

UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINUM PRODUCTS

(DS554)

**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)
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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

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	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	Intentionally Omitted
US-73	Intentionally Omitted

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US-74	National Security Strategy of the United States of America (Dec. 2017)
US-75	Intentionally Omitted
US-76	G20 Global Forum on Steel Excess Capacity Ministerial Meeting Ministerial Report (Sept. 20, 2018) http://www.g20.utoronto.ca/2018/global-forum-on-steel-excess-capacity-180920.pdf (excerpt)
US-77	Russian Federation Federal Law on Security, No. 390-FZ (Dec. 28, 2010)
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)
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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)
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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
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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
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US-122	James Crawford, BROWNIE'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 nd 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	Intentionally Omitted
US-175	Ian Sinclair, <i>The Vienna Convention on the Law of Treaties</i> , Manchester University Press, 2nd edn (1984) (excerpt)
US-176	Merriam-Webster's Guide to Punctuation and Style 233 (1st edn. 1995) (excerpts)
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	Intentionally Omitted
US-204	Intentionally Omitted
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	Presidential Proclamation 9772 of August 10, 2018
US-224	Presidential Proclamation 9886 of May 16, 2019
US-225	Presidential Proclamation 9980 of January 24, 2020
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	Presidential Proclamation 10060 of August 6, 2020
US-235	Presidential Proclamation 10064 of August 28, 2020
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. In its "General Responses to Questions 82-87, 90, 91" Russia purports to acknowledge the Panel's "right to 'consider the issues of its own jurisdiction on its own initiative,'" but then complains that "the Panel raised the issue of interpretation of Article 6.2 of the DSU at the very late stage of the dispute."¹ Russia also bemoans "[t]he additional work associated with the discussion of the interpretive issues, which are irrelevant to this particular dispute;"² stating in particular that "Question 82 is not relevant to the measures and claims" in this dispute.³ The United States disagrees that the timing of the Panel's questions have any bearing on their outcome, or that the requirements of Article 6.2 could be "irrelevant" to a dispute.

5. 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. Under Article 6.2, the request for the establishment of a panel must identify "the specific measures at issue" and provide "a brief summary of the legal basis for the complaint." It is these elements in the panel request that are the "matter referred to the DSB" as described in Article 7.1. 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.

¹ Russia's General Response to Questions 82-87, 90, 91, para. 7.

² Russia's General Response to Questions 82-87, 90, 91, para. 6.

³ Russia's Response to the Panel's Question 82, para. 9.

6. With respect to the requirements of Article 6.2, according to Russia, compliance with Article 6.2's requirement to sufficiently identify the measures at issue "will depend upon the ability of the respondent to defend itself given the description of the measure in the request" and suggests that the U.S. has "full awareness ... as to which measures which measures Russia is challenging."⁴ Contrary to Russia's arguments, 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.⁵ 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 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.

7. Russia also states that "[t]here are no requirements in Article 6.2 of the DSU to identify 'elements/components/forms that constitute a broader/complex measure at issue'."⁶ However, whether or not a particular complex measure has been properly identified will depend on the particular measure at issue. Article 6.2 does require that a complaining Member establish the identity of the precise or exact measures which it alleges affect the operation of any covered agreement. As the United States explained in response to the Panel's Question 83, if the measure a complainant seeks to challenge is not set out in a single legal instrument but consists of multiple elements or components, then identifying the precise scope and content of the measure may require a description of the measure and the various elements or components which the complainant considers to comprise the measure it challenges. Therefore, whether a particular measure has been sufficiently identified in a panel request must be determined on a case-by-case basis.

a. To Russia: Specifically regarding Russia's claim under Article X:3(a) of the GATT 1994, the Panel understands from responses to questions that Russia is arguing that the "administration of the restrictions" is one of the "forms" of the "treatment of steel imports" and "treatment of aluminium imports" measures. Please indicate how the panel request in this dispute adequately identifies the "administration of the restrictions".

8. In arguing that its panel request adequately identifies the "administration of the restrictions" as the measure challenged under Article X:3(a), Russia points to its listing of

⁴ Russia's General Response to Questions 82-87, 90, 91, para. 5.

