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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY NORWAY

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

My authorities have instructed me to request the establishment of a panel with respect to certain measures imposed by the United States to adjust imports of steel and aluminium into the United States, including through imposing additional *ad valorem* rates of duty on imports of certain steel and aluminium products and exempting certain WTO Members from the measures.

On 12 June 2018, Norway requested 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. Consultations were held on 19 July 2018, with a view to reaching a mutually satisfactory solution. Unfortunately, these consultations failed to resolve the dispute.

Therefore, Norway submits this request pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of the GATT 1994, and Article 14 of the Agreement on Safeguards, and asks that the DSB establish a panel with standard terms of reference as set out in Article 7.1 of the DSU.

In the paragraphs to follow, Norway identifies the measures at issue and provides a brief summary of the legal basis for its claims against those measures.

A. Background

Section 232 of the Trade Expansion Act of 1962 ("Section 232")¹ authorises the US Secretary of Commerce ("Commerce Secretary") to undertake an investigation to determine the effects of imports of a particular article of commerce on US national security. At the conclusion of the investigation, the Commerce Secretary is required to submit a report to the President, who is then authorised to negotiate agreements to limit imports or restrict imports, or to "take such actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten or impair the national security".²

In April 2017, the Commerce Secretary initiated investigations into the effect of imported steel and aluminium on US national security, pursuant to Section 232. On 11 January and 17 January 2018, the Department of Commerce released two reports: (1) *"The Effects of Imports of Steel on the National Security"* recommending, among other measures, a 24 percent tariff on all steel imports;³

¹ Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

² Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

³ DOC Report, "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", 11 January 2018, available at: <https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>.

and (2) *"The Effects of Imports of Aluminum on the National Security"*, recommending, among other measures, a 7.7 percent tariff on imports of aluminium.⁴

On 8 March 2018, the President of the United States issued Presidential Proclamations 9704 and 9705, under the authority conferred in Section 232.⁵ These instruments took action pursuant to the Commerce Secretary's recommendations by imposing additional import duties of 25 per cent and 10 per cent, respectively, on certain imported steel products and aluminium products from all countries, with a temporary exemption for imports from Canada and Mexico.

Subsequent to the adoption of Presidential Proclamations 9704 and 9705, the President of the United States issued additional Proclamations. In sum, these instruments increased the duty on steel imports from Turkey to 50 percent;⁶ removed the exemptions granted to Canada and Mexico;⁷ and granted various additional temporary and indefinite exemptions to certain other WTO Members.

As of the date of this request, indefinite exemptions to the steel and aluminium tariffs at issue have been granted to Argentina, Australia, Brazil and South Korea, in exchange for "agree[ment]" with these countries "on a range of measures".⁸ This "range of measures" includes, for Argentina, Brazil and South Korea, voluntary quantitative restrictions on exports of steel and aluminium products.⁹ Norway did not receive an exemption from either the steel tariffs or the aluminium tariffs. Since 23 March 2018, when the tariffs came into effect, they have restricted Norwegian imports of steel and aluminium products into the United States.

Presidential Proclamations 9705 and 9704 provide for a product exclusion process. Both Proclamations authorise the Commerce Secretary to provide relief from the additional duties for any steel article, or any aluminium article, determined not to be produced in the United States in a sufficient and reasonably available amount or in a satisfactory quality, or based upon specific national security considerations.¹⁰ Presidential Proclamations 9776 and 9777 subsequently extended the product exclusions to steel and aluminium products imported from countries subject to quantitative limitations, in certain defined circumstances, including national security considerations.¹¹

B. Measures at issue

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

1. Adjusting Imports of Aluminum Into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9704, issued on 8 March 2018);¹²
2. Adjusting Imports of Steel Into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9705, issued on 8 March 2018);¹³

⁴ DOC Report, "The Effects of Imports of Aluminum on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended", 17 January 2018, available at: <https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>.

⁵ Proclamation No. 9704, 83 Fed. Reg. 11,619 (published on 15 March 2018); Proclamation No. 9705, 83 Fed. Reg. 11,625 (published on 15 March 2018).

⁶ Proclamation No. 9772, 83 Fed. Reg. 40,429 (published on 15 August 2018).

⁷ Proclamation No. 9758, 83 Fed. Reg. 25,849 (published on 5 June 2018); Proclamation No. 9759, 83 Fed. Reg. 25,857 (published on 5 June 2018).

⁸ Proclamation No. 9740, 83 Fed. Reg. 20,683 (published on 7 May 2018); Proclamation No. 9758, 83 Fed. Reg. 25,849 (published on 5 June 2018); Proclamation No. 9759, 83 Fed. Reg. 25,857 (published on 5 June, 2018).

