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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY INDIA

The following communication, dated 8 November 2018, from the delegation of India to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 18 May 2018 India requested consultations with the United States of America (United States), pursuant to Articles 1 and 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 (the "AoS") with respect to certain measures by the United States to adjust imports of steel and aluminium into the United States, including but not limited to, imposing additional *ad valorem* rate of duty on imports of certain steel and aluminium products and exempting certain selected WTO Members from the measures.

Consultations were held on 20 July 2018. Unfortunately, the consultations were unsuccessful in resolving the dispute. Therefore, India requests that pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of GATT 1994 and Article 14 of the Agreement on Safeguards, the Dispute Settlement Body ("DSB") establish a Panel to examine this matter, with the standard terms of reference, as set forth in Article 7.1 of the DSU.

A. Measures at Issue

The measures at issue relate to institution of additional import duties of 25% *ad valorem* and 10% *ad valorem* on certain steel products and aluminium products respectively by the United States as briefly mentioned hereinbelow:

On Steel products:

On 23 March 2018, the United States instituted additional duties of 25% *ad valorem* on imports of certain steel products imported from countries other than Canada, Mexico, Australia, Argentina, Korea, Brazil and the EU and defined at the United States Harmonized Tariff Schedule (HTS) 6-digit level as: 7206.10 through 7216.50, 7216.99 through 7301.10, 7302.10, 7302.40 through 7302.90, and 7304.10 through 7306.90, including any subsequent revisions to these HTS classifications.

On 1 May 2018, based on an agreement, the United States instituted quotas limiting the quantities of imported steel articles by weight per calendar year starting from 2018 for Korea.

On 1 June 2018, additional duties of 25% *ad valorem* were instituted on import of the above-mentioned steel products from Canada, Mexico and the EU (only Australia, Argentina, Brazil and Korea remaining exempt).

On 1 June 2018, also based on an agreement, the United States instituted quotas limiting the quantities of imported steel articles by weight per calendar year starting from 2018 for Argentina and Brazil.

On Aluminium products:

On 23 March 2018, the United States instituted additional import duties of 10 per cent ad valorem on aluminium articles imported from countries other than Canada, Mexico, Australia, Argentina, Korea, Brazil and the EU and defined in the United States Harmonized Tariff Schedule (HTS) as: (a) unwrought aluminium (HTS 7601); (b) aluminium bars, rods, and profiles (HTS 7604); (c) aluminium wire (HTS 7605); (d) aluminium plate, sheet, strip, and foil (flat rolled products) (HTS 7606 and 7607); (e) aluminium tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and (f) aluminium castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70), including any subsequent revisions to these HTS classifications.

On 1 May 2018, the United States instituted additional import duties of 10 per cent ad valorem also on these aluminium articles imported from Korea (Argentina, Australia, Brazil, Canada, Mexico and the EU remaining exempt).

On 1 June 2018, the United States instituted additional import duties of 10 percent ad valorem also on these aluminium articles imported from Brazil, Canada, Mexico and the EU (Australia and Argentina remaining exempt).

On 1 June 2018, based on an agreement, the United States instituted quotas limiting the quantities of imported aluminium articles by weight per calendar year starting from 2018 for Argentina.

Accordingly, the measures at issue include but are not limited to the following:

- a) *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)¹;
- b) *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;
- c) *Adjusting Imports of Aluminium into the United States* (Presidential Proclamation 9710, issued on 22 March 2018)³;
- d) *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9711, issued on 22 March 2018)⁴;
- e) *Adjusting Imports of Aluminium into the United States* (Presidential Proclamation 9739, issued on 30 April 2018)⁵;
- f) *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9740, issued on 30 April 2018)⁶;
- g) *Adjusting Imports of Aluminium into the United States* (Presidential Proclamation 9758, issued on 31 May 2018)⁷;
- h) *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9759, issued on 31 May 2018)⁸;
- i) *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9772, issued on 10 August 2018)⁹;
- j) *Adjusting Imports of Steel into the United States* (Presidential Proclamation 9776, issued on 29 August 2018)¹⁰;

¹ 83 FR 11619-11624, March 15, 2018.

² 83 FR 11625-11630, March 15, 2018.

³ 83 FR 13355-13359, March 28, 2018.

⁴ 83 FR 13361-13365, March 28, 2018.

⁵ 83 FR 20677-20682, May 7, 2018.

⁶ 83 FR 20683-20705, May 7, 2018.

⁷ 83 FR, 25849-25855, June 5, 2018.

⁸ 83 FR 25857-25877, June 5, 2018.

⁹ 83 FR 40429-40432, August 15, 2018.

¹⁰ 83 FR 45019-45023, September 4, 2018.

