

AS DELIVERED

**In the World Trade Organization  
Panel Proceeding**

***European Union – Safeguard Measures on  
Certain Steel Products  
(DS595)***

**European Union's Opening Oral Statement**

**Geneva, 22 June 2021**

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**TABLE OF CASES CITED**

<b>Short Title</b>	<b>Full Case Title and Citation</b>
<i>China – Broiler Products</i>	Panel Report, <i>China - Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States</i> , WT/DS427/R and Add.1, adopted 25 September 2013, DSR 2013:IV, p. 1041
<i>India - Iron and Steel products</i>	Panel Report, <i>India – Certain Measures on Imports of Iron and Steel Products</i> , <a href="#">WT/DS518/R</a> and Add.1, circulated to WTO Members 6 November 2018 [appealed by India 14 December 2018 – the Division suspended its work on 10 December 2019]
<i>US-Lamb</i>	Appellate Body Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , <a href="#">WT/DS177/AB/R</a> , <a href="#">WT/DS178/AB/R</a> , adopted 16 May 2001, DSR 2001:IX, p. 4051
<i>US – Lamb</i>	Panel Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , <a href="#">WT/DS177/R</a> , <a href="#">WT/DS178/R</a> , adopted 16 May 2001, as modified by Appellate Body Report WT/DS177/AB/R, WT/DS178/AB/R, DSR 2001:IX, p. 4107
<i>US – Line Pipe</i>	Panel Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/R, adopted 8 March 2002, as modified by Appellate Body Report WT/DS202/AB/, DSR 2002:IV, p. 1473
<i>US – Softwood Lumber VI (Article 21.5 - Canada)</i>	Panel Report, <i>United States - Investigation of the International Trade Commission in Softwood Lumber from Canada - Recourse to Article 21.5 of the DSU by Canada</i> , WT/DS277/RW, adopted 9 May 2006, as modified by Appellate Body Report WT/DS277/AB/RW, DSR 2006:XI, p. 4935

## **I. INTRODUCTION**

Mr Chairman, distinguished Members of the Panel,

1. The EU thanks you for holding this second substantive meeting with the parties, so as to allow a more complete ventilation of arguments in light of the systemic importance of some of the matters under debate. We extend our gratitude to the Secretariat for its support.
2. In this oral statement, the EU will address issues pertaining to the product scope, unforeseen developments, increase in imports, threat of injury, causation and application of the safeguard measure, which have been raised in Turkey’s most recent responses and comments.

## **II. PRODUCT SCOPE**

3. Arguments and counter-arguments have been exchanged between the parties. Yet, Turkey can still not credibly demonstrate that there were several investigations comprising several products at issue.
4. Instead, what Turkey does is to recall that certain product categories were excluded.<sup>1</sup>
5. The EU recalls that data on several factors, such as unforeseen developments or with regard to threat of serious injury was analysed globally.
6. As the investigative record shows, there is only one safeguard measure, comprising only one product concerned.

## **III. UNFORESEEN DEVELOPMENTS**

7. Turkey takes issue with the relevance of the unforeseen developments relating to the broader steel market for the single product concerned.<sup>2</sup>
8. The proportion of steel products covered by the challenged measures out of all steel products imported into the European Union is high : around 69-70% in 2013-2014 and around 75% between 2015-2018. Turkey could have calculated these percentages itself : the total steel imports into the Union are publicly available on

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<sup>1</sup> Turkey’s comments on EU’s replies to the Panel questions after the first substantive meeting, para. 2.

<sup>2</sup> Turkey’s comments on EU’s replies to the Panel questions after the first substantive meeting, paras. 27-28.

Eurostat (Chapters 72 and 73<sup>3</sup> without steel without primary and semi products<sup>4</sup>) while the imports of the product concerned are included in Table 2 of the EU Definitive Measure Regulation.

