4, 2018), pp. 45025 – 45030.

¹¹ Federal Register Volume 83, Issue 171 (September 4, 2018), pp. 45019 – 45023.

¹² Available at:

https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

¹³ Available at:

https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf

¹⁴ 19 U.S.C. §1862.

¹⁵ 15 CFR 705 (47 FR 14693).

¹⁶ 83 FR 12106-12112, March 19, 2018.

¹⁷ 83 FR 46026-46065, September 11, 2018.

¹⁸ See, for instance, <https://www.bbc.co.uk/news/world-us-canada-45123607>. (last visited 17 October 2018)

- Article I:1 of the GATT 1994, because the United States fails to accord immediately and unconditionally any advantage, favour, privilege or immunity granted to products originating in other countries, with respect to customs duties and charges and quantitative import restrictions imposed on or in connection with importation and with respect to all rules and formalities in connection with importation, to like products originating in Turkey. The United States does so by applying selectively the additional import duties on certain steel and aluminium products originating in different Members, including by providing exemptions or applying alternative measures to certain countries. The United States further does so by applying exclusively to Turkey duties higher than those applied to any other WTO Member subject to these duties;
- Article II:1(a) of the GATT 1994, because the United States fails to accord to the commerce of most other WTO Members, including Turkey, treatment no less favourable than that provided for in the relevant part of the United States' Schedule of Concessions, and Article II:1(b) of the GATT 1994, first and second sentence, because the United States also fails to exempt products from most WTO Members, including Turkey, from ordinary customs duties in excess of those set forth and provided for in the United States' Schedule of Concessions 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;
- Article X:3(a) of the GATT 1994, because the United States has failed and fails to administer its laws, regulations, decisions and rulings with respect to, and through, the measures at issue in a uniform, impartial, and reasonable manner; and
- Articles XI:1 and XIII:1 of the GATT 1994, because by imposing the above-mentioned measures, in particular the above-mentioned quotas, the United States has instituted restrictions other than duties, taxes or other charges on the importation of products of the territory of certain other Members and fails similarly to restrict the importation of the like product from all other Members.

Turkey moreover considers that the United States' measures constitute emergency safeguard measures within the meaning of Article XIX of the GATT 1994 and of the Agreement on Safeguards. As such, the United States acts inconsistently with:

- Article XIX:1(a) of the GATT 1994, because the United States has suspended tariff concessions and other obligations, without these products being imported into the territory of the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products, as a result of unforeseen developments and of the effect of the obligations incurred under the GATT 1994;
- Article 2.1 of the Agreement on Safeguards, because the United States applies safeguard measures to the products at issue without first having determined 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 producing like or directly competitive products;
- Article 2.2 of the Agreement on Safeguards, because the United States fails to apply the safeguard measures at hand to imported products irrespective of their source;
- Article 3.1 of the Agreement on Safeguards, because the United States applies safeguard measures to the products in question without having conducted an investigation and without publishing a report that sets forth findings and reasoned conclusions on all pertinent issues of fact and law;
- 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, within the meaning of that provision;

- Article 4.2 of the Agreement on Safeguards, because the United States has not properly evaluated all relevant factors that have a bearing on the situation of the domestic industry. The United States has also not properly demonstrated that a causal link exists between increased imports and serious injury or the threat of serious injury. The United States has also failed to ensure that the injury caused by factors other than increased imports was not improperly attributed to increased imports. The United States has also failed to publish the requisite detailed analysis and demonstration of its conclusions.
- 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;
- Article 7 of the Agreement on Safeguards, because the United States is applying safeguard measures without providing 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 liberalization at regular intervals;
- Article 8.1 of the Agreement on Safeguards, because the United States has not endeavored to maintain a substantially equivalent level of concessions and other obligations to that existing under the GATT 1994 between the United States and the exporting members affected by these measures, including Turkey;
- Article 9.1 of the Agreement on Safeguards, because the United States applies its safeguard measures to products from developing country Members whose share of imports does not exceed 3 per cent, where developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product;
- 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 this action being in conformity with the provisions of Article XIX applied in accordance with the Agreement on Safeguards;
- 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; and
- Articles 12.1, 12.2, and 12.3 of the Agreement on Safeguards and Article XIX:2 of the GATT 1994, because the United States has failed to comply with any of the notification and consultation obligations set out in these provisions.

These measures appear to nullify or impair the benefits accruing to Turkey directly or indirectly under the covered agreements.

IV. Request for the establishment of a panel

In the light of the above, Turkey requests, pursuant to Articles 4.7 and 6 of the DSU, Article 14 of the Agreement on Safeguards and Article XXIII:2 of the GATT 1994, that the DSB establish a panel to examine this matter. Turkey further requests that the panel have standard terms of reference, as set forth in Article 7.1 of the DSU.

Turkey requests that this request be placed on the agenda of the DSB meeting to be held on 29 October 2018.
