

***RUSSIAN FEDERATION – MEASURES ON THE IMPORTATION  
OF LIVE PIGS, PORK AND OTHER PIG PRODUCTS  
FROM THE EUROPEAN UNION,  
RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE  
EUROPEAN UNION***

**(DS475)**

**THIRD PARTY SUBMISSION OF  
THE UNITED STATES OF AMERICA**

**June 17, 2019**

### Table of Exhibits

EXHIBIT	DESCRIPTION
US-1 - US-21	<i>These exhibit numbers intentionally omitted</i>
US-22	<i>The New Shorter Oxford English Dictionary</i> , 4th edn, L. Brown (ed.) (Clarendon Press, 1993) (excerpts)
US-23	<i>Draft Articles on the Law of Treaties with Commentaries (1966)</i> , YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, 1966, vol. II
US-24	GATT Contracting Parties Third Session, Agenda (Revised 8 <sup>th</sup> April), GATT/CP.3/2/Rev.2 (Apr. 8, 1949)
US-25	Statement by the Head of the Czechoslovak Delegation, Mr. Zdeněk Augenthaler to Item 14 of the Agenda, GATT/CP.3/33 (May 30, 1949)
US-26	Reply by the Vice-Chairman of the United States Delegation, Mr. John W. Evans, to the Speech by the Head of the Czechoslovak Delegation under Item 14 of the Agenda, GATT/CP.3/38 (June 2, 1949)
US-27	Summary Record of the Twenty-Second Meeting, GATT/CP.3/SR.22 (June 8, 1949) & Corrigendum to the Summary Record of the Twenty-Second Meeting, GATT/CP.3/SR.22/Corr.1 (June 20, 1949)
US-28	GATT, Decision of 8 June 1949, BISD vol. II at 28
US-29	Note by the Secretariat, Article XXI, Negotiating Group on GATT Articles, MTN/GNG/NG7/W/16 (Aug. 18, 1987)
US-30	Ian Sinclair, <i>THE VIENNA CONVENTION ON THE LAW OF TREATIES</i> , Manchester University Press, 2nd edition (1984) (excerpt)
US-31	Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/33 (Oct. 31, 1946), Annexure 11, United States Draft Charter
US-32	Preparatory Committee of the International Conference on Trade and Employment, E/PC/T/C.II/W.5 (Oct. 31, 1946)
US-33	Report of the Drafting Committee of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/34 (Mar. 5, 1947)
US-34	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/W/23 (May 6, 1947)

US-35	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/W/236 (July 4, 1947).
US-36	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Report of the Committee on Chapters I, II and VIII, E/PC/T/139 (July 31, 1947)
US-37	Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/180 (Aug. 19, 1947)
US-38	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, (Draft) General Agreement on Tariffs and Trade, E/PC/T/189 (Aug. 30, 1947)
US-39	United Nations Conference on Trade and Employment, An Informal Summary of the ITO Charter, E/CONF.2/INF.8 (Nov. 21, 1947)
US-40	Summary Record of the Thirty-Third Meeting of Commission A, Second Session of the Preparatory Committee, E/PC/T/A/SR/33 (July 24, 1947)
US-41	Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Verbatim Report, E/PC/T/A/PV/33 (July 24, 1947)
US-42	United Nations Conference on Trade & Employment, Committee VI: Organization, Report of Working Party of Sub-Committee G of Committee VI on Chapter VIII, <a href="#">E/CONF.2/C.6/W.30, at 2 (Jan 9, 1948)</a>
US-43	United Nations Conference on Trade & Employment, Sixth Committee: Organization, Sub-Committee on Chapter VIII (Settlement of Differences – Interpretation), <a href="#">January 13, 1948, E/CONF.2/C.6/W.41 (Jan. 13, 1948)</a>
US-44	United Nations Conference on Trade & Employment, Sixth Committee: Organization, Amendment to Article 94 Proposed by the United Kingdom Delegation, <a href="#">E/CONF.2/C.6/W.48 (Jan. 16, 1948)</a>
US-45	Final Act of the United Nations Conference on Trade and Employment (excerpt)
US-46	United Nations Conference on Trade & Employment, Sixth Committee, Notes of the Eighth Meeting (Article 94), <a href="#">E/CONF.2/C.6/W.123 (Feb. 28, 1948)</a>

