

SECTION 232:

MEASURES AND COUNTERMEASURES INVOLVING STEEL AND ALUMINUM IMPORTS INTO THE USA

5th issue

São Paulo, November 7, 2018.

EXECUTIVE SUMMARY

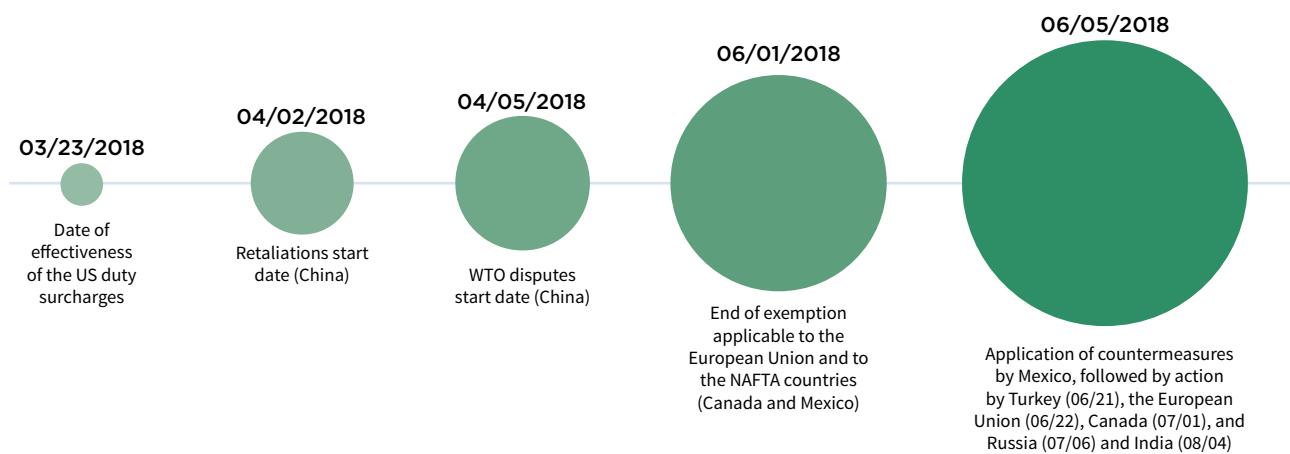
On March 1, 2018, the President of the United States announced new tariffs on imported steel and aluminum products from any of the country's trade partners for national security reasons. Part of an investigation substantiated by the procedure known as [Section 232](#), the measures came into force on March 23, initially exempting a selected group of trade partners with whom the United States started bilateral negotiations towards an agreement.

China was the first country to retaliate to the U.S. new tariffs by applying countermeasures in the same proportions on April 2, 2018. Following the Chinese response, other countries, such as Canada, Mexico and the European Union, also levied duty surcharges against U.S. imports.

In almost all cases, the countermeasures were preceded by the filing of notifications before the World Trade Organization (WTO) Safeguard Committee; the only exception were Canada and Mexico, member countries of the North American Free Trade Agreement (NAFTA). Through these notifications, these countries acknowledged that the U.S. duty surcharges were, in fact, safeguard measures, warning the United States about their intent to suspend tax concessions granted thereto and to adopt potential equivalent measures.

The situation was compounded by a set of disputes filed before the WTO's Dispute Settlement Body (DSB). Starting in April, complaints were filed against the United States by countries claiming the U.S. duty surcharges violated treaties executed before the Organization. In turn, the United States also contested the countries that adopted countermeasures against U.S. imports, opposing the interpretation that the U.S. duty surcharges constituted safeguards and reaffirming the sovereign nature of national security protection measures.

Figure 1. Summary of the escalation of restrictive measures and trade disputes related to Section 232



Source: DEREX/FIESP

I. LEVYING OF DUTY SURCHARGES BY THE UNITED STATES AGAINST STEEL AND ALUMINUM IMPORTS FOR NATIONAL SECURITY REASONS

On March 23, the duty surcharges levied against steel and aluminum products imported into the United States became effective at a rate of 25% and 10%, respectively. The decision results from investigations launched by the United States Department of Commerce, on April 2017, for the purpose of assessing the effects of these imports on America's national security. These proceedings, known as *Section 232*, reached the conclusion that imported steel and aluminum "threaten to impair the national security, as they weaken the national economy and threaten to disrupt the American production of commodities used in the national defense industry.

Initially, a group of countries was provisionally exempted from the duty surcharges. However, as of the June 1, only some of these countries were granted definitive exemption, as summarized in the following table.

