

UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINUM PRODUCTS

(DS552)

**COMMENTS OF THE UNITED STATES OF AMERICA
ON THE COMPLAINANT’S COMMENTS ON U.S. STATEMENTS
AT THE PANEL’S VIDEOCONFERENCE WITH THE PARTIES**

March 11, 2021

1. The United States comments below on the complainant’s comments on U.S. statements at the Panel’s videoconference with the parties. 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.

I. CONTRARY TO COMPLAINANT’S COMMENTS, CHALLENGED MEASURES ARE ESSENTIAL SECURITY MEASURES UNDER ARTICLE XXI(B), AND THE PANEL SHOULD FIND THAT THE UNITED STATES HAS INVOKED ARTICLE XXI(B) OF THE GATT 1994

2. In its closing statement, the United States explained that, even on the complainant’s understanding of Article XXI(b) as *not* self-judging, the United States as the Member invoking Article XXI(b) has chosen to make information available to other Members that would satisfy the complaining party’s approach.¹ The United States then pointed to information in the record, including the DOC steel report and the G20 Global Steel Forum report, that clearly supports the U.S. consideration that 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.”²

3. In response, Norway argues that the circumstance described in the DOC aluminum and steel reports could not constitute an “emergency” within the meaning of Article XXI(b)(iii). Specifically, Norway argues that “Article XXI(b)(iii) does not permit WTO-inconsistent import restrictions because a ‘war or other emergency in international relations’ might happen in the future.”³ Norway is wrong.

4. Norway appears to misconstrue the U.S. discussion of the DOC reports. The emergency that the United States assessed was that, as a result of the circumstances resulting from the global steel and aluminum excess capacity crises, it was at risk of not being able to produce sufficient steel and aluminum to meet demands during national emergency. To the United States, that risk in itself was an emergency that needed to be addressed urgently and immediately. Norway’s suggestion that “emergency” can only arise if the United States is in fact unable to meet such demands during a national emergency cannot be reconciled with the purpose of Article XXI(b). That a Member must, for example, allow vital industries to come to collapse before acting is nonsensical, and would in fact prevent a Member from being able to take measures it considers necessary for the protection of its essential security interests – a result directly contrary to the text of Article XXI, which provides that *Nothing in the Agreement shall prevent* a Member from taking such action.

5. At issue is the sovereign right of a state to take action to protect its essential security in the manner it considers necessary. This right is fundamental and goes to the heart of the basic responsibilities of a government. WTO Members, including the United States, did not relinquish this inherent right in joining the WTO. Norway’s constricted interpretation of Article XXI(b)(iii)

¹ See U.S. Closing Statement, paras. 51-67.

² See U.S. Closing Statement, paras. 51-67.

³ Norway’s Comments on U.S. Closing Statement, paras. 4-6.

would effectively render this provision incapable of fulfilling that function. Moreover, Norway's suggestion is disconnected from how nations operate in the face of national security risks; states do not and cannot wait until the risks have materialized.

6. Further, with its discussions about the perceived deficiencies in the DOC reports, Norway urges the Panel to supplant the Secretary's finding with its own findings and the supplant the President's determination with the Panel's own determination.⁴ Nothing in the text of Article XXI(b) permits such an approach, and the Panel should reject it.

II. CONCLUSION

7. In its comments on the U.S. closing statement, the complainant has failed to rebut the arguments put forward by the United States. As the U.S. understanding of Article XXI – consistent across decades of Council statements and negotiating history, and consistent with several of the complainants' own previous views – stands unrebutted, the United States respectfully requests that the Panel find that the United States has invoked its essential security interests under GATT 1994 Article XXI(b) and so report to the DSB.

⁴ Norway's Comments on U.S. Closing Statement, paras. 10-19.