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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE RUSSIAN FEDERATION

The following communication, dated 18 October 2018, from the delegation of the Russian Federation to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 29 June 2018 the Russian Federation requested 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 ("DSU"), 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 imposition of additional ad valorem import duties on certain steel and aluminium products and exemption of certain WTO members from these measures (document WT/DS554/1, G/SG/DS58/1). These measures adversely affect exports of these products from the Russian Federation to the United States.

The Russian Federation held consultations with the United States on 30 August 2018 in Geneva with a view to reaching a satisfactory settlement of the matter. Unfortunately, the dispute has not been resolved.

Given aforementioned, my authorities have instructed me to request the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the Agreement on Safeguards with respect to the measures of the United States identified below that affect exports of steel and aluminium from the Russian Federation to the United States.

I. MEASURES WITH RESPECT TO STEEL PRODUCTS

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, including the Russian Federation, 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.¹

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.² Thus, Australia, Argentina, Brazil and Korea remain exempt from these duties.

On 1 May 2018, based on an agreement, the United States introduced quotas for Korea limiting the quantities of imported steel and steel products by weight per calendar year starting from 2018.³ On 1 June 2018, based on agreements, the United States introduced quotas also for Argentina and

¹ Presidential Proclamation 9705 of 8 March 2018, Federal Register Vol. 83, No. 51, 11625-11630, March 15, 2018.

² Presidential Proclamation 9740 of 30 April 2018, Federal Register Vol. 83, No. 88, 20683-20705, May 7, 2018.

³ Ibid.

Brazil limiting the quantities of imported steel and steel products by weight per calendar year starting from 2018.⁴

Presidential Proclamation 9705 provides that, besides removal or modification of the restriction on imports of steel products from countries which agreed to "a satisfactory alternative means", the President of the United States can make any corresponding adjustments to the tariff as it applies to other countries.

The United States also introduced an exclusion process for users of steel products in the United States. According to Presidential Proclamation 9705, the Commerce Secretary is authorized to provide relief from the above mentioned additional import duties on any steel product determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and is also authorized to provide such relief based upon specific national security considerations. Such relief shall be provided for a steel product only after a request for exclusion is made by a directly affected party located in the United States. In addition, by Presidential Proclamation 9777, in certain defined circumstances, the Commerce Secretary is also authorized to provide relief from quantitative limitations on imports of steel products. The exclusion process is governed by the interim final rule issued by the U.S. Department of Commerce on March 19, 2018, as revised by the interim final rule issued on September 11, 2018.

The measures at issue are import adjustments on the above mentioned steel products in the form of additional import duties, exemptions, quotas and exclusions provided to products of certain WTO members. These measures are enacted, implemented through and are evidenced by the following documents considered alone and in any combination:

- 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 States);⁵
- Presidential Proclamation 9711 of 22 March 2018, Adjusting Imports of Steel into the United States, amending Proclamation 9705 of 8 March 2018;⁶
- 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 2018;⁷
- 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 2018;⁸
- Presidential Proclamation 9772 of 10 August 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 2018, Proclamation 9740 of 30 April 2018 and Presidential Proclamation 9759 of 31 May 2018;⁹
- Presidential Proclamation 9777 of 29 August 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 2018, Proclamation 9740 of 30 April 2018, Presidential Proclamation 9759 of 31 May 2018 and Presidential Proclamation 9772 of 10 August 2018;¹⁰
- 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

⁴ Presidential Proclamation 9759 of 31 May 2018, Federal Register Vol. 83, No. 108, 25857-25877, June 5, 2018.

⁵ Federal Register Vol. 83, No. 51, 11625-11630, March 15, 2018.

⁶ Federal Register Vol. 83, No. 60, 13361-13365, March 28, 2018.

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

⁸ Federal Register Vol. 83, No. 108, 25857-25877, June 5, 2018.

⁹ Federal Register Vol. 83, No. 158, 40429-40432, August 15, 2018.

¹⁰ Federal Register Vol. 83, No. 171, 45025-45030, September 4, 2018.

Commerce, Bureau of Industry and Security, Office of Technology Evaluation, 11 January 2018;¹¹

- Interim final rule regarding 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);¹²
- Interim final rule regarding Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum (U.S. Department of Commerce);¹³
- 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.

This request covers the measures set out in section I (Measures with respect to steel products) of the present request as well as any further amendments, supplements, replacements, extensions, related and implementing measures, renewal measures or other related measures, including any adjustments of tariffs, exemptions, exclusions, tariff quotas or quotas.

