

UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINUM PRODUCTS

(DS552)

**COMMENTS OF THE UNITED STATES OF AMERICA
ON THE COMPLAINANT’S RESPONSES TO
THE PANEL’S ADDITIONAL QUESTIONS TO THE PARTIES**

October 28, 2020

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SHORT TITLE	FULL CITATION
<i>Mexico – Corn Syrup (Article 21.5 – US) (AB)</i>	Appellate Body Report, <i>Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS132/AB/RW, adopted 21 November 2001
<i>Saudi Arabia – Protection of IPR</i>	Panel Report, <i>Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights</i> , WT/DS567/R, circulated 16 June 2020
<i>US – 1916 Act (AB)</i>	Appellate Body Report, <i>United States – Anti-Dumping Act of 1916</i> , WT/DS136/AB/R, WT/DS162/AB/R, adopted 26 September 2000

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U.S. First Written Submission	
US-1	Section 232 statute, 19 U.S.C. 1862
US-2	Section 232 Regulations, 15 C.F.R., Part 705
US-3	U.S. President, “Memorandum on Steel Imports and Threats to National Security,” Weekly Compilation of Presidential Documents, April 20, 2017, https://www.govinfo.gov/content/pkg/DCPD-201700259/pdf/DCPD-201700259.pdf
US-4	U.S. President, “Memorandum on Aluminum Imports and Threats to National Security,” Weekly Compilation of Presidential Documents, April 27, 2017, https://www.govinfo.gov/content/pkg/DCPD-201700284/pdf/DCPD-201700284.pdf
US-5	DOC, Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel, 82 Fed. Reg. 19205 (Apr. 26, 2017)
US-6	DOC, Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Aluminum, 82 Fed. Reg. 21509 (May 9, 2017)
US-7	U.S. Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, The Effect of Imports of Steel on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended (Jan. 11, 2018)
US-8	U.S. Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, The Effect of Imports of Aluminum On the National Security, An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended (Jan. 17, 2018)
US-9	Presidential Proclamation 9705 of March 8, 2018, Adjusting Imports of Steel into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States, 83 Fed. Reg. 11625 (Mar. 15, 2018)
US-10	Presidential Proclamation 9704 of March 8, 2018, Adjusting Imports of Aluminum into the United States, including the Annex, To Modify Chapter 99 of the Harmonized Tariff Schedule of the United States, 83 Fed. Reg. 11619 (Mar. 15, 2018)

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US-11	Presidential Proclamation 9711 of March 22, 2018, Adjusting Imports of Steel into the United States, amending Proclamation 9705 of March 8, 2018, 83 Fed. Reg. 13361 (Mar. 27, 2018)
US-12	Presidential Proclamation 9710 of March 22, 2018, Adjusting Imports of Aluminum into the United States, amending Proclamation 9704 of March 8, 2018, 83 Fed. Reg. 13355 (Mar. 28, 2018)
US-13	Presidential Proclamation 9740 of April 30, 2018, Adjusting Imports of Steel into the United States, amending Proclamation 9705 of March 8, 2018, as amended by Proclamation 9711, 83 Fed. Reg. 20683 (May 7, 2018)
US-14	Presidential Proclamation 9739 of April 30, 2018, Adjusting Imports of Aluminum into the United States, amending Proclamation 9704 of March 8 2018, as amended by Proclamation 9710 of March 22, 2018, 83 Fed. Reg. 20677 (May 7, 2018)
US-15	Presidential Proclamation 9759 of May 31, 2018, Adjusting Imports of Steel into the United States, amending Proclamation 9705 of March 8, 2018, as amended by Proclamation 9711 of March 22, 2018 and Proclamation 9740 of April 20, 2018, 83 Fed. Reg. 25857 (June 5, 2018)
US-16	Presidential Proclamation 9758 of May 31, 2018, Adjusting Imports of Aluminum into the United States, amending Proclamation 9704 of March 8, 2018, as amended by Proclamation 9710 of March 22, 2018 and Proclamation 9739 of April 30, 2018, 83 Fed. Reg. 25849 (June 5, 2018)
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US-18	Presidential Proclamation 9777 of Aug. 29, 2018, Adjusting Imports of Steel Into the United States, 83 Fed. Reg. 45025 (Sep. 4, 2018)
US-19	Presidential Proclamation 9776 of Aug. 29, 2018, Adjusting Imports of Aluminum Into the United States, 83 Fed. Reg. 45019 (Sep. 4, 2018)
US-20	Department of Commerce, Bureau of Industry and Security, 15 CFR Part 705, Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum”, 83 Fed. Reg. 12106 (Mar. 19, 2018)
US-21	Department of Commerce, Bureau of Industry and Security, 15 CFR Part 705, Interim Final Rule, Submissions of Exclusion Requests and

EXHIBIT	DESCRIPTION
	Objections to Submitted Requests for Steel and Aluminum, 83 Fed. Reg. 46026 (Sep. 11, 2018)
US-22	<i>The New Shorter Oxford English Dictionary</i> , 4th edn, L. Brown (ed.) (Clarendon Press, 1993) (excerpts)
US-23	<i>Draft Articles on the Law of Treaties with Commentaries (1966)</i> , YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, 1966, vol. II
US-24	GATT Contracting Parties Third Session, Agenda (Revised 8 th April), GATT/CP.3/2/Rev.2 (Apr. 8, 1949)
US-25	Statement by the Head of the Czechoslovak Delegation, Mr. Zdeněk Augenthaler to Item 14 of the Agenda, GATT/CP.3/33 (May 30, 1949)
US-26	Reply by the Vice-Chairman of the United States Delegation, Mr. John W. Evans, to the Speech by the Head of the Czechoslovak Delegation under Item 14 of the Agenda, GATT/CP.3/38 (June 2, 1949)
US-27	Summary Record of the Twenty-Second Meeting, GATT/CP.3/SR.22 (June 8, 1949) & Corrigendum to the Summary Record of the Twenty-Second Meeting, GATT/CP.3/SR.22/Corr.1 (June 20, 1949)
US-28	GATT, Decision of 8 June 1949, BISD vol. II at 28
US-29	Note by the Secretariat, Article XXI, Negotiating Group on GATT Articles, MTN/GNG/NG7/W/16 (Aug. 18, 1987)
US-30	Ian Sinclair, <i>THE VIENNA CONVENTION ON THE LAW OF TREATIES</i> , Manchester University Press, 2nd edition (1984) (excerpt)
US-31	Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/33 (Oct. 31, 1946), Annexure 11, United States Draft Charter
US-32	Preparatory Committee of the International Conference on Trade and Employment, E/PC/T/C.II/W.5 (Oct. 31, 1946)
US-33	Report of the Drafting Committee of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/34 (Mar. 5, 1947)
US-34	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/W/23 (May 6, 1947)
US-35	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/W/236 (July 4, 1947).

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US-36	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Report of the Committee on Chapters I, II and VIII, E/PC/T/139 (July 31, 1947)
US-37	Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/180 (Aug. 19, 1947)
US-38	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, (Draft) General Agreement on Tariffs and Trade, E/PC/T/189 (Aug. 30, 1947)
US-39	United Nations Conference on Trade and Employment, An Informal Summary of the ITO Charter, E/CONF.2/INF.8 (Nov. 21, 1947)
US-40	Summary Record of the Thirty-Third Meeting of Commission A, Second Session of the Preparatory Committee, E/PC/T/A/SR/33 (July 24, 1947)
US-41	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Verbatim Report, E/PC/T/A/PV/33 (July 24, 1947)
US-42	United Nations Conference on Trade & Employment, Committee VI: Organization, Report of Working Party of Sub-Committee G of Committee VI on Chapter VIII, E/CONF.2/C.6/W.30, at 2 (Jan 9, 1948)
US-43	United Nations Conference on Trade & Employment, Sixth Committee: Organization, Sub-Committee on Chapter VIII (Settlement of Differences – Interpretation), January 13, 1948, E/CONF.2/C.6/W.41 (Jan. 13, 1948)
US-44	United Nations Conference on Trade & Employment, Sixth Committee: Organization, Amendment to Article 94 Proposed by the United Kingdom Delegation, E/CONF.2/C.6/W.48 (Jan. 16, 1948)
US-45	Final Act of the United Nations Conference on Trade and Employment (excerpt)
US-46	United Nations Conference on Trade & Employment, Sixth Committee, Notes of the Eighth Meeting (Article 94), E/CONF.2/C.6/W.123 (Feb. 28, 1948)
US-47	United Nations Conference on Trade & Employment, Sixth Committee, Notes of the Fourth Meeting (Article 94), E/CONF.2/C.6/W.60 & E/CONF.2/C.6/W.60/Corr.1 (Jan. 20, 1948)

