

***UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINUM PRODUCTS***

**(DS556)**

**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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<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

**TABLE OF EXHIBITS**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>
<b>U.S. First Written Submission</b>	
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, <a href="https://www.govinfo.gov/content/pkg/DCPD-201700259/pdf/DCPD-201700259.pdf">https://www.govinfo.gov/content/pkg/DCPD-201700259/pdf/DCPD-201700259.pdf</a>
US-4	U.S. President, “Memorandum on Aluminum Imports and Threats to National Security,” Weekly Compilation of Presidential Documents, April 27, 2017, <a href="https://www.govinfo.gov/content/pkg/DCPD-201700284/pdf/DCPD-201700284.pdf">https://www.govinfo.gov/content/pkg/DCPD-201700284/pdf/DCPD-201700284.pdf</a>
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)
US-17	Intentionally Omitted
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 <sup>th</sup> 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), <a href="https://www.reuters.com/article/us-usa-trade-autos-wto-idUSKCN1SX1I7">https://www.reuters.com/article/us-usa-trade-autos-wto-idUSKCN1SX1I7</a>
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
<b>First Panel Meeting</b>	
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), <a href="https://www.ghy.com/images/uploads/default/Global-Steel-Forum-Report-Nov2017.pdf">https://www.ghy.com/images/uploads/default/Global-Steel-Forum-Report-Nov2017.pdf</a> (excerpt)

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US-73	Intentionally Omitted
US-74	Intentionally Omitted
US-75	Intentionally Omitted
US-76	Intentionally Omitted
US-77	Intentionally Omitted
US-78	Switzerland, Federal Department of Foreign Affairs, New Security-policy challenges, <a href="https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/security-policy/new-challenges.html">https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/security-policy/new-challenges.html</a>
<b>U.S. Responses to the Panel's First Set of Questions</b>	
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 <sup>th</sup> edn, (Oxford University Press, 2007)
US-89	<i>The Oxford Spanish Dictionary</i> , 1 <sup>st</sup> 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, <a href="https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_incorp_oth.pdf">https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_incorp_oth.pdf</a>
US-101	General Agreement on Tariffs and Trade, Protocol Amending the General Agreement to Introduce a Part IV on Trade and Development:

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	Establishment of Authentic Text in Spanish, Decision of 22 Mar. 1965 (L/2424)
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, <a href="https://www.itu.int/en/ITU-T/studygroups/com17/Pages/cybersecurity.aspx">https://www.itu.int/en/ITU-T/studygroups/com17/Pages/cybersecurity.aspx</a>
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), <a href="https://tass.com/world/1046641">https://tass.com/world/1046641</a>
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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>nd</sup> edn (revised), (Oxford University Press, 2001) (excerpt)
US-170	Ortografía Y Gramática, <a href="https://gramatica.celeberrima.com/">https://gramatica.celeberrima.com/</a>
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)
<b>U.S. Second Written Submission</b>	
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)



<b>EXHIBIT</b>	<b>DESCRIPTION</b>
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	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)
<b>U.S. Responses to the Panel's Additional Questions</b>	
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	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).
<b>U.S. Comments on Complainant's Responses to the Panel's Additional Questions</b>	
US-229	Intentionally Omitted
US-230	Presidential Proclamation 9886 of May 16, 2019
US-231	Intentionally Omitted
US-232	Presidential Proclamation 9893 of May 19, 2019
US-233	Presidential Proclamation 9894 of May 19, 2019
US-234	Presidential Proclamation 10060 of August 6, 2020
US-235	Presidential Proclamation 10064 of August 28, 2020
US-236	Intentionally Omitted
US-237	Rodney Huddleston & Geoffrey K. Pullum, <i>The Cambridge Grammar of the English Language 1359-1360</i> (Cambridge Univ. Press, 2002) (excerpt)
US-238	HARPER'S ENGLISH GRAMMAR 248-249 (Harper & Row, 1966) (excerpt)

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 "preliminary comments on the Panel's questions relating to Article 6.2 of the DSU," Switzerland expresses "surprise" regarding the Panel's questions related to Article 6.2.<sup>1</sup> Switzerland should not be surprised. 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.

