

United States Notifies Intent to Appeal WTO Panel Reports on Section 232 Steel and Aluminum Measures

January 30, 2023

In a January 27, 2023 statement before a meeting of the World Trade Organization (WTO) Dispute Settlement Body, the United States indicated that it would appeal a series of recent WTO panel reports finding that its 2018 tariffs and quotas on steel and aluminum imports under Section 232 of the Trade Expansion Act of 1962 did not fall within the scope of the security exceptions in Article XXI of the General Agreement on Tariffs and Trade 1994 (GATT). In its statement, the United States reiterated its longstanding position that WTO panels may not question any actions that a WTO Member considers necessary for the protection of its essential security interests.

U.S. Ambassador to the WTO María Pagán said that the United States “continues to be one of the most free, transparent, and competitive economies” and “the world’s largest single-country importer,” with “tariffs {that} are among the lowest in the world.” Ambassador Pagán emphasized that “the United States will not cede decision-making over its essential security to WTO panels.” The United States indicated that it has decided to appeal the Panels’ decisions.

Given the ongoing deadlock in the appointment of new Appellate Body members, the U.S. decision effectively puts the disputes on hold indefinitely and ensures that the United States will not be required to remove or adjust the Section 232 measures as a result of the panel decisions.

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The United States also noted its intention to address the issue outside of dispute settlement proceedings. It intends to “raise this fundamental issue as part of our discussions on reform of the WTO dispute settlement system” and to “seek an authoritative interpretation of Article XXI of the GATT 1994.” It emphasized that “we believe Members need to clarify and adopt a shared understanding of the essential security exception.”

The panel reports at issue in the U.S. statement released on December 9, 2022 and addressed complaints by China (DS544), Norway (DS552), Switzerland (DS556), and Turkey (DS564). Additional complaints by the European Union (DS548), Canada (DS550), and Mexico (DS551) were withdrawn after agreements between those countries and the United States. Panel decisions regarding complaints by India (DS547) and Russia (DS554) are pending.

Should you have any questions, please contact the attorneys listed on this alert.