

***RUSSIA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES***

**(DS566)**

**U.S. Responses to Questions from the Panel to the Parties  
Prior to the Second Substantive Meeting**

**December 4, 2020**

**TABLE OF EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
USA-48	Table Comparing Exhibit USA-2 with Exhibit RUS-26.

**TABLE OF REPORTS**

<b>SHORT TITLE</b>	<b>FULL CITATION</b>
<i>US – Gambling (AB)</i>	Appellate Body Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/AB/R, adopted 20 April 2005

## **1 MEASURE AT ISSUE**

### **1.1 To the United States**

#### **74. In its response to Panel question No. 11, Russia states:**

**Exhibit USA-1 contains a translated version of that act, which, however, is inaccurate in several instances. For this reason, the Russian Federation has provided its verified translation in its Exhibit RUS-1 and respectfully asks the Panel to defer to our translation of that document.**

**Please comment.**

#### **Response:**

1. There are no material differences between the English translation of Resolution No. 788 provided by the United States (Exhibit USA-1) and the English translation of Resolution No. 788 provided by Russia (Exhibit RUS-1). Accordingly, the United States does not object to the Panel using Russia’s translation of Resolution No. 788.

#### **75. At paragraphs 123-124 of its second written submission, Russia notes that the "WTO Tariff Analysis Online" website contains a disclaimer. According to Russia:**

**This disclaimer specifically states that there is no warranty as to the accuracy and reliability of results that may be obtained from use of these data. Thus, it is not sufficient to make a compilation from WTO Tariff Analysis Online without providing additional supporting evidence as doubts arising from this disclaimer remain.**

...

**In order to make a prima facie case, the United States should have provided the actual text of the relevant documents to substantiate information on the MFN and bound rates included in Exhibit USA-2.**

**Please comment.**

#### **Response:**

2. The MFN and bound rate information in Exhibit USA-2 (Table Presenting Tariff Lines & Bound Rates Affected by the Russian Measure), which the United States obtained from the WTO Tariff Analysis Online system, is more than sufficient for the United States to meet its initial burden of proof regarding the U.S. claims under Articles I and II of the GATT 1994. The United States having met its burden, it is up to Russia to rebut the U.S. prima facie case. But Russia has not—instead, Russia alleges the existence of unspecified “doubts”. Surely, if there are any

inaccuracies with Exhibit USA-2, Russia is well-positioned to point them out but has failed to do so. Notably, Russia has not identified any errors with Exhibit USA-2.

3. Nonetheless, to confirm that the data provided by the United States in Exhibit USA-2 are accurate, the United States is providing the Panel a table (Exhibit USA-48) that compares the data in Exhibit USA-2 with Russia's data in Exhibit RUS-26 (Russia's Bound and Applied Duty Rates). This comparison confirms that:

- All HS codes in Exhibit USA-2 match the HS codes in Exhibit RUS-26;
- All MFN rates in Exhibit USA-2 match the MFN rates in Exhibit RUS-26;
- All amended duty rates in Exhibit USA-2 match the amended duty rates under Resolution No. 788 in Exhibit RUS-26;
- The U.S. claims concerning Articles I and II of the GATT 1994 supported by USA-2 are correct; and
- The bound rate data the United States obtained from the WTO's Tariff Analysis Online system matches Russia's schedule of concessions (Schedule CLXV).

Accordingly, Russia's assertion in paragraph 123 of its second written submission casting doubt on the accuracy and reliability of Exhibit USA-2 is **meritless**.

4. Regarding Russia's assertion in paragraph 124 of its second written submission concerning the "admissibility" of the evidence provided by the United States, this assertion is also meritless for there is no rule of evidence in the DSU or in the Panel's adopted Working Procedures governing so-called "admissibility". Furthermore, there are certainly no rules that only "the actual text of the relevant documents" – as Russia proposes – can be the basis for presenting facts and evidence to a WTO panel.

**76. At paragraphs 125-126 of its second written submission, Russia states:**

**[T]he United States failed to submit extracts from Russia's Schedule of Concessions which would demonstrate whether the Russian Federation has tariff bindings on 79 products and, if yes, at what level, and whether the United States provided information in Exhibit USA-2 with required accuracy and reliability. In fact, the Russian Federation has found some discrepancies in this Exhibit and provided Exhibit RUS-26 to correct them.**

**Therefore, the United States' claims under Articles II:1(b) and II:1(a) of the GATT 1994 are not supported by sufficient evidence because the United States failed to submit relevant extracts from Russia's Schedule of Concessions to the Panel. ...**

**Please comment on this argument, and on Exhibit RUS-26.**

**Response:**

5. As an initial matter, the United States directs the Panel to the U.S. response to question 75 and Exhibit USA-48, which confirms the accuracy of the data in Exhibit USA-2.