II. MEASURES WITH RESPECT TO ALUMINIUM PRODUCTS

On 23 March 2018, the United States introduced additional ad valorem import duties of 10 per cent on aluminium products imported from all countries, including the Russian Federation, 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 classifications.¹⁴

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.¹⁵ Thus, Australia and Argentina remain exempt from these duties.

On 1 June 2018, based on an agreement, the United States introduced quotas for Argentina limiting the quantities of imported aluminium products by weight per calendar year starting from 2018.¹⁶

Presidential Proclamation 9704 provides that, besides removal or modification of the restriction on imports of aluminium products from countries which agreed to "a satisfactory alternative means", the President of the United States can make any corresponding adjustments to the tariff as it applies to other countries.

The United States also introduced an exclusion process for users of aluminium products in the United States. According to Presidential Proclamation 9704, the Commerce Secretary is authorized to provide relief from the above mentioned additional import duties for any aluminium product determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality and is also authorized to provide such relief based upon specific national

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

¹² Federal Register Vol. 83, No. 53, 12106-12112, March 19, 2018.

¹³ Federal Register Vol. 83, No. 176, 46026-46065, September 11, 2018.

¹⁴ Presidential Proclamation 9704 of 8 March 2018, Federal Register Vol. 83, No. 51, 11619-11624, March 15, 2018.

¹⁵ Presidential Proclamation 9758 of 31 May 2018, Federal Register Vol. 83, No. 108, 25849-25855, June 5, 2018.

¹⁶ Ibid.

security considerations. Such relief shall be provided for an aluminium product only after a request for exclusion is made by a directly affected party located in the United States. In addition, by Presidential Proclamation 9776, in certain defined circumstances, the Commerce Secretary is also authorized to provide relief from quantitative limitations on imports of aluminium products. The exclusion process is governed by the interim final rule issued by the U.S. Department of Commerce on March 19, 2018, as revised by the interim final rule issued on September 11, 2018.

The measures at issue are import adjustments on the above mentioned aluminium products in the form of additional import duties, exemptions, quotas and exclusions provided to products of certain WTO members. These measures are enacted, implemented through and are evidenced by the following documents considered alone and in any combination:

- 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 States);¹⁷
- Presidential Proclamation 9710 of 22 March 2018, Adjusting Imports of Aluminum into the United States, amending Proclamation 9704 of 8 March 2018;¹⁸
- 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 2018;¹⁹
- 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 2018;²⁰
- Presidential Proclamation 9776 of 29 August 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, Proclamation 9739 of 30 April 2018 and Presidential Proclamation 9758 of 31 May 2018;²¹
- 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 2018;²²
- Interim final rule regarding 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);²³
- Interim final rule regarding Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum (U.S. Department of Commerce);²⁴
- 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.

¹⁷ Federal Register Vol. 83, No. 51, 11619-11624, March 15, 2018.

¹⁸ Federal Register Vol. 83, No. 60, 13355-13359, March 28, 2018.

¹⁹ Federal Register Vol. 83, No. 88, 20677-20682, May 7, 2018.

²⁰ Federal Register Vol. 83, No. 108, 25849-25855, June 5, 2018.

²¹ Federal Register Vol. 83, No. 171, 45019-45023, September 4, 2018

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

²³ Federal Register Vol. 83, No. 53, 12106-12112, March 19, 2018.

²⁴ Federal Register Vol. 83, No. 176, 46026-46065, September 11, 2018.

This request covers the measures set out in section II of the present request (Measures with respect to aluminium products) as well as any further amendments, supplements, replacements, extensions, related and implementing measures, renewal measures or other related measures, including any adjustments of tariffs, exemptions, exclusions, tariff quotas or quotas.

III. LEGAL BASIS OF THE COMPLAINT

The measures at issue described in Section I and Section II appear to be inconsistent with the obligations of the United States under the following provisions of the covered agreements:

- 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 certain advantages, favours, privileges or immunities granted by the United States to products originating in certain other countries immediately and unconditionally to the like products originating in the territories of all other Members;
- Article II:1(a) and (b) of the GATT 1994, because through the measures the United States does 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 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 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 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, has sought, taken or maintained 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.

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

Therefore, the Russian Federation requests pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the Agreement on Safeguards that the Dispute Settlement Body ("DSB") establish a panel to examine the matter, with the standard terms of reference, as set forth in Article 7.1 of the DSU.

The Russian Federation requests that this request be placed on the agenda of the DSB meeting to be held on 29 October 2018.