5. Switzerland is mistaken when it suggests that the absence of U.S. arguments related to Article 6.2 "only confirms" that its request for the establishment of a panel is consistent with Article 6.2.<sup>2</sup> 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

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<sup>1</sup> Switzerland's Response to the Panel's Questions, Preliminary comments on the Panel's questions relating to Article 6.2 of the DSU (questions 82 to 85), para 2. *See also* Switzerland's Response to the Panel's Question 82, para. 8.

<sup>2</sup> Switzerland's Response to the Panel's Questions, Preliminary comments on the Panel's questions relating to Article 6.2 of the DSU (questions 82 to 85), para. 2.

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.<sup>3</sup> 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.

6. With respect to the requirements of Article 6.2, Switzerland states that “what matters” for the Article 6.2 requirement to identify the specific measures at issue is the identification of “the measures in their substance rather than the legal instruments(s) in their legal forms.”<sup>4</sup> Switzerland suggests that the obligation to identify the specific measures at issue under Article 6.2 “does not encompass the identification of the ‘elements/components/forms that constitute a broader/complex measure at issue’.”<sup>5</sup>

7. The United States agrees that Article 6.2 requires the identification of measures, and that measures may not be coextensive with particular legal instruments. Whatever form the measure may take, however, Article 6.2 requires the complainant to identify the *specific* measures at issue – that is, a panel request must identify 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, where a measure is not reflected in a legal instrument, a complainant is under no less of an obligation to identify it specifically.

**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?**

8. In its response to Question 84, Switzerland refers to its prior assertion that “[r]egardless of whether the different elements (i.e. additional import duties, import quotas, country exemptions and product exclusions) are considered as forming part of a single measure or as separate measures, Article 11 of the DSU requires the Panel to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements.”<sup>6</sup> Switzerland’s answer does not acknowledge, however, that under the plain meaning of the

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<sup>3</sup> *US – 1916 Act (AB)*, n.30; see *Mexico – Corn Syrup (Article 21.5 – US) (AB)*, para. 36.

<sup>4</sup> Switzerland’s Response to the Panel’s Question 82, para.4.

<sup>5</sup> Switzerland’s Response to the Panel’s Question 83, para. 9.

<sup>6</sup> Switzerland’s Response to the Panel’s Question 2(d)(iii), para. 18, referred to in Switzerland’s Response to the Panel’s Question 84, para. 12.

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. If a complainant has not challenged a complex measure, for example, but several separate measures, then each separate measure must be examined under the relevant provisions separately. The Panel may not, of its own accord, combine the measures and assess them collectively. Were it to do so, the Panel would be examining measures and claims not put before it in the complainant's request for the establishment of a panel and therefore outside its terms of reference. The same would be true if a complainant has challenged a single, complex measure. The Panel may not, of its own accord, isolate certain aspects of that measure and assess them separately. In this respect, the United States also refers the Panel to its own 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.**

9. 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
<b>Amended, modified or replaced measures</b>			
<b>Any other measures following the establishment of the Panel</b>			
<b>Lapsed measures</b>			

10. 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.**

11. The United States comments on the complainant's response to Questions 86 and 87 together. Switzerland lists six proclamations and related adjustments as "amendment[s], modification[s] or replacement[s]" that fall within the Panel's terms of reference.<sup>7</sup> Pointing to the language "any additional measures amending, superseding, supplementing, updating, extending, replacing or implementing the measures referred to above as well as any exemptions or exclusions applied," Switzerland argues that its request is "formulated in a sufficiently broad manner."<sup>8</sup> Switzerland also argues that these new measures are closely related to, and do not change the essence of, the measures identified in its panel requests.<sup>9</sup> Switzerland's efforts to bring these new instruments and measures into the Panel's terms of reference are misguided.

12. 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.

13. The six proclamations<sup>10</sup> cited by Switzerland did not exist at the time of panel's establishment and were not (and could not have been) identified in Switzerland's panel request. Thus, neither the proclamations nor the related adjustments could have fallen within the Panel's terms of reference.

