RUSSIA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES

(DS566)

OPENING STATEMENT OF THE UNITED STATES OF AMERICA AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES

September 30, 2019

TABLE OF REPORTS

Short Form	Full Citation
Indonesia – Iron or Steel Products (Viet Nam) (AB)	*Appellate Body Report, Safeguard on Certain Iron or Steel Products*, WT/DS/490/AB/R, WT/DS/496/AB/R, adopted 27 August 2018
Indonesia – Iron or Steel Products (Viet Nam) (Panel)	*Panel Report, Safeguard on Certain Iron or Steel Products*, WT/DS/490/R, WT/DS/496/R, adopted 27 August 2018, as modified by Appellate Body Report, WT/DS/490/AB/R, WT/DS496/AB/R
US – Wool Shirts and Blouses (India) (AB)	*Appellate Body Report, United States - Measures Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, adopted 23 May 1997

TABLE OF EXHIBITS

Exhibit No.	Description
USA - 4	*The Common Customs Tariff of the Eurasian Economic Union, excerpts*
USA-5	*Third Participant Oral Statement of the United States of America, (May 8. 2018), Indonesia – Safeguard on Certain Iron or Steel Products, AB-2017/DS489, DS496*

1. Mr. Chairperson, Members of the Panel – on behalf of the United States, we thank you and the Secretariat staff assisting you – for your ongoing work in this dispute.

I. INTRODUCTION

2. The United States initiated this dispute in response to Russia's measure that imposes additional duties on U.S. products that are plainly inconsistent with the fundamental WTO obligations to provide Most-Favored-Nation (MFN) treatment and treatment no less favorable than that set out in Russia's Schedule of Concessions, as set out, respectively, in Articles I and II of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994").

3. The central question in this dispute is whether Russia has any justification for its apparent breach of Articles I and II of the GATT 1994. In our first written submission, we anticipated Russia's excuse and showed that it was baseless. In particular, Russia's argument is baseless because there is no relevant U.S. safeguard.[1] Accordingly, the rights and obligations under Article XIX of the GATT 1994 and the WTO *Agreement on Safeguards* ("Safeguards Agreement") are not applicable in this proceeding.

4. As the United States explained in the U.S. first written submission, for the WTO safeguard disciplines to apply to a Member's measure, that Member must invoke Article XIX of the GATT 1994. That provision requires invocation of the right to apply a safeguard measure with notice under Article XIX:2. Without this invocation and notice from the WTO Member proposing to take action, a Member is not seeking legal authority pursuant to Article XIX to

[1] *See* First Written Submission of the United States of America ("U.S. First Written Submission") (May 2, 2019), paras. 48 – 68.

suspend an obligation or to withdraw or modify a concession. Therefore, without invocation, a measure is not a measure within the scope of Article XIX. Moreover, another WTO Member cannot assert that Article XIX should have been invoked and, on that basis, adopt measures that are plainly inconsistent with fundamental WTO obligations.

5. But that is exactly the position that Russia is asking the Panel to adopt. Russia believes that the U.S. national security measures are inconsistent with U.S. obligations under the WTO Agreement. Russia is challenging those U.S. measures in a separate dispute.[2] However, instead of following the WTO's dispute settlement procedures, Russia decided to impose additional duties on U.S. products that are plainly inconsistent with its obligations under Articles I and II of the GATT 1994. And Russia is now seeking to justify its additional duties by advancing a baseless interpretation of Article XIX of the GATT 1994 and the Safeguards Agreement.

6. Besides lacking any support in the text of the WTO Agreement, Russia's position is fundamentally at odds with the basic element of the WTO Agreement that a Member is to utilize the WTO's dispute settlement procedures if a Member believes that another Member's measure is inconsistent with WTO rules.

7. Russia's approach would undermine the WTO. Under Russia's theory, any measure that a Member deems inconsistent with a GATT obligation could be labeled as a "safeguard." And on that basis, that Member could decide, for itself, to adopt retaliatory measures disguised as "rebalancing" measures.

