10. UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION (WT/DS548/14)

- The United States is deeply disappointed that the European Union has submitted a panel request in this dispute. This action is misdirected. It does not address the damage to the international trading system posed by the creation and maintenance of non-market economic conditions in the steel and aluminum sectors.

- In fact, rather than support the international trading system by taking action to resolve the underlying concerns, the European Union is undermining the trading system by asking the WTO to do what it was never intended to do. It is simply not the WTO's role, nor its competence, to review a sovereign nation's judgment of its essential security interests.

- The United States has explained that it considers the Section 232 measures necessary for the protection of its essential security interests, and they are therefore justified under Article XXI of the GATT 1994. In particular, we have explained that the U.S. President has determined that these measures are necessary to address the threatened impairment that imports of steel and aluminum articles pose to U.S. national security.

- In March 2018, the United States provided information to the Council on Trade in Goods in relation to the proclamations issued by the President of the United States pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, consistent with the Decision Concerning Article XXI of the General Agreement taken by the GATT Council on 30 November 1982.[52]

- In the U.S. reply to the consultation requests challenging the 232 measures, the United States clearly stated: "Issues of national security are political matters not susceptible to review or capable of resolution by WTO dispute settlement."[53] We therefore do not understand the purpose of this request for panel establishment, seeking WTO findings that the United States has breached certain WTO provisions. The WTO cannot, consistent with Article XXI, consider those claims or make the requested findings.

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[52] GATT Council, Decision Concerning Article XXI of the General Agreement – Decision of 30 November 1982, L/5426 (2 December 1982).

[53] *See e.g.*, WT/DS548/13.

- The clear and unequivocal U.S. position, for over 70 years, is that issues of national security are not matters appropriate for adjudication in the WTO dispute settlement system.

- No WTO Member can be surprised by this view. For decades, the United States, as well as other WTO Members, has consistently held the position that actions taken pursuant to Article XXI are not subject to review in GATT or WTO dispute settlement. Each sovereign has the power to decide, for itself, what actions are essential to its security, as is reflected in the text of GATT 1994 Article XXI.[54] Not surprisingly, this has also been the view of the European Union and its member States.

- For instance, in 1949, with respect to a dispute with the then-Czechoslovakia, the view of the United States was that the claim alleging a breach of GATT commitments could not be reviewed consistent with Article XXI. The United Kingdom agreed, explaining that "since the question clearly concerned Article XXI, the United States action would seem to be justified because every country must have the last resort on questions relating to its own security."[55]

- Indeed, in 1982, when certain European actions were before the GATT Council, this is precisely the position that the European Economic Community took. The Community stated that Article XXI was a reflection of a Member's "inherent rights." They stressed that "the exercise of these rights constituted a general exception, and required neither notification, justification, nor approval, a procedure confirmed by thirty-five years of implementation of the General Agreement . . . [since] every contracting party was – in the last resort – the judge of its exercise of these rights."[56] Lest anyone consider this was not an official position, the European Community then communicated the same views to the GATT Contracting Parties through a written communication.57

- At that same meeting, the United States supported the European Community's position. The United Stated that the "GATT, by its own terms, left it to each contracting party to

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[54] GATT 1994 Article XXI(b) ("Nothing in this Agreement shall be construed … (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of *its essential security interests* … (italics added).

[55] GATT/CP.3/SR.22, p. 3.

[56] C/M/157, p. 10.

[57] Communication to the Members of the GATT Council, L/5319/Rev.1 (noting "the European Community and its Member States, Australia and Canada, wish to state the following for the information of members of the Council … (b) they have taken these measures on the basis of their inherent rights of which Article XXI of the General Agreement is a reflection").

judge what was necessary to protect its essential security interests in time of international crisis. This was wise in the view of the United States, since no country could participate in GATT if in doing so it gave up the possibility of using any measures, other than military, to protect its security interests."[58]

- It is striking that the U.S. position on Article XXI today is consistent with the U.S. position in 1982, when European actions were challenged, and consistent with the U.S. position in 1949, when U.S. actions were challenged. It is only the *European* position that has changed today. But *nothing* has changed in the text of Article XXI. We therefore see no principled basis for the EU position today.

