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TURKEY – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

REPORT OF THE PANEL

TABLE OF CONTENTS

LIST OF ANNEXES

ANNEX A

WORKING PROCEDURES OF THE PANEL

ANNEX B

ARGUMENTS OF THE PARTIES

ANNEX C

ARGUMENTS OF THE THIRD PARTIES

ANNEX D

COMMUNICATION BY THE PANEL ON REQUESTS FOR ENHANCED THIRD-PARTY RIGHTS

ANNEX E

TABLE OF RELEVANT DUTY RATES

CASES CITED IN THIS REPORT

Short Title	Full Case Title and Citation
Argentina – Financial Services	Appellate Body Report, *Argentina – Measures Relating to Trade in Goods and Services*, WT/DS453/AB/R and Add.1, adopted 9 May 2016, DSR 2016:II, p. 431
Argentina – Textiles and Apparel	Appellate Body Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, WT/DS56/AB/R and Corr.1, adopted 22 April 1998, DSR 1998:III, p. 1003
Canada – Autos	Panel Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/R, WT/DS142/R, adopted 19 June 2000, as modified by Appellate Body Report WT/DS139/AB/R, WT/DS142/AB/R, DSR 2000:VII, p. 3043
Chile – Price Band System	Appellate Body Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207/AB/R, adopted 23 October 2002, DSR 2002:VIII, p. 3045 (Corr.1, DSR 2006:XII, p. 5473)
China – Auto Parts	Appellate Body Reports, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R, adopted 12 January 2009, DSR 2009:I, p. 3
China – Auto Parts	Panel Reports, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/R, Add.1 and Add.2 / WT/DS340/R, Add.1 and Add.2 / WT/DS342/R, Add.1 and Add.2, adopted 12 January 2009, upheld (WT/DS339/R) and as modified (WT/DS340/R / WT/DS342/R) by Appellate Body Reports WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R, DSR 2009:I, p. 119
China – Publications and Audiovisual Products	Panel Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R, DSR 2010:II, p. 261
China – Raw Materials	Panel Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/R, Add.1 and Corr.1 / WT/DS395/R, Add.1 and Corr.1 / WT/DS398/R, Add.1 and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, DSR 2012:VII, p. 3501
China – TRQs	Panel Report, *China – Tariff Rate Quotas for Certain Agricultural Products*, WT/DS517/R and Add.1, adopted 28 May 2019
Colombia – Ports of Entry	Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry*, WT/DS366/R and Corr.1, adopted 20 May 2009, DSR 2009:VI, p. 2535
Colombia – Textiles	Appellate Body Report, *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*, WT/DS461/AB/R and Add.1, adopted 22 June 2016, DSR 2016:III, p. 1131
Dominican Republic – Import and Sale of Cigarettes	Appellate Body Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/AB/R, adopted 19 May 2005, DSR 2005:XV, p. 7367
Dominican Republic – Import and Sale of Cigarettes	Panel Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS302/AB/R, DSR 2005:XV, p. 7425
Dominican Republic – Safeguard Measures	Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric*, WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R, and Add.1, adopted 22 February 2012, DSR 2012:XIII, p. 6775
EC – Chicken Cuts	Appellate Body Report, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts*, WT/DS269/AB/R, WT/DS286/AB/R, adopted 27 September 2005, and Corr.1, DSR 2005:XIX, p. 9157
EC – Chicken Cuts	Panel Reports, European *Communities – Customs Classification of Frozen Boneless Chicken Cuts*, WT/DS269/R *(Brazil)* / WT/DS286/R *(Thailand)*, adopted 27 September 2005, as modified by Appellate Body Report WT/DS269/AB/R, WT/DS286/AB/R, DSR 2005:XIX, p. 9295 / DSR 2005:XX, p. 9721
EC – IT Products	Panel Reports, *European Communities and its member States – Tariff Treatment of Certain Information Technology Products*, WT/DS375/R / WT/DS376/R / WT/DS377/R, adopted 21 September 2010, DSR 2010:III, p. 933
EC – Seal Products	Appellate Body Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R / WT/DS401/AB/R, adopted 18 June 2014, DSR 2014:I, p. 7

Short Title	Full Case Title and Citation
EC – Selected Customs Matters	Appellate Body Report, *European Communities – Selected Customs Matters*, WT/DS315/AB/R, adopted 11 December 2006, DSR 2006:IX, p. 3791
India – Additional Import Duties	Appellate Body Report, *India – Additional and Extra-Additional Duties on Imports from the United States*, WT/DS360/AB/R, adopted 17 November 2008, DSR 2008:XX, p. 8223
Indonesia – Autos	Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, Corr.1 and Corr.2, adopted 23 July 1998, and Corr.3 and Corr.4, DSR 1998:VI, p. 2201
Indonesia – Iron or Steel Products	Appellate Body Report, *Indonesia – Safeguard on Certain Iron or Steel Products*, WT/DS490/AB/R, WT/DS496/AB/R, and Add.1, adopted 27 August 2018, DSR 2018:VII, p. 3393
Russia – Tariff Treatment	Panel Report, *Russia – Tariff Treatment of Certain Agricultural and Manufacturing Products*, WT/DS485/R, Add.1, Corr.1, and Corr.2, adopted 26 September 2016, DSR 2016:IV, p. 1547
Saudi Arabia – IPRs	Panel Report, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, WT/DS567/R and Add.1, circulated to WTO Members on 16 June 2020, dispute terminated while appeal pending
US – Certain EC Products	Appellate Body Report, *United States – Import Measures on Certain Products from the European Communities*, WT/DS165/AB/R, adopted 10 January 2001, DSR 2001:I, p. 373
US – Large Civil Aircraft (2nd complaint) (Article 21.5 – EU)	Panel Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint) – Recourse to Article 21.5 of the DSU by the European Union*, WT/DS353/RW and Add.1, adopted 11 April 2019, as modified by Appellate Body Report WT/DS353/AB/RW, DSR 2019:V, p. 2171
US – Line Pipe	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/AB/R, adopted 8 March 2002, DSR 2002:IV, p. 1403
US – Poultry (China)	Panel Report, *United States – Certain Measures Affecting Imports of Poultry from China*, WT/DS392/R, adopted 25 October 2010, DSR 2010:V, p. 1909
US – Renewable Energy	Panel Report, *United States – Certain Measures Relating to the Renewable Energy Sector*, WT/DS510/R and Add.1, circulated to WTO Members 27 June 2019, appealed 15 August 2019
US – Steel and Aluminium Products (Turkey)	Panel Report, *United States – Certain Measures on Steel and Aluminium Products*, WT/DS564/R, Add.1 and Suppl.1, circulated to WTO Members 9 December 2022, appealed 26 January 2023
US – Steel Safeguards	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, adopted 10 December 2003, DSR 2003:VII, p. 3117
US – Tariff Measures (China)	Panel Report, *United States – Tariff Measures on Certain Goods from China*, WT/DS543/R and Add.1, circulated to WTO Members 15 September 2020, appealed 26 October 2020
US – Upland Cotton	Appellate Body Report, *United States – Subsidies on Upland Cotton*, WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, p. 3
US – Zeroing (Japan) (Article 21.5 – Japan)	Appellate Body Report, *United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan*, WT/DS322/AB/RW, adopted 31 August 2009, DSR 2009:VIII, p. 3441

EXHIBITS REFERRED TO IN THIS REPORT

Panel Exhibit	Title	Short title (where applicable)
USA-1, TUR-41	Decree on Additional Duties on the Importation of Certain Products Originated from the United States of America, Council of Ministers Decree No. 11973/2018, Official Gazette No. 30459(bis) (25 June 2018)	Implementation Decree
USA-2, TUR-42	Decision Amending the Decree On Additional Duties on the Importation of Certain Products Originated from the United States of America, Presidential Decision No. 21, Official Gazette No. 30510 (15 August 2018)	First Amendment
USA-6	United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure from 21 June 2018 to 14 August 2018	
USA-7	United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure from 15 August 2018 to 31 December 2018	
USA-8	United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure beginning on 1 January 2019	
USA-10, TUR-1	Trade Expansion Act, Public Law No. 87–794, 76 Stat. 877 (1962), United States Code, Title 19, Section 1862	Section 232
USA-16, TUR-2	United States Code of Federal Regulations, Title 15, Part 705	
USA-21, TUR-3	United States Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security, An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended* (11 January 2018)	Section 232 investigation into steel imports
USA-22, TUR-4	United States Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, *The Effect of Imports of Aluminum on the National Security, An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended* (17 January 2018)	Section 232 investigation into aluminium imports
USA-23, TUR-6	Proclamation 9705 of 8 March 2018, Adjusting Imports of Steel Into the United States, United States Federal Register, Vol. 83, No. 51 (15 March 2018), p. 11625	Proclamation 9705
USA-24, TUR-7	Proclamation 9704 of 8 March 2018, Adjusting Imports of Aluminum Into the United States, United States Federal Register, Vol. 83, No. 51 (15 March 2018), p. 11619	Proclamation 9704
USA-25, TUR-8	Proclamation 9711 of 22 March 2018, Adjusting Imports of Steel Into the United States, United States Federal Register, Vol. 83, No. 60 (28 March 2018), p. 13361	Proclamation 9711
USA-26, TUR-9	Proclamation 9710 of 22 March 2018, Adjusting Imports of Aluminum Into the United States, United States Federal Register, Vol. 83, No. 60 (28 March 2018), p. 13355	Proclamation 9710
USA-27, TUR-10	Proclamation 9740 of 30 April 2018, Adjusting Imports of Steel Into the United States, United States Federal Register, Vol. 83, No. 88 (7 May 2018), p. 20683	Proclamation 9740
USA-28, TUR-11	Proclamation 9739 of 30 April 2018, Adjusting Imports of Aluminum Into the United States, United States Federal Register, Vol. 83, No. 88 (7 May 2018), p. 20677	Proclamation 9739
USA-29, TUR-12	Proclamation 9759 of 31 May 2018, Adjusting Imports of Steel Into the United States, United States Federal Register, Vol. 83, No. 108 (5 June 2018), p. 25857	Proclamation 9759
USA-30, TUR-13	Proclamation 9758 of 31 May 2018, Adjusting Imports of Aluminum Into the United States, United States Federal Register, Vol. 83, No. 108 (5 June 2018), p. 25849	Proclamation 9758
USA-31, TUR-14	Proclamation 9772 of 10 August 2018, Adjusting Imports of Steel Into the United States, United States Federal Register, Vol. 83, No. 158 (15 August 2018), p. 40429	Proclamation 9772
USA-32, TUR-15	Proclamation 9777 of 29 August 2018, Adjusting Imports of Steel Into the United States, United States Federal Register, Vol. 83, No. 171 (4 September 2018), p. 45025	Proclamation 9777
USA-33, TUR-16	Proclamation 9776 of 29 August 2018, Adjusting Imports of Aluminum Into the United States, United States Federal Register, Vol. 83, No. 171 (4 September 2018), p. 45019	Proclamation 9776

Panel Exhibit	Title	Short title (where applicable)
USA-35	Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum, United States Federal Register, Vol. 83, No. 176 (11 September 2018), p. 46026	BIS rule of 11 September 2018
USA-55	Consolidated Tariff Schedule file of Türkiye	CTS file of Türkiye
USA-56	Türkiye's 2018 Import Table (Decision No. 2017/11168 - Additional Decision to the Import Regime Decision, issued on 25 December 2017)	Türkiye's 2018 Import Table
USA-57	Türkiye's 2019 Import Table, as attached to USA-5 (Decision No. 517 - Additional Decision to the Import Regime Decision, issued on 27 December 27 2018)	Türkiye's 2019 Import Table
USA-58	Excerpts of graphs from WTO-WCO HS Tracker, Subheading Visualizer tool, HS2002 to HS2017 correlations for certain tariff headings	Excerpts of graphs from WTO-WCO HS Tracker
USA-59	World Customs Organization correlation tables HS2012 to HS2017 (Table 1)	WCO correlation tables HS2012 to HS2017 (1)
USA-60	World Customs Organization correlation tables HS2012 to HS2017 (Table 2)	WCO correlation tables HS2012 to HS2017 (2)
TUR-19	Memorandum from the United States Secretary of Defense, Memorandum for Secretary of Commerce responding to the Steel and Aluminum Policy Recommendations	United States Secretary of Defense Memorandum
TUR-43	Presidential Decision No. 1130 Amending the Decree on Additional Duties on the Importation of Certain Products Originated from the United States of America, Official Gazette No. 30781 (22 May 2019)	Second Amendment
TUR-44	Proclamation 9894 of 19 May 2019, Adjusting Imports of Steel Into the United States, United States Federal Register, Vol. 84, No. 100 (23 May 2019), p. 23987	Proclamation 9894
TUR-45	Proclamation 9893 of 19 May 2019, Adjusting Imports of Aluminum Into the United States, United States Federal Register, Vol. 84, No. 100 (23 May 2019), p. 23983	Proclamation 9893
TUR-46	Proclamation 9886 of 16 May 2019, Adjusting Imports of Steel Into the United States, United States Federal Register, Vol. 84, No. 98 (21 May 2019), p. 23421	Proclamation 9886

ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Description
CTS	Consolidated Tariff Schedule
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATT 1994	General Agreement on Tariffs and Trade 1994
HS2002	Harmonized System Nomenclature 2002
HS2007	Harmonized System Nomenclature 2007
HS2012	Harmonized System Nomenclature 2012
HS2017	Harmonized System Nomenclature 2017
IDB	Integrated Database
MFN	Most-Favoured Nation
WCO	World Customs Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

1 INTRODUCTION

1.1 Complaint by the United States

1.1. On 16 July 2018, the United States requested consultations with Türkiye[1] pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994). The consultations request concerned Türkiye's imposition of additional duties on certain products originating in the United States. The United States indicated that these additional duties were imposed through legal instruments including Türkiye's Decree No. 11973/2018 on Additional Duties on the Importation of Certain Products Originated from the United States of America, Official Gazette No. 30459(bis), 25 June 2018 (Implementation Decree)[2], as well as any amendments, replacements, related measures, or implementing measures. In its consultations request, the United States referred to these additional duties as the "additional duties measure".[3]

1.2. Consultations were held on 29 August 2018, but failed to resolve the dispute.

1.3. On 18 October 2018, the United States sent Türkiye a second request for consultations pursuant to Article 4 of the DSU and Article XXIII of the GATT 1994, which supplemented its earlier consultations request. This supplementary consultations request concerned "the amended additional duties measure"[4], which resulted from an increase in the duty rates implemented by Türkiye through the Decision Amending the Decree On Additional Duties on the Importation of Certain Products Originated from the United States of America, Presidential Decision No. 21, Official Gazette No. 30510 (15 August 2018) (First Amendment)[5], as well as any amendments, replacements, related measures, or implementing measures.

1.4. Supplemental consultations were held on 14 November 2018, but failed to resolve the dispute.

1.2 Panel establishment and composition

1.5. On 20 December 2018, the United States requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference.[6] At its meeting on 28 January 2019, the Dispute Settlement Body (DSB) established a panel pursuant to the request of the United States in document WT/DS561/2, in accordance with Article 6 of the DSU.[7]

1.6. The Panel's terms of reference are the following:

> To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by the United States in document WT/DS561/2 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.[8]

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[1] Following the establishment of this Panel, Turkey changed its name to the Republic of Türkiye. See WT/INF/43/Rev.23.

[2] Both parties have submitted translations of this instrument, which differ in respect of, *inter alia*, its title. In its consultations and panel requests, the United States referred to this instrument as the "Decision on Implementation of Additional Financial Obligations for the Import of Certain Products Originating in the United States of America". In this Report, the Panel has decided to use Türkiye's translation, submitted as Exhibit TUR-41, in the light of the United States' indication that it would have no objection to the Panel doing so. See United States' response to Panel question No. 71. The Panel understands that the slight differences in language between the two translations have no legal significance.

[3] Request for consultations by the United States, WT/DS561/1.

[4] Request for consultations by the United States – Addendum, WT/DS561/1/Add.1.

[5] Both parties have submitted translations of this instrument. In its consultations and panel requests, the United States referred to this instrument as the "Decision to Amend the Decision to Impose Additional Financial Liabilities on the Import of Some Products Originating From the United States of America". In this Report, the Panel will use Türkiye's translation, submitted as Exhibit TUR-42. The Panel does not consider that the slight differences between the two translations have any legal significance.

[6] Request for the establishment of a panel by the United States, WT/DS561/2 (United States' panel request).

[7] DSB, Minutes of the meeting held on 28 January 2019, WT/DSB/M/425, para. 6.7.

[8] Constitution note of the Panel, WT/DS561/3.

1.7. On 18 February 2019, the United States requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU. On 28 February 2019, the Director-General accordingly composed the Panel as follows:

Chairperson:	Mr William Ehlers
Members:	Mr Johannes R. Bernabe Mr Homero Larrea Monard

1.8. Brazil, Canada, China, the European Union, Guatemala, India, Indonesia, Japan, Kazakhstan, Mexico, New Zealand, Norway, the Russian Federation, Singapore, Switzerland, Chinese Taipei, Thailand, Ukraine, and the Bolivarian Republic of Venezuela notified their interest in participating in the Panel proceedings as third parties.

1.3 Panel proceedings

1.3.1 General

1.9. The Panel held an organizational meeting with the parties on 14 March 2019.

1.10. After consulting with the parties, the Panel adopted its Working Procedures[9] and partial timetable on 5 April 2019. The Panel revised its timetable several times throughout the proceedings in consultation with the parties.[10]

1.11. The Panel held a first substantive meeting with the parties on 3 and 4 October 2019. A session with the third parties took place on 3 October 2019. Prior to the first substantive meeting, on 23 September 2019, the Panel sent the parties and the third parties a list of questions to be answered orally at the meeting. Following the meeting, on 29 November 2019, the Panel sent written questions to the parties and the third parties.

1.12. The second substantive meeting was originally scheduled to take place on 15 and 16 June 2020. However, due to the COVID-19 pandemic and related restrictions on travel and in-person meetings, it was not possible to physically meet with the parties at the WTO premises on the scheduled dates. In consultation with the parties, the Panel postponed the second substantive meeting several times to a date to be determined. Meanwhile, on 16 November 2020, the Panel sent the parties a list of questions to which it sought responses in writing.

1.13. On 17 December 2021, after further consultations with the parties, the Panel communicated its decision that, taking into account the delays already occasioned by COVID-19, as well as the uncertainty about the evolution of the pandemic, scheduling a second substantive meeting in virtual format would strike an appropriate balance between the efficient conduct of the proceedings and the parties' due process rights.[11]

1.14. On 8 February 2022, after consultations with the parties, the Panel scheduled the second substantive meeting through virtual means for 8 and 9 March 2022, and issued draft Additional Working Procedures Concerning Substantive Meetings with Remote Participation to the parties. On 18 February 2022, the Panel adopted its Additional Working Procedures Concerning Substantive Meetings with Remote Participation.[12]

1.15. The Panel held its second substantive meeting with the parties virtually on 8 and 9 March 2022 via the Cisco Webex platform. Prior to the second substantive meeting, on 1 March 2022, the Panel sent the parties a list of questions to be answered orally at the meeting.

1.16. On 28 April 2022, the Panel sent the parties a list of questions to which it sought answers in writing.

[9] See Working Procedures of the Panel (Annex A-1).
[10] The timetable was revised on 5 April 2019, 7 February 2020, 3 June 2020, 16 November 2020, 23 November 2020, 18 February 2022, 28 April 2022, 13 May 2022, 23 November 2022, and 25 May 2023.
[11] Panel's communication to the parties (17 December 2021).
[12] Annex A-2.

1.17. On 15 December 2022, the Panel issued the draft descriptive part of its Report to the parties. On the same day, and following the circulation of the panel report in *US – Steel and Aluminium Products (Turkey)*, the Panel sought the parties' views on the findings in that report concerning the applicability of the WTO safeguards regime to the United States' Section 232 measures, and on the relevance of those findings for this Panel's analysis.

1.18. The Panel issued its Interim Report to the parties on 25 May 2023. The Panel issued its Final Report to the parties on 1 December 2023.

1.3.2 Requests for enhanced third-party rights

1.19. The Panel received communications from Canada[13], the Russian Federation[14], the European Union[15], China[16], and Mexico[17], asking that the Panel exercise its discretion under Article 12.1 of the DSU to grant all third parties additional rights to those provided under Article 10 of the DSU. The requesting third parties asked the Panel to allow all third parties: (i) to receive copies of the parties' written submissions, their oral statements, rebuttals, and answers to questions from the Panel and each other, through all the stages of the proceedings; (ii) to be present for the entirety of all substantive meetings of the Panel with the parties; (iii) to review the draft summary of their own arguments in the descriptive part of the Panel Report; and (iv) to make a brief oral statement during the second substantive meeting.

1.20. The Panel sought the parties' views on the requests for enhanced third-party rights. Türkiye supported the requests, noting that the measure challenged by the United States in this dispute was similar to the measures challenged by the United States in separate panel proceedings where the requesting third parties were participating as respondents. According to Türkiye, the enhanced rights requested by the third parties would not impose any undue additional burden on either the Panel or the parties to the dispute.[18] The United States opposed the requests, arguing that they were not well founded under the DSU, and that the granting of additional rights to third parties would result in a corresponding imposition of additional obligations on the parties, without the consent of one of them.[19]

1.21. On 5 April 2019, the Panel sent a communication to the parties and the third parties in relation to the requests for enhanced third-party rights. The Panel recalled that it had discretion to grant such requests but declined to do so in the circumstances of this case. In explaining its decision, the Panel noted, *inter alia*, the lack of agreement between the parties and the due process implications of granting enhanced third-party rights. The Panel further noted that the third parties requesting enhanced rights would have an opportunity to fully express their views on the relevant legal issues as third parties in this dispute in accordance with Article 10 of the DSU, and also as respondents in separate panel proceedings concerning the United States' complaints against their own measures.