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US-48	U.S. Delegation (Internal), Second Meeting of the U.N. Preparatory Committee for the International Conference on Trade and Development Geneva, Minutes of Delegation Meeting, July 2, 1947, NARA, Record Group 43, International Trade Files, Box 133, Folder marked “Minutes U.S. Delegation (Geneva 1947) June 21 - July 30, 1947.” – 8:00 p.m. meeting – July 2, 1947
US-49	U.S. Delegation (Internal), Second Meeting of the U.N. Preparatory Committee for the International Conference on Trade and Development Geneva, Memorandum from Seymour J. Rubin dated July 14, 1947, NARA, Record Group 43, International Trade Files, Box 133, Folder marked “Minutes U.S. Delegation (Geneva 1947) June 21 – July 30, 1947.” – July 14, 1947, Memo from Seymour J. Rubin, Legal Advisor of US Delegation, regarding Thorp and Neff Memo
US-50	<i>Young Loan Arbitration</i> , (UK, US, France, Belgium and Switzerland v. Federal Republic of Germany), Arbitral Award of 16 May 1980, ILR 59 (1980)
US-51	Permanent Court of Arbitration, <i>Iron Rhine ('Ijzeren Rhin') Railway Arbitration (Belgium v. Netherlands)</i> , 27 RIAA 35, (2005)
US-52	U.S. Delegation (Internal), Department of State, Memorandum of Conversation, “Security Exceptions to Proposed ITO Charter” June 17, 1946, NARA, Record Group 43, International Trade Files, In Folder “ITO Charter – Security” (June 17, 1946)
US-53	U.S. Delegation (Internal), Services Economic Disarmament Argument Draft (1946)
US-54	U.S. Delegation (Internal), Letter from Coppock to Wilcox, “National Security Provisions in the Draft Charter” July 3, 1946, NARA, Record Group 43, International Trade Files, Box 13, In Folder “ITO Charter – Security” July, 3 1946
US-55	Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment - Draft Charter, E/PC/T/A/SR/186 (Sep. 10, 1947)
US-56	U.S. Delegation (Internal), Second Meeting of the U.N. Preparatory Committee for the International Conference on Trade and Development Geneva, Minutes of Delegation Meeting, July 4, 1947, NARA, Record Group 43, International Trade Files, Box 133, Folder marked “Minutes U.S. Delegation (Geneva 1947) June 21 – July 30, 1947.” – July 4, 1947, at 2

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US-57	Summary Record of the Twelfth Session, SR.19/12 (Dec. 21, 1961)
US-58	Report by the Working Party on Accession of the United Arab Republic, L/3362 (Feb. 25, 1970)
US-59	GATT Council, Minutes of Meeting, C/M/157 (June 22, 1982)
US-60	Communication to the Members of the GATT Council, L/5319/Rev.1 (May 15, 1982)
US-61	GATT Council, Minutes of Meeting, C/M/159 (Aug. 10, 1982)
US-62	Decision Concerning Article XXI Of The General Agreement, L/5426 (Dec. 2, 1982)
US-63	Minutes of Meeting of May 29, 1985, C/M/188 (June 28, 1985)
US-64	Minutes of Meeting of March 12, 1986, C/M/196 & C/M/196/Corr.1(April 2, 1986)
US-65	GATT Panel Report, <i>United States – Trade Measures Affecting Nicaragua</i>
US-66	Minutes of Meeting of November 5-6, 1986, C/M/204 (Nov. 19, 1986)
US-67	Tom Miles, <i>Adjudicator says any security defense of U.S. auto tariffs at WTO 'very difficult'</i> , REUTERS BUSINESS NEWS (May 27, 2019), https://www.reuters.com/article/us-usa-trade-autos-wto-idUSKCN1SX1I7
US-68	<i>The New Shorter Oxford English Dictionary</i> , 4th edn, L. Brown (ed.) (Clarendon Press, 1993) (excerpts)
US-69	Black's Law Dictionary, ed. Bryan A. Garner, Eighth edition, 2004
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US-70	Letter to the Chairman of the Panel on U.S. Trade Measures Affecting Nicaragua from the Office of the United States Trade Representative (June 4, 1986) (excerpt)
US-71	Intentionally Omitted
US-72	G20 Global Steel Forum Report (Nov. 30, 2017), https://www.ghy.com/images/uploads/default/Global-Steel-Forum-Report-Nov2017.pdf (excerpt)

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US-73	Agreement Establishing the European Free Trade Association & Treaty on the Functioning of the European Union (excerpts)
US-74	National Security Strategy of the United States of America (Dec. 2017)
US-75	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)
US-76	Intentionally Omitted
US-77	Intentionally Omitted
US-78	Intentionally Omitted
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US-79	WTO Committee on Safeguards, Notification under Article 12.1(b) of the Agreement on Safeguards on Finding a Serious Injury or Threat Thereof Caused by Increased Imports, G/SG/N/8/IDN/16/Suppl.1, G/SG/N/10/IDN/16/Suppl.1, & G/SG/N/11/IDN/14 (July 28, 2014)
US-80	WTO Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods, 10 November 2017, G/C/M/130 (Mar. 22, 2018),
US-81	WTO Council on Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods, 23-26 March 2018, G/C/M/131 (Oct. 5, 2018)
US-82	WTO Committee on Safeguards, Communication from the United States, G/SG/168 (Apr. 5, 2018)
US-83	U.S. Mission to International Organizations in Geneva, Ambassador Dennis Shea's Statement at the WTO General Council (May 8, 2018),
US-84	Statements by the United States at the Meeting of the WTO Dispute Settlement Body, Geneva, October 29, 2018, November 21, 2018, and December 4, 2018 (excerpts)
US-85	WTO Committee on Market Access, Notification Pursuant to the Decision on Notification Procedures for Quantitative Restrictions (G/L/59/Rev.1), G/MA/QR/N/USA/4 (Oct. 3, 2018),
US-86	<i>The New Shorter Oxford English Dictionary</i> , 4th edn, L. Brown (ed.) (Clarendon Press, 1993) (excerpts)