[2] *US – Steel and Aluminum Products (Russia)*, WT/DS554/18.

8. Prior to this dispute, no WTO Member had contended that it had the right to adopt rebalancing measures based on its own assertion that another Member had adopted a safeguard. Of course, no Member had ever made such assertion because there is no basis for it in the WTO Agreement.

II. RUSSIA'S MEASURE IS INCONSISTENT WITH ITS OBLIGATIONS UNDER ARTICLES I AND II OF THE GATT 1994

9. In the U.S. first written submission, the United States demonstrated that Russia's measure is inconsistent with Articles I and II of the GATT 1994.[3]

10. Russia's measure applies additional duties of 25 to 40 percent on 79 tariff lines for products originating in the United States.[4] As demonstrated in the U.S. first written submission, the additional duties for all 79 tariff lines have resulted in tariffs applied to U.S.-originating products that are higher than the rates of duty applied to other WTO Members on an MFN basis.[5] In addition, for all 79 tariff lines, the United States has shown in Exhibit USA-2 that the additional duties result in applied tariffs on U.S.-origin products greater than the rates of duty set out in Russia's schedule of concessions.

11. Accordingly, the United States has established that Russia's measure breaches its obligations under Articles I and II of the GATT 1994.

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[3] *See* U.S. First Written Submission, paras. 14 - 47.

[4] *See* First Written Submission by the Russian Federation ("Russia's First Written Submission") (June 6, 2019), para. 76; *see also* Government of the Russian Federation *Decree No. 788, On Approval of Rates for Import Customs Duties for Individual Commodities Originating in the United States of America*, July 6, 2018 (Exhibit USA-1).

[5] *See* U.S. First Written Submission, paras. 14 - 30.

12. In its first written submission, Russia presents certain arguments regarding the sufficiency of the evidence submitted by the United States to support the U.S. claim under Article I of the GATT 1994. In particular, Russia argues that "the evidence submitted by the United States is not capable of demonstrating the alleged violation of Article I of the GATT 1994."[6] This argument is baseless: Exhibit USA-2 **compares** Russia's additional duties with the applied MFN rate for each tariff line at issue.[7] Notably, Russia does not identify any errors in the comparison provided in Exhibit USA-2.

13. Rather, Russia asserts that Exhibit USA-2 is allegedly deficient because "it is not an original source but a compilation from different documents, most notably from the WTO Tariff Analysis Online" database.[8] As an initial matter, the United States did not assert that Exhibit USA-2 is an "original source."[9] In any event, and most fundamentally, there is no rule of evidence in WTO dispute settlement that only "original sources" – which is not even a defined term – can be the basis for presenting facts and evidence to a WTO panel. Finally, it is the understanding of the United States that there is no "original source" **comparing** Russia's additional duties on U.S.-origin products with the applied MFN rate for each tariff line at issue.

14. Russia's final argument relates to the hyperlinks in Exhibit USA-3. As Russia pointed out, the hyperlinks in Exhibit USA-3 lead to a Russian language version of *The Common*

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[6] Russia's First Written Submission, para. 182.

[7] Following Russia's first written submission, the United States reviewed Exhibit USA-2 and compared it against the *Common Customs Tariff of the Eurasian Economic Union* and identified no errors in the applied MFN rates.

[8] Russia's First Written Submission, para. 183.

[9] *See* footnote 1 in Exhibit USA-2 (noting that "MFN and bound rates obtained from WTO Tariff Analysis Online." The MFN rates in Exhibit USA-2, however, are actually sourced from the *Common Customs Tariff of the Eurasian Economic Union*, which is an original source. The bound rates in Exhibit USA-2 are sourced from the WTO's Tariff Analysis Online database.)

