



2 July 2018

(18-4150)

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Original: English

UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR CONSULTATIONS BY THE RUSSIAN FEDERATION

The following communication, dated 29 June 2018, from the delegation of the Russian Federation 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 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:1 of the *General Agreement on Tariffs and Trade* 1994 (GATT 1994) and Article 14 of the *Agreement on Safeguards*, concerning the measures that the United States introduced to adjust imports of steel and aluminium into the United States, including imposing additional ad valorem import duties on certain steel and aluminium products and exempting certain WTO members from these measures. These measures adversely affect exports of these products from the Russian Federation to the United States.

On 23 March 2018, the United States introduced additional ad valorem import duties of 25 per cent on steel and steel products imported from all countries except Canada, Mexico, Australia, Argentina, Korea, Brazil and the European Union and defined at the US Harmonized Tariff Schedule (HTS) 6-digit level as: 7206.10 through 7216.50, 7216.99 through 7301.10, 7302.10, 7302.40 through 7302.90, and 7304.10 through 7306.90, including any subsequent revisions to these HTS classifications.

On 1 June 2018, the United States introduced additional ad valorem import duties of 25 per cent also on these steel and steel products imported from Canada, Mexico and the European Union. Thus, Australia, Argentina, Brazil and Korea remain exempt from these duties. On 1 May 2018, the United States introduced quotas for Korea limiting the quantities of imported steel and steel products by weight per calendar year starting from 2018. On 1 June 2018, the United States introduced quotas also for Argentina and Brazil limiting the quantities of imported steel and steel products by weight per calendar year starting from 2018.

On 23 March 2018, the United States introduced additional ad valorem import duties of 10 per cent on aluminium products imported from all countries except Canada, Mexico, Australia, Argentina, Korea, Brazil and the European Union and defined in the US Harmonized Tariff Schedule (HTS) as: (a) unwrought aluminium (HTS 7601); (b) aluminium bars, rods, and profiles (HTS 7604); (c) aluminium wire (HTS 7605); (d) aluminium plate, sheet, strip, and foil (flat rolled products) (HTS 7606 and 7607); (e) aluminium tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and (f) aluminium castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70), including any subsequent revisions to these HTS.

On 1 May 2018, the United States introduced additional ad valorem import duties of 10 per cent also on these aluminium products imported from Korea. Thus, Argentina, Australia, Brazil, Canada, Mexico and the European Union remained exempt from these duties. On 1 June 2018, the United States introduced additional ad valorem import duties of 10 per cent also on these aluminium products imported from Brazil, Canada, Mexico and the European Union. Thus, Australia and Argentina remain exempt from these duties. On 1 June 2018, the United States introduced

quotas for Argentina limiting the quantities of imported aluminium products by weight per calendar year starting from 2018.

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

- Presidential Proclamation 9705 of 8 March 2018, Adjusting Imports of Steel into the United States (including the Annex), To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States¹;
- Presidential Proclamation 9704 of 8 March 2018, Adjusting Imports of Aluminum into the United States (including the Annex), To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States²;
- Presidential Proclamation 9711 of 22 March 2018, Adjusting Imports of Steel into the United States (including the Annex), amending Proclamation 9705 of 8 March 2018³;
- Presidential Proclamation 9710 of 22 March 2018, Adjusting Imports of Aluminum into the United States (including the Annex), amending Proclamation 9704 of 8 March 2018⁴;
- Presidential Proclamation 9740 of 30 April 2018, Adjusting Imports of Steel into the United States (including the Annex, To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States), amending Proclamation 9705 of 8 March 2018, as amended by Proclamation 9711 of 22 March 2018⁵;
- Presidential Proclamation 9739 of 30 April 2018, Adjusting Imports of Aluminum into the United States (including the Annex, To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States), amending Proclamation 9704 of 8 March 2018, as amended by Proclamation 9710 of 22 March 2018⁶;
- Presidential Proclamation 9759 of 31 May 2018, Adjusting Imports of Steel into the United States (including the Annex), amending Proclamation 9705 of 8 March 2018, as amended by Proclamation 9711 of 22 March 2018 and Proclamation 9740 of 30 April 2018⁷;
- Presidential Proclamation 9758 of 31 May 2018, Adjusting Imports of Aluminum into the United States (including the Annex, To Modify Certain Provisions of Chapter 99 of the Harmonized Tariff Schedule of the United States), amending Proclamation 9704 of 8 March 2018, as amended by Proclamation 9710 of 22 March 2018 and Proclamation 9739 of 30 April 2018⁸;
- Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminium Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminium (U.S. Department of Commerce)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, Bureau of Industry and Security, Office of Technology Evaluation, 11 January 2018¹⁰;

