



7 June 2018

(18-3530)

Page: 1/4

Original: Spanish

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

### REQUEST FOR CONSULTATIONS BY MEXICO

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

---

My authorities have instructed me to request consultations with the Government of the United States of America pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 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 and aluminium, including but not limited to applying an additional *ad valorem* customs duty on imports of certain aluminium products and exempting certain selected Members of the World Trade Organization (WTO) from the measures.

#### A. Measures at issue

On 8 March 2018, the President of the United States of America issued Presidential Proclamations 9704 and 9705, imposing an additional import tariff of 25% on certain steel products and an additional import tariff of 10% on certain aluminium products from all countries except Canada, Mexico, Australia, Argentina, South Korea, Brazil and the European Union. This measure came into effect as from 23 March 2018. Subsequently, on 30 April 2018, the President of the United States issued a new Proclamation excluding exports from South Korea, Argentina, Australia and Brazil from the additional import duties. The United States also extended the exemption from the additional import tariffs on steel and aluminium products from Canada, Mexico and the European Union until 31 May 2018. The exemption expired on 31 May, and this resulted in the imposition of additional tariffs on the Members concerned, including Mexico.

As from 1 June 2018, the United States is imposing an additional customs duty of 25% on imports of certain steel products, as well as an additional customs duty of 10% on imports of aluminium products, originating from Mexico. The measures point to the possibility of being modified by way of additional customs duties or quotas. Clearly, the establishment of an additional import tax is intended to protect the United States industry from the economic effects of imports.

At the same time, these measures are not administered in a uniform manner since, in the case of steel, Argentina, Australia, Brazil and South Korea are exempted, and in the case of aluminium, Argentina and Australia are exempted. Moreover, quotas have been established for Argentina, Brazil and South Korea in the case of steel imports, and for Argentina in the case of aluminium imports.<sup>1</sup>

---

<sup>1</sup> <https://www.cbp.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel> (updated on 31 May 2018).

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

- "Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Into the United States", 83 Fed. Reg. 11625 (15 March 2018), including the Annex thereto;
- "Proclamation 9704 of March 8, 2018 Adjusting Imports of Aluminum Into the United States", 83 Fed. Reg. 11619 (15 March 2018), including the Annex thereto;
- "Proclamation 9711 of March 22, 2018 Adjusting Imports of Steel Into the United States", 83 Fed. Reg. 13361 (15 March 2018);
- "Proclamation 9710 of March 22, 2018 Adjusting Imports of Aluminum Into the United States", 83 Fed. Reg. 13355 (28 March 2018);
- "Proclamation 9740 of April 30, 2018 Adjusting Imports of Steel Into the United States", 83 Fed. Reg. 20683 (7 May 2018), including the Annex thereto;
- "Proclamation 9739 of April 30, 2018 Adjusting Imports of Aluminum Into the United States", 83 Fed. Reg. 20677 (7 May 2018), including the Annex thereto;
- "Proclamation 9758 of May 31, 2018 Adjusting Imports of Aluminum Into the United States", 83 Fed. Reg. 25849 (5 June 2018), including the Annex thereto;
- "Proclamation 9759 of May 31, 2018 Adjusting Imports of Steel Into the United States", 83 Fed. Reg. 25857 (5 June 2018), including the Annex thereto;
- U.S. Department of Commerce, "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 Exclusion Requests for Steel and Aluminum" (Interim Final Rule), 83 Fed. Reg. 12106 (19 March 2018);
- U.S. Customs and Border Protection, "Cargo Systems Messaging Service #18-000372: Additional Duty on Imports of Steel and Aluminum Articles under Section 232 of the Trade Expansion Act of 1962", issued on 31 May 2018<sup>2</sup>;
- "Section 232 of Trade Expansion Act of 1962", codified in Title 19, United States Code § 1862;
- U.S. Department of Commerce, "The Effect of Imports of Steel on the National Security" (11 January 2018)<sup>3</sup>;
- U.S. Department of Commerce, "The Effect of Imports of Aluminum on the National Security" (17 January 2018)<sup>4</sup>;
- Code of Federal Regulations, Title 15, Section 705, "Effect of Imported Articles on the National Security".