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US-87	Negotiating Group on Safeguards, Drafting History of Article XIX and Its Place in The GATT: Background Note by the Secretariat, MTN.GNG/NG9/W/7 (Sep. 16, 1987)
US-88	<i>The Oxford French Dictionary</i> , 4 th edn, (Oxford University Press, 2007)
US-89	<i>The Oxford Spanish Dictionary</i> , 1 st edn, (Oxford University Press, 1994)
US-90	General Agreement on Tariffs and Trade Second Session of the Contracting Parties, Rules of Procedure GATT/CP.2/3 Rev.1 (Aug. 16, 1948)
US-91	General Agreement on Tariffs and Trade Rules of Procedure for Sessions of the Contracting Parties GATT/CP/30 (Sept. 6, 1949)
US-92	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Corrigendum to Verbatim Report, E/PC/T/A/PV/33.Corr.3 (July 30, 1947)
US-93	ENGLISH GRAMMAR (Sydney Grenbaum ed., Oxford Univ. Press, 1996)
US-94	THE CLASSIC GUIDE TO BETTER WRITING (Ruldolf Flesch & A. H. Lass, HarperPerrenial, 1996)
US-95	MERRIAM-WEBSTER'S GUIDE TO PUNCTUATION AND STYLE 233 (1st edn. 1995) (excerpts)
US-96	HARPER'S ENGLISH GRAMMAR (Harper & Row, 1966) (excerpts)
US-97	Ian Sinclair, THE VIENNA CONVENTION ON THE LAW OF TREATIES, Manchester University Press, 2nd edn (1984) (excerpt)
US-98	Analytical Index: Guide to GATT Law and Practice, Vol. 2 (Geneva, WTO, 1994)
US-99	Bradly J. Condon, <i>The Concordance of Multilingual Legal Texts at the WTO</i> , 33 Journal of Multilingual and Multicultural Development 6, App. 1 (2012)
US-100	WTO Analytical Index: Language incorporating the GATT 1947 and other instruments into GATT 1994, https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_incorp_oth.pdf
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US-102	Instrumentos Básicos y Documentos Diversos (IBDD), Vol. I (revised) (1955) (excerpt)
US-103	Decision of the Trade Negotiations Committee (TNC) on “Corrections to be Introduced in the General Agreement on Tariffs and Trade” MTN.TNC/41 (Mar 30, 1994)
US-104	Instrumentos Básicos y Documentos Diversos (IBDD), Vol. III (1958) (excerpt)
US-105	Instrumentos Básicos y Documentos Diversos (IBDD), Vol. IV, 41 (1969) (excerpt)
US-106	ADVANCED FRENCH GRAMMAR 60 (Cambridge Univ. 1999) (excerpt)
US-107	OPPENHEIM’S INTERNATIONAL LAW, vol. I (excerpt)
US-108	Vienna Convention on the Law of Treaties
US-109	U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517
US-110	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, Oct. 10, 1980, 1342 U.N.T.S. 137
US-111	U.N. Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, 1489 U.N.T.S. 3
US-112	U.N. Convention on the Use of Electronic Communications in International Contracts, Nov. 23, 2005, 2898 U.N.T.S. 3
US-113	Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37
US-114	U.N. Convention on Independent Guarantees and Stand-By Letters of Credit, Dec. 11, 1995, 2169 U.N.T.S. 163
US-115	U.N. Convention on the Carriage of Goods by Sea, Mar. 31, 1978, 1695 U.N.T.S. 3
US-116	Convention on Registration of Objects Launched into Outer Space, Nov. 12, 1974, 1023 U.N.T.S. 15

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US-117	U.N. Convention on Conditions for Registration of Ships, Feb. 7, 1986, 26 I.L.M. 1229
US-118	Convention on the Limitation Period in the International Sale of Goods, June 14, 1974, 1511 U.N.T.S. 3
US-119	International Sugar Agreement, Mar. 20, 1992, 1703 U.N.T.S. 203
US-120	U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3
US-121	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crime Against Humanity, Nov. 26, 1968, 754 U.N.T.S. 73
US-122	James Crawford, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW (8th ed. 2012)
US-123	UNIDIR, The United Nations, Cyberspace and International Peace and Security: Responding to Complexity in the 21st Century (2017) (excerpt)
US-124	International Telecommunication Union (ITU), Definition of cybersecurity, https://www.itu.int/en/ITU-T/studygroups/com17/Pages/cybersecurity.aspx
US-125	United Nations General Assembly, Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (July 30, 2010) A/65/201
US-126	United Nations General Assembly, Resolution adopted by the General Assembly on 5 December 2016, A/RES/71/28
US-127	New Zealand Government, New Zealand's cybersecurity strategy (2019) (excerpt)
US-128	Australian Government, Australia's Cyber Security Strategy (2016) (excerpt)
US-129	Turkey's National Cyber Security Strategy (2016)
US-130	National Cyber Security Strategy for Norway (2019) (excerpt)
US-131	India, Call for Comments, National Cyber Security Strategy 2020 (2019)
US-132	India, National Cyber Security Policy 2013

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US-133	The Ministry of Foreign Affairs of the Netherlands, Working Worldwide for the Security of the Netherlands: An Integrated International Security Strategy 2018-2022, at 19 (2018) (excerpt)
US-134	The Netherlands Government, National Security Strategy (2019)
US-135	Switzerland, National Strategy for the Protection of Switzerland against Cyber Risks 2018-2022, at 1 (Apr. 2018)
US-136	ENISA, NCSS Good Practice Guide (Nov. 2016) (excerpt)
US-137	Canada's National Cyber Security Action Plan 2019-2024 (2019) (excerpt)
US-138	National Security Law of the People's Republic of China (2015)
US-139	Cybersecurity Law of the People's Republic of China (2017)
US-140	Russian National Security Strategy (Dec. 2015)
US-141	Tass.com (Russian News Agency), Kremlin says cyber attacks against Russia perpetually initiated from US territory (Feb. 27, 2019), https://tass.com/world/1046641
US-142	National Security Strategy of the United States of America (Dec. 2017)
US-143	National Cyber Strategy of the United States of America (Sept. 2018)
US-144	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Amendment Proposed by the Australian Delegation, Article 35 – paragraph 2, E/PC/T/W/170 (June 6, 1947)
US-145	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Summary Record of the 35 th meeting of Commission A, held on Monday 11 August 1947, E/PC/T/A/SR/35 (Aug. 12, 1947)
US-146	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Chapter V, Articles 34, 35 and 38, Report by the Sub-Committee for submission to Commission A on Monday, 4 th August, 1947, E/PC/T/146 (July 31, 1947)
US-147	Report of the Tariff Negotiations Working Party, General Agreement on Tariffs and Trade, E/PC/T/135 (July 24, 1947)

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US-148	Second Session of the Preparatory Committee of the United Nations Conference on Trade And Employment, Verbatim Report, E/PC/T/EC/PV.2/22 (Aug. 22, 1947)
US-149	Negotiating Group on GATT Articles, Meeting of 3 March 1987, Note by the Secretariat, MTN.GNG/NG7/1/Rev.1 (Apr. 3, 1987)
US-150	Negotiating Group on GATT Articles, Article XXI Proposal by Nicaragua, MTN.GNG/NG7/W/48 (June 18, 1988).
US-151	Negotiating Group on GATT Articles, Communication from Argentina, MTN.GNG/NG7/W/44 (Feb. 19, 1988)
US-152	Negotiating Group on GATT Articles, Communication from Nicaragua, MTN.GNG/NG7/W/34 (Nov. 12, 1987)
US-153	Negotiating Group on GATT Articles, Note on Meeting of 27-30 June 1988, MTN.GNG/NG7/8 (July 21, 1988)
US-154	Third Report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur (A/CN.4/167 and Add.1-3)
US-155	WTO, A Handbook of the WTO Dispute Settlement System (2nd edn. 2017) (excerpt)
US-156	Summary Record of Thirty-Seventh Meeting, Aug. 8, 1949, GATT/CP.3/SR.37 (Aug. 8, 1949)
US-157	Austrian Security Strategy, Security in a new decade – Shaping security (2013) (excerpt)
US-158	Defence Ministry of the Republic of Indonesia, Defence White Paper (2015) (excerpt)
US-159	The Federal Government, White Paper on German Security Policy and the Future of the Bundeswehr (excerpt)
US-160	Japan, National Security Strategy (Dec. 17, 2013) (excerpt)
US-161	Netherlands Government, National Risk Profile 2016 (excerpt)
US-162	New Zealand Government, Strategic Defence Policy Statement 2018 (excerpt)
US-163	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

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	Council of State the same day (White paper from the Solberg Government) (excerpts)
US-164	Opening Ceremony of the 12th Asia-Pacific Programme for Senior National Security Officers (APPSNO) - Speech by Mrs. Josephine Teo, Minister for Manpower and Second Minister for Home Affairs (May 7, 2018)
US-165	Spain, The National Security Strategy, Sharing a Common Project (2013) (excerpt)
US-166	Turkey, Ministry of Foreign Affairs, Turkey's Perspectives and Policies on Security Issues
US-167	Negotiating Group on Safeguards, Communication from Switzerland, MTN.GNG/NG9/W/10 (Oct. 5, 1987)
US-168	Negotiating Group on Safeguards, Communication by the Nordic Countries, MTN.GNG/NG9/W/16 (May 30, 1988)
US-169	<i>The Oxford Spanish Dictionary</i> , 2 st edn (revised), (Oxford University Press, 2001) (excerpt)
US-170	Ortografía Y Gramática, https://gramatica.celeberrima.com/
US-171	SIDE BY SIDE SPANISH & ENGLISH GRAMMAR (3rd edn. 2012) (excerpt)
US-172	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Verbatim Report, E/PC/T/A/PV/12 (June 12, 1947)
US-173	Summary Record of the Twelfth Meeting, E/PC/T/A/SR/12 (June 12, 1947)
U.S. Second Written Submission	
US-174	Collins Dictionary
US-175	Ian Sinclair, <i>The Vienna Convention on the Law of Treaties</i> , Manchester University Press, 2nd edn (1984) (excerpt)
US-176	Intentionally Omitted
US-177	THE NEW YORK PUBLIC LIBRARY WRITER'S GUIDE TO STYLE AND USAGE (1994)