1.22. The Panel's communication is annexed to this Report.[20]

2 FACTUAL ASPECTS

2.1 The measure at issue

2.1. This dispute concerns Türkiye's imposition of additional duties on certain products originating in the United States (additional duties measure).[21] The duties imposed by this measure are

[13] Canada's communication (15 March 2019).
[14] Russian Federation's communication (19 March 2019).
[15] European Union's communication (20 March 2019).
[16] China's communication (20 March 2019).
[17] Mexico's communication (22 March 2019).
[18] Türkiye's communications (21, 22, and 25 March 2019).
[19] United States' communications (20, 21, 22, and 26 March 2019).
[20] Communication by the Panel on requests for enhanced third-party rights (Annex D-1).
[21] As explained in section 1.1 above, the additional duties originally challenged by the United States were amended by Türkiye following the parties' consultations under Article 4 of the DSU. Further to supplementary consultations on these amended additional duties, the United States requested the establishment of a panel on the "amended additional duties measure". In this Report, to differentiate the measure at issue from later amendments, the Panel has decided to refer to the measure challenged by the United States in its panel request as the "additional duties measure".

additional in that they apply in addition to other duties assessed on imports. The United States' panel request identifies the Implementation Decree[22] and the First Amendment[23], as well as any amendments, replacements, related measures or implementing measures, as the legal instruments through which the additional duties measure is imposed.[24]

2.2. The Implementation Decree imposes additional duties on the importation of certain products from the United States, including nuts, rice, food preparations, ethyl alcohol, tobacco, coal, beauty and make-up preparations, certain chemical substances, firewood, certain paper products, certain kinds of pumps, certain x-ray parts, and certain automotive parts.[25] Specifically, it imposes additional duties of between 4% and 70% on 22 tariff lines at the four- and six-digit level, and 479 tariff lines at the 12-digit level.[26] These duties apply only to products originating in the United States.[27]

2.3. The First Amendment applies to the same products as the Implementation Decree but increases the level of the additional duties, such that the 479 tariff lines are subject to additional duties of between 4% and 140%.[28]

2.2 Factual background

2.4. Between March and August 2018, the United States issued instruments imposing certain duties on imports of steel and aluminium products from several countries, including Türkiye (Section 232 duties).[29]

2.5. On 20 April 2018, Türkiye sent a communication to the United States stating that it considered the Section 232 duties to be safeguard measures, and requesting consultations with the United States in accordance with Article 12.3 of the Agreement on Safeguards.[30] That same day, the United States sent a response to Türkiye, stating that the Section 232 duties were not safeguard measures, and that therefore there was no basis to conduct consultations under the Agreement on Safeguards with respect to these duties.[31] The United States indicated that while it would be open to discuss this or any other issue with Türkiye, any discussions regarding the Section 232 duties would not be under the Agreement on Safeguards and would be without prejudice to the United States' view that the Section 232 duties were not safeguard measures.[32]

2.6. On 21 May 2018, Türkiye notified the WTO Council for Trade in Goods and the Committee on Safeguards that, in Türkiye's view, the Section 232 duties constituted "safeguard measures which are not consistent with the provisions of the [Agreement on Safeguards]".[33] Türkiye therefore

[22] Exhibits USA-1, TUR-41. The Implementation Decree entered into force on 21 June 2018 but was only published on 25 June 2018. See United States' response to Panel question No. 3.

[23] Exhibits USA-2, TUR-42.

[24] United States' panel request, p. 1.

[25] Implementation Decree, (Exhibits USA-1, TUR-41), Table; Türkiye's first written submission, para. 2.21.

[26] Implementation Decree, (Exhibits USA-1, TUR-41). In its first written submission, the United States argued that the Implementation Decree affected 477 tariff lines at the 12-digit level. (United States' first written submission, para. 5). Türkiye, in its first written submission, noted that in fact the 22 four- and six-digit tariff lines identified in the Implementation Decree cover 479 12-digit tariff lines. (Türkiye's first written submission, para. 2.17, fn 28 and para. 2.22, fn 37). The United States subsequently accepted this correction. (United States' response to Panel question No. 4).

[27] Implementation Decree, (Exhibits USA-1, TUR-41), Article 1. A full list of the relevant duties is provided in the Table of relevant duty rates (Annex E-1).

[28] First Amendment, (Exhibits USA-2, TUR-42).

[29] Türkiye's first written submission, paras. 2.6-2.9; United States' second written submission, paras. 12-14.

[30] Committee on Safeguards, Imposition of a safeguard measure by the United States on imports of steel and aluminium: Request for consultations under Article 12.3 of the Agreement on Safeguards, G/SG/183.

[31] Committee on Safeguards, Communication from the United States in response to Turkey's request circulated on 20 April 2018, G/SG/184.

[32] Committee on Safeguards, Communication from the United States in response to Turkey's request circulated on 20 April 2018, G/SG/184.

[33] Council for Trade in Goods and Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of Article 8 of the Agreement on Safeguards, G/L/1242-G/SG/N/12/TUR/6, para. 2. In the same paragraph, Türkiye notes its disagreement with the United States'

proposed to "[s]uspen[d] … substantially equivalent concessions and other obligations under GATT 1994 to the trade of the United States tak[ing] the form of an increase in tariffs on selected products originating in the United States" pursuant to Article XIX:3 of the GATT 1994 and Article 8.2 of the Agreement on Safeguards.[34] Türkiye imposed the additional duties measure one month later, on 21 June 2018, through the Implementation Decree.[35]

2.7. On 15 August 2018, the United States increased the level of duties it applied to steel products from Türkiye.[36] That same day, Türkiye notified the Council for Trade in Goods and the Committee on Safeguards that it "reserves its right to further suspend substantially equivalent concessions and other obligations based on the trade impact resulting from the application of the new measures of the United States".[37] Türkiye adopted the First Amendment on the same day, thereby increasing the level of additional duties imposed on certain products originating in the United States.

2.8. On 21 May 2019, a few months after the establishment of this Panel on 28 January 2019, the United States announced that it would reduce the duties it applied on certain steel products from Türkiye to the level in force prior to 15 August 2018.[38] On the same day, Türkiye amended its additional duties measure through the Decision Amending the Decree On Additional Duties on the Importation of Certain Products Originated from the United States of America, Presidential Decision No. 1130, Official Gazette No. 30781 (22 May 2019) (Second Amendment).[39] This instrument reduces the additional duties to the rates in force prior to 15 August 2018, i.e. prior to the entry into force of the First Amendment.[40]

3 PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

3.1. The United States requests that the Panel find that Türkiye's additional duties measure is inconsistent with Türkiye's obligations under Articles I:1, II:1(a), and II:1(b) of the GATT 1994.[41]

3.2. Türkiye requests that the Panel reject the United States' claims in this dispute in their entirety.[42]

4 ARGUMENTS OF THE PARTIES

4.1. The arguments of the parties are reflected in their executive summaries, provided to the Panel in accordance with paragraph 22 of the Working Procedures adopted by the Panel (see Annexes B-1 and B-2).

5 ARGUMENTS OF THE THIRD PARTIES

5.1. The arguments of China, the European Union, Japan, New Zealand, Norway, the Russian Federation, Switzerland, and Ukraine are reflected in their executive summaries, provided

view that the Section 232 duties "are not safeguard measures, and therefore, there is no basis to conduct consultations under the Agreement on Safeguards with respect to these measures". (Ibid.)

[34] Council for Trade in Goods and Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of Article 8 of the Agreement on Safeguards, G/L/1242-G/SG/N/12/TUR/6, para. 3.

[35] As noted above, the Implementation Decree was only published on 25 June 2018. Implementation Decree, (Exhibits USA-1, TUR-41).

[36] Türkiye's first written submission, para. 2.18. See Proclamation 9772, (Exhibits USA-31, TUR-14).

[37] Council for Trade in Goods and Committee on Safeguards, Immediate Notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of Article 8 of the Agreement on Safeguards, G/L/1242/Suppl.1-G/SG/N/12/TUR/6/Suppl.1.

[38] Türkiye's first written submission, para. 2.20. See Proclamation 9886, (Exhibit TUR-46).

[39] Exhibit TUR-43.

[40] The parties disagree on whether this instrument is within the Panel's terms of reference, and what its legal significance might be. See United States' response to Panel question Nos. 5, 69, and 70; Türkiye's response to Panel question Nos. 5, 69, and 72. The Panel will address these issues in its Findings.

[41] United States' first written submission, para. 77; second written submission, para. 150.

[42] Türkiye's first written submission, para. 5.1; second written submission, para. 4.1.

in accordance with paragraph 25 of the Working Procedures adopted by the Panel (see Annexes C-1, C-2, C-3, C-4, C-5, C-6, C-7, and C-8).

6 INTERIM REVIEW

6.1. On 25 May 2023, the Panel issued its Interim Report to the parties. On 8 June 2023, the parties submitted written requests for review of the Interim Report. Neither party requested an interim review meeting. On 15 June 2023, both parties submitted comments on the other party's requests for review.

6.2. In accordance with Article 15.3 of the DSU, this section of the Report sets out the Panel's responses to the requests made at the interim review stage.[43]

6.3. At the outset, the Panel notes the parties' requests to modify or expand the Panel's summaries of their arguments. In this Report, the Panel has summarized the parties' arguments concerning the contested issues with a view to placing its reasoning and findings in context. The Panel did not intend to provide extensive descriptions of all the arguments raised by the parties, but only of arguments relevant for the purposes of the Panel's objective assessment of the matter before it. In this regard, the Panel recalls that the parties have submitted detailed executive summaries of their arguments, annexed to this Report[44], which provide a comprehensive account of their respective positions. The Panel further understands that it has substantial discretion to focus on those aspects of the parties' submissions that it considers most pertinent for the resolution of the dispute, in fulfilment of its duty to make such findings as will assist the DSB in making the recommendations or rulings provided for in the covered agreements.[45]

6.4. Accordingly, unless otherwise specified in this section, the Panel considers that the parties' arguments were adequately summarized in the Interim Report and has not modified or expanded the relevant paragraphs in the Final Report.

6.5. The Panel has made typographical and other editorial modifications in the Report, including in response to the parties' requests for review.

6.1 Applicability of the relevant covered agreements

6.1.1 Paragraph 7.3 and footnote 67

6.6. The United States requests that the Panel make certain changes to more accurately reflect the United States' position that "invocation through notice is the condition precedent for taking action under Article XIX and the application of the safeguards disciplines".[46] Türkiye does not object to the United States' request.[47]

6.7. Taking into account that the modifications requested in the summary of the United States' arguments do not impact the Panel's reasoning, and in the absence of any objection from Türkiye, the Panel agrees to modify paragraph 7.3 and footnote 67 of the Report.

6.1.2 Paragraphs 7.52-7.56

6.8. Türkiye requests that the Panel either delete or revise its reasoning in paragraphs 7.52 and 7.54 and footnote 120 of the Report, which Türkiye considers to be inconsistent with the principles of treaty interpretation. In particular, Türkiye contends that the Panel's contextual interpretation of Article 11.1(c) of the Agreement on Safeguards places selective reliance on the other paragraphs of Article 11.1 and fails to consider how the expression "pursuant to" is used in other provisions of the

[43] The paragraph and footnote numbers in the Final Report may have changed due to the revisions made at the interim review stage. The paragraph and footnote numbers indicated in this section pertain to those in the Final Report, unless otherwise specified.

[44] Integrated executive summary of the arguments of the United States (Annex B-1) and Integrated executive summary of the arguments of Türkiye (Annex B-2).

[45] Article 7.1 of the DSU.

[46] United States' interim review comments, para. 4.

[47] Türkiye's comments on United States' interim review comments, para. 2.1.

Agreement on Safeguards.[48] The United States objects to Türkiye's request, and refers to various elements of the Panel's findings to argue that "the Panel did consider the use of 'pursuant to' in other provisions of the Agreement on Safeguards … as well as the broader context of the Agreement on Safeguards".[49]

6.9. The Panel recalls its observation in paragraph 7.52 that the meaning of "pursuant to" in a provision depends on its context, as illustrated by the different ways in which that expression is used in the Agreement on Safeguards. The Panel accordingly interpreted "pursuant to" in Article 11.1(c) in the context in which those terms appear in that provision, namely, in relation to the applicability of legal disciplines.[50] In doing so, the Panel took into account the immediate context of Article 11.1(c), including the use of contrasting terms in the various paragraphs of Article 11.1 of the Agreement on Safeguards, as well as the broader context of the Agreement on Safeguards.[51] The Panel also examined the context provided by various provisions of the Agreement on Safeguards for interpreting the terms "*en vertu de*" and "*de conformidad* con", respectively, in the French and Spanish language versions of Article 11.1(c). Based on the foregoing, the Panel considers that its interpretation of Article 11.1(c) takes due account of the relevant context of that provision in all three languages and declines Türkiye's request to revise its findings in this respect.

6.10. The United States requests that the Panel add a paragraph in the Report to support the Panel's interpretation of the terms "pursuant to" in Article 11.1(c) of the Agreement on Safeguards as set out in paragraphs 7.52 to 7.56. Specifically, the United States requests the Panel to indicate that the ordinary meaning of "sought, taken or maintained" in Article 11.1(c) supports the Panel's understanding that "in the case of measures sought, taken, or maintained by virtue of or under 'provisions of GATT 1994 other than Article XIX', the Agreement on Safeguards does not apply, irrespective of whether the measures are consistent with such other provisions".[52] Türkiye opposes the United States' request as, in its view, nothing in the Interim Report suggests that the Panel agrees with the United States' interpretation of the phrase "sought, taken or maintained" in Article 11.1(c). Türkiye argues that the United States' request seeks to amend the Panel's reasoning with respect to an issue that is not necessary for the Panel to address to resolve the legal question before it, and that accepting this request could be seen as providing an advisory opinion.[53]

6.11. The Panel does not find it necessary to supplement its reasoning with additional considerations as requested by the United States. In the Panel's view, the interpretation provided in the Report of the text of Article 11.1(c) of the Agreement on Safeguards, in its context and in the light of the object and purpose of the Agreement, is sufficiently detailed. The Panel does not consider that addressing the additional elements raised by the United States is strictly necessary to resolve the dispute or to make such findings as will assist the DSB in making the recommendations or rulings provided for in the covered agreements. Accordingly, the Panel declines the request.

6.1.3 Paragraph 7.61

6.12. Türkiye notes the reference in paragraph 7.61 to its argument that "whether a measure falls under the scope of Article 11.1(c) of the Agreement on Safeguards must be determined 'objectively' by analysing 'in particular, whether the measure presents the constituent features of a safeguard measure within the meaning of Article XIX'". Türkiye requests the Panel to clarify that this argument was made in the context of a measure that "exhibits the features of both a safeguard measure and a different type of measure" such as, in Türkiye's view, the Section 232 measures. Türkiye further requests the Panel to clarify whether its reasoning in this paragraph should be understood as suggesting that "the assessment of the applicability of Article XXI to the United States' measures involves only the analysis of the nexus of these measures to the United States' alleged national security concerns …[and] does not involve the analysis of whether WTO safeguard rules may be a more suitable applicable provision".[54] The United States objects to Türkiye's requests, arguing that Türkiye does not explain why the Panel's statement of its argument is incorrect. The United States further contends that Türkiye is misconstruing the Panel's analysis as pertaining to "the applicability

[48] Türkiye's interim review comments, paras. 2.1-2.6.
[49] United States' comments on Türkiye's interim review comments, paras. 3-5.
[50] See para. 7.52 below.
[51] See paras. 7.54-7.57 below.
[52] United States' interim review comments, para. 8.
[53] Türkiye's comments on United States' interim review comments, paras. 2.8-2.10.
[54] Türkiye's interim review comments, paras. 2.7-2.10.

of Article XXI [of the GATT 1994]" rather than "the applicability of Article 11.1(c) [of the Agreement on Safeguards]". In the United States' view, the text of Article 11.1(c) does not require a panel to assess "whether WTO safeguard rules may be a more suitable applicable provisions", and the United States does not object to including such a clarification in the Panel's findings.[55]

6.13. The Panel has revised paragraph 7.61 and footnote 132 to explain the context in which Türkiye made the relevant arguments. The Panel has also clarified its reasoning in that paragraph in response to Türkiye's request, taking note of the lack of objection from the United States in this regard.

6.1.4 Section 7.1.2.5.2

6.14. Türkiye contends that the Panel's reasoning in this section improperly defers to the United States' subjective view that the Section 232 measures are "national security measures". In Türkiye's view, the Panel's approach fails to "apply an objective test that examines the nature, essence and constituent features of the measure, to determine whether the measure is covered by a particular set of WTO disciplines", and disregards "the well-established WTO principle that … the applicability of particular WTO norms[] is determined by the objective substantive characteristics of the measure". Türkiye considers that, in the context of the present dispute, the Panel's approach deprives Members of their rights under Article 8 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994.[56] The United States contends that Türkiye's characterization of the Panel's analysis is erroneous, as the Panel did assess the substance of the Section 232 measures in the context of Article 11.1(c) of the Agreement on Safeguards. According to the United States, Türkiye's approach to the assessment of the Section 232 measures would allow any measure inconsistent with an obligation under the GATT 1994 to be "construed as a safeguard measure and give rise to a 'right' to 'rebalance' for another Member", contrary to the text of the WTO Agreement.[57]

6.15. The Panel recalls that Article 15.2 of the DSU provides that parties may only request the review of "precise aspects" of the Interim Report. In this regard, the Panel considers that Türkiye has not indicated which precise aspects of section 7.1.2.5.2 it wishes the Panel to revise. The Panel notes that Türkiye's comments appear to repeat its prior submissions on the characterization of the Section 232 measures, as well as their "objective assessment", and raise "what it considers to be certain troubling implications of the Panel's approach". The Panel does not consider the interim review stage to be the appropriate phase for parties to relitigate arguments made during the panel proceedings regarding the implications of a particular "approach" that could be adopted by a panel.

6.16. In its Report, the Panel has examined various aspects of the application (through tariffs and quotas) and non-application (through exemptions and exclusions) of the Section 232 measures to determine how these measures were designed and expected to operate.[58] The Panel also explained the relevance of evidence concerning the domestic legal basis, procedures for adoption, and notification of the Section 232 measures, based on the Panel's interpretation of Article 11.1(c) of the Agreement on Safeguards.[59] Therefore, the Panel has already addressed Türkiye's arguments on the characterization of the Section 232 measures in its findings, where appropriate.[60] The Panel considers that its approach preserves the rights of Members under Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994, which, based on the Panel's interpretation, are conditional upon the characterization under the Agreement on Safeguards of the measure applied by another Member.[61]

6.17. In the light of these considerations, the Panel declines Türkiye's request for review of section 7.1.2.5.2 of the Report.

[55] United States' comments on Türkiye's interim review comments, paras. 6-8.
[56] Türkiye's interim review comments, paras. 2.11-2.17.
[57] United States' comments on Türkiye's interim review comments, paras. 9-16.
[58] See paras. 7.67-7.78 below.
[59] See para. 7.74 below.
[60] See also paras. 7.74-7.78 of the Panel's findings addressing specific arguments raised by Türkiye.
[61] See paras. 7.41 and 7.44 below.

6.2 United States' claim under Articles II:1(a) and II:1(b) of the GATT 1994

6.2.1 Section 7.2.3.2.2

6.18. Türkiye objected to the Panel's determination in paragraphs 7.130-7.133 of the Interim Report that tariff lines 870333909011, 870333909019, 870340100000, 870340900000, 870350000000, and 870360100000 were subject to a bound rate of 19%.[62] Türkiye argued that bound rates for the tariff lines in question are not discernible from its GATT Schedule.[63] In particular, Türkiye submitted that the Panel's Interim Report failed to explain how the Panel reached its determination of the applicable bound rates, or how it converted or disaggregated the bindings expressed in Türkiye's bound Schedule, which are expressed in terms of the Harmonized System Nomenclature 2002 (HS2002), into the Harmonized System Nomenclature 2017 (HS2017), in which Türkiye's applied tariff schedule and, thus, the additional duties measure is expressed.[64] Türkiye requested that the Panel provide a substantiated analysis of what it considers to be the correct bound rates for the six tariff lines and why, giving weight to the fact that Türkiye's process of transposing its schedule from HS2002 to the Harmonized System Nomenclature 2007 (HS2007) is still ongoing.[65] In Türkiye's view, the numerous technical questions that need to be resolved in the transposition process are best discussed in the appropriate setting in the WTO, that is, in the interaction between Türkiye, the WTO Secretariat, and other Members, rather than by a WTO panel. Türkiye argued that, because its concern affects only a tiny fraction of the 479 tariff lines covered by the additional duties measure, the most appropriate and practical approach for the Panel would be to leave the bound rates for these six tariff lines unresolved.[66]

6.19. The United States objected to Türkiye's requests in this connection. The United States disagreed that the bound rates for the tariff lines at issue are not discernible from Türkiye's bound Schedule, and argued that the applied duties on certain products, based on HS2017, must be assessed in terms of the scope of Türkiye's WTO commitments as certified in HS2002.[67] In the United States' view, Türkiye's ongoing transposition process is "entirely separate" from the Panel's assessment of Türkiye's commitments as reflected in its bound Schedule as certified in HS2002 at the time of the Panel's establishment.[68] On the basis of these considerations, the United States argued that there is no basis for Türkiye's request that the Panel leave the bound rates for these six tariff lines unresolved and abstain from making a finding on whether Türkiye has violated Article II of the GATT 1994 in respect of them. Rather, the United States maintained that, in accordance with its terms of reference, the Panel has a duty to assess the United States' claims under Articles II:1(a) and (b) with respect to these items, including by assessing Türkiye's applied duties in terms of the scope of its WTO commitments as certified in the HS2002 nomenclature.[69] The United States did, however, suggest that the Panel clarify in its report its analysis on the bound rates for the tariff lines in question.[70]

6.20. To examine this issue more closely, the Panel invited the parties to provide "[a]ll documents and information necessary to ascertain the bound rates applicable to the relevant tariff lines", and "[e]xplain the methodology that … the Panel should use to confirm Türkiye's scheduled commitments, if any, with respect to the relevant tariff lines".[71] On 10 July 2023, Türkiye sent a communication to the Panel advising that it did not intend to submit any material in response to the Panel's request, and asking the Panel to refrain from making findings on the bound rates applicable to these tariff lines. Türkiye reiterated that its bound Schedule is currently undergoing a "highly technical and complex … WTO transposition process"[72], and expressed the view that "deferring to