- It is not the WTO's function, nor within its authority, to second guess a sovereign's national security determination. WTO Members did not abdicate their responsibilities to their citizens to protect their essential security interests when they formed the WTO.

- Because the United States has invoked Article XXI, there is no basis for a WTO panel to review the claims of breach raised by the European Union. Nor is there any basis for a WTO panel to review the invocation of Article XXI by the United States. We therefore do not see any reason for this matter to proceed further.

- The United States nonetheless would take a few moments to express how misguided this request is in terms of the EU's own economic interests.

- As noted under the previous item, WTO Members are well aware that the steel and aluminum sectors have been suffering under conditions of massive excess capacity.

- WTO Members have recognized that this situation is untenable, and has resulted in a crisis for the global economic system.

- It is striking that this view has been expressed particularly forcefully by the European Union itself. For example, in the 2017 Global Steel Forum report prepared for the G20, the European Union described the situation in crisis terms: "[G]lobal overcapacity has reached a tipping point—it is so significant that it poses an *existential threat* that the EU *will not accept*. This requires *urgent solutions* addressing its structural causes."[59]

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[58] *Id.*

[59] Global Forum on Steel Excess Capacity Report, November 30, 2017, prepared under the direction of the Chair of the G20, para. 126.

- We agree with the European Union that overcapacity "poses an existential threat" and "requires urgent solutions." We wonder how the European Union understands the terms "existential threat" and "urgent solutions", however. Because the United States understands "existential" as "relating to *existence*" and "urgent" as "requiring *immediate* action," we view the EU's diagnosis as, in fact, *supporting* the U.S. actions on steel and aluminum.

- Together with the European Union, we have also participated in the Global Steel Forum on Excess Capacity for years, but, let us be honest: no effective solutions have been found. And so, this ongoing "existential threat" calling for "urgent solutions" that the EU "will not accept" has in fact been going on for years, draining public support for an international trading system that permits devastating economic harms to occur – *for years* – without effective remedies.

- We would welcome effective solutions and coordinated actions to address these problems. Rather than working together with us to address the source of non-market economic conditions, however, some Members that share long-standing security relationships with the United States are working to challenge a U.S. national security determination. This is a blatant misuse of the WTO dispute settlement system. We find it troubling and regrettable that the European Union would risk such damage to the WTO – contrary to the longstanding European position on Article XXI.

- The United States has invoked Article XXI for its measures taken pursuant to Section 232. We implemented these measures only after long and careful analysis, and after all trading partners had the chance to address our concerns.

- While the United States has acted in accord with its commitments to protect its legitimate security interests, other WTO Members have not. Rather than work with the United States, they have retaliated with tariffs designed to punish U.S. companies and workers. We will provide remarks on these unjustified and WTO-inconsistent retaliatory tariffs under separate items on the agenda today.

- The United States wishes to be clear: if the WTO were to undertake to review an invocation of Article XXI, this would undermine the legitimacy of the WTO's dispute settlement system and even the viability of the WTO as a whole.

- Infringing on a sovereign's right to determine, for itself, what is in its own essential security interests would run exactly contrary to the WTO reforms that are necessary in order for this organization to maintain any relevancy.

- For these reasons, the United States will not agree to establishment of the panel requested by the European Union today. We would encourage the European countries to consider carefully their broader economic, political, and security interests.

11. UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CANADA (WT/DS550/11)

- The United States is deeply disappointed that Canada has requested establishment of a panel in this dispute.

- The United States has explained that it considers the Section 232 measures necessary for the protection of its essential security interests, and they are therefore justified under Article XXI of the GATT 1994. In particular, we have explained that the U.S. President has determined that these measures are necessary to address the threatened impairment that imports of steel and aluminum articles pose to U.S. national security.