9. Unforeseen developments on the global steel market are necessarily relevant for the product concerned that covers such a wide range of products categories. The evidence underlying the persistent global overcapacity in the steel sector does not reveal any product category unaffected by overcapacity.
10. As to trade restrictive practices in third countries, the EU Provisional Measure Regulation referred for example to products (hot rolled and cold rolled steel, flat steel products like strips, and also rebars)<sup>5</sup> also included in the single product concerned.
11. Similarly, the U.S. Section 232 measures cover all the products categories included in the single product concerned by the safeguard investigation. Moreover, the EU explained in its comments to Turkey’s reply to the Panel question 23 why the alleged product exclusions are not relevant.<sup>6</sup>
12. The competent authority also made a sufficient reasoned and adequate explanation about the logical connection between unforeseen developments and the increase in imports. The competent authority found that the “Union market is generally a very attractive market for steel products both in terms of demand and prices.”<sup>7</sup> Therefore, the competent authority did not rely only on the fact that the EU is the largest steel importing market worldwide but also on the attractive EU prices, which are usually higher than in other third markets.
13. In this respect, the competent authority found, *inter alia*, that “Some of the main exporters to the US are also traditional steel suppliers to the Union and there is no doubt that these countries, as well as others whose exports and production will be affected by the U.S. measures and the foreseeable trade diversion cascade, will redirect their exports to the Union”<sup>8</sup> and “Import prices have in general undercut

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<sup>3</sup> The list of products, and their respective tariff lines, included the single product concerned are listed in Annex I to the EU Provisional Measure Regulation.

<sup>4</sup> These products are excluded because the single product concerned includes finished products.

<sup>5</sup> EU Provisional Measure Regulation, recital 33.

<sup>6</sup> Comments by the European Union on Turkey’s Responses to the Questions from the Panel after the first substantive meeting, paras. 5-8.

<sup>7</sup> EU Provisional Measure Regulation, recital 35.

<sup>8</sup> EU Provisional Measure Regulation, recital 35.

Union industry prices in 2017, based on an average price comparison for each product category.”<sup>9</sup>

14. Besides, all identified unforeseen developments give rise to increases in imports in the European Union. As explained,<sup>10</sup> the exporting producers have a clear interest in maximizing their capacity utilization faced with a global and persistent overcapacity, the increased use of trade restrictive practices, trade defence instruments and the U.S. Section 232 measures that limit export opportunities in other markets. Thus, the existence of several unforeseen developments of this type creates an increase in imports into the European Union.

#### **IV. THREAT OF SERIOUS INJURY**

15. The competent authority found that the Union industry is in a situation of threat of serious injury because of the following factors.
16. The EU explained<sup>11</sup> that the data for the product concerned shows a declining trend for a series of injury factors over the period of investigation (2013-2017):
- a) there was significant price depression on the Union market until 2016, prices recovering to their 2013 level only in 2017; unit sales prices were lower by 15 % as late as 2016;
  - b) the Union producers lost 5.4 percentage points in market shares from 2013 to 2017;
  - c) profitability decreased during 2013-2015 9 (between -1,0% and 2.2%) and the industry “achieved a marginal profit level in 2016 and increase it to a more sustainable level in 2017 (5,6 %)”;
  - d) stocks grew by 19%;
  - e) employment decreased by 4% (9 208 jobs).
17. The post-2017 data analysis made by the European Commission shows a clear trend of continuous increase of imports into the Union; a decrease of imports into the US; that the US industry was preparing to supply the US market on a much bigger scale to the detriment of imports which would then be re-directed; and that

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<sup>9</sup> EU Provisional Measure Regulation, recital 32.

<sup>10</sup> EU Definitive Measure Regulation, recital 54.

<sup>11</sup> EU’s SWS, para. 211.

the EU was an attractive market, also due to the 2017 recovery in prices.<sup>12</sup> This demonstrates that the existence of threat of serious injury and that serious injury is “clearly imminent”.