Customs Tariff of the Eurasian Customs Union. As an initial matter, the United States observes that the U.S. claim regarding Article I of the GATT does not rely on Exhibit USA-3.[10] Rather, it is in Exhibit USA-2 where the United States **demonstrates** that Russia's additional duties on U.S. products result in applied rates of duty in excess of Russia's MFN rate for all 79 tariff lines at issue in this dispute.[11] Nonetheless, to address this clerical error, and consistent with Rule 5(1) of the Panel's Adopted Working Procedures, the United States is providing the Panel with a new exhibit that translates the excerpts from the hyperlink.[12]

III. RUSSIA'S JUSTIFICATION FOR ITS ADDITIONAL DUTIES IS MERITLESS AS THE UNITED STATES HAS NOT ADOPTED A SAFEGUARD

15. Russia asserts that it has taken the measure at issue under Article 8 of the Safeguards Agreement.[13] Because Russia has presented this argument, it bears the burden to establish it.

A. Russia Has Not Rebutted that its Measure Breaches Article I and II of the GATT 1994

16. Russia's first written submission confuses matters related to the concept of burden of proof. According to Russia, the United States "failed to discharge" its burden of proof because the U.S. did not "properly qualify" Russia's additional duties "as a measure taken under Article 8.2 of the Safeguards Agreement."[14] However, as in other dispute settlement proceedings in which the complaining party has raised a presumption of WTO-inconsistency, the burden has

[10] *See* U.S. First Written Submission, paras. 5-10.

[11] *See* U.S. First Written Submission, (noting that in Exhibit USA-2 the United States demonstrates that the measure at issue is inconsistent with Russia's obligations under Articles I and II of the GATT 1994), para. 8.

[12] *See* Exhibit USA-4.

[13] *Id*., para. 77

[14] Russia's First Written Submission, paras. 51 and 62.

now shifted to Russia to bring evidence and argument to rebut the presumption established by the United States.[15]

17. The U.S. panel request does not assert a breach of any WTO provision on safeguards. Accordingly, the United States is not responsible for providing proof of such a breach. Rather, to the extent that Russia believes that a WTO safeguards provision is relevant, Russia, as the party asserting that proposition, carries the burden to establish it.

18. Russia agrees in its first written submission[16] with the observation by the Appellate Body in *US – Wool Shirts and Blouses* that "it is a generally accepted cannon of evidence in civil law, common law, and, in fact, most jurisdictions that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence."[17] Accordingly, because Russia is affirming the relevance of the Safeguards Agreement to this dispute, Russia carries the burden of establishing its relevance.

19. In short, Russia's arguments concerning the burden of proof are baseless.

B. Russia Has no Basis for Asserting that Its Additional Duties Are Authorized by Article 8.2 of Safeguards Agreement

20. We now turn to Russia's argument that Article 8.2 of the Safeguards Agreement is applicable to this dispute. In short, it is not.

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[15] *See US – Wool Shirts and Blouses* (India) (AB) (noting that "the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence."), page 14.

[16] *See* Russia's First Written Submission, para. 62.

[17] *US – Wool Shirts and Blouses (India) (AB)*, page 14.

21. The Safeguards Agreement, as explained in its Preamble, seeks to "clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX." Article 1 of the Safeguards Agreement defines safeguard measures as those "measures provided for in Article XIX of GATT 1994."

22. At this point, we think it is important to pause and look specifically at the wording of Article 1 of the Safeguards Agreement. It states "measures provided for" in Article XIX, not measures **defined** in Article XIX. This language reflects that Article XIX does not in fact define a safeguard measure. Rather, Article XIX sets out certain procedures for a Member to suspend GATT obligations. That is, Article XIX provides that an importing Member may suspend GATT obligations if an importing Member meets certain procedural and substantive requirements.

23. The procedural nature of Article XIX is reflected in its title: "Emergency Action on Imports of Particular Products." The title does not focus on any particular type of measure, nor does it reference any type of obligation. Rather, the article sets out procedural and substantive rules for how a Member may choose to take action affecting imports of particular products.