[62] Following the issuance of the draft descriptive part of the Panel's report, Türkiye raised concerns about these same tariff lines. In particular, Türkiye objected to the Panel's determination that these tariff lines were subject to a bound rate of 19%. In Türkiye's view, the Panel should have determined that these tariff lines are unbound (Türkiye's communication (18 April 2023)). In response to Türkiye's objection, the United States maintained its position that the tariff lines are subject to a bound rate of 19% (United States' communication (25 April 2023), paras. 1 and 4).
[63] Türkiye's interim review comments, para. 2.20.
[64] Türkiye's interim review comments, para. 2.21.
[65] Türkiye's interim review comments, paras. 2.27-2.28.
[66] Türkiye's interim review comments, para. 2.28.
[67] United States' comments on Türkiye's interim review comments, para. 19.
[68] United States' comments on Türkiye's interim review comments, para. 20.
[69] United States' comments on Türkiye's interim review comments, para. 21.
[70] United States' comments on Türkiye's interim review comments, para. 22.
[71] Panel's communication to the parties (3 July 2023).
[72] Türkiye's communication (10 July 2023).

the outcome of Türkiye's transposition process is the sole correct approach" that the Panel could take on this issue.[73] In Türkiye's view, a ruling by the Panel on the bound rates applicable to these tariff lines "would be neither appropriate, nor would assist the parties in developing a mutually satisfactory solution in this dispute".[74] Türkiye expressed concern that a detailed analysis of this issue by the Panel, particularly at a late stage of the proceedings and against the background of an ongoing transposition process, "would not only necessarily prejudge the outcome of this [transposition] process, but would also interfere with the institutional balance and the division of tasks between different WTO bodies".[75]

6.21. On 24 July 2023, the United States submitted several documents to the Panel: (1) an Excel file of Türkiye's bound Schedule sourced from the WTO's Consolidated Tariff Schedule (CTS) Database[76]; (2) two documents showing Türkiye's applied rates for 2018 and 2019 in HS2017 at the 12-digit level[77]; (3) a consolidated document showing graphs of HS2002 to HS2017 correlations from the HS Tracker webpage, prepared by the WTO and the World Customs Organization (WCO), using the subheading visualizer tool[78]; and the relevant WCO correlation tables for HS2012 to HS2017 prepared by the Harmonized System Committee of the WCO.[79] In its accompanying communication, the United States objected to Türkiye's suggestion that the Panel should defer to the outcome of Türkiye's transposition process, and submitted that the WTO transposition process is "entirely separate from the Panel's assessment of Türkiye's commitments at the time of panel establishment, as reflected in Türkiye's WTO Schedule certified in HS2002".[80] The United States further emphasized that, in accordance with the Panel's terms of reference, the Panel has a duty to assess the United States' claims under Articles II:1(a) and (b) with respect to these six tariff lines.[81]

6.22. The United States also elaborated on the methodology it used to ascertain the bound rates for the six tariff lines in question. The United States explained that it isolated the first six digits of Türkiye's applied nomenclature in HS2017 for conversion using WCO correlation tables to determine the equivalent bound rates in Türkiye's bound Schedule, which is expressed in terms of the HS2002 classification. The United States submitted that, while there were changes in nomenclature between HS2012 and HS2017, for each of the relevant tariff lines bound in terms of the HS2017 classification Türkiye is bound at 19% for certain lines in the HS2002 classification. In the United States' view, as Türkiye's additional duties apply to all products of United States origin classified within the 4-digit heading 87.03, the Panel should find that Türkiye imposes duties in excess of its bindings to the extent that goods subject to the additional duties measure are within the scope of Türkiye's bound commitments.[82]

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[73] Türkiye's communication (10 July 2023).
[74] Türkiye's communication (10 July 2023).
[75] Türkiye's communication (10 July 2023).
[76] CTS file of Türkiye, (Exhibit USA-55). The Panel notes that the CTS Database is a WTO database containing the agreed maximum tariffs that WTO Members can impose on imported products from other WTO Members. It can only be accessed from within the WTO. See CTS Database, https://www.wto.org/english/tratop_e/tariffs_e/cts_e.htm (accessed 3 October 2023).
[77] Türkiye's 2018 Import Table, (Exhibit USA-56); Türkiye's 2019 Import Table, (Exhibit USA-57).
[78] Excerpts of graphs from WTO-WCO HS Tracker, (Exhibit USA-58).
[79] WCO correlation tables HS2012 to HS2017 (1), (Exhibit USA-59); WCO correlation tables HS2012 to HS2017 (2), (Exhibit USA-60).
[80] United States' communication (24 July 2023), para. 5.
[81] United States' communication (24 July 2023), para. 6.
[82] United States' communication (24 July 2023), para. 4. The Panel recalls the similar explanation provided in the United States' first written submission:

> Turkey, however, has not substantially updated its schedule of tariff bindings since its accession, and available WTO tariff binding data in uses the 2007 revision of the Harmonized System. It is therefore difficult for the United States—or any other WTO Member, for that matter—to confirm whether Turkey continues to meet its commitments since the Harmonized System and Turkey's domestic tariff schedule have undergone substantial revisions in recent years. To overcome this obstacle, the United States first isolated the first four or six digits of each 12-digit tariff code subject to Turkey's additional duties. The United States converted these 4- or 6-digit HS codes from HS2017 to HS2007 using a conversion table published by the United Nations Statistics Division. The United States then compared these HS2007 six-digit codes to CTS data from TDF to identify the highest tariff binding for all lines under each 10-digit subheading. The United States adopted this maximum bound rate at the 10-digit level as the bound rate for all 12-digit HTS lines falling under that subheading. For certain 12-digit tariff codes at issue, an exact match was not available at the 10-digit level. The United States, therefore, adopted the maximum bound

6.23. On 31 July 2023, Türkiye submitted comments on the United States' communication of 24 July 2023. Türkiye repeated its view that a ruling by this Panel on the correct bound rates of these tariff lines would neither be appropriate, nor assist the parties in developing a mutually satisfactory solution in this dispute.[83] Türkiye explained that its bound Schedule, which is bound in terms of the HS2002 classification, does not contain the relevant tariff lines from Türkiye's current applied tariff schedule, nor does it contain the bound tariff rates for those specific lines. Thus, according to Türkiye, these lines, and their corresponding bound tariffs, can only be determined by conducting the transposition process.[84] In Türkiye's view, the Panel could only determine the bound rates applicable to these six tariff lines by "effectively … conduct[ing], in analytical terms, the WTO transposition procedures".[85] Türkiye expressed the view that, if the Panel were to engage in this activity, it would be bypassing or even undermining the complex, technical, and ongoing transposition process.[86]

6.24. The Panel recalls that, pursuant to Article 7.1 of the DSU, its terms of reference require it to examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by the United States in document WT/DS561/2, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.[87] More specifically, the Panel's task pursuant to Article 11 of the DSU is to make an objective assessment of the United States' claims that Türkiye's additional duties measure is inconsistent with, *inter alia*, Articles II:1(a) and II:1(b) of the GATT 1994.

6.25. The Panel recalls that, early in these proceedings, the United States submitted documents setting out its understanding of the bound rates applicable to the tariff lines covered by the additional duties measure.[88] In its first written submission, Türkiye described these documents as "broadly accurate"[89] and did not cast doubt on the correctness of the United States' submissions on the applicable bound rates. Nevertheless, as noted above, following the issuance of the draft descriptive part of the Panel's report, and again during the interim review process, Türkiye raised concerns about the accuracy of the bound rates that the Panel had identified as applicable to tariff lines 870333909011, 870333909019, 870340100000, 870340900000, 870350000000, and 870360100000. Over the course of several exchanges between the Panel and the parties, Türkiye requested the Panel to refrain from determining the bound rates applicable to these six tariff lines in the light of the ongoing transposition process in respect of Türkiye's bound Schedule.

6.26. The Panel is of the view that it would not be possible to fulfil its duty under Article 11 of the DSU if it were to refrain from determining the bound rates applicable to the tariff lines subject to Türkiye's additional duties measure, including tariff lines 870333909011, 870333909019, 870340100000, 870340900000, 870350000000, and 870360100000, at the time the Panel was established. The Panel recalls that, under Article II:7 of the GATT 1994, Members' bound schedules annexed to the GATT 1994 are integral part thereof. As such, the Panel understands that it is its responsibility, in the circumstances of this case, to determine whether the import duties for products falling under the tariff lines listed above are bound in Türkiye's Schedule and, if so, at what rate. Accordingly, the Panel rejects Türkiye's request to leave the question regarding the determination of the bound rates for the abovementioned six tariff lines unresolved.

6.27. The Panel takes note that Türkiye, in the alternative, is requesting the Panel to provide a more substantiated analysis of how it reached its determination of the bound rates applicable to the six tariff lines. The United States does not object to the request that the Panel clarify its analysis on the bound rates for the items in question. The Panel has taken the opportunity to make certain amendments to its findings, with a view to improving the clarity of the Final Report.

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rate at the 6-digit level for all of the 12-digit tariff codes falling under the applicable 6-digit heading.

(United States' first written submission, fn 14.)

[83] Türkiye's communication (31 July 2023).

[84] Türkiye's communication (31 July 2023).

[85] Türkiye's communication (31 July 2023).

[86] Türkiye's communication (31 July 2023).

[87] Constitution note of the Panel, WT/DS561/3.

[88] United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure from 21 June 2018 to 14 August 2018, (Exhibit USA-7); United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure beginning on 1 January 2019, (Exhibit USA-8).

[89] Türkiye's first written submission, para. 2.22.

6.28. The Panel recognizes that the six tariff lines in question are expressed in terms of the HS2017 classification, whereas Türkiye's bound Schedule is certified in terms of the HS2002 classification. However, in the Panel's view, this does not necessarily imply, *per se*, that the bound rates for the tariff lines at issue cannot be identified. According to the Panel, the information on the record, together with the WTO's Integrated Database (IDB)[90], which is composed of Türkiye's own notifications, and the information in the CTS Database, namely the CTS file of Türkiye, enable it to undertake the process of determining the bound rates applicable to the relevant tariff lines, despite the existence of some important differences between HS2002, in which Türkiye's bound Schedule is expressed, and HS2017, in which Türkiye's applied tariff schedule is expressed.

6.29. In order to better assist the parties in the resolution of their dispute, the Panel has decided to provide a full analysis of the determination of the bound rates for the tariff lines in question in Section 7.2.3.2.2 of the Final Report. Pursuant to the analysis, the Panel has confirmed its findings with regard to tariff lines 870333909011, 870333909019. The Panel has partially revised its findings with regard to tariff lines 870340100000, 870340900000, 870350000000, and 870360100000. In this context, the Panel took the opportunity to re-examine the issue and to determine that it was not possible to establish an exact correspondence between the applied rates expressed in terms of the HS2017 classification, and the bound rates expressed in terms of the HS2002 classification. In this respect, the Panel did however find that the bound rates in Türkiye's schedule cover, at least partially, some of the products falling under the tariff lines expressed in terms of the HS2017 classification. Accordingly, the Panel has concluded that Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 with regard to tariff lines 870340100000, 870340900000, 870350000000, and 870360100000 to the extent that they cover products subject in Türkiye's bound Schedule to bound rates of 19% or 20%.

6.30. Finally, the Panel recognizes that Türkiye is currently undergoing the process of transposing its schedule from HS2002 to HS2007. The Panel wishes to emphasize that its findings in this dispute are without prejudice to the ongoing transposition process.

7 FINDINGS

7.1 Applicability of the relevant covered agreements

7.1.1 Main arguments of the parties

7.1.1.1 United States

7.1. The United States argues that in WTO dispute settlement, a panel generally begins its assessment by examining the claims of the complainant before assessing the respondent's defence. For the United States, the Panel's analysis in this case should accordingly begin with the United States' claims under Articles I and II of the GATT 1994, before addressing Türkiye's arguments under Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994.[91]

7.2. The United States maintains that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to Türkiye's additional duties measure. In the United States' view, Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 explicitly link a Member's right to suspend concessions or other obligations to the application or extension of a safeguard measure by another Member.[92] According to the United States, Article 8.2 of the Agreement on Safeguards allows an exporting Member affected by a safeguard measure to suspend concessions or other obligations under the GATT 1994 if no agreement concerning compensation has been reached among the Members concerned pursuant to Article 8 of the Agreement on Safeguards. For the United States, the first analytical step to

[90] The IDB contains the official time series of tariffs applied by WTO Members and selected acceding countries to imports from other WTO Members. It comprises data notified to the WTO by Members on an annual basis. See World Trade Organization, Integrated Database, https://www.wto.org/english/tratop_e/tariffs_e/idb_e.htm (accessed 3 October 2023).

[91] United States' responses to Panel question No. 11, para. 22.

[92] United States' response to Panel question No. 29, para. 66; second written submission, paras. 140-142.

determine whether Article 8.2 of the Agreement on Safeguards applies to a certain measure is thus to examine whether another Member has previously applied a safeguard measure.[93]

7.3. The United States argues that it has not adopted any relevant safeguard measure for the purposes of the present dispute.[94] According to the United States, a measure is only a safeguard measure when the right to apply a safeguard is invoked with notice under Article XIX:2 of the GATT 1994, which the United States deems a "condition precedent" for a measure to qualify as a safeguard measure. Without this invocation, the United States argues, a Member is not seeking legal authority under Article XIX of the GATT 1994 to suspend its obligations or withdraw or modify its concessions.[95] The United States acknowledges that the applicability of the Agreement on Safeguards and Article XIX of the GATT 1994 is a matter that requires an "objective examination", and contends that whether invocation has occurred is an objective matter that a Panel may and must evaluate, just as it would for any other objective matter.[96] The United States notes that, in the present case, it has not invoked Article XIX, but rather Article XXI of the GATT 1994.[97]

7.4. The United States argues that the relationship between the Agreement on Safeguards and provisions of the GATT 1994 is clarified in Article 11.1(c) of the Agreement on Safeguards.[98] In this respect, the United States recalls that under Article 11.1(c), the Agreement on Safeguards does not apply to measures "sought, taken or maintained … pursuant to provisions of GATT 1994 other than Article XIX". The United States understands the terms of Article 11.1(c) to mean that the Agreement on Safeguards is inapplicable when a Member acts "under" a provision of the GATT 1994 other than Article XIX.[99] In support of this understanding, the United States refers to early draft texts of the Agreement on Safeguards, which, in its view, clarify that "the availability of Article XIX as a release from obligations does not constrain a Member's ability to take action pursuant to other provisions of the GATT 1994". The United States also notes that references in these early draft texts to measures "consistent with" or "taken in conformity with" other GATT provisions were changed in the final draft of Article 11.1(c), which instead refers to measures sought, taken, or maintained "pursuant to" other GATT provisions.[100]

7.5. According to the United States, the Section 232 measures were taken pursuant to Article XXI of the GATT 1994. In this respect, and in the context of Article 11.1(c), the United States refers to the domestic legal basis and procedures for the Section 232 measures as well as relevant statements made in WTO committees.[101] On this basis, the United States argues that the Agreement on Safeguards does not apply to the Section 232 measures by virtue of Article 11.1(c) of that Agreement. For the United States, this also means that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 are inapplicable to Türkiye's additional duties measure.[102]

7.6. In its comments on the findings of the panel in *US – Steel and Aluminium Products (Turkey)* on the applicability of the Agreement on Safeguards and Article XIX of the GATT 1994 to the Section 232 measures, the United States argues that those findings may be taken into account to the extent that they are persuasive. The United States notes the finding in that panel report that the term "pursuant to" in Article 11.1(c) of the Agreement on Safeguards does not mean consistency

[93] United States' response to Panel question No. 15, para. 27.
[94] United States' opening statement at the first meeting of the Panel, para. 3.
[95] United States' first written submission, para. 71; opening statement at the first meeting of the Panel, paras. 4 and 26. See also United States' response to Panel question No. 50, para. 108 (noting that in using the term "invocation", the United States refers to the exercise of an available right); response to Panel question No. 19, para. 42 (arguing that the "invocation" of the right to take a safeguard measure occurs through providing notification and an opportunity to consult).
[96] United States' opening statement at the first meeting of the Panel, para. 33; response to Panel question No. 100, para. 106. The United States further notes that while an objective examination of whether a Member has invoked the right to take action pursuant to Article XIX is the "first step" in analysing the applicability of WTO rules on safeguard measures, invocation is not a "sufficient" condition for a measure to fall under the Agreement on Safeguards and Article XIX of the GATT 1994 because the measure must also meet certain other conditions of these provisions. (United States' opening statement at the first meeting of the Panel, paras. 33 and 41).
[97] United States' response to Panel question No. 25; second written submission, para. 10.
[98] United States' response to Panel question No. 40.
[99] United States' second written submission, paras. 91 and 108.
[100] United States' response to Panel question No. 78, paras. 30 and 32.
[101] United States' second written submission, paras. 10-16; comments on Türkiye's responses to Panel question Nos. 84 and 89.
[102] United States' second written submission, para. 91; response to Panel question No. 77.

with provisions of the GATT 1994 other than Article XIX. The United States also regards as compelling that panel's assessment of the Section 232 measures in the context of Article 11.1(c). The United States nevertheless emphasizes that this Panel must conduct an objective assessment of the matter before it pursuant to Article 11 of the DSU.[103]

7.1.1.2 Türkiye

7.7. Türkiye argues that the Panel should begin its analysis by assessing the threshold question of the applicability of the provisions cited by the parties to the measure at issue.[104] In Türkiye's view, the law applicable to a measure must be determined before a claim of violation is assessed.[105] Accordingly, Türkiye submits that the Panel should begin its analysis by evaluating the applicability of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 to the additional duties measure, because if it were to find these provisions applicable, there would be no basis to assess the United States' claims under Articles I and II of the GATT 1994.[106]

7.8. According to Türkiye, a measure under Article 8.2 of the Agreement on Safeguards must exhibit the following constituent features: (i) it must respond to an underlying safeguard measure, by suspending concessions or other obligations; and (ii) the measure's purpose, structure, and operation must indicate that it was designed as a measure taken pursuant to Article 8.2 of the Agreement on Safeguards.[107] In connection with the first constituent feature, Türkiye considers that it is not possible for the Panel to ascertain whether Türkiye's additional duties measure falls under Article 8.2 of the Agreement on Safeguards without determining whether an underlying safeguard measure exists, which it considers to be a threshold issue.[108]

7.9. Türkiye maintains that its additional duties measure possesses both constituent features outlined above. First, Türkiye submits that its measure was adopted in response to the United States' Section 232 measures, which, in Türkiye's view, are "safeguard measures in all but their name"[109], as they meet the "definitional criteria" of safeguard measures.[110] Türkiye argues that the Section 232 measures "suspend, in whole or in part, a GATT obligation or withdraw or modify a GATT concession" by imposing on aluminium and steel products duties inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994, and quantitative limitations inconsistent with Article XI:1 of the GATT 1994.[111] Türkiye also contends that the Section 232 measures pursue the "specific objective" of preventing or remedying serious injury to domestic industries of the United States, which is the "most central" aspect of these measures.[112] In support of this contention, Türkiye refers to several legal instruments issued by the United States' authorities, including the reports in the investigations that led to the adoption of the Section 232 measures and the proclamations providing for the Section 232 measures.[113] For Türkiye, the examination of whether a measure is a safeguard measure should be based on its objective features[114], including its design, structure, and operation.[115]

7.10. Second, Türkiye maintains that the purpose, structure, and operation of its additional duties measure indicate a "clear link" between the United States' Section 232 measures on steel and aluminium, on the one hand, and Türkiye's measure, on the other hand. In Türkiye's view, it is illustrative in this respect that its additional duties measure has reflected the level of suspension in the United States' Section 232 measures.[116]

7.11. In the light of this characterization of its measure under Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994, Türkiye maintains that the application of

[103] United States' communications (20 January and 10 February 2023).
[104] Türkiye's response to Panel question No. 11, second written submission, para. 2.8.
[105] Türkiye's second written submission, para. 2.19.
[106] Türkiye's second written submission, para. 2.23; opening statement at the first meeting of the Panel, paras. 23-26.
[107] Türkiye's response to Panel question No. 27.
[108] Türkiye's response to Panel question No. 15(b).
[109] Türkiye's second written submission, para. 2.26.
[110] Türkiye's first written submission, paras. 4.45-4.46.
[111] Türkiye's first written submission, paras. 4.45 and 4.49.
[112] Türkiye's first written submission, para. 4.50.
[113] Türkiye's first written submission, paras. 4.52-4.62.
[114] Türkiye's first written submission, para. 4.19.
[115] Türkiye's response to Panel question Nos. 18 and 58.
[116] Türkiye's second written submission, para. 2.28.

