In the World Trade Organization

Panel Proceedings

EUROPEAN UNION – SAFEGUARD MEASURES ON CERTAIN STEEL PRODUCTS (DS595)

First Written Submission

by the European Union

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Argentina – Preserved Peaches	Panel Report, *Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches*, WT/DS238/R, adopted 15 April 2003, DSR 2003:III, p. 1037
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TABLE OF ABBREVIATIONS

Abbreviation	Full Name
CCFRS	Certain Carbon Flat-Rolled Steel
CN	Combined Nomenclature
CVD	Countervailing Duty Measures
EU	European Union
FTA	Free Trade Agreement
GATT 1994	General Agreement on Tariffs and Trade 1994
MRP	most recent period
MT	Megatonne
OECD	Organization for Economic Cooperation and Development
POI	Period of investigation
Section 232	Section 232 of the Trade Expansion Act of 1962
TRQ	Tariff rate quota
USITC	United States International Trade Commission
WTO	World Trade Organization

LIST OF EXHIBITS

Exhibit No.	Title
EU-1	Lexico (Oxford) dictionary, definition of the term "product"
EU-2	WTO statistic on antidumping initiations by sector
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EU-4	WTO statistic on antidumping measures by sector
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EU-6	Press release of U.S. Secretary Ross of 16 February 2018, Department of Commerce
EU-7	Presentation "Recent developments in steel trade and trade policies" by the OECD Secretariat Economics Department at the 83rd Session of the OECD Steel Committee
EU-8	The Chair's Statement at the 83rd Session of the OECD Steel Committee
EU-9	The Chair's Statement at the 84th Session of the OECD Steel Committee

1. INTRODUCTION

1. Turkey challenges the provisional and definitive safeguard measures imposed by the European Union on the product defined as certain steel products belonging to over 20 steel product categories. Turkey alleges that these safeguard measures are inconsistent with several obligations of the European Union under the GATT 1994 and the Agreement on Safeguards.

2. First, Turkey digs into a terminology issue, attempting to show that *the* definitive safeguard measure is in fact a group of distinct safeguard measures and that *the* product concerned is in fact a multitude of products concerned. The European Union vigorously rebuts this claim, which the Panel should clearly reject. There is only one product concerned on which a single definitive safeguard measure was applied. The competent authority examined the product under investigation in an objective and unbiased manner.

3. Then, Turkey takes issue with the existence of unforeseen developments and the identification of the obligations it has incurred under the GATT 1994. The European Union explains why these claims should failed, as it duly complied with the respective obligations in Article XIX:1(a) of the GATT 1994.

4. Third, Turkey alleges that the European Union erred in its determinations concerning the increase in imports, threat of serious injury and causal link between the two. The European Union explains how the evidence on the record and the applicable case law overwhelmingly support the conclusion that the legal conditions are met with respect to each of the three mentioned issues. The competent authority offered a reasoned and adequate explanation in each instance.

5. Turkey then contends that the European Union applied the safeguard measure beyond the extent and time necessary to prevent serious injury and to facilitate adjustment, and that it failed to progressively liberalize it. The European Union explains why Turkey's claim must fail, as it complied with its respective obligations.

6. Fifth, contrary to what Turkey alleges, the safeguard measure applied by the European Union in the form of tariff rate quotas is consistent with Article XIII:2 of the GATT 1994 and Article 5.2(a) of the Agreement on Safeguards, as the tariff rate quotas have been allocated using a previous representative period.

7. Finally, as the safeguard measure at issue validly suspends the European Union's obligations, the out-of-quota duty it is not a violation of Article II:1(b) of the GATT 1994.

8. For all the reasons explained through this submission, Turkey's claims must be rejected by the Panel in their entirety.

2. THE EUROPEAN UNION ACTED CONSISTENTLY WITH ARTICLE XIX:1(A) OF THE GATT 1994 AND THE AGREEMENT ON SAFEGUARDS IN RELATION TO ITS DETERMINATION AND ANALYSIS OF THE PRODUCT UNDER INVESTIGATION

2.1. FACTUAL CONSIDERATIONS

9. Turkey starts by noting that the Notice of Initiation used the plural with respect to the "products concerned", namely the 26 product categories and their associated CN codes as identified in Annex I.[1]

10. Turkey then submits that such an approach is problematic.[2] According to Turkey, it is not possible to start with 26 product categories provisionally referred to as "products concerned" in the plural and then end up with 26 product categories as part of only one product concerned in the singular. Turkey seems to attach great significance to the language used and not to the content as such of the respective documents.

11. At first sight, this may be easily contrasted against recital 17 of the EU Definitive Measure Regulation, which states that "the Notice of Initiation clearly states repeatedly and without doubt that the 28 product categories under investigation were treated as a single group of products".

12. Which are the repeated statements in the Notice of Initiation indicating that the different product categories were treated as a single group of products?

13. First, the Notice of Initiation explains that "the investigation will examine the situation of the products concerned, including the situation of each of the product categories individually".[3] By contrasting the individual product categories with the products concerned, it becomes clear that the intention of the competent authority was to conduct a global analysis, supplemented by an analysis per product category.

14. Second, section 2, dealing with the increase in imports and injury, only refers to global figures, i.e. those of the product concerned (which comprises several product categories):

> The information currently available to the Commission indicates that **total imports** of the products concerned increased from 17,8

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1 Notice of Initiation, p. 29 (Exhibit TUR-1).

2 Turkey's first written submission, paras. 42- 48.

3 Notice of Initiation, p. 29.

> million tonnes to 29,3 million tonnes in the period 2013-2017 … Imports of the products concerned have remained at a significant level thereafter. In addition, there have been … increases in imports of each of the products concerned in absolute terms. In addition, the Commission also notes that **total imports** of the products concerned increased in relative terms as well, i.e. from 7,3 % to 11,6 % in terms of production and from 12,2 % to 17,6 % in terms of consumption... (emphasis added)

15. Third, the Notice of Initiation refers to a significant overall impairment (this language reflects the injury language in the Agreement on Safeguards) in the singular, approach confirmed and maintained throughout the whole investigation.

16. Thus, when looking at all those elements together, there appears a certain contrast between the language used (products concerned in the plural) and what the competent authority actually meant. An analysis of the overall design and architecture of the Notice of Initiation leads to the conclusion expressed in recital 17 of the EU Definitive Measure Regulation.

17. In any event, the European Union recalls that at this earliest possible stage (notice of initiation) of the investigation, terminology errors are possible, especially as it cannot be expected from any competent authority to have the same understanding of the subject of the investigation at that stage as in a more advanced stage of the investigation. The understanding of the competent authority advances with the investigation, including with regard to matters like terminology; otherwise, it will not be an investigation in first place.

18. Even Turkey uses the "product concerned" in the singular in its first written submission, showing how easily the singular or the plural can be used interchangeably from a terminology perspective.[4] Does it mean that Tukey in fact agrees that there is only a product concerned? Maybe.

19. In the EU Provisional Measure Regulation, the competent authority continued to carry out its assessment on the basis of an analysis of all product categories together:

> The Commission initiated the safeguard investigation on 26 steel product categories imported into the EU, and on 28 June its scope was extended by 2 additional product categories by means of a

[4] Turkey's first written submission, para. 266: "(iii) imports of the **product** concerned increased significantly between 2013 to 2017 and took away Union market share with lower price levels"; para. 345: "the supplying countries having a substantial interest in supplying the **product** concerned"; para. 348: "the countries having a substantial interest in supplying the **product** concerned (more than 5%)"; para. 351 "in order to allocate the quotas among the countries having a substantial interest in supplying the **product** concerned"; para. 374: "… the European Union levies a duty of 25% on the imports of the **product** concerned" (emphasis added).

> notice amending the Notice of Initiation. The 28 product categories ('the product concerned' or the 'product categories concerned').[5]

20. It was clearly explained that this preliminary approach to the product concerned was warranted because of the interrelations and interconnections between the different product categories and the fact that the potential trade diversions resulting from the US Section 232 measures applied to all product categories.[6] The competent authority also offered concrete examples of such interrelations:

> (13) The Commission has also found in this preliminary analysis that there is an important interrelation and strong competition between products classified in different product categories and also between products at different production stages within certain categories as some of the categories contain the main raw or input material to produce other products in other product categories.
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> (14) Some examples illustrate this interrelation and competition within and between product categories. For instance, hot rolled wide strips are produced from slabs and rolled into coils or produced flat on quarto mills. By cutting the strip to length, sheets are produced. Narrow strip is produced either directly or by slitting hot-rolled wide strip. Hot rolled flat products are also used in the manufacture of pipes and tubes for the petrochemical industry and cold rolled flat products are subsequently used by welded tube manufacturers. A large part of the hot rolled wide strip that is produced is further processed to produce cold rolled strip, which is thinner and has a superior surface finish. A significant proportion of the cold rolled products are metallically coated, with tin or chrome for the can industry or with zinc.
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> (15) Many producers in the Union are active in the production of most the above mentioned products. For example, Arcelor Mittal not only produces hot rolled and cold rolled sheets and strips but also coats several steel products and produces plates. Similarly, companies like Voest Alpine and Tata Steel produce hot rolled and cold rolled sheets and strips and also coated steel products made of these products.
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> (16) Furthermore, as a consequence, given this level of interrelation, competitive pressure can easily be shifted from one product to the other. For instance, if trade defence measures are imposed on one product, e.g. steel coils, that product may be further transformed in the same country and exported under a different form to avoid the additional measures and still compete with domestic products. It is also not excluded that third countries import some of these products at low cost and transform them before re-exporting them to the Union.[7]

21. To confirm its overall findings with regard to increase in imports and injury (to recall, the Notice of Initiation already embraces a global approach to these

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5 EU Provisional Measure Regulation, recital 11 (Exhibit TUR-3).

6 EU Provisional Measure Regulation, recital 17.

7 EU Provisional Measure Regulation, recitals 13 – 16 (Exhibit TUR-3), original footnotes omitted.

matters), the competent authority diligently conducted also an analysis "at individual level for each product category".[8]

22. The competent authority adopted a similar approach at the definitive stage. In the EU Definitive Measure Regulation, the increase in imports at the global level of the product concerned, as well as for each individual product category were examined:

> The product concerned is certain steel products belonging to the 28 steel product categories defined in the above-mentioned Notice of Initiation, as amended by the Extension Notice, taken all together. These product categories are subject to the US tariff measures under Section 232 of the Trade Expansion Act of 1962 ('US Section 232 measures').[9]

23. As a diligent, reasonable and unbiased competent authority, the European Commission then went one step further and even supplemented its analysis of the 28 product categories (formally treated as a single group at provisional and definitive stage) with their grouping into "three steel product families" (flat products, long products and tubes), in order to confirm the soundness of its conclusions on increased imports and threat of serious injury:

> Although the Commission reiterated and confirmed in its final determination the need to carry out in the present case an overall analysis of the conditions required to impose safeguards, in order to further examine the linkage between certain categories as argued by some interested parties, the Commission further decided to examine the 28 product categories under investigation, which are treated formally as a single group, also as three steel 'product families'. This decision has been taken in order to examine, in addition, whether the findings for the single group are confirmed at more disaggregated level and to dispel any doubts about the reliability of the conclusions reached at an overall level. The three steel product families regroup certain product categories showing an even stronger degree of commonalities between them.[10]

24. Thus, although there may have been some terminology clumsiness in the very beginning, the competent authority had had a global approach on increased imports and injury throughout the investigation from the Notice of Initiation to the EU Definitive Measure Regulation.

2.2. LEGAL ASSESSMENT

25. Turkey's critique of the conduct of the investigation by the competent authority is twofold. It claims that:

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8 EU Provisional Measure Regulation, recitals 17 and 47.

9 EU Definitive Measure Regulation, recital 12 (Exhibit TUR-5).

10 EU Definitive Measure Regulation, recital 19.

(i) "it failed to examine the circumstances and conditions for the imposition of a safeguard measure for each individual product category while a distinct safeguard measure was imposed on the imports of each product category";

and

(ii) "it failed to examine the products under investigation in a consistent manner throughout the investigation".[11]

26. Turkey's allegations with regard to breaches of Article XIX:1(a) of the GATT 1994 and of Articles 2.1, 3.1, 4.1(c), 4.2(a), 4.2(b), 4.2(c) and 6 of the Agreement on Safeguards have to be rejected for the following reasons.

2.2.1. There is only one product concerned on which the safeguard measure was applied. The European Union was not required to examine the circumstances and conditions for the imposition of a safeguard measure for each individual product category

27. To begin with, Turkey's underlying premise is flawed, because it claims that there are different steel products subject to the EU measures. This is not correct. There is only one product at issue (the product concerned). Thus, the European Union was not obliged to conduct separate assessments of the circumstances and conditions for the imposition of a safeguard measure for each individual product category.

28. Indeed, the product concerned, on which the safeguard measure is applied, is the same as the product with respect to which the competent authority has determined that it is imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry, consistently with Article XIX of the GATT 1994 and the Agreement on Safeguards. It is the same specific product with respect to which the investigation is initiated, the investigation is carried out and the safeguard measure is imposed: the scope is the same.

29. As already explained, the fact that the Notice of Initiation refers to 26 product categories in the plural has no bearing on the legality of the definitive safeguards measure. Once having a better understanding of the specific terminology, the competent authority confirmed its approach from the Notice of Initiation and defined the product concerned, which is not different from the sum of the product categories from the Notice of Initiation. Thus, Turkey cannot be right for several reasons.

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[11] Turkey's first written submission, para. 49.

30. First, the dictionary definition of the term "product" is rather flexible and depends on the context. It can apply to one particular item sold, to a group of items, or to a class of items. In almost every situation in which items may be referred to as a "product", it is possible to discern both a broader "product" of which that product is a subset, and a subset of that product that itself may be referred to as a "product".[12]

31. Second, the Agreement on Safeguards does not impose any specific obligations with respect to the definition or the scope of the product under investigation and does not contain any guidelines with respect to this matter, as confirmed by the panel in *Dominican Republic — Safeguard Measures*.[13] Indeed, a safeguard measure may be applied to a product, imports of which have increased; however, a disaggregated analysis for all cases in which the definition of the product under investigation comprises more than one product is not required. Accordingly, it is the competent authority that defines the product under investigation, as well as the way in which the relevant data should be analysed in the investigation. In whichever product under investigation, there may be multiple subcategories, even within the same CN code.

32. Third, as it is only one product concerned, the competent authority was not under an obligation to determine that each of the conditions and circumstances to impose a safeguard measure was met for each product category. The European Union did not impose different safeguard measures on individual product categories, but one comprehensive safeguard measure on all product categories, grouped as the product concerned.

33. Fourth, Turkey claims that "the present case is similar to the *US – Steel Safeguards* case where the US competent authorities had imposed distinct safeguard measures on distinct steel products".[14]

34. This is not true. In *US – Steel Safeguards* the United States offered two contradictory responses to what constituted the "imported products" or the "subject imports". First, the United States admitted that the USITC did not identify the specific imported product concerned and denied such a legal obligation. Then, the

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12 See e.g. the Oxford English dictionary definition at https://www.lexico.com/definition/product (Exhibit EU-1).

13 Panel Report, *Dominican Republic — Safeguard Measures*, paras. 7.177 and 7.236.

14 Turkey's first written submission, para. 53.

United States subsequently attempted "to sell the USITC's domestic industry definition as identification of the specific imported product".[15]

35. To recall, in the present case, the European Union clearly defined the product concerned as "the 28 product categories"[16], "certain steel products belonging to the 28 steel product categories".[17]

36. The European Union reiterates its position that, "although WTO Members are not obliged to regulate the scope of complaints or requests to start a safeguard investigation, they must ensure that their competent authorities identify the imported product concerned for the purpose of the determination".[18] The European Union has precisely done so.

37. Indeed, the European Union notes that Turkey did not take issue with the competent authority's findings on the important interrelation and strong competition between products classified in different product categories. The competent authority provided concrete examples of such interrelations (quoted above).[19] It also pointed out that many Union producers were active on the production of most of the product categories (showing that steel makers could adapt their production to various types of product categories). The authority further took into account the fact that the US Section 232 measures applied to all steel products "without distinction of their shape, size or composition",[20] so that the authority's analysis was carried out both globally for all 28 product categories, as the product concerned (i.e. steel in various shapes and forms) and also at individual level for each product category.

38. This latter point is important because in the EU Provisional Measure Regulation the authority examined the increase in imports globally but also having regard to the product categories individually. The authority had made clear that: "In addition to the global analysis of the situation for the product concerned overall, which the Commission considers to be the appropriate standpoint for the appraisal of the necessity of safeguard measures in this investigation, the Commission has also assessed the situation at the level of the individual product categories in order to

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15 Panel Reports, *US – Steel Safeguards*, para. 7.262.