24. For these reasons, Russia's attempt to divorce the procedural requirements of Article XIX from the substantive requirements is fundamentally at odds with the text of the WTO Agreement, as well as with the function that Article XIX serves within the WTO system.

25. Article XIX authorizes Members facing an injurious increase in imports subject to an obligation or concession "to suspend the obligation in whole or in part or to withdraw or modify the concession." The measures can only be "provided for" under Article XIX if the Member taking emergency action invokes that provision.

26. Where a Member has not asserted this right, then the WTO safeguards disciplines are not relevant to the particular matter. Because the WTO safeguards provisions are not applicable in this dispute, Russia cannot assert that Article 8.2 of the Safeguards Agreement justifies its additional duties.

1. Invocation is a Precondition to Applying a Safeguard Measure Under GATT Article XIX and the WTO Agreement on Safeguards

27. The first step to determine whether a WTO Member has applied a safeguard measure under Article XIX of the GATT 1994 and the Safeguards Agreement is to identify whether the Member in question has invoked the right to take action pursuant to these provisions. Absent this invocation, a measure cannot fall under the WTO's safeguard disciplines.

28. First, Article 1 of the Safeguards Agreement provides that the Safeguards Agreement "establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994."

29. This proposition is clear from the text and structure of Article XIX of the GATT 1994. For instance, Article XIX:1(a) provides that if certain conditions are met, a Member "shall be free" to suspend an obligation or to withdraw or modify a concession. Thus, when a Member determines that the conditions in Article XIX:1(a) are met, that Member has the discretion to invoke the right reserved to it under Article XIX. The Appellate Body has expressed support for this analytical approach.

30. In *Indonesia – Iron or Steel Products*, the Appellate Body reasoned that the phrase "shall be free" in Article XIX:1(a) accords to a "Member the 'freedom' to exercise its right to impose a safeguard measure by suspending a GATT obligation or withdrawing or modifying a GATT

concession if the conditions set out in the first part of Article XIX:1(a) are met."[18] Accordingly, a Member may elect to invoke Article XIX to implement a safeguard measure. Absent a Member's invocation of Article XIX, however, a measure cannot constitute a safeguard under WTO safeguard disciplines.

31. The text of Article XIX:2 of the GATT 1994 confirms the U.S. position regarding invocation. Under that provision, a Member's ability to take action pursuant to Article XIX is conditioned on invocation with notice to other Members before that Member can take action. In relevant part, Article XIX:2 provides:

> **Before** any contracting party shall take action **pursuant** to the provisions of paragraph 1 of this Article, it **shall give notice** in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the **proposed** action.[19]

32. Accordingly, without invocation, and without notification of that invocation, a Member has not taken and is not "free" to "take action pursuant" to Article XIX.

33. Similarly, the text and structure of Article XIX:3(a) of the GATT 1994 further support the U.S. position. Under that provision, if the consultations envisioned by Article XIX:2 fail to address the concerns of affected Members, then affected Members can suspend substantial equivalent suspensions or other obligations. Invocation and notice, however, is the triggering condition for the consultation.

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[18] *Indonesia – Iron and Steel Products (Viet Nam) (AB)*, fn. 188 (emphasis added).

[19] Emphasis added.

34. Third, multiple provisions in the Safeguards Agreement also support the necessity for invocation and notice. For instance, the first sentence of Article 8.1 of the Safeguards Agreement provides:

> A Member **proposing** to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavor to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members who would be affected by such a measure, in accordance with the provisions of paragraph 3 of Article 12.[20]

35. According to its ordinary meaning, the term "propose" means to "suggest or state (a possible plan or action) for consideration."[21] How does a Member "propose" to apply or extend a safeguard measure? Through invocation of the WTO's safeguards provisions and notice.