Table 1. Countries exempted from duty surcharges

TYPE OF EXEMPTION	COUNTRY	PRODUCT SUBJECT TO EXEMPTION	DUTY SURCHARGES START DATE (END OF EXEMPTION)
Provisional	Canada	Steel and aluminum	June 1, 2018
	Mexico		
	European Union		
Definitive	Brazil	Aluminum	May 1, 2018
	South Korea		
	Argentina	Steel and aluminum	-
	Australia		
Definitive	Brazil	Steel	-
	South Korea		
Not exempted	All other countries	-	March 23, 2018

Source: DEREX/FIESP

In nearly all cases, the definitive exemption from duty surcharges was achieved through quota negotiation. The only exception was with Australian imports: although exempted from duty surcharges, Australia was not included in the [list of countries subject to quantitative restrictions](#), as per negotiations with the United States.

In the case of Brazil, the exemption from duty surcharges levied on imported steel required the definition of quotas corresponding to 70% of the average annual finished steel and 100% of the average annual semi-finished steel exports from Brazil to the United States, with the period between 2015 and 2017 considered as a reference. The distribution of the Brazilian steel quotas has already been [published by the U.S. Customs and Border Protection](#).

Table 2. Parameters of the quotas applicable to steel imported from Brazil

PRODUCT SUBCATEGORIES	54 taxation subcategories were defined for the distribution of Brazilian steel quotas
RECORDS	January 2018 was the reference month use to start recording the quotas
DEFINITION OF LIMITS	Absolute import quotas were defined, meaning that, once the annual quota (calendar year) is reached, additional imports shall not be authorized to enter the country in that same year for the product subcategory that has reached the predefined limit
MONITORING REPORT	The U.S. Government publishes weekly reports on the percentage of quotas met by Brazilian exporters
TRADE PROTECTION	Products subject to trade protection measures that are also included in the list of items subject to quotas shall, concurrently, be subject to both measures (for as long as the quotas and/or trade protection measures are in force)
QUARTERLY LIMIT	Imports classified into each of the taxation subcategories may not exceed the amount of 500,000 kilograms in a single quarter or 30% of the total amount of the quota fixed for the relevant calendar year
NEW ANNUAL LIMITS	The quota's aggregate annual limits for the following years shall, in principle, remain the same, unless they are amended or canceled by the U.S. Government

Source: DEREX/FIESP

II. PROCEDURE FOR DUTY SURCHARGE EXCLUSION

Published in March 2018, the procedures to apply for exclusion from duty surcharges on steel and aluminum imported into the United States were [updated¹](#) in September. The new rules will be available for public comments until November 13th.

Among the main updates created by the exclusion procedure, we highlight the following: the addition of a rebuttal and subrrebuttal process associated with the objections; the further detailing of the criteria adopted in the requests for exclusion and objection process analysis; the establishment of a quicker review procedure for exclusion requests that meet some specific requirements and are not subject to objections; the creation of [guides](#) and [guidelines](#) to assist producers when filling the application form for exclusion; new rules on retroactivity for exclusions granted; the formal establishment of the requirements to benefit from the Business Protected Information (BPI) system.

• **Exclusion requests for relief from quantitative limits**

At first, only imports originating from countries affected by the duty surcharges could be the object of an application for exclusion. Countries that had negotiated quotas, on the other hand, although exempt from duty surcharges, were not allowed to export to the United States once the limits agreed upon were reached.

However, in August 2018, the President of the United States made an announcement [authorizing the Secretary of Commerce](#) to set forth a procedure for the exclusion of countries affected by quotas involving [steel](#) and [aluminum imports to the United States](#). Upon the President's decision, U.S. companies were allowed to request the exclusion of certain commodities from the quantitative restrictions applicable to steel imported from Argentina, Brazil and South Korea, as well as to aluminum imported from Argentina.

A. QUOTA EXCLUSION, WITHOUT DUTY SURCHARGE PAYMENTS

As was already the case for countries that, although affected by the surcharges, did not face quantitative restrictions when exporting to the United States, the exclusion from the quota can only be authorized by the U.S. government when:

- i. Aluminum and steel articles are not produced in the United States in a sufficient and reasonably available amount;
- ii. Aluminum and steel articles are not produced in the United States in a satisfactory quality;
- iii. There are no specific national security concerns.

¹ The procedures to apply for exclusion from duty surcharges was first issued in [March 2018](#), when were settled up the policies to file objections to applications for exclusions.

Petitioners must be able to provide information that supports allowing the requester to import steel that may otherwise exceed the quantitative limitation. Such companies could claim, for example, that they believe the steel identified in the exclusion request is not available from any U.S suppliers and indicate that the quantitative limitation has been exceeded or will likely soon be exceeded, preventing them from obtaining the steel needed.

The exclusions granted based on these criteria must not be subject to surcharges and only the import tax normally levied on the product will be exacted.