Articles I and II of the GATT 1994 is "suspended" in respect of its measure, and that, therefore, the Panel should reject the United States' claims as they are based on "improper", "inapplicable" legal provisions.[117] Türkiye further notes that the United States has not made any claims under Article XIX:3(a) of the GATT 1994 or Article 8.2 of the Agreement on Safeguards.[118]

7.12. Türkiye agrees with the United States that there is no right to impose "rebalancing measures" under Article 8.2 of the Agreement on Safeguards or Article XIX:3(a) of the GATT 1994 in response to a measure falling under Article 11.1(c) of the Agreement on Safeguards.[119] In this regard, Türkiye notes that Article 11.1 of the Agreement on Safeguards draws a distinction between "emergency action[s] on imports … as set forth in Article XIX of GATT 1994" and "measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX"[120], the latter of which fall outside the scope of the Agreement on Safeguards under Article 11.1(c).[121] At the same time, for Türkiye, a measure falling under Article 11.1(c) of the Agreement on Safeguards must be consistent with a provision of the GATT 1994 other than Article XIX.[122] Noting the United States' argument that it has adopted the Section 232 measures pursuant to Article XXI of the GATT 1994, Türkiye argues that the Section 232 measures can only be considered to be "pursuant to" Article XXI if they comply with the requirements of that provision.[123] In Türkiye's view, however, the United States has not justified its Section 232 measures under Article XXI.[124]

7.13. Türkiye further maintains that whether a measure falls within the scope of Articles 11.1(a) or 11.1(c) of the Agreement on Safeguards must be determined objectively by analysing the design, structure, and expected operation of the measure, and "in particular whether the measure possesses the constituent features of a safeguard measure … within the meaning of Article XIX".[125] Türkiye argues that giving effect to Article 11.1(c) does not require that the subjective intent of a regulating Member should be decisive rather than the objective design of a measure, and that the intent of a Member is only relevant to the extent that it is "embodied" in the objective features of the measure.[126]

7.14. In its comments on the findings by the panel in *US – Steel and Aluminium Products (Turkey)* concerning the applicability of the WTO safeguards regime to the Section 232 measures, Türkiye argues that this Panel is not bound by either the factual or the legal findings of another panel, and must conduct its own objective assessment of the matter before it. Further, Türkiye agrees with the legal standard articulated in that panel report for the characterization of measures under the Agreement on Safeguards, but not with that panel's application of the legal standard to the facts, which, in Türkiye's view, assigned excessive weight to the United States' subjective designation and labelling of the Section 232 measures.[127]

7.1.2 Analysis by the Panel

7.1.2.1 Introduction

7.15. The parties hold diverging views on which covered agreement applies to the measure at issue in this dispute. On the one hand, Türkiye argues that its additional duties measure is subject to Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994, and therefore that the application of Articles I and II of the GATT 1994 to the measure is suspended.[128] On the other hand, the United States maintains that the challenged measure is subject to Articles I and II

[117] Türkiye's second written submission, para. 2.52.
[118] Türkiye's second written submission, para. 1.6.
[119] Türkiye's response to Panel question No. 77.
[120] Türkiye's response to Panel question No. 23.
[121] Türkiye's response to Panel question No. 23; opening statement at the second meeting of the Panel, para. 2.29.
[122] Türkiye's response to Panel question Nos. 23 and 78. According to Türkiye, this is supported by the Spanish version of Article 11.1(c), which uses the term "*de conformidad con*". (Ibid.)
[123] Türkiye's response to Panel question No. 88.
[124] Türkiye's comments on the United States' response to Panel question No. 78.
[125] Türkiye's second written submission, para. 2.41; response to Panel question No. 82.
[126] Türkiye's opening statement at the second meeting of the Panel, para. 2.29.
[127] Türkiye's communications (20 January and 10 February 2023).
[128] Türkiye's first written submission, paras. 1.5-1.9; opening statement at the first meeting of the Panel, para. 5.

of the GATT 1994, and that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 are not applicable.[129]

7.16. The Panel will begin by setting out its understanding of the provisions in the DSU concerning the assessment of the applicability of the relevant covered agreements in a dispute. The Panel will then decide the order in which it will conduct its analysis. Specifically, the Panel will decide whether it will begin with a review of the United States' claims under Articles I and II of the GATT 1994 before examining Türkiye's argument that the application of the obligations and concessions under those two provisions is suspended within the meaning of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994, or vice versa.

7.1.2.2 The Panel's duty to assess the applicability of the relevant covered agreements

7.17. Article 11 of the DSU requires a panel to make "an objective assessment of the matter before it, including an objective assessment of the applicability of and conformity with the relevant covered agreements". This requirement applies in all disputes, including those where the parties agree on which relevant covered agreements apply to the measures at issue.[130] In the specific circumstances of this case, the requirement to make an objective assessment of the applicability of the relevant covered agreements is of particular significance given the parties' disagreement.

7.18. Under Article 7.2 of the DSU, a panel is required to address "the relevant provisions in any covered agreement or agreements cited by the parties to the dispute". In this dispute, while the United States has raised claims under Articles I and II of the GATT 1994 in its panel request, Türkiye has identified Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 as the provisions applicable to the additional duties measure. Both parties have made extensive arguments regarding the applicability (or non-applicability) of these provisions to the measure at issue. The Panel therefore considers that all of these provisions are "relevant" within the meaning of Article 7.2 of the DSU and must be addressed in the Panel's analysis.

7.19. Reading Articles 7.2 and 11 of the DSU together, the Panel is of the view that, in making an objective assessment of the matter before it, it must determine which provisions of the covered agreements apply to Türkiye's additional duties measure. To examine the United States' claims under Articles I and II of the GATT 1994 without determining their relationship with other provisions raised by Türkiye (specifically, Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994) would overlook a disputed issue between the parties and not assist the DSB "in making the recommendations or in giving the rulings provided for in the covered agreements", as prescribed in Article 11 of the DSU. The Panel further considers that this would be at odds with the aim of the dispute settlement mechanism, as set out in Article 3.7 of the DSU, of securing a positive solution to a dispute.

7.20. The Panel is mindful of the limits of its authority when assessing the applicability of the relevant covered agreements to the measure at issue in this dispute. Specifically, examining the applicability of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 to Türkiye's additional duties measure does not imply that the Panel may make findings on the consistency of the additional duties measure with those two provisions. While Articles 11 and 7.2 of the DSU require the Panel to determine the provisions applicable to the additional duties measure, the Panel can only make findings on the claims raised and provisions listed in the United States' panel request[131], which does not include Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994. Accordingly, the Panel will only consider Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 to the extent necessary to determine the applicability of these provisions to the measure at issue.

[129] United States' first written submission, paras. 38 and 55; second written submission, paras. 20 and 91.

[130] Appellate Body Report, *Indonesia – Iron or Steel Products*, para. 5.32.

[131] A panel making findings on provisions that are not listed in the panel request would be acting *ultra petita*, and thus inconsistently with Article 11 of the DSU. Appellate Body Report, *Chile – Price Band System*, para. 173.

7.1.2.3 Order of analysis

7.21. The Panel now turns to consider the order in which to conduct its analysis. One possibility would be to begin by examining the United States' claims under Articles I and II of the GATT 1994, and then proceeding to assess the applicability of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 to Türkiye's additional duties measure. The United States favours this approach.[132] Alternatively, the Panel could begin by examining the applicability of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994. Under this approach, the Panel would only examine the United States' claims under Articles I and II of the GATT 1994 if it were to conclude that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to the additional duties measure. Türkiye and several third parties are in favour of this option.[133]

7.22. Neither the DSU nor the relevant provisions of the GATT 1994 or the Agreement on Safeguards prescribe a mandatory order of analysis that must be followed in addressing the issues raised in this dispute. The Panel thus has discretion to structure its order of analysis in the way it considers most appropriate, provided that its choice is in line with its mandate and functions as laid down in the DSU.[134]

7.23. In the specific circumstances of this case, the Panel considers that beginning with the question of whether Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 apply to Türkiye's additional duties measure is the most appropriate course of action, for the reasons that follow.

7.24. Article XIX:3(a) of the GATT 1994 allows Members to "suspend … the application … of … substantially equivalent concessions or other obligations under this Agreement" to the trade of another Member taking action under Article XIX:1 of the GATT 1994. Article 8.2 of the Agreement on Safeguards, which clarifies the disciplines of Article XIX:3(a) of the GATT 1994[135], similarly allows Members, under certain conditions, to "suspend … the application of substantially equivalent concessions or other obligations under GATT 1994" to the trade of another Member applying a safeguard measure. Measures falling within the scope of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 thus "suspend" the application of concessions or other obligations under the GATT 1994. In the context of these two provisions, the Panel understands the notion of a suspension of concessions or other obligations to mean that, provided certain conditions are met, Members affected by the application of a safeguard measure may temporarily lift the application of tariff concessions or other GATT obligations *vis-à-vis* the Member applying the safeguard measure. In such cases, measures falling within the scope of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 would not simultaneously be subject to GATT rules governing tariff concessions or other obligations that have been suspended.

7.25. The Panel therefore considers it most logical to begin its analysis by first determining whether Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 apply to Türkiye's additional duties measure, suspending concessions and obligations under Articles I and II of the GATT 1994. If that were the case, the Panel would have to conclude its analysis with a finding that Articles I and II of the GATT 1994 do not apply to Türkiye's additional duties measure. If, however, the Panel were to find that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to the measure at issue, this would mean that the application of Articles I and II of the GATT 1994 has not been suspended. Consequently, the Panel would need to review the consistency of Türkiye's additional duties measure with the latter set of provisions, as per the claims raised by the United States.

7.26. Beginning with an assessment of the applicability of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 has the benefit of allowing the Panel to examine

[132] United States' response to Panel question No. 11.

[133] Türkiye's response to Panel question No. 11; Canada's response to Panel question No. 3(a); China's response to Panel question No. 3(a); European Union's response to Panel question No. 3(a); Japan's response to Panel question No. 3(a); Norway's response to Panel question No. 3; Russian Federation's response to Panel question No. 3; Switzerland's response to Panel question No. 3; Ukraine's third-party submission, para. 15.

[134] See Appellate Body Report, *Colombia – Textiles*, para. 5.20.

[135] Agreement on Safeguards, preamble, second recital: "*Recognizing* the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (*Emergency Action on Imports of Particular Products*) …".

the United States' claims under Articles I and II of the GATT 1994 only to the extent necessary, that is, only if the Panel determines that those provisions actually apply to Türkiye's additional duties measure. Otherwise, the Panel would need to make interim findings under Articles I and II of the GATT 1994, which would become moot if the Panel subsequently were to find that the application of those provisions to the additional duties measure is suspended under Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994.

7.27. Accordingly, the Panel will proceed to examine whether Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 apply to the additional duties measure. The Panel commences by interpreting these provisions in accordance with the customary rules of interpretation of public international law.[136]

7.1.2.4 Interpretation of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994

7.28. Article 8.2 of the Agreement on Safeguards (*Level of Concessions or Other Obligations*) reads:

> If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.

7.29. Article XIX:3(a) of the GATT 1994 (*Emergency Action on Imports of Particular Products*) reads:

> If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

7.30. Article 8.2 of the Agreement on Safeguards sets out the right of a Member "to suspend … concessions or other obligations under GATT 1994 [] to the trade of" another Member, provided that certain conditions are met. The exercise of this right is part of a process laid down in Article 8 of the Agreement on Safeguards designed to preserve the level of concessions and other obligations existing under the GATT 1994.

7.31. In this respect, Article 8.1 of the Agreement on Safeguards requires Members proposing to apply a safeguard measure (or seeking to extend its application) to endeavour to maintain, *vis-à-vis* other Members affected by that safeguard measure, a level of concessions or other obligations substantially equivalent to that existing under the GATT 1994. To this effect, Article 8.1 of the Agreement on Safeguards establishes that the Members concerned may agree on adequate means of trade compensation for the adverse effects of the safeguard measure on their trade. Article 8.2 of the Agreement on Safeguards then stipulates that, if the Member applying the safeguard measure and the affected exporting Members fail to reach an agreement on adequate means of trade compensation, the affected Members shall have the right, subject to certain conditions, to suspend the application of substantially equivalent concessions or other obligations under the GATT 1994 to the trade of the Member applying the safeguard measure. Next, Article 8.3 of the Agreement on Safeguards sets out certain temporal and substantive limitations on the exercise of the right to

[136] Article 3.2 of the DSU.

suspend concessions or other obligations under the GATT 1994 *vis-à-vis* the Member applying a safeguard measure.

7.32. The Panel considers that the ordinary meaning of the terms of Article 8.2 of the Agreement on Safeguards plainly links the right to suspend concessions or other obligations under the GATT 1994 to the application of a safeguard measure by another Member. Indeed, the provision stipulates that affected exporting Members "shall be free … to suspend … the application of substantially equivalent concessions or other obligations … to the trade of the Member applying *the safeguard measure*".[137] In the Panel's view, this language indicates that the right under Article 8.2 of the Agreement on Safeguards becomes available only to rebalance the adverse effects of a safeguard measure. The French and Spanish versions of Article 8.2 of the Agreement on Safeguards equally reserve the right provided in that provision only to Members affected by a "*mesure de sauvegarde*" or a "*medida de salvaguardia*".[138]

7.33. An examination of the text of Article 8.2 of the Agreement on Safeguards shows that the right to suspend concessions or other obligations under the GATT 1994 established in this provision is subject to several requirements, including that: (a) no agreement on adequate means of trade compensation maintaining a level of concessions or other obligations substantially equivalent to those existing under the GATT 1994 is reached between the Member proposing to apply or extend a safeguard measure and other Members having a substantial interest as exporters of the product concerned, within 30 days from the application of the safeguard measure; (b) not more than 90 days have passed from the application of the safeguard measure; and (c) a Member affected by a safeguard measure suspends the application of "substantially equivalent" concessions or other obligations to the trade of the Member applying the safeguard measure. The Panel observes that all of these requirements are contingent upon a safeguard measure being applied or extended by another Member.[139]

7.34. The immediate context of Article 8.2 of the Agreement on Safeguards supports the Panel's understanding. Article 8 of the Agreement on Safeguards refers to "safeguard measure" five times, and to "such a measure" twice. Only in one case does Article 8 refer to "the measure", without further qualification, at the end of the final sentence of paragraph 1. There, the provision stipulates that the Members concerned may agree on adequate means of trade compensation for the adverse effects of "the measure" on their trade. For the Panel, this can only be read as referring to the "safeguard measure" mentioned at the beginning of the paragraph, which is the basis for the negotiations and eventual agreement foreseen in this final sentence. This understanding is consistent with the logic and the structure of Article 8 of the Agreement on Safeguards as a whole, which, as noted above, envisages a process that is premised on the adoption or extension of a safeguard measure. All other steps outlined in Article 8 of the Agreement on Safeguards flow from, and depend on, this premise. The immediate context of Article 8.2 of the Agreement on Safeguards thus underscores that a safeguard measure is a necessary precondition and the basis for the rights and procedures laid out therein.

7.35. The Panel's understanding of Article 8.2 of the Agreement on Safeguards is also consistent with the broader context of the Agreement on Safeguards. In this connection, the Panel considers Article 11.1 of the Agreement on Safeguards (*Prohibition and Elimination of Certain Measures*) to be particularly relevant. This provision establishes certain rights and obligations for Members depending on the characterization of a measure under the Agreement on Safeguards. First, Article 11.1(a) stipulates that Members "shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement". This provision must be read in conjunction with Article 1 of the Agreement on Safeguards, according to which the Agreement "establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994". Thus, Article 11.1(a) of the Agreement on Safeguards

[137] Emphasis added.

[138] Under Article 33(1) of the Vienna Convention, "[w]hen a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail".

[139] A fourth requirement in Article 8.2 of the Agreement on Safeguards envisages that the right to suspend concessions or other obligations be exercised upon expiration of 30 days from the day on which written notice of the proposed suspension of concessions or other obligations is received by the Council for Trade in Goods, provided that the latter does not disapprove it.

establishes that Members can take or seek safeguard measures, which must conform with Article XIX of the GATT 1994 applied in accordance with the Agreement on Safeguards.

7.36. Under Article 11.1(b), Members shall not seek, take, or maintain "any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side". To the extent that any such measures were in effect on the date of entry into force of the WTO Agreement, they should have either been phased out within a short time-frame after the entry into force of the Agreement on Safeguards or brought into conformity with the provisions thereof.

7.37. Finally, Article 11.1(c) provides that the Agreement on Safeguards does not apply to "measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994".

7.38. Article 11.1 of the Agreement on Safeguards conditions the disciplines applicable to measures upon their characterization under the three subparagraphs of that provision. If a Member is seeking or taking a safeguard measure, that Member is subject to several obligations under the Agreement on Safeguards. This includes endeavouring "to maintain a substantially equivalent level of concessions or other obligations to that existing under the GATT 1994 between it and exporting Members" affected by the safeguard measure as provided in Article 8.1. Relatedly, Members affected by a safeguard measure have a right to suspend concessions or other obligations in response to that measure under the terms of Article 8.2 of the Agreement on Safeguards. This right is, however, not available if the underlying measure has a different characterization under the subparagraphs of Article 11.1 of the Agreement on Safeguards, and is correspondingly subject to different legal disciplines.

7.39. Reading the multiple references to a "safeguard measure" in Article 8 of the Agreement on Safeguards in this broader context, the Panel considers that the characterization of an underlying measure as a safeguard measure or otherwise is a necessary analytical step in determining the applicability or inapplicability of Article 8.2 of the Agreement on Safeguards.

7.40. The Panel further considers this understanding to be consistent with the object and purpose of the Agreement on Safeguards. The second recital of the Agreement's preamble recognizes "the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (*Emergency Action on Imports of Particular Products*), to re-establish multilateral control over safeguards and eliminate measures that escape such control". The preamble thus confirms the distinct treatment of measures depending on their characterization under the Agreement on Safeguards. In the Panel's view, such distinction is therefore central to the structure and logic of the entire Agreement on Safeguards and should inform the reading of its provisions. In particular, this suggests to the Panel that Article 8.2 of the Agreement on Safeguards can only be interpreted as concerning rights and obligations related to or flowing from safeguard measures, which are the measures over which the Agreement on Safeguards establishes multilateral control.

7.41. Based on the foregoing, the Panel considers that the ordinary meaning of the terms of Article 8.2 of the Agreement on Safeguards, in their context and in the light of the object and purpose of the Agreement on Safeguards, conditions the right to suspend concessions or other obligations under the GATT 1994 upon a "safeguard measure" being applied by another Member.

7.42. Article XIX:3(a) of the GATT 1994 is the other relevant provision for the purposes of the Panel's assessment. According to Article XIX:3(a), a Member affected by "the action" taken or continued by another Member under paragraph 1 of the same provision shall be free, subject to certain conditions, to suspend the application of GATT concessions or obligations to the trade of the Member taking such action. Article XIX:3(a) of the GATT 1994 also provides that the GATT concessions or obligations so suspended must be "substantially equivalent to" the "action" envisaged under Article XIX:1 of the GATT 1994.

7.43. Under Article XIX:3(a) of the GATT 1994, for a Member to have a right to suspend concessions or other obligations under the GATT 1994, another Member must have taken or continued an "action" under Article XIX:1 of the GATT 1994. According to Article 1 of the Agreement on Safeguards,

measures provided for in Article XIX of the GATT 1994 shall be understood to be safeguard measures. It follows that, like Article 8.2 of the Agreement on Safeguards, Article XIX:3(a) of the GATT 1994 establishes a conditional right to suspend concessions or other obligations under the GATT 1994 in response to a safeguard measure. Thus, in the Panel's view, the application of a safeguard measure is a necessary precondition under both Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 for this right to become available to affected Members.

7.44. The Panel notes the parties' agreement that, in the absence of a safeguard measure applied by a Member, another Member would not have the right, under Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994, to suspend concessions or other obligations under the GATT 1994.[140] The Panel's interpretation of those two provisions, as set out above, confirms this. Accordingly, based on its understanding of the text, logic, and structure of the relevant provisions of the Agreement on Safeguards and the GATT 1994, the Panel considers that whether Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 apply to Türkiye's additional duties measure depends on the characterization under the Agreement on Safeguards of the underlying measure adopted by the United States.

7.1.2.5 Whether Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 apply to Türkiye's additional duties measure

7.45. The United States' measures, in response to which Türkiye has imposed the additional duties measure, are the measures "Adjusting Imports of Aluminum" and "Adjusting Imports of Steel" into the United States (the Section 232 measures).[141] Both parties have submitted arguments and evidence concerning the background, legal basis, and application of these measures.[142]

7.46. In the light of its earlier conclusion that the applicability of Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 to the additional duties measure depends on whether a Member has applied a safeguard measure, the Panel does not consider that it can make an objective assessment of the applicability of the relevant provisions of the covered agreements to the measure at issue in this dispute without reviewing the characterization of the Section 232 measures under the Agreement on Safeguards. In the Panel's view, the examination of the arguments and evidence submitted by the parties in this connection is essential to secure a positive solution to the present dispute. The Panel will accordingly proceed to examine the characterization of the Section 232 measures under the Agreement on Safeguards.

7.47. The Panel recalls that Article 11.1 of the Agreement on Safeguards stipulates the disciplines that apply to a measure depending upon its characterization under that provision.[143] Türkiye argues that the Section 232 measures are "safeguard measures" under the Agreement on Safeguards, which must conform to the disciplines set out in Article 11.1(a) of that Agreement (namely, Article XIX of the GATT 1994 applied in accordance with the Agreement on Safeguards). In the United States' view, the Section 232 measures are "measures sought, taken or maintained … pursuant to provisions of GATT 1994 other than Article XIX" within the meaning of Article 11.1(c) of the Agreement on Safeguards, to which that Agreement "does not apply".

7.48. The Panel observes that, in relation to the applicability of the Agreement on Safeguards, both parties agree that Article 11.1(c) excludes certain measures from the scope of application of that Agreement.[144] They further acknowledge that Members affected by measures to which the Agreement on Safeguards does not apply do not have the right to take action under Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994.[145] The point of contention

[140] United States' second written submission, paras. 140-142; Türkiye's response to Panel question Nos. 15 and 27.

[141] Türkiye's first written submission, para. 1.2; opening statement at the first meeting of the Panel, para. 3. The Panel notes that the applicability of the Agreement on Safeguards and Article XIX of the GATT 1994 to the United States' Section 232 measures was also examined by the panel in *US – Steel and Aluminium Products (Turkey)*. Recalling its duty under Article 11 of the DSU, this Panel will make its own objective assessment of the characterization of the Section 232 measures and will refer to the reasoning of that panel to the extent that it finds the same relevant and persuasive.

[142] United States' second written submission, section II; Türkiye's first written submission, section 4.1.4.

[143] See para. 7.38 above.

[144] United States' response to Panel question No. 77; Türkiye's response to Panel question No. 77.

[145] United States' response to Panel question No. 77; Türkiye's response to Panel question No. 77.

between the parties, based on their differing interpretations of Article 11.1(c) of the Agreement on Safeguards[146], is whether the Section 232 measures are measures of the kind described in Article 11.1(c).

7.49. The Panel will begin its analysis by setting out its understanding of Article 11.1(c) of the Agreement on Safeguards, before turning to consider the Section 232 measures in the light of its interpretation of that provision.

7.1.2.5.1 Interpretation of Article 11.1(c) of the Agreement on Safeguards

7.50. Article 11.1 of the Agreement on Safeguards (*Prohibition and Elimination of Certain Measures*) reads:

> 1. (a) A Member shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement.
>
> (b) Furthermore, a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.[3,4] These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members. Any such measure in effect on the date of entry into force of the WTO Agreement shall be brought into conformity with this Agreement or phased out in accordance with paragraph 2.
>
> (c) This Agreement does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994.
>
> [3] An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement may, by mutual agreement, be administered by the exporting Member.
> [4] Examples of similar measures include export moderation, export-price or import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection.