36. Finally, consider Article 8.3 of the Safeguards Agreement. In relevant part, Article 8.3 provides that a "Member **proposing** to apply or extend a safeguard measure shall provide adequate opportunity for prior consultation with those Members having a substantial interest as exporters" of the product concerned.[22] Again, this reference to "proposing" supports the U.S. position regarding invocation. The term "proposing" presumes the existence of a notification by a Member seeking to take action pursuant to Article XIX and the Safeguards Agreement.

37. In short, the text and structure of the WTO's safeguards provisions support the U.S. position.

[20] Emphasis added.

[21] Cambridge English Dictionary, available at https://dictionary.cambridge.org/us/dictionary/english/propose

[22] Emphasis added.

2. Russia's Argument that the Applicability of the Safeguards Agreement is an "Objective Question" Misses the Point

38. We now turn to Russia's specific arguments in support of its flawed interpretation of the WTO's safeguards provisions. According to Russia, "it is an objective question whether or not the measures by the United States qualify as measures provided for in Article XIX of the GATT 1994."[23] This argument completely misses the point.

39. The United States agrees that the applicability of the WTO's safeguards disciplines to a particular matter is an objective question. As the United States has explained throughout this proceeding, the first step in the analysis is the objective question of whether a Member has invoked the right to take action pursuant to Article XIX. In fact, the question of whether a Member has taken an action in the past – here, the invocation of the safeguards agreement – is the type of objective question evaluated in every dispute settlement proceeding. It is no different than the question of, for example, whether a Member has adopted a measure that increases duties on the products of another Member.

40. Here, the United States has not invoked Article XIX; therefore, Article 8.2 of the Safeguards Agreement is simply not applicable in this dispute. Accordingly, the answer to Russia's rhetorical question is **no**: the U.S. national security measures cannot be qualified as measures taken pursuant to Article XIX of the GATT 1994.

[23] Russia's First Written Submission, para. 110.

3. Russia Mischaracterizes the U.S. Position in *Indonesia – Iron or Steel Products* Regarding Notification

41. In its first written submission, Russia mischaracterizes the U.S. position in *Indonesia – Iron or Steel Products* regarding invocation being a precondition for the application of a safeguard measure under Article XIX. According to Russia, the U.S. position in this dispute is "contrary" to the U.S. position as a third party in *Indonesia – Iron or Steel Products*.[24]

42. Russia's assertions are **false**. For the record, the U.S. took the following position in *Indonesia – Iron or Steel Products*:

> The United States agrees with the disputing parties that the measure at issue meets what – in *most* circumstances – is the most fundamental criterion for establishing the existence of a safeguard measure: namely, that the Member adopting a measure invokes Article XIX of the GATT 1994 as a basis for "suspending [an] obligation" or "withdraw[ing] or modify[ing] [a] concession." Indeed, Article XIX:2 of the GATT 1994 and Article 12 of the Safeguards Agreement make clear that advance notice by a Member intending to suspend an obligation or to modify a concession is a precondition to applying a safeguard measure. In this dispute, Indonesia did notify other Members that it intended to adopt a safeguard measure, and thus did invoke Article XIX. In most situations, the question of whether the Safeguards Agreement applied would be resolved by this fact.[25]

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[24] *See* Russia's First Written Submission, paras. 100 – 104.

[25] Third Participant Oral Statement of the United States of America ("U.S. Third Party Statement") (May 8, 2018) (Exhibit USA-5), para. 2. (emphasis in original)

43. Accordingly, the U.S. position in this dispute is fully consistent with the U.S. position in *Indonesia – Iron or Steel Products*. For reference, the United States is providing the Panel with the complete U.S. third participant statement in *Indonesia – Iron or Steel Products*.[26]

4. Russia Relies on WTO Reports That Are Not Relevant Here

44. Russia's failure to ground its justification on the relevant text of the WTO Agreement is a fatal flaw of its approach. Instead, Russia derives its legal theory from the reasoning of panel and Appellate Body reports in *Indonesia – Iron or Steel Products*. That dispute, however, is not applicable here because it did not address a situation where a Member has **not** invoked Article XIX of the GATT 1994.