14. There is nothing in the text of the DSU<sup>11</sup> 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

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<sup>7</sup> Switzerland's Response to the Panel's Question 86.

<sup>8</sup> Switzerland's Response to the Panel's Question 87, para. 31.

<sup>9</sup> Switzerland's Response to the Panel's Question 87, para. 32.

<sup>10</sup> Proclamation 9886 of May 16, 2019 (US-230); Proclamation 9893 of May 19, 2019 (US-232); Proclamation 9894 of May 19, 2019 (US-231); 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).

<sup>11</sup> U.S. Response to the Panel's Question 87, para. 20.



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”<sup>12</sup> – 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,<sup>13</sup> which includes only those “specific measures at issue.”

15. 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.

16. In addition, contrary to Switzerland’s argument, it cannot be said that the new duties on derivative products “do not change the essence of,”<sup>14</sup> or “are closely related to,”<sup>15</sup> the additional duties on steel and aluminum imports identified in Switzerland’s panel request when the new duties concern an entirely separate set of products with different HTS headings.<sup>16</sup> Put differently, there is a substantive difference between the measures listed in

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<sup>12</sup> DSU Art. 6.2.

<sup>13</sup> DSU Art. 7.1.

<sup>14</sup> Switzerland’s Response to the Panel’s Question 87, para. 50.

<sup>15</sup> Switzerland’s Response to the Panel’s Question 87, para. 49.

<sup>16</sup> 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 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).

Switzerland'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 Switzerland'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 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.**

17. 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.**

18. Switzerland 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

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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).

a breach of the GATT 1994.<sup>17</sup> Switzerland disagrees, however, with the U.S. assertion that it has not “suspended in whole or in part a GATT obligation or withdrawn or modified a GATT concession” generally or within the meaning of Article XIX.<sup>18</sup>

19. Switzerland’s reasoning proves circular, however, when it attempts to explain why it disagrees with the United States on this point, stating that it believes “the steel and aluminium import adjustment measures constitute safeguard measures since through those measures the United States has suspended at least one GATT obligation or withdrawn or modified at least one GATT concession.”<sup>19</sup> In essence, it appears that Switzerland disagrees with the U.S. assertion that it has not “suspended in whole or in part a GATT obligation or withdrawn or modified a GATT concession” generally or within the meaning of Article XIX because Switzerland believes that the measures at issue “constitute safeguard measures since through those measures the United States has suspended at least one GATT obligation or withdrawn or modified at least one GATT concession.”

20. This 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).

21. 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.

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 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.

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<sup>17</sup> Switzerland’s Response to the Panel’s Question 89, para. 71.

<sup>18</sup> Switzerland’s Response to the Panel’s Question 89, para. 73.

<sup>19</sup> Switzerland’s Response to the Panel’s Question 89, para. 73.

23. In relation to the measures at issue, the United States has explicitly and repeatedly invoked GATT 1994 Article XXI.<sup>20</sup> 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. Switzerland 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.<sup>21</sup> 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. Switzerland’s response regarding the grammatical construction of Article XXI(b) is flawed and unsupported. First, Switzerland argues that Article XXI(b) is comprised of eight

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<sup>20</sup> 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)).

<sup>21</sup> 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.

subordinate clauses but fails to cite a single grammar source in support of that assertion or provide a credible explanation for its position.<sup>22</sup>

26. For instance, Switzerland argues that “necessary for the protection of its essential security interests” is a verbless clause. However, while there is a unique category of clauses called a verbless clause (typically, a clause has a subject and a predicate including a verb, as Switzerland agrees<sup>23</sup>), the language of Article XXI that Switzerland cites is not such a clause.

27. The source cited by Switzerland on a different topic provides the following example of a “verbless clause”: “The tourists, *most of them foreigners*, had been hoarded onto a cattle truck.”<sup>24</sup> It then explains, “In [the example] the supplement is comparable in function to a relative clause: compare *who were most of them foreigners* (or *most of whom were foreigners*).”<sup>25</sup> Thus, in the example, the supplement (“most of them foreigners”) functions like a relative clause even though it is missing a relative pronoun and verb.