7.51. The Panel understands the phrase "[t]his Agreement does not apply" in Article 11.1(c) to explicitly limit the scope of application of the Agreement on Safeguards by carving out "measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX" from the purview of that Agreement.[147] This is also recognized in the French and Spanish texts of Article 11.1(c), in which the expressions "*ne s'applique pas*" and "*no es aplicable*", respectively, signify that the Agreement on Safeguards is inapplicable to certain "*mesures*" or "*medidas*". Further, the Panel sees no indication in the text of the Agreement on Safeguards that the carve-out in Article 11.1(c) is subject to or qualified by other provisions in that Agreement. The Panel thus understands that all disciplines of the Agreement on Safeguards are inapplicable to measures of the kind described in Article 11.1(c) of the Agreement, including Article 8.2 of the Agreement on Safeguards, which foresees that certain rights are available only to Members affected by safeguard measures. Moreover, the Panel does not consider that Article XIX:3(a) of the GATT 1994 provides Members with a right to suspend concessions or other obligations under the

[146] For Türkiye, a measure under Article 11.1(c) of the Agreement on Safeguards must be consistent with a provision of the GATT 1994 other than Article XIX to be considered "pursuant to" such other provision. (Türkiye's response to Panel question No. 78). The United States does not consider that Article 11.1(c) refers to a measure in conformity with provisions of the GATT 1994 other than Article XIX, and notes the use of the term "pursuant to" in that provision as opposed to "conforms with" used in Article 11.1(a). (United States' comments on Türkiye's response to Panel question No. 78. See also United States' second written submission, para. 115 (arguing that Article 11.1(c) precludes the application of the Agreement on Safeguards to any measure sought, taken, or maintained "under" a provision of the GATT 1994 other than Article XIX)).

[147] The Panel notes that, as per the terms of Article 11.1(c), the Agreement on Safeguards also does not apply to measures sought, taken, or maintained pursuant to "Multilateral Trade Agreements in Annex 1A other than this Agreement" or pursuant to "protocols and agreements or arrangements concluded within the framework of GATT 1994".

GATT 1994 in response to measures that are not subject to the disciplines of the Agreement on Safeguards.[148]

7.52. The expression "pursuant to" in Article 11.1(c) of the Agreement on Safeguards links "measures sought, taken or maintained by a Member" to "provisions of GATT 1994 other than Article XIX". Depending on the context in which it is used, "pursuant to" may have different meanings. A measure could be "pursuant to" a provision in the sense that it is consistent or in conformity with that provision. A measure could also be "pursuant to" a provision when it is adopted by virtue of or under that provision, regardless of whether it is consistent with that provision. The Panel notes that the Agreement on Safeguards uses the expression "pursuant to" in different ways. In some instances, the expression refers to a requirement of consistency with a provision of the covered agreements; in others, it appears to denote measures taken under a provision of the covered agreements.[149] To determine the meaning of "pursuant to" in Article 11.1(c) of the Agreement on Safeguards, the Panel will assess the ordinary meaning of this expression in the context in which it appears in Article 11.1(c), and in the light of the object and purpose of the Agreement on Safeguards, as required by the customary rules of interpretation of public international law.[150]

7.53. In Article 11.1(c) of the Agreement on Safeguards, the expression "pursuant to" is part of a provision that pertains to the applicability of the Agreement on Safeguards. Specifically, as suggested by the opening phrase "[t]his Agreement does not apply", Article 11.1(c) determines whether the disciplines applicable to a measure sought, taken, or maintained by a Member are not those provided in the Agreement on Safeguards, but those contained in "provisions of GATT 1994 other than Article XIX". In the Panel's view, to condition the applicability of "provisions of GATT 1994 other than Article XIX" to a measure upon its consistency with such other provisions would conflate two distinct issues, namely, the applicability of the relevant covered agreements and conformity with those agreements. In this light, the Panel is not persuaded by Türkiye's argument that the expression "pursuant to" in Article 11.1(c) denotes consistency with provisions of the GATT 1994 other than Article XIX. The Panel's understanding of Article 11.1(c) is that, in the case of measures sought, taken, or maintained by virtue of or under "provisions of GATT 1994 other than Article XIX", the Agreement on Safeguards does not apply, irrespective of whether the measures are consistent with such other provisions.

7.54. The Panel finds support for this understanding of Article 11.1(c) in the context provided by the other paragraphs of Article 11.1 of the Agreement on Safeguards. In stipulating that a safeguard measure must be consistent with certain disciplines, Article 11.1(a) requires that the measure "conforms with" the provisions of Article XIX of the GATT 1994 applied "in accordance with" the Agreement on Safeguards. Similarly, concerning the prohibition on seeking, taking, or maintaining voluntary export restraints, orderly marketing arrangements, or any other similar measures, Article 11.1(b) directs that any such measures that are in effect on the date of the entry into force of the WTO Agreement must be brought "into conformity with" the Agreement on Safeguards, or phased out "in accordance with" Article 11.2 of that Agreement. Footnote 3 to Article 11.1(b) specifies that an exporting Member may, under certain conditions, administer an import quota applied as a safeguard measure "in conformity with the relevant provisions of GATT 1994 and [the Agreement on Safeguards]". Thus, where Article 11.1 stipulates an obligation to conform with provisions of the Agreement on Safeguards or with relevant provisions of the GATT 1994, it does so

[148] The Panel recalls its understanding of the relationship between Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 as set out in paragraph 7.43 above.

[149] For example, Article 2.1 of the Agreement on Safeguards states that "[a] Member may apply a safeguard measure to a product only if that Member has determined, *pursuant to* the provisions set out below", that certain conditions exist. (emphasis added) In this instance, the expression "pursuant to" is part of a provision that has been interpreted as establishing requirements with which Members must comply. (Appellate Body Report, *US – Steel Safeguards,* para. 264). This expression is represented in the French and Spanish texts of Article 2.1 with the terms "*conformément*" and "*con arreglo a*", respectively. Another example is Article 10 of the Agreement on Safeguards, referring to "measures taken pursuant to Article XIX of GATT 1947". The French and Spanish texts of Article 10 describe these measures as "*mesures … au titre de l'article XIX du GATT de 1947*" and "*medidas … al amparo del artículo XIX del GATT de 1947*", respectively, and the three authentic texts of this provision do not appear to be referring to consistency of measures with the GATT 1947.

[150] Article 3.2 of the DSU.

explicitly. In contrast, Article 11.1(c) of the Agreement on Safeguards does not contain any explicit references to consistency with "provisions of GATT 1994 other than Article XIX".

7.55. This is equally true for the French text of the Agreement on Safeguards. In Articles 11.1(a) and 11.1(b), the French text uses the terms "*conforme au*" (or the plural "*conformes aux*" as appropriate) and "*conformément*" to signify obligations to comply with provisions of the Agreement on Safeguards or relevant provisions of the GATT 1994. On the other hand, the French text of Article 11.1(c) conditions the inapplicability of the Agreement on Safeguards on whether the measures in question were sought, taken, or maintained "*en vertu de*" provisions of the GATT 1994 other than Article XIX. The use of different terms in the English and French texts of Article 11.1(c) when compared with the immediately preceding paragraphs of Article 11.1 indicates that "pursuant to" in Article 11.1(c) has a different meaning to consistency with provisions of the GATT 1994 other than Article XIX. Particularly noteworthy is the use of the expression "*en vertu de*" in the French text of Article 11.1(c), which suggests that Article 11.1(c) concerns measures sought, taken, or maintained by virtue of or under provisions of the GATT 1994 other than Article XIX.[151]

7.56. In the Spanish text of the Agreement on Safeguards, the expression corresponding to "pursuant to" in Article 11.1(c) is "*de conformidad con*". This expression has several meanings.[152] Depending on the context, the Spanish text of the Agreement on Safeguards uses the expression "*de conformidad con*" variably to indicate "consistency" with the Agreement, as well as other kinds of relationships between a measure and the relevant provision. For example, the Spanish expression "*conformidad con*" in Articles 11.1(a) and 11.1(b) of the Agreement on Safeguards appears in the English and French texts as "conformity with" and "*conformément aux*", respectively. In contrast, in footnote 1 to Article 2.1 of the Agreement on Safeguards, the terms corresponding to "*conformidad con el presente Acuerdo*" are "under this Agreement" and "*au titre du présent accord*" in English and French respectively, which do not seem to denote consistency.[153] Thus, the Panel does not consider that the use of "*de conformidad con*" in Article 11.1(c) in and of itself denotes that "*medidas que un Miembro trate de adoptar, adopte o mantenga*" must be consistent with "*otras disposiciones del GATT de 1994, aparte del artículo XIX*" for the Agreement on Safeguards to be inapplicable. In the Panel's view, read in the context of a provision governing the applicability of the Agreement on Safeguards[154], "*de conformidad con*" must be understood as referring to measures adopted by virtue of or under certain provisions, but not requiring consistency with such provisions. Accordingly, the three authentic language versions of Article 11.1(c) of the Agreement on Safeguards converge in this respect.

7.57. The Panel's understanding of the terms of Article 11.1(c) comports with the broader context of the Agreement on Safeguards. As clarified in Article 1 of the Agreement, the Agreement on

[151] *Dictionnaire Larousse de Français* (defining the expression "*en vertu de*" as "*en conséquence de*", "*par l'effet de*", or "*au nom de*"). The Panel notes that the expression "*en vertu de*" only features in two other provisions of the Agreement on Safeguards, both of which confirm the Panel's understanding of this expression as used in Article 11.1(c) of the Agreement. Article 8.1 of the Agreement on Safeguards refers to the level of concessions and other obligations existing "*en vertu du GATT de 1994*", denoted in the English text as "under GATT 1994", and thus does not suggest that concessions or obligations must be in conformity with GATT 1994. Article 12.8 of the Agreement on Safeguards refers to notifications by Members "*qui sont tenus de le faire en vertu du présent accord*". The terms corresponding to notifications "*en vertu du présent accord"* in the English text of Article 12.8 are "by this Agreement". To denote the obligation of making such notifications, the terms "by this Agreement" or "*en vertu du présent accord"* are used together with explicit references to a requirement or, in French, the expression *"[ils] sont tenus de le faire*", respectively.

[152] *Diccionario de la Lengua Española*, 22nd Edition (Real Academia Española, 2001), pp. 420-421 (defining "*conformidad con*" as "*con arreglo a*", "*a tenor de*", "*en proporción o correspondencia a*", or "*de la misma suerte o manera que*").

[153] For other examples in the covered agreements, see Article 3.9 of the DSU (referring to "the rights of Members to seek authoritative interpretation … through decision-making under the WTO Agreement" in English, "*droit des Membres de demander une interprétation faisant autorité … par la prise de décisions au titre de l'Accord sur l'OMC*" in French, and "*el derecho de los Miembros de recabar una interpretación autorizada … mediante decisiones adoptadas de conformidad con el Acuerdo sobre la OMC*" in Spanish); Article 3.11 of the DSU (referring to "requests for consultations under the consultation provisions of the covered agreements" in English, "*demandes de consultations présentées au titre des dispositions des accords visés*" in French, and "*solicitudes de celebración de consultas que se presenten de conformidad con las disposiciones sobre consultas de los acuerdos abarcados*" in Spanish); and Article 4.11 of the DSU (providing that a Member shall be free to request "consultations under paragraph 1 of Article XXII", "*consultations au titre du paragraphe 1 de l'article XXII*", and "*consultas de conformidad con el párrafo 1 del artículo XXII*" in English, French and Spanish, respectively).

[154] See para. 7.53 above.

Safeguards "establishes rules for the application of safeguard measures". This "General Provision" resonates in other provisions of the Agreement on Safeguards, which broadly relate to one of two enquiries: (i) whether there is a right to apply safeguard measures, and (ii) if so, whether that right has been exercised within the limits set out in the Agreement.[155] The Agreement on Safeguards thus prescribes rules and requirements for a specific kind of measure identified in that Agreement. The consistency of measures with "provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than [the Agreement on Safeguards]" is not a matter regulated by the Agreement on Safeguards, and Article 11.1(c) must be interpreted taking this important consideration into account.

7.58. In this connection, the Panel recalls its discussion above of the object and purpose of the Agreement on Safeguards, which confirms that different disciplines apply to measures depending on their characterization under the Agreement on Safeguards, as reflected in Article 11.1 of that Agreement.[156] In particular, the Agreement on Safeguards seeks to "re-establish multilateral control over safeguards" (expressed through the mandatory conditions in Article 11.1(a) with which safeguard measures must conform) and to "eliminate measures that escape such control" (expressed through the prohibition of the measures described in Article 11.1(b)). The object and purpose of the Agreement on Safeguards is thus to regulate, and in particular to secure the WTO-consistency of, measures of the kind described in Articles 11.1(a) and 11.1(b) of the Agreement, and not those excluded from its scope under Article 11.1(c). Exclusion of such measures from the Agreement on Safeguards is instrumental in order to preserve the rights of Members under "the basic principles of GATT 1994" on which the Agreement on Safeguards is based.[157] The Panel does not consider that an interpretation of Article 11.1(c) of the Agreement of the Safeguards that brings the question of whether a measure is consistent with "provisions of GATT 1994 other than Article XIX" within the scope of the Agreement on Safeguards would be consistent with this clearly articulated aim and focus of the Agreement. The Panel's interpretation thus respects the distinct treatment of measures under the Agreement on Safeguards depending on their characterization.[158]

7.59. The parties have also referred to supplementary means of interpretation, such as the preparatory work of the Agreement on Safeguards, in support of their interpretative arguments. Under Article 32 of the Vienna Convention on the Law of Treaties (Vienna Convention), the Panel may have recourse to this preparatory work to confirm its interpretation of Article 11.1(c) set out above. The Panel observes that early draft texts of the Agreement on Safeguards sought to preserve the rights and obligations of contracting parties regarding trade-restrictive measures "taken in conformity with" or "consistent with" other GATT provisions.[159] These references to conformity and consistency were removed from subsequent drafts of the provision that became Article 11.1(c) of the Agreement on Safeguards, in favour of the expression "pursuant to".[160] The Panel also notes that references to conformity and consistency were only removed from Article 11.1(c) of the Agreement on Safeguards, but retained in the other paragraphs of Article 11.1, which provide context for the interpretation of Article 11.1(c). This preparatory work thus confirms the Panel's understanding that Article 11.1(c) does not pertain to the consistency of measures excluded from the scope of the Agreement on Safeguards.

7.60. Based on the foregoing, the Panel considers that Article 11.1(c) excludes from the scope of the Agreement on Safeguards measures that are sought, taken, or maintained by virtue of or under provisions of the GATT 1994 other than Article XIX. In the Panel's view, Article 11.1(c) is not concerned with the consistency of such measures with the provisions of the GATT 1994 pursuant to which they are sought, taken, or maintained.

7.61. The Panel now turns to certain interpretive arguments raised by the parties. Türkiye maintains that, in the present dispute, whether a measure falls under the scope of Article 11.1(c) of the Agreement on Safeguards must be determined "objectively" by analysing "in particular, whether the measure presents the constituent features of a safeguard measure within the meaning of

[155] Appellate Body Report, *US – Line Pipe,* para. 84.
[156] See para. 7.40 above.
[157] Agreement on Safeguards, preamble, fourth recital.
[158] See paras. 7.35-7.38 above.
[159] Negotiating Group on Safeguards, Chairman's Report on Status of Work in the Negotiating Group (13 July 1990), MTN.GNG/NG9/W/25/Rev.2, p. 3; Negotiating Group on Safeguards, Draft Text of an Agreement (31 October 1990), MTN.GNG/NG9/W/25/Rev.3, p. 9.
[160] Trade Negotiations Committee, Draft Final Act Embodying The Results of the Uruguay Round of Multilateral Trade Negotiations (20 December 1991), MTN.TNC/W/FA, p. M.7.

Article XIX".[161] The Panel understands Türkiye's argument to mean that the assessment of whether the Section 232 measures were sought, taken, or maintained pursuant to provisions of the GATT 1994 "other than Article XIX" should include consideration of whether these measures have certain features of safeguard measures. The Panel is not persuaded by this argument. An examination of measures under Article 11.1(c) of the Agreement on Safeguards must proceed on the basis of the specific terms of that provision, which provide for the inapplicability of the Agreement on Safeguards to measures adopted "pursuant to" another provision of the GATT 1994. The Panel does not see in the text of Article 11.1(c) an additional requirement to determine "whether WTO safeguard rules may be [] more suitable applicable provision[s] for these measures" as argued by Türkiye.[162] In this respect, the Panel understands that, in referring to provisions of the GATT 1994 "other than Article XIX", the terms of Article 11.1(c) call for determining whether another provision of the GATT 1994 is the legal basis in the covered agreements by virtue of or under which a Member has sought, taken, or maintained a measure.

7.62. The parties have also advanced certain interpretive arguments concerning the "definitional criteria" of or "condition precedent" for safeguard measures.[163] Noting the United States' arguments under Article 11.1(c) of the Agreement on Safeguards, and in the light of the interpretation of that provision rendered above, the Panel is of the view that it would be appropriate to first determine whether the United States' Section 232 measures are excluded from the scope of the Agreement on Safeguards by virtue of Article 11.1(c). Should the Panel find that the Section 232 measures are not so excluded, it will then consider whether they can be characterized as measures regulated by the Agreement on Safeguards and the legal standard for such characterization. Accordingly, the Panel will now turn to examine whether the Section 232 measures were "sought, taken or maintained … pursuant to provisions of GATT 1994 other than Article XIX".

7.1.2.5.2 Whether the United States' Section 232 measures are excluded from the scope of application of the Agreement on Safeguards

7.63. The United States maintains that it adopted the Section 232 measures on aluminium and steel imports pursuant to Article XXI of the GATT 1994, which concerns "Security Exceptions", and thus, pursuant to a provision of the GATT 1994 other than Article XIX. Türkiye, however, argues that the design, structure, and expected operation of the Section 232 measures demonstrate otherwise, and relies, in support of this proposition, on the domestic legal basis for these measures, the reports in the investigations leading to their adoption, and the legal instruments providing for the measures.

7.64. Based on the Panel's interpretation of Article 11.1(c) of the Agreement on Safeguards, the Panel will examine whether the Section 232 measures were sought, taken, or maintained by virtue of or under Article XXI of the GATT 1994, such that the Agreement on Safeguards does not apply. In this respect, the Panel is guided by its duty under Article 11 of the DSU to conduct an objective assessment of the matter before it, which in the context of Article 11.1(c) of the Agreement on Safeguards pertains to the applicability of, and not consistency with, provisions of the GATT 1994 other than Article XIX. The Panel will assess the arguments and evidence advanced by the parties concerning the Section 232 measures in this light.

7.65. The domestic legal basis for the United States' measures was Section 232 of the Trade Expansion Act of 1962 titled "Safeguarding national security" (Section 232).[164] Under Section 232, the United States' Secretary of Commerce may investigate "the effects on the national security of imports of [an] article" into the United States.[165] Based on the Secretary of Commerce's findings and recommendations, the President of the United States may take action under Section 232 to adjust imports of the investigated article into the United States so that they will not threaten to impair its national security.[166] Section 232 also states that, in exercise of their respective authorities

[161] Türkiye's response to Panel question Nos. 78 (arguing that "pursuant to" in Article 11.1(c) means "as a first step, that a measure objectively falls within the relevant category", and contending that this must be determined through consideration of whether the measure presents the "constituent features" of a safeguard measure) and 82 (referring to the analysis of the "constituent features" of a safeguard measure in the context of its submission on the distinction between safeguard measures and "measures taken under other GATT permissive provisions, such as [Article XXI]").

[162] See para. 6.12 above.

[163] United States' first written submission, para. 71; Türkiye's first written submission, para. 4.8.

[164] Section 232, (Exhibits USA-10, TUR-1).

[165] Section 232(b), (Exhibits USA-10, TUR-1).

[166] Section 232(c), (Exhibits USA-10, TUR-1).

under that provision, the President and the Secretary of Commerce "shall … give consideration to" a non-exhaustive list of factors, such as the domestic production needed for the United States' projected national defence requirements, the capacity of its domestic industries to meet such requirements, and the importation of goods that affects the capacity of the United States to meet such requirements.[167]

7.66. In April 2017, as authorized under Section 232, the Secretary of Commerce began investigations into the effects of aluminium and steel imports on the United States' national security.[168] These investigations concluded that excessive aluminium and steel imports were weakening the United States' internal economy and, therefore, threatened to impair its national security as defined in Section 232. In arriving at this conclusion, the Secretary of Commerce referred to rising levels of imports of foreign aluminium and steel, and the "substantial risk" that this would displace the United States' domestic capacity to produce aluminium and steel for critical infrastructure and national defence.[169] Specifically, the reports of these investigations note that "it is the ability to quickly shift production capacity used for commercial products to defence and critical infrastructure production that provides the United States a surge capability that is vital to national security, especially in an unexpected or extended conflict or national emergency." Thus, in the Secretary of Commerce's view, the risk to the financial viability of the United States' domestic aluminium and steel industries, and their competitiveness in commercial markets, placed at risk the United States' capability to meet its defence and critical infrastructure needs.[170]

7.67. Acting on these findings and the related recommendations, the President of the United States issued several proclamations adjusting imports of aluminium and steel into the United States. These proclamations constitute the Section 232 measures. They provide for (i) *ad valorem* tariffs of 10% and 25% on aluminium and steel imports, respectively, applicable in addition to any duties provided in the Harmonized Tariff Schedule of the United States[171]; (ii) exemptions for select countries from these tariffs[172]; (iii) "quota treatment" for aluminium and steel imports from select countries[173]; and (iv) a mechanism authorizing the United States' Secretary of Commerce to relieve certain aluminium and steel imports from the aforementioned tariffs and quotas.[174]

7.68. The tariffs on aluminium and steel imports were imposed through Proclamations 9704 and 9705, respectively. These proclamations note that aluminium and steel articles are being imported into the United States "in such quantities and under such circumstances as to threaten to impair the national security of the United States", and state that the tariffs imposed are necessary to address this threat. Specifically, the tariffs were imposed under these proclamations with a view to helping domestic aluminium and steel industries, so as to reduce the United States' need to rely on foreign producers for aluminium and steel and, as a result, "ensure that domestic producers can continue to supply all the [aluminium and steel] necessary for critical industries and national defense". Proclamations 9704 and 9705 reason that, without the relief provided through these tariffs, the United States' domestic industries would continue to decline, leaving the United States at risk of becoming reliant on foreign producers to meet its national security needs concerning aluminium and

[167] Section 232(d), (Exhibits USA-10, TUR-1). The Panel notes that these criteria are also specified in the United States Code of Federal Regulations, Title 15, Part 705, (Exhibits USA-16, TUR-2) which sets forth "the procedures by which the [United States Department of Commerce] shall commence and conduct an investigation to determine the effect on the national security of the imports of any article" and based on which "the Secretary shall make a report and recommendation to the President for action or inaction regarding an adjustment of the imports of the article."

