

**UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINUM PRODUCTS  
(DS554)**

**First Substantive Meeting of the Panel with the Parties**

**Closing Statement of the United States**

**November 8, 2019**

1. We thank the Panel for its time in this dispute, and we appreciate the interesting exchanges we have had regarding the issues presented. We think these exchanges have reinforced the correctness of the United States' interpretation of Article XXI(b). That interpretation is that Article XXI(b) is self-judging.
2. As we have noted, in two other disputes over the past two years, Russia has commented on the authority reserved to Members under Article XXI(b), and the timing of Members' actions under Article XXI.<sup>1</sup> We agree with these prior statements by Russia and we suggest there is no principled reason for Russia to take a different position here. We note further that Russia appears to take a broad view of national security in its domestic law.<sup>2</sup> We are puzzled by the lack of textual support for the interpretations of Article XXI(b) that Russia has offered in this dispute. The interpretations Russia has put forward today also appear to be internally inconsistent.
3. The United States has not sought to take the challenged measures pursuant to Article XIX of the GATT 1994. Instead, the United States has invoked Article XXI in relation to the challenged measures. We have invoked *all* of Article XXI(b). Although Article XXI does not

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<sup>1</sup> Oral Opening Statement by the Russian Federation, *Russia – Traffic in Transit* (DS512), January 23, 2018, para. 43; Second Written Submission of the Russian Federation, *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union – Recourse to Article 21.5 of the DSU by the European Union* (DS475), June 3, 2019, para. 127.

<sup>2</sup> See Russian Federation Federal Law on Security, Adopted by the State Duma (Dec. 7, 2010), arts. 1 & 4 (US-77).

impose any obligation to provide reasons or give additional information, the United States has provided and pointed to extensive facts and rationale set out in the measures themselves.<sup>3</sup>

4. The United States has presented to the Panel a comprehensive understanding of Article XXI, including the long history of the U.S. understanding and the conclusion that should result. When Article XXI is invoked, the United States has always recognized there may be consequences. One is that other WTO Members have the capacity to take reciprocal actions; another is that WTO Members may seek other actions under the DSU, including whether to bring a non-violation, nullification or impairment claim.

5. Without an understanding that Members can judge for themselves when the circumstances described in Article XXI(b) arise, what would happen? Unfortunately, the situation in which the WTO finds itself today: the types of security actions that have always been taken – but which have not previously been subject to WTO disputes – are now being brought into WTO dispute settlement.

6. The WTO was created with a focus on economic and trade issues, and not to seek to resolve sensitive issues of national security and foreign policy. The dispute settlement actions that you are presented with are not necessary, and they risk serious consequences to the WTO.

7. The United States thanks the Panel very much for its questions. We hope our answers will help to lead you in the right direction towards the findings that are appropriate and necessary in this dispute.

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<sup>3</sup> See Oral Opening Statement of the United States of America, *United States – Certain Measures on Steel and Aluminum Products* (DS554), para. 51, et seq.; see also National Security Strategy of the United States (December 2017), at 2, 8 (US-74).