This consultation request relates to the measures at issue and to any additional measures that amend, supersede, update or replace them.

## **B. Legal basis of the complaint**

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

1. Inasmuch as the measures at issue, *in fact and in substance*, constitute safeguard measures, they are in breach of Articles XIX:1(a) and XIX:2 of the GATT 1994, and Articles 2.1, 2.2, 3.1, 4.1, 4.2, 5.1, 7, 11.1(a), 12.1, 12.2, 12.3 and 12.5 of the Agreement on Safeguards. The United States has failed to meet the substantive requirements for the imposition of safeguard measures, which include, *inter alia*, a recent and adequate explanation of "unforeseen developments" and of the effect of the

<sup>2</sup> [https://csms.cbp.gov/viewmssg.asp?Recid=23571&page=&srch\\_argv=18-000372&srchtype=&btype=edi&sortby=&sby=](https://csms.cbp.gov/viewmssg.asp?Recid=23571&page=&srch_argv=18-000372&srchtype=&btype=edi&sortby=&sby=)

<sup>3</sup> [https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_steel\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180111.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf)

<sup>4</sup> [https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_aluminum\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180117.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf)

obligations incurred; of the increase in imports in absolute or relative terms, the existence of serious injury or threat thereof to the domestic industry of the United States, and the causal link between the two. Likewise, the United States has failed to meet the procedural requirements for applying a measure of this nature in terms of the investigation, the notification procedure, the opportunity provided for consultations in order to maintain an equivalent level of concessions or to agree on compensation, the duration and progressive liberalization of its measures, the application of the measures for the period of time necessary to facilitate adjustment; or for ensuring that the measures applied are in conformity with its obligations under the Agreement on Safeguards.

2. Article 9 of the Agreement on Safeguards, given that the United States applies its measures to products from developing country Members whose share of imports does not exceed 3%, whereas developing country Members with less than 3% import share collectively account for not more than 9% of total imports of the product.
3. Article 11.1(b) of the Agreement on Safeguards, to the extent that the United States, through the application of the measures at issue, seeks any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side, in violation of the provisions of the Agreement on Safeguards.
4. Article II:1(a) and (b) of the GATT 1994, inasmuch as the United States affords treatment less favourable than that provided for in its Schedule of Concessions, and given that it has imposed import duties on certain steel and aluminium products in excess of the duties set forth in Part I of the United States' Schedule of Concessions and Commitments annexed to the GATT 1994.
5. Article I:1 of the GATT 1994, since the United States grants an advantage, favour, privilege or immunity to imports of steel and aluminium products from other WTO Members, which is not accorded immediately and unconditionally to like imports originating in Mexico. These advantages consist in exemption from the measures applied, and the application of alternative measures.
6. Article XI:1 of the GATT 1994, since through these measures the United States implicitly introduces restrictions in the form of quotas, by reducing or limiting imports of steel and aluminium products from the trade levels that existed prior to these measures, or inhibits their potential for growth. In this way, by using these measures, the United States establishes effective restrictions on the import of steel and aluminium products. The foregoing is evident since the United States maintains certain alternative measures with other Members, i.e. quantitative restrictions in the form of quotas or equivalent measures which limit imports.
7. Article X:3(a) of the GATT 1994, since 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.
8. Article XVI:4 of the WTO Agreement, since the United States has failed to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

In addition, Mexico considers that Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862), including its regulations, could be inconsistent, as such, with the provisions cited above. This measure constitutes a general rule of prospective application and is likely to continue being applied in the future in a manner inconsistent with the United States' obligations under the WTO covered agreements.

Finally, Mexico considers that the measures at issue cannot be justified under Article XXI(b) of the GATT 1994, since, among other things, they require the United States to take account of economic welfare and other factors not necessary for the protection of its essential security interests.

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

Mexico 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 thank you in advance for your reply to this request for the purpose of setting a mutually convenient date for consultations.

---