[168] Section 232 investigation into steel imports, (Exhibits USA-21, TUR-3); Section 232 investigation into aluminium imports, (Exhibits USA-22, TUR-4).

[169] Section 232 investigation into steel imports, (Exhibits USA-21, TUR-3), p. 55; Section 232 investigation into aluminium imports, (Exhibits USA-22, TUR-4), p. 104.

[170] Section 232 investigation into steel imports, (Exhibits USA-21, TUR-3), pp. 55-56; Section 232 investigation into aluminium imports, (Exhibits USA-22, TUR-4), p. 105.

[171] Proclamation 9704, (Exhibits USA-24, TUR-7), p. 11621; Proclamation 9705, (Exhibits USA-23, TUR-6), p. 11627.

[172] Proclamation 9740, (Exhibits USA-27, TUR-10), p. 20685; Proclamation 9739, (Exhibits USA-28, TUR-11), pp. 20678-20679; Proclamation 9759, (Exhibits USA-29, TUR-12), p. 25858; and Proclamation 9758, (Exhibits USA-30, TUR-13), p. 25850.

[173] Proclamation 9740, (Exhibits USA-27, TUR-10), Annex; Proclamation 9759, (Exhibits USA-29, TUR-12), Annex; and Proclamation 9758, (Exhibits USA-30, TUR-13), Annex.

[174] Proclamation 9704, (Exhibits USA-24, TUR-7), p. 11621; Proclamation 9705, (Exhibits USA-23, TUR-6), p. 11627; Proclamation 9776, (Exhibits USA-33, TUR-16), p. 45020; and Proclamation 9777, (Exhibits USA-32, TUR-15), p. 45026.

steel, a situation that the proclamations describe as "fundamentally inconsistent with the safety and security of the American people".[175]

7.69. Proclamations 9704 and 9705, and the "national security interests" of the United States raised therein, formed the basis for further action by the United States.[176] In this respect, the Panel considers relevant the exemptions granted to certain countries from the tariffs on aluminium and steel imports. Following determinations that imports from those countries no longer threatened to impair its national security, the United States exempted (i) from tariffs on aluminium imports, Argentina, Australia, Canada, and Mexico; and (ii) from tariffs on steel imports, Argentina, Australia, Brazil, Canada, Mexico, and the Republic of Korea.[177] These exemptions were granted on the basis of "important security relationships" between the United States and the exempted countries, and their shared concern regarding circumstances that threaten to impair national security, namely global excess capacity in aluminium and steel.[178] Proclamations 9710 and 9711 describe in greater detail the various facets of the United States' security relationships with the countries exempted from the aluminium and steel tariffs, including security, defence and intelligence partnerships, shared commitments towards addressing security concerns, and military alliances.[179]

7.70. The application of these tariffs and the related exemptions by the United States reveals the design and expected operation of the Section 232 measures. In connection with the tariffs, the Panel notes that Proclamations 9704 and 9705 provide for their modification or termination based on monitoring and review of the "status of [aluminium or steel] imports with respect to the national security" of the United States.[180] The United States in fact modified the duty applicable to steel imports from Türkiye following such monitoring and review.[181] The Panel also considers relevant that any exemptions from the aluminium and steel tariffs were temporarily applied[182], until the United States secured "an effective, long-term alternative means" to address the contribution of the exempted countries to the threatened impairment of its national security.[183] Such "long-term alternative means" included quotas restricting the quantities of aluminium and steel imported into the United States from the exempted country[184], which were previously identified by the United States as appropriate means to ensure that the exemptions do not undermine the national security objectives of the tariffs on aluminium and steel imports.[185]

7.71. The product coverage of the Section 232 measures is similarly revealing of the national security objectives pursued by the United States in adopting these measures. Tariffs were imposed on aluminium and steel articles that the United States found, following the investigations by the

[175] Proclamation 9704, (Exhibits USA-24, TUR-7), pp. 11619-11620; Proclamation 9705, (Exhibits USA-23, TUR-6), pp. 11626-11627.

[176] Proclamation 9711, (Exhibits USA-25, TUR-8), p. 13361; Proclamation 9710, (Exhibits USA-26, TUR-9), p. 13355; Proclamation 9740, (Exhibits USA-27, TUR-10), p. 20683; Proclamation 9739, (Exhibits USA-28, TUR-11), p. 20677; Proclamation 9759, (Exhibits USA-29, TUR-12), p. 25857; Proclamation 9758, (Exhibits USA-30, TUR-13), p. 25849; Proclamation 9772, (Exhibits USA-31, TUR-14), p. 40429; Proclamation 9777, (Exhibits USA-32, TUR-15), p. 45025; and Proclamation 9776, (Exhibits USA-33, TUR-16), p. 45019.

[177] Proclamation 9740, (Exhibits USA-27, TUR-10), p. 20685; Proclamation 9739, (Exhibits USA-28, TUR-11), pp. 20678-20679; Proclamation 9759, (Exhibits USA-29, TUR-12), p. 25858; Proclamation 9758, (Exhibits USA-30, TUR-13), p. 25850; Proclamation 9894, (Exhibit TUR-44), p. 23988; and Proclamation 9893, (Exhibit TUR-45), p. 23984.

[178] Proclamation 9704, (Exhibits USA-24, TUR-7), p. 11620; Proclamation 9705, (Exhibits USA-23, TUR-6), p. 11626.

[179] Proclamation 9711, (Exhibits USA-25, TUR-8), pp. 13361-13362; Proclamation 9710, (Exhibits USA-26, TUR-9), pp. 13355-13356.

[180] Proclamation 9704, (Exhibits USA-24, TUR-7), pp. 11621-11622; Proclamation 9705, (Exhibits USA-23, TUR-6), pp. 11627-11628.

[181] Proclamation 9772, (Exhibits USA-31, TUR-14), p. 40429; Proclamation 9886, (Exhibit TUR-46), p. 23421.

[182] Proclamation 9711, (Exhibits USA-25, TUR-8), p. 13362; Proclamation 9710, (Exhibits USA-26, TUR-9), p. 13356.

[183] Proclamation 9740, (Exhibits USA-27, TUR-10), pp. 20683-20684; Proclamation 9759, (Exhibits USA-29, TUR-12), pp. 25857-25858; and Proclamation 9758, (Exhibits USA-30, TUR-13), p. 25850.

[184] Proclamation 9740, (Exhibits USA-27, TUR-10), p. 20685; Proclamation 9759, (Exhibits USA-29, TUR-12), p. 25858; and Proclamation 9758, (Exhibits USA-30, TUR-13), p. 25850.

[185] Proclamation 9711, (Exhibits USA-25, TUR-8), p. 13363; Proclamation 9710, (Exhibits USA-26, TUR-9), p. 13357.

Secretary of Commerce, to have applications for defence and critical infrastructure.[186] The Section 232 measures also include a mechanism under which certain aluminium and steel articles which were otherwise subjected to tariffs and quotas could be excluded from them on the basis of "specific national security considerations".[187] This mechanism was elaborated in the rules issued by the Bureau of Industry and Security of the United States Department of Commerce. The rules provide that, in granting exclusions based on national security considerations, the United States Department of Commerce can consider impacts on the United States' national security that may result from not approving an exclusion. They additionally require that "the demonstrated concern with [US] national security would need to be tangible and clearly explained and ultimately determined by the [US] Government".[188]

7.72. In the Panel's view, the abovementioned features of the Section 232 measures demonstrate that they were designed and expected to operate to address the threat to national security that the United States had determined to arise from rising levels of aluminium and steel imports. The Panel observes that the United States' national security objectives are reflected both in the application (tariffs, quotas) and non-application (exemptions, exclusions) of the Section 232 measures. The prescribed procedure for the adoption, modification, and removal of the Section 232 measures, and especially the provisions made for consultations with domestic authorities such as the United States' Secretary of Defense[189], further support the Panel's view.

7.73. The United States also outlined its national security objectives relating to the Section 232 measures in its communications to WTO councils and committees, linking them to Article XXI of the GATT 1994. Before adopting the Section 232 measures, the United States informed the Council for Trade in Goods that its ongoing investigations into the effects of aluminium and steel imports on national security were to determine whether those imports were threatening its ability to meet its national security needs.[190] Following the adoption of the Section 232 measures, the United States referred to the findings of its completed investigations and provided information "pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, and consistent with the Decision Concerning Article XXI of the General Agreement taken by the GATT Council on 30 November 1982".[191] In a communication addressed to the Committee on Safeguards, responding to Türkiye's request for consultations on the Section 232 measures under Article 12.3 of the Agreement on Safeguards, the United States noted the domestic legal basis pursuant to which it had taken action, and reiterated that it had provided information to the WTO Council for Trade in Goods "consistent with the Decision Concerning Article XXI of the General Agreement taken by the GATT Council on 30 November 1982".[192] Considered together with the features of the Section 232 measures discussed above, these communications indicate that the legal basis in the covered agreements pursuant to which the United States has sought, taken, or maintained these measures is Article XXI of the GATT 1994.

7.74. Türkiye argues that designation of a measure under domestic law and its notification or non-notification to WTO bodies are not decisive of its characterization under the Agreement on Safeguards.[193] The Panel agrees. At the same time, the Panel recalls that the characterization of the measures in the present case must proceed from the terms of the relevant provision itself, that is Article 11.1(c) of the Agreement on Safeguards. This provision calls for a determination of whether

[186] See Proclamation 9704, (Exhibits USA-24, TUR-7), p. 11621; Proclamation 9705, (Exhibits USA-23, TUR-6), p. 11627; Section 232 investigation into steel imports, (Exhibits USA-21, TUR-3), pp. 21-22 and Appendices H and I; and Section 232 investigation into aluminium imports, (Exhibits USA-22, TUR-4), pp. 24-38.

[187] Proclamation 9704, (Exhibits USA-24, TUR-7), p. 11621; Proclamation 9705, (Exhibits USA-23, TUR-6), p. 11627; Proclamation 9777, (Exhibits USA-32, TUR-15), p. 45026; and Proclamation 9776, (Exhibits USA-33, TUR-16), p. 45020.

[188] BIS rule of 11 September 2018, (Exhibit USA-35), p. 46062.

[189] See Section 232(b), (Exhibits USA-10, TUR-1); Proclamation 9704, (Exhibits USA-24, TUR-7), pp. 11621-11622; and Proclamation 9705, (Exhibits USA-23, TUR-6), pp. 11627-11628.

[190] Council for Trade in Goods, Minutes of the meeting held on 10 November 2017, G/C/M/130.

[191] Council for Trade in Goods, Minutes of the meeting held on 23 and 26 March 2018, G/C/M/131.

[192] Committee on Safeguards, Communication from the United States in response to Turkey's request circulated on 20 April 2018, G/SG/184. The United States noted that the proclamations constituting the Section 232 measures were issued "pursuant to Section 232 of the Trade Expansion Act of 1962" and not "pursuant Section 201 of the Trade Act of 1974, which is the law under which the United States imposes safeguard measures". Accordingly, the United States maintained that the Section 232 measures were "not safeguard measures" and declined to engage in consultations under the Agreement on Safeguards.

[193] Türkiye's response to Panel question No. 79.

a Member has adopted measures acting under or by virtue of provisions of the GATT 1994 other than Article XIX. In these circumstances, the Panel considers that the domestic legal basis and procedures as well as notifications concerning the adoption of the measures are relevant evidence of the legal basis under the covered agreements pursuant to which the Section 232 measures were sought, taken, or maintained. The Panel further notes that it has not considered this evidence in isolation, but in conjunction with aspects of the Section 232 measures that demonstrate how they were designed, applied, and expected to operate.

7.75. Türkiye also argues that the reports of the investigation into aluminium and steel imports, and the proclamations adjusting these imports into the United States, pursue the specific objective of improving the economic health of the domestic aluminium and steel industries, which is the same as the objective of safeguard measures. Türkiye contends that the Panel should accordingly find the Agreement on Safeguards applicable to the Section 232 measures.[194]

7.76. The Panel is not persuaded by this argument. The Panel notes that the references to the economic welfare of domestic industries in the instruments mentioned above are in the context of the relationship of such economic welfare to the United States' national security. Under Section 232, the relevant factors for the consideration of the Secretary of Commerce and the President include the impact of foreign competition on the economic welfare of domestic industries, substantial unemployment, decrease in revenues of government, and loss of skills or investment, among others. These provide the basis under which the weakening of the United States' internal economy can be determined by the relevant authorities of the United States to impair its national security. In the same vein, the findings of the Secretary of Commerce on the impact of rising levels of imports on domestic aluminium and steel industries, and the corresponding adjustments recommended, follow the Secretary's conclusion that (i) certain aluminium and steel products, as well as their domestic production, are essential to the United States' national security, national defence, and critical infrastructure; and (ii) falling domestic capacity in these industries due to rising import competition would place at risk the ability of the United States' domestic industries to cater to its national security needs, particularly during an unexpected or extended conflict or national emergency.

7.77. The Section 232 measures further implement the recommendations of the Secretary of Commerce, including with respect to reviving idled facilities, opening closed smelters and mills, preserving necessary skills, and maintaining or increasing production, for the specific purpose of securing aluminium and steel necessary for critical industries and national defence. The references to the economic welfare of the United States' domestic industries in the instruments considered above thus constitute one aspect of the United States' determination that there exists a threat to its national security. This aspect of the Section 232 measures cannot be divorced from its background and context, which reflect the measures' national security objectives and confirms that they were sought, taken, or maintained pursuant to Article XXI of the GATT 1994.

7.78. Türkiye refers to a memorandum issued by the United States' Secretary of Defense, which states that the findings of the investigations into aluminium and steel imports do not "impact the ability of [Department of Defense] programs to acquire the steel or aluminum necessary to meet national defense requirements".[195] According to Türkiye, this undermines the United States' arguments concerning the national security objectives of the Section 232 measures.[196] The Panel notes that this memorandum was issued as part of the consultation process between the Department of Commerce and the Department of Defense provided for in Section 232. The memorandum refers to the risk posed to the United States' national security by imports of aluminium and steel and "concurs with the Department of Commerce's conclusion that imports of foreign steel and aluminum based on unfair trading practices impair the national security".[197] In the Panel's view, this supports the understanding set out above that the Section 232 measures pursue national security objectives. The additional considerations raised by Türkiye regarding the United States' ability to acquire aluminium and steel for its national defence needs pertain to whether the Section 232 measures meet the requirements of Article XXI of the GATT 1994, rather than whether they were sought, taken, or maintained pursuant to that provision. In this connection, the Panel recalls its earlier conclusion that Article 11.1(c) concerns whether certain measures were sought, taken, or

[194] Türkiye's first written submission, para. 4.54.
[195] United States Secretary of Defense Memorandum, (Exhibit TUR-19), p. 1.
[196] Türkiye's communication (20 January 2023) also noting that, according to this memorandum, "the [US] military requirements for steel and aluminum each represent about three percent of [US] production."
[197] United States Secretary of Defense Memorandum, (Exhibit TUR-19), p. 1.

maintained by virtue of or under provisions of the GATT 1994 other than Article XIX, and not whether they are consistent with such other provisions.

7.79. Finally, the Panel notes that the characterization of the Section 232 measures under the Agreement on Safeguards was previously examined by the panel in *United States – Steel and Aluminium Products (Turkey).* As noted above[198], the Panel sought the parties' views on the findings in that panel report concerning the applicability of the WTO safeguards regime to the Section 232 measures and on the relevance of those findings for this Panel's analysis, in response to which both parties emphasized this Panel's duty under Article 11 of the DSU. Following its examination of the Section 232 measures, the Panel concurs with the findings of the panel in *United States – Steel and Aluminium Products (Turkey)* that "the United States' determination of a threat to its national security under Section 232 is a central aspect of the measures with respect to their legal characterization as being sought, taken, or maintained pursuant to Article XXI of the GATT 1994".[199] Based on the Panel's understanding of Article 11.1(c) and the relevance of domestic legal status and WTO notifications for the characterization of measures under that provision, the Panel also concurs with that panel's treatment of the same considerations.[200]

7.80. In the light of its conclusion that the Section 232 measures were sought, taken, or maintained pursuant to a provision of the GATT 1994 other than Article XIX, the Panel finds that the Agreement on Safeguards does not apply to these measures, as provided for in Article 11.1(c) of that Agreement. As noted above, the rights under Article 8.2 of the Agreement on Safeguards and, relatedly, Article XIX:3(a) of the GATT 1994, are unavailable in respect of measures to which the Agreement on Safeguards does not apply. Accordingly, the Panel finds that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to Türkiye's additional duties measure.

7.1.3 Conclusion

7.81. Having found that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to Türkiye's additional duties measure, the Panel consequently finds that the application of Articles I and II of the GATT 1994 is not suspended in relation to this measure. The Panel will accordingly proceed to examine the United States' claims under Articles I and II of the GATT 1994 in turn.

7.2 United States' claims under the GATT 1994

7.2.1 Whether the Panel should examine the additional duties measure as amended by Presidential Decision 1130/2019

7.82. Before assessing the United States' claims under the GATT 1994, the Panel must address an issue raised by the parties' arguments concerning the scope of the measure at issue. In particular, the Panel must assess whether to examine the WTO consistency of the additional duties measure as amended by Presidential Decision 1130/2019 (the Second Amendment).[201] As explained in section 2.2 of this Report[202], the Second Amendment entered into force on 21 May 2019, nearly four months after the Panel's establishment. The Second Amendment reduced the rates of duty applied under the additional duties measure to levels below those in force at the time of the Panel's establishment.

7.2.1.1 Main arguments of the parties

7.2.1.1.1 United States

7.83. The United States does not contest that, following the entry into force of the Second Amendment on 21 May 2019, the additional duties applicable to certain tariff lines were reduced. However, the United States maintains that this reduction of the additional duties is "legally irrelevant" to these proceedings because it occurred well after the establishment of the Panel in this

[198] See section 1.3.1 above.
[199] Panel Report, *US – Steel and Aluminium Products (Turkey),* para. 7.111.
[200] Panel Report, *US – Steel and Aluminium Products (Turkey),* para. 7.98, fn 411, and para. 7.111.
[201] Second Amendment, (Exhibit TUR-43).
[202] See para. 2.8 above.

dispute. In the United States' view, the Panel's terms of reference are to examine the matter in the United States' panel request, and not a different matter existing on some other date.[203]

7.2.1.1.2 Türkiye

7.84. Türkiye argues that the Panel should make findings on the version of the additional duties measure currently in force, namely, the measure as amended by the Second Amendment.[204] In Türkiye's view, both the terms of the United States' panel request and the fact that the Second Amendment did not change the essence of the measure allow the Panel to make findings on this amended version of the measure.[205]

7.2.1.2 Analysis by the Panel

7.85. The Panel's terms of reference are defined by Article 7 of the DSU. According to that provision, the Panel's task is to examine the matter referred to the DSB by the United States in document WT/DS561/2 (that is, the United States' panel request), and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the relevant agreements.

7.86. In this respect, the United States' panel request explicitly identifies the Implementation Decree and the First Amendment as the legal instruments through which Türkiye imposes the additional duties measure.[206] The panel request does not explicitly identify the Second Amendment as constituting part of the challenged measure. Indeed, this could not be otherwise, as the Second Amendment came into force nearly four months after the Panel was established.

7.87. The Panel notes that Articles 3 and 6 of the DSU invest a complainant with a considerable degree of discretion in framing its complaint. For example, Article 3.3 of the DSU suggests that a Member may initiate panel proceedings when it considers that the benefits accruing to it under any of the covered agreements are impaired by another Member's measure. Further, Article 3.7 empowers Members to bring actions under the DSU where they consider that doing so would be fruitful. Article 6 similarly provides that a panel is to be established only where the complainant so requests, and gives complainants the power to identify the specific measures at issue. The DSU thus prioritizes the "perception or understanding" of a complainant in framing the scope and content of the disputed measures.[207]

7.88. In several past disputes, WTO adjudicators have held that a panel's terms of reference may, in certain circumstances, encompass amendments to measures identified in the panel request enacted after its establishment.[208] The Panel observes, however, that in the relevant disputes, and consistent with the principle of complainant control outlined above, those adjudicators only examined whether an amendment fell within the terms of reference because the complainant in the proceedings explicitly requested that the relevant amendments be included in the panel's review. Their examination of whether a particular amendment fell within their terms of reference was thus motivated by the complainants' choice of what measures (or versions of measures) to challenge.

7.89. The Panel thus considers that, in the light of the emphasis placed by the DSU on the complainant's choices in framing the scope of its complaint, the question whether a particular measure or amendment falls within a panel's terms of reference is only relevant to the extent that the complainant seeks findings on that measure or amendment. The Panel does not consider there to be any basis for making either jurisdictional or substantive findings on a measure or amendment in the absence of a request from the complainant to do so.[209] In the circumstances of these proceedings, where the complainant has explicitly limited its claims to the additional duties measure as applied through the Implementation Notice and the First Amendment, the question whether the

[203] United States' response to Panel question No. 5, para. 16; and No. 69, paras. 1 and 3.
[204] Türkiye's response to Panel question No. 69.
[205] Türkiye's response to Panel question Nos. 5 and 69.
[206] United States' panel request, p. 1.
[207] Appellate Body Report, *US – Upland Cotton*, para. 264.
[208] See e.g. Appellate Body Reports, *Chile – Price Band System*, paras. 136-144; *EC – Chicken Cuts*, paras. 156-157; *US – Zeroing (Japan) (Article 21.5 – Japan)*, para. 121; and *EC – Selected Customs Matters*, para. 184; and Panel Reports, *EC – IT Products*, para. 7.139; *China – Raw Materials*, para. 7.15; *US – Large Civil Aircraft (2nd complaint) (Article 21.5 – EU)*, para. 7.524; *and US – Tariff Measures (China)*, paras. 7.47-7.48.
[209] Panel Reports, *Russia – Tariff Treatment*, para. 7.84; and *US – Renewable Energy*, para. 7.17.