16 EU Provisional Measure Regulation, recital 11 (Exhibit TUR-3).

17 EU Definitive Measure Regulation, recital 12 (Exhibit TUR-5).

18 Panel Reports, *US – Steel Safeguards*, para. 7.222.

19 EU Provisional Measure Regulation, recitals 13 – 16.

20 EU Provisional Measure Regulation, recital 17.

confirm the above trends at a disaggregated level."[21] In fact, the authority excluded five product categories (categories 10, 11, 19, 24 and 27) from the application of the EU Provisional Measure Regulation and two product categories (categories 11 and 23) from the application of the EU Definitive Measure Regulation because the import data showed that there were no absolute increases during the period considered. When examining the situation of the Union industry, the Commission also examined the global situation of the Union steel industry, as well as the situation at the level of the individual product categories.

39. If anything, the supplementary analysis of the individual 28 product categories (treated as a single group throughout the investigation) and of the "three steel product families" (flat products, long products and tubes) at definitive stage confirmed the soundness of the competent authority's conclusions on increased imports and threat of serious injury. In fact, the authority conducted such a complementary assessment precisely in order to address the comments made by interested parties against the global approach followed at the provisional stage.

40. With regard to the increase in imports, in the EU Definitive Measure Regulation the competent authority confirmed the absolute and relative increases during the period of analysis having regard to the "26 remaining product categories under assessment" as well as the three product families.[22]

41. With respect to the threat of serious injury, in the EU Definitive Measure Regulation the competent authority conducted an examination on a global basis, namely for the product concerned (thereby including the 26 product categories where it was found an increase in imports).[23] The competent authority supplemented its analysis with an assessment for each of the three product families.[24] The above analysis showed that the Union industry – both globally and for each of the three product families – was in a difficult economic situation until 2016, and only partially recovered in 2017. The competent authority considered that the Union industry, despite the temporary improvement, was still in a fragile situation and under the threat of serious injury if the increasing trend in imports continued with the ensuing price depression and profitability drop below sustainable levels.[25]

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21 EU Provisional Measure Regulation, recital 47.

22 EU Definitive Measure Regulation, recitals 32 – 36 (Exhibit TUR-5).

23 EU Definitive Measure Regulation, recitals 63 – 73.

24 EU Definitive Measure Regulation, recitals 74 – 86.

25 EU Definitive Measure Regulation, recitals 90 - 91.

42. The causation analysis also took into account the global approach (because of the strong interrelation between the product categories that make up the product concerned)[26] and also considered the effects of the increased imports at the level of the three product families.[27]

43. The European Union was not required to assess whether, as a result of unforeseen developments, each product category subject to a safeguard measure was being imported into its territory in such increased quantities and under such conditions as to cause, or threaten to cause, serious injury to the Union industry. Its global analysis addressed this issue,[28] as explained in this submission.

44. Turkey's concern as expressed by its reference to the Appellate Body Report in *US – Steel Safeguards* (the risk is that a Member "make a determination and apply a safeguard measure to a broad category of products even if imports of one or more of those products did not increase"[29]) was addressed by the analysis for each product category, and by excluding certain product categories.

45. Thus, in order to impose a safeguard measure on the product concerned, the competent authority has established that the substantive conditions to impose that measure on that product are met with regard to that specific product.

46. In light of the above, Turkey's claims must be dismissed, as the European Union acted consistently with Article XIX:1(a) of the GATT 1994 and Articles 2.1, 4.1(c), 4.2(a), 4.2(b) and 6 of the Agreement on Safeguards.

2.2.2. The competent authority examined the product under investigation in an objective and unbiased manner

47. Turkey submits that "the competent authorities cannot group together different products or product categories for the purpose of examining certain aspects in a safeguard investigation while grouping them differently for the purpose of examining other aspects and/or imposing the measures".[30]

48. Turkey places the weight of its argument on the fact that the Notice of Initiation referred to "products concerned" in the plural, while the provisional and definitive measures address a product concerned.

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26 EU Definitive Measure Regulation, recitals 114 and 118 – 124.

27 EU Definitive Measure Regulation, recital 126.

28 EU Definitive Measure Regulation, recitals 48-62 (Exhibit TUR-5). EU Provisional Measure Regulation, recitals 30-36 (Exhibit TUR-3).

29 Appellate Body Report, *US – Steel Safeguards*, para. 319.

30 Turkey's first written submission, para. 39.

49. The European Union has already explained that the product categories have remained the same throughout the investigation. Some long products were not mixed with certain flat products and some tubes in the middle of the investigation. Each product category guarded its specificity. The competent authority noted

> an important interrelation and strong competition between products classified in different product categories and also between products at different product stages within certain categories as some of the categories contain the main raw material or input material to produce other products in other product categories.[31]

50. In light of those findings, the product concerned, in the singular, was defined as the totality of the product categories. This is logical and follows from the understanding of the specificities of the steel sector and of the product at issue throughout the investigation.

51. To recall, the competent authority supplemented its examination by an analysis per product category regarding the imports. In the Definitive Regulation, the analysis was further supplemented by an assessment of three "product families" (flat products, long products and tubes).[32]

52. Turkey points to the fact that in *Dominican Republic – Safeguard Measures* the panel considered that the definition adopted by the competent authority was that which governed the definition of the product under investigation.[33] If anything, the statement Turkey refers to supports the European Union's position. It confirms the margin enjoyed by the competent authority in defining the product concerned. Differently from other cases, in the present case the competent authority has defined the product concerned. Can an investigating authority be faulted for the mere fact that some terminology used in the Notice of Initiation did not accurately reflect its content, as long as throughout the whole investigation the definition of the product concerned was reasonably clear? A rational and reasonable answer can be only in the negative.

53. What is the "consistency requirement" that Turkey relies on? If we have a closer look at the construction of its legal arguments, all that Turkey says is that:

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31 EU Provisional Measure Regulation, recital (13) (Exhibit TUR-3).

32 EU Definitive Measure Regulation, recitals 13 – 22 (Exhibit TUR-5).

33 Panel Report, *Dominican Republic – Safeguard Measures*, para. 7.236.

(i) "[a]lthough Article 4.2(a) does not provide any guidance regarding the methodology for evaluating the increase in imports, the evaluation made by the competent authorities must be objective and unbiased"[34] and

(ii) Article 3.1 of the Agreement on Safeguards requires the competent authorities to "publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law".

54. The European Union could not agree more.

55. However, Turkey infers from those provisions and case law statements that they "support" its idea of a "consistency requirement".[35]

56. The so-called "consistency requirement" is not treaty language. It is a self-serving Turkish construction, as applied by Turkey to the facts of this case.

57. The European Union agrees with the principle that the methodology used by the competent authorities must lead to an evaluation that is objective and unbiased. Indeed, for all the reasons explained in detail above, the application of the chosen methodology in the present case permits an adequate, reasoned and reasonable explanation of how the facts on the record support the determination made.[36]

58. In conclusion, Tukey's claims must be rejected, as the European Union acted consistently with Article XIX:1(a) of the GATT 1994 and Articles 2.1, 3.1, 4.1(c), 4.2(a), (b), (c) and 6 of the Agreement on Safeguards by examining in an objective and unbiased manner the product concerned and its constituent categories of products.

3. THE EFFECT OF THE OBLIGATIONS INCURRED UNDER THE GATT 1994

59. Turkey argues that neither the EU Provisional Measure Regulation nor in the EU Definitive Measure Regulation identified or explained the obligations the European Union incurred under the GATT 1994 with respect to the product concerned nor the effects of such obligations.[37]

60. The European Union rejects this claim.

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[34] Panel Report, *India – Iron and Steel Products*, para. 7.137, referring to Appellate Body Report, *US – Lamb*, para. 130.

[35] Turkey's first written submission, paras. 40 – 41.

[36] Panel Report, *US – Line Pipe*, para. 7.194.

[37] Turkey's first written submission, paras. 151-158.

61. First of all, the European Union considers that the wording "of the effect of the obligations" in Article XIX:1(a) of the GATT 1994 is not to be interpreted in the manner implied by Turkey.

62. Turkey appears to assume that this provision refers to any obligations brought about by the GATT 1994 as compared to the obligations preceding the entry into force of the GATT 1994. However, this interpretation is unwarranted as no safeguards would be allowed if, for example, the tariff concessions for a particular product remained the same further to the GATT 1994.

63. Rather, the provision simply refers to any obligations brought about by the GATT 1994 that do not allow a WTO Member to take action to counter an increase in imports causing injury to the domestic industry. The WTO jurisprudence supports this interpretation as it found that incurring tariff concessions is a prerequisite for imposing safeguard measures. In this respect, the Appellate Body found that :

> The first clause in Article XIX:1(a) – "as a result of unforeseen developments and of the effect of the obligations incurred by a Member under the Agreement, including tariff concessions … " – is a dependent clause which, in our view, is linked grammatically to the verb phrase "is being imported" in the second clause of that paragraph. Although we do not view the first clause in Article XIX:1(a) as establishing independent conditions for the application of a safeguard measure, additional to the conditions set forth in the second clause of that paragraph, we do believe that the first clause describes certain circumstances which must be demonstrated as a matter of fact in order for a safeguard measure to be applied consistently with the provisions of Article XIX of the GATT 1994. In this sense, we believe that there is a logical connection between the circumstances described in the first clause – "as a result of unforeseen developments and of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions … " – and the conditions set forth in the second clause of Article XIX:1(a) for the imposition of a safeguard measure.[38]

64. In the present case, Turkey states that[39] the the bound rates are 0% for the 28 steel product categories.

65. Therefore, the circumstance "of the effect of the obligations" means in this case that the obligation under the GATT 1994 to not impose any tariffs above 0% (or quantitative restrictions) constrained the European Union's freedom of action to prevent the threat of serious injury caused by the increase in imports.

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[38] Appellate Body Report, *Korea – Dairy*, para. 85; and Appellate Body Report, *Argentina – Footwear (EC),* para. 92.

[39] Turkey's first written submission, para. 33.

66. These obligations are self-evident and do not require any additional explanation in the published report. Unlike "as a result of unforeseen developments" which by definition are circumstances unforeseen when negotiating the obligations under the GATT 1994 and require explanations in the published report, the "of the effect of the obligations" does not necessitate an additional demonstration in the written report of the investigative authority if, as in this case, the safeguards measures obviously go beyond the tariff level permitted according to the existing obligations under the GATT 1994.

67. By contrast, the circumstances of the *India — Iron and Steel Products* case[40] required further explanations in the written report of the Indian authorities. The rates imposed as safeguard rates from 20% to 10%[41] were below India's tariff bindings on the product concerned of 40% ad valorem.[42]

68. Similarly, in the *Dominican Republic – Safeguard Measures* case, where the Panel found fault with the lack of explanations in relation to "of the effect of the obligations"[43], the Dominican Republic had tariff bindings at the level of 40% ad valorem while the safeguards measures imposed were lower, i.e. between 38% and 14%.[44]

69. In light of the above, Turkey has failed to demonstrate that the European Union acted inconsistently with Article XIX:1(a) of the GATT 1994 with respect to the circumstance 'of the effect of the obligations' incurred under the GATT 1994.

4. THE EUROPEAN UNION ACTED CONSISTENTLY WITH ARTICLE XIX:1(A) OF THE GATT 1994 WITH RESPECT TO ITS DETERMINATION ON UNFORESEEN DEVELOPMENTS

70. Turkey submits that the European Union acted inconsistently with Article XIX:1(a) of the GATT 1994 since the European Union allegedly failed to demonstrate:

a) the existence of unforeseen developments; and

b) a logical connection between the unforeseen developments and the increase in imports.

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40 Panel report, *India — Iron and Steel Products*.

41 Ibid., paras. 2.2 and 2.4.

42 Ibid. para. 7.121.

43 Panel Report, *Dominican Republic – Safeguard Measures,* paras. 7.146-7.147, 7.150.

44 Ibid. paras. 2.11, 2.19 and 7.57.

4.1. THE EXISTENCE OF UNFORESEEN DEVELOPMENTS

71. Regarding the determination of unforeseen developments, Turkey argues that the European Union failed to identify the events which constituted the "unforeseen developments" and their timing and that the elements identified by the European Union do not constitute "unforeseen developments" within the meaning of Article XIX:1(a) of the GATT 1994.[45]

72. The EU Definitive and Provisional Measure Regulations found that the following factors constitute unforeseen developments within the meaning of Article XIX:1(a) of the GATT 1994 :

    a) The unprecedented steelmaking overcapacity which has persisted despite measures to reduce it leading many steel producers to flood third country markets with their products;[46]

    b) the recourse to trade restrictive and trade defence instruments has steadily increased;

    c) in the context of the prevailing persistent worldwide overcapacity, the illegal and restrictive U.S. Section 232 measures, given their level and scope, are likely to cause substantial trade diversion of steel products into the Union.[47]

73. Turkey considers that these are the mere "sources of the unforeseen developments" but not the unforeseen developments as such.[48]

74. Despite Turkey's semantic efforts, the reading of the EU Definitive[49] and Provisional Measure[50] Regulation shows that these factors represent the unforeseen developments and not mere sources of unforeseen developments.

75. Turkey also considers that the European Union failed to state clearly when or during which period of time the factors identified would have occurred.[51]

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45 Turkey's first written submission, para. 87.

46 EU Provisional Measure Regulation, recitals 31-36.

47 Ibid., para. 35.

48 Turkey's first written submission, para. 88-91.

49 EU Definitive Measure Regulation, recital 49: "These factors consisted of an unprecedented steelmaking overcapacity that persists despite the important number of measures adopted worldwide to reduce it, accentuated by distortive subsidies and government support measures, which led to price depression, the increased use of trade restrictive practices, trade defence instruments and the US Section 232 measures adopted in March 2018."

50 EU Provisional Measure Regulation, recital 36: "Consequently, the abovementioned unforeseen developments have lead and will further lead to a clear increase of steel imports into the Union."

51 Turkey's first written submission, para. 90.

76. The timing of the unforeseen developments is clear. The EU Provisional Measure Regulation[52] found that the nominal global steelmaking capacity has more than doubled since 2000, from a level of 1,05 billion tonnes in 2000 to 2,29 billion tonnes in 2016 and has remained at a very high level in 2017. Also the actual global steel production in 2016 (1,6 billion tonnes) was still 100 million tonnes higher than global steel demand. The use of trade defence instruments increased since 2014/2015 and continued throughout 2017. The investigation that led to the adoption of the US Section 232 measures was already initiated in April 2017 and the report on which basis they were decided was issued on 11 January 2018.[53]

77. All these developments are overlapping and have a clear temporal connection.

78. While global steelmaking capacity has more than doubled since 2000, it remained at a high level in 2017 as did the increase in the use of trade instruments. The US Section 232 investigation was also initiated in April 2017. As the case law has stated, not all events that form a confluence of developments must necessarily take place simultaneously, merely that there must be a clear temporal connection between them.[54]

79. Contrary to Turkey's affirmations, recital 52 of the measure at issue does not change the time period when the unforeseen developments are analysed. It compares the period 2009-2011 with the period 2011-2016 because it simply replies to the argument that overcapacity was well-known to the competent authority. Recital 52 finds that overcapacity continued to increase after 2011 despite the expectation that it would decrease or remain stable.

80. Turkey also considers the three factors identified by the European Union cannot qualify as "unforeseen developments" because they are not "unforeseen" within the meaning of Article XIX:1 (a).

4.1.1. Global persistent overcapacity

81. In Turkey's view, global overcapacity in the steel sector is far from being a recent issue and periods of global overcapacity in commodities thus cannot be characterised as an unexpected development.[55]

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52 EU Provisional Measure Regulation, recital. 31.