⁵ *US – 1916 Act (AB)*, n.30; see *Mexico – Corn Syrup (Article 21.5 – US) (AB)*, para. 36.

⁶ Russia's Response to the Panel's Question 83, para. 20.

several presidential proclamations among the “legal instruments” identified in its panel request, and its reference to Article X:3(a) as a legal basis of the complainant.⁷

9. Article X:3(a) relates to the administration of particular laws or other measures, however, and not to the content of substantive laws themselves. Therefore, general statements such as those provided by Russia in its panel request do not adequately identify a measure governing (or failing to govern) administration such as that Russia now seeks to challenge under Article X:3(a). Accordingly, Russia’s claim under Article X:3(a) falls outside the Panel’s terms of reference.

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?

10. Russia suggests that the Panel’s question is “too vague and abstract” and that “[i]t is unclear of what relevance this question is to the measures and claims in the dispute before this Panel.”⁸ Contrary to Russia’s assertion, the Panel’s question is highly relevant to the present dispute. As the United States explained in its response to the Panel’s Question 84, under the plain meaning of the DSU, the measures within a panel’s terms of reference are those “specific measures” identified in the panel request; no other measures are properly within the panel’s authority. The United States refers to its response to the Panel’s Question 84.

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.

11. 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.

	Description of the Measure	Challenged independently or as an element/component of an existing measure?	Relevant language in the panel request
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⁷ Russia’s Response to the Panel’s Question 83, paras. 30-31.

⁸ Russia’s Response to the Panel’s Question 84.

Amended, modified or replaced measures			
Any other measures following the establishment of the Panel			
Lapsed measures			

12. 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.

13. The United States comments on the complainant’s response to Questions 86 and 87 together. In response to the Panel’s Question 86, Russia lists five proclamations as “legal instruments [that] are within the Panel’s terms of reference.”⁹ Russia argues that these proclamations qualify as “any further amendments, supplements, replacements, extensions, related and implementing measures, renewal measures or other related measures, including any adjustments of tariffs, exemptions, exclusions, tariff quotas or quotas” referenced in its panel request.¹⁰ Russia also argues that these proclamations have “the same essence” and are “subsidiary or closely related” to the measures identified in its panel request.¹¹ Russia further elaborates on this statement in its response to the Panel’s Question 87.

⁹ Proclamation 9777 of August 29, 2018 (US-18); Proclamation 9886 of May 16, 2019 (US-230); Proclamation 9980 of January 24, 2020 (US-225); Proclamation 10060 of August 6, 2020 (US-234); and Proclamation 10064 of August 28, 2020 (US-235). See Russia’s Response to the Panel’s Question 86, paras. 50-51.

¹⁰ Russia’s Response to the Panel’s Question 86, paras. 47-49.

¹¹ Russia’s Response to the Panel’s Question 86, para. 50.

14. Of the five proclamations, only Proclamation 9777 existed at the time of the panel establishment and was identified in Russia's panel request.¹² The other four proclamations did not exist at the time of the panel's establishment and were not (and could not have been) identified in Russia's panel request.

15. As the United States explained in its response to Question 87, under the DSU, subsequent measures, such as "amended" or "new" measures, that did not exist at the time of the panel request could not have been identified in the panel request and are not within the Panel's terms of reference. Thus, the Panel lacks the authority to make findings on those measures.

16. There is nothing in the text of the DSU¹³ that supports the assertions in certain reports that panels can make findings concerning legal instruments that came into effect after the panel was established when those instruments "did not change the essence of the regime" and that, under certain circumstances, "closely connected" subsequent measures may fall within the panel's terms of reference. Rather, the DSU requires that a complaining party identify in its panel request "the specific measures at issue"¹⁴ – not *non-specific* or hypothetical measures *not yet* at issue – and the DSB establishes a panel's terms of reference "to examine ... the matter" in the panel request,¹⁵ which includes only those "specific measures at issue."