B. QUOTA EXCLUSION, WITH DUTY SURCHARGE PAYMENTS

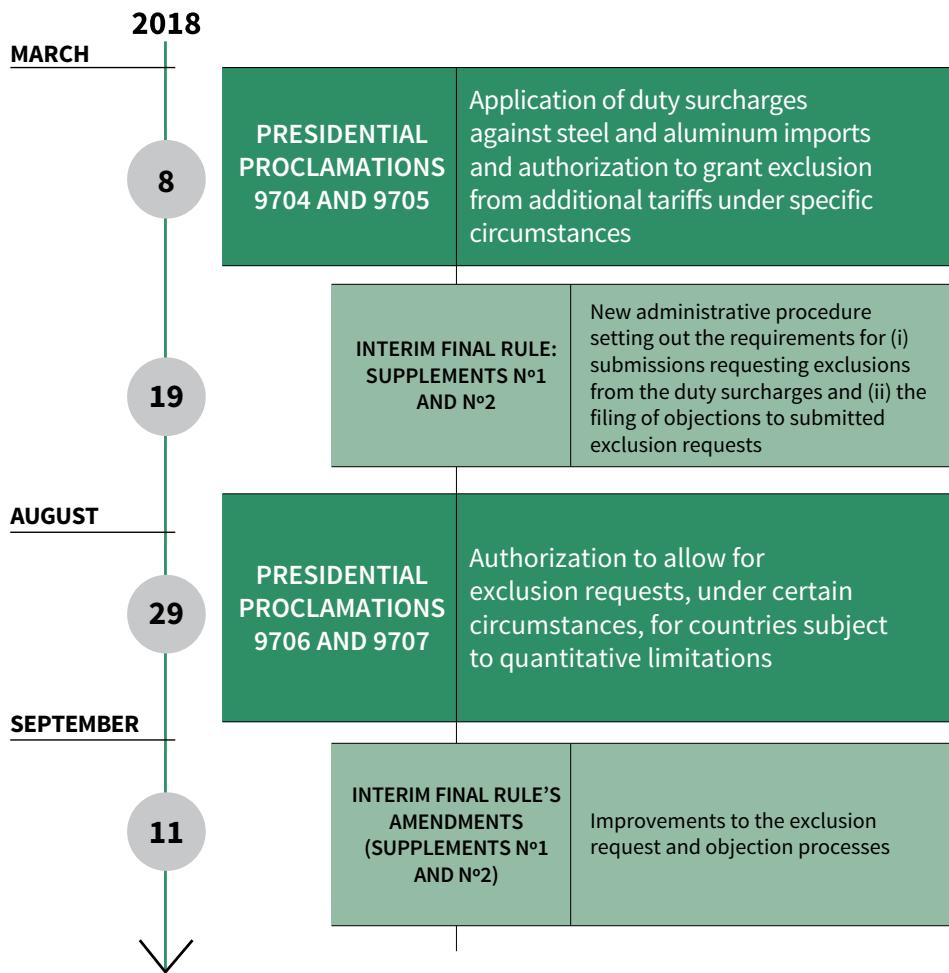
In certain circumstances, where there are existing sale and purchase contracts, expedited relief from quantitative limits is also possible.² However, in such cases the products entered for consumption or withdrawn from warehouse for consumption will be subject to the additional duty rate. In addition, the following criteria must be attended:

- i. The requesting party entered into a written contract for production and shipment of the below identified steel article(s) before March 8, 2018;
- ii. The written contract specifies the quantity of these steel article(s) that is to be produced and shipped to the United States consistent with a schedule contained in the written contract;
- iii. The steel article(s) is to be used to construct a facility in the United States and cannot be procured from a supplier in the United States to meet the delivery schedule and specifications contained in the written contract;
- iv. The payments made pursuant to the contract constitute 10 percent or less of the cost of the facility under construction;
- v. Lack of relief from the quantitative limitations on the steel article(s) would significantly disrupt or delay completion of the facility being constructed in the United States with the steel article(s) specified in the written contract.

In this scenario, the exclusion request must be submitted by filling a specific [form](#). Should the relief be granted, the party requesting it must accurately report to U.S. Customs and Border Protection (CBP), in the manner that the CBP prescribes, the number of steel articles entered for consumption or withdrawn from warehouse for consumption. In addition, the number of steel articles entered pursuant to a grant of relief must not exceed the quantity specified in such contract for delivery on or before March 31, 2019. Any relief provided under this process may be revoked if the U.S. government determines at any time after such a grant that the criteria for relief have not been met.

² The [new administrative procedure](#) of the exclusion request does not apply to this case (b), characterized by the existence of a prior agreement.