28. In contrast, the main text of Article XXI(b) does contain a relative pronoun – Switzerland has just chosen to ignore it. The text reads “*which* it considers necessary for . . . .” The language “necessary for the protection of its essential security interests” is therefore part of the relative clause that begins with the relative pronoun “which” and subject / predicate “it considers” and ends at the end of each subparagraph ending; it is not a separate verbless clause that functions like a relative clause.

29. Switzerland characterizes each subparagraph ending as a “participial clause,” though it once again does not cite to a grammar source in support.<sup>26</sup> Switzerland also argues that each “participial clause” modifies the noun “action.”<sup>27</sup> Both Switzerland and the United States seem to agree that each subparagraph ending is a “modifier” that modifies a noun. Under English grammar rules, the modifier is placed as closely as possible to the noun it modifies.<sup>28</sup>

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<sup>22</sup> Switzerland’s Response to the Panel’s Question 90, paras. 74-75.

<sup>23</sup> Switzerland’s Response to the Panel’s Question 91, para. 87 (“In English grammar, ‘clause’ is defined as ‘syntactic construction consisting [...] of a subject and a predicate.’”).

<sup>24</sup> Rodney Huddleston & Geoffrey K. Pullum, *The Cambridge Grammar of the English Language 1359-1360* (Cambridge Univ. Press, 2002)(emphasis in the original)(US-237).

<sup>25</sup> Rodney Huddleston & Geoffrey K. Pullum, *The Cambridge Grammar of the English Language 1359-1360* (Cambridge Univ. Press, 2002)(emphasis in the original)(US-237).

<sup>26</sup> Switzerland’s Response to the Panel’s Question 90, para. 75.

<sup>27</sup> Switzerland’s Response to the Panel’s Question 90, para. 75.

<sup>28</sup> The Merriam-Webster’s Guide to Punctuation and Style provides that “[t]he adjective clause modifies a noun or pronoun and normally follows the word it modifies” and “[u]sage problems with phrases occur most often when a modifying phrase is not placed close enough to the word or words that it modifies.” MERRIAM-WEBSTER’S GUIDE TO PUNCTUATION AND STYLE 232, 233 (1st edn 1995) (US-95). The Harper’s English Grammar also provides that “adjectives and adverbial phrases, like adjectives and adverbs themselves should be placed as closely as possible to the words they modify.” HARPER’S ENGLISH GRAMMAR 186-187 (Harper & Row, 1966) (US-96). In fact, a common mistake in English grammar is the use of “misplaced modifier,” which is “a word, phrase, or clause that is placed incorrectly in a sentence, thus distorting the meaning.” See THE NEW

Thus, the most natural reading is that subparagraph endings (i) and (ii) modify the noun “interests” and not “action.”

30. Switzerland also argues that “the list (i), (ii) and (iii) in Article XXI(b) constitutes a case of ‘coordinate construction’” and that “[o]ne essential feature of coordinate constructions is that ‘coordinates must be **alike in function**, they must stand in the same syntactic relation to any surrounding material” and that therefore it is “not possible that (i) and (ii) modify the noun ‘interests’ if (iii) modifies the noun ‘action.’”<sup>29</sup> By “alike in function” and “same syntactic relation,” however, the source to which Switzerland refers does not indicate that the items in a list must modify the same noun, as evident in the examples and explanation provided in the source:

Rule [1] says that there must be no change in function when we make the replacement. This condition excludes examples like:

[4] i \*He left this morning and the room.

ii. \*She became and admired the best teacher in the university.

Example [i] is inadmissible because *He left this morning* has *this morning* as adjunct whereas *He left the room* has *the room* as object.