53 EU Definitive Measure Regulation, recital. 58.

54 Panel report, *India — Iron and Steel Products,* para. 7.114.

55 Turkey's first written submission, paras. 93-96.

82. The competent authority found that the global overcapacity was unforeseen, because, first, of its continued increased after 2011 despite being already excessive then:

> the world crude steel excess capacity decreased from 2009 to 2011 before following an opposite trend from 2011 to 2016. Considering that the total crude steel excess production capacity in 2011 was already well above the total production of that year, it was expected that total crude steel capacity would decrease or at least remain stable in order to improve capacity utilization and cost efficiency. Total crude steel production capacity, however, unexpectedly continued to increase after 2011, generating an additional world excess capacity as confirmed by the Commission in its Communication 'Steel: Preserving Sustainable Jobs and Growth in Europe' (20). Considering the timing of the events described above and more specifically the fact that excess production capacity increased at a time when it was economically expected to decrease, it is concluded that the steel overcapacity should be considered as an unforeseen development.[56]

> and, second, because of the persistence of the overcapacity despite the important number of measures taken to reduce it:

> consisted of an unprecedented steelmaking overcapacity that persists despite the important number of measures adopted worldwide to reduce it, accentuated by distortive subsidies and government support measures, which led to price depression, the increased use of trade restrictive practices, trade defence instruments and the US Section 232 measures adopted in March 2018.[57]

83. The unforeseen nature of overcapacity is also clear from a report of 2017 by the Global Forum on Steel Excess Capacity, which describes overcapacity in 2016 as "no longer simply a cyclical issue to be tackled as "business as usual" and "the highest level seen in the history of the steel industry".[58]

84. The European Union considers, in line with the Panel's findings in *India — Iron and Steel Products*,[59] that even though changes in production capacity or demand are not necessarily extraordinary circumstances, and can occur as part of normal business cycles, the extent and timing of such changes as well as the degree of their impact on the competitive situation in a particular market can be unforeseen.

85. Similarly to the present case, the Panel in *India — Iron and Steel Products* found that a significant increase in global production capacity for steel in 2015, a period very close to the timing of the unforeseen developments in the present case, was,

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56 EU Definitive Measure Regulation, recital 52.

57 EU Definitive Measure Regulation, recital. 49.

58 Report of 30 November 2007 of the Global Forum on Steel Excess Capacity, paras. 2, 4, 14 available online at https://www.bmwi.de/Redaktion/EN/Downloads/global-forum-on-steel-excess-capacity-report.pdf?__blob=publicationFile

59 Panel report, *India — Iron and Steel Products,* para. 7.96.

together with other factors, a circumstance that amounted to an "unforeseen development".

86. Paragraph 95 of Turkey's submission claims that the decrease in global capacity during 2009-2011 was foreseeable as it corresponded to a recovery period following the previous financial crisis when steel production and consumption fell drastically.

87. However, even if this explanation would be correct, it fails to explain the occurrence of a renewed increase in overcapacity during the period between 2011 and 2016. As Figure 1 in Turkey's submission shows, the extent of increase in overcapacity worldwide and China after 2011 significantly exceeds the previous overcapacity.

4.1.2. Increasing use of trade defence instruments and restrictive trade practices

88. Second, Turkey argues that the increased use of trade defence instruments in the steel sector by third countries cannot be an "unforeseen development" as the adoption of trade defence measures is contemplated by WTO rules and increases in the use of trade defence instruments did take place prior to the conclusion of the Uruguay Round in 1995.[60]

89. The European Union considers that, similarly to the overcapacity, even though the use of trade defence instruments is not necessarily an extraordinary circumstance, the extent and timing of such developments as well as the degree of their impact on the competitive situation in a particular market can be unforeseen.

90. Recital 34 of the EU Provisional Measure Regulation found that an average of 77 steel-related investigations had been initiated per year during 2011-2013, increasing to 117 during 2015-2016. This data shows a significant increase of steel-related investigations compared to 2011-2013 and amounts to an unforeseen development.

91. The tables in Figures 2 and 3 of Turkey's submission purporting to show significant changes in the use of trade defence measures over time are not relevant, as they do not concern the steel sector.

92. As regards the table in Figure 4 of Turkey's submission, relating to the anti-dumping investigations concerning "base metals and articles", the mere increase in the use of trade defence instruments in early 2000 does not mean this factor cannot constitute an "unforeseen development". The expression "unforeseen developments" is understood to mean developments that were "unexpected" at the

[60] Turkey's first written submission, paras. 98-109.

time the importing Member incurred the relevant GATT obligation[61] and not in early 2000.[62] The WTO statistics regarding antidumping[63] and countervailing[64] initiations for "base metals and articles" show a significant increase during 2014-2018 compared to the period 2011-2013.

93. The WTO statistics regarding the number of worldwide trade defence measures in the "XV Base metals and articles" sector for the period 2013-2018 portray a similar picture:

    a) 498 antidumping measures were adopted worldwide in the period 2013-2018 compared to 138 in the period 2006-2012[65];

    b) 61 countervailing measures were adopted in the period 2013-2018 compared to 25 measures adopted in the period 2006-2012.[66]

94. Next, Turkey disagrees with the characterisation of the increase in the use of trade defence instruments for the sector "XV Base metals and articles" as "steady" given the decrease in the number of initiations in 2014 and 2018.[67]

95. The slight decrease in 2014 to 89 anti-dumping initiations (from 97 in 2013) is not determinative as the number of initiations increased again in 2015 (to 105). Moreover, the slight decrease in anti-dumping initiations in 2014 was compensated by the increase in the number of countervailing initiations in 2014 (24 initiations compared with 12 in 2013).[68]

96. The decrease in the number of initiations in 2017-2018 compared to 2015-2016 does not call into question the "unforeseen" nature of the overall significant increase of the use of trade defence instruments during the entire period 2014-2018. The number of anti-dumping initiations (81) as well as countervailing initiations (24) in 2017-2018 remained slightly higher than the period 2011-2013.

97. Further, Turkey alleges that, since the European Union is also responsible for the use of trade defence measures, it cannot call them "unforeseen". Turkey recalls

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61 The European Communities joined the WTO on 1 January 1995.

62 Panel Report, *Indonesia — Iron or Steel Products (Viet Nam)*, para. 7.51.

63 WTO statistic on antidumping initiations by sector, Exhibit EU-2.

64 WTO statistic on countervailing initiations by sector, Exhibit EU-3.

65 WTO statistic on antidumping measures by sector, Exhibit EU-4.

66 WTO statistic on countervailing measures by sector, Exhibit EU-5.

67 Turkey's first written submission, paras. 105-106.

68 WTO statistic on antidumping initiations by sector, Exhibit EU-2.

that the European Union has itself initiated 29 trade defence investigations targeting iron and steel products in the period 2013 to 2019 while, in 2019, third countries maintained 72 trade defence measures in force against the European Union's steel exports.[69]

98. However, the number of trade defence measures adopted against exports from the European Union or trade defence measures adopted by the European Union is small compared to the worldwide use of trade defence measures in the steel sector:

    a) in 2020 there were 723 trade defence measures of all types in force of which only 72 (about 10%) targeted the European Union;

    b) there were 582 antidumping[70] and 118 countervailing initiations[71] in the "Base metals and articles" sector in the period 2013-2018, out of which the European Union initiated only 29 trade defence investigations for iron and steel.[72]

99. The above shows that the European Union did not significantly contribute to the increased worldwide use of trade defence instruments. Therefore, this development can be reasonably qualified as "unforeseen" within the meaning of Article XIX:1(a) of the GATT 1994.

100. Turkey also considers that United States' high number of anti-dumping and countervailing duty measures targeting steel imports in place and under investigation is not an unforeseen development because it is expected that the United States, would maintain and initiate a high number of trade defence investigations given that it is one of the world's largest steel importing countries, and that it had a similarly high number of trade defence investigations in the period 2002-2006.[73]

101. However, the number of trade defence investigations fluctuates in the United States and a significant increase in the number of such investigations, as part of a global increase in the use of such instruments, could amount to an "unforeseen development", as in the present case.

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69 Turkey's first written submission, para. 107.

70 WTO statistic on antidumping initiations by sector, Exhibit EU-2.

71 WTO statistic on countervailing initiations by sector, Exhibit EU-3.

72 The European Union initiated two more investigations on iron and steel in 2018. See the European Commission's trade defence statistics for the first nine months of 2018 available online at https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157589.pdf

73 Turkey's first written submission, para. 108.

102. The analysis of the reports of the WTO Secretariat on the United States Trade Policy Review show a significant increase in the number of antidumping and countervailing investigations in the steel sector starting with 2013.

103. During the period 2005-07, the United States initiated some 48 antidumping and 10 countervailing investigations in all sectors.[74] Also the number of anti-dumping measures in force decreased in 2007 to 117 from 184 in 2004.[75]

104. By contrast, the US anti-dumping and countervailing duty investigations increased significantly in 2013, in particular with 33 initiations only for the steel products.[76]

105. In the period 2014 to end-June 2016, the United States initiated 85 anti-dumping initiations, mainly in the steel industry.[77] There were 69 countervailing duty (CVD) orders in place as at 30 June 2016 out of which some 50% of the CVD orders in place related to steel products.[78]

106. Further, in 2015-2017, the number of US anti-dumping initiations increased to 133 mostly in the steel industry. Of the 340 anti-dumping measures in July 2018, 179 (52.6% of the total) were applied on iron and steel products.[79] Similarly, of the 109 CVD measures in place as of end-July 2018, 55 (some 50.5% of the total) were also applied on iron and steel products.[80] More precisely, in February 2018, the U.S. had 169 anti-dumping and countervailing duty orders in place on steel.[81]

107. Regarding the increased use of trade restrictive practices by certain WTO Member, Turkey complains that the EU Provisional Measure Regulation fails to cite those measures and to explain how they constitute an "unforeseen development".[82]

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74 Trade Policy Review 2008, United States, Report by the Secretariat, paras. 79 and 94 of Section "Trade policies and practices by measure". Available online at https://www.wto.org/english/tratop_e/tpr_e/tp300_e.htm.

75 Ibid., para. 82.

76 Trade Policy Review 2015, United States, Report by the Secretariat , para. 10 of the summary and para. 3.68. Available online at https://www.wto.org/english/tratop_e/tpr_e/s350_e.pdf

77 Trade Policy Review 2016, United States, Report by the Secretariat, para. 12 of the summary. Available online at https://www.wto.org/english/tratop_e/tpr_e/s350_e.pdf

78 Ibid., para. 3.93.

79 Trade Policy Review 2018, United States, Report by the Secretariat, para. 3.76. Available online at https://www.wto.org/english/tratop_e/tpr_e/s382_e.pdf

80 Ibid., para. 16 of the summary and para 3.84.

81 Exhibit EU- 6, Press release U.S. Secretary Ross, Department of Commerce, https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination

82 Turkey's first written submission, para. 110.

108. It has to be recalled that the EU Provisional Measure Regulation found that the greater use of trade practices (import tariffs' increases by Mexico, South Africa, India and Turkey, minimum import prices (India), some imposed mandatory national standards for steel (Indonesia) and others imposed local content requirements, including through government procurement (U.S.)) together with the increased use of trade defence instruments constitute one of the "unforeseen development".[83] Several countries have begun to make greater use of trade policy and trade defence instruments in the steel sector with a view to protecting their domestic producers in reaction to the oversupply of steel and market-distorting practices. These practices are referred to in the presentation "Recent developments in steel trade and trade policies" by the OECD Secretariat Economics Department at the 83rd Session of the OECD Steel Committee.[84]

4.1.3. United States' Section 232 measures

109. Finally, regarding the United States' Section 232 measures, Turkey alleges that the European Union failed to explain how the imposition of a duty through the Section 232 measures, and of a duty in general, constitutes an "unforeseen development" since that legislation has been in place before the Uruguay round.[85]

110. Even though duties imposed by the United States on the basis of Section 232, and duties in general, are not necessarily extraordinary circumstances, the duties in the circumstances of this case gave rise to an "unforeseen development". The EU Provisional Measure Regulation explained[86] that:

a) the imposition of single across-product tariff with almost no country exclusion is expected to decrease imports by approximately 13 million tonnes – 7% of the Union consumption;

b) some of the main exporters to the US are also traditional steel suppliers to the Union and that will redirect their exports to the Union, a very attractive market for steel products both in terms of demand and prices;

c) an additional import increase might especially originate from countries currently not subject to anti-dumping/countervailing duty measures.

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83 EU Provisional Measure Regulation, recital (33).

84 Exhibit EU-X7. The reports of the 83rd Session are referred to in recital 31 of the EU Provisional Measure Regulation (footnote 1).

85 Turkey's first written submission, para. 111.

86 Recital (35).

4.2. THE EUROPEAN UNION DEMONSTRATED THE EXISTENCE OF A LOGICAL CONNECTION BETWEEN THE UNFORESEEN DEVELOPMENTS AND THE INCREASE IN IMPORTS

111. Turkey submits that the European Union has failed to demonstrate a "logical connection" between the alleged unforeseen developments and the alleged increase in imports for the following reasons.

4.2.1. The European Union duly explained how the unforeseen developments resulted in increases in imports

112. First, Turkey argues that the European Union failed to explain how the alleged unforeseen developments resulted in increases in imports into the European Union even though the facts of the present case are particularly complex: many distinct products, high volumes of imports and a big number exporting countries and several unforeseen developments.[87]

113. In particular, the European Union allegedly ignored the existence of trade defence measures and failed to provide supporting evidence for its findings that :

a) "many steel producers … kept capacity utilisation at high rates and flooded third country markets with their products at low prices when they could not be absorbed by domestic consumption";[88]

b) in "situations where spare capacity is available after supplying their domestic market, [exporting producers] will seek other business opportunities on export markets and thus generate an increase in import volumes".[89]

114. It has to be recalled that, according to the jurisprudence, the logical connection between the alleged unforeseen developments and the alleged increase in import entails :

> In some cases, the explanation may be as simple as bringing two sets of facts together. However, in other situations, it may require much more detailed analysis in order to make clear the relationship that exists between the unforeseen developments and the increased imports that are causing or threatening to cause serious injury. The nature of the facts, including their complexity, will dictate the extent to which the relationship between the unforeseen developments and increased imports causing injury needs to be explained. The timing of the explanation, its extent and its quality

87 Turkey's first written submission, paras. 124-135.

88 EU Provisional Regulation, recital 32.

89 EU Definitive Measure Regulation, recital 54.

> are all factors that can affect whether a[n] explanation is reasoned and adequate.[90]

115. The present case required the European Union to merely put the two sets of facts together:

> As far as the link between the unforeseen development of steel overcapacity and the increase in imports is concerned, it is clear that exporting producers have an interest in maximizing their capacity utilization. In situations where spare capacity is available after supplying their domestic market, they will seek other business opportunities on export markets and thus generate an increase in import volumes on such markets. On this basis, the above mentioned claims have to be rejected.[91]

116. On the one hand, the measure identifies the significant and persistent increase in global overcapacity despite measures taken to reduce it, the increase in trade restrictive measures that maintained the overcapacity, the increase in trade defence measures and the imminent adoption of the Section 232 measures by the United States. On the other hand, the measure also identifies the increase in imports of steel products in the European Union. The previously mentioned unforeseen developments required that many steel producers increase their exports and the European Union was a major destination for the exports of steel products (the European Union's worldwide market share of steel *imports* increased from 6.4% to 8.5% between 2012 and 2016).[92]

117. The timing of the two sets of facts is relevant[93]: the unforeseen developments and the increase in the import volumes took place during the same period. Specifically, the overcapacity has been increasing since 2000 and reached high levels in 2014-2016;[94] the use of trade defence measures increased in 2014/2015 and continued throughout 2017; the US Section 232 investigation started in April 2017 and the investigation report was issued on 11 January 2018. Similarly, the increase in imports took place between 2013 and the first six months of 2018 (the most recent period or "MRP").

118. The European Union's findings are justified by evidence.

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90 Panel Reports, *US–Steel Safeguards*, para. 10.115.

91 EU Definitive Measure Regulation, recital 54.

92 Simon Evenett and Johannes Fritz, Going Spare: Steel, Excess Capacity, and Protectionism The 22nd Global Trade Alert Report, Exhibit TUR-21, p. 75, (see the EU Definitive Measure Regulation, Exhibit TUR-5, recital 52).