- As Canada knows, the position of the United States for over 70 years has been that actions taken pursuant to Article XXI of the GATT 1994 are not subject to review by the WTO. Each sovereign has the power to decide, for itself, what actions are essential to its security, as is reflected in the text of GATT 1994 Article XXI.[60]

- As Canada also knows, it has also been the position of Canada that the invocation of Article XXI is not reviewable in dispute settlement. In the same 1982 GATT Council discussion in which the European Community expressed its view that the invocation of Article XXI was self-judging, Canada made a similar and unequivocal statement: "Canada's sovereign action was to be seen as a political response to a political issue" and "the GATT had neither the competence nor the responsibility to deal with the political issue which had been raised" under Article XXI.61

- Because the United States has invoked Article XXI, there is no basis for a WTO panel to review the claims of breach raised by Canada. Nor is there any basis for a WTO panel to review the invocation of Article XXI by the United States. We therefore do not see any reason for this matter to proceed further.

- For these reasons, we cannot agree to establishment of the panel requested by Canada today.

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[60] GATT 1994 Article XXI(b) ("Nothing in this Agreement shall be construed ... (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of *its essential security interests* ... (italics added).

[61] C/M/157, p. 10.

- The United States notes that Canadian and U.S. authorities have been engaging in constructive discussions towards resolving concerns surrounding these matters, and the United States is hopeful these discussions may be concluded satisfactorily.

12. UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY MEXICO (WT/DS551/11)

- The United States is disappointed that Mexico has requested establishment of a panel in this dispute.

- The United States has explained that it considers the Section 232 measures necessary for the protection of its essential security interests, and they are therefore justified under Article XXI of the GATT 1994. In particular, we have explained that the U.S. President has determined that these measures are necessary to address the threatened impairment that imports of steel and aluminum articles pose to U.S. national security.

- As explained in previous items, the position of the United States for over 70 years has been that actions taken pursuant to Article XXI of the GATT 1994 are not subject to review by the WTO. Each sovereign has the power to decide, for itself, what actions are essential to its security, as is reflected in the text of GATT 1994 Article XXI.[62]

- Because the United States has invoked Article XXI, there is no basis for a WTO panel to review the claims of breach raised by Mexico. Nor is there any basis for a WTO panel to review the invocation of Article XXI by the United States. We therefore do not see any reason for this matter to proceed further.

- For these reasons, we cannot agree to establishment of the panel requested by Mexico today.

- The United States notes that Mexican and U.S. authorities have been engaging in constructive discussions towards resolving concerns surrounding these matters, and the United States is hopeful these discussions may be concluded satisfactorily.

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[62] GATT 1994 Article XXI(b) ("Nothing in this Agreement shall be construed … (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of *its essential security interests* … (italics added).

13. UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY NORWAY (WT/DS552/10)

- The United States is disappointed that Norway has submitted a panel request in this dispute. This action is misdirected. It does not address the damage to the international trading system posed by the creation and maintenance of non-market economic conditions in the steel and aluminum sectors.

- In fact, rather than support the international trading system by taking action to resolve the underlying concerns, Norway is undermining the trading system by asking the WTO to do what it was never intended to do. It is simply not the WTO's role, nor its competence, to review a sovereign nation's judgment of its essential security interests.

- The United States has explained that it considers the Section 232 measures necessary for the protection of its essential security interests, and they are therefore justified under Article XXI of the GATT 1994. In particular, we have explained that the U.S. President has determined that these measures are necessary to address the threatened impairment that imports of steel and aluminum articles pose to U.S. national security.

- In the U.S. reply to the consultation requests challenging the 232 measures, the United States clearly stated: "Issues of national security are political matters not susceptible to review or capable of resolution by WTO dispute settlement."[63] We therefore do not understand the purpose of this request for panel establishment, seeking WTO findings that the United States has breached certain WTO provisions. The WTO cannot, consistent with Article XXI, consider those claims or make the requested findings.