18. The finding of threat of serious injury is not just an hypothetical finding that might occur in the future as Turkey alleges.<sup>13</sup> The competent authority found that the future increase is established and not just conjecture:

- a) “...In this context, the established risk of trade diversion would be a key element that would negatively affect the current economic situation of the Union industry if measures are not adopted.”<sup>14</sup>;
- b) “for the reasons developed below, this increasing trend will become more pronounced in the future if definitive measures are not adopted”;<sup>15</sup>
- c) “In this context, a significant increase of supply on the Union market caused by an influx of imports will result in a general downward price pressure, resulting in price levels comparable to 2016 with significant negative consequences on the profitability of the Union steel industry.”<sup>16</sup>
- d) “This progressive decrease is already causing and will further generate trade diversion that is liable to speed up the increase trend of imports into the Union.”<sup>17</sup>

19. Imports of the product concerned have increased significantly, remaining at high levels in 2017. The further increase of imports in 2018 – in particular from those countries or exporters not subject to trade defence measures – was likely to prevent the industry from a full recovery and from benefiting from these measures.

20. The further increase in imports in 2018 was fuelled by the global and persistent overcapacity, a dramatic increase of global exports, and an unprecedented wave of unfair trading practices.<sup>18</sup>

21. In addition, there was a clear and steady trend of a decrease in imports into the US due to the Section 232 measures; the EU was not excluded from the Section 232

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<sup>12</sup> EU Provisional Measure Regulation, recital 67 and EU Definitive Measure Regulation, recital 107.

<sup>13</sup> Turkey’s FWS, para. 248.

<sup>14</sup> EU Definitive Measure Regulation, recital 97.

<sup>15</sup> Ibid. para. 100.

<sup>16</sup> EU Provisional Measure Regulation, recital 68.

<sup>17</sup> EU Definitive Measure Regulation, recital 109.

<sup>18</sup> EU Provisional Measure Regulation, recital 58.

measure; the US industry was preparing to supply the US market on a much bigger scale in the medium term, to the detriment of imports; the US market would no longer be able to absorb an increased domestic production and the same level of imports as before due the 25% duties. Thus, exporting producers would have to look for alternative markets, the EU market being an ideal substitute market in view of its size and prices.

22. According to the economic model proposed by the Union industry, 72 % of current U.S. imports of steel would be diverted to the EU market, which corresponds to 55 % of total Union imports of steel in 2017.<sup>19</sup>
23. It follows that, contrary to the Turkey’s affirmations, the determination of a threat of serious injury is based on facts and not mere conjecture.
24. Therefore, the competent authority correctly determined that the Union steel industry was still vulnerable to increases in imports.<sup>20</sup>
25. Turkey argues that the profitability improvement of several product categories not subject to EU’s trade defence measures shows that, on the contrary, the EU industry was not in a vulnerable situation.<sup>21</sup>
26. This improvement in profitability is explained, *inter alia*, by the general recovery of the industry, by several trade defence measures adopted by the Commission in that period (2016/2017).<sup>22</sup>
27. However, the product categories not subject to EU’s trade defence measures still had low levels of profitability, below what is generally considered as a healthy level in the steel sector.<sup>23</sup> Annex III of the EU Provisional Measure Regulation called ‘Economic indicators for the 23 product categories’ shows that products with a healthy profitability above 8%, a sufficient profit level in this sector in order to cover investments,<sup>24</sup> are products covered by recent trade defence measures (imposed between 2015 and February 2018), specifically on product categories 1, 2, 4 and 9. Product categories 12, 15, 16 and 26, that were not subject to EU’s recent trade defence measures, only reached an improved profitability between

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<sup>19</sup> EU Provisional Measure Regulation, recital 107 and Exhibits EU-12 and EU-13.

<sup>20</sup> EU Provisional Measure Regulation, recital 61.

<sup>21</sup> Turkey’s reply to the Panel questions after the first substantive meeting, paras. 22-24; Turkey’s comments on EU’s replies to the Panel questions after the first substantive meeting, paras. 27-28.

<sup>22</sup> EU Provisional Measure Regulation, recital 64.

<sup>23</sup> EU Definitive Measure Regulation, recital 97.

<sup>24</sup> EU Provisional Measure Regulation, recital 53.



