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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR CONSULTATIONS BY SWITZERLAND

The following communication, dated 9 July 2018, from the delegation of Switzerland 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 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 imposed by the United States to adjust imports of steel and aluminium into the United States, including imposing additional *ad valorem* rates of duty on imports of the certain steel and aluminium products and exempting certain selected WTO members from the measures. These measures adversely affect exports of such products from Switzerland to the United States.

A. Claims with respect to measures relating to steel and aluminium

On 8 March 2018, the United States imposed an additional import duty of 25% on certain steel products and an additional import duty of 10% on certain aluminium products from all countries except, Mexico, Australia, Argentina, Brazil, Canada, the European Union and Korea, taking effect on 23 March 2018. On 30 April 2018, the President of the United States issued presidential proclamations exempting imports from Argentina, Australia, Brazil, and Korea from the additional duties on certain steel products, and exempting imports from Argentina, Australia and Brazil from the additional duties on certain aluminium products. The United States also extended the exemption from the additional import duties for Canada, the European Union and Mexico until 31 May 2018. As of 1 June 2018, the additional duties on certain steel products apply to all countries of origin, except Argentina, Australia, Brazil and Korea, and the additional duties on certain aluminium products apply to all countries of origin except Argentina and Australia. Quotas have been introduced concerning steel imports from Argentina, Brazil and Korea, and aluminium imports from Argentina.

The measures at issue are the import adjustments on certain steel products and certain aluminium products. They consist of and are evidenced by the following documents considered alone and in any combination:

1. Presidential Proclamation 9705 of 8 March 2018 on Adjusting Imports of Steel Into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States¹
2. Presidential Proclamation 9704 of 8 March 2018 on Adjusting Imports of Aluminum Into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States²

¹ Federal Register Volume 83, Issue 51 (March 15, 2018), pp. 11625-11630.

² Federal Register Volume 83, Issue 51 (March 15, 2018), pp. 11619-11624.

3. Presidential Proclamation 9711 of 22 March 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States³
4. Presidential Proclamation 9710 of 22 March 2018 on Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁴
5. Presidential Proclamation 9740 of 30 April 2018 on Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁵
6. Presidential Proclamation 9739 of 30 April 2018 on Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States⁶
7. Presidential Proclamation 9759 of 31 May 2018 on Adjusting Imports of Steel into the United States, including the Annex⁷
8. Presidential Proclamation 9758 of 31 May 2018 on Adjusting Imports of Aluminum into the United States, including the Annex⁸
9. 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, January 11, 2018)⁹
10. 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, January 17, 2018)¹⁰

This request also covers any additional measures amending, superseding, supplementing, updating, extending, replacing or implementing the measures referred to above as well as any exemption or exclusion applied.

The measures at issue appear to be inconsistent with the United States' obligations under several provisions of the GATT 1994 and the Agreement on Safeguards, in particular, but not necessarily exclusively:

- Article I:1 of the GATT 1994, because, by applying selectively the additional import duties on certain steel and aluminium products originating in different Members, including by providing exemptions or applying alternative means to certain countries, the United States fails, 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, to accord immediately and unconditionally any advantage, favour, privilege or immunity granted to products originating in other countries to like products originating in Switzerland;
- Article II:1(a) and (b) of the GATT 1994, because, through the measures at issue, the United States fails to accord to the commerce of most other WTO Members, including Switzerland, treatment no less favourable than that provided for in the appropriate part of the United States' Schedule of Concessions, and fails to exempt products of most

³ Federal Register Volume 83, Issue 60 (March 28, 2018), pp. 13361-13365.

⁴ Federal Register Volume 83, Issue 60 (March 28, 2018), pp. 13355-13359.

⁵ Federal Register Volume 83, Issue 88 (May 7, 2018), pp. 20683-20705.

⁶ Federal Register Volume 83, Issue 88 (May 7, 2018), pp. 20677-20682.