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US-178	The Grammar Bible: Everything You Always Wanted to Know About Grammar but Didn't Know Whom to Ask 146-147 (2nd edn 2004)
US-179	Intentionally Omitted
US-180	Intentionally Omitted
US-181	Treaty of Rome (excerpt)
US-182	Treaty on the Functioning of the European Union (excerpt)
US-183	Communication from Switzerland, MTN.GNS/W/102 (June 7, 1990)
US-184	Communication from Brazil, Chile, Colombia, Cuba, Honduras, Jamaica, Nicaragua, Mexico, Peru, Trinidad and Tobago and Uruguay, MTN.GNS/W/95 (Feb. 26, 1990)
US-185	Communication from the United States, MTN.GNS/W/75 (Oct. 17, 1989)
US-186	Proposal by the European Community, MTN.GNS/W/105 (June 18, 1990)
US-187	Communication from Japan, MTN.GNS/W/107 (July 10, 1990)
US-188	Draft Multilateral Framework for Trade in Services, MTN.GNS/35 (July 23, 1990)
US-189	Trade Negotiations Committee, Draft Final Act Embodying The Results of the Uruguay Round of Multilateral Trade Negotiations, Revision, MTN.TNC/W/35/Rev.1 (Dec. 3, 1990) (excerpts)
US-190	Trade Negotiations Committee, Draft Final Act Embodying The Results of the Uruguay Round of Multilateral Trade Negotiations, MTN.TNC/W/FA (Dec. 20, 1991) (excerpts)
US-191	Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, Status of Work in the Negotiating Group, Chairman's Report to the GNG, MTN.GNG/NG11/W/76 (July 23, 1990)
US-192	Communication from Nicaragua, MTN.GNG/NG13/W/15 (Nov. 6, 1987)
US-193	Negotiating Group on Dispute Settlement, Meeting of November 20, 1987, Note by the Secretariat, MTN.GNG/NG13/5 (Dec. 7, 1987)

EXHIBIT	DESCRIPTION
US-194	Negotiating Group on Dispute Settlement, Meeting of November 20, 1987, Note by the Secretariat, Addendum, MTN.GNG/NG13/5/Add.1 (Apr 29, 1988)
US-195	Negotiating Group on Dispute Settlement, Meeting of 25 June, 1987, Note by the Secretariat, MTN.GNG/NG13/2 (July 15, 1987)
US-196	Negotiating Group on Dispute Settlement, Meeting of July 11, 1988, Note by the Secretariat, MTN.GNG/NG13/9, para. 7 (July 21, 1988)
US-197	Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America (excerpt)
US-198	Tokyo Round Code on Government Procurement (1979) (excerpt)
US-199	Agreement on Government Procurement, Revised Text (1988) (excerpt)
US-200	Agreement on Government Procurement, Article XXIII (1994) (excerpt)
US-201	Agreement on Government Procurement (2012) (excerpt)
US-202	Intentionally Omitted
US-203	Ortografía Y Gramática (excerpt)
US-204	The Oxford Spanish Dictionary, 2nd edn, (University Press, 2001)
US-205	The New Shorter Oxford English Dictionary, 4th edn., L. Brown (ed.) (Clarendon Press, Oxford, 1993) (excerpts)
US-206	GATT Contracting Parties, Summary Record of the Fourteenth Meeting, GATT/CP.5/SR.14 (Nov. 30, 1950)
US-207	Schedule XX – United States, Withdrawal of Item 1526(a) under the Provisions of Article XIX, GATT/CP/83 (Oct. 19, 1950)
US-208	<i>United States – Fur Felt Hats</i> (GATT Panel)
US-209	Preparatory Committee of the International Conference on Trade and Employment, Verbatim Report of the Seventh Meeting, E/PC/T/C.II/PV/7 (Nov. 1, 1946)
US-210	Preparatory Committee of the United Nations Conference on Trade and Employment, Verbatim Report of the Ninth Meeting, E/PC/T/C.II/RO/PV/9 (Nov. 9, 1946)

EXHIBIT	DESCRIPTION
US-211	Preparatory Committee of the International Conference on Trade and Employment, Verbatim Report of the Eleventh Meeting, E/PC/T/C .II/PRO/PV/11 (Nov. 14, 1946)
US-212	Preparatory Committee of the International Conference on Trade and Employment, Addition to Report of Sub-Committee Procedures, E/PC/T/C.II/57/Add.1 (Nov. 20, 1946)
US-213	Work Already Undertaken in the GATT on Safeguards, MTN.GNG/NG9/W/1, (Apr. 7, 1987),
US-214	Declaration of Ministers Approved at Tokyo on 14 September 1973
US-215	Negotiating Group on Safeguards, Draft Text by the Chairman, MTN.GNG/NG9/W/25 (June 27, 1989)
US-216	Negotiating Group on Safeguards, Draft Text by the Chairman, MTN.GNG/NG9/W/25/Rev.1 (January 15, 1990)
US-217	Negotiating Group on Safeguards, Chairman's Report on Status of Work in the Negotiating Group, MTN.GNG/NG9/W/25/Rev.2 (July 13, 1990)
US-218	Negotiating Group on Safeguards, Additional United States' Proposals on Safeguards, MTN.GNG/NG9/W/31 (Oct. 31, 1990)
US-219	Negotiating Group on Rule Making and Trade-Related Investment Measures, Safeguards, Note by the Secretariat MTN.GNG/RM/W/3 (June 6, 1991)
US-220	Negotiating Group on Safeguards, Draft Text of an Agreement, MTN.GNG/NG9/W/25/Rev.3 (Oct. 31, 1990)
US-221	Agreement on the European Economic Area (excerpt)
U.S. Responses to the Panel's Additional Questions	
US-222	<i>The New Shorter Oxford English Dictionary</i> , 4th edn, L. Brown (ed.) (Clarendon Press, 1993) (excerpts)
US-223	Intentionally Omitted
US-224	Intentionally Omitted
US-225	Intentionally Omitted
US-226	WILLIAM STRUNK JR. & E.B. WHITE, <i>THE ELEMENTS OF STYLE</i> (4th ed. 1999) (excerpt)

EXHIBIT	DESCRIPTION
US-227	Kingdom of Saudi Arabia, Statement before the Dispute Settlement Body, <i>National Security in WTO dispute Settlement Proceeding DS567</i> (July 29, 2020)
US-228	UNITED STATES TRADE REPRESENTATIVE, REPORT ON THE APPELLATE BODY OF THE WORLD TRADE ORGANIZATION (Feb. 2020) (excerpt).
U.S. Comments on Complainant’s Responses to the Panel’s Additional Questions	
US-229	Intentionally Omitted
US-230	Intentionally Omitted
US-231	Intentionally Omitted
US-232	Intentionally Omitted
US-233	Intentionally Omitted
US-234	Intentionally Omitted
US-235	Intentionally Omitted
US-236	Intentionally Omitted
US-237	Intentionally Omitted
US-238	Intentionally Omitted

1. The United States comments below on the complainant's responses to the Panel's additional questions. The absence of a comment on any particular answer or argument by the complainant should not be construed as agreement with the complainant's arguments.

TO ALL

Question 82. In relation to the requirement under Article 6.2 of the DSU to "identify the specific measures at issue", is it sufficient to identify a legal instrument in a panel request without explaining the challenged substantive content of such legal instrument? Please respond with reference to the panel request in this dispute.

2. The United States responds to the Panel's Questions 82 and 83 together, at Question 83, below.

Question 83. Does the requirement to "identify the specific measures at issue" in a panel request also encompass the identification of the elements/components/forms that constitute a broader/complex measure at issue? Please respond in light of due process considerations under Article 6.2 of the DSU.