93 Panel Report, *India — Iron and Steel Products,* para. 7.114.

94 See Figure 1 in Turkey's first written submission.

119. For example, the European Commission's Communication *Steel: Preserving Sustainable Jobs and Growth* found that the excess production of steel has recently led to a dramatic increase of exports, destabilising global steel markets and depressing steel prices world-wide.[95]

120. Further, the Chair's Statement at the 83rd Session of the OECD Steel Committee explained that excess capacity caused trade tensions in the steel market and that steel imports increased in certain regions like the EU:

> Excess capacity remains a major challenge to the global steel industry, with implications for the financial and economic sustainability of the sector and international trade. The Committee reiterated the urgency of addressing the excess capacity problem, including by removing any forms of market distorting government support that result in capacity additions or barriers to capacity closure, by enhancing market mechanisms in the steel sector. Moreover, the Committee reiterated the importance of providing effective programmes for steel workers affected by structural adjustments… Trade tensions continue in the global steel market, amidst persistent excess capacity, unfair trade practices and trade friction… However, in certain major markets such as North America, Japan and the EU, steel imports increased significantly in the first half of 2017.[96]

121. Similarly, the Chair's Statement at the 84th Session of the OECD Steel Committee indicated that excess capacity is a major challenge and is exacerbated by market-distorting policies :

> the reduction in global crude steelmaking capacity which mainly happened in absolute figures in Asia while proportionally significant in other constitutions has contributed to a slight narrowing of the gap between global capacity and production. However this modest adjustment still falls short of alleviating global excess capacity—demand would take more than 30 years to absorb the current level of excess capacity. New investment projects continue to take place around the world and global steelmaking capacity could increase by 2.0% between 2018 and 2020 in the absence of any further closures. Global excess capacity is expected to continue to be a major challenge for the global steel industry—calling for urgent, accelerated actions to reduce it. Economies at the heart of the increase in capacity have an important role in this regard, and those increasing capacity should do so strictly in line with demand to avoid an exacerbation of the problem. The OECD Steel Committee called for a swift removal of market-distorting policies that result in capacity additions or in sustaining or delaying the closure of inefficient steel production units. The Committee stressed the importance of policies that facilitate restructuring in the steel

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[95] COM(2016) 155 final of 16 March 2016 available online at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0155&from=EN. See also the European Commission's steel investigations, for example, Section 5.2 of the Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016, OJ L 272, 7.10.2016, p. 33–69 on the issue of Chinese steel overcapacity which is not in line with the demand for the like product in the PRC or in other countries is not is not challenged by the Chinese authorities.

[96] Exhibit EU-8 also available online at https://www.oecd.org/sti/ind/83-oecd-steel-chair-statement.

> sector, including policies that help steel workers affected by structural adjustments.[97]

122. Further, Turkey criticises the challenged measures for not having provided supporting evidence, like detailed factual or statistical records, as to how the trade defence and trade restrictive measures referred to in the Provisional Measure Regulation led to increases in imports in the European Union.[98]

123. The European Union considers that it is sufficient to put together the persistent global overcapacity, compounded by the increase in trade defence and trade restrictive measures, with the increase of imports in the EU to show the existence of a logical connection between them. The EU Provisional Measure Regulation noted[99] that, based on WTO statistics, whereas an average of 77 steel-related investigations had been initiated per year during 2011-2013, this average increased to 117 during 2015-2016. This explanation is clear and does not require additional evidence like factual and statistical records.

124. Finally, regarding the Section 232 measures Turkey makes several arguments:

a) they are irrelevant as they entered into force after the period under investigation;

b) the US steel imports subject to the measures at issue increased between 2017 and 2016;

c) the competent authority should have demonstrated that imports of each product into the European Union increased as a consequence of the section 232 measures because these measures included exclusions of imports from several countries;

d) the competent authority should have conducted an analysis on a country specific basis; as regards the United States changes in import flows into the United States for major steel exporting countries do not correlate with changes in import flows into the European Union.

125. Regarding a), it is recalled that the mere initiation of the investigation did undoubtedly create uncertainty on the market and caused effects on steel trade flows[100] and while the US Section 232 measures entered into force on 8 March

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97 Exhibit EU-9 also available online at https://www.oecd.org/sti/ind/84-oecd-steel-chair-statement.

98 Turkey's first written submission, para. 131.

99 EU Provisional Measure Regulation, recital 34.

100 EU Definitive Measure Regulation, recitals 58-59.

2018, the competent authority analysed import data up until the end of the first six months of 2018 (the "MRP" period).[101]

126. Regarding b), the EU Definitive Measure Regulation explained that, for each and every month in 2018, import volumes into the Union in 2018 were higher than import volumes in 2017.[102]

127. Regarding c), the competent authority explained that the countries exempted by the United States do no change the conclusion that the US Section 232 measures caused a substantial trade diversion of steel products into the Union. Australia accounted only around 1 % of total US imports in 2017; other countries such as South Korea, Argentina and Brazil were granted tariff-free quotas that were either 0 or already exhausted upon allocation but were not exempted from the measures;[103] Canada and Mexico were not amongst the main historical suppliers of steel to the Union and could actually exacerbate the trade diversion to the Union and in any event, Canada's and Mexico's exclusion is irrelevant for the purposes of analysing unforeseen developments because it occurred after the adoption of the safeguards measures.[104]

128. Regarding point d), the requirement set out in *India — Iron and Steel Products* for a country-based analysis is circumscribed to the facts of that case. The Panel found in that case that the Indian competent authority relied in its analysis of unforeseen developments on events occurring in specific countries, in particular China, Russia, and Ukraine, while a significant portion of imports during the period of investigation originated from its FTA partners, Korea and Japan which warranted an explanation as to the connection between the two. However, in the present case, the unforeseen developments generally consist in global events and not events concerning particular countries.

129. As to the Section 232 measures the explanation of the connection between these measures and the increase of imports in the EU is simple: US Section 232 measures have sped up the increase in imports by adding further trade diversion flows to the prevailing prior increasing trend. The EU Definitive Measure Regulation explained that available statistics show that, with the exception of April 2018, monthly imports of steel into the US became consistently lower than their corresponding

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101 EU Definitive Measure Regulation, recital 29.

102 EU Definitive Measure Regulation, recitals 58 and 106.

103 EU Definitive Measure Regulation, recital 61.

104 EU First Reviewed Definitive Measure, recital 161. The exemption of Canada and Mexico on 17 May 2019after the adoption of the EU Definitive Measure Regulation.

volume in 2017. This coincides with an opposite increasing trend in imports observed in the European Union, where, monthly imports volumes were consistently at a higher level than a year before.[105]

130. Finally, the European Union considers that if the panel finds that the existence of one of the unforeseen developments was insufficiently proven, this this does not necessarily give rise to an inconsistency with Article XIX:1(a) because the determination of unforeseen developments also relies on the other factors.

4.2.2. The logical connection between the unforeseen developments and the product concerned

131. Turkey argues that the European Commission failed to explain the result that the unforeseen developments, referred to events concerning "steel" in general, had on the specific products concerned. Indeed, the European Commission but failed to consider how those events related to the "specific products at issue".[106]

132. By this argument, Turkey contends that the European Commission should have analysed the unforeseen developments and demonstrated their impact with regard to each of the 26 specific product categories included in the product concerned.

133. First of all, the unforeseen developments relating to the steel market in general are also applicable to the product concerned.[107] The latter consists of a wide range of steel products, i.e. 28 product categories, representing around 90% of all steel products imported into the European Union (flat/long/tubes and pipes).

134. Further, The jurisprudence has established that an investigation authority is required to analyse only the product under investigation that it had defined and not the individual products forming the product under investigation:

> … However, as the complainants have not stated an objection to the definition of the product under investigation per se, the Panel considers that the definition adopted by the competent authority is that which governs the definition of the product under investigation, as well as the way in which the relevant data should have been analysed in the investigation. Given the undisputed definition of tubular fabric and polypropylene bags as the product under investigation, the Panel does not regard as valid the argument of the complainants that the increase in imports should have been demonstrated separately with respect to each of these products. In any event, the complainants have not demonstrated that Article 2.1 of the Agreement on Safeguards requires the

105 EU Definitive Measure Regulation, recital 59.

106 Turkey's first written submission, paras. 136-143.

107 Turkey's first written submission, paras. 139-140.

> separate consideration of imports of each product that forms part of a single product under investigation.[108]

135. Similarly, the Panel in *US — Steel Safeguards,* established that :

> The Panel notes that the parties have also made submissions with regard to the question whether imports of the various products comprised in CCFRS, taken individually, have increased. However, the USITC did not make a determination on individual products within the CCFRS group. The USITC made its determination on increased imports only with regard to a category defined as CCFRS products. This determination, pursuant to which safeguard action has been taken against imports of CCFRS, is subject to review in this dispute. Therefore, in light of the Panel's standard of review, the Panel will not scrutinize individual items comprised in CCFRS.[109]

136. The Panel Report in *India – Iron and Steel Products* also required that an competent authority analyse only the product concerned.[110]

137. This case law is also applicable to the analysis of the unforeseen developments. It is worth stressing that Turkey has not objected to the definition of the product under investigation *per se*. In particular, the European Union reiterates that Turkey did not take issue with the competent authority's findings on the important interrelation and strong competition between products classified in different product categories (as explained above in para. 37). Instead, Turkey relied on its own flawed and self-serving definition of the product concerned.

138. Therefore, the European Commission did not have to analyse the existence of unforeseen developments and the logical connection with the increase in imports for each of the 28 product categories; thus, the finding that "it is sufficient to demonstrate the existence of unforeseen developments globally" is correct.[111]

4.2.3. The Section 232 measures taken by the United States

139. Turkey claims that the European Union failed to establish that the Section 232 measures led to an increase in imports before their adoption.[112] The finding that "the mere initiation of the investigation did undoubtedly create uncertainty on the market and caused effects on steel trade flows" is not supported by evidence. Moreover, the announcement of the investigation allegedly should have led to an increase in imports into the US before its finalisation.

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108 Panel Report, *Dominican Republic – Safeguard Measures,* paras. 7.236-7.237. See also

109 Panel Report, US — Steel Safeguards, para 10.187.

110 Panel Report, *India – Iron and Steel Products,* para. 7.112.

111 EU Definitive Measure Regulation, recital 50.

112 Turkey's first written submission, paras. 144-149.

140. The European Union recalls that the period under investigation ended at the end of June 2018[113] and that the United States adopted the Section 232 measures on 8 March 2018. Hence, the initiation of the Section 232 investigation and its adoption took place before the investigation was completed and definitive measures adopted on 31 January 2019..

141. Turkey also infers that the period of investigation ended when the European Union opened the investigation in March 2018 and the investigating authority cannot take into account events subsequent to the opening. Yet, the jurisprudence[114] held that the demonstration of unforeseen developments must be made before the safeguard measure is applied (in this case 1 February 2019) and not only until the opening of the investigation.

142. As regards the alleged lack of evidence, Table 14 of the EU Definitive Measure Regulation shows that, with the exception of April 2018, monthly imports of steel into the US became consistently lower than their corresponding volume in 2017.[115] Even before the adoption of the Section 232 measures, a decrease in imports took place: February 2018 shows a decrease of 5% in imports compared to February 2017.

143. Finally, Turkey speculates that the European Union's opening of the investigation in the present case may have triggered an increase in imports thus casting doubt on the logical connection with the Section 232 measures.[116]

144. This argument can hardly reconcile with the significant decrease of imports in the Unites States after the adoption of the Section 232 measures.[117]

145. Finally, the European Union considers that if the panel finds that there is no logical connection between the increase in imports and one of the identified unforeseen developments, this does not necessarily give rise to an inconsistency with Article XIX:1(a) because the increase in imports occurred as result of the other factors identified as unforeseen developments.

4.3. CONCLUSION

113 EU Definitive Measure Regulation, recital 29.

114 Appellate Body Report, *US – Lamb*, para. 72.

115 EU Definitive Measure Regulation, recital 59.

116 Turkey's first written submission, para. 149.

117 EU Definitive Measure Regulation, Table 14.

146. On the basis of the above, Turkey has failed to show that the European Union acted inconsistently with Article XIX:1(a) of the GATT 1994 with respect to its determination of the existence of unforeseen developments and of the logical connection between the alleged unforeseen developments and the alleged increase in imports.

5. THE EUROPEAN UNION ACTED CONSISTENTLY WITH ARTICLES 2.1 AND 4.2(A) OF THE AGREEMENT ON SAFEGUARDS AND ARTICLE XIX:1(A) OF THE GATT 1994 WITH RESPECT TO ITS DETERMINATION OF INCREASE IN IMPORTS

147. Turkey submits[118] that the European Union failed to make a determination regarding the increase in imports which is consistent with Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 for the following reasons:

a) first, it failed to examine the imports in relation to each product category;

b) second, it erroneously made an end-point-to-end-point analysis and failed to make a trend analysis;

c) third, it failed to make a reasoned and adequate explanation of its finding of "increased imports" in light of the decrease observed in the most recent past;

d) fourth, it failed to demonstrate an increase in imports that is sharp enough, significant enough, sudden enough and recent enough.

5.1. TURKEY FAILED TO SHOW THAT THE EUROPEAN UNION WAS REQUIRED TO ANALYSE EACH PRODUCT CATEGORY SEPARATELY

148. Turkey submits that the European Union identified 28 distinct product categories and carried out an analysis to decide which products experience import increases. However, the European Union examined only imports of the product categories taken together and at the level of product families but failed to also examine each product category separately.[119]

149. It has to be recalled that in this case the European Union defined the product concerned as certain steel products belonging to the 28 steel product categories

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118 Turkey's first written submission, para. 169.

119 Turkey's first written submission, paras. 170-173.

taken all together[120]. The European Union analysed the relevant data on the increase in imports in relation to the product concerned, meaning all 28 product categories taken together. It also analysed three product families for the purposes of confirming the soundness of the conclusions reached on a global basis.

150. Hence, the European Union followed a consistent approach between the definition of the product concerned and the analysis of the increase in imports. The analysis of three product families was carried out only to confirm the reliability of the conclusions reached on a global basis.

151. Since the complainant did not challenge the definition of the product concerned, the definition of the competent authority governs the definition of the product under investigation.[121] Having defined the product concerned, the competent authority was required to examine the product concerned for determining the increase in imports, serious injury/threat and causal link. Nothing in Article 2.1 of the Agreement on Safeguards requires the separate consideration of imports of each product that forms part of a single product under investigation.[122] It only requires examining "a product" or "such product".

152. It is true that the European Union's competent authority carried out a limited analysis for each product category for the purposes of determining which product categories experience increases in imports. Following that analysis, the competent authority excluded five products categories at the provisional stage and subsequently revised its analysis to exclude only two products categories at the definitive stage.[123] Nevertheless, this analysis per product category does not contradict the definition of the product concerned because it was carried out only for the purposes of identifying the product categories experiencing increases in imports. Since the competent authority is competent to define the product concerned, nothing prohibits it from carrying out this kind of analysis. .

153. For all the following analytical steps, the European Union consistently examined the relevant data only in relation to the product concerned and, for completeness, in relation to the three product families.

154. Therefore, Turkey has failed to show that the European Union was required that it also examine each product category separately.

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120 EU Definitive Measure Regulation, recitals 13 and 17.

121 Panel Report, *Dominican Republic – Safeguard Measures*, paras. 7.236-7.237.

122 Ibid.

123 EU Definitive Measure Regulation, recital 31.

5.2. THE EUROPEAN UNION WAS NOT REQUIRED TO ANALYSE TRENDS IN IMPORTS FOR EACH PRODUCT CATEGORY SEPARATELY

155. Further, Turkey argues that the European Union failed to examine the trends in imports over the period of investigation for each product category.[124]

156. This is not true. As explained above (Section 4.2.2) only the product concerned as defined by an investigatory authority is under review by a panel and not the individualized items comprised in the product concerned.

157. In this case, the European Union made its determination on increased imports only with regard to the product concerned and not in relation to the individual product categorises within the product concerned. This determination, pursuant to which safeguard action has been taken against imports of the product concerned, is subject to review in this dispute.

158. As to the analysis carried out for the purposes of identifying the product categories experiencing increases in imports, as explained above (Section 5.1) nothing prohibits an competent authority from carrying out this kind of analysis.

159. In conclusion, since the European Union was not required to examine the trends in imports over the period of investigation for each product category, Turkey's claim that the European Union's determinations are inconsistent with Article XIX:1(a) of the GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards should be rejected.

5.3. THE EUROPEAN UNION PROVIDED A REASONED AND ADEQUATE EXPLANATION FOR ITS FINDING OF "INCREASE IN IMPORTS" IN LIGHT OF THE RECENT PAST

160. Turkey contends that the European Union failed to provide a reasoned and adequate explanation of its finding of increase in imports in light the decrease observed in the most recent past with regard to certain product families and with regard to a number of product categories.[125]

161. However, Turkey fails to criticise the relevant determination made by the European Commission, namely the one concerning the product concerned. The European Commission made determinations regarding the product families but only to "to examine, *in addition*, whether the findings for the single group are confirmed at more disaggregated level and to dispel any doubts about the reliability of the

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124 Turkey's first written submission, paras. 174-181.

125 Turkey's first written submission, para. 182-196.

conclusions reached at an overall level".[126]. Any error regarding this additional analysis cannot lead to an inconsistency with Article XIX:1(a) of the GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards since it was not legally required. Also, it was not decisive in the determinations made by the European Commission.