Similarly [ii] is excluded because the *best teacher in the university* is predicative complement in *She became the best teacher in the university*, but object in *She admired the best teacher in the university*.<sup>30</sup>

31. Rather, the rule is concerned with the grammatical function of the text (adjunct, complement, object, etc.). And here, Switzerland appears to agree that each subparagraph ending has the same grammatical function – a participial phrase/clause that modifies a noun. Furthermore, the examples above all use a coordinate conjunction – “and” – indicating that

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YORK PUBLIC LIBRARY WRITER'S GUIDE TO STYLE AND USAGE 181 (1994) (US-177). The following example from a grammar book is informative: “A nine-year-old girl has been attacked by a pack of pit bulls returning home from school.” The author explains that “[t]he present participle phrase **returning home from school** appears to modify the noun **pack**. The sentence implies that the pit bulls were home from school, not the girl.” The author corrects the sentence by placing “returning home from school” closer to the noun it modifies: “A nine-year old girl returning home from school has been attacked by a pack of pit bulls.” The Grammar Bible: Everything You Always Wanted to Know About Grammar but Didn't Know Whom to Ask 146-147 (2nd edn 2004) (emphasis in the original) (US-178).

<sup>29</sup> Switzerland's Response to the Panel's Question 90, para. 79.

<sup>30</sup> R. Huddleston and G.K. Pullum, THE CAMBRIDGE GRAMMAR OF THE ENGLISH LANGUAGE 1323 (Cambridge University Press, 2016), (emphasis in the original) Exhibit CHE-78.

the rule is applicable when a coordinate conjunction is used.<sup>31</sup> The subparagraphs of Article XXI(b), however, do not use a coordinate conjunction; thus, the rule to which Switzerland refers simply does not apply.

32. As explained in great detail in prior submissions<sup>32</sup>, 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.

33. Under the ordinary meaning of the English text of Article XXI(b), the subparagraph endings (i) and (ii) modify the phrase "essential security interests"; each relate to the kinds of interests for which the Member may consider its action necessary to protect. In this way, the subparagraph endings (i) and (ii) indicate the types of essential security interests to be implicated by the action taken.<sup>33</sup> The final subparagraph ending provides that a Member may take any action which it considers necessary for the protection of its essential security interests "taken in time of war or other emergency in international relations." It does not speak to the nature of the security interests, but provides a temporal limitation related to the action taken. Although an adjectival phrase normally follows the word it modifies, it is "actions" – not "interests" – that are taken. In this case, the drafters departed from typical English usage in placing the modifier next to "its essential security interests" as opposed to "action."

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. 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

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<sup>31</sup> See HARPER'S ENGLISH GRAMMAR, at 248-249 ("It is violation of the principle of coherence to use a coordinate conjunction—especially and—to connect terms that pertain to widely different and unrelated ideas of functions...The co-ordinate conjunctions connect elements of equal value and importance—two clauses of equal rank, two phrases, two adjectives, two adverbs, two nouns, two verbs, and the like. They are not used to connect a noun with an adjective, for instance, or an infinitive phrase with a participial phrase, or an adjective clause with an adverb clause. **She began to cry and murmuring her grief to me** is incoherence because and does not connect co-ordinate or similar elements.")(emphasis in the original)(US-238).

<sup>32</sup> See e.g., Second Written Submission of the United States, Section II.B; U.S. Response to the Panel's Questions 34-37.

<sup>33</sup> Those subparagraphs provide that a Member may take any action it considers necessary for the protection of its essential security interests "relating to fissionable materials or the materials from which they are derived," and its essential security interests "relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying for military establishment."

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".**

35. In response to the Panel’s question, Switzerland argues that the terms “chapeau” and “subparagraphs” are appropriate terms to refer to the structure of Article XXI(b). Switzerland objects to the use of the term “subparagraph ending,” stating that the term is “a new – and unclear – terminology.”<sup>34</sup>

36. While the United States considers that the interpretation of Article XXI(b) does not turn on the terminology used, the term “subparagraph ending” enhances clarity given the function of the subparagraphs in the context of Article XXI.<sup>35</sup> 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**

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<sup>34</sup> Switzerland’s Response to the Panel’s Question 91, para. 86.

<sup>35</sup> Switzerland’s Response to the Panel’s Question 91, para. 85. Switzerland states, “A subparagraph means essentially ‘a paragraph within a paragraph’ or ‘a subordinate paragraph especially of a formally drafted document.’”