3. The United States responds to the Panel's Questions 82 and 83 together.

4. Norway comments that "after two rounds of written submissions, a substantive meeting, and one round of questioning from the Panel, the United States has never suggested that Norway failed to comply with Article 6.2 by insufficiently identifying the measures at issue."¹ Such an observation does not establish that Norway's panel request complies with Article 6.2, however. The terms of reference in a dispute establish the scope of a panel's legal authority under the DSU, the examination and confirmation of which is thus a threshold issue, distinct from the merits of a claim. Therefore, a panel not only may raise questions regarding these issues, but must do so if its authority with respect to a particular claim is in doubt.

5. Regardless of whether a respondent has expressed concerns under Article 6.2, when in the course of a proceeding these concerns arise, or whether the respondent is perceived to understand the claims brought against it, the Panel may only address "the matter" contained in the panel request, pursuant to the standard terms of reference established by the DSB pursuant to DSU Article 7.1. Therefore, the Panel may appropriately raise questions regarding compliance with Article 6.2 if it perceives those issues are presented in a particular dispute. This understanding of the plain text of Articles 6.2 and 7.1 of the DSU is reflected in the findings of previous reports addressing this issue.² Under Article 7.1, the DSB charges the panel with terms of reference "to examine the matter;" the DSB does not charge the panel with terms of reference "to examine the matter and other matters, provided the responding

¹ Norway's Response to the Panel's Question 83, para. 14.

² *US – 1916 Act (AB)*, n.30; *see Mexico – Corn Syrup (Article 21.5 – US) (AB)*, para. 36.

party is not prejudiced.” A complainant must comply with the terms of Article 6.2 in its request for the establishment of a Panel, and those terms remain the same, whether or not a respondent raises arguments under Article 6.2.

6. With respect to the requirements of Article 6.2, Norway is incorrect in asserting that “identifying a legal instrument in a panel request is sufficient to ‘identify the specific measures at issue.’”³ As the United States explained in its response to the Panel’s Question 82, where a legal instrument sets out numerous different actions by a Member, merely naming the instrument without more (for example, without specifying the potential action of concern or without clarifying the complaint encompasses the entirety of the instrument) may not be sufficient to identify the “specific measure at issue.” Therefore, whether a particular measure has been sufficiently identified in a panel request must be determined on a case-by-case basis.

Question 84. How does the characterisation of various actions and/or omissions as either (i) elements/components of a single complex measure, or as (ii) separate measures affect the Panel's assessment or its findings and recommendations to the DSB?

7. Norway has confirmed that it “does not challenge ‘component part[s] of a single, broader measure’”⁴ and that “each of the measures identified in its panel request is ‘challenged on its own terms, and not as a component of a single, broader measure.’”⁵ As the United States explained in its response to the Panel’s Question 84, the panel’s findings and recommendations must therefore be made with respect to the specific separate measures identified.

Question 85. In relation to the requirement under Article 6.2 of the DSU to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly", is it sufficient to indicate the relevant legal provisions and reproduce their terms after separate identification of the measures at issue? Please respond with reference to the panel request in this dispute and bearing in mind the distinction between claims and arguments in WTO dispute settlement.

8. The United States refers the Panel to its own response to the Panel’s Question 85.

TO COMPLAINANT

Question 86. With respect to any challenges against (i) potential amendments, modifications or replacements of a measure identified in the panel request, (ii) any other measures following the establishment of the Panel, and/or (iii) measures that have lapsed since the establishment of the Panel, please complete the following table to the extent relevant to the claims in this dispute.

³ Norway’s Response to the Panel’s Question 82, para. 1.

⁴ Norway’s Response to the Panel’s Question 84, para. 16 (emphasis in original).

⁵ Norway’s Response to the Panel’s Question 83, para. 11.

	Description of the Measure	Challenged independently or as an element/component of an existing measure?	Relevant language in the panel request
Amended, modified or replaced measures			
Any other measures following the establishment of the Panel			
Lapsed measures			

9. The United States addresses the complainant's response to the Panel's Questions 86 and 87 together at Question 87, below.

TO ALL

Question 87. In dealing with amended, new, and/or lapsed measures, panels and the Appellate Body have previously used considerations such as (i) whether the "essence" of an identified measure has been altered, (ii) the "close connection" between measures identified and those not expressly mentioned in a panel request, and (iii) considerations regarding providing a positive resolution to the dispute. Please comment on the validity and applicability of these considerations in this dispute. In doing so, please comment on the differences and similarities across these considerations and whether there are any other relevant considerations in this dispute.

10. In its response to the Panel's Questions 86 and 87, Norway responds that it does not challenge any amended, new, or lapsed measures. The United States has no comments on this response.

TO COMPLAINANT

Question 88. Please confirm if the Panel's understanding of your characterisation of the measures under the Agreement on Safeguards, as depicted in the diagram at the end of this document, is correct. In this regard, please clarify the precise scope of the elements/measures challenged under Article 11.1(b) of the Agreement on Safeguards and whether these are also challenged as a safeguard measure.

11. The United States has no comments on complainant's response at this time.

Question 89. Please clarify how the measures "suspend the obligation in whole or in part" or "withdraw or modify the concession" within the meaning of Article XIX taking into account the distinction between these actions under Article XIX and

violations of the GATT 1994. In doing so, please address the United States' response to Panel question No. 7.

12. Norway appears to agree with the United States that the suspension or withdrawal of a Member's obligations as referred to in Article XIX of the GATT 1994 is not synonymous with a breach of the GATT 1994.⁶ Rather than responding to the Panel's question, however – which refers to “*how* the measures [at issue] ‘suspend the obligation in whole or in part’ or ‘withdraw or modify the concession’ within the meaning of Article XIX taking into account the distinction between these actions under Article XIX and violations of the GATT 1994” (emphasis added) – Norway makes a circular argument based on its previous assertions drawn from the Appellate Body's report in *Indonesia – Iron or Steel Products*, which the United States has already rebutted.

13. Specifically, Norway suggests that “whether a measure permissibly suspends, or impermissibly violates, a GATT 1994 obligation is a legal characterisation, dependent on whether a measure satisfies applicable safeguards obligations.”⁷ Two paragraphs later, the circular nature of Norway's argument becomes apparent when it asserts, relying on the Appellate Body's Report in *Indonesia – Iron or Steel Products*, that “[t]he legal standard for assessing the applicability of the *Safeguards Agreement* is as follows: (1) does the measure suspend, withdraw, or modify a GATT 1994 obligation or concession; and (2) is the suspension designed to prevent or remedy serious injury to a domestic industry caused or threatened by increased imports?”⁸ Neither part of Norway's argument provides an answer to the Panel's question.

14. Contrary to the second part of Norway's suggestion, the terms “suspend [an] obligation in whole or in part or . . . withdraw or modify [a] concession” do not address the design or purpose of a measure. Rather, the terms “suspend [an] obligation in whole or in part or . . . withdraw or modify [a] concession” identify a release under the Agreement on Safeguards that gives a Member legal authority to take otherwise prohibited action. Put differently, the terms “suspend [an] obligation in whole or in part or . . . withdraw or modify [a] concession” describe what a Member is permitted to do if it meets the conditions of Article XIX and the Agreement on Safeguards. These terms do not serve to define or other identify a measure as a “safeguard measure” where such a measure is not taken pursuant to the Agreement on Safeguards. As the United States has explained in response to the Panel's Question 19, the scope of measures that may be taken pursuant to Article XIX and other provisions may overlap. Therefore, the text of the covered agreements does not support an interpretation which depends on consideration of whether the suspension is “designed to prevent or remedy serious injury to a domestic industry caused or threatened by increased imports.”

15. With respect to the first part of its argument, Norway suggests in essence that to determine whether a measure suspends or violates a GATT 1994 obligation, a panel must assess whether a measure suspends, withdraws, or modifies a GATT 1994 obligation. This

⁶ Norway's Response to the Panel's Question 89, para. 46.

⁷ Norway's Response to the Panel's Question 89, para. 48.

⁸ Norway's Response to the Panel's Question 89, para. 50.

circular argument fails to acknowledge the difference between suspension and breach of obligations under the GATT 1994. The phrase “suspend the obligation in whole or in part or to withdraw or modify the concession” appears in Article XIX, while a breach of the GATT 1994 typically refers to “the failure of a Member to carry out its obligations” as stated in Article XXIII:1(a).