162. In any event, Turkey claims that the European Commission failed to explain why it could make a finding of "increased imports" despite the decrease observed between 2017 and the MRP for flat products and tubes (product families 1 and 3) and the decrease in imports between 2016 and 2017 for long products (product family 2).

163. Table 3 of the EU Definitive Measure Regulation reads:

Import volume (after exclusion of certain countries and products) and market share – by product family

	2013	2014	2015	2016	2017	MRP
Flat products						
imports (000 tonnes)	12 327	14 215	18 391	20 281	20 299	20 202
index 2013 = 100	*100*	*115*	*149*	*164*	*164*	*164*
Market share	14,2 %	15,8 %	19,4 %	20,7 %	20,9 %	20,9 %
Long products						
imports (000 tonnes)	4 001	5 258	6 028	6 550	6 465	7 901
index 2013 = 100	*100*	*131*	*151*	*164*	*162*	*197*
Market share	8,6 %	10,6 %	11,8 %	12,4 %	11,8 %	14,0 %
Tubes						
imports (000 tonnes)	2 001	2 396	2 134	2 310	3 330	3 212
index 2013 = 100	*100*	*120*	*107*	*115*	*166*	*160*
Market share	20,4 %	20,8 %	19,9 %	20,1 %	25,3 %	25,7 %

Source: Eurostat and Union Industry questionnaire replies.

126 EU Definitive Measure Regulation, recital 19 (emphasis added).

164. For the sake of completeness, this argument should be rejected because the European Commission analysed the trends in imports for each product family. It found that:

> The most significant increase for the flat products, both in absolute and relative terms, took place in the period 2013-2016. Imports thereafter remained relatively stable but at a much higher level than in the period 2013-2015. For long products, the most significant increase both in absolute and relative terms, took place in the period 2013-2016 before picking up steeply in the MRP. As for tubes, imports increased progressively over the period 2013-2016, before steeply increasing, both in absolute and relative terms, in the period 2016-MRP.[127]

165. The jurisprudence confirmed that the determination of whether the requirement of imports "in such increased quantities" is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year – or five years ago.[128]

166. As regards the picture of the domestic industry, while data from the most recent past has special importance, competent authorities should not consider such data in isolation from the data pertaining to the entire period of investigation. The real significance of the short-term trends in the most recent data, evident at the end of the period of investigation, may only emerge when those short-term trends are assessed in the light of the longer-term trends in the data for the whole period of investigation.[129] The same is true of the resulting picture of an increase in imports.[130]

167. Moreover, there is nothing in the text of Article XIX:1(a) of the GATT 1994 or the Agreement on Safeguards to indicate that the rate of the increase in imports must accelerate (or be positive) at every moment of the period of investigation or that it is rising and positive only if every percentage increase is greater than the preceding increase.[131]

168. In this case, the volume of imports in the MRP compared to 2017 decrease by around 0,9% for flat products and tubes. Yet, this is calculated based on an absolute volume of imports that had already increased significantly in the

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127 EU Definitive Measure Regulation, recital 36.

128 Appellate Body Report*, Argentina — Footwear (EC)*, para. 131.

129 Appellate Body Report, *US – Lamb*, para. 138.

130 Panel Report, *Argentina — Preserved Peaches*, para. 7.65.

131 Panel Report, *Dominican Republic – Safeguard Measures*, paras. 7.235.

immediately preceding period. The European Commission correctly described the period 2016-MRP as "stable" for flat products[132] and as "steeply increasing" for tubes.[133] Overall, the volumes of imports for flat products was 12.327 million in 2013 to reach 20.299 million in 2017 (64%) while for tubes ranged between 2.001 million and 3.330 million (66%).

169. As regards long products, Turkey highlights a very small decrease in imports between 2016 and 2017 from 6,55 million to 6,465 million. However, such decrease of, again, around 1,13% is calculated based on an absolute volume of imports that had already increased significantly cannot undermine the determination that long products are being imported in increased quantities.[134] Such a decrease at the end of the investigation period must be out into the context of the prior developments in the import quantities, and if these increased significantly enough, then a subsequent marginal decrease towards the end of the investigation period does not stand in the way of a finding that the product is (still) being imported in increased quantities. The volumes for long products increased by 63% between 2013 and 2016 and by 20% between 2016 and the MRP. Hence, the European Commission rightly stated that imports were "picking up steeply in the MRP".[135]

170. Therefore, the very small decrease of imports between 2017 and the MRP for flat products and tubes and between 2016 and 2017 for long products when examined in the context of the entire period of investigation cannot undermine the determination that imports increased for the three product families and also importantly cannot detract from the conclusion of the global analysis on increased imports with regard to the product concerned.

171. As regards the failure to provide a reasoned and adequate explanation in relation to individual product categories, as explained above (Sections 4.2.2 and 5.1), the European Commission was not required to consider separately the imports of each product category that forms part of the product concerned under investigation.

5.4. THE EUROPEAN UNION DEMONSTRATED AN INCREASE IN IMPORTS THAT IS SHARP ENOUGH, SUDDEN ENOUGH, SIGNIFICANT ENOUGH AND RECENT ENOUGH TO CAUSE THE THREAT OF SERIOUS INJURY

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132 The volumes of imports was 20,281 million in 2016 and 20.202 million in the MRP.

133 The volumes of imports was 2.134 in 2016 and 3.212 in the MRP.

134 For example, Panel Report, *US — Steel Safeguards,* para. 10.205 found that a decrease of 28.9% at the end of the investigation period, that the investigating authority failed to evaluate, undermined the determination that hot-rolled bar "is being imported in such increased quantities".

135 EU Definitive Measure Regulation, recital 36.

172. Next, Turkey argues that the European Union did not explain how the increase in imports was sharp and sudden. The European Commission's allegedly made only an end-point-to-end-point analysis and failed to examine the trends over the period of investigation, especially that the most significant increase taking place between 2013-2016.[136]

173. To recall, the European Union did not conduct only an end-point-to-end-point analysis. More importantly, it has to be recalled that there are no absolute standards as regards how sudden, recent, and significant the increase must be in order to qualify as an 'increase' in the sense of Article 2.1 of the Agreement on Safeguards.[137] Also, in *US – Steel Safeguards*, the panel, in a finding upheld by the Appellate Body, concluded that "a finding that imports have increased pursuant to Article 2.1 can be made when an increase evidences a certain degree of recentness, suddenness, sharpness and significance.

174. The European Union contends that the increase of the product concerned in the present case did evidence such certain and thus sufficient degree of recentness, suddenness, sharpness and significance and that this is apparent in both the figures and the reasoned explanations of the report. Another panel saw the need to clarify the meaning of sharp ('involving sudden change of direction; abrupt, steep') and sudden ('happening or coming without warning; unexpected', or 'abrupt, sharp'),[138] and it is the European Union's contention that the figures in question more than adequately satisfy those parameters as well. It is lastly important to bear in mind that the assessment of whether an increase is "recent enough, sudden enough, and significant enough to cause or threaten serious injury" relates to other conditions necessary for imposition of a safeguard (namely injury and causation) and not a determination to be made in the abstract.[139]

175. Table 2 of the EU Definitive Measure Regulations reads:

*Table 2*Import volume (after exclusion of certain countries and products) and market share	2013	2014	2015	2016	2017	MRP
Imports (000 tonnes)	18	21	26	29	30	31

136 Turkey's first written submission, paras. 197-205.

137 Appellate Body Report, *US — Steel Safeguards,* para. 397.

138 Panel Report, *Ukraine — Passenger Cars*, para. 7.146.

139 Appellate Body Report, *US — Steel Safeguards,* paras. 359, 360, Panel Report, *US — Steel Safeguards,* para. 10.171.

	329	868	552	141	094	314
index 2013 = 100	*100*	*119*	*145*	*159*	*164*	*171*
Market share	12,7 %	14,4 %	16,9 %	17,9 %	18,1 %	18,8 %

Source: Eurostat and Union Industry questionnaire replies.

176. In the present case, the European Commission carried out both an end-point-to-end-point and a comprehensive trends analysis across the period of investigation:

> Imports increased in absolute terms by 71 % during the period of analysis, and in relative terms with market shares increasing from 12,7 % to 18,8 %. The most significant increase took place in the period 2013-2016. Subsequently, imports continued to increase at a slower pace before picking up again in the MRP, when the US Section 232 measures entered into force…
>
> Additionally, Eurostat statistics also show that imports increased by 45 % between 2013 and 2015 and that this sharp increase continued until the MRP to reach 71 % overall. A similar trend is also observed as far as the relative increase in imports is concerned."[140]

177. Turkey takes issue with the fact that the increase in imports was gradual throughout the period of investigation with the most significant increase taking place between 2013-2016 (59%). However, there is nothing wrong with a gradual increase as long as it qualifies as an increase: in the present case, imports of the product concerned increased in every single year of the period of investigation, compared to the preceding year. This therefore qualifies as an increase and certainly allows the conclusion, at the end of the investigation period, that the product "is being imported in … increased quantities". Surely, there would be no basis for finding, instead, that the product is being imported in *de*creased quantities, nor that it is being imported in unaltered quantities.

178. The jurisprudence considered that there is nothing in the text of Article XIX:1(a) of the GATT 1994 or the Agreement on Safeguards to indicate that the rate of the increase in imports must accelerate at every moment of the period of investigation or that it is rising only if every percentage increase is greater than the preceding increase (see para. 167 above).

179. Similarly, the Appellate Body found in *US — Steel Safeguards* that a decline in the relative imports at the end of the period of investigation does not necessarily

[140] EU Definitive Measure Regulation, recitals 33 and 39.

detract from the overall determination that the product is "being imported in such increased quantities":

> Based on the facts found by the Panel and in the Panel record, we have some misgivings about the Panel's assessment. As the Panel pointed out, the ratio of imports to domestic production was 18.4 per cent in 1997355, and 27.5 per cent in 2000—the last full year included in the period of investigation. This represents an increase in 9.1 percentage points. Between interim 2000 and interim2001, there was a decline in that ratio (2.4 percentage points, being the difference between 27 per cent for interim 2000 and 24.6 per cent for interim 2001). However, the ratio for interim 2001 was still 6.2 percentage points above that for 1997… appears to us that the decline in imports between interim 2000 and interim 2001—from 27 to 24.6 per cent of domestic production—is relatively modest when assessed in the context of the aforementioned 43.23 per cent increase, and does not necessarily detract from an overall determination by the USITC that the product is "being imported in such increased quantities.[141]

180. Contrary to Turkey's assertions, the data on imports volumes shows a different picture. Imports sharply increased by 59 % between 2013 and 2016 and this sharp increase continued until the MRP to reach 71 % overall. A similar upward trend is also observed as far as the relative increase in imports is concerned. This increase is steep and unexpected enough to show a sufficiently sudden and sharp increase of imports for what Article 2.1 of the Agreement on Safeguards requires.

181. Imports followed an uninterrupted upward trend, increasing every year both in absolute and relative terms. While the rate of imports continued to increase at a slower pace after 2016 before picking up again in the MRP this does not undermine the determination that the product is/was being imported in increased quantities and this was sharp and sudden as clarified by the case-law.

182. Turkey also considers that the European Union failed to explain how the increase in imports is "recent" enough since the most significant increase took place in the period 2013-2016. According to Turkey, the European Union erroneously asserted that imports "picked up again in the MRP", while the increase between 2017 and the MRP is only of 7%,[142] compared to the increase of 19% between 2013 and 2014 and of 26% between 2014 and 2015.[143]

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141 Appellate Body Report, *US — Steel Safeguards,* paras. 395 and 396.

142 Turkey refers to a 7% increase between 2017 and the MRP but, according to Table 2 of the EU Definitive Measure Regulation, this increase took place between 2016 and the MRP.

143 Turkey's first written submission, paras. 204-205.

183. Article 2.1 of the Safeguards Agreement requires that the product concerned "is being imported" in increased quantities. The Appellate Body made the following observation regarding this phrase:

> In our view, the use of the present tense of the verb phrase "is being imported" in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 indicates that it is necessary for the competent authorities to examine recent imports, and not simply trends in imports during the past five years – or, for that matter, during any other period of several years.[130] In our view, the phrase "is being imported" implies that the increase in imports must have been sudden and recent.[144]
>
> Footnote 130 reads: The Panel ... recognizes that the present tense is being used, which it states "would seem to indicate that, whatever the starting-point of an investigation period, it has to *end* no later than the very recent past." (emphasis added) Here, we disagree with the Panel. We believe that the relevant investigation period should not only *end* in the very recent past, the investigation period should *be* the recent past.

184. As found by the Panel in *Ukraine — Passenger Cars* case,[145] it is clear from the above-quoted statement by the Appellate Body that the increase in imports must be recent in relation to the date of determination.

185. In the present case the date of the determination took place in January 2019 while the period of investigation finished at the end of the first 6 months of 2018 (the "MRP"). Turkey does not argue that the period of investigation is not in the recent past.

186. Turkey rather states that the most substantial increase in imports took place at the beginning of the period of investigation. This argument is mistakenly premised on the, actually non-existing, requirement to show that the rate of the increase in imports in absolute terms must accelerate at every moment of the period of investigation and that the increase must take place mostly at the end of the period of investigation. The Appellate Body established that the real significance of the short-term trends in the most recent data, evident at the end of the period of investigation, may only emerge when those short-term trends are assessed in the light of the longer-term trends in the data for the whole period of investigation.[146]

187. In past cases, importance was given to a decline in imports that is sharper than previous increase and, as a matter of proportion, offset the increase of preceding

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144 Appellate Body Report, *Argentina – Footwear(EC),* para. 130 (emphasis original).

145 Panel Report, *Ukraine — Passenger Cars*, para. 7.165.

146 Appellate Body Report, *US – Lamb*, para. 138.

years.[147] This is not the case here. The data in this case shows that imports continued to increase in absolute and relative terms also at the end of the period of investigation. The competent authority correctly stated that the increase in imports between 2017 and the MRP picked up again because imports increased by around 4% between 2017 and the MRP compared to around 3% between 2016 and 2017.

188. Turkey's position that the most recent data shows an increase of 3% or 4% year-on-year which can hardly be described as being "sharp" or "sudden" is misleading since it isolates the period 2016-MRP from the whole period of investigation. It cannot be assumed that an increase of 3% or 4% in the mentioned intermediate periods constituted is not "sharp" or "sudden" enough, especially when this increase was calculated on the basis of an absolute volume of imports that had already increased significantly in the immediately preceding period.

189. Regarding the three product families, Turkey claims[148] that the European Commission failed to explain that imports were sudden enough, sharp enough, significant enough and recent enough considering that the data shows:

    a) for flat products, a substantial increase between 2013 and 2016, which did not increase further since then;

    b) for long products, a decrease between 2016 and 2017; and

    c) for tubes, a fluctuating trend throughout the period of investigation with a decrease between 2017 and the MRP.

190. While any fault found with regard to product families cannot give rise to an inconsistency with the covered agreements, the European Union replies nonetheless for completeness to Turkey's arguments.

191. First, regarding flat products, in light of the case law (para. 167 above), the mere fact that the increase remained stable after 2016 but at a much higher level than in the period 2013-2015 does not detract from the European Commission conclusion that imports "increased in such quantities". Moreover, the end-point-to-end-point analysis (64%) shows a substantial increase.[149]

192. Second, regarding long products, as already explained above, the very small decrease in imports of 1,13% between 2016 and 2017 does not weaken the European Commission's determination. The latter correctly found that the end-

147 Appellate Body Report, *US — Steel Safeguards,* para. 380.

148 Turkey's first written submission, paras. 206-211.

149 EU Definitive Measure Regulation, recital 35.

point-to-end-point (97% increase)[150] and the constant upward trend of imports with a steeper increase (about 22%) at the end of the period of investigation (2017-MRP) demonstrate that imports of long products "increased in such quantities".

193. Third, regarding tubes, the slight decreases in 2015 (11%) and 2016 (4%)[151] compared to 2014 do not offset the previous increase between 2013 and 2014. The European Commission correctly found that that end-point-to-end-point increase in imports (60%)[152] and the steep increase (around 44%) at the end of the period of investigation between 2016 and 2017 demonstrate that imports "increased in such quantities".

194. Finally, as regards the product categories, the European Union reiterates that it was not required to analyse the increase in imports in relation to each product category.

5.5. CONCLUSION

195. On the basis of the above, Turkey has failed to show that the European Union acted inconsistently with Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 with respect to its determination of increase in imports.

