

Statements by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, December 4, 2018

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

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY INDIA
(WT/DS547/8)

- We regret that India has moved forward with this second request for the establishment of a panel.
- As we explained in our statement addressing India's first panel request, because the United States has invoked Article XXI of the GATT 1994, there is no basis for a panel to review India's claims of WTO-inconsistency. There is no finding a panel could make other than to note that the United States has invoked Article XXI.
- 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.
- The text of Article XXI is clear: each WTO Member has the right to determine, for itself, what it considers is in its own essential security interests. This has been the understanding of the United States for over 70 years, since the negotiation of the GATT. And that understanding has been shared by every WTO Member whose national security action was subject of complaint, including several WTO Members speaking at the last DSB meeting, such as the European Union, Canada, Russia, and others.

Second Intervention

- India has requested that a single panel be established under Article 9.1 to examine various matters on the agenda of today's meeting, as well as the agenda of the November 21 DSB meeting. The United States does not agree.
- For a single panel to be established to examine multiple complaints, the DSB must *decide* to establish a single panel.
- This is a decision taken by the DSB by consensus.

- Because the challenged actions were taken on the basis of U.S. national security interests, we continue to see no basis for this dispute. Therefore, we do not agree to establish a single panel under Article 9.1.

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

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY SWITZERLAND (WT/DS556/15)

- The United States is disappointed that Switzerland has submitted a second panel request in this dispute.
- As we explained in our statement addressing Switzerland’s first panel request, because the United States has invoked Article XXI of the GATT 1994, there is no basis for a panel to review Switzerland’s claims of WTO-inconsistency. As there is no finding a panel could make other than to note that the United States has invoked Article XXI, we do not see any point to this request.
- If the WTO were to undertake to review a Member’s invocation of Article XXI, and its assessment of its own essential security interests, this would undermine the legitimacy of the WTO’s dispute settlement system and even the viability of the WTO as a whole.
- The text of Article XXI is clear: each WTO Member has the right to determine, for itself, what it considers is in its own essential security interests. This has been the understanding of the United States for over 70 years, since the negotiation of the GATT. And that understanding has been shared by every WTO Member whose national security action was subject of complaint, including several WTO Members speaking at the last DSB meeting, such as the European Union, Canada, Russia, and others.

Second Intervention

- In response to Switzerland’s reference to Article 9.3, that provision does not contain any reference to DSB action, and therefore does not authorize the DSB to make a decision on the matter of choosing panelists or on the harmonization of timetables.
- Therefore, the DSB need not and cannot consider this issue at all.

4. RUSSIAN FEDERATION – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES (WT/DS/566/2)

- Several WTO Members are unilaterally retaliating against the United States for actions it has taken pursuant to Section 232 that, as national security actions, are fully justified under Article XXI of the GATT 1994.
- These Members, including Russia, are pretending 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 Agreement on Safeguards.
- Just as these Members appear 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.
- We know even from their own actions that many of these Members do not seriously believe that the U.S. security measures under Section 232 are safeguards. Russia, for example, has not addressed whether its action is in response to an alleged “safeguard” taken as a result of an absolute increase in imports. If there was an absolute increase, the right to suspend substantially equivalent concessions under the Safeguard Agreement may not be exercised for the first three years of the safeguard measure.
- 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 Russia’s WTO commitments and are applied only to the United States, contrary to Russia’s most-

favoured-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.

5. SAUDI ARABIA – MEASURES CONCERNING THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

A. REQUEST FOR THE ESTABLISHMENT OF A PANEL BY QATAR (WT/DS/567/3)

- As the United States has observed in prior DSB meetings, Members have understood, from the very beginning of the international trading system, that each WTO Member may judge for itself what actions it considers necessary to protect its essential security interests.
- Similar to the points made earlier today with respect to GATT Article XXI, it would undermine the legitimacy of the WTO's dispute settlement system if a WTO panel were to undertake review of a Member's invocation of TRIPS Article 73 and a Member's assessment of its own essential security interests.
- Issues of national security are inherently political in nature, and the text of Article 73, which parallels GATT 1994 Article XXI, establishes that this provision is self-judging: every WTO Member has the right to determine, for itself, what is in its own essential security interests.
- To the extent that Saudi Arabia invokes its essential security interests, there is no basis for a WTO panel to review the claims of WTO-inconsistency raised by Qatar. Nor is there any basis for a WTO panel to review an invocation of TRIPS Article 73 by Saudi Arabia.
- Under these circumstances, the United States considers the parties should resolve the issues raised in this dispute outside the context of WTO dispute settlement.