



21 January 2022

(22-0430)

Page: 1/2

Original: English

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

### RECOURSE TO ARTICLE 25 OF THE DSU

The following communication, dated 17 January 2022, from the delegation of the United States and the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 25.2 of the DSU.

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The European Union and the United States hereby notify the Dispute Settlement Body that they have mutually agreed pursuant to Article 25.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) to resort to arbitration in accordance with the provisions of that Article regarding the matter pending before the panel in *United States – Certain Measures on Steel and Aluminum Products* (DS548). The parties respectfully request the Director-General to assist in the composition of the arbitrator as set out in the annexed agreed procedures. The parties also request the Director-General to provide Secretariat support as appropriate for this proceeding.

Upon the composition of the arbitrator, the arbitration shall be immediately and indefinitely suspended, and the dispute before the panel in *United States – Certain Measures on Steel and Aluminum Products* (DS548) shall be immediately terminated through withdrawal of the complaint and notification by the parties to the Dispute Settlement Body (DSB) pursuant to the DSU. Accompanying this letter is an annex containing agreed procedures for the Article 25 proceeding. Please circulate this letter and its annex to the Dispute Settlement Body.

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Annex - Agreed Procedures and Timetable for Article 25 Arbitration

1. The parties recall that they have mutually agreed pursuant to Article 25.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) to resort to arbitration in accordance with the provisions of that Article regarding the matter pending before the panel in *United States – Certain Measures on Steel and Aluminum Products* (DS548) (WT/DS548/14), which matter is incorporated into these procedures by reference.
  2. The arbitration proceedings shall not move forward until the arbitrator is fully composed in accordance with the parties' mutually agreed procedures. The parties respectfully request that the Secretariat immediately contact the panelists in the panel proceeding referenced in paragraph 1 to determine their availability to serve as members of the arbitrator in this proceeding, and inform the parties accordingly. If available, they shall be appointed to the arbitrator with effect from the date of the Secretariat's letter to the parties informing them of such availability. Should any individual panelist not be available to serve as a member of the arbitrator, the parties may agree on a replacement for that individual, who shall be appointed to the arbitrator by agreement of the parties with effect from the date on which the parties notify the Secretariat thereof. Should the parties not agree on a replacement individual, the parties respectfully request the Director-General to appoint a replacement within one week of a request to that effect by the complaining party.
  3. Once the arbitrator is fully composed, the arbitration proceedings shall be suspended immediately and indefinitely. The arbitration shall remain suspended unless the complaining party notifies the arbitrator of the resumption of the arbitration. The complaining party may not notify such a resumption before 1 November 2022.
  4. If the arbitration resumes, the complaining party shall immediately provide the arbitrator and the responding party electronic copies of both parties' submissions to the panel. Submissions shall include all written and oral submissions (that is, including responses to questions and comments thereon) as filed in writing with the panel, including exhibits.
    - a. The parties additionally request that any other internal documents that were not available or not yet available to the parties in the panel proceedings be immediately transferred by the Secretariat from the record of the panel proceedings to the record of the arbitration proceedings.
    - b. The arbitrator shall contact the third parties to the dispute before the panel in *United States – Certain Measures on Steel and Aluminum Products* (DS548) to seek their written consent to permit the arbitrator to receive copies of their third-party written and oral submissions to the panel. To the extent that a third party provides such consent in writing, the arbitrator shall communicate that consent to the parties, and the complaining party shall provide to the arbitrator and the responding party electronic copies of the panel submissions by that third party.
    - c. If the responding party considers that any panel submission – whether by a party or consenting third-party – was not submitted to the arbitrator by the complaining party, the responding party shall provide the arbitrator and the complaining party electronic copies of that submission. Any disagreement as to whether the appropriate submissions have been provided to the arbitrator shall be decided by the arbitrator.
  5. If the arbitration resumes, the arbitrator shall resume adjudicating the matter at issue before the panel at the point at which the panel proceedings were terminated. The arbitration proceedings shall be completed following the rules, procedures and practices on panel proceedings that would have applied to the panel proceedings, save as otherwise expressly provided in this agreement.
  6. The phrase "for a period not to exceed 12 months" in Article 12.12 of the DSU shall not apply to these arbitration proceedings.
  7. The arbitrator shall develop a schedule, in consultation with the parties.
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