6. THE EUROPEAN UNION ACTED CONSISTENTLY WITH ARTICLES 2.1, 4.1(A), 4.1(B) AND 4.2(A) OF THE AGREEMENT ON SAFEGUARDS AND ARTICLE XIX:1(A) OF THE GATT 1994 WITH RESPECT TO ITS DETERMINATION OF A THREAT OF SERIOUS INJURY TO THE DOMESTIC INDUSTRY

196. Turkey claims that the European Union acted inconsistently with Articles 2.1, 4.1(a), 4.1(b) and 4.2(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 because it allegedly failed :

a) to make its threat of serious injury analysis with respect to each product category;

b) to provide a reasoned and adequate explanation of its determination of threat of serious injury;

c) to establish on the basis of facts that there was a high degree of likelihood of serious injury to its domestic industry in the very near future; and

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150 Ibid.

151 Actually, there was a small increase between 2015 and 2016.

152 Ibid.

d) to analyse each of the factors listed in Article 4.2(a) for the product categories.[153]

6.1. THE EUROPEAN UNION WAS NOT REQUIRED TO MAKE A THREAT ANALYSIS FOR EACH PRODUCT CATEGORY

197. By this argument, Turkey reiterates its main claim that the European Union failed to also analyse each product category.

198. The European Union recalls that it carried out an injury assessment at the definitive stage has been on a global basis, namely for the product concerned including the 26 product categories and refers further to its considerations above (paras. 27 and seq.).

199. The additional analysis at the level of the individual product categories, made at the provisional stage in order to confirm the above trends at a disaggregated level,[154] does not detract from the fact that the analysis in relation to the product concerned is the determinative one.

6.2. THE EUROPEAN UNION PROVIDED A REASONED AND ADEQUATE EXPLANATION OF ITS DETERMINATION OF THREAT OF SERIOUS INJURY

200. In Turkey's view, the European Union failed to demonstrate the existence of a significant overall impairment that is clearly imminent. In particular, the European Union failed:

a) to provide a reasoned and adequate explanation of its determination that the industry was "in a fragile and vulnerable position"; and

b) to make a determination based on the "recent past".[155]

6.2.1. The Union industry is in a "fragile and vulnerable position"

201. Turkey disagrees with the conclusion that the Union industry was in a "fragile and vulnerable position". While the situation of the Union industry deteriorated over the period 2013 to 2016, it substantially improved in the year preceding the imposition of the provisional measure, i.e. in 2017, and is, furthermore, confirmed by the data of the first semester of 2018.[156] As regards the situation of the Union steel industry when examined at the level of the product categories taken together, the data on

153 Turkey's first written submission, para. 225 and seq.

154 EU Provisional Measure Regulation, recital 47.

155 Turkey's first written submission, paras. 230-243.

156 Turkey's first written submission, para. 232.

sales volumes, production, sales prices, profitability and cash flow were better than any other year in the period 2013-2016.[157]

202. The European Union acknowledged the partial recovery in 2017 and explained that it could not establish the existence of serious injury and it assessed the threat thereof. It concluded that the Union industry was still in a fragile situation and under threat from serious injury:

> In the provisional Regulation, the Commission concluded that the situation of the Union industry deteriorated significantly in the period 2013-2016 and recovered partially in 2017. : However, the Commission considered that the Union industry, despite the temporary improvement, was still in a fragile situation and under the threat of serious injury if the increasing trend in imports continued with the ensuing price depression and profitability drop below sustainable levels.
>
> This provisional finding can also be confirmed at definitive stage in light of the above-mentioned updated analysis of the development of the injury indicators both globally and at the level of the three product families (flat products, long products and tubes).[158]
>
> … The Commission, therefore, concluded that the fact that the situation for the Union industry in 2017 showed an improvement as compared to previous years did not prevent the findings of the existence of a threat of serious injury.[159]

203. Turkey emphasizes the developments in the year 2017 but fails to look at the most recent developments in the semester of 2018 confirming the delicate situation of the Union industry and the threat posed by the most recent increase in imports:

> The European Commission's updated analysis shows that, overall, imports of the product concerned have, on an annual basis further increased. The imports in the first semester of 2018 were 17,4 million MT as compared to 15,4 million MT during the first semester of 2017 and 14,5 million MT during the second semester of 2017.[160]

204. Turkey itself admits that for some factors the Union industry did not outperform in 2017[161]: the market share which dropped by 5.4% from 2013 to 2017, its stocks, which grew by 19% during the same period, and its employment which decreased by 4% (9 208 jobs).[162]

205. Even if some factors improved in 2017, the period 2013-2016 indicates that the Union industry is vulnerable to an increase in imports. Specifically, during the

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157 Turkey's first written submission, paras. 233-234.

158 EU Definitive Measure Regulation, recitals 90-91.

159 Ibid., recital 97.

160 Ibid., recital 101.

161 Turkey's first written submission, paras. 234.

162 EU Definitive Measure Regulation., recital 73.

period 2013-2016 there was a significant price depression on the Union market: for example, unit sales prices decreased by 15 % and profitability overall remained at a very low level during the period 2013-2016 (between -1,0% and 2.2%). The improvement in 2017 could rapidly be reversed if imports would continue to increase (or surge, as a result of inter alia, the US Section 232 measures).[163]

206. Regarding the three product families, for the sake of completeness of the analysis, the European Commission replies that certain factors did not improve in 2017:

    a) market shares decreased for flat products (minus 7 percentage points), long products (minus 3 percentage points) and tubes (minus 5 percentage points).[164]

    b) stocks for flat and long products increased by 12% and 14% respectively during the period 2013 - 2017, while, for tubes, they nearly doubled.[165]

    c) unit sales prices decreased during 2013-2017 for long products (-4%) and tubes (-13%).[166]

    d) cash flow decreased considerably for tubes and stayed negative until the end of 2017.[167]

    e) employment for flat products (-6%) and tubes (-12%) decreased during the same period.[168]

207. Finally, even if some factors improved in 2017 for each product family, the difficult economic situation during the period 2013-2016 indicates that the Union industry is vulnerable to an increase in imports in relation to each product family.

208. In line with the above considerations (paras. 148-154), the European Union considers that it was not required to make a determination regarding the situation of the Union industry at the product category level.

6.2.2. The European Union made a determination based on the "most recent past"

163 Ibid., recital 97.

164 Ibid., recital 77.

165 Ibid., recital 81.

166 Ibid., recital 83.

167 Ibid., recital 85.

168 Ibid., recital 86.

209. Turkey recalls that "… evidence from the most recent past will provide the strongest indication of the likely future state of the domestic industry" and that, in this case, the data concerning most injury factors show a clear positive trend over the period of investigation and, for 2017, the best performance for the entire period of investigation. Therefore, in Turkey's view, the date does not support the finding of "threat of serious injury".[169]

210. The European Union disagrees.

211. First, the data for the product concerned does not show a clear positive trend for most injury factors over the period of investigation (2013-2017)[170]:

    a) there was significant price depression on the Union market until 2016, prices recovering to their 2013 level only in 2017;

    b) the Union producers lost 5.4 percentage points in market shares from 2013 to 2017;

    c) profitability decreased during 2013-2015 and the industry "achieved a marginal profit level in 2016 and increase it to a more sustainable level in 2017 (5,6 %)".[171]

    d) stocks grew by 19%;

    e) employment which decreased by 4% (9 208 jobs).

212. Second, the fact that the economic situation recovered in 2017, does not detract from the finding of a threat of serious injury. Turkey focuses on the data in 2017, but the Appellate Body considered that placing:

> too much emphasis on certain data from the most recent past, while neglecting other, even more recent data. Also, the Panel did not ensure that the data was assessed in the context of the data for the entire period of investigation. The Panel's approach improperly excluded the possibility that short-term trends in the data, evident in the last 21 months of the period of investigation, could possibly be a misleading indicator of the likely future state of the domestic industry, when viewed in the context of the data for the entire period of investigation.[172]

213. In this case, the competent authority confirmed that the partial[173] ongoing provisional recovery could quickly be reversed if a further increase of imports was

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169 Turkey's first written submission, paras. 240-243.

170 Sections 5.1-5.3 of the EU Definitive Measure Regulation.

171 EU Definitive Measure Regulation, recital 72.

172 Appellate Body Report, *US – Lamb*, para. 139.

173 EU Definitive Measure Regulation, recital 89.

to take place (or surge as a result, inter alia, of the Section 232 measures).[174] The post-2017 data analysis shows that the upward trend in imports continued and the first signs of trade diversion have already been observed in the months following the entry into force of the US Section 232 measures, with imports into the USA progressively decreasing and imports into the Union increasing.[175]

214. The economic recovery of the Union industry in 2017 has to be considered in the context of the entire period of investigation that showed an initial period of significant deterioration and of the post-2017 data analysis that showed a clear trend of continuous increase of imports into the Union. For each month in 2018, import volumes into the Union in 2018 were higher than import volumes in 2017. The differences were more substantial in June and July 2018, a few months after the imposition of the US Section 232.[176]

215. The imports into the Unites States consistently showed that there was a clear and steady trend of a decrease in imports into the USA. This progressive decrease was already causing and was going to further generate trade diversion that is liable to speed up the increase trend of imports into the Union.[177] Some of the main exporters to the US are also traditional steel suppliers to the Union. It is more than likely that these countries, as well as others, will to a large extent be willing to redirect their exports to the Union. The Union market is indeed generally an attractive market for steel products both in terms of demand and prices. In fact, the EU is, after China, but before the U.S., one of the main markets for steel, where demand has increased in the last years and prices have also now recovered.[178]

6.2.3. The European Union correctly established, on the basis of facts, that there is a high degree of likelihood of serious injury to its domestic industry in the very near future

216. Turkey submits that the European Union failed to demonstrate that the Union industry faced an actual threat of serious injury during the period of investigation but rather of a possible threat of serious injury that "might" occur in the future.[179] Moreover, even if the threat is actual, it is not "clearly imminent" as it has been

174 EU Definitive Measure Regulation, recital 95.

175 Ibid., recital 100.

176 EU Definitive Measure Regulation, recital 102.

177 EU Definitive Measure Regulation, recital 109.

178 EU Provisional Measure Regulation, recital 67.

179 Ibid., paras. 249-250.

established on the basis of conjecture or a remote possibility as it is conditional on a future increase of imports.[180]

217. The Appellate Body clarified the meaning of the term "threat of serious injury":

> Returning now to the term "threat of serious injury", we note that this term is concerned with "serious injury" which has not yet occurred, but remains a future event whose actual materialization cannot, in fact, be assured with certainty. We note, too, that Article 4.1(b) builds on the definition of "serious injury" by providing that, in order to constitute a "threat", the serious injury must be "clearly imminent". The word "imminent" relates to the moment in time when the "threat" is likely to materialize. The use of this word implies that the anticipated "serious injury" must be on the very verge of occurring. Moreover, we see the word "clearly", which qualifies the word "imminent", as an indication that there must be a high degree of likelihood that the anticipated serious injury will materialize in the very near future. We also note that Article 4.1(b) provides that any determination of a threat of serious injury "shall be based on facts and not merely on allegation, conjecture or remote possibility." (emphasis added) To us, the word "clearly" relates also to the factual demonstration of the existence of the "threat". Thus, the phrase "clearly imminent" indicates that, as a matter of fact, it must be manifest that the domestic industry is on the brink of suffering serious injury.163 (original emphasis).[181]

218. Contrary to Turkey's argument, the European Union has shown that the effects of the imports are noticeable on the situation of the domestic industry during the period of investigation, creating a situation of "threat of serious injury" during that period. The post-2017 data analysis made by the European Commission shows a clear trend of continuous increase of imports into the Union. The competent authority's consideration[182] that the Union industry will find itself in a vulnerable and critical situation if imports continue to increase simply reflects that a threat determination is by definition "future-oriented" and whose actual materialization cannot, in fact, be assured with certainty. However, this determination is based on facts, i.e. the 2013-2017 analysis and the post-2017 data analysis, and not, as Turkey claims, on conjecture.

219. As to whether the threat is "clearly imminent", Turkey reads out of context that "threat of serious injury" is clearly conditional upon continuing to increase and fails to notice that the threat determination is based on the increase in imports taking place in January-September 2018.

220. In this respect, the European Commission found at the provisional stage that:

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180 Ibid., paras. 251-253.

181 Appellate Body Report, *US – Lamb*, para. 136.

182 EU Definitive Measure Regulation, recitals 97, 113-114.

a) The recent U.S. decision not to exclude EU exports from the scope of Section 232 measures will likely reduce the Union producers' ability to export their products and make their situation even more vulnerable;[183]

b) the Union has imposed a number of anti-dumping and anti-subsidy measures against imports of steel products; the further increase of imports in 2018 – in particular from those countries or exporters not subject to trade defence measures – is likely to prevent the industry from a full recovery and from benefiting from these measures;[184]

c) in a situation of global overcapacity in various countries, it is expected that the restrictive U.S. Section 232 measures, given their level and scope, are likely to cause trade diversion of steel products in the Union also because the main exporters to the US are also traditional steel suppliers to the Union.[185]

221. At the definitive stage, the updated analysis (until September 2018) confirmed the analysis made at the provisional stage by showing that, overall, imports of the product concerned have, on an annual basis, further increased:

a) the level of imports into the Union in the first semester of 2018 amounted to 17,4 million MT as compared to 15,4 million MT during the first semester of 2017 and 14,5 million MT during the second semester of 2017;[186]

b) for each and every month in 2018, import volumes into the Union in 2018 were higher than import volumes in 2017;[187]

c) clear and steady trend of a decrease in imports into the USA, in particular since the imposition of the US Section 232 measures; this is already causing and will further generate an increase of imports into the Union;[188]

d) the US market will no longer be able to absorb an increased domestic production and the same level of imports as before; therefore, exporting

183 EU Provisional Measure Regulation, recitals 60 and 65.

184 EU Provisional Measure Regulation, recital 61.

185 EU Provisional Measure Regulation, recitals 6-67.

186 EU Definitive Measure Regulation, recital 101.

187 Ibid., recital 102.

188 Ibid., recitals 104-109.

producers will have to look for alternative markets and the Union market is then, in view of its size, an ideal substitute market.[189]

222. Thus, the above evidence shows that the threat of serious injury is based on the existing increasing trend in imports in the Union and not on mere conjecture or remote possibility.

6.2.4. The European Union was not required to analyse each of the injury factors listed in Article 4.2(a) for the product categories

223. Turkey claims that the European Commission failed, first, to analyse - the data regarding the situation of the Union industry for product categories 10, 19, 24 and 27 that were included in the investigation at the definitive stage and, second, to analyse the different injury factors per product category.

224. Both arguments are premised on the idea that a competent authority is required to analyse each individual product included in a product concerned consisting of multiple products. As explained above (paras. Sections 4.2.2. and 5.1), the GATT 1994 and the Agreement on Safeguards do no impose such requirement.

6.3. CONCLUSION

225. On the basis of the above, Turkey has failed to show that the European Union acted inconsistently with Articles 2.1, 4.1(a), 4.1(b) and 4.2(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 with respect to its determination of a threat of serious injury to the domestic industry.

7. THE EUROPEAN UNION ACTED CONSISTENTLY WITH ARTICLES 2.1 AND 4.2(B) THE AGREEMENT ON SAFEGUARDS AND ARTICLE XIX:1(A) OF THE GATT 1994, WITH RESPECT TO ITS DETERMINATION OF THE CAUSAL LINK BETWEEN THE INCREASE IN IMPORTS AND THE THREAT OF SERIOUS INJURY TO THE DOMESTIC INDUSTRY

226. Turkey failed to demonstrate that the European Union acted inconsistently with Articles 2.1 and 4.2(b) the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, since the competent authority demonstrated the existence of a causal link between the increased imports and the threat of serious injury to the domestic industry as required by those provisions.

7.1. FACTUAL CONSIDERATIONS

189 Ibid., recital 107.

227. In the EU Provisional Measure Regulation, the competent authority found a causal link between the increase in imports and a threat of serious injury to the Union industry. The competent authority relied on a number of factors in reaching that conclusion:

(i) the product produced by the Union producers was like or directly competing with the product concerned;[190]

(ii) the Union producers had suffered loss of market share and unsustainable levels of profit;[191]

(iii) imports of the product concerned increased significantly during the period 2013 - 2017 and took away Union market share because of lower price levels;[192]

(iv) the link between increased imports and the Union situation was especially marked during the interval 2013 – 2016, while imports remained high and undercut Union prices in 2017;[193]

(v) Union industry profits were still vulnerable even if profits recovered;[194]

(vi) against this background, it was considered that the US Section 232 measures were likely to cause imminent serious injury to Union producers.[195]

228. With regard to the non-attribution analysis, the competent authority found that the global overcapacity boosted cheap imports but was not as such so as to break the causal link, and that imports from the EEA countries were not sufficient to affect the situation of the Union industry.[196] The competent authority did not identify other factors that could have weakened the causal link between the increased imports and the threat of serious injury.

