



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

### REQUEST FOR CONSULTATIONS BY CHINA

The following communication, dated 5 April 2018, from the delegation of China to the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the Government of the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII 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 into the United States and to adjust imports of aluminum into the United States, including but not limited to, imposing additional ad valorem rate of duty on imports of certain steel and aluminum products and exempting certain selected WTO Members from the measures.

#### A. Measures at Issue

The United States imposed 25 percent and 10 percent of additional import duty respectively on certain steel products and aluminum products, from all countries except Canada, Mexico, Australia, Argentina, South Korea, Brazil and the European Union, which took effect from 23 March 2018. It is indicated that the president of the United States would consider further adjustments to the additional import duties, alternative means, or implementation of quota.

The measures at issue in this request include, but not limited to:

- *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)<sup>1</sup>
- *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)<sup>2</sup>
- *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9711, issued on 22 March 2018)<sup>3</sup>
- *Adjusting Imports of Aluminum into the United States* (Presidential Proclamation 9710, issued on 22 March 2018)<sup>4</sup>
- *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*

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<sup>1</sup> 83 FR 11625-11630, March 15, 2018

<sup>2</sup> 83 FR 11619-11624, March 15, 2018

<sup>3</sup> 83 FR 13361-13365, March 28, 2018

<sup>4</sup> 83 FR 13355-13359, March 28, 2018

*Exclusion Requests for Steel and Aluminum* (U.S. Department of Commerce)<sup>5</sup>

- *Section 232 Tariffs on Aluminum and Steel, Additional Duty on Imports of Steel and Aluminum Articles under Section 232 of the Trade Expansion Act of 1962* (U.S. Customs and Border Protection)<sup>6</sup>
- Section 232 of the *Trade Expansion Act of 1962*, as amended (19 U.S.C. §1862), cited in the Presidential Proclamations above for vesting authorities in the President of the United States to take the actions therein
- *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* (U.S. Department of Commerce, 11 January 2018)
- *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* (U.S. Department of Commerce, 17 January 2018)

as well as any amendments, or successor, replacement, or implementing measures.

## **B. Legal Basis of the Complaint**

The measures at issue, operating separately or together, appear to be inconsistent with the United States' obligations under:

- Articles XIX:1(a), XIX:2 of the GATT 1994 and Articles 2.1, 2.2, 4.1, 4.2, 5.1, 7, 11.1(a), 12.1, 12.2 and 12.3 of the Agreement on Safeguards, because with regard to the measures at issue which constitute safeguard measures in substance, the United States has failed to make proper determination and to provide reasoned and adequate explanation of "unforeseen developments", imports "in such increased quantities" and "under such conditions", and "cause or threaten to cause serious injury to domestic producers", and the United States has also failed to follow proper procedural requirements including, for example, notification and consultation procedures, and has failed to apply the measures in a proper manner, for example, application irrespective of source of supply and only for necessary period of time.
- 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 provided in the United States' Schedule of Concessions and Commitments annexed to the GATT 1994, and has failed to exempt products of China 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.
- Article I:1 of the GATT 1994, because the selective application by the United States of the additional import duties on certain steel and aluminum products originating in different Members, including providing exemption or applying alternative means, has failed to extend immediately and unconditionally to China any "advantage, favor, privilege or immunity" granted by the United States "[w]ith 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, as well as with respect to "the method of levying such duties and charges" and the "rules and formalities in connection with importation".
- 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.

<sup>5</sup> 83 FR 12106-12112, March 19, 2018

<sup>6</sup> <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel>

As a result of the foregoing, the measures at issue appear to nullify or impair benefits accruing to China directly or indirectly under the cited agreements.

China reserves the right to raise additional factual and legal claims and matters regarding the above mentioned measures during the course of the consultations and in any future request for panel proceedings.

China looks forward to receiving the reply of the United States to the present request and to setting a mutually convenient date and venue for consultations.

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