17. In addition to the lack of foundation in the DSU, making findings on a measure of the same "essence", or a "closely connected" measure, which post-dates the establishment of the panel would not be necessary to resolve a dispute. A recommendation to bring a measure that existed as of panel establishment into compliance with WTO rules would apply to any measure of the same "essence" in place at the end of a compliance period, where such measure bears on whether the responding Member has implemented the DSB's recommendations, whether or not the panel had specifically made findings upon it. If the measure in place at the end of the compliance period is *essentially the same* as the measure that formed the basis of the recommendation, then the respondent will not have complied with the recommendation to bring its measures into conformity with its WTO obligations.

18. In addition, contrary to Russia's argument, it cannot be said that the additional duties on steel and aluminum imports identified in Russia's panel request and the new duties on derivative products share "the same essence" or are "subsidiary or closely related" when the new duties concern an entirely separate set of products with different HTS headings.¹⁶ Put

¹² United States – Certain Measures on Steel and Aluminum Products, Request for the Establishment of a Panel by the Russian Federation, WT/DS554/17 (Oct. 19, 2018).

¹³ U.S. Response to the Panel's Question 87, para. 20.

¹⁴ DSU Art. 6.2.

¹⁵ DSU Art. 7.1.

¹⁶ Proclamation 9704 and subsequent amendments concern "aluminum articles" defined in HTS as: (a) unwrought aluminum (HTS 7601); (b) aluminum bars, rods, and profiles (HTS 7604); (c) aluminum wire (HTS 7605); (d) aluminum plate, sheet, strip, and foil (flat rolled products) (HTS 7606 and 7607); (e) aluminum tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and (f) aluminum castings and forgings (HTS

differently, there is a substantive difference between the measures listed in Russia's request for the establishment of a panel, imposing the duties on steel and aluminum imports, and Proclamation 9980, which imposes new duties on derivative steel and aluminum articles – a separate and distinct group of products not covered by prior proclamations. Therefore, even under Russia's own misplaced arguments, neither Proclamation 9980 nor the duties imposed pursuant to that proclamation on derivative steel and aluminum articles fall within the Panel's terms of reference.

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

7616.99.51.60 and 7616.99.51.70). *See* Presidential Proclamation 9704 of March 8, 2018 (US-10). In contrast, Proclamation 9980 imposed additional duties on the following “derivative aluminium products”: (a) stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and with steel core, not electrically insulated; the foregoing fitted with fittings or made up into articles (described in subheading 7614.10.50); (b) stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and not with steel core, not electrically insulated; the foregoing comprising electrical conductors, not fitted with fittings or made up into articles (described in subheading 7614.90.20); (c) stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and not with steel core, not electrically insulated; the foregoing not comprising electrical conductors, not fitted with fittings or made up into articles (described in subheading 7614.90.40); (d) stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and not with steel core, not electrically insulated; the foregoing fitted with fittings or made up into articles (described in subheading 7614.90.50); (e) bumper stampings of aluminum, the foregoing comprising parts and accessories of the motor vehicles of headings 8701 to 8705 (described in subheading 8708.10.30); and (f) body stampings of aluminum, for tractors suitable for agricultural use (described in subheading 8708.29.21). *See* Presidential Proclamation 9980 of January 24, 2020 (US-225).