- 3,2% and 4,8%, below healthy levels for the steel industry. Even those subject to recent trade defence measures, such as product categories 7 and 13 had low profitability levels.
28. Therefore, the accelerated increase in imports in 2018 jeopardizes that improvement.
29. Turkey maintains that the European Commission not only failed to identify the relevant anti-dumping/countervailing (AD/CV) measures, but also did not make any analysis nor compiled any data in relation to those AD/CV measures, on the basis of which it could draw inferences.<sup>25</sup>
30. However, a detailed correlation between the products covered by EU's trade defence measures and the product categories included in the single product concerned is not required for the determination of a threat of serious injury.
31. The competent authority found that only some product categories were subject to recent AD/CV measures covering certain origins/exporters. These products were replaced by imports from other origins and exporters as the data for 2018 shows. Imports into the EU actually reached the highest absolute levels in the most recent period (MRP), i.e. 31 314 000 tonnes, and increased even in the remainder of 2018. In addition, steel prices in the Union started to follow a declining trend as of the third quarter of 2018.<sup>26</sup> The fact is that several injury factors were in a continuous poor situation, despite the recent AD/CV measures, while the increase in imports continued to rise. The effects of the AD/CV measures were already reflected in the still vulnerable state of the EU industry. It follows that it was not necessary to consider a detailed correlation with the products subject to AD/CV measures as the EU industry as a whole was still vulnerable despite the EU's trade defence measures.
32. According to Turkey, the lingering effects of past dumped or subsidised imports explain the still vulnerable state of the EU industry.<sup>27</sup>
33. This argument is unfounded.
34. First, the recent AD/CV measures had a limited scope. It is important to recall that the vast majority of anti-dumping and/or countervailing duties (ADDs/CVDs) on

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<sup>25</sup> Turkey's comments on EU's replies to the Panel questions after the first substantive meeting, para. 21.

<sup>26</sup> EU Definitive Measure Regulation, recital 89.

<sup>27</sup> Turkey's comments on EU's replies to the Panel questions after the first substantive meeting, para. 25.

- product categories belonging to the product concerned were already in place by 2017 (in some cases they had been imposed many years before, e.g. ADD/CVD measures on category 5 originating from China were imposed in 2012 or AD measures on category 20 originating from Russia were imposed in 2008).
35. Second, imports relating to products/origins/exporters not subject to AD/CV measures were replacing those subject to such measures also because of the trade diversion cause by the U.S. Section 232 measure (imports from Turkey are particularly a good example of this replacement, as in fact, claimed by Turkey in several bilateral meetings with the EU in the framework of the safeguard proceeding). It has to be recalled that AD/CV measures covered only certain product categories and even those product categories were not entirely subject to AD/CV measures but only in relation to certain origins and exporters. This is clear from the the EU Provisional Measure Regulation (referring to product categories 1, 2 and 4),<sup>28</sup> the answer to the Panel’s question no. 28 showing that the proportion of the imports subject to AD/CV measures was decreasing dramatically against the accelerated increase in imports in 2018.<sup>29</sup>
36. Turkey also reiterates that a threat of increased imports as such cannot be equated with threat of serious injury.<sup>30</sup>
37. It should be recalled that the Panel in *US-Lamb* found that “In our view, in the particular circumstances of a case, a continuation of imports at an already recently increased level may suffice to cause such threat”.<sup>31</sup> Therefore, a further increase in imports, as in the present case, is sufficient to degenerate the EU industry into serious injury. As explained above, in this case, the European Commission found more than a mere threat of increase imports but an established risk of increase in imports that makes serious injury clearly imminent : “increasing trend will become more pronounced in the future”; “established risk of trade diversion”.
38. The increasing trend of further increasing imports in 2018 cannot be looked at in isolation, but in the context of the fragile situation of the Union industry that was recovering from a period during which its situation had deteriorated significantly because of a significant increase in imports. It is in that context that the upcoming

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<sup>28</sup> EU Provisional Measure Regulation, recital 56.

<sup>29</sup> EU’s replies to the Panel questions after the first substantive meeting, paras. 25-26.

<sup>30</sup> Turkey’s comments on EU’s replies to the Panel questions after the first substantive meeting, para. 25.

<sup>31</sup> Panel Report, *US-Lamb*, para. 7.187.

additional influx of imports would reverse the partial recovery of the Union industry and would bring the Union steel industry in a situation of serious injury.

