

***UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINUM PRODUCTS  
(DS556)***

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

**Closing Statement of the United States**

**November 12, 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 Switzerland and the United States. Switzerland and the United States both support greater transparency in WTO dispute settlement.<sup>1</sup> 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 Switzerland has itself invoked its right to take action under Article XXI, and there Switzerland appeared to also take a broad view of

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

“security.”<sup>2</sup> We note also that Switzerland appears to still take a broad view of “security” to include issues such as “economy and globalization” as well as “demography and migration.”<sup>3</sup>

5. We are puzzled as to why Switzerland takes a different position in this dispute; we suggest that it may be due to their differing policy preferences and interests.

6. 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 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.

7. 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.

8. 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.

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<sup>2</sup> Trade Policy Review Body, Trade Policy Review of Switzerland, Minutes of Meeting, May 28-29, 1996, WT/TPR/M/13 (July 3, 1996), para. 78.

<sup>3</sup> Switzerland Federal Department of Foreign Affairs, New Security-policy challenges (US-78).

9. 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.

10. 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.