Proclamation 9705 and subsequent amendments concern “steel articles” consisting of: (i) flat-rolled products provided for in headings 7208, 7209, 7210, 7211, 7212, 7225 or 7226; (ii) bars and rods provided for in headings 7213, 7214, 7215, 7227, or 7228, angles, shapes and sections of 7216 (except subheadings 7216.61.00, 7216.69.00 or 7216.91.00); wire provided for in headings 7217 or 7229; sheet piling provided for in subheading 7301.1 0.00; rails provided for in subheading 7302.10; fish plates and sole plates provided for in subheading 7302.40.00; and other products of iron or steel provided for in subheading 7302.90.00; (iii) tubes, pipes and hollow profiles provided for in heading 7304, or 7306; tubes and pipes provided for in heading 7305; (iv) ingots, other primary forms and semi-finished products provided for in heading 7206, 7207 or 7224; and (v) products of stainless steel provided for in heading 7218, 7219, 7220, 7221, 7222 or 7223. *See* Presidential Proclamation 9705 of March 8, 2018 (US-9). In contrast, Proclamation 9980 imposed additional duties on the following “derivative iron or steel products”: (a) nails, tacks (other than thumb tacks), drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material (excluding such articles with heads of copper), suitable for use in powder-actuated handtools, threaded (described in subheading 7317.00.30); (b) nails, tacks (other than thumb tacks), drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material (excluding such articles with heads of copper), of one piece construction, whether or not made of round wire; the foregoing described in statistical reporting numbers 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5560, 7317.00.5580 or 7317.00.6560 only and not in other statistical reporting numbers of subheadings 7317.00.55 and 73,17. 00. 65; (c) bumper stampings of steel, the foregoing comprising parts and accessories of the motor vehicles of headings 8701 to 8705 (described in subheading 8708.10.30); and (d) body stampings of steel, for tractors suitable for agricultural use (described in subheading 8708.29.21). *See* Presidential Proclamation 9980 of January 24, 2020 (US-225).

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.

19. 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.

20. Russia agrees with the United States that the suspension or withdrawal of a Member's obligation as referred to in Article XIX of the GATT 1994 is not synonymous with a breach of the GATT 1994, and in its response to the Panel's Question 89, Russia simply refers the Panel to its Response to the Panel's Question 7.¹⁷ Russia's Response to Question 7, however, merely expresses Russia's views in the abstract regarding the distinction between "suspension, withdrawal or modification of concessions" on one hand, and "violations of the GATT 1994" on the other hand. This response does nothing to explain – as the Panel has asked – "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).

21. As the United States explained in response to the Panel's Question 7, suspension or withdrawal of a Member's obligation as referred to in Article XIX of the GATT 1994 is not synonymous with a breach of 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). 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.

22. 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

¹⁷ Russia's Response to the Panel's Question 89, paras. 69-70.

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.

23. In relation to the measures at issue, the United States has explicitly and repeatedly invoked GATT 1994 Article XXI.¹⁸ 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

24. Russia also ignores the fundamental importance of invocation through notice of a proposed measure to other Members as a condition 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.¹⁹ 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.

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.

25. In its response to this question, Russia refers back to its various prior submissions.²⁰ Further, Russia states that the “[i]mmediate context (grammatical and syntax constructions,

¹⁸ 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)).

¹⁹ 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

²⁰ Russia’s Response to the Panel’s Question 90, para 72.

structure or scheme of the provision) may be used to contextualize and confirm the meaning resulting from the application of Article 31 of the VCLT” and argues that “they may be of assistance, but are only as a part of the whole.”²¹ Russia’s suggestion that the context in which the treaty text appears may only be used to confirm the interpretation resulting from Article 31 of the VCLT is flawed and misleading.

26. The United States recalls that Article 31 of the VCLT provides that the treaty provision shall be interpreted “in accordance with the *ordinary meaning to be given to the terms of the treaty in their context* and in the light of its object and purpose.”²² Thus, understanding the context in which the text is used is a critical aspect of the general rule of interpretation under Article 31. Contrary to Russia’s suggestion, understanding the context in which the treaty text appears is not a separate, and even optional, exercise – it is an integral part of the application of Article 31.

27. The U.S. interpretation of Article XXI(b), including its self-judging nature, is established by the text of that provision, in its context, and in the light of the treaty’s object and purpose. 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.

28. 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.

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".

29. In response to the Panel’s question, Russia argues that “the Panel should be guided by the terminology used by the panel in *Russia – Traffic in Transit*.”²³ The United States disagrees. Instead, the Panel should base its interpretation on the text and grammatical

²¹ Russia’s Response to the Panel’s Question 90, para 73.

²² Art. 31 of the VCLT (emphasis added).

²³ Russia’s Response to the Panel’s Question 91, para. 77.

structure of Article XXI(b) itself. Furthermore, the panel report in *Russia – Traffic in Transit* did not itself refer to English grammar guides and so did not engage with the structure of the text of Article XXI(b) as this Panel has.

30. 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 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).

