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UNITED STATES – TARIFF MEASURES ON CERTAIN GOODS FROM CHINA III

REQUEST FOR CONSULTATIONS BY CHINA

The following communication, dated 2 September 2019, 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 pursuant to Article 4 of *the Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXIII of *the General Agreement on Tariffs and Trade 1994* (GATT 1994) concerning the tariffs measures that the United States accords to certain goods with the estimated trade value of approximately \$300 billion originating from China.

The United States published the Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation in the Federal Register dated 20 August 2019¹, according to which an additional ad valorem duty of 10 percent targeting to certain importing products of Chinese origin, on the tariff subheading set out in Annex A to the above Notice, has been imposed since 1 September, 2019, and an additional ad valorem duty of 10 percent targeting to certain importing products of Chinese origin, on the tariff subheading set out in Annex C to the above Notice, is to be imposed starting from 15 December, 2019. The additional duty rate was increased to 15 percent according to the Notice published in the Federal Register dated on 30 August 2019². The additional duty, described as modification of Section 301 Action, is only applied to China's products and in excess of the United States's bound rates in its Schedule of Concessions and Commitments annexed to the GATT 1994.

The legal documents through which the United States implements the additional tariff measures include:

1. Section 301-310 of the Trade Act of 1974, as amended (19 U.S.C., paragraphs 2411-2420).
2. Findings of the investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974.³
3. Update Concerning China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Nov. 20, 2018).⁴
4. Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation.⁵

¹ 84_FR_43,304 (August 20, 2019). See <https://www.govinfo.gov/content/pkg/FR-2019-08-20/pdf/2019-17865.pdf>

² 84_FR_45,821 (August 30, 2019). See <https://www.govinfo.gov/content/pkg/FR-2019-08-30/pdf/2019-18838.pdf>

³ See <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>

⁴ See <https://ustr.gov/sites/default/files/enforcement/301Investigations/301%20Report%20Update.pdf>.

⁵ See <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>

5. Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (April 6, 2018).⁶
6. Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (May 17, 2019).⁷
7. Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (August 20, 2019).⁸
8. USTR Statement on Section 301 Tariff Action Regarding China (August 23, 2019)⁹
9. Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (August 30, 2019).¹⁰

This request for consultations also concerns any modification, replacement or amendments to the measures identified above, and any closely connected, subsequent or implementing measures.

These measures appear to be inconsistent with the relevant provisions of the WTO covered agreements including:

1. Article I.1 of the GATT 1994, because the measures at issue fail to extend immediately and unconditionally to the products originating in China an "advantage, favour, privilege or immunity" granted by the United States "[w]ith respect to customs duties and charges of any kind imposed on or in connection with" the importation of products originating in the territories of other Members.
2. Article II.1(a) and (b) of the GATT 1994, because the United States imposes additional tariffs on certain imported products originated in China as identified in measures 7, 8 and 9 above that are in excess of United States bound rates in its Schedule of Concessions and Commitments annexed to the GATT 1994, and therefore fails to accord to the products originating in China identified in the above mentioned documents the treatment no less favourable than that provided for in the United States's Schedule of Concessions and Commitments annexed to the GATT 1994.
3. Article 23.1 and Article 23.2 (a), (b), and (c) of the DSU, because United States made a determination to the effect that a violation has occurred without recourse to the dispute settlement in accordance with the DSU and the measures at issue fail to recourse to, and abide by, the rules and procedures of the DSU, when the United States seeks the redress of a violation of obligation or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements.

In addition, and as a consequence of the foregoing, the measures at issue appear to nullify or impair benefits accruing to China directly or indirectly under the cited agreements.

China reserves the right to raise additional claims and legal matters regarding the above mentioned measures during the course of the consultations.

China looks forward to receiving your reply to the present consultations request and to scheduling a mutually convenient date for consultations.

⁶ 83 FR 14,906 (April 6, 2018). See <https://ustr.gov/sites/default/files/enforcement/301Investigations/FRN301.pdf>

⁷ 84 FR 22,564 (May 17, 2019). See https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_22564.pdf

⁸ 84 FR 43,304 (August 20, 2019). See <https://www.govinfo.gov/content/pkg/FR-2019-08-20/pdf/2019-17865.pdf>

⁹ See <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/august/ustr-statement-section-301-tariff>

¹⁰ 84 FR 45,821 (August 30, 2019). See <https://www.govinfo.gov/content/pkg/FR-2019-08-30/pdf/2019-18838.pdf>