

*UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINUM PRODUCTS
(DS552)*

First Substantive Meeting of the Panel with the Parties

Closing Statement of the United States

November 7, 2019

1. We thank the Panel for taking the decision to open this meeting to observation by other Members and the public on the joint request of Norway and the United States. Norway and the United States both support greater transparency in WTO dispute settlement.¹ The decision by the Panel to assist the parties in making their statements publicly available supports the WTO and its dispute settlement system.
2. 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.
3. Article XXI(b) reflects a Member's sovereign right to take any action which it considers necessary for the protection of its essential security interests in three circumstances. Use of the phrase "which it considers" indicates that the matters set forth in Article XXI(b) are left to each Member's judgment, as each Member must be able to judge whether any action taken is necessary to protect its interests. Each of the elements in Article XXI(b) is part of a single relative clause and necessarily implicates a Member's judgment with respect to its essential security interests.
4. As we have noted, in another context Norway appears to agree that every Member's judgment regarding its essential security interests will necessarily be its own judgment. And

¹ Joint Statement on the Importance of Transparency in WTO Dispute Settlement, WT/GC/W/785.

Norway recognizes the interrelationship between economic issues and security interests. In a document we have cited to the Panel called “Setting the course for Norwegian foreign and security policy,” Norway has written: “The importance of a strong economy for a country’s security *cannot be overstated*. Economic strength enhances resilience in the face of difficult situations and makes it possible to give priority to defence and promote national interests.”² In the same document, Norway has also stated that “[t]his white paper focuses on security policy from the perspective of Norway. In other parts of the world, *the security landscape looks different*.”³

5. We agree with these statements; this is just common sense. And so, a Member’s judgment of whether the circumstances in Article XXI(b) are present necessarily relates to the Member’s appreciation of its essential security interests. They are inextricably linked. And they are textually linked in Article XXI(b).

6. We have puzzled over why Norway has been willing to read Article XXI(b) contrary to its text. For example, Norway would treat elements of Article XXI(b) as separate conditions, even calling them “clauses”, when they are not so drafted. We may have seen an answer in Article 39 of the Agreement Establishing the European Free Trade Association (EFTA Agreement), that reflects a *separate* clause, *without* the key “which it considers” language in Article 39(b)⁴

² Setting the course for Norwegian foreign and security policy, Meld. St. 36 (2016-2017), Report to the Storting (white paper), Recommendation of 21 April 2017 from the Ministry of Foreign Affairs, approved in the Council of State the same day (White paper from the Solberg Government), at 19 <https://www.regjeringen.no/contentassets/0688496c2b764f029955cc6e2f27799c/en-gb/pdfs/stm201620170036000engpdfs.pdf> (US-75) (italics added).

³ Setting the course for Norwegian foreign and security policy, Meld. St. 36 (2016-2017), Report to the Storting (white paper), Recommendation of 21 April 2017 from the Ministry of Foreign Affairs, approved in the Council of State the same day (White paper from the Solberg Government), at 44 <https://www.regjeringen.no/contentassets/0688496c2b764f029955cc6e2f27799c/en-gb/pdfs/stm201620170036000engpdfs.pdf> (US-75) (italics added).

⁴ Agreement Establishing the European Free Trade Association, Article 39 (US-73).

7. We have also been puzzled about Norway’s very narrow reading of an “other emergency in international relations” in Article XXI(b). We may have seen another answer to this question in Article 39(c) of the EFTA Agreement, that substitutes for “other emergency in international relations” the phrase “serious international tension constituting threat of war.”⁵

8. But that grammatical construction of EFTA Article 39(b), and those words of EFTA Agreement Article 39(c), are *not* present in Article XXI(b) of the GATT 1994.

9. We have invoked Article XXI in relation to the challenged measures. We have invoked *all* of Article XXI(b). Although Article XXI does not 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.

10. 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. The traditional U.S. understanding of Article XXI is wholly supportive of the reciprocal and mutually advantageous commitments that Members have exchanged in the WTO.

11. 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

⁵ Agreement Establishing the European Free Trade Association, Article 39(c) (US-73).

taken – but which have not previously been subject to WTO disputes – are now being brought into WTO dispute settlement.

12. 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.

13. 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.