16. Suspension or withdrawal of a Member’s obligation as referred to in Article XIX of the GATT 1994 is thus not synonymous with a breach of the GATT 1994. Once a Member has the right to suspend an obligation or withdraw or modify a concession under Article XIX (including by invoking Article XIX through notice of a proposed measure to other Members), that Member no longer has to perform those obligations. In other words, the Member does not breach (or “fail to carry out”) its obligations within the meaning of Article XXIII:1(a) of the GATT 1994, if the Member’s nonfulfillment of those obligations occurs under the circumstances set forth in Article XIX and the Agreement on Safeguards. In that situation, the obligations are suspended, or the relevant concessions are withdrawn or modified – there is no breach.

17. Complainant’s argument fails to address the Panel’s question of “*how* the measures [at issue] ‘suspend the obligation in whole or in part’ or ‘withdraw or modify the concession’ within the meaning of Article XIX.” (emphasis added) A measure does not itself suspend an obligation or withdraw or modify a concession; instead, a Member must claim an obligation is suspended (or a concession is withdrawn or modified) to justify taking particular action. If the Member does not make such a claim, the Member would simply breach another commitment (*e.g.*, Article II), unless it has a basis to take the action.

18. In relation to the measures at issue, the United States has explicitly and repeatedly invoked GATT 1994 Article XXI.⁹ No obligation or concession may supersede the right to take action under that provision, as the text of Article XXI confirms that “[n]othing in this Agreement shall be construed ... to prevent” a Member “from taking any action which it considers necessary for the protection of its essential security interests.” Accordingly, in taking action under Section 232, the United States has acted consistently with its existing rights under the covered agreements, and has not “suspended in whole or in part a GATT obligation or withdrawn or modified a GATT concession” within the meaning of Article XIX.

19. The circular nature of Norway’s argument also highlights the fundamental importance of invocation through notice of a proposed measure to other Members as a condition

⁹ See U.S. Response to the Panel’s Question 5(b)-(d) (citing and discussing U.S. statements in the WTO Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods, 10 November 2017, G/C/M/130 (Mar. 22, 2018), at 26-27 (US-80), WTO Council on Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods, 23-26 March 2018, G/C/M/131 (Oct. 5, 2018), at 26-27 (US-81), WTO Committee on Safeguards, Communication from the United States, G/SG/168 (Apr. 5, 2018), at 1-2 (US-82), U.S. Mission to International Organizations in Geneva, Ambassador Dennis Shea’s Statement at the WTO General Council (May 8, 2018), at 3 (US-83), and Statements by the United States at the Meeting of the WTO Dispute Settlement Body, Geneva, October 29, 2018, November 21, 2018, and December 4, 2018 (US-84)).

precedent to a Member's exercise of its right to take action under Article XIX and for the application of safeguards rules to that action, as discussed in Section IV of the U.S. Second Written Submission.¹⁰ As the United States explains there, the ordinary meaning of the text of Article XIX, including the title of Article XIX and each of its paragraphs, establishes that such invocation is a necessary, condition precedent to the right to apply a safeguard measure under Article XIX.

20. Perhaps realizing the circular nature of its argument, Norway then proceeds to suggest that “in assessing whether the *Safeguards Agreement* applies to a measure, a panel must assess whether a measure is *designed to suspend GATT 1994 obligations (i.e., departs from them) for the purposes of protecting a domestic industry from injury caused by increased imports.*”¹¹ The first part of this assertion continues Norway's circular logic, as Norway appears to suggest that a measure suspends an obligation or modifies or withdraws a concession if it is “*designed to suspend a GATT 1994 obligation (i.e., departs from them).*”

21. Moreover, neither the terms of Article XIX nor the Agreement on Safeguards supports using this sole criterion (“whether a measure is designed to suspend GATT 1994 obligations . . . for the purposes of protecting a domestic industry from injury caused by increased imports”) as the basis for, as Norway says, “assessing whether the Safeguards Agreement applies to a measure.” As the United States has already explained in the paragraphs above, Article XIX's references to suspension of an obligation or withdrawal or modification of a concession do not address the purpose or design of a measure, but rather identify the legal authority to take action that would otherwise be prohibited.

TO ALL

Question 90. Please comment on the grammatical structure and composition of Article XXI(b). In doing so, please identify the distinct grammatical elements (e.g. clauses and phrases) in the provision and the grammatical relationship (e.g. qualification and modification) between such elements. The parties are invited to use the table below should it be of assistance.

22. Norway's response is deficient and flawed in numerous ways. First, Norway fails to accurately identify the distinct grammatical elements (e.g. clauses and phrases) of Article XXI(b) identified by the Panel. For instance, Norway claims that “to prevent any contracting party from taking an action” is a subordinate clause, but does not offer any explanation as to

¹⁰ Invocation of Article XXI, therefore, also does not entail a breach of an obligation under the WTO Agreement. In this respect, a Member's invocation of Article XXI parallels that of a Member properly exercising its right to invoke Article XIX. The reason is that neither invoking Member has “failed to carry out” its obligations. The similarities between Article XIX and Article XXI, however, end here because an invocation of Article XXI does not entail a suspension of an obligation. Instead, the obligation does not apply when a Member invokes Article XXI with respect to a measure it implements. Accordingly, the measures at issue cannot be considered safeguards because they do not suspend an obligation or withdraw or modify a concession under the WTO Agreement.

¹¹ Norway's Response to the Panel's Question 89, para. 53 (emphasis in original)

why that is the case when, under English grammar rules, a “clause” is “a group of words containing both a subject and a predicate (which includes a verb).”¹² Therefore, Norway’s suggestion is not consistent with English grammar rules.

23. Despite the Panel’s inclusion of the chapeau text (“Nothing in this Agreement shall be construed”) in the Panel’s table, Norway does not address the chapeau text, other than labelling it as such. Again, Norway resists interpreting the entire text of Article XXI(b), including the chapeau. It continues to interpret Article XXI(b) in a piece-meal fashion, artificially separating the independent clause that begins Article XXI(b) into two pieces, and artificially separating the single relative clause that follows “action” into different pieces. The result of Norway’s piece-meal approach is a failure to interpret the entire text of Article XXI(b), including the grammatical construction of the full provision.

24. In contrast, the United States has explained the grammatical composition of Article XXI(b) in detail with citations to multiple linguistic sources, including grammar books, to present an interpretation of Article XXI(b), including its self-judging nature, based on the ordinary meaning of the text of that provision, in its context, and in the light of the treaty’s object and purpose.

25. Fundamentally, Article XXI(b) is about a Member taking “any action which it considers necessary.” The relative clause that follows the word “action” describes the situation which the Member “considers” to be present when it takes such an “action.” The clause begins with “which it considers” and ends at the end of each subparagraph.

26. All of the elements in the text, including each subparagraph ending, are therefore part of a single relative clause, and they are left to the determination of the Member. Specifically, because the operative language is “it considers,” Article XXI(b) reserves for the Member to decide what action it considers “necessary for” the protection of its essential security interests and which circumstances are present. In that sense, the phrase “which it considers” “qualifies” all of the elements in the relative clause, including the subparagraph endings.

27. While it is not clear why Norway addresses the Spanish and French texts of Article XXI(b) in response to the Panel’s question regarding the English text of Article XXI(b), it appears that Norway is again advancing an interpretation that is based on the Spanish text of Article XXI(b) but is otherwise inconsistent with the ordinary meaning of the English text of the Article XXI(b) of the GATT. However, as the United States has explained, such an interpretation is inconsistent with the customary rules of treaty interpretation.

¹² While there are certain exceptions to this general definition of a “clause,” it does not appear that “to prevent any contracting party from taking an action” would fall under those exceptions. Norway’s Response to the Panel’s Question 90, p. 22. See MERRIAM-WEBSTER’S GUIDE TO PUNCTUATION AND STYLE 233 (1st ed. 1995) (US-176).