Figure 2. Section 232 – Exclusion Procedure Timeline



Source: DEREX/FIESP

III. ADOPTION OF COUNTERMEASURES IN RESPONSE TO THE UNITED STATES' DUTY SURCHARGES ON STEEL AND ALUMINUM IMPORTS

The duty surcharges levied by the United States unleashed reactions from the main countries affected by the measures. These countries interpreted the additional taxation as a safeguard measure and, as such, grounded on the WTO's Agreement on Safeguards, filed for the suspension of the applicability of concessions or other duties, in an equivalent amount,³ to products originating from the United States (as listed in the table below).

Table 3. List of products affected by the countermeasures (by Chapter)

COUNTRY	CHAPTERS (Harmonized System - HS)
China	02, 08, 12, 22, 73 and 76
Turkey	08, 10, 21, 22, 24, 27, 33, 39, 44, 48, 55, 73, 84, 87 and 90
Canada	04, 09, 16, 17, 18, 19, 20, 21, 22, 33, 34, 35, 38, 39, 44, 48, 49, 72, 73, 76, 84, 89, 94, 95 and 96
India	05, 07, 08, 28, 38, 72 and 73
Mexico	02, 04, 08, 16, 20, 21, 22, 72, 73, 76, 84, 89 and 94
Russia	82, 84, 87 and 90
European Union	1st phase: 07, 10, 19, 20, 22, 24, 33, 61, 62, 63, 64, 72, 73, 76, 87, 89 and 95 2nd phase: 20, 22, 33, 48, 56, 59, 62, 63, 64, 66, 69, 70, 71, 72, 73, 76, 84, 85, 87, 89 and 94

Source: DEREX/FIESP

Following are details on the countermeasures applied by the main countries affected by the U.S. duty surcharges.

A. CHINA

On March 29, 2018, China submitted to the WTO a [list of products](#) originating from the United States that would be affected by the suspension of tax concessions. The duty surcharges, in force as of [April 2](#), affect the import of 128 taxed items originating from the United States, and vary between 15% (120 products, including fruits, ginseng roots, iron or steel products) and 25% (8 products, including aluminum scrap and swine products).

Table 4. Countermeasures applied by China on imports originating from the United States

Product	Duty surcharge	Taxation lines
Almonds, bananas, alcoholic beverages, oranges, lemons, apples, mangos, macadamia nuts, strawberries, pears, iron or steel products	15%	120
Swine meat and giblets, and aluminum scrap	25%	8
TOTAL		128

Source: Popular Republic of China, Ministry of Finance

³ As provided in Article 8.2 of the Agreement on Safeguards.

B. MEXICO

The Mexican government stated in a note that the measures imposed by the United States within the scope of [Section 232](#) violate the WTO's Agreement on Safeguards and announced it was filing a commercial dispute before the DSB. Mexico also [published](#), on June 5, 2018, a list of products originating from the United States whose preferential treatment had been suspended, with a concurrent tariff increase of up to 25%⁴.

C. TURQUIA

According to the Turkish government, the duty surcharges applied by the United States on steel and aluminum products affect approximately US\$ 1.1 billion in imports originating from Turkey, resulting in an additional cost of US\$ 266 million in duties levied by the United States.

Within this context, in May 2018, Turkey signaled its intent to suspend the tax concessions offered to the United States and to apply duty surcharges on a [list of selected products](#). Following, in June, the Turkish government published [the final list of U.S. products](#) subject to the levying of duty surcharges, in force as of June 21.

Later, on August 13, 2018, the United States doubled the duty surcharges applied against the import of steel from Turkey, [from 25% to 50%](#). According to the Turkish government, the U.S. duty surcharges (50% on steel items and 10% on aluminum products) shall result in an additional cost of [US\\$ 527 million in duties](#) levied by the United States (US\$ 521 million on steel imports and US\$ 6 million on aluminum imports). In response, Turkey updated its offsetting list, and raised the duty surcharges of practically all products⁵ previously included in the list. The [revised Turkish list](#) has been in force since August 15.

D. EUROPEAN UNION

In [May 2018](#), the European Union submitted to the WTO, a preliminary list of products originating from the United States to be affected by the application of countermeasures, in the amount of US\$ 7.1 billion. The expectation is that these measures will result in the levying of US\$ 1.6 billion in additional duties.

In the sequence, on June 21, 2018, the European Union published a [final list of products](#) originating from the United States that were subject to additional duties, to be implemented by the union in two stages.

The first phase involves the levying of duty surcharges, starting of June 22, 2018, at rates of 10% and 25%, on a set of products; the second stage, in turn, sets forth the levying of duty surcharges of 10%, 25%, 35% and 50% on another set of taxed items.

