

a specific sector.<sup>460</sup> In the Panel's view, however, the gravity or severity of an "emergency in international relations" within the meaning of Article XXI(b)(iii), particularly regarding the impact on international relations of situations falling under that provision, has not been established based on the evidence and arguments submitted in this dispute. In reaching this conclusion, the Panel is mindful of its mandate in this dispute<sup>461</sup> as well as the balance of rights and obligations reflected in the terms of Article XXI of the GATT 1994 interpreted in accordance with the DSU.

#### 7.8.4 Conclusion

7.137. In conclusion, the Panel does not find, based on the evidence and arguments submitted in this dispute, that the measures at issue were "taken in time of war or other emergency in international relations" within the meaning of Article XXI(b)(iii) of the GATT 1994. Therefore, the Panel finds that the inconsistencies of the measures at issue with Articles I:1, II:1, and XI:1 of the GATT 1994 are not justified under Article XXI(b)(iii) of the GATT 1994.

### 8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- a. Regarding Norway's claims under Article II of the GATT 1994, the additional duties of 25% on steel products and 10% on aluminium products do not accord the treatment provided for in the United States' Schedule, contrary to Article II:1(b) and Article II:1(a) of the GATT 1994.
- b. Regarding Norway's claims under Article I of the GATT 1994, the country exemptions for steel and aluminium products confer an advantage to products from Australia, Argentina, Brazil, and the Republic of Korea that has not been accorded immediately and unconditionally to like products from all other Members, in a manner inconsistent with Article I:1 of the GATT 1994.
- c. Regarding Norway's claims under Article XI:1 of the GATT 1994, by imposing import quotas on steel and aluminium products from Argentina, Brazil, and the Republic of Korea, the United States has instituted prohibitions or restrictions other than duties, taxes or other charges on the importation of those products of the territory of those Members, inconsistently with Article XI:1 of the GATT 1994.
- d. Regarding Norway's claims under Article X of the GATT 1994, the Panel does not consider it necessary to make findings on Norway's claims relating to the administration of the processes for excluding certain countries or products from measures that have already been found inconsistent with other obligations under the GATT 1994. The Panel therefore declines to make findings regarding the claims under Article X:3(a) of the GATT 1994.

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<sup>460</sup> The United States refers to other evidence that similarly reflects expressions of concern in the context of specific international initiatives. For example, the United States refers to remarks by the EU Commissioner for Trade at the OECD High-Level Symposium on Steel expressing concerns on steel overcapacity while noting ongoing interventions as well as recommendations for international cooperation. (Remarks dated 18 April 2016 of C. Malmström, "Way ahead for the global steel industry", OECD High-Level Symposium on Steel, (Exhibit USA-240)). The statement of the chairperson of the OECD Ministerial Council Meeting addressed multiple topics related to "[r]eshaping the foundations of multilateralism for more responsible, effective and inclusive outcomes", including a series of points reflecting the chairperson's understanding of the views of OECD members on "[i]nternational trade and investment for strong and inclusive growth". In this context, the chairperson of the OECD Ministerial Council Meeting referred to "the view that severe excess capacity in key sectors such as steel and aluminium are serious concerns" and, "[t]o address this critical concern", indicated an agreement "to enhance cooperation in the WTO and in other fora, as appropriate". (Statement of the Chair of the OECD Ministerial Council Meeting (2018), (Exhibit USA-246), p. 5). The Charlevoix G7 Summit Communiqué similarly addresses a number of topics of international engagement and international economic concerns, which includes G7 leaders "call[ing] on all members of the Global Forum on Steel Excess Capacity to fully and promptly implement its recommendations" while "stress[ing] the urgent need to avoid excess capacity in other sectors such as aluminium and high technology". (Charlevoix G7 Summit Communiqué (9 June 2018), (Exhibit USA-247), p. 2).

<sup>461</sup> See section 7.1 above.

- e. Regarding Norway's claims under the Agreement on Safeguards, the Panel finds that the relevant measures at issue were sought, taken, or maintained pursuant to a provision of the GATT 1994 other than Article XIX, namely Article XXI of the GATT 1994, within the meaning of Article 11.1(c) of the Agreement on Safeguards. The Panel therefore finds that the Agreement on Safeguards does not apply to the measures at issue.
- f. Regarding Article XXI of the GATT 1994, the Panel does not find that the measures at issue were "taken in time of war or other emergency in international relations" within the meaning of Article XXI(b)(iii) of the GATT 1994. The Panel therefore finds that the inconsistencies of the measures at issue with Articles I:1, II:1, and XI:1 of the GATT 1994 are not justified under Article XXI(b)(iii) of the GATT 1994.

8.2. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the measures at issue are inconsistent with certain provisions of the GATT 1994, they have nullified or impaired benefits accruing to Norway under that Agreement.

8.3. Pursuant to Article 19.1 of the DSU, the Panel recommends that the United States bring its WTO-inconsistent measures into conformity with its obligations under the GATT 1994.

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