- The clear and unequivocal U.S. position, for over 70 years, is that issues of national security are not matters appropriate for adjudication in the WTO dispute settlement system.

- No WTO Member can be surprised by this view. For decades, the United States, as well as other WTO Members, has consistently held the position that actions taken pursuant to Article XXI are not subject to review in GATT or WTO dispute settlement. Each

[63] *See e.g.*, WT/DS548/13.

sovereign has the power to decide, for itself, what actions are essential to its security, as is reflected in the text of GATT 1994 Article XXI.[64]

- As noted previously, in 1982, when certain European actions were before the GATT Council, the European Economic Community and its member States stated that Article XXI was a reflection of a Member's "inherent rights." They stressed that "the exercise of these rights constituted a general exception, and required neither notification, justification, nor approval, a procedure confirmed by thirty-five years of implementation of the General Agreement . . . [since] every contracting party was – in the last resort – the judge of its exercise of these rights."[65]

- In that same discussion, Norway supported the EEC and its member States, Canada, and Australia, in their invocation of Article XXI, stating that "in taking the measures … [they] did not act in contravention of the General Agreement."[66]

- As also noted, the United States in the same meeting also supported the European position, stating that the "GATT, by its own terms, left it to each contracting party to judge what was necessary to protect its essential security interests in time of international crisis."[67] The position of the United States remains the same in 2018 as it was in 1982, 1949, and indeed during the negotiation of the GATT itself.

- Because the United States has invoked Article XXI, there is no basis for a WTO panel to review the claims of breach raised by Norway. Nor is there any basis for a WTO panel to review the invocation of Article XXI by the United States. We therefore do not see any reason for this matter to proceed further.

- The United States wishes to be clear: if the WTO were to undertake to review an invocation of Article XXI, this would undermine the legitimacy of the WTO's dispute settlement system and even the viability of the WTO as a whole.

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[64] GATT 1994 Article XXI(b) ("Nothing in this Agreement shall be construed … (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of *its essential security interests* … (italics added).

[65] C/M/157, p. 10.

[66] C/M/157, p. 10.

[67] *Id.*

- Infringing on a sovereign's right to determine, for itself, what is in its own essential security interests would run exactly contrary to the WTO reforms that are necessary in order for this organization to maintain any relevancy.

- For these reasons, the United States will not agree to establishment of the panel requested by Norway today.

14. UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE RUSSIAN FEDERATION (WT/DS554/17)

- The United States refers to the statement made under the previous agenda item.

- The United States has explained that it considers the Section 232 measures necessary for the protection of its essential security interests, and they are therefore justified under Article XXI of the GATT 1994. In particular, we have explained that the U.S. President has determined that these measures are necessary to address the threatened impairment that imports of steel and aluminum articles pose to U.S. national security.

- In the U.S. reply to the consultation requests challenging the 232 measures, the United States clearly stated: "Issues of national security are political matters not susceptible to review or capable of resolution by WTO dispute settlement."[68] We therefore do not understand the purpose of this request for panel establishment, seeking WTO findings that the United States has breached certain WTO provisions. The WTO cannot, consistent with Article XXI, consider those claims or make the requested findings.

- The United States has noted that, for decades, the U.S. position has been that actions taken pursuant to Article XXI are not subject to review in GATT or WTO dispute settlement. Each sovereign has the power to decide, for itself, what actions are essential to its security, as is reflected in the text of GATT 1994 Article XXI.[69] The position of the United States remains the same in 2018 as it was in 1982, 1949, and indeed during the negotiation of the GATT itself.

- In requesting this panel, however, Russia does not even act consistently with the view it expressed in 2017, *less than one year ago*. In another dispute, the United States agreed with Russia's understanding of Article XXI that a determination that an action is necessary for the protection of a Member's essential security interests, and a

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[68] *See e.g.*, WT/DS548/13.