The applicability of the duty surcharges on the products included in the second phase list shall only enter into effect as of June 1, 2021 (three years after the application of the U.S. duty surcharges on steel and aluminum products originating from Europe), or alternatively, as of the fifth day following the date when WTO's DSB renders a decision indicating the eventual incompatibility of the U.S. duty surcharges with the multilateral trading rules.

⁴ Although the preferential treatment of most of the products was suspended on June 5, a second list of items was only affected by the increased taxation rates on July 5.

⁵ Compared to the previous list of products, non-calcined petroleum coke is the only commodity that was not subject to surcharges in the new Turkish list.

SAFEGUARDS

Concurrently, the European Committee completed the first stage of its [safeguard investigation](#) on steel imports, which started in [March 2018](#), and applied provisional global safeguards. The measure, in force since July 19, shall remain in effect for 200 days, at the most, and may be converted into definitive safeguards by the end of the investigation (expected to end in early 2019).

The provisional safeguards shall become taxation quotas applicable to 23 categories of steel products. Additional duties at a rate of 25% shall be levied once the European imports of these items exceed the average imports of the last three years. The quotas shall be assigned in a first come, first served basis, therefore, they will not be individually distributed by country of origin. In addition, the measure shall be imposed on all countries, except for a set of developing countries that are responsible for a small portion of the steel exports to the European Union, as well as partners of the European Free Trade Association (EFTA) with the exception of Switzerland.

The purpose of the investigation was to contain the potential deviation of trade arising from the duty surcharges applied by the United States resulting from the [Section 232](#) investigation over the same set of product. In order to prevent the sudden increase in imports, which could lead to severe economic losses for the European producers, it was understood that the application of a provisional safeguard was necessary.

E. CANADA

After the publication, in early June 2018, of a [note](#) indicating the intent to apply countermeasures against the United States, including a prospected list of products to be subject to the government's commercial response, Canada published a [final list of US products](#) whose imports shall be subject to new duty surcharges.

The new tariffs came into force on July 1 and they shall affect an amount of US\$ 16.6 billion in imports originating from the United States (a historical amount of Canadian exports to the USA affected by duty surcharges). While steel products shall be subject to duty surcharges of 25%, an additional 10% fee shall apply to aluminum products and other items such as yogurts, whiskeys, orange juice, insecticides, dishwashers, among others. The [customs details](#) associated with the levying of duty surcharges are already available as well.

Table 5. Countermeasures applied by Canada on imports originating from the USA

Product	Duty surcharge	Taxation lines
Steel	25%	131
Aluminum	10%	19
Other products	10%	79
Total		229

Source: Canadian Government

SAFEGUARDS

On October 11th, 2018, Canada [imposed provisional safeguards](#) on imports of steel products. The measure will come into force on October 25th, and shall be valid for up to 200 days. Depending on the final results of the investigation, definitive safeguard measures may be imposed.

The provisional safeguard is aimed at addressing trade diversion of foreign steel products from other countries to Canada and concerns imports of seven product categories: heavy plate, concrete reinforcing bar (rebar), energy tubular products, hot-rolled sheet, pre-painted steel, stainless steel wire and wire rod.

The key elements of the Canadian safeguard include:

- i. Total quota volume:** the measure will be in the form of a tariff-rate quota, with a 25% surcharge applied to imports that exceed a specified quantity threshold. The limits were calculated based on the average volume imported in the years 2015-16, 2016-17 and 2017-18.
- ii. Quota periods:** the total quota volume is split into four 50-day periods. Once the quota established for a particular period has been filled, imports of goods under that steel product category will be subject to a surcharge for the remainder of that period. Remaining quotas will be rolled-over into the subsequent period.
- iii. Quantitative limit:** for each steel category, a limit is imposed on the share of the total quota that may be met by a single country. If the amount imported of a product category from a given country reaches this limit, then all subsequent imports of that product category, when originating in the same country, will be subject to the surcharge for the remainder of the provisional safeguard period.

Table 6 – Tariff-rate quota volumes

Product	Quota for each 50-day period (tonnes)	Total 200-day quota (tonnes)	Maximum share of total quota per country
Heavy plate	12.918	51.672	23%
Concrete reinforcing bar	35.332	141.328	23%
Energy tubular products	64.348	257.392	23%
Hot-rolled sheet	15.299	61.196	37%
Pre-painted steel	11.635	46.540	35%
Stainless steel wire	467	1.868	25%
Wire rod	11.513	46.052	47%

Source: Government of Canada

Imports from the United States, Chile, Israel, and developing countries benefiting from the Canadian General Preferential Tariff regime will be exempt from the provisional safeguard for all product categories (with the exception rebar imports from Vietnam). In addition, five product categories of Mexican imports will also be exempted from the measure.

Detailed information on the implementation of the safeguard measure is available at the [Canada's Border Services Agency website](#).