31. In response to the Panel’s question, Russia argues that the United States has failed to “provide any explanation and evidence in this respect” and that “neither Russia nor the Panel must second-guess what concrete circumstances does the US refers to...while invoking Article XXI(b) of the GATT 1994 in attempts to justify its measures.”²⁴ Russia asserts that the invoking Member must specify a subparagraph ending and must furnish certain evidence to support its invocation. Russia is wrong.

32. 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.

²⁴ Russia’s Response to the Panel’s Question 82, paras. 78-79.

33. 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.

34. 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 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.

35. 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. Russia 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.

36. Although Russia acknowledges that the panel in *Saudi Arabia – Measures Concerning the Protection of IPRs* “primarily supported and followed the interpretation” of the panel report in *Russia – Traffic in Transit*,²⁵ Russia fails to acknowledge or address the panel’s failure to engage in its own analysis of the relevant provisions. Russia also makes much of the arguments made by Saudi Arabia to support its invocation of Article 73(b)(iii).²⁶ That a Member may have chosen to present evidence to support certain arguments does not change whether evidence is required by the provision in question, as interpreted according to the customary rules of interpretation of public international law.

37. As the United States explained in its response to the Panel’s Question 93, the panel in *Saudi Arabia – Measures Concerning the Protection of IPRs* merely “transposed” the *Russia – Traffic in Transit* panel’s analysis. Simply transposing the approach of a prior panel, however, 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 appear to provide any additional relevant guidance to the Panel in this dispute with respect to the interpretation of Article XXI(b).

38. 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

²⁵ Russia’s Response to the Panel’s Question 93, para. 82.

²⁶ Russia’s Response to the Panel’s Question 93, para. 88.

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).

39. 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.”²⁷ 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 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.”

40. 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.

41. In its two-sentence response to the Panel’s Question 94, Russia emphasizes the phrase “other than this Agreement” in Article 11.1(c), which reads:

This Agreement does not apply to measures sought, taken or maintained by a WTO Member pursuant to provisions of GATT 1994 other than

²⁷ *Saudi Arabia – Protection of IPRs*, para. 7.19.

Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994.²⁸

42. Without elaboration, Russia then asserts “[t]hus, Article 11.1(c) has no effect in relation to measures under Article 11.1(b) since the latter fall within the scope of the Agreement on Safeguards.”²⁹

43. Russia’s assertion, while not explained, appears to ignore that there could 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. As the United States explained in response to the Panel’s Question 19, there could be some overlap in the scope of measures covered by Articles II or XI of GATT 1994 and those covered by Article XIX, or between measures covered by Article XI of the GATT 1994 and measures covered by Article 11.1(b) of the Agreement on Safeguards. A “voluntary export restraint[], orderly marketing arrangement[] or . . . other similar measure” under Article 11.1(b), for example, could take the form of a quantitative restriction. A quantitative restriction might be a measure sought, taken, or maintained pursuant to a number of WTO provisions (e.g., Articles XI, XII, XVIII, XX, XXI). If so, Article 11.1(c) provides that the Agreement on Safeguards – including Article 11.1(b) – “does not apply” to such a measure. Therefore, the fact that the measure takes the form of, or operates as, a quantitative restriction is not determinative of its legal characterization under the covered agreements

44. Under Russia’s interpretation, the Agreement on Safeguards would apply to a measure that could be understood to fall under Article 11.1(b), even if that measure was taken pursuant to by another provision of the GATT 1994, such as Article XI. This result would render Article 11.1(c) *inutile*, because the Agreement on Safeguards would apply even to measures that were “sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX.”

45. Moreover, in the present dispute, Russia’s argument comes to nothing because – as the United States has repeatedly made clear, including in communications to WTO committees and in connection with this dispute³⁰ – the measures at issue were taken pursuant to Article XXI – which is a “provision[] of GATT 1994 other than Article XIX” under Article 11.1(c).

²⁸ Russia’s Response to the Panel’s Question 94, para 89 (quoting Article 11.1(c), emphasis added in Russia’s quotation).

²⁹ Russia’s Response to the Panel’s Question 94, para. 90.

³⁰ 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)).