45. The panel and Appellate Body reports in *Indonesia – Iron or Steel Products* do not support Russia's extreme position. For instance, in that dispute, the panel recognized that a "fundamental question" was whether the measure should properly be considered a safeguard measure within the meaning of Article 1 of the Safeguards Agreement. The panel pointed out that "not *any* measure suspending, withdrawing or modifying a GATT obligation or concession will fall within the scope of Article XIX:1(a)."[27] Here, Russia's position is fundamentally at odds with the panel's position in *Indonesia – Iron or Steel Products*.

46. And, in *Indonesia – Iron or Steel Products*, the disputing parties concurred that the Indonesian measure at issue was a safeguard measure. Why? Because the dispute followed invocation and notification under Article XIX and the Safeguards Agreement. Thus, in that

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[26] *See* Exhibit USA-5.

[27] *Indonesia – Iron and Steel Products (Viet Nam) (Panel)*, para. 7.14 (emphasis in original).

dispute, the disputing parties concurred that the measure at issue in that dispute met what – in most situations – is the fundamental criterion for establishing the existence of a safeguard measure: namely, that the Member taking action **invokes** Article XIX of the GATT 1994 as the legal basis for its measure.[28]

47. Furthermore, the Appellate Body in *Indonesia – Iron or Steel Products* adopted a multi-step analysis to determine whether the measure at issue was a safeguard measure under Article XIX.[29] Under the first step of that analysis, a WTO Member must **invoke** the right under Article XIX for a measure to be considered a safeguard within the meaning of Article 1 of the Safeguards Agreement. Of course, as in *Indonesia – Iron or Steel Products*, invocation is not a sufficient condition for the measure to fall under the WTO safeguards discipline because the measure still needs to meet the other conditions of Article XIX and the Safeguards Agreement. But if the first step of invocation and notification does not take place, the measure is **not** a measure taken pursuant to Article XIX.

5. Russia's Approach Fails Under its own Test

48. Significantly, even under the analytical approach that Russia urges the Panel to adopt, the relevant factors still support the U.S. position. As an initial matter, Russia only cites one of the three factors that the Appellate Body in *Indonesia – Iron or Steel Products* used to assess whether the Indonesian measure in that dispute was a safeguard measure under Article XIX.[30]

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[28] *See* U.S. Third Party Statement, para.2 (Exhibit USA-5)

[29] *See Indonesia – Iron or Steel Products (Viet Nam) (AB),* para. 5.54

[30] *See* Russia's First Written Submission, para. 107.

49. Specifically, in *Indonesia – Iron or Steel Products*, the Appellate Body reasoned that as part of an assessment of whether a measure presents the features of a safeguard measure, a panel should:

> evaluate and give due consideration to all relevant factors, including the manner in which the measure is characterized under the **domestic law** of the Member concerned, the **domestic procedures** that led to the adoption of the measure, and any relevant **notifications** to the WTO Committee on Safeguards.[31]

50. Presumably, Russia does not recite all three factors because their application undermines its case. Regarding the first factor (domestic law), the U.S. security measures were imposed under Section 232 of the Trade Expansion Act of 1962.[32] Section 232 authorizes the President of the United States, upon receiving a report from the U.S. Secretary of Commerce finding that an "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the **national security**," to take action that "in the judgment of the President" will "adjust the imports of the article and its derivatives so that such imports will not threaten to impair the **national security**."[33] In contrast, under U.S. domestic law, safeguards measures are taken pursuant to Section 201 of the Trade Act of 1974.[34]

51. Regarding the second factor (domestic procedures), the Bureau of Industry and Security of the U.S. Department of Commerce conducted the investigation pursuant to Section 232. The mission of the Bureau of Industry and Security is to protect the security of the United States, including its national security, cyber security, and homeland security. In contrast, the U.S.

