

*UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINUM PRODUCTS
(DS564)*

First Substantive Meeting of the Panel with the Parties

Closing Statement of the United States

November 15, 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. 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.
3. As we referenced in our opening statement, the Panel has heard a wide spectrum of interpretations of Article XXI(b) from the complaining Members. These Members have presented various views as to how this one clause should be broken up, how different elements of Article XXI(b) should (or should not) be subject to review, and what level of "deference" or "discretion" or "margin of appreciation" should be afforded to the acting Member as to different elements. The United States again submits that these varying interpretations have emerged because the complaining Members are attempting to interpret Article XXI(b) in a manner that is not based on the ordinary meaning of its terms, in their context, but rather to fit with their different policy views.

4. As the United States has explained, the ordinary meaning of Article XXI(b) is that each of the elements in Article XXI(b) is part of a single relative clause. Use of this single relative clause necessarily implicates a Member's judgment – or the Member's consideration – with respect to all these elements.

5. 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.

6. 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. The interpretation of Article XXI(b) that is in accordance with the customary rules of treaty interpretation supports the rule of law in the international trading system, and this interpretation – which is the one that the U.S. has offered over the past two days – properly respects the balance of rights and obligations agreed to by the Members.

7. 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.

8. 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.

9. 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.