**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).**

37. In response to the Panel's question, Switzerland again argues that the United States has failed to make a *prima facie* case under Article XXI(b).<sup>36</sup> In support of this assertion, Switzerland notes that "the United States has merely invoked Article XXI(b) without specifying a subparagraph on which its defence rests" and that "the United States has not put forward any evidence, nor any facts and legal arguments supporting its claim that the measures at issue are justified under Article XXI(b)." <sup>37</sup>

38. Contrary to Switzerland's claims, 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.

39. 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.

40. 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.

41. Therefore, the text of Article XXI(b) does not require a 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. Switzerland cites nothing in the text of Article XXI(b) that suggests one or more specific subparagraphs must be invoked.

42. Switzerland refers to the *Russia-Traffic in Transit* panel's interpretation of Article XXI(b) throughout its response, including that "essential security interests" are "defence and military interests as well as maintenance of law and public order interests" and that "in time of war or other emergency in international relations" appears "to refer generally to a situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of

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<sup>36</sup> Switzerland's Response to the Panel's Question 92, para. 93.

<sup>37</sup> Switzerland's Response to the Panel's Question 92, para. 96.

general instability engulfing or surrounding a state.”<sup>38</sup> As explained in great detail in the U.S. First Written Submission, however, that panel’s interpretation suffered fatal flaws, including ignoring the ordinary meaning of the terms of Article XXI(b).<sup>39</sup>

43. The ordinary meaning of “its essential security interests” supports the U.S. interpretation. As explained in the U.S. response to the Panel’s Question 51, the phrase “its essential security interests” could encompass a broad range of security interests considered by the invoking Member to be “essential.” The term “security” refers to “[t]he condition of being protected from or not exposed to danger; safety.”<sup>40</sup> As this definition indicates, the term “security” is broad and could encompass many types of security interests that are critical to a Member. The term “essential” refers to significant or important, in the absolute or highest sense.<sup>41</sup> The term does not specify a particular subject matter – only the importance that the Member attaches to the security interest.

44. This means that, as discussed in detail in response to Question 51, action taken pursuant to Article XXI(b)(iii) could implicate a broad range of security interests considered by the invoking Member to be “essential.” Importantly, it is “its” essential security interests – those of the acting Member – that the action is taken for the protection of. With this language, Article XXI(b) acknowledges that the essential security interests at issue are those as determined by the acting Member, and reflects that these interests might change over time and across Members.

45. As the United States explained in response to the Panel’s Question 51, the ordinary meaning of the phrase “other emergency in international relations” in Article XXI(b)(iii) is broad. Definitions of “emergency” include “[a] situation, esp. of danger or conflict, that arises unexpectedly and requires urgent attention.”<sup>42</sup> A broad understanding of the term “emergency” in Article XXI(b)(iii) is supported by the context provided by other provisions of the GATT 1994 and other covered agreements.<sup>43</sup>

46. The phrase “international relations” can be understood as referring to a broad range of matters. The term “relations” can be defined as “[t]he various ways by which a country,

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<sup>38</sup> Switzerland’s Response to the Panel’s Question 92, paras. 98-99.

<sup>39</sup> First Written Submission of the United States of America, Section III.B.

<sup>40</sup> The New Shorter Oxford English Dictionary, 4th edn, L. Brown (ed.) (Clarendon Press, 1993), at 852, 2754 (US-22).

<sup>41</sup> The New Shorter Oxford English Dictionary, 4th edn, L. Brown (ed.) (Clarendon Press, 1993), at 852, 2754 (US-22).

<sup>42</sup> The New Shorter Oxford English Dictionary, 4th edn, L. Brown (ed.) (Clarendon Press, 1993), 806 (US-86).

<sup>43</sup> See GATT 1994 Article XII, Agreement on Safeguards Article 11.1(b), and Agreement on Agriculture Article 4.2, discussed more fully in the U.S. response to Question 51.

State, etc., maintains political or economic contact with another,”<sup>44</sup> while the term “international” can be defined as “[e]xisting, occurring, or carried on between nations; pertaining to relations, communications, travel, etc., between nations.”<sup>45</sup> With these definitions in mind, an “other emergency in international relations” can be understood as referring to a situation of danger or conflict, concerning political or economic contact occurring between nations, which arises unexpectedly and requires urgent attention. As the United States has explained, what those situations are arising between nations that require urgent attention by a Member is a judgment that can only be exercised by that Member for itself.

