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UNITED STATES – CERTAIN MEASURES ON STEEL AND ALUMINIUM PRODUCTS

COMMUNICATION FROM TÜRKİYE

The following communication, dated 20 February 2023, was received from the delegation of Türkiye with the request that it be circulated to the Dispute Settlement Body (DSB).

On 26 January 2023, the United States notified the Dispute Settlement Body (DSB) of its decision to appeal the report of the panel in the dispute "United States Certain Measures on Steel and Aluminium Products (WT/DS564)". The United States did so by filing a "Notification of Appeal" within the meaning of Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). This "Notification of Appeal" has been circulated as document WT/DS564/21.

Although the Appellate Body remains non-operational, the DSU and the Appellate Body's Working Procedures for Appellate Review (Working Procedures) referred to in Article 17.9 of the DSU remain in force and govern any appeal within the meaning of the DSU. Pursuant to Rule 20(1) of the Working Procedures, an appeal shall be initiated by filing a Notice of Appeal that must satisfy the criteria in Rule 20(2), including a "brief statement of the nature of the appeal", which in turn includes "an indicative list of the paragraphs of the panel report containing the alleged errors".

The United States' "Notification of Appeal" of 26 January 2023 does not satisfy these requirements, because it does not contain any reference to the paragraphs of the panel report that contain the alleged errors.

In addition, under Rule 21(1) of the Working Procedures, the United States was required to file, simultaneously with the Notice of Appeal, an appellant's submission that satisfies the substantive criteria set out in Rule 21(2). The United States has not filed an appellant's submission.

As a result, in Türkiye's view, the United States' appeal was not filed in a legally valid manner. When the Appellate Body resumes its functions, Türkiye reserves its right to raise the procedural flaws of the United States' appeal and to request the Appellate Body to dispose of the United States' appeal accordingly.

Leaving aside the procedural flaws in the United States' appeal, Türkiye considers that all subsequent procedural deadlines set out in the Working Procedures are properly to be considered as suspended. When the Appellate Body resumes its functions – and if it were to take the view that the United States' appeal was validly filed despite the above-mentioned inconsistencies with the Working Procedures – the Appellate Body should set the schedule for this appeal. In that event, Türkiye intends to file its appellee's submission in this appeal within the deadline set out in that schedule. Türkiye also intends to participate and make oral statements at the hearing to be convened by the Appellate Body.

Türkiye disagrees with the United States' statements concerning the alleged errors in the Panel's Report, as mentioned in the United States' "Notification of Appeal".

Türkiye is providing a copy of this communication directly to the United States and the third parties to this dispute.