6. Regarding Russia’s assertions concerning the bound rates for 79 tariff lines, Exhibit USA-48 confirms that 73 of the 79 bound rates in Exhibit USA-2 match the bound rates submitted by Russia in Exhibit RUS-26. For the six bound rates that do not match, the United States notes that the United States used a maximum bound rate at the 4- or 6-digit HS level that exceeds the bound rate in RUS-26. The United States used this conservative approach to ensure that the United States used the highest possible bound rate applicable, which the United States indicated in footnotes to Exhibit USA-2. For the six bound rates that do not match, the approach of the United States supports the U.S. claim under Article II of the GATT 1994. Further, columns S and T of Exhibit USA-48 validate the factual basis for the U.S. claim under Article II of the GATT 1994. Accordingly, the data in Exhibit USA-2 concerning the 79 bound rates are accurate and reliable.

7. Finally, in paragraph 125 of its second written submission, Russia attempts to raise doubts about the accuracy and reliability of the data in Exhibit USA-2. Russia, however, has **not** identified any errors with the data in Exhibit USA-2. And regarding Russia’s assertion in paragraph 125 concerning the evidentiary “sufficiency” of Exhibit USA-2, this assertion is also meritless. As the United States has explained throughout this dispute, there is no rule of evidence in the DSU providing that only (to use Russia’s terminology) “relevant extracts”, an “actual text”,<sup>1</sup> or “original sources”,<sup>2</sup> can be the basis for presenting facts and evidence to a WTO panel. Russia’s meritless assertions cannot obfuscate the fact that the data presented by the United States in Exhibit USA-2 are accurate.

**2 OTHER EVIDENTIARY ISSUES**

**2.1 To the United States**

**81. At paragraph 148 of its second written submission, Russia states:**

**[T]he United States has failed to provide Exhibits and afford the Russian Federation the opportunity to verify the United States' descriptions of dictionary and ordinary meanings of the terms in Article I:1 of the GATT 1994, on which the United States relied, and relevant arguments in order to defend itself. Thus, the Russian Federation requests the Panel to disregard the United States' explanations in these footnotes and related arguments in the text of United States' [first written submission].**

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<sup>1</sup> Russia’s Second Written Submission, para. 124.

<sup>2</sup> Russia’s First Written Submission, para. 183.

**Please comment.**

**Response:**

8. As an initial matter, the United States observes that dictionary definitions are part of the interpretive exercise of ascertaining the ordinary meaning of the terms of a treaty pursuant to Article 31(1) of the *Vienna Convention on the Law of Treaties*,<sup>3</sup> and interpretive materials are not facts or evidence for purposes of a WTO dispute. Accordingly, the United States was not required to submit as exhibits the dictionary definitions provided in its first written submission.

9. Furthermore, there is no basis in the DSU or the Panel’s adopted Working Procedures to support Russia’s assertion in paragraph 148 of its second written submission that the Panel “disregard” the arguments presented in the U.S. first written submission concerning Article I:1 of the GATT 1994 because the United States did not convert into exhibits the dictionary definitions of several common terms (specifically, “customs duty”, “advantage”, “immediately”, and “unconditional”) that were provided in the U.S. first written submission.<sup>4</sup> As Russia notes in paragraph 145 of its second written submission, the United States **provided** the definitions of these common terms in footnotes of the U.S. first written submission. And these footnotes included the quoted definitions and corresponding citations.<sup>5</sup> By quoting and citing a dictionary source, not only could Russia readily obtain the source if it questioned the accuracy of the U.S. quotation, but Russia could also readily compare that dictionary definition to any number of dictionaries. However, Russia has not argued for any such definitions that would contradict the definitions provided by the United States.

**82. At paragraphs 149-150 of its second written submission, Russia notes the United States' arguments, in its first written submission, concerning the "sum total" of Russia's applied MFN rate.<sup>6</sup> With respect to these arguments, Russia states:**

**Nowhere does it refer to a "sum" of the applied MFN rates with the duty rates provided in the Resolution No. 788. The customs duties in this list are currently applied to imports of 79 products of the United States.**

**On the basis of these consideration, the Panel should find that the United States failed to provide proper evidence and substantiate its claim under Article I:1 of the GATT 1994. ...**

**Please comment.**

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<sup>3</sup> See, e.g., *US – Gambling (AB)*, para. 164 (“In order to identify the ordinary meaning, a Panel may start with the dictionary definitions of the terms to be interpreted.”).

<sup>4</sup> See U.S. First Written Submission, fns. 10, 11, 15, 19, and 20.

<sup>5</sup> *Id.*

<sup>6</sup> U.S. First Written Submission, para. 19.

**Response:**

10. Regarding the use of the phrase “sum total” in the U.S. first written submission, the United States observes that the phrase “sum total” is not appropriate in that instance because Russia’s duties are *amended* rather than additional. Regardless, Exhibit USA-2 confirms that Russia’s amended duties exceed MFN and bound rates for all 79 tariff lines.

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