229. In the EU Definitive Measure Regulation, the competent authority confirmed the causal link between the increase in imports and a threat of serious injury to the Union industry.[197] In response to various submissions from interested parties, the competent authority explained that:

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190 EU Provisional Measure Regulation, recital 70 (Exhibit TUR-3).

191 EU Provisional Measure Regulation, recital 71.

192 EU Provisional Measure Regulation, recital 72.

193 EU Provisional Measure Regulation, recital 74

194 EU Provisional Measure Regulation, recital 75.

195 EU Provisional Measure Regulation, recital 76.

196 EU Provisional Measure Regulation, recitals 79-80.

197 EU Definitive Measure Regulation, recitals 112-117, 127 (Exhibit TUR-5).

(i) while the Union industry achieved profitable levels of production in 2017, which was clearly higher than in all other years of the period considered, the largest increase of imports was between 2014 and 2015, and the parallel profitability dropped in that same period; moreover, the profitability achieved in 2017 can be considered as temporary in the circumstances of a continuously increasing import trend and exceptionally favourable sales prices on the market in that period;[198]

(ii) anti-dumping and anti-subsidy measures do not follow the same logic as safeguard measures; the anti-dumping and anti-subsidy measures at issue concern only a few of the product categories covered by the current investigation and only from certain origins;[199]

(iii) With regard to the development of raw material costs, the cost of production trend is similar to the trend in sales prices, with the exception of 2017 when sales prices were exceptionally favourable as compared to costs, resulting in a relatively high profit; it does not reveal any particular link between raw material cost and profitability development;[200]

(iv) an analysis of the export performance of the Union industry with regard to the product concerned revealed (a) that the volumes exported by the Union industry throughout the period considered are relatively small as compared to the volumes sold on the Union market and (b) that the export price development was rather flat over the period considered, with the exception of 2016 when export prices were overall significantly lower than in the other years;[201]

(v) with regard to the role of imports made by Union producers or related traders/distributors, these imports were marginal and relatively stable over the period considered, representing 0,3 % to 0,7 % of total imports depending on the year;[202]

(vi) a global causation analysis is warranted in view of the high degree of interrelation between the product categories that make up the product concerned, that the imported product and the Union product are 'like or directly competing'.[203]

230. In light of the above, the competent authority concluded that the cumulative attribution analysis of these factors "both separately and when taken together,

198 EU Definitive Measure Regulation, recital 114.

199 EU Definitive Measure Regulation, recitals 115 - 116.

200 EU Definitive Measure Regulation, recitals 118 - 120.

201 EU Definitive Measure Regulation, recitals 121 - 123.

202 EU Definitive Measure Regulation, recital 124.

203 EU Definitive Measure Regulation, recitals 125 - 126.

did not attenuate the causal link between increase in imports and the threat of serious injury to the Union industry."[204]

7.2. LEGAL ANALYSIS

231. Turkey wrongly alleges that the European Union acted inconsistently with Articles 2.1 and 4.2(b) the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, as it failed to establish the existence of a causal link between the increased imports and the threat of serious injury to the domestic industry. It also contends that the European Union failed to ensure that injury caused by factors other than imports had not been attributed to imports.

7.2.1. The European Union established the existence of a causal link between the increased imports and the threat of serious injury

232. Turkey alleges that the European Union failed to establish a causal link between the increased imports and the threat of serious injury for the following reasons:

- There was no coincidence in time between the movements in imports and the movements in injury factors;
- The European Commission did not provide a compelling explanation as to why, notwithstanding the lack of such a coincidence, a causal link nonetheless existed; and
- The European Commission established that a risk of further increase in imports threatens to cause serious injury to the Union industry.[205]

233. The European Union would like to start by noting that the competent authority "has established a threat of serious injury if imports continue to increase. It has not established injury during the investigation due to the increase of imports over the period considered".[206]

234. The primary objective of the process of establishing the causal link is to determine whether there is a genuine and substantial relationship of cause and effect between the increased imports and the threat of serious injury.[207] It is a projection of what is rational and reasonable to expect if increased imports continue to pour in a similar manner.

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204 EU Definitive Measure Regulation, recital 127.

205 Turkey's first written submission, para. 271.

206 EU Definitive Measure Regulation, recital 113.

207 Appellate Body Report, *US – Line Pipe*, para. 211.

235. Throughout the causality part of its submission, Turkey seems to assimilate serious injury to threat of serious injury. This is not a reasonable approach. While serious injury is already materialized, a threat of injury is only about to materialize, it is clearly imminent, and the very purpose of a safeguard measure is to avoid that happening:

> Returning now to the term "threat of serious injury", we note that this term is concerned with "serious injury" which has not yet occurred, but remains a future event whose actual materialization cannot, in fact, be assured with certainty.[208]

236. Thus, when Turkey paints the graphs juxtaposing increased imports and certain injury indicators (e.g. profitability), it must be borne in mind that the situation is one of threat of injury.

237. Turkey's claims with regard to the lack of correlation between the increased imports and different injury factors have to be rejected, as there is a coincidence in time between the upward trend in the imports and the trends in those injury factors over the period of investigation.

238. First, with regard to market share, the competent authority found that imports of the product concerned increased significantly during the period 2013-2017, taking away Union market shares because of price levels lower than those of the EU steel producers. Importantly, the market share of imports grew overall from 12,2 % to 17,6 % and import prices remained almost systematically lower than the Union sales prices for each individual product.[209]

239. Turkey does not seem to dispute this finding in its submission. Instead, it attempts to downplay its importance and to emphasize alleged mismatches with regard to trends in profitability and prices.

240. Second, with regard to profitability and prices, as already explained, the Appellate Body found that short-term trends in the data could possibly be a misleading indicator of the likely future state of the domestic industry, when viewed in the context of the data for the entire period of investigation.[210]

241. With that consideration in mind, when looking at the increase in imports and the evolution of the injury factors, the European Union recalls that even if some factors improved in 2017, the period 2013-2016 indicates that the Union industry is vulnerable to an increase in imports.

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208 Appellate Body Report, *US – Lamb*, para. 125.

209 EU Provisional Measure Regulation, recital 73.

210 Appellate Body Report, *US – Lamb*, para. 139.

242. In particular, during the period 2013-2016 there was a significant price depression on the Union market: for example, unit sales prices decreased by 15 % and profitability overall remained at a very low level during the period 2013-2016 (between -1,0% and 2.2%).[211]

243. For all product categories, there was significant price depression on the Union market until 2016. Prices recovered to their 2013 level afterwards. The Union steel industry could reduce its cost of production to achieve a marginal profit level in 2016 and increase it to a more sustainable level in 2017 (5,6 %).[212]

244. However, the improvement in 2017 could rapidly be reversed if imports would continue to increase (or surge, as a result of inter alia, the US Section 232 measures).[213]

245. With regard to the three product families, certain factors did not improve in 2017, when unit sales prices decreased during 2013-2017 for long products (-4%) and tubes (-13%).[214]

246. Finally, even if some factors improved in 2017 for each product family, the difficult economic situation during the period 2013-2016 indicates that the Union industry is vulnerable to an increase in imports in relation to each product family.

247. Thus, the record shows that (i) the Union producers suffered loss of market share and unsustainable levels of profit;[215] (ii) the link between increased imports and the Union situation was especially marked during the interval 2013 – 2016, while imports remained high and undercut Union prices in 2017;[216] and (iii) the economic situation of the Union industry was still vulnerable, even if profits recovered.[217]

248. All these explanations, substantiated by tables and figures, meet the required standard of causality in light of the relevant case-law.

249. Thus, to sum up: at this stage of the legal analysis, Turkey does not seek to take issue with an important injury factor, namely the loss of market share,

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211 EU Provisional Measure Regulation, recital 45 and EU Definitive Measure Regulation, recital 97.

212 EU Definitive Measure Regulation, recital 72.

213 EU Definitive Measure Regulation, recital 97.

214 Ibid., recital 83.

215 EU Provisional Measure Regulation, recital 72.

216 EU Provisional Measure Regulation, recital 74

217 EU Provisional Measure Regulation, recital 75.

while it has difficulties in demonstrating its thesis with regard to profitability and prices, as it fails to take into account important evolutions during the whole period of investigation.

250. In any event, as Turkey admits, a competent authority may make a compelling analysis without showing a correlation between the increase in imports and the evolution of certain injury factors.

251. Indeed, the case law confirms the flexibility enjoyed by a competent authority, as long as it is unbiased and objective in its assessment.

252. For instance, even in the case of serious injury, a correlation is not dispositive in a causation analysis. In *Argentina – Footwear (EC)*, the Appellate Body explained that:

> … with respect to a "coincidence" between an increase in imports and a decline in the relevant injury factors, we note that the Panel simply said that this should "normally" occur if causation is present. The Panel qualified this statement, however, with the following sentence:
>
> While such a coincidence by itself cannot *prove* causation … its absence would create serious doubts as to the existence of a causal link, and would require a *very* compelling analysis of why causation still is present.[218]

253. Thus, the Appellate Body made clear that "the existence of correlation, though indicative, is by no means dispositive of the existence of a causal link. Indeed, the Appellate Body considered that the lack of correlation does not preclude a finding that a causal link exists, provided that a very compelling analysis is provided":[219]

> However, … the examination of the conditions of competition and the analysis of correlation between movements in imports and injury factors are merely "analytical tools" that may assist an investigating authority in determining whether rapidly increasing imports are "a significant cause" of material injury to the domestic industry. As such, neither of these analytical tools is dispositive of the question of whether rapidly increasing imports are "a significant cause" of material injury to the domestic industry under Paragraph 16.4.[220]

254. With these considerations in mind, the European Union recalls that the competent authority explained that:

> In the period 2013-2016 there was a significant price depression on the Union market: Unit sales prices decreased by 15%. It should be

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218 Appellate Body Report, *Argentina – Footwear (EC)*, para. 144 (quoting Panel Report, *Argentina – Footwear (EC)*, para. 8.238) (original emphasis; footnotes omitted).

219 Appellate Body Report, *US — Tyres (China)*, para. 194.

220 Appellate Body Report, *US — Tyres (China)*, para. 192. (original footnote omitted)

> recalled that imports also increased significantly during this period. The average unit sales price recovered however in 2017 and reached a level comparable to 2013. Profitability overall remained at a very low level during the period 2013-2016. Despite a significant decrease in prices, the Union industry could nevertheless reduce its cost of production in 2016 to such an extent that it managed to make a small level of profit of 2,2%. The situation temporarily recovered in 2017. Sales prices increased by almost 20% between 2016 and 2017 and reached their 2013 level. The Union industry achieved a level of profit of 6,2% since cost of production (raw material), even if increasing, remained lower than in 2013. The overall cash flow position of the Union industry increased by approximately 60%.[221]

255. Thus, when looking at the totality of the analysis with regard to the relationship between increased imports and the evolution of market shares, profitability and prices, as already explained, it follows that the competent authority provided reasoned and adequate explanations that meet the legal standard required by Articles 2.1 and 4.2(b) of the Agreement on Safeguards.

256. In light of the above, Turkey failed to demonstrate that the competent authority did not prove the required causality between increased imports and the threat of serious injury.

7.2.2. With regard to the non-attribution analysis

257. The competent authority examined relevant factors other than increased imports, ensuring that the injury caused by such other factors was not attributed to the increased imports.[222] Following this analysis, it has not identified other factors that would weaken the causal link between the increase in imports and the serious injury to the Union producers.

258. The "other factors" the competent authority has considered in its analysis of possible factors causing injury to the domestic industry are described in the EU Provisional Measure Regulation and in the EU Definitive Measure Regulation.[223]

259. In particular, at the provisional stage the competent authority analyzed the effects of the global overcapacity and found that, albeit facilitating cheap imports it was not of a kind to break the causal link.[224]

260. Similarly, the imports from the EEA countries were not sufficient to affect the situation of the Union industry:

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221 EU Provisional Measure Regulation, recital 45.

222 Panel Report, *India – Iron and Steel Products*, para. 7.237.

223 Recitals 78 - 81 of the EU Provisional Measure Regulation and to recitals 112 - 127 of the EU Definitive Measure Regulation.

224 EU Provisional Measure Regulation, recital 79.

> Indeed, and while the imports from these countries have indeed contributed for some product categories to an increase in imports (overall imports from these countries show an increase of approximately 9 %), the share of those imports in the total imports is limited (EEA share in imports is about 1,5 %, with a corresponding market share of 0,3 % in total). In addition, EEA members are traditionally minor suppliers of the product concerned to the U.S., which means that the risk of trade diversion has preliminarily been determined to also be limited. Having, therefore, regard to the traditionally minor supplies to the U.S., the maturity of the industry in EEA markets, and the related limited risk of trade diversion stemming therefrom, the Commission considers that imports of the products concerned from EEA members may only have very marginally, if at all contributed to the threat of serious injury.[225]

261. At that stage no other factors were identified that could have weakened the causal link between the increased imports and the threat of serious injury.

262. At the definitive stage, the competent authority confirmed the causal link between the increase in imports and a threat of serious injury to the Union industry.[226] On the same occasion, it analysed several possible "other factors".

263. With respect to the development of raw material costs, the competent authority noted that the cost of production trend is similar to the trend in sales prices, with the exception of 2017, when sales prices were exceptionally favourable as compared to costs. It thus concluded that it does not reveal any particular link between raw material cost and profitability development.[227]

264. As to the export performance of the Union steel industry, it was noted that the volumes exported by the Union industry throughout the period considered are relatively small as compared to the volumes sold on the Union market. At the same time, the export price development was rather flat over the period considered, with the exception of 2016 when export prices were overall significantly lower than in the other years.[228]

265. With regard to the role of imports made by Union producers or related traders/distributors, it was noted that those imports were marginal and relatively stable over the period considered, representing 0,3 % to 0,7 % of total imports depending on the year.[229]

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225 EU Provisional Measure Regulation, recital 80.

226 EU Definitive Measure Regulation, recitals 112-117, 127 (Exhibit TUR-5).

227 EU Definitive Measure Regulation, recitals 118 - 120.

228 EU Definitive Measure Regulation, recitals 121 - 123.

229 EU Definitive Measure Regulation, recital 124.

266. On the basis of all this data before it, the competent authority concluded that no other factor was capable of breaking the established causal link between the increased imports and the threat of serious injury.

267. In light of all the above considerations, Turkey failed to show that the European Union acted inconsistently with Articles 2.1 and 4.2(b) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 and its claims with regard to causality must be rejected.

8. THE EUROPEAN UNION ACTED CONSISTENTLY WITH ARTICLES 5.1 AND 7.1 OF THE AGREEMENT ON SAFEGUARDS AND ARTICLE XIX:1(A) OF THE GATT 1994 IN ITS APPLICATION OF THE SAFEGUARD MEASURES

268. Turkey alleges that the European Union acted inconsistently with Article 5.1, first sentence, and Article 7.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 as it applied safeguard measures beyond the extent and duration necessary to prevent serious injury and to facilitate adjustment.

269. The European Union disagrees.

270. Indeed, the approach adopted by the competent authority was such as "to ensure that the measure applied is commensurate with the goals of preventing or remedying serious injury and to facilitating adjustment."[230]

271. To recall, at the provisional stage the competent authority considered that the "openness of the Union market should be preserved and the traditional flow of imports should be maintained".[231] That was a major consideration for the choice of tariff rate quotas.[232]

272. That was confirmed at the definitive stage, as "a tariff-rate quota is indeed the best form of measure to balance the various interests at stake, namely preventing serious injury and ensuring that traditional trade flows are maintained".[233]

273. Thus, the safeguard measure at issue took the form of tariff rate quotas, imports being subject to a duty of 25% when exceeding a quota. The tariff rate

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230 Appellate Body Report, *Korea – Dairy*, para. 96, referring to the Panel Report, para. 7.100-7.101.

231 EU Provisional Measure Regulation, recital 97 (Exhibit TUR-3).

232 EU Provisional Measure Regulation, recital 98.

233 EU Definitive Measure Regulation, recital 165 (Exhibit TUR-5).

quotas have been calculated for each product category, as the average import volumes during the period 2015-2017, plus 5%.[234]

274. What Tukey seems to take issue with within this claim is not the within-the-quota determination, but the out-of-quota 25% duty, which it separates from the former element of the tariff rate quota.