39. Finally, Turkey argues that the EU necessarily had to engage in a prospective analysis injury factor by injury factor to be able to determine that the EU industry was in a situation of threat.<sup>32</sup>
40. The EU explained that the GATT 1994 and the Agreement on Safeguards do not require analysing the likely developments in the very near future with respect to each relevant factor.<sup>33</sup> If a competent authority were required to carry out such analysis this would not be of “an objective and quantifiable nature” as prescribed by Article 4.2 (a) of the Agreement on Safeguards. As the WTO jurisprudence found under the AD and SCM Agreements, such detailed prospective analyse “might result in a degree of speculation in the decision-making process, which is not consistent with the requirement of the Agreements”.<sup>34</sup> In line with the findings of the Appellate Body in *US-Lamb*,<sup>35</sup> in this case the competent authority analysed the “overall state of the domestic industry” and pointed out in particular at likely drops in price depression and profitability.<sup>36</sup> A a prospective analysis injury factor by injury factor would have necessarily been too speculative.

## **V. CAUSATION**

41. The EU has already dealt with in detail with Turkey’s allegations with respect to causation. We will react to some of Turkey’s most recent comments.
42. Turkey seems to contradict itself when maintaining that:

price comparison conducted at the level of the product categories is of limited informative value given the broad range of product types and steel grades that may be included in a single product category.<sup>37</sup>
43. If that is the case, then why Turkey insists that instead of a product concerned there should be several products concerned?

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<sup>32</sup> Turkey’s comments on EU’s replies to the Panel questions after the first substantive meeting, para. 25.

<sup>33</sup> EU’s comments on Turkey’s replies to the Panel questions after the first substantive meeting, paras. 31-36.

<sup>34</sup> Panel Report, *US — Softwood Lumber VI (Article 21.5 - Canada)*, para. 7.105.

<sup>35</sup> Appellate Body Report, *US-Lamb*, para. 136.

<sup>36</sup> EU Definitive Measure Regulation, recitals 90, 97.

<sup>37</sup> Turkey’s comments on on EU’s replies to the Panel questions after the first substantive meeting, para. 39.

44. As already explained, the competent authority conducted a price undercutting analysis per product category, as reflected in Annex III to the EU Provisional Measure Regulation. That demonstrates that average import price levels were almost systematically lower.<sup>38</sup>
45. One more issue that Turkey continues to allege is that:
- [while] the imposition of AD/CV measures is a right of WTO Members and not an obligation, if a WTO Member has found in the course of an AD/CV investigation with respect to the period of investigation of the safeguard investigation that imports were dumped or subsidised, then, in accordance with Article 18.1 of the Anti-Dumping Agreement and Article 32.1 of the SCM Agreement, the only action that can be taken against this dumping or subsidisation is in the form of AD/CV measures.<sup>39</sup>
46. The EU disagrees.
47. The EU can imagine the following example: a competent authority has to deal with a narrow product, which is produced only in 5 WTO Members. Suppose the product from all these countries is subject to CVDs. But some and enough imports continue, and after 2 years (with CVDs continuing being in place), the importing country is considering a safeguard measure, based on standard conditions (including unforeseen developments). Can a competent authority impose a safeguard measure in such circumstances?
48. The EU considers that the answer must be ‘yes’. Such imports are part of the increased imports and not other factors.

## **VI. OTHER ISSUES**

49. *First*, with regard to the **total share of imports of categories 11 and 23**, the EU agrees that the question is whether “the evaluation made by the competent authorities [was] objective and unbiased”<sup>40</sup> because the competent authorities “are not entitled to conduct their investigation in such a way that it becomes more likely

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<sup>38</sup> EU’s response to Panel question no 37.

<sup>39</sup> Turkey’s comments on on EU’s replies to the Panel questions after the first substantive meeting, para. 55.

