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CHINA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES

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

On July 16, 2018, the United States requested consultations with the Government of the People's Republic of China ("China") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), with respect to China's imposition of additional duties on certain products originating in the United States ("additional duties measure").¹ The United States held consultations with China on August 29, 2018. Unfortunately, these consultations did not resolve the dispute.

The additional duties measure applies only to products originating in the United States. The additional duties measure does not apply to like products originating in the territory of any other WTO Member, and thus appears inconsistent with the most-favored nation obligation in Article I of the GATT 1994. Moreover, the additional duties measure results in rates of duty greater than the rates of duty set out in China's schedule of concessions, and thus appears inconsistent with Article II of the GATT 1994.

The legal instruments through which China imposes the additional duties measure include the following, operating separately or collectively:

1. *Ministry of Commerce Notice on Publicly Soliciting Opinions on U.S. Imported Steel and Aluminum Products 232 Measures and Chinese Countermeasures* (Ministry of Commerce, published March 23, 2018);
2. *State Council Customs Tariff Commission Notice on Suspension of Tariff Concession Obligations on Some Imported Products Originating from the United States* (State Council Customs Tariff Commission, Shui Wei Hui [2018] No. 13, issued April 1, 2018, effective April 2, 2018);

as well as any amendments, replacements, related measures or implementing measures.

The additional duties measure appears to be inconsistent with China's obligations under:

- Article I:1 of the GATT 1994 because it fails to extend to products of the United States an advantage, favor, privilege or immunity granted by China with respect to customs duties and charges of any kind imposed on or in connection with the importation of products originating in the territory of other Members;
- Article II:1(a) of the GATT 1994 because it accords less favorable treatment to products originating in the United States than that provided for in China's schedule; and

¹ WT/DS558/1.

- Article II:1(b) of the GATT 1994 because it imposes duties or charges in excess of those set forth in China's schedule.

The additional duties measure appears to nullify or impair the benefits accruing to the United States directly or indirectly under the GATT 1994.

Accordingly, the United States respectfully requests pursuant to Article 6 of the DSU that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.