275. The competent authority duly explained with regard to the setting of the level of the out-of-quota 25% duty that:

> unless the Union imposes an above quota tariff on the relevant steel import of an amount at least equal to the tariff applied by the US, the exporter to the US will gain extra margin or minimise the loss thereof by redirecting sales to the EU.[235]

276. The different elements of the tariff rate quota have to be taken together so as to understand its design and operation. A threat of injury situation by definition involves certain projections. These projections have to meet a stringent legal standard, but their essence remains. Against this background, the competent authority has transparently explained how in an objective and unbiased way, it designed the tariff rate quotas (both the within-the-quota and out-of-quota components), precisely to cater for the various competing interests, and in particular having in mind the requirement that a safeguard measure has to be applied only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.

277. Then, as a consequential claim, Turkey contends that "it follows that the violation of Article 4.2(b) constitutes a sufficient basis for a *prima facie* case that the safeguard measures have not been applied 'only to the extent necessary to prevent or remedy serious injury' as required by Article 5.1 of the Agreement on Safeguards".[236] As the European Union has explained in the previous section, the competent authority established the existence of a causal link between the increased in imports and the threat of serious injury. Thus, this sub-claim should be dismissed.

278. For the same reasons, Turkey alleges that the European Union also violated Article 7.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994:

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234 EU Definitive Measure Regulation, recital 144.

235 EU Definitive Measure Regulation, recital 173.

236 Turkey's first written submission, para. 331.

> Since the European Union failed to make a proper causation analysis in accordance with Article 4.2(b), it was unable to ensure that the safeguard measures were applied only for such a period of time necessary to address the serious injury attributed to increased imports. Consequently, the period of 3 years does not represent the period of time necessary to address the serious injury caused by increased imports.[237]

279. This contention must similarly be rejected. A duration of 3 years, as opposed to a longer period of time, was precisely designed, in an objective and unbiased manner, so as to apply the safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

280. Finally, a third direction of Turkish critiques comes from the fact that European Union applied the definitive safeguard measure allegedly to "address the serious injury caused by dumped and subsidized imports".[238]

281. As the competent authority explained,

> In order to avoid the imposition of 'double remedies', whenever the tariff quota is exceeded, the level of the existing anti-dumping and countervailing will be suspended or reduced to ensure that the combined effect of these measures does not exceed the highest level of the safeguard or anti-dumping/countervailing duties in place.[239]

282. Indeed, the rationale of this approach is the avoidance of double remedies for those steel product categories concerned originating from some countries also subject to anti-dumping and/or countervailing duties. As explained by the competent authority, "a cumulation of anti-dumping/anti-subsidy measures with safeguards may lead to a greater effect than desirable" and the "issue of cumulation would only potentially arise once tariff-rate quota ceilings are reached".[240] This cannot be legally characterized as a failure to apply the measure only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. The within-the-quota figures were precisely designed in order to satisfy the very logic of safeguard measures and the legal requirement in Article 5.1.

283. In light of the above, Turkey failed to show that the European Union acted inconsistently with Article 5.1, first sentence, and Article 7.1 of the Agreement

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237 Turkey's first written submission, para. 333.

238 Turkey's first written submission, para. 334.

239 EU Provisional Measure Regulation, recital 117.

240 EU Definitive Measure Regulation, recital 186.

on Safeguards and Article XIX:1(a) of the GATT 1994 and its claim should be rejected by the Panel.

9. THE EUROPEAN UNION ACTED CONSISTENTLY WITH ARTICLE XIII:2 CHAPEAU AND PARAGRAPH (D) OF THE GATT 1994, AS WELL AS WITH ARTICLE 5.2(A) OF THE AGREEMENT ON SAFEGUARDS

284. Turkey claims that the European Union acted inconsistently with Article XIII:2 chapeau, Article XIII:2(d) of the GATT 1994 and Article 5.2(a) of the Agreement on Safeguards as it failed to allocate the shares of the TRQs by taking into account imports of a previous representative period, due account being taken of any special factors affecting the trade in the product concerned.[241] In particular, Turkey claims that the European Union should have used for the purpose of allocation of the shares of the TRQs data of the most recent period, i.e. including the first six months of 2018.[242]

285. The European Union starts by recalling that Article 5.2(a) of the Agreement on Safeguards does not apply in this case because it does not apply to tariff rate quotas. This is because a tariff-rate quota is the setting of a typically lower import duty that applies for a set quantity of imports after the importation of which a higher import duty applies. In this sense, a tariff-rate quota is the combination of two tariff rates and the setting of a quantity of imports after which the lower duty switches to the higher one. Import duties are tariff measures and not "quantitative restrictions":

> We do not consider that tariff quotas are "quantitative restriction[s]" within the meaning of Article 5. We note that the second sentence of Article 5.1 refers to quantitative restrictions in the sense of measures that "reduce the quantity of imports below [a certain] level". Tariff quotas do not necessarily reduce the volume of imports below any predetermined level, since they do not impose any limit on the total amount of permitted imports (whether globally or from a specific country). Tariff quotas merely provide that imports in excess of a certain level shall be subject to a higher rate of duty. Thus, it would appear that tariff quotas are not the sort of measure envisaged by the reference in the second sentence of Article 5.1 to "quantitative restriction[s] [that] reduce the quantity of imports below [a certain] level".[243]

286. This rationale is simple: a tariff rate quota is not a quantitative restriction because it imposes no quantitative limitation on imports, which are allowed

241 Turkey's first written submission, para. 336.

242 Turkey's first written submission, para. 348.

243 Panel Report, *US- Line Pipe*, para. 7.69.

subject to duties of different levels. In-quota imports come in at a lower duty, (e.g. zero), and out-of-quota imports come in at a higher duty (e.g. 25%), to the extent this higher duty still makes trade profitable.

287. In order to allocate country-specific tariff quota shares consistently with the requirements of Article XIII of the GATT 1994, a Member has to base such shares on an appropriate previous representative period and any special factors would have to be applied on a non-discriminatory basis.[244]

288. In the context of establishing which Members hold a substantial supplying interest, the panel in *EU - Poultry Meat (China)* concluded that "there is no general rule always requiring the use of the most recent three-year period prior to the entry into force of a TRQ".[245]

289. Although the European Union considers that a similar approach is warranted when considering the "previous representative period" for the purpose of the second sentence of Article XIII:2(d), which is not defined, it is also true that there is a widespread practice in the GATT and WTO to resort to recent three-year periods as representative periods. Indeed, the treaty language on the legal standard does not go further than referring to a "previous representative period".

290. The fact that the competent authority used an average of the imports during the period 2015-2017 meets precisely this legal criterion of the "previous representative period". Of note, this period of three years is also a recent one, as the competent authority did not include the year 2014 as part of that period, which would have resulted in different figures.

291. Thus, the tariff rate quotas were distributed in the least trade-distorting manner and in full conformity with the non-discrimination requirements of Article XIII, so as to serve the aim of a distribution of trade approaching "as closely as possible" the shares that various Members may be expected to obtain in the absence of the tariff rate quotas, as required by the chapeau of Article XIII of the GATT 1994. The competent authority precisely achieved that, as the consideration of the average imports during the last three years prior to the initiation of the investigation reflect as closely as possible such historical share.

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244 Article XIII:2(d) of the GATT 1994, confirmed also in the Panel Report, *EC – Bananas III (Guatemala and Honduras)*, para. 7.94.

245 Panel Report, *EU - Poultry Meat (China)*, para. 7.353.

292. Turkey claims that "the additional ad-hoc 12-month period made of the last 6 months of 2017 and the first 6 months of 2018 ('the most recent period' or 'MRP')", which was considered in order to assess the increase in imports, should also have been used for the purpose of the tariff rate quota calculations.[246]

293. The European Union disagrees. The treaty language is different with regard to increased imports and the previous representative period, and the approach adopted by the competent authority precisely caters for those differences.

294. Safeguard measures are permitted only when a product is being imported in increased quantities, i.e. the increase must still exist when the determination is made and in that sense must be recent. Also, the increase must be such that it caused the threat of serious injury.[247] Indeed, as the very title of Article XIX of the GATT 1994 suggests, a safeguard measure is an "emergency action". This is what requires an investigation period that focuses significantly on the recent past and why investigating authorities add to it months of an uncompleted year when the moment of the investigation warrants that.

295. In contrast, for trade statistics it is important to use representative periods, which for reasons of seasonal variations requires the use of full years, for representativeness purposes also several years (very often, as here, three), which in the averaging are of equal weight, i.e. without special focus on the most recent year.

296. In light of the above, it becomes clear that the EU acted in full conformity with Article XIII of the GATT 1994. Accordingly, Turkey failed to demonstrate that the European Union acted inconsistently with Article XIII of the GATT 1994 and Article 5.2(a) of the Agreement on Safeguards and those claims have to be rejected.

10. THE EUROPEAN UNION ACTED CONSISTENTLY WITH ARTICLES 7.4 AND 5.1 OF THE AGREEMENT ON SAFEGUARDS WITH REGARD TO THE PACE OF LIBERALIZATION

297. Turkey alleges that the European Union acted inconsistently with Article 7.4 and Article 5.1, first sentence, of the Agreement on Safeguards because the

246 Turkey's first written submission, para. 351.

247 Appellate Body Report, *Argentina – Footwear (EC)*, para. 131.

safeguard measure became more trade restrictive following the first and second reviews, as the pace of liberalization of the measure was reduced.[248]

298. As per the requirements of Article 7.4, the safeguard measure at issue, exceeding one year, was progressively liberalized, in order to facilitate adjustment of the domestic industry by increasing its exposure to foreign competition.

299. The European Union reviewed the definitive safeguard measure in 2019. As part of that review, the liberalization rate was set at 3% during the second and third year of the application of the measure:

> (143) In light of those findings, if the Commission were to confirm the 5 % + 5 % liberalisation pace […], the total volume of quotas made available for the second and third year of measures (that is, 2019-2020 and 2020-2021) would be 31,6 million tonnes and 33,2 million tonnes respectively. That type of liberalisation scenario would mean that, during the third year of application of safeguard measures (that is, 1 July 2020 – 30 June 2021), the Commission would allow imports to reach almost the same volume as that measured in 2018 (that is, about 33,4 million tonnes). That volume would be 3,3 million tonnes above the 2017 level considered by the Commission as causing a threat of serious injury, and, as such, highly distorting the functioning of the Union market.
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> (144) The automatic acceptance of that level of imports, without the ability to assess the potential effects of those imports would, accordingly compromise the effet utile of the measures concerned. Indeed, as the definitive Regulation stressed, the 2018 level of imports contain substantial trade diversion caused by the U.S. Section 232 measures.[…]
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> (147) Consequently, […] a cumulative 3 % + 3 % for the second and third year of application of the safeguard measures is considered to be appropriate. In fact, this less pronounced rate of liberalisation will have the effect that that the total level of quotas during the third year of measures will remain at 31,6 million tonnes, that is to say 1,5 million tonnes below the distorted 2018 record. It should also be noted that this adjustment would fully preserve the liberalisation effect, as, under this rate of liberalisation, the level of quotas during the second year of application of the safeguard measures would be of 31 million tonnes (and so represent about one million tonnes more than the level of imports measured during 2017). The Commission deemed this rate to represent a more evenly distributed effort to facilitate adjustment for the Union industry, with quota increases of 0,9 and 0,9 at the end of the first and second year of measures (that is, on 30 June 2019 and 30 June 2020). Thereafter, imports would be allowed to increase by 1,5 million tonnes to possibly reach the 2018 level only after the complete lifting of the definitive measures after the three-year period foreseen in WTO and Union law.[249]

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248 Turkey's first written submission, para. 354.

249 EU First Review of the Definitive Measure Regulation (Exhibit TUR-9).

300. This approach complies with the requirements in Article 7.4. In particular, this liberalization is progressive, set at 5% and then 3% and 3% respectively, and occurs at regular intervals of one year. This is a progressive liberalization of the kind of referred to in the *Ukraine – Passenger Cars* panel report.[250]

301. The treaty text does not establish any particular requirement as to the form or concrete pace of liberalisation, other than such liberalisation should occur progressively at regular intervals during the period of application.

302. In this regard, we strongly disagree with Turkey's contention that this requirement implies "that once the competent authorities have determined a schedule of liberalization, it cannot decrease the pace of liberalization".[251] There is no support in the Agreement for this proposition. Moreover, should this proposition be accepted, then a WTO Member that announced at the very beginning a certain pace of liberalization (5 % + 5 % liberalisation pace) and then revises it (3% and 3% liberalisation pace) would be found to have breached the Agreement whereas if the same WTO Member had not announced the pace of liberalization in advance but after one and two years liberalised it at the 3% and 3% liberalisation pace, it would not be found to have breached the Agreement. This would be a perverse incentive which would have the detrimental effect of encouraging an early announcement of low or minimal liberalisation degrees (to be subject to possible accelerations afterwards) and thus forestalling an early announcement that gives a more demanding signal to the domestic industry as regards how it is expected to adjust. Finally, the requirements of Article 7.4 are to "progressively liberalize" the safeguard measure, which the European Union did.

303. With regard to the claim concerning quantitative caps on the use of the global and residual TRQs for certain product categories, the competent authority explained that:

> […] the current annual administration of the country specific quotas would not be effective in preventing the disturbances on the Union steel market identified above, which would be exacerbated by the expected opportunistic behaviour of some exporters. These disturbances would not only run counter to the interest of the majority of exporting countries, but would also very negatively affect the economic situation of the Union steel industry, thus undermining the effectiveness of the measures.

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250 Panel Report, *Ukraine – Passenger Cars*, para. 7.362.

251 Turkey's first written submission, para. 356.

> Accordingly, the Commission decided that the country-specific quotas be administered quarterly as well. This adjustment will ensure a more stable flow of imports and minimise the existing very high risk that the opportunistic conduct of exporters conflicts with the legitimate interest of other market participants throughout the next period of measures, i.e. 1 July 2020 to 30 June 2021.
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> This adjustment will have a positive stabilizing effect on the market, since it will avoid massive stockpiling at the beginning of a period, as it was already detected in the past in several product categories. [...][252]

304. With respect to Turkey's claim that imports were restricted under product category 4.B to those exporters that could demonstrate an end-use in the automotive sector, it is worth noting that those exporting countries selling 4.B (non-automotive) could do it under that category because the relevant CN codes were transferred to category 4.A. So export could continue according to historical trade flows and no restriction resulted from that.

305. The ameliorated administration of the tariff rate quotas and the specific adjustments to individual product categories, including with regard to category 4.B are not modifications that render the definitive safeguard measure inconsistent with Article 7.4 of the Agreement on Safeguards. The definitive measure continued to be progressively liberalized at regular intervals and the modifications, taken together, are consistent with that requirement.

306. In light of the above, Turkey's claim under Articles 7.4 and 5.1 of the Agreement of Safeguards was not demonstrated and it has to be rejected.

11. THE EUROPEAN UNION'S MEASURES AT ISSUE ARE CONSISTENT WITH ARTICLE XIX OF THE GATT 1994 AND THE AGREEMENT ON SAFEGUARDS AND DO NOT AMOUNT TO A VIOLATION OF THE SECOND SENTENCE OF ARTICLE II:1(B) OF THE GATT 1994

307. Turkey has failed to demonstrate that the measures at issue are imposed in violation of the second sentence of Article II:1(b) of the GATT 1994.

308. In fact, Turkey's Article II of the GATT 1994 claim is consequential to its claims of violation of the Agreement on Safeguards.[253]

309. The European Union has adopted safeguard measures that are consistent with its obligations under Articles II:1 and XIX:1(a) of the GATT 1994 and the Agreement on Safeguards.

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252 EU Second Review of the Definitive Measure Regulation, recitals 39 - 41 (Exhibit TUR-12).

253 Turkey's first written submission, para. 380.

310. Having complied with the relevant conditions, this is something that the European Union "shall be free to do". Once the European Union has suspended its obligations, it was entitled to apply duties of the kind of those at issue in the present case.

311. There is no violation of Article II:1(b) that is justified by Article XIX:1(a) of the GATT 1994 and the Agreement on Safeguards. A suspension is not a violation in first place.

312. As the European Union has demonstrated throughout the present submission, Turkey has failed to demonstrate that the measures at issue are inconsistent with the European Union's obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards. The measures at issue resulted in a valid suspension of the European Union's obligations under Article II:1(b), second sentence, within the meaning of Article XIX:1(a) of the GATT 1994.

12. CONCLUSIONS

313. Turkey has failed to make a *prima facie* case on any of its claims. For the reasons set out in this submission, the European Union respectfully requests that the Panel rejects all of Turkey's claims that the European Union's provisional and definitive safeguard measures on steel products are inconsistent with the GATT 1994 and the Agreement on Safeguards.