¹ Federal Register Vol. 83, No. 51, 11625-11630, March 15, 2018.

² Federal Register Vol. 83, No. 51, 11619-11624, March 15, 2018.

³ Federal Register Vol. 83, No. 60, 13361-13365, March 28, 2018.

⁴ Federal Register Vol. 83, No. 60, 13355-13359, March 28, 2018.

⁵ Federal Register Vol. 83, No. 88, 20683-20705, May 7, 2018.

⁶ Federal Register Vol. 83, No. 88, 20677-20682, May 7, 2018.

⁷ Federal Register Vol. 83, No. 108, 25857-25877, June 5, 2018.

⁸ Federal Register Vol. 83, No. 108, 25849-25855, June 5, 2018.

⁹ Federal Register Vol. 83, No. 53, 12106-12112, March 19, 2018.

¹⁰ http://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf.

- 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, Bureau of Industry and Security, Office of Technology Evaluation, 17 January 2018¹¹;
- Section 232 of the Trade Expansion Act of 1962, as amended (Title 19 United States Code §1862);
- Code of Federal Regulations, Title 15, Section 705, Effect of Imported Articles on the National Security.

For each of these measures referred to above, this request also covers any further amendments, supplements, replacements, extensions, implementing measures, renewal measures or other related measures, including any adjustments of tariffs, tariff quotas or quotas.

The measures at issue, separately or together, appear to be inconsistent with the obligations of the United States under the covered agreements, in particular:

- Article I:1 of the GATT 1994, because, 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, the United States fails to accord any advantage, favour, privilege or immunity granted by the United States to certain other countries immediately and unconditionally to the like product originating in the territories of all other Members;
- Article II:1(a) and (b) of the GATT 1994, because the measures do not accord to the commerce of most other WTO Members, including the Russian Federation, treatment no less favourable than that provided for in the appropriate part of the United States' Schedule of Concessions and Commitments annexed to the GATT 1994. They do not exempt the products at issue imported from most other Members, including the Russian Federation, from ordinary customs duties and all other duties or charges of any kind imposed on or in connection with importation in excess of those provided for in the United States' Schedule of Concessions and Commitments annexed to the GATT 1994;
- Article X:3(a) of the GATT 1994, because 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 the United States has introduced 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 XIX:2 of the GATT 1994, because the United States has failed to give notice in writing to the WTO as far in advance as may be practicable and has failed to afford the WTO and WTO Members having a substantial interest as exporters of the products concerned an opportunity to consult with it in respect of the proposed action;
- 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

¹¹ https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf.

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 their 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;
- 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, including by not attributing injury caused by factors other than 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 8.1 of the Agreement on Safeguards, because the United States has not endeavoured to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between them and the exporting members;
- 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 that Article applied in accordance with the Agreement on Safeguards;
- Article 11.1(b) of the Agreement on Safeguards, because 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 side or the import side;
- Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards, because the United States has failed to comply with any of the notification and consultation obligations set out in these provisions; and
- Articles I:1, II:1(a) and (b), X:3(a) and XI:1 of the GATT 1994, as a consequence of each of the above inconsistencies with the provisions of Article XIX of the GATT 1994 and the Agreement on Safeguards.

These measures of the United States described above nullify or impair the benefits accruing to the Russian Federation directly or indirectly under the cited agreements.

The Russian Federation reserves the right to address additional measures and claims under other provisions of the covered agreements regarding the above matters in the course of the consultations and in any future request for panel proceedings.

The Russian Federation looks forward to receiving the reply of the United States to this request for consultations in due course and to fixing a mutually acceptable date for consultations.