[69] GATT 1994 Article XXI(b) ("Nothing in this Agreement shall be construed … (b) to prevent any contracting party from taking any action *which it considers necessary* for the protection of *its essential security interests* … (italics added).

determination of what are those essential security interests, is at the sole discretion of that Member.70

- The text of Article XXI has not changed in the past year – only Russia's interests have. That is not a sound basis for understanding WTO rules, nor for preserving the legitimacy of the WTO's dispute settlement system.

- For these reasons, the United States will not agree to establishment of the panel requested by Russia today.

[70] *See, e.g.*, U.S. Third-Party Submission Regarding GATT Article XXI (Nov. 7, 2017) (available at https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/wto-dispute-settlement/pending-wto-dispute-35).

15. CANADA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS557/2)

- Under previous items of the agenda, certain Members have claimed that the United States is breaching WTO rules. That view is erroneous as we have explained that the U.S. actions taken pursuant to Section 232 are fully justified under Article XXI of the GATT 1994 as national security actions.

- At the same time, several of those same WTO Members are unilaterally retaliating against the United States. They pretend that the US actions under Section 232 are so-called "safeguards," and further pretend that their unilateral, retaliatory duties constitute suspension of substantially equivalent concessions under the WTO Safeguards Agreement.

- This is the height of hypocrisy. Just as those Members appear to be ready to undermine the dispute settlement system by throwing out the plain meaning of Article XXI and 70 years of practice, so too are they ready to undermine the WTO by pretending they are following WTO rules while taking measures blatantly against those rules.

- And we know from their own actions that many of these Members do not seriously believe that the U.S. actions under Section 232 are safeguard measures. Canada has not even notified the Council for Trade in Goods of its suspension of concessions and other obligations, as it would be required to do under Article 12.5 of the WTO *Agreement on Safeguards* if its duties were in response to a U.S. safeguard action. Thus, even were its action permissible under the Safeguards Agreement, which it is not, Canada does not even follow the WTO rules that would apply to that action.

- To be clear: Article XIX of the GATT 1994 may be invoked by a Member to depart temporarily from its commitments in order to take emergency action with respect to increased imports. The United States, however, is not invoking Article XIX as a basis for its Section 232 actions. Thus, Article XIX and the Safeguards Agreement are not relevant to the U.S. actions under Section 232, and the United States has not utilized its domestic law on safeguards to take the actions under Section 232.

- Because the United States is not invoking Article XIX, there is no basis for another Member to pretend that Article XIX should have been invoked and to use safeguards rules that are simply inapplicable.

- The additional, retaliatory duties are nothing other than duties in excess of Canada's WTO commitments and are applied only to the United States, contrary to Canada's most-favored-nation obligation. The United States will not permit its businesses, farmers, and workers to be targeted in this WTO-inconsistent way.

- For these reasons, the United States requests that the DSB establish a panel to examine this matter with standard terms of reference.

16. CHINA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS558/2)

- Under previous items of the agenda, certain Members have claimed that the United States is breaching WTO rules. That view is erroneous as we have explained that the U.S. actions taken pursuant to Section 232 are fully justified under Article XXI of the GATT 1994 as national security actions.

- At the same time, some of those very same Members are unilaterally retaliating against the United States, based on the pretense that the actions taken by the United States are so-called "safeguards." Those WTO Members engage in the further pretense that their unilateral, retaliatory duties constitute a suspension of substantially equivalent concessions pursuant to the WTO Safeguards Agreement.

- This is the height of hypocrisy. Just as those Members eagerly seek to undermine the dispute settlement system by throwing out the plain meaning of Article XXI and 70 years of practice, so too are they prepared to undermine the WTO by taking measures blatantly against WTO rules, all the while pretending they are following the rules.

- China is a prime example. China pretends that it is entitled to withdraw substantially equivalent concessions pursuant to the Safeguards Agreement, but China has not complied with the most basic elements of the Safeguards Agreement that would be necessary for such action. Suspension of concessions and other obligations under the Safeguards Agreement requires a multi-step process that must take place within 90 days from the application of a safeguard measure. That process entails certain procedures and considerations that China has not satisfied to put its suspension of concessions into effect.

