

**EUROPEAN UNION – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES
(DS559)**

First Substantive Meeting of the Panel with the Parties

Closing Statement of the United States

September 25, 2019

1. The United States again expresses its thanks to the Chairperson, members of the Panel, and the Secretariat staff for holding this first substantive meeting with the parties in this dispute.
2. Over the last several days, the United States has heard some theories and views that any longstanding observer of the WTO system would see as stunning. We have heard the European Union, and third-parties affected by the U.S. 232 measures, take the position that any Member somehow has the right to deem any action allegedly protecting a domestic industry as a “safeguard.” Moreover, according to these Members, the Member deeming the existence of a safeguard is then free to take unilateral retaliatory action. This is stunning for a number of reasons. At least to our knowledge -- no Member, since 1947, has ever taken this view of Article XIX of the GATT 1994. Nor, since 1995, of Article XIX plus the WTO Safeguards Agreement. Moreover, this is stunning because according to the general consensus, one of the most important accomplishments of the Uruguay Round was to restrain unilateral action. To be clear, this has not necessarily been the U.S. view. But it has been a major theme of observers of the system, and many Members. Most notably, of the European Union. We could pull hundreds of statements from EU submissions over the last 20 years objecting to unilateral actions. Yet now, the European Union and certain other Members are apparently saying that unilateral action is wonderful, and has always been allowed.
3. In these circumstances, we suggest that instead of jumping to any conclusions at this point, all of us need to take a deep breath, and engage in the rigorous evaluation of these novel theories. Fortunately, the existing working procedures provide for this. The parties have opportunities to respond to questions in writing, to provide a second submission, and to engage in a second substantive meeting. As the briefing proceeds, the United States believes that there are at least two key legal issues. First, the European Union cannot justify the theory for unilateral action that it presents, based on a careful review of the actual text. In contrast, the United States’ interpretation is grounded in the text of the relevant agreements. And second, the European Union’s proposed right to unilateral action, if adopted, would fundamentally affect the operation of the WTO system.
4. Regarding the first question, the European Union’s test to determine whether a measure constitutes a safeguard is deeply flawed. That test is not founded on the text of Article XIX and the Safeguards Agreement. Instead, it seeks to adopt the analysis from an inapplicable Appellate Body report (*Indonesia – Iron or Steel Products*) without recognizing the fundamental differences between that dispute, where the implementing Member invoked the relevant provisions, and this dispute where there has been no invocation.

5. And, over the last two days, when the European Union has sought to find support in the actual text, the European Union has made unsupportable assertions. For example, the European Union has taken the view that the word “measure” in Article 8.1 of the Safeguards Agreement has two different meanings in different parts of that paragraph. These types of textual matters need to be carefully addressed, and we will do so in our second submission.

6. Regarding the second question, the European Union has no answer to the United States’ point that the test offered by the European Union would be met by nearly any tariff measure that any Member may implement. The European Union’s test has no limiting principle and would allow unilateral retaliation for any measure that another Member characterizes, in its judgment, as a safeguard.

7. The United States concludes its closing statement and looks forward to providing additional explanations and analysis as this dispute unfolds. Again, thank you for your work up to this point, and we look forward to seeing you at the second substantive meeting.