F. RUSSIA

Russia informed the WTO, in [May 2018](#), that approximately US\$ 3.2 billion in Russian exports of steel and aluminum products were affected by the duty surcharges levied by the United States. In July, the country finally [applied countermeasures](#)⁶ to imports originating from the United States, imposing duty surcharges of 25% to 40% on 79 products, including hauling vehicles, oil and gas equipment, metal milling and rock drilling tools, optical fibers, among others.

G. INDIA

On June 13, 2018, India [informed](#) the WTO about its intention to apply duty surcharges on a list of 30 U.S. products, with additional rates of 10%, 15%, 20%, 25% or 50% (varying with taxed item). Although initially expected to be in force as of [August 4](#), the actual start date of effectiveness of the Indian countermeasures, which shall affect an amount of approximately US\$ 1.4 billion in imports originating from the United States, was postponed to [December 17](#)⁷.

H. JAPAN

Japan [signaled](#) to the WTO, in May 2018, that it is entitled to apply countermeasures to offset the amount of US\$ 1.9 billion of Japanese exports affected by the U.S. duty surcharges. So far, however, duty surcharges have not been implemented.

I. EURASIAN ECONOMIC UNION (EEU)

SAFEGUARDS

The Eurasian Economic Union (EEU) started, on August 7, 2018, a [safeguard investigation](#) on imports of flat-rolled steel products. According to the petition filed by the local producers, there has been an increase in the import of these products, both in relative and in absolute terms, and there is sufficient evidence showing that the amounts and pricing of imported flat-rolled products may lead to a significant deterioration of the industry in the EEU.

The petitioners have also indicated that the industry in EEU countries is vulnerable to a potential increase in imports, theoretically imminent, considering: (i) the global context of steel production overcapacity; (ii) the increase in the number of trade protection measures applied by other countries against ironwork products; (iii) the new safeguard investigations; and, (iv) the recent restrictions adopted by the United States against steel imports, as provided in *Section 232*.

The EEU [notified](#) the WTO about its investigation in September.

6 The measure, published on July 6, 2018, came into force 30 days later.

7 Although the duty surcharges listed in the [notifications issued by the Indian Ministry of Finance](#) apply exclusively to the United States, no reference was made to *Section 232* or to any measures applied by the United States within the scope of the relevant procedures. Nevertheless, the products listed in India's notifications match the set of taxed items the Indian government previously provided [to the WTO](#) – reason why they are construed as countermeasures.

Table 7. Summary of applied or announced countermeasures on U.S. imports

Country	Amount of exports affected by the U.S. duty surcharges (US\$ thousands)	Amount to be levied upon the application of U.S. duty surcharges (US\$ thousands)	Amount of imports affected by countermeasures (US\$ thousands)	Amount to be levied upon application of countermeasures (US\$ thousands)	Status of countermeasure
Canada	12.600.000 ⁸	2.000.000	12.600.000	1.900.000	In force (since 07/01/2018)
European Union	7.200.000	1.600.000	7.100.000	1.600.000	In force (1st phase: since 06/22/2018)
Russia	3.158.000	537.600	Undefined	Potential amount: 537,600	In force (since 08/05/18)
China	2.515.000	604.000	2.745.000	611.000	In force (since 04/02/18)
Mexico	Undefined	Undefined	Undefined	Undefined	In force (1st phase: since 06/05/18; 2nd phase: since 07/05/18)
Japan	1.910.508	439.943	Undefined	Potential amount: 439,943	Not applied
India	1.218.900	241.000	1.395.290	240.070	Applied (to be in force as of 11/02/18)
Turkey	1.101.716	527.188	1.784.743	Potential amount: 527,188	In force (since 06/21/18 ⁹)

Source: DEREX/FIESP

⁸ The American duty surcharges, according to the Canadian government, affects an amount of 16.6 billion Canadian Dollars in imports of steel and aluminum products originated from this country. The exchange rate available in the International Monetary Fund (IMF) website on June 29, 2018 (USD = CAD 1.3168) was used to convert this amount into US Dollars.

⁹ Duty percentages updated on 08/15/2018, upon an increase in almost all of the duty surcharges previously applied.

IV. DISPUTES FILED AT THE DISPUTE SETTLEMENT BODY OF THE WORLD TRADE ORGANIZATION

The duty surcharges imposed by the United States on aluminum and steel imports, allegedly due to national security reasons, have also resulted in the filing of disputes before the WTO's Dispute Settlement Body. The table below summarizes the disputes filed to date in association with the U.S. duty surcharges levied on steel and aluminum product imports.