47. In short, the text of Article XXI(b) establishes that it is for the invoking Member to consider whether any action is “necessary for the protection of its essential security interests” “taken in time of war or other emergency in international relations.” The extensive findings in the steel and aluminum reports are consistent with the United States considering the measures at issue to be necessary for the protection of its essential security interests and taken “in time of war or other emergency in international relations.” That Switzerland disagrees with the U.S. assessment of U.S. national security needs is not relevant for the purpose of Article XXI(b).

**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.**

48. Although Switzerland acknowledges that the panel in *Saudi Arabia – Measures Concerning the Protection of IPRs* relied on the “analytical framework” of the panel report in *Russia – Traffic in Transit*,<sup>46</sup> Switzerland fails to acknowledge or address the panel’s failure to engage in its own analysis of the relevant provisions. Switzerland also makes much of the arguments made by Saudi Arabia to support its invocation of Article 73(b)(iii),<sup>47</sup> but a party’s presentation of evidence in one dispute does not affect the burden of proof in another. As set forth in Article 3.2 of the DSU, the relevant provisions of the covered agreements must be interpreted in accordance with the customary rules of interpretation of public international law.

49. As the United States explained in its response to the Panel’s Question 93, simply transposing the approach of a prior panel 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 set forth in the U.S. First Written Submission, and that

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<sup>44</sup> The New Shorter Oxford English Dictionary, 4th edn, L. Brown (ed.) (Clarendon Press, 1993), 2534 (US-222).

<sup>45</sup> The New Shorter Oxford English Dictionary, 4th edn, L. Brown (ed.) (Clarendon Press, 1993), 1397 (US-222).

<sup>46</sup> Switzerland’s Response to the Panel’s Question 93, para. 102.

<sup>47</sup> Switzerland’s Response to the Panel’s Question 93, paras. 104, 107, 109.

report therefore does not provide any additional relevant guidance to the Panel in this dispute with respect to the interpretation of Article XXI(b).

50. 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).

51. In addition, Switzerland states that the order of analysis of the panel report in *Saudi Arabia – Measures Concerning the Protection of IPRs* was “correct” and suggests that “[t]he same order of analysis should be followed in the present proceedings.” As the United States explained in Section V of its Second Written Submission, 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. 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 United States' invocation of GATT 1994 Article XXI(b).

52. 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.”<sup>48</sup> 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.”

53. 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

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<sup>48</sup> *Saudi Arabia – Protection of IPRs*, para. 7.19.

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.**

54. In its response to the Panel's Question 94, Switzerland begins by reciting the terms of Article 11.1(c) and Article 11.1(b), and then – without explanation – states its conclusion, that “Article 11.1(c) of the Agreement on Safeguards does not have any effect on the measures that fall under Article 11.1(b). Those measures fall within the scope of the Agreement on Safeguards and are prohibited.”<sup>49</sup> Although it thereafter suggests that “Article 11.1(c) complements the provisions of Articles 11.1(a) and Article 11.1(b) by identifying measures that are not subject to the disciplines of the Agreement on Safeguards,”<sup>50</sup> Switzerland provides little additional analysis to support its conclusion. Switzerland then expands its conclusion, and states “Article 11.1(c) is not relevant for the measures that fall within the scope of Articles 11.1(a) and 11.1(b) as those measures are subject to the Agreement on Safeguards.”<sup>51</sup>

55. Switzerland's interpretation would render Article 11.1(c) *inutile*, however, and ignores the potential 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.

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<sup>49</sup> Switzerland's Response to the Panel's Question 94, para. 112. Switzerland similarly suggests that “Article 11.1(c) of the Agreement on Safeguards does not have any effect on the measures that fall under Article 11.1(b). Those measures fall within the scope of the Agreement on Safeguards and are prohibited.” Switzerland's Response to the Panel's Question 94, para. 112.

<sup>50</sup> Switzerland's Response to the Panel's Question 94, para. 113.

<sup>51</sup> Switzerland's Response to the Panel's Question 94, para. 113.

56. Under Switzerland'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."