- If China truly considered the U.S. actions under Section 232 to be safeguards, it would certainly have respected an obligation to allow 30 days for consultations and to wait 30 days to implement its suspension of concessions. But China did not comply with either of these obligations.

- Moreover, China has not even attempted to address whether its action is in response to an alleged "safeguard" taken as a result of an absolute increase in imports. If there were an absolute increase in imports, the right to suspend substantially equivalent concessions under the Safeguard Agreement may not be exercised for the first three years of the safeguard measure.

- China's blatant disregard for these provisions of the Safeguards Agreement prove that China is not serious about its contention that the U.S. actions under Section 232 are safeguard measures or that China is exercising a right under the Safeguards Agreement.

- To be clear: Article XIX of the GATT 1994 is not applicable to the U.S. actions under Section 232. Article XIX may be invoked by a Member to depart temporarily from its commitments in order to take emergency action with respect to increased imports. The United States, however, is not invoking Article XIX as a basis for its Section 232 actions. Thus, Article XIX and the Safeguards Agreement are not relevant to the U.S. actions under Section 232, and the United States has not utilized its domestic law on safeguards to take the actions under Section 232.

- Because the United States is not invoking Article XIX, there is no basis for China to pretend that Article XIX should have been invoked and to use safeguards rules that are simply inapplicable.

- China's additional, retaliatory duties are nothing other than duties in excess of China's WTO commitment and are applied only to the United States, contrary to its most-favored-nation obligation. The United States will not permit its businesses, farmers, and workers to be targeted in this WTO-inconsistent way.

- For these reasons, the United States requests that the DSB establish a panel to examine this matter with standard terms of reference.

17. EUROPEAN UNION – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS559/2)

- Under previous items of the agenda, certain Members have claimed that the United States is breaching WTO rules. That view is erroneous as we have explained that the U.S. actions taken pursuant to Section 232 are fully justified under Article XXI of the GATT 1994 as national security actions.

- At the same time, some of those very same Members are unilaterally retaliating against the United States, based on the pretense that the actions taken by the United States are so-called "safeguards." Those WTO Members engage in the further pretense that their unilateral, retaliatory duties constitute suspension of substantially equivalent concessions under the WTO Safeguards Agreement.

- This is the height of hypocrisy. Just as those Members eagerly seek to undermine the dispute settlement system by throwing out the plain meaning of Article XXI and 70 years of practice, so too are they prepared to undermine the WTO by taking measures blatantly against WTO rules, all the while pretending they are following the rules.

- The European Union's willingness to disregard WTO rules is apparent in its characterization of the U.S. actions under Section 232 as safeguard measures. This fiction requires the European Union to ignore the facts that contradict its narrative.

- The U.S. actions on steel and aluminum were taken under Section 232, a national security statute that expressly relates to imports that threaten to impair the national security of the United States. The United States President made his determinations on the basis of lengthy and detailed reports by the responsible government department. The U.S. actions were not taken pursuant to Section 201 of the Trade Act of 1974 that authorizes the imposition of a safeguard measure under U.S. domestic law.

- To be clear: Article XIX of the GATT 1994 on safeguards may be invoked by a Member to depart temporarily from its commitments in order to take emergency action with respect to increased imports. The United States, however, is not invoking Article XIX as a basis for its Section 232 actions. Thus, Article XIX and the Safeguards Agreement are not relevant to the U.S. actions under Section 232.

- Because the United States is not invoking Article XIX, another Member cannot simply act as if Article XIX had been invoked and use that sham pretense to apply safeguards rules that are simply inapplicable.

- The European Union's additional, retaliatory duties are nothing other than duties in excess of the EU's WTO commitments and are applied only to the United States, contrary to its most-favored-nation obligation. The United States will not permit its businesses, farmers, and workers to be targeted in this WTO-inconsistent way.

- For these reasons, the United States requests that the DSB establish a panel to examine this matter with standard terms of reference.