Table 8. Disputes at the WTO related to the levying of duty surcharges by the United States on steel and aluminum product imports

COMPLAINANT	RESPONDENT	DATE OF NOTICE	DISPUTE	CHALLENGED MEASURE
China	United States	05/04/2018	DS 544	Measures set forth against steel and aluminum product imports
India		18/05/2018	DS 547	
European Union		01/06/2018	DS 548	
Canada		01/06/2018	DS 550	
Mexico		05/06/2018	DS 551	
Norway		12/06/2018	DS 552	
Russia		29/06/2018	DS 554	
Switzerland		09/07/2018	DS 556	
United States	Canada	16/07/2018	DS 557	Additional duties applied against certain products originating from the United States
	China		DS 558	
	European Union		DS 559	
	Mexico		DS 560	
	Turkey		DS 561	
Turkey	United States	15/08/2018	DS 564	Measures set forth against steel and aluminum product imports
United States	Russia	29/08/2018	DS 566	Additional duties applied against certain products originating from the United States

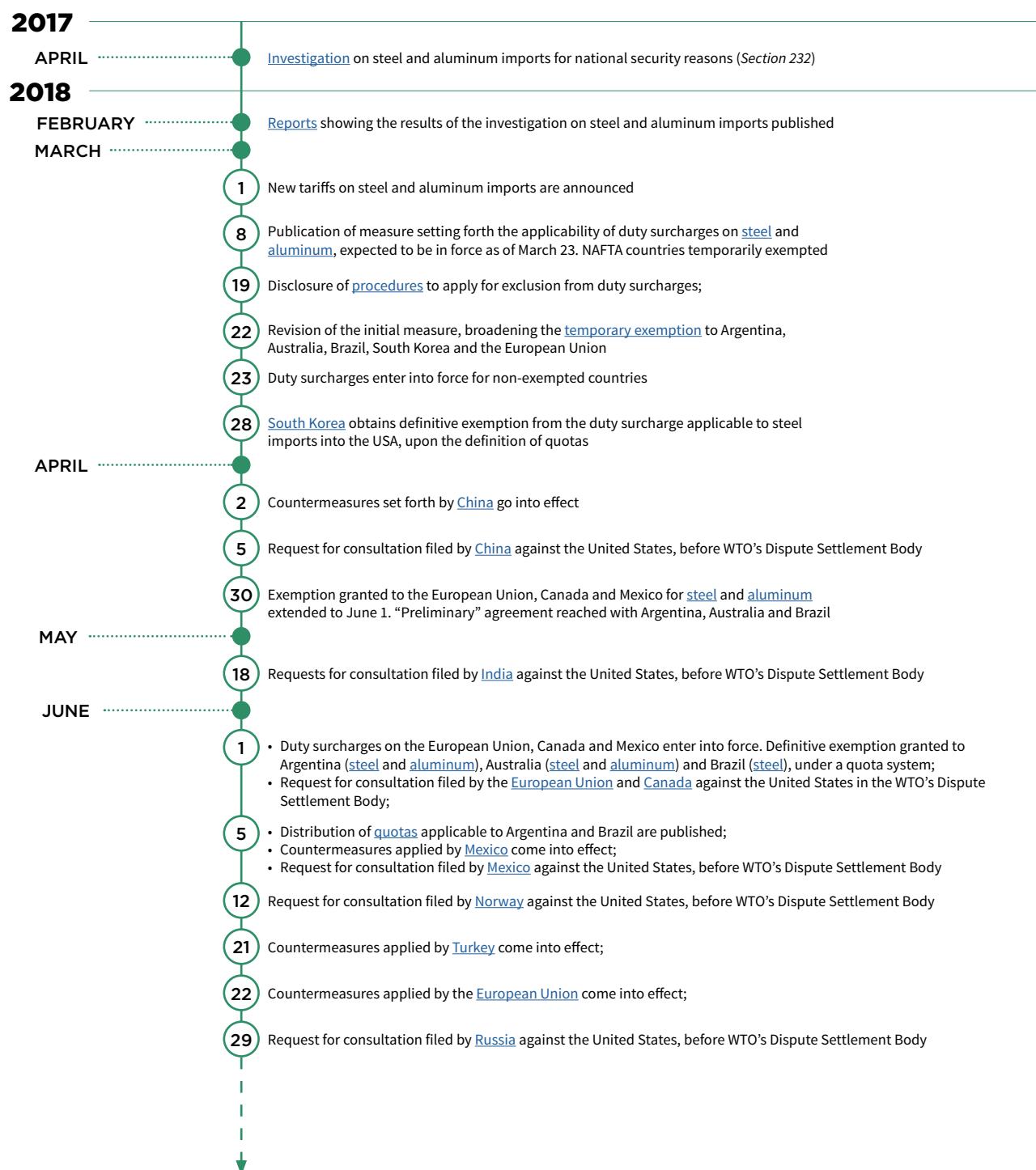
Source: WTO

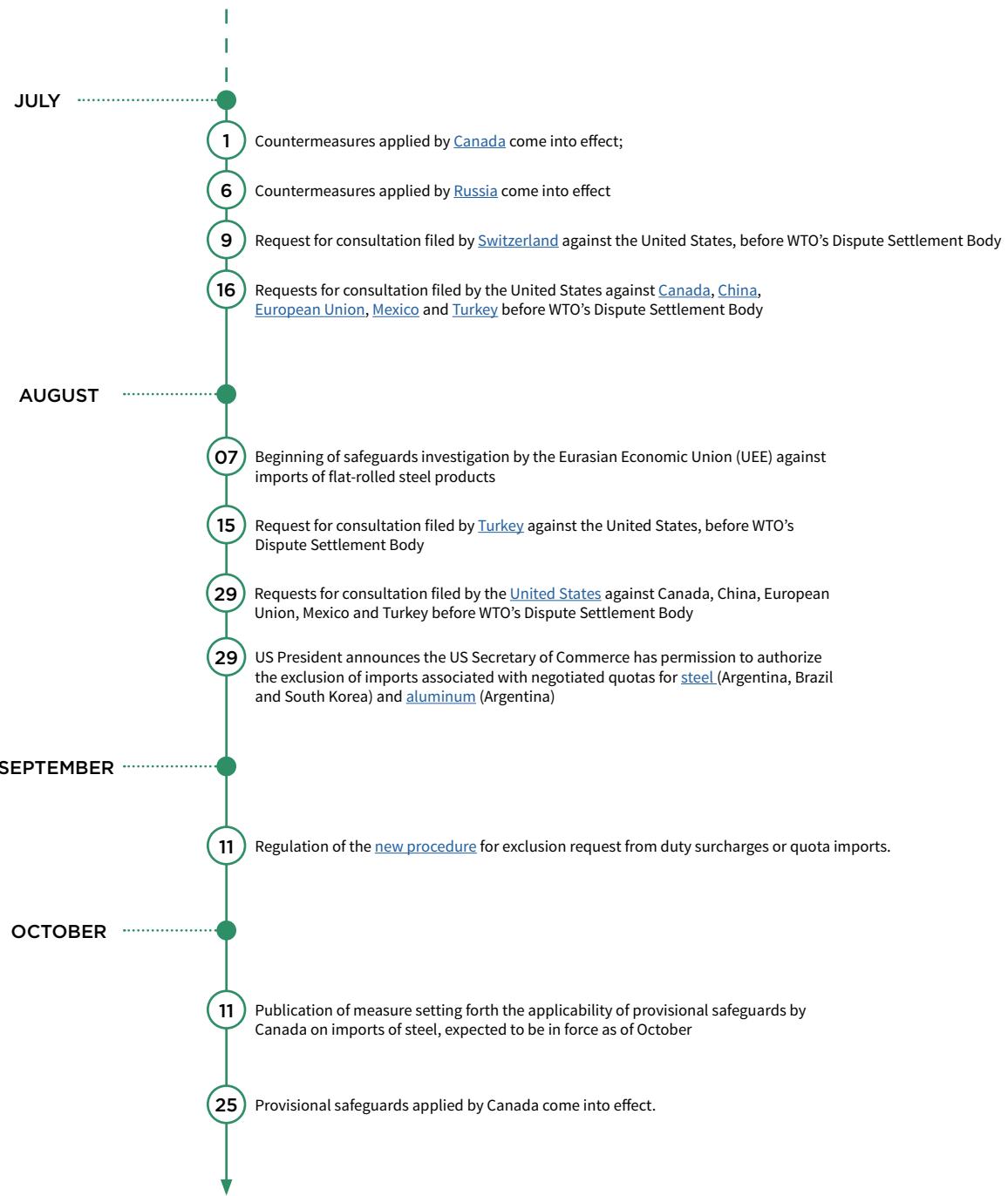
The countries that claim the U.S. measures violate multilateral commitments undertaken have filed formal complaints before the Organization, thus commencing consultation proceedings. The United States, in turn, also filed disputes against the countries whose countermeasures are already in force, reiterating their insight that the duty surcharges they adopted, as provided in [Section 232](#), do not constitute safeguard measures, but are measures to protect lawful national security interests.

V. SUMMARY OF THE ESCALATION OF RESTRICTIONS RELATED TO SECTION 232

The restrictive measures against steel and aluminum product imports adopted by the United States for national security reasons, the countermeasures announced or implemented by other countries, and the disputes filed at the WTO are summarized in the figure below.

Figure 3. Timeline showing the application of Section 232 restriction measures and retaliating countermeasures





Source: DEREX/FIESP

TECHNICAL TEAM

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