28. The United States has extensively analyzed all three versions of the text in its prior submissions.¹³ In particular, in Section II.D. of its Second Written Submission, the United States recognized that the interpretation that emerges based on the ordinary meaning of the text of the subparagraph endings in the English and French language versions, is not fully supported by the Spanish text.¹⁴

29. Specifically, the Spanish text of the three subparagraph endings indicates that they must be read to modify the term “actions” in the main text of Article XXI(b); whereas the ordinary meaning of subparagraph endings (i) and (ii) in the English and French versions is most naturally read to modify the term “interests” in the chapeau. Thus, the United States argued, that the meaning that best reconciles the texts, having regard to the object and purpose of the treaty, must be adopted under Article 33 of the VCLT.

30. As the United States has explained, reconciling the texts leads to the interpretation that all of the subparagraph endings modify the terms “any action which it considers” in the main text, because this reading is consistent with the Spanish text, and also – while less in line with rules of grammar and conventions – permitted by the English and French texts. This reading of the text of the subparagraph endings does not alter the plain meaning of the main text or the overall structure of Article XXI(b), however. The terms of the provision still form a single relative clause that begins in the main text of Article XXI(b) and ends with each subparagraph ending, and therefore the phrase “which it considers” still modifies the entirety of the main text and the subparagraph endings. Therefore, reconciling the three authentic texts leads to the same fundamental meaning the United States has presented, committing the determination of whether an action is necessary for the protection of a Member’s essential security interests in the relevant circumstances to the judgment of that Member alone.

Question 91. Please comment on the appropriate terminology to refer to the various parts of Article XXI(b), including the following possibilities:

a. "chapeau" and "subparagraph" (as used in relation to Article XX) and, accounting for the additional layer of indentation in Article XXI, "subparagraph endings";

b. "clauses" and "phrases" in the text of Article XXI(b) including variations such as an "introductory" or "adjectival/relative/dependent" clause/phrase or "subclauses".

31. In response to the Panel’s question, Norway refers back to its response to the Panel’s Question 90. As the United States explained in its own response to this question, while the interpretation of Article XXI(b) does not turn on the particular terminology used, the United States considers that the following terms most accurately capture the structure of Article XXI(b): chapeau of Article XXI, main text of Article XXI(b), and subparagraph endings of Article XXI(b). Furthermore, the United States considers that the following terms most

¹³ Second Written Submission of the United States, Section II.D; U.S. Response to the Panel’s Questions 41-43, paras. 156-188.

¹⁴ Second Written Submission of the United States, Section II.D; see also U.S. Response to the Panel’s Questions 41-43, paras. 163-166.

accurately capture the grammatical structure of Article XXI(b): independent clause (“Nothing in this Agreement shall be construed to prevent any [Member] from taking any action”); relative/dependent clause (from “which it considers” to the end of each subparagraph ending); and participial phrase (each subparagraph ending). The United States refers the Panel back to its response to the Panel’s Questions 90 and 91.

Question 92. Regarding evidence on the Panel record concerning the measures at issue, please comment on:

a. "national security" as used in the Section 232 legislation (as well as the Department of Commerce Reports and Presidential Proclamations on steel and aluminium) in relation to the terms "its essential security interests" in Article XXI(b); and

b. "imports" of products "in such quantities or under such circumstances as to threaten to impair the national security" in the Section 232 legislation (as well as the Department of Commerce Reports and Presidential Proclamations on steel and aluminium) in relation to the terms "other emergency in international relations" in Article XXI(b)(iii).

32. In response to the Panel’s question, Norway states that it “cannot address, in a vacuum, a defence that has not be made out by the United States.”¹⁵ Norway further claims that it cannot “speculate on what ‘essential security interests’ the United States might assert are implicated” or “speculate, on behalf of the United States, as to which subparagraph of Article XXI(b) might provide a basis for its defence.”¹⁶ Norway asserts that the invoking Member must specify a subparagraph ending and must furnish certain evidence to support its invocation. Norway is wrong.

33. As the United States has explained in its response to the Panel Questions 35-38 and 92(b), Article XXI(b) does not require the responding member to specify a subparagraph ending or to furnish reasons for or explanations of an action for which Article XXI(b) is invoked. What is required of the party exercising its right under Article XXI(b) is that the Member consider one or more of the circumstances set forth in Article XXI(b) to be present. The invoking Member’s burden is discharged once the Member indicates, in the context of dispute settlement, that it has made such a determination.

34. Fundamentally, Article XXI(b) is about a Member taking “any action which it considers necessary.” The relative clause that follows the word “action” describes the situation which the Member “considers” to be present when it takes such an “action.” The clause begins with “which it considers” and ends at the end of each subparagraph ending.

35. All of the elements in the text, including each subparagraph ending, are therefore part of a single relative clause, and they are left to the determination of the Member. Thus, as

¹⁵ Norway’s Response to the Panel’s Question 92, paras. 62-63.

¹⁶ Norway’s Response to the Panel’s Question 92, paras. 62-63.

relevant to the Panel's present question, whether a Member considers its action necessary for the protection of its essential security interests and whether the Member considers such action to be "taken in time of war or other emergency in international relations" within the meaning of in Article XXI(b)(iii), are left to the determination of the Member invoking that provision.

36. Therefore, the text of Article XXI(b) does not require the Member exercising its right under Article XXI(b) to identify the relevant subparagraph ending to that provision that an invoking Member may consider most relevant. Norway cites nothing in the text of Article XXI(b) that suggests one or more specific subparagraphs must be invoked.

Question 93. Please comment on the analysis and findings of the panel in Saudi Arabia – Protection of IPRs in relation to the legal standard under Article XXI(b), including the panel's application of Article XXI(b) to the position taken by the respondent in that dispute.

37. Norway suggests the findings of the panel in *Saudi Arabia – Measures Concerning the Protection of IPRs* are "highly significant".¹⁷ Norway also makes much of the arguments made by Saudi Arabia to support its invocation of Article 73(b)(iii).¹⁸ Norway fails to acknowledge, however, that the panel in *Saudi Arabia – Measures Concerning the Protection of IPRs* merely "transposed" the *Russia – Traffic in Transit* panel's analysis. In fact, nowhere in its response to the Panel's Question 93 does Norway appear to acknowledge that the *Saudi Arabia – Measures Concerning the Protection of IPRs* panel relied on the analysis of the *Russia – Traffic in Transit* panel's analysis.

38. As explained in the U.S. response to the Panel's Question 93, simply transposing the approach of a prior panel – as the *Saudi Arabia – Measures Concerning the Protection of IPRs* panel explicitly did – is not consistent with the function of panels as set out in the DSU. Moreover, as the United States has explained in Section III.B. of its First Written Submission, there were numerous errors in the analysis of *Russia – Traffic in Transit* panel report. The *Saudi Arabia – Measures Concerning the Protection of IPRs* panel report is erroneous for the same reasons, and that report therefore does not provide any additional relevant guidance to the Panel in this dispute with respect to the interpretation of Article XXI(b).

39. As the United States explained in response to the Panel's Questions 35 to 38 and 92(b), the text of Article XXI(b) does not include any language requiring the invoking Member to provide an explanation or produce evidence to justify its invocation. The text does not indicate the Member must notify the circumstances underlying the invocation, explain the action, or provide advance notice – as it might under other provisions of the WTO Agreement. It may be that a Member invoking Article XXI nonetheless chooses to make information available to other Members, and the United States has made plentiful information available in relation to its actions under Section 232. Neither the U.S. decision to make this information available, nor evidence that Saudi Arabia may have presented in its own dispute, changes the terms of Article XXI(b).

¹⁷ Norway's Response to the Panel's Question 93, para. 70.

¹⁸ Norway's Response to the Panel's Question 93, paras. 83-118.

40. Norway is also mistaken in its hyperbolic suggestion that the panel's report in *Saudi Arabia – Measures Concerning the Protection of IPRs* represents “the ultimate rejection” of U.S. arguments in this dispute. In fact, Norway's suggestion is a misrepresentation (one would hope inadvertent, rather than deliberate) of the content of that panel report. Although the panel in *Saudi Arabia – Protection of IPRs* acknowledged that the U.S. interpretation of Article XXI(b) differed from that of the parties, that panel did not engage any of the arguments and evidence provided by the United States. Instead, as noted in the paragraphs above, the *Saudi Arabia – Measures Concerning the Protection of IPRs* panel simply “transposed” the approach of the panel in *Russia – Traffic in Transit*.¹⁹

41. This decision by the *Saudi Arabia – Measures Concerning the Protection of IPRs* panel is notable, and regrettable, because the United States presented arguments and evidence in support of its interpretation that were in addition to the arguments and evidence it had presented in *Russia – Traffic in Transit*. And in this dispute, the United States has provided even further support for its position. The panel in *Saudi Arabia – Measures Concerning the Protection of IPRs* nowhere grappled with the specific arguments and evidence presented by the United States in that dispute. Accordingly, the panel's report in that dispute in no way responds to the U.S. arguments put forward in this dispute.

