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1.1 Text of Article 11

1.2 Article 11.1(c)

1.2.1 Applicability of the Agreement on Safeguards

1. In *US – Safeguards*, Türkiye argued that the challenged additional duties and related measures constituted safeguard measures within the meaning of Article XIX of the GATT 1994 and the Agreement on Safeguards. The United States disagreed with this view. The Panel described the gist of these opposing views, as follows:

"The Panel notes that a threshold question presented by the parties' arguments concerns the applicability of Article XIX of the GATT 1994 and the Agreement on Safeguards to the measures at issue. Türkiye emphasizes the characterization of the measures at issue as safeguards or other prohibited measures under Article 11.1(b) of the Agreement on Safeguards based on objective features of the measures at issue. The United States refers to Article XXI of the GATT 1994 and contends that the Agreement on Safeguards is inapplicable to the measures at issue by virtue of Article 11.1(c) as the measures were 'sought, taken or maintained ... pursuant to provisions of GATT 1994 other than Article XIX'."¹

2. In resolving the matter, the Panel focused on Article 11.1(c) of the Agreement on Safeguards:

"The Panel thus considers that finding the measures at issue to fall within the scope of Article 11.1(c) would fully address the matter within the Panel's terms of reference under the Agreement on Safeguards as there would be no basis to assess claims of inconsistency under an agreement that 'does not apply' to the measures at issue. ...

In the circumstances of this dispute, the Panel therefore considers that it is appropriate to determine whether the measures at issue can be characterized as having been '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."²

3. In its interpretation of Article 11.1(c), the Panel examined the question of whether the terms "'(ov)11.4 (is ()0..2 (l)-7 (2.3 (f)9. .7 5962.8T30..2 (l)-(e)2 (r)6.3 (t)13.3 (h)-1 (a)713.3 (h)-1 (a)

' in Article 11.1(c) is especially compelling in this regard in signalling a contrast to the term ' ' and indicates a different legal relationship than consistency or conformity with the requirements of a provision of the GATT 1994 other than Article XIX.

The Panel considers that interpreting the terms 'pursuant to' in Article 11.1(c) to refer to measures sought, taken, or maintained under the purview of another provision of the GATT 1994, without entailing consistency with the requirements of such other provision, accords with the specific context in which those terms appear. The terms 'pursuant to' in Article 11.1(c) form part of a provision governing the applicability of the Agreement on Safeguards rather than the consistency of measures with the rules and requirements of that agreement. Accordingly, the nature of the relevant inquiry under Article 11.1(c) does not relate to another provision of the GATT 1994 as a legal exception or justification for inconsistencies with the Agreement on Safeguards. Rather, the relevant inquiry under Article 11.1(c) corresponds to the threshold issue of applicability and leaves as a separate inquiry whether a measure is consistent with the requirements of such other provision 'pursuant to' which the measure was sought, taken, or maintained."⁴

5. The Panel in concluded with respect to the terms "other than" in Article 11.1(c) that "[t]he ordinary meaning of these terms in their context encompasses measures that are pursuant to another provision of the GATT 1994, and the Panel does not find in the text of Article 11.1(c) the imposition of an additional requirement or limitation of being exclusively pursuant to such other provision".⁵

6. The Panel in rejected Türkiye's argument that an assessment of whether a particular measure falls within the scope of Article 11.1(c) shouldwit(2)7 (o88 -1

"[T]he Panel will assess the applicability of the Agreement on Safeguards to the measures at issue in light of the foregoing interpretive considerations on Article

industries of the United States.¹³ The Panel noted these findings, but underlined that such findings were linked to national security of the United States.¹⁴ The Panel therefore came to the conclusion that:

"Viewed in their context, the findings in the Steel and Aluminium Reports confirm that the aspects of the measures most central to their legal characterization under Article 11.1(c) of the Agreement on Safeguards concern the national security considerations as reflected in Section 232 and reiterated in the relevant domestic legal acts and instruments. The examination in the Steel and Aluminium Reports of the state of the domestic steel and aluminium industries is an element of the United States' determination of a threat to its national security under the relevant domestic laws. The Panel considers that it would be improper to assess such factors in isolation from the threat to national security that was determined to exist under Section 232 on the basis of those and other factors."¹⁵

11. Based on its assessment, the Panel concluded that:

"[T]he measures were sought, taken, or maintained pursuant to Article XXI of the GATT 1994. Accordingly, the measures were sought, taken, or maintained pursuant to a provision of the GATT 1994 other than Article XIX . a-(-79.4 (t) 0.933 0060.3 (t8531