IMPOSITION OF A SAFEGUARD MEASURE BY THE UNITED STATES ON IMPORTS OF CRYSTALLINE SILICON PHOTOVOLTAIC CELLS

REQUEST FOR CONSULTATIONS UNDER ARTICLE 12.3 OF THE AGREEMENT ON SAFEGUARDS

CHINA

The following communication, dated 6 February 2018, is being circulated at the request of the Delegation of China.

On 26 January 2018, the Government of the United States of America ("United States") notified the WTO Committee on Safeguards pursuant to Article 12.1(c) of the WTO Agreement on Safeguards ("Safeguards Agreement") of its decision to apply a safeguard measure on imports of crystalline silicon photovoltaic cells (whether or not partially or fully assembled into other products).1 On 4 December 2017, the United States indicated that it was prepared to consult with those WTO Members that have a substantial interest as exporters of products concerned.2

As a Member that is a major exporter of the product at issue, The People's Republic of China ("China" or "we") hereby formally requests consultations with the United States pursuant to Article 12.3 of the Safeguards Agreement and Article XIX:2 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) with respect to the United States' safeguard measures on crystalline silicon photovoltaic cells (whether or not partially or fully assembled into other products). These measures include:

- The Presidential Proclamation to Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells, signed on 23 January 20183;

- The affirmative injury determination issued by the U.S. International Trade Commission ("USITC") on 22 September 20174, which was reported to U.S. President Donald Trump in November 2017;

- The supplemental report of the USITC regarding unforeseen developments issued on December 27, 2017; and

- Any amendments thereto or extension thereof, and any other related measures.

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1 G/SG/N/8/USA/9/Suppl.4-G/SG/N/10/USA/7-G/SG/N/11/USA/6 (dated 26 January 2018).
2 G/SG/N/8/USA/9/Suppl.2 (dated 4 December 2017).
3 Proclamation 9693 of 23 January 2018 – To Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes, United States Federal Register, 25 January 2018 (Volume 83, Number 17).
We believe the measures taken by the United States are not consistent with its obligations under the relevant provisions of the GATT 1994 and Safeguards Agreement which include, but are not limited to: Articles I, II, X, XI, XIII, and XIX of GATT 1994 and Articles 2, 3, 4, 5, 7, and 12 of the Safeguards Agreement.

Article 12.3 of the Safeguards Agreement entitles China, as an exporter with a substantial interest in the product concerned, to have an adequate opportunity for prior consultations before application of a measure. This request does not prejudge China's position on whether the period between the announcement and application of the proposed measure provides sufficient amount of time for a meaningful exchange of views, as required under Article 12.3.

In accordance with Article 8.1 of the Safeguards Agreement, China also is exercising its right to trade compensation consultations. However, in the process of these consultations, China reserves the right to raise additional issues, make further factual and legal arguments, and pursue any other remedies provided for under the Safeguards Agreement and the Understanding on Rules and Procedures Governing the Settlement of Disputes.

China would like to set the consultations mentioned above on 9 February or 12 February, 2018 and looks forward to a prompt reply to this request from the United States.