<sup>40</sup> Panel Report, *India – Iron and Steel Products*, para. 7.137, referring to Appellate Body Report, *US – Lamb*, para. 130 and Panel Report, *US – Line Pipe*, para. 7.194.

that, as a result of the fact-finding or evaluation process, they will reach a certain determination”.<sup>41</sup>

50. The measure at issue complies with these considerations.
51. In its response to Panel question 50, the EU has already explained that recital 31 of the EU Definitive Measure Regulation refers to categories where an increase in imports did not take place. The fact that it does not refer to the share of those categories does not mean that the share was not observed by the competent authority during the investigation.
52. If the EU had not done the preliminary assessment Turkey complains about, then the scope of the measure may have been broader. The competent authority could have even added a few other categories to the basket, as the overall trends would have remained.
53. Turkey’s parallel with anti-dumping investigations is inapposite, even more so on the facts of this case:

accepting the European Union’s claim would, in essence, mean that the investigating authority is allowed to exclude from the definition of the product concerned those product types which are found not be dumped thereby making it more likely that a higher overall dumping margin will be found.<sup>42</sup>

54. The competent authority did not exclude from the definition of the product concerned those product categories for which there are no increased imports found so as to “make it more likely” that a higher overall absolute increase in exports will be found. The conclusion with regard to whether an absolute increase in imports existed or not did not depend on the inclusion or exclusion of those two product categories.
55. Moreover, differently from anti-dumping investigations, in a safeguard investigation there is no “safeguard margin” (as opposed to a dumping margin) which may then influence the level of the duties to be collected. Section 8.1. of the EU Definitive Measure Regulation, entitled “Form and level of measures” explains how the level of the out-of-quota duties was established.

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<sup>41</sup> Panel Report, *China – Broiler Products*, para. 7.411.

<sup>42</sup> Turkey’s comments on EU’s replies to the Panel questions after the first substantive meeting, para. 62.

56. In light of the above, the exclusion of imports of categories 11 and 23 from the definitive measure is not inconsistent with Articles 2.1 and 4.2(a) of the Agreement on Safeguards.
57. *Second*, the EU did **not act inconsistently with Articles 7.4 and 5.1 of the Agreement on Safeguards** as it did not make the safeguard measures more trade restrictive.
58. While the EU has already addressed this claim, it would like to add one consideration with regard to the exclusion of certain developing countries.
59. In its first written submission, Turkey complains that the competent authority:<sup>43</sup>
- amended the list of developing countries excluded from the scope of the definitive measures by including within the scope of the measures certain developing countries exceeding the 3% threshold of imports in 2018 per product category;<sup>44</sup>
60. Then, Turkey maintains that:<sup>45</sup>
- It amended the list of developing countries excluded from the scope of the safeguard measures by including within the scope of the measures certain developing countries exceeding the thresholds provided for under Article 9.1 of the Agreement on Safeguards in 2019 per product category.<sup>46</sup>
61. The EU notes that Turkey does not reiterate the allegation that these modifications made the safeguard measure more restrictive in its response to Panel question no 46. Thus, it appears that Turkey has dropped this part of its claim.
62. Indeed, Article 9.1 of the Agreement on Safeguards provides that safeguard measures shall not be applied... **“as long as”** the share of imports... Thus, there is a continuous obligation of adaptation embedded in Article 9.1, which the EU followed by amending the list of developing countries on the two mentioned occasions. This requirement is perfectly in line with, and should be read together with the requirement in Article 5.1 that a WTO Member shall apply safeguard measures **only to the extent necessary** to prevent serious injury and to facilitate adjustment.

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<sup>43</sup> Turkey’s FWS, para. 361.

<sup>44</sup> EU First Reviewed Definitive Measure Regulation, Article 1(2)(a), Annex I (Exhibit TUR-9).

<sup>45</sup> Turkey’s FWS, para. 363.

<sup>46</sup> EU Second Reviewed Definitive Measure Regulation, Article 1(2) and Annex I (Exhibit TUR-12).

63. Thus, by amending the list of developing countries excluded from the safeguard measure at issue, the EU did not breach, but, on the contrary, complied with Article 5.1 of the Agreement on Safeguards.

**VII. CONCLUSIONS**

64. For the reasons described in detail in our submissions, Turkey has failed to make its case on all its claims and, as a result, its claims must be rejected.

Thank you once again for your attention!