

recalls that an "emergency in international relations" under Article XXI(b)(iii) refers to situations of a certain gravity or severity and international tensions that are of a critical or serious nature in terms of their impact on the conduct of international relations.

7.166. Having carefully reviewed the relevant evidence and arguments submitted in this dispute, and particularly those submitted by the United States in relation to global excess capacity, the Panel is not persuaded that the situation to which the United States refers rises to the gravity or severity of tensions on the international plane so as to constitute an "emergency in international relations" during which a Member may act under Article XXI(b)(iii).⁵⁸⁹ For example, the G20 Global Steel Forum Report "focuses on the steel sector and provides concrete policy solutions to reduce steel excess capacity".⁵⁹⁰ In referring to excess steelmaking capacity as "a global challenge that has become particularly acute since 2015", the report highlights various efforts within the Global Steel Forum in light of trends in the sector as part of "[g]lobal cooperation to find solutions to tackle excess capacity in the steel market".⁵⁹¹ Such evidence submitted by the United States in this dispute reflects international concern expressed in the context of cooperative efforts to address excess capacity in a specific sector.⁵⁹² 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 dispute⁵⁹³ 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.

7.9.4 Conclusion

7.167. 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 Switzerland's claims under Article II of the GATT 1994:
 - i. 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;

⁵⁸⁹ The Panel notes in this regard that previous panels have found situations to constitute an "emergency in international relations" under Security Exceptions based on the particular evidence and circumstances at issue in those disputes. In a dispute under Article XXI(b)(iii) of the GATT 1994, such evidence included international recognition of the degree of deterioration of relations between two Members and a situation involving armed conflict during a certain time period. (See Panel Report, *Russa – Traffic in Transit*, paras. 7.122-7.123). In another dispute under Article 73(b)(iii) of the TRIPS Agreement (the corresponding provision to Article XXI(b)(iii) of the GATT 1994 in the TRIPS Agreement), such evidence included the severance of all diplomatic, consular, and economic relations between two Members. (See Panel Report, *Saudi Arabia – IPRs*; paras. 7.257-7.266).

⁵⁹⁰ G20, *Global Forum on Steel Excess Capacity Report* (30 November 2017), (Exhibit USA-72), p. 2.

⁵⁹¹ G20, *Global Forum on Steel Excess Capacity Report* (30 November 2017), (Exhibit USA-72), pp. 2-3. The report describes the formal establishment of the Global Forum on Steel Excess Capacity and notes that "the OECD acts as the facilitator to the Global Forum". (Ibid. para. 6). The report further describes efforts to develop an "information-sharing mechanism" in a "tangible process [that] contributes to the collective trust and confidence that are necessary to find collective solutions to the challenge of excess capacity". (Ibid. paras. 7-8).

⁵⁹² 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)).

⁵⁹³ See section 7.1 above.

- ii. the additional duty of 50% on steel products from Türkiye does 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; and
 - iii. the additional duties of 25% on derivative steel products and 10% on derivative 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 Switzerland's claims under Article I of the GATT 1994:
- i. 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;
 - ii. the country exemptions for steel and aluminium products confer an advantage to products from Canada and Mexico 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; and
 - iii. the country exemptions for derivative steel and aluminium products confer an advantage to products from Australia, Argentina, Brazil, the Republic of Korea, Canada, and Mexico 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 Switzerland'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 Switzerland's claims under Article X of the GATT 1994, the Panel does not consider it necessary to make findings on Switzerland'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.
- e. Regarding Switzerland's claims under Article XIX of the GATT 1994 and 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 Switzerland 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.