- k) Adjusting Imports of Steel into the United States (Presidential Proclamation 9777, issued on 29 August 2018)¹¹;
- l) *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)¹²;
- m) *Interim final rule regarding submissions of exclusion requests and objections to submitted requests for Steel and Aluminium* issued by Bureau of Industry and Security issued on 11 September 2018¹³;
- n) *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)¹⁴;
- o) 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;
- p) *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)¹⁵;
- q) *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)¹⁶.

The request also covers all the amendments, supplements, successor, replacement, extensions or implementing measures and any exemptions applied.

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 the following provisions of the GATT 1994 and the Agreement on Safeguards:

1. Articles XIX:1(a) of the GATT 1994, because the United States has suspended tariff concessions without the products at issue being imported into the territory of the United States in such increased quantities and under such conditions as to cause or to threaten serious injury to domestic producers in the United States of like or directly competitive products, as a result of unforeseen developments and of the effect of the obligations incurred under the GATT 1994.
2. XIX:2 of the GATT 1994 because the United States has failed to give notice in writing to the WTO as far in advance as may be practicable and has failed to afford the WTO Members having a substantial interest as exporters of the products concerned an opportunity to consult with it in respect of the proposed action.
3. Article 2.1 of the AoS, because the United States applies safeguard measures to the products in question without first having determined, pursuant to the subsequent provisions of the AoS, 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 that produces like or directly competitive products.

¹¹ 83 FR 45025-45030, September 4, 2018.

¹² 83 FR 12106-12112, March 19, 2018.

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

¹⁴ <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel>

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https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_2018111.pdf

¹⁶

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

4. Article 2.2 of the AoS, because the United States does not apply the safeguard measures to imported products irrespective of their sources.
5. Article 3.1 of the AoS, because the United States applies the measures in question without conducting an investigation in accordance with the provisions of Article 3.1 and without publishing a report setting for its findings and reasoned conclusions reached on all pertinent issues of facts and law.
6. Article 4.1 of the AoS, because the United States has not properly determined serious injury or threat of serious injury to a domestic industry in the United States.
7. Article 4.2 of the AoS, because the United States has failed to properly evaluate all relevant factors having a bearing on the situation of the domestic industry; has failed to demonstrate the existence of a causal link between increased imports and serious injury or threat thereof, including by not attributing injury caused by factors other than increased imports; and has failed to publish a detailed analysis and demonstration of its conclusions.
8. Article 5.1 of the AoS, because the United States is applying safeguard measures beyond the extent necessary to prevent or remedy serious injury and to facilitate adjustment.
9. Article 7 of the AoS, because the United States is applying safeguard measures without making provision 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.
10. Article 9.1 of the AoS, because the United States is applying safeguard measures against products originating in developing country members whose share of imports of the products concerned in the United States does not exceed 3 per cent, without developing country Members with less than 3 per cent import share collectively accounting for more than 9 per cent of total imports of the products concerned.
11. Article 11.1(a) of the AoS, because the United States has taken emergency action on imports of particular products as set forth in Article XIX of the GATT 1994, without such action conforming with the provisions of that Article applied in accordance with the AoS.
12. Article 11.1(b) of the AoS and Article XI:1 of GATT 1994 because the United States has sought, taken or maintained voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or import side.
13. Articles 12.1, 12.2 and 12.3 of the AoS, because the United States has failed to comply with any of the notification and consultation obligations set out in the said provisions.
14. Article I:1 of the GATT 1994, because with respect to customs duties and charges of any kind imposed on or in connection with importation, and with respect to all rules and formalities in connection with importation, the United States fails to accord any advantage, favour, privilege or immunities granted by the United States to products originating in the territories of certain other countries, immediately and unconditionally to the like product originating in the territories of all other Members.
15. Article II:1(a) and (b) of the GATT 1994, because the United States does not accord to the commerce of most other Members, including India, treatment no less favourable than that provided for in the appropriate part of the United States' Schedule. The United States has not exempted the products at issue imported from most other Members, including India, from ordinary customs duties and all other duties or charges of any kind imposed on or in connection with importation in excess of those provided for in the United States Schedule and the GATT 1994.
16. Article XI:1 of the GATT 1994, because the United States has instituted restrictions other than duties, taxes or other charges, made effective through quotas, on the importation of steel and aluminium products from other Members. The United States instituted quotas limiting the quantities of imported steel articles by weight per calendar year starting from 2018 for Korea, Argentina and Brazil. The United States instituted quotas limiting the quantities of imported aluminium articles by weight per calendar year starting from 2018 for Argentina.
17. 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.

The measures in question appear to nullify or impair the benefits accruing to India directly or indirectly under the covered agreements.

India hereby requests that this request for the establishment of a Panel be placed on the agenda of the DSB meeting to be held on 21 November 2018 and that the DSB establish a panel with standard terms of reference as set out in Article 7.1 of the DSU.