18. MEXICO – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS560/2)

- Under previous items of the agenda, certain Members have claimed that the United States is breaching WTO rules. That view is erroneous as we have explained that the U.S. actions taken pursuant to Section 232 are fully justified under Article XXI of the GATT 1994 as national security actions.

- At the same time, some of those very same Members are unilaterally retaliating against the United States, based on the pretense that the actions taken by the United States are so-called "safeguards." Those WTO Members engage in the further pretense that their unilateral, retaliatory duties constitute suspension of substantially equivalent concessions under the WTO Safeguards Agreement.

- This is the height of hypocrisy. Just as those Members appear to be ready to undermine the dispute settlement system by throwing out the plain meaning of Article XXI and 70 years of practice, so too are they prepared to undermine the WTO by taking measures blatantly against WTO rules, all the while pretending they are following the rules.

- And we know from their own actions that many of these Members do not seriously believe that the U.S. actions under Section 232 are safeguard measures. Mexico has not even notified the Council for Trade in Goods of its suspension of concessions and other obligations, as it would be required to do under Article 12.5 of the WTO Agreement on Safeguards if its duties were in response to a U.S. safeguard action. Thus, even were its action permissible under the Safeguards Agreement, which it is not, Mexico does not even follow the WTO rules that would apply to that action.

- To be clear: Article XIX of the GATT 1994 is not applicable to the U.S. actions under Section 232. Article XIX may be invoked by a Member to depart temporarily from its commitments in order to take emergency action with respect to increased imports. The United States, however, is not invoking Article XIX as a basis for its Section 232 actions. Thus, Article XIX and the Safeguards Agreement are not relevant to the U.S. actions under Section 232, and the United States has not utilized its domestic law on safeguards to take the actions under Section 232.

- Because the United States is not invoking Article XIX, there is no basis for Mexico to pretend that it should have been invoked and to use safeguards rules that are simply inapplicable.

- The increased, retaliatory duties are nothing other than duties applied only to the United States, contrary to Mexico's most-favored-nation obligation. The United States will not permit its businesses, farmers, and workers to be targeted in this WTO-inconsistent way.
- For these reasons, the United States requests that the DSB establish a panel to examine this matter with standard terms of reference.

19. UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY TURKEY (WT/DS564/15)

- The United States refers to the statements made under agenda items 13 and 14.

- The United States has explained that it considers the Section 232 measures necessary for the protection of its essential security interests, and they are therefore justified under Article XXI of the GATT 1994. In particular, we have explained that the U.S. President has determined that these measures are necessary to address the threatened impairment that imports of steel and aluminum articles pose to U.S. national security.

- In the U.S. reply to the consultation requests challenging the 232 measures, the United States clearly stated: "Issues of national security are political matters not susceptible to review or capable of resolution by WTO dispute settlement."[71] We therefore do not understand the purpose of this request for panel establishment, seeking WTO findings that the United States has breached certain WTO provisions. The WTO cannot, consistent with Article XXI, consider those claims or make the requested findings.

- We would welcome effective solutions and coordinated actions to address the problems created by non-market economic policies and practices creating massive excess capacity in the steel and aluminum sectors. Rather than working together with us to address the source of non-market economic conditions, however, some Members that share long-standing security relationships with the United States are working to challenge a U.S. national security determination. This is a blatant misuse of the WTO dispute settlement system.

- While the United States has acted in accord with its commitments to protect its legitimate security interests, other WTO Members have not. Rather than work with the United States, they have retaliated with tariffs designed to punish U.S. companies and workers. The United States recently requested supplemental WTO consultations with Turkey on its unjustified amended retaliatory tariffs.

- The United States wishes to be clear: if the WTO were to undertake to review an invocation of Article XXI, this would undermine the legitimacy of the WTO's dispute settlement system and even the viability of the WTO as a whole.

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[71] *See e.g.*, WT/DS548/13.

- Infringing on a sovereign's right to determine, for itself, what is in its own essential security interests would run exactly contrary to the WTO reforms that are necessary in order for this organization to maintain any relevancy.