Second Amendment falls within the Panel's terms of reference has no legal significance because the Panel has not been asked to make findings on that instrument.

7.90. Accordingly, the Panel will assess the United States' claims under the GATT 1994 with reference to the additional duties measure as it existed at the time of the Panel's establishment, that is, as applied through the Implementation Notice and the First Amendment. It will not make findings on the measure as implemented through the Second Amendment. Nevertheless, the Panel is of the view that it may be necessary to reflect the changes implemented through the Second Amendment in its recommendations, if any, under Article 19.1 of the DSU.[210]

7.2.2 United States' claim under Article I:1 of the GATT 1994

7.2.2.1 Main arguments of the parties

7.2.2.1.1 United States

7.91. The United States claims that Türkiye's additional duties measure is inconsistent with Article I:1 of the GATT 1994 because it fails to extend to certain products of the United States an advantage granted by Türkiye to like products originating in other countries.[211] In the United States' view, a measure is inconsistent with Article I:1 of the GATT 1994 where the following elements are present: (a) the challenged measure is covered by Article I:1 of the GATT 1994; (b) the subject imports are "like products" within the meaning of Article I:1 of the GATT 1994; (c) the challenged measure confers an "advantage, favour, privilege, or immunity" to a product originating in (or destined for) another country; and (d) such "advantage, favour, privilege, or immunity" is not extended "immediately" and "unconditionally" to all subject imports.[212] The United States maintains that Türkiye's additional duties measure satisfies all of these elements.[213]

7.92. The United States first submits that the additional duties measure is "explicitly covered" by the text of Article I:1. Noting that Article I:1 refers to "customs duties", the United States argues that these are charges imposed at the border, as are the additional duties imposed by the measure at issue.[214] Further, the United States contends that the terms "tariff", "customs duty", and "import duty" are used interchangeably in economics and international trade law, and that therefore the phrase "customs duties and charges of any kind imposed on or in connection with importation" in Article I:1 of the GATT 1994 would include the duties imposed by Türkiye's additional duties measure.[215]

7.93. The United States next submits that each United States' product subject to Türkiye's additional duties measure is like a product from other countries not subject to the additional duties measure within the meaning of Article I:1.[216] According to the United States, in circumstances where the only distinction between two sets of products is the country of origin, it may be presumed that the two sets are like products.[217] The United States considers that origin is the only criterion used by Türkiye's measure for imposing additional duties on United States' products covered by 479 tariff lines, but not products from other countries entered under the same tariff lines. Accordingly, in the United States' view, the relevant products can be considered like for the purposes of Article I:1 of the GATT 1994.[218]

7.94. Turning to the third element, the United States submits that Türkiye's additional duties measure confers an advantage on like products of other Members because it imposes additional duties on certain United States products while leaving unchanged the rates of duty applicable to

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[210] See e.g. Appellate Body Reports*, US – Certain EC Products*, para. 81; and *Dominican Republic – Import and Sale of Cigarettes*, para. 129; and Panel Report, *Russia – Tariff Treatment*, para. 7.85.

[211] United States' first written submission, para. 23.

[212] United States' first written submission, para. 24 (referring to Appellate Body Reports, *EC – Seal Products*, para. 5.86).

[213] United States' first written submission, para. 24.

[214] United States' first written submission, para. 25.

[215] United States' first written submission, para. 25.

[216] United States' first written submission, para. 28.

[217] United States' first written submission, paras. 29-30 (referring to Panel Reports, *China – Publications and Audiovisual Products*, para. 7.1446; *Indonesia – Autos*, para. 14.113; and *Canada – Autos*, para. 10.74).

[218] United States' first written submission, para. 30.

goods from all other countries, including all other WTO Members.[219] In the United States' view, it is "evident" that, by providing lower duty rates to products originating outside the United States, the additional duties measure accords an "advantage" to those goods within the meaning of Article I:1. According to the United States, this is because the subjection of some products to lower duty rates affects the competitive relationship between products and provides more favourable competitive opportunities to products benefiting from the lower rates.[220]

7.95. Finally, the United States argues that the lower duties that Türkiye provides to products from other countries are not provided to products originating in the United States.[221] For the United States, where, as in this dispute, a measure imposes duties on one WTO Member and leaves duties on other countries unchanged, that measure clearly does not "immediately" accord to that WTO Member an advantage enjoyed by products originating in other countries.[222]

7.96. The United States concludes that, because Türkiye's additional duties measure satisfies all of these elements, it is inconsistent with Article I:1 of the GATT 1994.

7.2.2.1.2 Türkiye

7.97. Türkiye responds to the United States' claim under Article I:1 of the GATT 1994 by arguing that that provision is "suspended" and therefore not applicable to the additional duties measure, which is a rebalancing measure under Article 8.2 of the Agreement on Safeguards.[223] Türkiye further observes that, even if the Panel were to disagree with Türkiye about the characterization of the additional duties measure as a "rebalancing measure", the United States as the complainant in this dispute nevertheless has an obligation to make a *prima facie* case of a violation of Article I:1 of the GATT 1994.[224]

7.2.2.2 Analysis by the Panel

7.98. The question before the Panel is whether, as the United States claims, Türkiye's additional duties measure is inconsistent with Article I:1 of the GATT 1994. Türkiye has responded to this claim by submitting that Article I:1 is "suspended" and thus inapplicable in respect of the additional duties measure. However, Türkiye has not contested that the additional duties measure imposes duties on United States' products in excess of those applied on like products from other countries. Nor has it addressed any of the specific arguments raised by the United States in support of its position that the additional duties measure is inconsistent with Article I:1.

7.99. The Panel concluded, in the previous Section of this Report, that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to the additional duties measure.[225] As such, contrary to Türkiye's submission, the application of Article I:1 of the GATT 1994 is not "suspended" in relation to the additional duties measure within the meaning of those provisions.

7.100. In the absence of any further argumentation on Türkiye's part concerning the consistency of the additional duties measure with Article I:1 of the GATT 1994, the Panel considers that the United States' claim under Article I:1 is uncontested. Nevertheless, in accordance with its duty to make an objective assessment of the matter before it as laid down in Article 11 of the DSU, the Panel cannot simply accept the United States' arguments without further analysis. Rather, the Panel must satisfy itself as to whether the United States has established a *prima facie* case that the additional duties measure is inconsistent with Article I:1 of the GATT 1994.[226] To that end, the Panel commences its analysis with the text of the relevant provision.

[219] United States' first written submission, para. 31.
[220] United States' first written submission, paras. 32-33.
[221] United States' first written submission, para. 34.
[222] United States' first written submission, para. 35.
[223] Türkiye's first written submission, para. 3.4; response to Panel question No. 13.
[224] Türkiye's response to Panel question No. 13.
[225] See para. 7.81 above.
[226] See e.g. Panel Reports, *US – Poultry (China)*, paras. 7.445-7.446; *Saudi Arabia – IPRs*, para. 7.40; and *China – TRQs*, para. 7.21.

7.2.2.2.1 The applicable legal standard

7.101. Article I:1 of the GATT 1994 provides as follows:

> With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

7.102. Article I:1 prohibits, with respect to measures falling within its scope of application, discrimination among like products originating in or destined for different countries.[227] This obligation to accord most-favoured-nation (MFN) treatment in respect of customs duties and charges of any kind imposed on or in connection with importation or exportation has been understood as protecting expectations of equal competitive opportunities for like imported products from any Member.[228]

7.103. To establish that a measure is inconsistent with Article I:1, a complainant must demonstrate that: (a) the measure at issue falls within the scope of Article I:1; (b) the imported products at issue are like products within the meaning of Article I:1; (c) the measure at issue confers an "advantage, favour, privilege or immunity" on any product originating in the territory of any country; and (d) the advantage, favour, privilege or immunity granted is not extended "immediately" and "unconditionally" to like products originating in the territory of all Members.[229] The Panel will examine whether the United States has demonstrated that Türkiye's additional duties measure satisfies these four elements.

7.2.2.2.2 Whether the additional duties measure is inconsistent with Article I:1 of the GATT 1994

7.104. Article I:1 of the GATT 1994 applies *inter alia* to "customs duties and charges of any kind imposed on or in connection with importation". The Panel understands "customs duties" to refer to charges on goods that accrue at the moment and by virtue of importation or exportation.[230]

7.105. The Panel notes that the Implementation Decree is formally titled "Decree on Additional Duties on the Importation of Certain Products Originated from the United States of America".[231] The Panel also notes that Article 1(1) provides that "[t]he purpose of this Decree is to impose additional duties on the importation of certain products originated from the United States of America", and Article 1(2) provides that "[a]dditional duties are collected on the importation of certain products originated from the [United States] at the rates shown in the table attached to this Decree".[232] These provisions therefore explicitly establish that the additional duties measure imposes duties that accrue at the moment and by virtue of the importation of goods from the United States into Türkiye.

7.106. Further, Article 3(1) of the Implementation Decree provides that the provisions of Türkiye's Customs Law No. 4458 and other relevant customs legislation on the methods and procedures related to customs duties are also applicable for the registration, accrual, collection, return, follow-up, and warranty processes of the additional duties imposed within the scope of this Decree.[233] This provision appears to assimilate the duties imposed by the additional duties measure to other kinds of customs duties imposed or maintained by Türkiye for the purposes of administration and enforcement.

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[227] Panel Report, *US – Steel and Aluminium Products (Turkey)*, para. 7.56.
[228] Panel Report, *US – Steel and Aluminium Products (Turkey)*, para. 7.56 (referring to Appellate Body Reports, *EC – Seal Products*, paras. 5.86-5.87).
[229] Appellate Body Reports, *EC – Seal Products*, para. 5.86.
[230] Appellate Body Reports, *China – Auto Parts*, para. 158.
[231] Implementation Decree, (Exhibits USA-1, TUR-41).
[232] Implementation Decree, (Exhibits USA-1, TUR-41), Articles 1(1) and 1(2).
[233] Implementation Decree, (Exhibits USA-1, TUR-41), Article 3(1).

7.107. The Panel observes that Article 2 of the Implementation Notice provides that "[a]dditional duties are collected separately from customs duties and other charges of [a] fiscal nature by the customs authorities and are recorded as revenue to the national budget".[234] Türkiye has not argued, however, and the Panel does not consider that this administrative requirement changes the essential characterization of the duties as "customs duties". The Panel understands this provision to be concerned with the sorting and allocation of collected revenues, rather than with defining the event or condition giving rise to the duties or on which the duties become payable. As noted, this event or condition is the importation of goods from the United States into Türkiye, thus bringing the additional duties within the scope of "customs duties" in the sense of Article I:1 of the GATT 1994.

7.108. The Panel therefore considers that the additional duties measure imposes customs duties, and accordingly falls within the scope of Article I:1 of the GATT 1994.

7.109. With respect to whether the products at issue are like within the meaning of Article I:1, the Panel notes that past WTO adjudicators have consistently held that when a measure makes a distinction between products based exclusively on their origin, the likeness of such products can be presumed.[235] Türkiye's additional duties measure applies additional tariff rates exclusively on products "originated from the United States".[236] It thus makes a distinction between products solely on the basis of origin, i.e. whether they originate in the United States or in any other country.[237] The Panel therefore finds that the United States' products subject to the additional duties measure can be presumed to be like the equivalent products from other countries that are not subject to the additional duties measure.

7.110. The additional duties measure applies "additional tariff rates" on certain products originating in the United States, but does not increase the tariffs applicable to like products originating in any other country. In effect, this means that imports from other countries are subject to lower tariff rates than like products imported from the United States. In the Panel's view, lower tariff rates constitute an "advantage" within the meaning of Article I:1 of the GATT 1994 because they create more favourable import opportunities and thus affect the competitive relationship between those products benefiting from lower tariff rates and those subject to higher tariff rates.

7.111. Finally, because the additional duties measure applies additional tariff rates only on products originating in the United States, it does not accord the advantage of lower tariff rates "immediately and unconditionally" to those products.

7.112. Accordingly, the Panel finds that the United States has demonstrated that the additional duties measure is inconsistent with Article I:1 of the GATT 1994 because, with respect to customs duties imposed on or in connection with importation, it fails to accord an advantage granted to products originating in other countries immediately and unconditionally to products originating in the United States.

7.2.2.3 Conclusion

7.113. For the reasons outlined above, the Panel finds that Türkiye's additional duties measure is inconsistent with Article I:1 of the GATT 1994 because, with respect to customs duties imposed on or in connection with importation, it fails to accord an advantage granted to products originating in other countries immediately and unconditionally to products originating in the United States.

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[234] Implementation Decree, (Exhibits USA-1, TUR-41), Article 2(1).

[235] Appellate Body Report, *Argentina – Financial Services*, para. 6.36. See also Panel Reports, *Colombia – Ports of Entry*, paras. 7.355-7.356; and *US – Poultry (China)*, paras. 7.424-7.432.

[236] Implementation Decree, (Exhibits USA-1, TUR-41), Article 1. The Panel recalls that, through the Second Amendment, Türkiye reduced the additional duties to the rates in force prior to the enactment of the First Amendment on 15 August 2018. Despite this reduction in duties, Türkiye continues to impose tariffs on products imported from the United States falling under 479 tariff lines at a higher level than the applied import duty rates for like products imported from other countries.

[237] The table of relevant duty rates in Annex E-1 shows the MFN rates applied to all imports of the relevant products into Türkiye and the additional duties that apply only to the like products originating in the United States.

7.2.3 United States' claim under Articles II:1(a) and II:1(b) of the GATT 1994

7.2.3.1 Main arguments of the parties

7.2.3.1.1 United States

7.114. The United States claims that Türkiye's additional duties measure imposes duties on products originating in the United States in excess of Türkiye's bound rates and provides less favourable treatment to such products, and is therefore inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994.[238]

7.115. According to the United States, if a measure results in the imposition of duties that are in excess of the duties provided for in a Member's bound Schedule, the measure breaches obligations under Article II:1(a) and (b) of the GATT 1994.[239] The United States also submits that a measure that is inconsistent with Article II:1(b) will necessarily be inconsistent with Article II:1(a) as well, and accordingly addresses the former provision first.[240]

7.116. The United States begins by noting that Article II:1(b) covers both ordinary customs duties and other duties or charges.[241] In the United States' view, it is "legally immaterial" whether the additional duties constitute ordinary customs duties or other duties or charges because, under either characterization, the duties exceed the rates set out in Türkiye's bound Schedule.[242] Nevertheless, arguing that ordinary customs duties typically relate to either the value or the volume of imported goods, whereas "other duties and charges" form a residual category that includes any financial responsibilities resulting from the importation of goods that do not qualify as ordinary customs duties, the United States submits that the additional duties measure appears to impose ordinary customs duties.[243] The United States argues that, for 210 of the 479 tariff lines covered by Türkiye's additional duties measure, Türkiye applies tariffs on United States-origin products that are greater than the rates of duty set out in Türkiye's bound Schedule.[244] In the alternative, the United States submits that if the additional duties are characterized as "other duties or charges" rather than ordinary customs duties, they are nevertheless inconsistent with Article II:1(b) because they are not reflected in Türkiye's bound Schedule.[245]

7.117. Turning to Article II:1(a) of the GATT 1994, the United States argues that "Article II:1(b) proscribes the type of measures that are equally inconsistent with Article II:1(a)", and therefore submits that, having established the inconsistency of the additional duties measure with Article II:1(b), it has also demonstrated that the measure is inconsistent with Article II:1(a).[246] The United States thus argues that, by imposing duties in excess of its bound rates on products originating in the United States, Türkiye has correspondingly accorded less favourable treatment to these products than that provided in its bound Schedule and breached Article II:1(a) as well.[247]

7.2.3.1.2 Türkiye

7.118. Türkiye responds to the United States' claims under Article II of the GATT 1994 by arguing that that provision is suspended and therefore not applicable to the additional duties measure, which is a rebalancing measure under Article 8.2 of the Agreement on Safeguards.[248] Nevertheless, Türkiye submits that, if the Panel were to examine the United States' claims under Article II of the GATT 1994, Article II:1(b) is the more specific provision, and Article II:1(a) the more general one.

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[238] United States' first written submission, para. 39.
[239] United States' first written submission, para. 42.
[240] United States' first written submission, para. 43.
[241] United States' first written submission, para. 46.
[242] United States' first written submission, para. 47.
[243] United States' first written submission, para. 48 (referring to Panel Report, *Dominican Republic – Safeguard Measures*, paras. 7.79-7.85).
[244] United States' opening statement at the second meeting of the Panel, para. 16.
[245] United States' first written submission, para. 50.
[246] United States' first written submission, para. 53 (referring Appellate Body Report, *Argentina – Textiles and Apparel*, para. 47).
[247] United States' first written submission, para. 54.
[248] Türkiye's first written submission, para. 3.4.

Therefore, in its view, if Article II:1(b) has been violated, this would also mean that the more general provision under Article II:1(a) has been violated.[249]

7.2.3.2 Analysis by the Panel

7.119. The question before the Panel is whether, as the United States claims, Türkiye's additional duties measure is inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994. The Panel notes that Türkiye has responded to the United States' claim by arguing that Article II of the GATT 1994 is suspended in respect of the additional duties measure, and therefore inapplicable to it. With two exceptions dealt with below, Türkiye has not contested that the additional duties measure does in fact impose duties on products originating in the United States in excess of the rates bound in its bound Schedule. In fact, Türkiye characterizes the United States' description of the measure and its relationship with Türkiye's bound rates as "broadly accurate".[250] Additionally, Türkiye agrees with the United States that a measure that is inconsistent with Article II:1(b) will necessarily be inconsistent with Article II:1(a) as well.

7.120. The Panel has already concluded that Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to Türkiye's additional duties measure.[251] The Panel further found that, consequently, the application of Articles I and II of the GATT 1994 is not suspended in relation to the additional duties measure. As such, the Panel has already addressed and rejected Türkiye's argument that the additional duties measure is not inconsistent with Article II of the GATT 1994 because the application of that provision is suspended.

7.121. The Panel considers that the United States' claims under Articles II:1(a) II:1(b) of the GATT 1994 are largely uncontested. Nevertheless, in accordance with its duty to make an objective assessment of the matter before it as laid down in Article 11 of the DSU, the Panel cannot simply accept the United States' arguments without further analysis. Rather, as noted above[252], the Panel must satisfy itself as to whether the United States has established a *prima facie* case that the additional duties measure is inconsistent with those provisions of the GATT 1994.[253] The Panel must also address Türkiye's arguments concerning certain tariff lines affected by the additional duties measure. To that end, the Panel commences its analysis with the text of the relevant provisions.

7.2.3.2.1 The applicable legal standard

7.122. Articles II:1(a) and II:1(b) of the GATT 1994 provide as follows:

> (a) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate schedule annexed to this Agreement.
>
> (b) The products described in Part I of the schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the schedule relates, and subject to the terms, conditions or qualifications set forth in that schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

7.123. Additionally, the Understanding on the Interpretation of Article II:1(b) of the GATT 1994 provides in relevant part:

> Members hereby agree as follows:

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[249] Türkiye's response to Panel question No. 14.
[250] Türkiye's first written submission, para. 2.22.
[251] See para. 7.81 above.
[252] See para. 7.100 above.
[253] See e.g. Panel Reports, *US – Poultry (China)*, paras. 7.445-7.446; *Saudi Arabia – IPRs*, para. 7.40; and *China – TRQs*, para. 7.21.

> 1. In order to ensure transparency of the legal rights and obligations deriving from paragraph 1(b) of Article II, the nature and level of any "other duties or charges" levied on bound tariff items, as referred to in that provision, shall be recorded in the schedules of concessions annexed to GATT 1994 against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges".

7.124. Article II:1(a) of the GATT 1994 prohibits Members from subjecting imports to treatment less favourable than that provided for in their bound Schedules.[254] The first sentence of Article II:1(b) of the GATT 1994 prohibits the imposition of ordinary customs duties in excess of the rates set forth in a Member's bound Schedule.[255] In assessing whether a measure is inconsistent with this sentence, a panel must ascertain the treatment accorded to the products at issue under the bound Schedule of the relevant Member, the treatment accorded to the products at issue under the measures at issue, and whether the measures at issue result in the imposition of duties and conditions on the products at issue in excess of those provided for in the relevant bound Schedule.[256] The second sentence of Article II:1(b) prohibits the imposition of other duties or charges of any kind on or in connection with importation in excess of those imposed on the date of entry into force of the GATT 1994 (or those directly and mandatorily required to be imposed thereafter by legislation in force on that date).[257] According to the Understanding on the Interpretation of Article II:1(b), the nature and level of any such "other duties or charges" must be recorded in a Member's bound schedule.[258]

7.125. A measure that is inconsistent with Article II:1(b) of the GATT 1994 will necessarily be inconsistent with Article II:1(a) as well. This is because the imposition by a Member of duties in excess of the relevant bound rates constitutes "less favourable treatment" within the meaning of Article II:1(a).[259] Accordingly, the Panel will begin its analysis by considering the United States' claim under Article II:1(b) of the GATT 1994.

7.2.3.2.2 Whether Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994

7.126. Article II:1(b) of the GATT 1994 prohibits the imposition of both ordinary customs duties in excess of those provided in a Member's bound Schedule and "other duties or charges" not recorded in a Member's bound schedule. The Panel therefore begins its analysis by considering whether the duties imposed by Türkiye's additional duties measure fall within the scope of either of these categories.