⁹ Proclamation No. 9740, 83 Fed. Reg. 20,683 (published on 7 May 2018); Proclamation No. 9758, 83 Fed. Reg. 25,849 (published on 5 June 2018); Proclamation No. 9759, 83 Fed. Reg. 25,857 (published on 5 June 2018).

¹⁰ Proclamation No. 9704, 83 Fed. Reg. 11,619 (published on 15 March 2018); Proclamation No. 9705, 83 Fed. Reg. 11,625 (published on 15 March 2018).

¹¹ Proclamation No. 9776, 83 Fed. Reg. 45,019 (published on 4 September 2018); Proclamation No. 9777, 83 Fed. Reg. 45,025 (published on 4 September 2018).

¹² Proclamation No. 9704, 83 Fed. Reg. 11,619 (published on 15 March 2018).

¹³ Proclamation No. 9705, 83 Fed. Reg. 11,625 (published on 15 March 2018).

3. Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9710, issued on 22 March 2018);¹⁴
4. Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9711, issued on 22 March 2018);¹⁵
5. Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9739, issued on 30 April 2018);¹⁶
6. Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9740, issued on 30 April 2018);¹⁷
7. Adjusting Imports of Aluminum into the United States, including any annexes (Presidential Proclamation 9758, issued on 31 May 2018);¹⁸
8. Adjusting Imports of Steel into the United States, including any annexes (Presidential Proclamation 9759, issued on 31 May 2018);¹⁹
9. Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9772, issued on 10 August 2018);²⁰
10. Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9776, issued on 29 August 2018);²¹
11. Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States (Presidential Proclamation 9777, issued on 29 August 2018);²²
12. Interim Final Rule regarding the Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum, published on 19 March 2018;²³
14. Interim Final Rule regarding Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum, published on 11 September 2018;²⁴
15. 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 (19 U.S.C. 1862), US Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, 11 January 2018;²⁵ *and*

¹⁴ Proclamation No. 9710, 83 Fed. Reg. 13,355 (published on 28 March 2018).

¹⁵ Proclamation No. 9711, 83 Fed. Reg. 13,361 (published on 28 March 2018).

¹⁶ Proclamation No. 9739, 83 Fed. Reg. 20,677 (published on 7 May 2018).

¹⁷ Proclamation No. 9740, 83 Fed. Reg. 20,683 (published on 7 May 2018).

¹⁸ Proclamation No. 9758, 83 Fed. Reg. 25,849 (published on 5 June 2018).

¹⁹ Proclamation No. 9759, 83 Fed. Reg. 25,857 (published on 5 June 2018).

²⁰ Proclamation No. 9772, 83 Fed. Reg. 40,429 (published on 15 August 2018).

²¹ Proclamation No. 9776, 83 Fed. Reg. 45,019 (published on 4 September 2018).

²² Proclamation No. 9777, 83 Fed. Reg. 45,025 (published on 4 September 2018).

²³ Department of Commerce, Interim final rule, 83 Fed. Reg. 12,106 (published on 19 March 2018).

²⁴ Department of Commerce, Interim final rule, 83 Fed. Reg. 46,026 (published on 11 September 2018).

²⁵ Available at: <https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>.

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16. The Effect of Imports of Aluminum on the National Security, An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1972, as amended, US Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, 17 January 2018²⁶

and any amendments, successor, replacement or implementing measures and any exemptions applied.

C. Legal basis for the complaint

The US measures listed in the previous section of this request are inconsistent with the United States' obligations under the following provisions of the GATT 1994 and the Agreement on Safeguards:

- a) 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 other 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;
- b) 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;
- c) 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;
- d) Article 11.1(b) of the Agreement on Safeguards to the extent that the United States seeks or has sought any voluntary export restraints, orderly marketing arrangements, or any other similar measures on the export or the import side;
- e) Articles 12.1 and 12.2 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;
- f) 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;
- g) Article II:1(a) and (b) of the GATT 1994, because the United States has imposed import duties on certain steel and aluminium products in excess of the duties set forth and provided in the United States' Schedule of Concessions and Commitments annexed to the GATT 1994, and has failed to exempt products of Norway subject to the measures at issue from ordinary customs duties in excess of those set forth and provided in the United States' Schedule of Concessions and Commitments annexed to the GATT 1994 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.;
- h) 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;

²⁶ Available at: <https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>

- i) 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;
- j) 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; and
- k) 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.

Norway asks that this request for the establishment of a panel be placed on the agenda for the next meeting of the Dispute Settlement Body, which is scheduled for 29 October, and that the Dispute Settlement Body establish a panel with standard terms of reference as set out in Article 7.1 of the DSU.