42. Norway also highlights the order of analysis of the panel report in *Saudi Arabia – Measures Concerning the Protection of IPRs*, and emphasizes that “the Panel must begin by assessing Norway's claims, before turning to the US defence.”²⁰ Contrary to Norway's argument, however, the DSU does not specify the order of analysis that a panel must adopt and the Panel may consider the issues presented in any order that it sees fit. As explained in Section V of the U.S. Second Written Submission, whatever the Panel's *internal* ordering of its analysis, in light of the U.S. invocation of Article XXI(b) and the self-judging nature of that provision, the sole *finding* that the Panel may make in its report – consistent with its terms of reference and the DSU – is to note its understanding of Article XXI and that the United States has invoked Article XXI. No additional findings concerning the claims raised by the complaining Member in its submissions would be consistent with the DSU, in light of the text of Article XXI(b). Accordingly, the Panel should begin by addressing the U.S. invocation of GATT 1994 Article XXI(b).

43. The United States also notes the findings of the panel in *Saudi Arabia – Measures Concerning the Protection of IPRs* regarding DSU Article 3.7. Article 3.7 provides, among other things, that “[b]efore bringing a case, a Member shall exercise its judgment as to whether action under these procedures would be fruitful.” In *Saudi Arabia – Measures Concerning the Protection of IPRs*, Saudi Arabia argued that Qatar “had not exercised sound judgment in taking action under Article 3.7 of the DSU” due to “the comprehensiveness of the diplomatic and economic measures imposed by Saudi Arabia and other Members in the region, and the underlying rationale for those measures.”²¹ The panel in that dispute rejected Saudi Arabia's argument, however, based on the discretion granted to Qatar under Article 3.7. As that panel explained, “[g]iven the discretion granted to complainants in deciding

¹⁹ *Saudi Arabia – Protection of IPR*, para. 7.243.

²⁰ Norway's Response to the Panel's Question 93, paras. 78-82.

²¹ *Saudi Arabia – Protection of IPRs*, para. 7.19.

whether to bring a dispute under the DSU, the Panel does not consider that Qatar failed to exercise its judgment within the meaning of Article 3.7 in bringing this case.”

44. This finding is consistent with the U.S. view of Article 3.7, as expressed in response to the Panel's Question 48. As the United States observed there, the terms of Article 3.7 provide no basis for a panel to opine on whether or not a Member has exercised its judgment “before bringing a case.” Once a dispute has been brought, the Member has exercised its judgment, and the provision imposes no ongoing obligation. DSU Article 3.7 shows that for certain obligations, the drafters chose to impose obligations but did not permit a panel to look behind the decision of a Member in carrying out that obligation. Similarly, given the terms of Article XXI, an adjudicator cannot assume for itself the authority to second-guess the determination of a Member as to the necessity of its action for the protection of its essential security interests.

Question 94. Please comment on the effect of Article 11.1(c) of the Agreement on Safeguards in relation to measures that fall under Article 11.1(b) but are not "measures provided for in Article XIX of GATT 1994" or an "emergency action on imports of particular products as set forth in Article XIX of GATT 1994" under Articles 1 and 11.1(a) of the Agreement on Safeguards.

45. In its response to the Panel's Question 94, Norway attempts to rewrite Article 11.1(c) – and Article 1 and Article 11.1(a) – of the Agreement on Safeguards to import an abstract concept of “safeguard measures.”²² According to Norway, Article 11.1(b) measures “may, but need not be, ‘safeguard measures’ under Articles 1 and 11.1(a),” and “under Article 11.1(c), when an Article 11.1(b) measure is taken consistently with a GATT 1994 provision, and the measure is not a safeguard measure, it is carved out of the prohibition in Article 11.1(b).”²³ Norway's argument is incorrect and does not reflect the text of Article XIX or the Agreement on Safeguards.

46. Norway appears to acknowledge that (1) there may be some overlap in the scope of measures covered by Article XIX of the GATT 1994, Article 11.1(b) of the Agreement on Safeguards, and other provisions, and (2) such measures could be carved out from the Agreement on Safeguards – including from Article 11.1(b) – by Article 11.1(c). Specifically, Norway suggests that two Members could bilaterally negotiate a voluntary export restraint to relieve critical shortages of food essential to the exporting Member, and that such a measure, although “in principle” subject to Article 11.1(b), could be taken pursuant to GATT 1994 Article XI:2(a) and therefore “would be carved out of the *Safeguards Agreement*, including the prohibition in Article 11.1(b).”²⁴ This result would occur, according to Norway, because

²² Norway's Response to the Panel's Question 94, paras. 122, 124 (stating that “under Article 11.1(c), when an Article 11.1(b) measure is taken consistently with a GATT 1994 provision, and the measure is not a safeguard measure, it is carved out of the prohibition in Article 11.1(b)” and that “Article 11.1(c) does not operate to carve ‘safeguards measures’ out of the scope of the *Safeguards Agreement*”).

²³ Norway's Response to the Panel's Question 94, paras. 123-124.

²⁴ Norway's Response to the Panel's Question 94, paras. 125-126.

“[t]his export-side measure would not be a safeguard measure, because safeguard measures involve import duties or import quotas.”²⁵

47. Norway does not explain on what basis it defines “a safeguard measure” for these purposes, merely asserting that a safeguard measure is a measure “involv[ing] import duties or import quotas.”²⁶ Regardless of what definition Norway may have invented for that term for purposes of its response, Article 11.1(c) does not refer to the concept of a “safeguards measure,” nor does Article 11.1(c) condition its application on the basis of whether a measure is (or is not) a “safeguard measure.” Instead, Article 11.1(c) provides, “This Agreement [the Agreement on Safeguards] does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX.” Thus, when a measure is “sought, taken or maintained by a Member pursuant to provisions of the GATT 1994 other than Article XIX” the Agreement on Safeguards, including Article 11.1(b), “does not apply.” The text does not call for a determination of whether the measure is what Norway calls a “safeguard measure.”

48. Norway’s argument also ignores that measures sought, taken, or maintained pursuant to other provisions of the GATT 1994 other than Article XIX, could “involve import duties or import quotas,” meaning that – following Norway’s logic – under Article 11.1(c) the Agreement on Safeguards, including Article 11.1(b), “does not apply” to such measures. For example, in the face of increased imports causing injury, a Member might increase its ordinary customs duty within its bound rate. If a Member does so pursuant to Article II of the GATT 1994, the Agreement on Safeguards, including Article 11.1(b), “does not apply.” A Member might also impose an import prohibition or restriction pursuant to GATT 1994 Article XI:2(b) or (c), and the Agreement on Safeguards, including Article 11.1(b), also “does not apply”. This would be the result even though the measure would also “involve import duties or import quotas” and according to Norway therefore constitute a “safeguard measure.”

49. Norway’s attempt to define the concept of a “safeguards measure” in isolation does not withstand scrutiny, because it is not supported by the text of the Agreement on Safeguards. Rather, as the United States explained in its response to Question 94, if a measure could be understood to fall under Article 11.1(b) – but was “sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX” – Article 11.1(c) provides that the Agreement on Safeguards “does not apply” to such a measure.

50. Norway also asserts that Article 11.1(c) “does not affect measures whose legal basis includes Article XIX of the GATT 1994,”²⁷ but this assertion has no bearing in this dispute. The measures at issue here were taken pursuant to Article XXI, and not pursuant to Article XIX, as the United States has repeatedly made clear, including in communications to WTO committees and in connection with this dispute.²⁸

²⁵ Norway’s Response to the Panel’s Question 94, para. 125.

²⁶ Norway’s Response to the Panel’s Question 94, para. 125.