[31] *Indonesia – Iron or Steel Products (AB)*, para. 5.60 (emphasis added)

[32] Codified at 19 U.S.C. §1862, *et seq*

[33] 19 U.S.C. §1862(c)(1)(A) (emphasis added)

[34] Codified at 19 U.S.C. §2251, *et seq*

International Trade Commission is the only competent authority in the United States authorized to conduct safeguards investigations.

52. Finally, the application of the third factor (notification to the WTO Committee on Safeguards), further supports the U.S. position. The United States has not notified the WTO Committee on Safeguards of any relevant safeguard because the United States did not invoke Article XIX of the GATT 1994.

53. Accordingly, were the Panel to assess the U.S. security measures under the factors used by the Appellate Body in *Indonesia – Iron or Steel Products*, it would conclude that the U.S. security measures do not qualify as safeguard measures under Article XIX of the GATT 1994.

6. Adopting Russia's Approach Would Undermine the WTO

54. Russia has taken the position that any measure that a Member deems inconsistent with a GATT obligation is a "safeguard." And, on that basis, that Member can decide to adopt retaliatory measures disguised as "rebalancing" measures.

55. This is a stunning position. It is our understanding that, since 1947, no Member has ever taken this view of Article XIX of the GATT 1994. Nor, since 1995, of Article XIX plus the WTO Safeguards Agreement. Moreover, Russia's position would radically undermine the WTO dispute settlement mechanism and the WTO as a whole.

IV. RUSSIA's PRELIMINARY RULING REQUEST IS MERITLESS

56. Finally, we will turn to Russia's baseless request for a preliminary ruling. There is no basis in the *Understanding on Rules and Procedures Governing the Settlement of Disputes*

("DSU") to support Russia's argument that the U.S. panel request should have identified a WTO provision that the United States does not consider relevant in this dispute.

57. Article 6.2 of the DSU sets forth the requirements related to a request for the establishment of a panel. For purposes of Russia's preliminary ruling request, we can focus on the element of Article 6.2 that requires a panel request to "provide a brief summary of the legal basis sufficient to present the problem clearly." As we explained in the U.S. response to Russia's preliminary ruling request, a panel request meets this element of Article 6.2 by including sufficient information about the claims to provide the respondent with adequate notice on the nature of the dispute.[35]

58. Article 6.2 does not require that a panel request provide legal arguments or anticipate legal arguments raised by the responding party. Rather, in Appendix 3, paragraph 4, the DSU reflects that "[b]efore the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case *and their arguments*."

59. As demonstrated in the U.S. response to Russia's preliminary ruling request, the U.S. panel request sets out that the United States considers that Russia's additional duties are inconsistent with Russia's WTO obligations under Articles I and II of the GATT 1994.[36] Accordingly, the U.S. panel request provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

[35] *See* Response of the United States of America to Russia's Request for a Preliminary Ruling (June 25, 2019) ("U.S. Response to Russia's Preliminary Ruling Request"), para. 7.

[36] *See* U.S. Response to Russia's Preliminary Ruling Request, paras. 8-9.

60. Russia asserts that the United States did not comply with Article 6.2 of the DSU because the U.S. panel request did not cite the Safeguards Agreement.[37] In other words, Russia is pointing out additional claims that, in Russia's view, the United States could have presented. But that is not the legal standard under Article 6.2 of the DSU. Thus, Russia's arguments are not legally correct.

61. As the United States has explained throughout this proceeding, this dispute is about Russia's WTO commitments under Articles I and II of the GATT 1994. That is the legal basis for the U.S. claims, and that basis was presented clearly in the U.S. panel request. Accordingly, Russia's request is baseless and should be denied.

V. CONCLUSION

62. Ultimately, Russia's position is based on an untenable reading of Article XIX of the GATT 1994 and the Safeguards Agreement. There is simply no basis to find that Russia's measure is anything other than duties applied without justification only against products originating in the United States and that exceed Russia's bound rates. As such, they are clear breaches of Russia's obligations under Articles I and II of the GATT 1994.

[37] Russia's First Written Submission, para. 50.