

PERMANENT MISSION OF THE UNITED STATES TO THE WORLD TRADE ORGANIZATION
MISSION PERMANENTE DES ÉTATS-UNIS D'AMÉRIQUE
AUPRÈS DE L'ORGANISATION MONDIALE DU COMMERCE

11, ROUTE DE PREGNY
1292 CHAMBESY - GENEVA

April 4, 2018

H.E. Mr. Zhang Xiangchen
Ambassador
Permanent Mission of the People's Republic of China
Route de Lausanne 228
1292 Chambésy

Dear Mr. Ambassador:

The United States has received China's requests for consultations under Article 12.3 of the *Agreement on Safeguards* with respect to the Proclamations issued with respect to steel and aluminum on March 8, 2018.¹

The United States notes that the premise for China's requests for consultations under Article 12.3 of the *Agreement on Safeguards* is that the Steel and Aluminum Proclamations are safeguard measures for purposes of that Agreement. The President issued the Steel and Aluminum Proclamations pursuant to Section 232 of the Trade Expansion Act of 1962, under which the President determined that tariffs are necessary to adjust imports of steel and aluminum articles that threaten to impair the national security of the United States.² These actions are not safeguard measures, and therefore, there is no basis to conduct consultations under the *Agreement on Safeguards* with respect to these measures.

The United States did not take action pursuant Section 201 of the Trade Act of 1974, which is the law under which the United States imposes safeguard measures.³ It did not submit notifications with respect to these measures because they are not safeguard measures. As evidenced by our recent notifications with respect to solar products and washers,⁴ the United

¹ See Proclamation No. 9705 of March 8, 2018, 83 Fed. Reg. 11625 (March 15, 2018) (Steel); and Proclamation No. 9704 of March 8, 2018, 83 Fed. Reg. 11619 (March 15, 2018) (Aluminum).

² At the Committee on Trade in Goods meeting held on March 23, 2018, the United States provided information in relation to these proclamations, consistent with the Decision Concerning Article XXI of the General Agreement taken by the GATT Council on 30 November 1982. See also GATT Council, Decision Concerning Article XXI of the General Agreement – Decision of 30 November 1982, L/5426 (2 December 1982).

³ See G/SG/N/1/USA/1 (Apr. 6, 1995) and G/SG/N/1/USA/1/Suppl.1 (July 20, 2015).

⁴ See e.g. G/SG/N/8/USA/9 (dated 4 October 2017), G/SG/N/8/USA/9/Suppl.3 (dated 8 January 2018), and G/SG/N/8/USA/9/Suppl.4 – G/SG/N/10/USA/7 – G/SG/N/11/USA/6 (dated 26 January 2018); and G/SG/N/8/USA/10 (dated 13 October 2017), G/SG/N/8/USA/10/Suppl.2 (dated 11 December 2017), and G/SG/N/8/USA/10/Suppl.3 – G/SG/N/10/USA/8 – G/SG/N/11/USA/7 (dated 26 January 2018).

States is well aware of its notification obligations for safeguards measures under the *Agreement on Safeguards*.

Article 12.3 of the *Agreement on Safeguards* states that a "Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations" with Members having a substantial interest in exports of the product concerned. However, the United States is not proposing "to apply or extend a safeguard measure" with respect to steel or aluminum, and therefore Article 12.3 does not apply. Accordingly, China's requests for consultations pursuant to Article 12.3 have no basis in the *Agreement on Safeguards*.

The United States has taken note of China's notification of March 29, 2018, in which China stated its intent to suspend concessions and other obligations, purportedly under Article 8.2 of the *Agreement on Safeguards*. We note further that China put these measures into effect on April 2, 2018. Because the actions under the Steel and Aluminum Proclamations are not safeguard measures, the United States considers that Article 8.2 of the *Agreement on Safeguards* does not justify China's suspension of concessions or other obligations. China has asserted no other justification for its measures, and the United States is aware of none. Therefore, it appears that China's actions have no basis under WTO rules.

Should China still have questions related to U.S. actions under Section 232 of the Trade Expansion Act of 1962, we nevertheless stand ready to fix a mutually convenient date with China to engage in bilateral discussions. Such discussions would not be held pursuant to the *Agreement on Safeguards* and would be without prejudice to our view that the Proclamations are not safeguard measures.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis C. Shea".

Dennis C. Shea
Ambassador