- For these reasons, the United States will not agree to establishment of the panel requested by Turkey today.

20. APPELLATE BODY APPOINTMENTS: PROPOSAL BY VARIOUS MEMBERS (WT/DSB/W/609/REV.5)

- The United States thanks the Chair for the continued work on these issues.
- As we have explained in prior meetings, we are not in a position to support the proposed decision.
- The systemic concerns that we have identified remain unaddressed.
- As the United States explained at the DSB meeting on August 27, 2018, for more than 15 years, across multiple U.S. Administrations, the United States has been raising serious concerns with the Appellate Body's disregard for the rules set by WTO Members.
- Through persistent overreaching, the WTO Appellate Body has been adding obligations that were never agreed by the United States and other WTO Members.
- The 2018 Trade Policy Agenda outlined several longstanding U.S. concerns.[72]
    - The United States has raised repeated concerns that appellate reports have gone far beyond the text setting out WTO rules in varied areas, such as subsidies, antidumping duties, anti-subsidy duties, standards and technical barriers to trade, and safeguards, restricting the ability of the United States to regulate in the public interest or protect U.S. workers and businesses against unfair trading practices.
    - And as we explained under an earlier agenda item, the Appellate Body has issued advisory opinions on issues not necessary to resolve a dispute. Furthermore, we have explained that the Appellate Body has reviewed panel fact-finding despite appeals being limited to legal issues. And the Appellate Body has asserted that panels must follow its reports although Members have not agreed to a system of precedent in the WTO, and continuously disregarded the 90-day mandatory deadline for appeals – all contrary to the WTO's agreed dispute settlement rules.
- And for more than a year, the United States has been calling for WTO Members to correct the situation where the Appellate Body acts as if it has the power to permit ex-Appellate Body members to continue to decide appeals even after their term of office – as set by the WTO Members – has expired. This so-called "Rule 15" is, on its face, another example of the Appellate Body's disregard for the WTO's rules.

[72] Office of the U.S. Trade Representative, 2018 President's Trade Policy Agenda, at 22-28.

- Our concerns have not been addressed. When the Appellate Body abuses the authority it was given within the dispute settlement system, it undermines the legitimacy of the system and damages the interests of all WTO Members who care about having the agreements respected as they were negotiated and agreed.

- The United States will continue to insist that WTO rules be followed by the WTO dispute settlement system, and will continue our efforts and our discussions with Members and with the Chair to seek a solution on these important issues.

****CHECK AGAINST DELIVERY****

21. FOSTERING A DISCUSSION ON THE FUNCTIONING OF THE APPELLATE BODY (JOB/DSB/2): STATEMENT BY HONDURAS

- The United States thanks Honduras for its non-paper and for placing this item on the agenda for today's meeting.

- We look forward to hearing other Members' views on options for addressing the concerns that the United States has been raising for over a year. We appreciate that the non-paper provides some of the possible options and that it recognizes that there may be other possible approaches.

- We remain interested in hearing of other approaches that Members are considering.

- We take this opportunity to reiterate our views on one of the questions presented in Honduras's non-paper: *who* decides how to respond to the situation where the term of an Appellate Body member appointed to a division expires before the report in that appeal is signed?

- The United States has reiterated that this is the responsibility of WTO Members. In this regard, we recall that it is the DSB, not the Appellate Body, that has the authority to appoint Appellate Body members and to decide when their term in office expires under Articles 17.1 and 17.2 of the DSU. Accordingly, it is up to the DSB, not the Appellate Body, to decide whether a person who is no longer an Appellate Body member can continue to serve on an appeal.

- We note that one of the options listed in the non-paper would be for the Appellate Body to continue to apply Rule 15. This would not address the issues we have been raising for over a year. A solution to the Appellate Body's abuse of its authority under the DSU will require Members to exercise their responsibility for the system. Continuing to ignore such abuses – or perhaps worse, accommodating or ratifying them – is not tenable.

- We look forward to continuing to discuss these issues with other Members.