⁷ Federal Register Volume 83, Issue 108 (June 5, 2018), pp. 25857-25877.

⁸ Federal Register Volume 83, Issue 108 (June 5, 2018), pp. 25849-25855.

⁹ https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

¹⁰ https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf

WTO Members including Switzerland from ordinary customs duties in excess of those set forth and provided in the United States' Schedule of Concessions 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 X:3(a) of the GATT 1994 as 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;
- Article XI:1 of the GATT 1994, because, through the measures at issue, the United States has instituted restrictions other than duties, taxes or other charges, made effective through quotas, on the importation of products of the territory of other Members;
- Article 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;
- Article 2.1 of the Agreement on Safeguards, because the United States applies safeguard measures to the products in question without first having determined, pursuant to the subsequent provisions of the Agreement on Safeguards, 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;
- Article 2.2 of the Agreement on Safeguards, because the United States does not apply the safeguard measures to imported products irrespective of their source;
- Article 3.1 of the Agreement on Safeguards, because the United States applies safeguard measures to the products in question without first properly conducting an investigation and publishing a report that sets forth findings and reasoned conclusions on all pertinent issues of fact and law;
- Article 4.1 of the Agreement on Safeguards, because the United States has not properly determined that there is serious injury, or threat thereof, to a domestic industry as provided for in that provision;
- Article 4.2 of the Agreement on Safeguards, 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 the threat thereof; has failed to ensure that the injury caused by factors other than increased imports was not attributed to increased imports; and has failed to publish a detailed analysis and demonstration of its conclusions;
- Article 5.1 of the Agreement on Safeguards, because the United States is applying safeguard measures beyond the extent necessary to prevent or remedy serious injury and to facilitate adjustment;
- Article 7 of the Agreement on Safeguards, 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 liberalisation at regular intervals;
- Article 11.1(a) of the Agreement on Safeguards, 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 Article XIX applied in accordance with the Agreement on Safeguards;

- Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards and Article XIX:2 of the GATT 1994, because the United States has failed to comply with any of the notification and consultation obligations set out in these provisions.

B. Claims with respect to measures to protect US domestic industry from import competition

In addition, Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. §1862), as interpreted by the United States' authorities, including in the context of the above and other measures¹¹, appears to be inconsistent with the provisions set forth in the covered agreements, in particular those set out in Section A above, in a manner that is also inconsistent with Article XVI:4 of the WTO Agreement.

Section 232, as interpreted by the United States' authorities, provides for the imposition of measures (such as additional import duties or quotas) that restrict imports from other WTO Members to shield the domestic production in the United States from the competition with foreign products on the grounds of an alleged threat to the national security in a manner inconsistent with the disciplines set out in the GATT 1994 and the Agreement on Safeguards.

In the alternative, Switzerland argues that the ongoing use of Section 232 by the United States' authorities so as to afford protection to the domestic production by restricting imports from other WTO Members on the grounds of the alleged threat to national security is inconsistent with the United States' obligations under the covered agreements, in particular those listed in Section A above.

The above-mentioned measures appear to nullify or impair the benefits accruing to Switzerland directly or indirectly under the covered agreements.

In addition to, and independently of, the multiple violations of the WTO obligations identified above, Switzerland considers that, as a result of the application of the measures at issue, the benefits accruing to Switzerland under the GATT 1994 are being nullified and impaired and that the attainment of the objectives of the GATT 1994 is being impeded within the meaning of Article XXIII:1(b) of the GATT 1994.

Switzerland reserves the right to raise additional factual claims and legal issues under other provisions of the covered agreements regarding the above matters during the course of the consultations and in any future request for the establishment of a panel in these proceedings.

Switzerland looks forward to receiving a reply from the United States to this request and to setting a mutually convenient date for consultations.

¹¹ Including Section 705 Code of Federal Regulations, Effect of Imported Articles on the National Security (15 CFR 705) 47 FR 14693.