



UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR CONSULTATIONS BY INDIA

The following communication, dated 18 May 2018, from the delegation of India 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.

Upon instructions from my authorities, I hereby wish to convey the request of the Government of India for consultations with the Government of the United States of America ("the United States") pursuant to Article 1 and Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (the "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 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 on certain steel products and aluminum products respectively from all countries *except* Canada, Mexico, Australia, Argentina, South Korea¹, Brazil and the European Union, which took effect from 23 March 2018.

The measures at issue in this request include, but are 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)²
- *Adjusting Imports of Aluminium 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)³
- *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9711, issued on 22 March 2018)⁴
- *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9740, issued on 30 April 2018)⁵
- *Adjusting Imports of Aluminium into the United States* (Presidential Proclamation 9710, issued on 22 March 2018)⁶

¹ Only imports of steel, and not those of aluminium, from South Korea have been exempted from the measures at issue by the United States.

² 83 FR 11625-11630, March 15, 2018

³ 83 FR 11619-11624, March 15, 2018

⁴ 83 FR 13361-13365, March 28, 2018

⁵ 83 FR 20683-20705, May 7, 2018

⁶ 83 FR 13355-13359, March 28, 2018

- *Adjusting Imports of Aluminium into the United States* (Presidential Proclamation 9739, issued on 30 April 2018)⁷
- *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminium into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminium* (U.S. Department of Commerce)⁸
- *Section 232 Tariffs on Aluminium and Steel, Additional Duty on Imports of Steel and Aluminium Articles under Section 232 of the Trade Expansion Act of 1962* (U.S. Customs and Border Protection)⁹
- 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)¹⁰
- *The Effect of Imports of Aluminium 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)¹¹

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

B. Legal Basis of the Complaint

The measures at issue, operating independently and/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, 3.1, 4.1, 4.2, 5.1, 7, 9.1, 11.1(a), 12.1, 12.2 and 12.3 of the Agreement on Safeguards because the measures at issue are, in effect and in substance, safeguard measures and the United States has adopted and implemented the measures at issue inconsistently with its obligations, both substantive and procedural, as set out under the said provisions of the GATT 1994 and the Agreement on Safeguards.
- Article 11.1(b) of the Agreement on safeguards and Article XI:1 of the GATT 1994 to the extent that the United States seeks, through the adoption of the measures at issue, any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.
- Article II:1(a) and (b) of the GATT 1994, because the United States has imposed import duties on certain steel and aluminium products in excess of the duties set forth and provided in Part -I of the United States' Schedule of Concessions and Commitments annexed to the GATT 1994.
- Article I:1 of the GATT 1994, because the measures at issue do not apply uniformly to all imports of certain steel and aluminium products into the United States irrespective of their origin and thereby the measures at issue discriminate against imports of the said steel and aluminium products originating from India, with respect to the advantage, favour, privilege or immunity extended by the United States to certain selected WTO Members.
- Article XI:1 of the GATT 1994, because the measures implicitly introduce restrictions in the form of quotas, as the said measures reduce the imports of steel and aluminium products from the trade levels as existed prior to these measures.

⁷ 83 FR 20677-20682, May 7, 2018.

⁸ 83 FR 12106-12112, March 19, 2018

⁹ <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel>

¹⁰ https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

¹¹ https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf

- 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.

These inconsistencies appear to nullify or impair the benefits accruing to India under the WTO provisions cited above. In addition to, and independently of, the multiple violations of the WTO obligations identified above, India considers that benefits accruing to India directly and indirectly under the GATT 1994 are being nullified and impaired as a result of the application of the measures identified above within the meaning of Article XXIII: 1(b) of the GATT 1994.

India 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 the establishment of a panel in these proceedings.

We look forward to receiving your reply to the present request and to agreeing to a mutually convenient date and venue for consultations.
