



**UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF
CRYSTALLINE SILICON PHOTOVOLTAIC PRODUCTS**

REQUEST FOR CONSULTATIONS BY CHINA

The following communication, dated 14 August 2018, from the delegation of China 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 ("United States") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article 14 of the *Agreement on Safeguards*, regarding the definitive safeguard measure imposed by the United States on imports of certain crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products (including, but not limited to, modules, laminates, panels, and building-integrated materials) ("crystalline silicon photovoltaic products").

This request identifies the measures at issue in Section I, and indicates the legal basis for China's complaint in Section II.

I. Measures at Issue

The United States imposed the definitive safeguard measure on imports of crystalline silicon photovoltaic products pursuant to "Proclamation 9693 of January 23, 2018 – To Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes"(83 FR 3541).

The safeguard measure on crystalline silicon photovoltaic products is based on the United States International Trade Commission ("USITC") determination of injury on September 22, 2017 and the report to the President on November 13, 2017 regarding the Investigation No. TA-201-75¹, as well as the Supplemental Report Regarding Unforeseen Developments issued by the USITC on December 27, 2017².

This request also concerns any modification, review, replacement or amendment to the definitive safeguard measure, including any closely connected, subsequent measures affecting the form and amount of the safeguard remedy, as well as the underlying reports, memoranda and other documents supporting the safeguard measure, including any subsequent determinations made by the United States Trade Representative with respect to the exemption of certain products from the application of the safeguard measure.

¹ See, Public Report, Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products), Inv. No. TA-201-75, USITC Pub. 4739 (Nov. 2017), a summary of which was published in the U.S. Federal Register on 21 November 2017 under citation "82 FR 55393".

² The Supplemental Report Regarding Unforeseen Developments is referenced in paragraph 4 of the Proclamation 9693 of January 23, 2018 – To Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes. See, <https://www.federalregister.gov/d/2018-01592/p-4>.

II. Legal Basis of the Complaint

China considers that the safeguard measure imposed by the United States on crystalline silicon photovoltaic products is inconsistent with the obligations of the United States under the GATT 1994 and the Agreement on Safeguards. In particular, China considers that the safeguard measure fails to comply with, among others, the following provisions:

- a. Article XIX:1(a) of the GATT 1994 and Article 3.1 of the Agreement on Safeguards, because the US failed to establish, prior to the application of the measures, that the increases in imports and the conditions of importation of the products covered by the measures at issue were the result of "unforeseen development" and of the effect of the US obligations under the GATT 1994;
- b. Articles 2.1 and 3.1 of the Agreement on Safeguards, because the United States failed to make a proper determination, including a reasoned and adequate explanation, that the subject imports increased "in such quantities and under such conditions" to cause serious injury to the domestic industry;
- c. Articles 2.1, 3.1, 4.1 and 4.2 of the Agreement on Safeguards as the United States failed to make a proper determination, including a reasoned and adequate explanation, of a significant overall impairment in the position of the domestic industry to support its conclusion that the domestic industry was suffering from "serious injury or threat of serious injury";
- d. Articles 2.1, 3.1 and 4.2 of the Agreement on Safeguards because the safeguard measure is not supported by a reasoned and adequate explanation of how the imports "caused or threatened to cause" serious injury to the domestic industry;
- e. Articles 2.1, 3.1, 4.1(c) and 4.2 of the Agreement on Safeguards because the United States did not properly define "domestic industry" as it failed to limit the scope to only those producers producing "like or directly competitive products" to the subject imports;
- f. Articles 3.1 and 3.2 of the Agreement on Safeguards because the United States did not provide the interested parties with sufficient opportunities to participate in the investigation, including as a result of the failure to respect the requirements on granting confidential treatment and the availability of sufficiently informative non-confidential summaries, and because the United States failed to set forth in the published report the findings and reasoned conclusions on all pertinent issues of fact and law, including the conditions on which the measure was imposed, the nature and level of the actual measure, and the ground for excluding certain sources;
- g. Articles 5.1 and 7.4 of the Agreement on Safeguards because the United States failed to grant relief only to the "extent necessary" and limit such relief to serious injury caused by increased imports at the time of the imposition of the measure as well as at the stages of progressive liberalization;
- h. Articles 2.1, 2.2, and 4.2 of the Agreement on Safeguards because the United States excluded certain products from the scope of application of its safeguard measure;
- i. Article 7.1 of the Agreement on Safeguards since the United States failed to grant relief only "for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment";
- j. Article 8.1 of the Agreement on Safeguards to the extent that the United States failed to endeavour to maintain a substantially equivalent level of concessions and other obligations under the GATT 1994 between the United States and China in accordance with Article 12.3 of the Agreement on Safeguards;
- k. Article XIX:2 of the GATT 1994 and Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards because the United States failed to provide immediate notifications with all

pertinent information and failed to provide China with an adequate opportunity to commence prior consultations;

- I. Article X:3 of the GATT 1994 since the measure is not based on uniform, impartial and reasonable administration of the relevant US laws and regulations; and,
- m. Article XIII of the GATT 1994 because the measure is inconsistent with the obligation with respect to the allocation of tariff rate quotas.

China is concerned that the safeguard measure on imports of crystalline silicon photovoltaic products appears to nullify or impair the benefits accruing to China directly or indirectly under the above Agreements.

China reserves the right to raise additional factual and legal issues, and to address additional measures and claims regarding the above matter, in the course of the consultations and in any request for the establishment of a panel.

China looks forward to receiving the United States' reply to the present request and to setting a mutually acceptable date and venue for consultations.