7.127. The United States submits that the duties imposed by the additional duties measure appear "on [their] face" to be ordinary customs duties.[260] The Panel notes that, although the term ordinary customs duties is not defined in Article II of the GATT 1994, it has been consistently found in past disputes that a duty is likely to constitute an ordinary customs duty where it arises or accrues "because of the importation of the product at the very moment it enters the territory of another Member"[261], such that it can be characterized as a duty "on" importation.[262]

7.128. The Panel has already found that Türkiye's additional duties measure imposes duties that accrue at the moment and by virtue of the importation of goods from the United States into

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[254] See Appellate Body Reports, *Argentina – Textiles and Apparel,* para. 45; *Colombia – Textiles,* para. 5.34.
[255] See Appellate Body Reports, *India – Additional Import Duties*, para. 150; *Colombia – Textiles*, para. 5.35.
[256] Panel Reports, *EC – Chicken Cuts*, para. 7.65.
[257] See Appellate Body Report, *India – Additional Import Duties*, para. 151; Panel Report, *Dominican Republic – Safeguard Measures*, para. 7.78.
[258] See Panel Report, *Dominican Republic – Safeguard Measures*, para. 7.78. See also Panel Report, *Dominican Republic – Import and Sale of Cigarettes*, paras. 7.84-7.90.
[259] Appellate Body Report, *Argentina – Textiles and Apparel*, para. 47.
[260] United States' first written submission, para. 48.
[261] Panel Reports, *China – Auto Parts,* para. 7.184.
[262] Appellate Body Reports, *China – Auto Parts*, para. 158.

Türkiye.[263] Accordingly, the Panel considers that these duties can properly be characterized as ordinary customs duties within the meaning of Article II:1(b) of the GATT 1994.[264]

7.129. The Panel now turns to assess whether the duties imposed by the additional duties measure are "in excess" of those set forth in Türkiye's bound Schedule. The United States has submitted evidence comparing Türkiye's bound rates and its applied rates (comprising both the MFN rates and the applicable additional duties[265]) in respect of the 479 tariff lines covered by the additional duties measure.[266] The United States contends that this evidence shows that Türkiye imposes ordinary customs duties in excess of its bound rates in respect of 210[267] of these tariff lines.

7.130. The arguments and evidence submitted by the United States were uncontested by Türkiye with regard to 199 of the tariff lines affected by the additional duties measure.[268] Having examined the arguments and evidence submitted, the Panel finds that the United States has demonstrated that Türkiye's additional duties measure results in the imposition of ordinary customs duties on imports from the United States under those 199 tariff lines in excess of the rates set forth in Türkiye's bound Schedule.[269]

7.131. Türkiye did, however, contest the arguments and evidence submitted by the United States with regard to two sets of tariff lines: first, tariff lines 210690980012, 210690980013, 210690980014, 210690980015, and 210690980019; and second, tariff lines 870333909011, 870333909019, 870340100000, 870340900000, 870350000000, and 870360100000. The Panel will examine the arguments and evidence relating to those two sets of tariff lines in the following Sections.

7.2.3.2.2.1 HS2017 tariff lines 210690980012, 210690980013, 210690980014, 210690980015, and 210690980019

7.132. In commenting on the Panel's draft descriptive part (which included a draft of the Panel's table of relevant duty rates setting out the Panel's understanding of the tariff rates and additional duties applicable to the products covered by the additional duties measure), Türkiye submitted that the MFN rate for tariff lines 210690980012, 210690980013, 210690980014, 210690980015, and 210690980019 was 9+T1, rather than 58.5% as indicated in Exhibits USA-6, USA-7, and USA-8.[270] In response to a question from the Panel, the United States indicated that it did not object to this change, and explained that, in its understanding, the formula 9+T1 "signifies that Türkiye applies a 9% ad valorem rate plus a specific duty rate determined according to milk fat and milk protein percentages by weight". The United States further argued that "[w]hen combined with the 10% additional duty Türkiye applies to United States-origin products only, Türkiye may still apply duties in excess of its bound rates" in respect of these tariff lines. However, the United States did not

[263] See para. 7.105 above.

[264] The precise relationship between the terms "customs duties" in Article I:1 of the GATT 1994 and "ordinary customs duties" in Article II:1(b) of the GATT 1994 has not been discussed by the parties, and the Panel does not consider it necessary to address this question to resolve the dispute before it.

[265] The Panel recalls that the Implementation Decree states that it operates to "impose additional duties on the importation of certain products originated from the United States of America". The Panel understands from this language that the measure requires the application of both Türkiye's MFN rates and the additional duties to imports from the United States. See Implementation Decree, (Exhibits USA-1, TUR-41), Article 1(1).

[266] United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure from 21 June 2018 to 14 August 2018, (Exhibit USA-6); United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure from 15 August 2018 to 31 December 2018, (Exhibit USA-7); and United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure beginning on 1 January 2019, (Exhibit USA-8). The Panel observes that these documents concern 477 tariff lines. However, following a clarification from Türkiye, the United States agreed that the additional duties measure covers 479 tariff lines. See Türkiye's first written submission, para. 2.22 and fn 37 and United States' opening statement at the second meeting of the Panel, para. 16. A consolidated list of the 479 tariff lines, including the relevant bound rates, MFN rates, and additional duties, can be found in the Table of relevant duty rates (Annex E-1).

[267] United States' opening statement at the second meeting of the Panel, para. 16.

[268] United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure from 21 June 2018 to 14 August 2018, (Exhibit USA-6); United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure from 15 August 2018 to 31 December 2018, (Exhibit USA-7); and United States' Table Presenting Tariff Lines and Bound Rates Affected By Türkiye's Measure beginning on 1 January 2019, (Exhibit USA-8).

[269] Table of relevant duty rates (Annex E-1).

[270] Türkiye's comments on the draft descriptive part (17 January 2023).

explain how the MFN rate 9+T1 operates so as to result in the application of ordinary customs duties in excess of Türkiye's bindings. Türkiye did not respond to the Panel's request for comments on the United States' comments in this respect.

7.133. The Panel notes that neither party has suggested that there exists any kind of cap or ceiling that would prevent the formula 9+T1 from producing a duty rate that, when combined with the applicable additional duty, would exceed Türkiye's bound rates. Therefore, the Panel considers that, to the extent that the additional duties measure results, in respect of tariff lines 210690980012, 210690980013, 210690980014, 210690980015, and 210690980019, in the imposition of ordinary customs duties that exceed the rates in Türkiye's bound Schedule, it is inconsistent with Article II:1(b) of the GATT 1994.

7.2.3.2.2.2 HS2017 tariff lines 870333909011, 870333909019, 870340100000, 870340900000, 870350000000, and 870360100000

7.134. The parties disagree about whether tariff lines 870333909011, 870333909019, 870340100000, 870340900000, 870350000000, and 870360100000 are bound in Türkiye's bound Schedule. The Panel has already provided a detailed discussion on the parties' positions on this issue in Section 6 above.[271] In this section, for each of the relevant tariff lines, the Panel will provide its assessment of (i) whether these tariff lines are bound in Türkiye's bound Schedule and, if so, at what rate; and (ii) whether the applied rates for the tariff lines concerned exceed the bound rates.

HS2017 tariff lines 870333909011 and 870333909019

7.135. The Panel notes that tariff lines 870333909011 and 870333909019 from Türkiye's applied tariff schedule fall under the HS2017 subheading 870333. This subheading concerns "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars / - other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): / -- Of a cylinder capacity exceeding 2,500 cc".[272] In Türkiye's applied tariff schedule, this subheading is subdivided into two categories – new and used – which are themselves further subdivided into motor cars, motor caravans, and "other". For present purposes, the Panel understands that what matters is that tariff line 8703339090 covers used vehicles other than motor cars (which instead fall under tariff line 8703339010).

7.136. Based on the information available, the Panel notes that the scope of tariff line 8703339090 is identical in Türkiye's bound Schedule and its applied tariff schedule with respect to the type of vehicle that has "only compression-ignition internal combustion piston engine (diesel or semi-diesel)". It is therefore possible to identify the bound rate for this kind of vehicles by looking at the relevant entry in Türkiye's bound Schedule. Doing so reveals that the bound rate applicable to these products is 19%.

7.137. The 12-digit tariff lines 870333909011 and 870333909019 in Türkiye's applied tariff schedule are break-out lines from tariff line 8703339090. That is, they provide further specificity and subdivisions on products falling under the 10-digit tariff line 8703339090. While neither of the 12-digit tariff lines appears as such in Türkiye's bound Schedule, nevertheless, because they both fall under the 10-digit tariff line 8703339090, and because that tariff line is bound at 19%, it follows that both 12-digit tariff lines are also subject to a maximum bound rate of 19%.

7.138. Türkiye's additional duties measure applies a duty of 120% on products falling under these two tariff lines. Accordingly, in respect of these two tariff lines, the Panel finds that Türkiye applies duties in excess of those set forth in Türkiye's bound Schedule.

[271] See Section 6.2.1 above.

[272] See Notifications of 2016 and 2021 applied tariff rates by Türkiye to the WTO IDB pursuant to the "Decision on the modalities and operation of the IDB" of 26 May 2019 (G/MA/367). Unless otherwise indicated, all product descriptions referred to in this section in respect of Türkiye's applied tariffs are taken from Türkiye's notifications as collected in the IDB.

HS2017 tariff lines 870340100000 and 870340900000

7.139. The Panel begins by noting that, because the last four digits of these tariff lines are zero, following the HS practice and conventions, they can also be expressed as 87034010 and 87034090. These tariff lines fall under the broader 6-digit subheading 870340. This subheading was introduced for the first time in HS2017 by combining parts of five separate subheadings from the HS2002 classification: 870321, 870322, 870323, 870324, and 870390.[273] The WCO correlation tables explain that "[t]he structure of heading 87.03 has been redrafted and renumbered to provide separately for hybrid electric vehicles, plug-in hybrid vehicles and for all-electric motor vehicles, respectively".[274] In particular, subheading 870340 was meant to regroup the classification of "other vehicles, *with both* spark-ignition internal combustion reciprocating piston engine and electric motor as motors for propulsion, *other than* those capable of being charged by plugging to an external source of electric power".[275]

7.140. In Türkiye's bound Schedule, subheadings 870321, 870322, 870323, and 870324 cover a range of "motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars / other vehicles, with spark-ignition internal combustion reciprocating piston engine", and are subdivided according to the cylinder capacity of the engine. Additionally, subheading 870390 covers "other vehicles" principally designed for the transport of persons that were not covered by 870310 (e.g. vehicles specially designed for travelling on the snow; golf cars and similar vehicles), 870320 (other vehicles, with spark-ignition internal combustion reciprocating piston engine), or 870330 (other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel)). This includes, for example, vehicles with only electric motors. These vehicles are further subdivided according to (a) whether they are "motor cars" or "other"; and (b) whether they are new or used. Based on the information in the CTS, the Panel notes that "motor cars" falling under tariff lines 870321, 870322, 870323, and 870324 are unbound, but vehicles other than motor cars, including motor caravans, are bound at 19%. Additionally, all vehicles with "electric motors" falling under tariff line 8703901000 are bound at 20%, where there is no further differentiation of the types of vehicles.

7.141. In Türkiye's applied tariff schedule, subheading 870340 is itself divided into two broad tariff lines: 87034010 for new vehicles, and 87034090 for used vehicles. These two tariff lines are further subdivided into three tariff lines covering: (a) motor cars; (b) motor caravans; and (c) "other". The result of this reclassification and regrouping of the products is that *new* vehicles with both spark-ignition internal combustion reciprocating piston engine and electric motor as motors for propulsion, other than those capable of being charged by plugging to an external source of electric power (whether motor cars, motor vans, or "other") formerly covered by HS2002 subheadings 870321, 870322, 870323, 870324, and 870390 in HS2002, fall under tariff line 87034010 in Türkiye's applied tariff schedule. Additionally, *used* vehicles with both spark-ignition internal combustion reciprocating piston engine and electric motor as motors for propulsion other than those capable of being charged by plugging to an external source of electric power that cannot be plugged (whether motor cars, motor vans, or "other") formerly covered by HS2002 subheadings 870321, 870322, 870323, 870324, and 870390, fall instead under tariff line 87034090 in in Türkiye's applied tariff schedule.

7.142. This means that tariff lines 87034010 and 87034090 in Türkiye's applied tariff schedule cover a range of products that, in Türkiye's bound Schedule, are either unbound or subject to a bound rate of either 19% or 20%. As the additional duties measure applies a duty of 120% to products falling under these tariff lines, the Panel concludes that Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994, to the extent that it applies to products subject in Türkiye's bound Schedule to a bound rate of 19% or 20%.

HS2017 tariff line 870350000000

7.143. The Panel begins by noting that, as explained above, because the last six digits of this tariff line are zero, it can be expressed as subheading 870350. This subheading was created for the first time in HS2017 by combining four separate subheadings from the HS2002 classification: 870331,

[273] WTO-WCO HS Tracker Subheading Visualizer – Consolidated, (Exhibit USA-58).
[274] WCO to HS2017 (Table 1), (Exhibit USA-59), p. 22.
[275] International Convention on the Harmonized Commodity Description and Coding System, Changes in the Harmonized System to be Introduced on 1 January 2017 (5 April 2016), G/MA/W/121, p. 57. (emphasis added)

870332, 870333, and 870390.[276] The WCO correlation tables explain that "[t]he structure of heading 87.03 has been redrafted and renumbered to provide separately for hybrid electric vehicles, plug-in hybrid vehicles and for all-electric motor vehicles, respectively".[277] In particular, HS2017 subheading 870350 was meant to regroup the classification of "other vehicles", with both compression-ignition internal combustion piston engine (diesel or semi-diesel) and electric motor as motors for propulsion, other than those capable of being charged by plugging to an external source of electric power.[278]

7.144. In HS2002, subheadings 870331, 870332, and 870333, cover a range of "motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars / other vehicles, with compression-ignition internal combustion piston engine (diesel or semi-diesel)", and are subdivided according to the cylinder capacity of the engine. In Türkiye's bound Schedule, these vehicles are further subdivided according to (a) whether they are motor cars or "other"; and (b) whether they are new or used. Additionally, as noted above, HS2002 tariff line 87039010 covers vehicles with electric motors. Based on the information in the CTS, the Panel notes that in Türkiye's bound Schedule, new motor cars falling under HS2002 subheadings 870331, 870332, and 870333 are unbound, but new vehicles other than motor cars, including motor caravans, are bound at 19%. Additionally, vehicles with electric motors falling under tariff line 87039010 are bound at 20%.

7.145. In Türkiye's applied tariff schedule, subheading 870350 is subdivided into three further tariff lines, covering (a) motor cars; (b) motor caravans, and (c) "other". The result of this reclassification and regrouping of the products is that all vehicles with both compression-ignition internal combustion piston engine (diesel or semi-diesel) and electric motor as motors for propulsion other than those capable of being charged by plugging to an external source of electric power formerly covered by HS2002 subheadings 870331, 870332, 870333, and 870390, whether new or used, and whether motor cars, motor caravans, or "other", now fall under subheading 870350.

7.146. This means that subheading 870350 covers a range of products that, in Türkiye's bound Schedule, are either unbound (motor cars) or subject to a bound rate of either 19% or 20%. As the additional duties measure applies a duty of 120% to products falling under these tariff lines, the Panel concludes that Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 to the extent that it applies to products subject in Türkiye's bound Schedule to a bound rate of 19% or 20%.

HS2017 tariff line 870360100000

7.147. The Panel begins by recalling that, as noted above, because the last four digits of this tariff line are zero, as explained above, it can also be expressed as 87036010. This tariff line falls under the broader 6-digit HS2017 subheading 870360. This subheading was created for the first time in HS2017 by combining five separate tariff lines from the HS2002 classification: 870321, 870322, 870323, 870324, and 870390.[279] The WCO correlation tables explain that "[t]he structure of heading 87.03 has been redrafted and renumbered to provide separately for hybrid electric vehicles, plug-in hybrid vehicles and for all-electric motor vehicles, respectively".[280] In particular, HS2017 subheading 870360 was meant to regroup the classification of "other vehicles, *with both* spark-ignition internal combustion reciprocating piston engine and electric motor as motors for propulsion, *capable* of being charged by plugging to an external source of electric power".[281]

7.148. The Panel observes that HS2017 subheading 870360 was created by combining the same five tariff lines as were combined to create subheading 870340.[282] The main difference is that, whereas subheading 870340 covers hybrid gasoline-electric vehicles *not* capable of being charged by plugging to an external source of electric power, subheading 870360 covers vehicles with both spark-ignition internal combustion reciprocating piston engine and electric motor as motors for

[276] WTO-WCO HS Tracker Subheading Visualizer – Consolidated, (Exhibit USA-58).
[277] WCO correlation tables HS2012 to HS2017 (Table 1), (Exhibit USA-59), p. 22.
[278] International Convention on the Harmonized Commodity Description and Coding System, Changes in the Harmonized System to be Introduced on 1 January 2017 (5 April 2016), G/MA/W/121, p. 57.
[279] WTO-WCO HS Tracker Subheading Visualizer – Consolidated, (Exhibit USA-58).
[280] WCO correlation tables HS2012 to HS2017 (Table 1), (Exhibit USA-59), p. 22.
[281] International Convention on the Harmonized Commodity Description and Coding System, Changes in the Harmonized System to be Introduced on 1 January 2017 (5 April 2016), G/MA/W/121, p. 58.
[282] See para. 7.139 above.

propulsion *capable* of being charged by plugging to an external source of electric power.[283] Like HS2017 subheading 870340, HS2017 subheading 870360 is divided into two broad categories in Türkiye's applied tariff schedule: 87036010 for new vehicles, and 87036090 for used vehicles. These two tariff lines are further subdivided into three tariff lines covering (a) motor cars; (b) motor caravans; and (c) "other". The result of this reclassification and regrouping of the products is that new vehicles with both spark-ignition internal combustion reciprocating piston engine and electric motor as motors for propulsion capable of being charged by plugging to an external source of electric power (whether motor cars, motor vans, or "other") formerly covered by HS2002 subheadings 870321, 870322, 870323, 870324, and 870390 now fall under 87036010, while used vehicles with both spark-ignition internal combustion reciprocating piston engine and electric motor as motors for propulsion capable of being charged by plugging to an external source of electric power formerly covered by HS2002 subheadings 870321, 870322, 870323, 870324, and 870390 now fall under 87036090.

7.149. The Panel has previously established that the five tariff lines that were combined into tariff line 87036010 in Türkiye's applied tariff schedule covered products that were either unbound (new motor cars), or else subject to a bound rate of 19% or 20%. As the additional duties measure applies a duty of 120% to products falling under these tariff lines, the Panel concludes that Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 to the extent that it applies to products subject in Türkiye's bound Schedule to a bound rate of 19% or 20%.

7.2.3.2.2.3 Conclusion

7.150. Based on the foregoing, the Panel finds that the United States has demonstrated that Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 because it results in the imposition of ordinary customs duties on imports from the United States under 201 tariff lines in excess of the rates set forth in Türkiye's bound Schedule. In addition, the Panel finds that the United States has demonstrated that Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 to the extent that it results in the imposition of ordinary customs duties on imports from the United States under a further nine tariff lines (210690980012, 210690980013, 210690980014, 210690980015, 210690980019, 870340100000, 870340900000, 870350000000, and 870360100000) in excess of the rates set forth in Türkiye's bound Schedule.

7.2.3.2.3 Whether the additional duties measure is inconsistent with Article II:1(a) of the GATT 1994

7.151. The Panel has explained above that where a measure is inconsistent with Article II:1(b) of the GATT 1994, it is necessarily inconsistent with Article II:1(a) as well.[284] This is so because, where a Member imposes duties on imports in excess of those set forth in its schedule, it accords to those imports treatment less favourable than that provided for in its schedule.[285]

7.152. Having found that the United States has demonstrated that Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 because it imposes ordinary customs duties on United States-origin imports in excess of those set forth in Türkiye's bound Schedule, the Panel also finds that the United States has demonstrated that the additional duties measure is inconsistent with Article II:1(a) of the GATT 1994 because it accords to those imports treatment less favourable than that provided for in Türkiye's bound Schedule.

7.2.3.3 Conclusion

7.153. For the reasons outlined above, the Panel finds that the additional duties measure is inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994.

[283] International Convention on the Harmonized Commodity Description and Coding System, Changes in the Harmonized System to be Introduced on 1 January 2017 (5 April 2016), G/MA/W/121, p. 58.
[284] See para. 7.125 above.
[285] Appellate Body Report, *Argentina – Textiles and Apparel*, para. 47.

8 CONCLUSIONS AND RECOMMENDATION

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

a. Article 8.2 of the Agreement on Safeguards and Article XIX:3(a) of the GATT 1994 do not apply to Türkiye's additional duties measure. Accordingly, the application of Articles I and II of the GATT 1994 is not suspended in relation to that measure.

b. Regarding the United States' claim under Article I:1 of the GATT 1994:

   i. Türkiye's additional duties measure is inconsistent with Article I:1 of the GATT 1994 because, with respect to customs duties imposed on or in connection with importation, it fails to accord an advantage granted to products originating in other countries immediately and unconditionally to products originating in the United States.

c. Regarding the United States' claims under Articles II:1(a) and II:1(b) of the GATT 1994:

   i. Türkiye's additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 because it results in the imposition of ordinary customs duties on imports from the United States under 201 tariff lines in excess of the rates set forth in Türkiye's bound Schedule.

   ii. In addition, the additional duties measure is inconsistent with Article II:1(b) of the GATT 1994 to the extent that it results in the imposition of ordinary customs duties on imports from the United States under a further nine tariff lines (210690980012, 210690980013, 210690980014, 210690980015, 210690980019, 870340100000, 870340900000, 870350000000, and 870360100000) in excess of the rates set forth in Türkiye's bound Schedule; and

   iii. Türkiye's additional duties measure is inconsistent with Article II:1(a) of the GATT 1994 because it imposes ordinary customs duties on United States-origin imports in excess of those set forth in Türkiye's bound Schedule, thus according to those imports treatment less favourable than that provided for in Türkiye's bound Schedule.

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 Türkiye's additional duties measure is inconsistent with certain provisions of the GATT 1994, it has nullified or impaired benefits accruing to the United States under that Agreement.

8.3. Pursuant to Article 19.1 of the DSU, the Panel recommends that Türkiye bring its WTO-inconsistent measure into conformity with its obligations under the GATT 1994, to the extent that it has not already done so.