US-47	United Nations Conference on Trade & Employment, Sixth Committee, Notes of the Fourth Meeting (Article 94), E/CONF.2/C.6/W.60 & E/CONF.2/C.6/W.60/Corr.1 <a href="#">(Jan. 20, 1948)</a>
US-48	U.S. Delegation (Internal), Second Meeting of the U.N. Preparatory Committee for the International Conference on Trade and Development Geneva, Minutes of Delegation Meeting, July 2, 1947, NARA, Record Group 43, International Trade Files, Box 133, Folder marked “Minutes U.S. Delegation (Geneva 1947) June 21 - July 30, 1947.” – 8:00 p.m. meeting – July 2, 1947
US-49	U.S. Delegation (Internal), Second Meeting of the U.N. Preparatory Committee for the International Conference on Trade and Development Geneva, Memorandum from Seymour J. Rubin dated July 14, 1947, NARA, Record Group 43, International Trade Files, Box 133, Folder marked “Minutes U.S. Delegation (Geneva 1947) June 21 – July 30, 1947.” – July 14, 1947, Memo from Seymour J. Rubin, Legal Advisor of US Delegation, regarding Thorp and Neff Memo
US-50	<i>Young Loan Arbitration</i> , (UK, US, France, Belgium and Switzerland v. Federal Republic of Germany), Arbitral Award of 16 May 1980, ILR 59 (1980)
US-51	Permanent Court of Arbitration, <i>Iron Rhine (‘Ijzeren Rhin’) Railway Arbitration (Belgium v. Netherlands)</i> , 27 RIAA 35, (2005)
US-52	U.S. Delegation (Internal), Department of State, Memorandum of Conversation, “Security Exceptions to Proposed ITO Charter” June 17, 1946, NARA, Record Group 43, International Trade Files, In Folder “ITO Charter – Security” (June 17, 1946)
US-53	U.S. Delegation (Internal), Services Economic Disarmament Argument Draft (1946)
US-54	U.S. Delegation (Internal), Letter from Coppock to Wilcox, “National Security Provisions in the Draft Charter” July 3, 1946, NARA, Record Group 43, International Trade Files, Box 13, In Folder “ITO Charter – Security” July, 3 1946
US-55	Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment - Draft Charter, E/PC/T/A/SR/186 (Sep. 10, 1947)
US-56	U.S. Delegation (Internal), Second Meeting of the U.N. Preparatory Committee for the International Conference on Trade and Development Geneva, Minutes of Delegation Meeting, July 4, 1947, NARA, Record

	Group 43, International Trade Files, Box 133, Folder marked “Minutes U.S. Delegation (Geneva 1947) June 21 – July 30, 1947.” – July 4, 1947, at 2
US-57	Summary Record of the Twelfth Session, SR.19/12 (Dec. 21, 1961)
US-58	Report by the Working Party on Accession of the United Arab Republic, L/3362 (Feb. 25, 1970)
US-59	GATT Council, Minutes of Meeting, C/M/157 (June 22, 1982)
US-60	Communication to the Members of the GATT Council, L/5319/Rev.1 (May 15, 1982)
US-61	GATT Council, Minutes of Meeting, C/M/159 (Aug. 10, 1982)
US-62	Decision Concerning Article XXI Of The General Agreement, L/5426 (Dec. 2, 1982)
US-63	Minutes of Meeting of May 29, 1985, C/M/188 (June 28, 1985)
US-64	Minutes of Meeting of March 12, 1986, C/M/196 & C/M/196/Corr.1(April 2, 1986)
US-65	GATT Panel Report, <i>United States – Trade Measures Affecting Nicaragua</i>
US-66	Minutes of Meeting of November 5-6, 1986, C/M/204 (Nov. 19, 1986)
US-67	Tom Miles, <i>Adjudicator says any security defense of U.S. auto tariffs at WTO ‘very difficult’</i> , REUTERS BUSINESS NEWS (May 27, 2019), <a href="https://www.reuters.com/article/us-usa-trade-autos-wto-idUSKCN1SX1I7">https://www.reuters.com/article/us-usa-trade-autos-wto-idUSKCN1SX1I7</a>
US-68	<i>The New Shorter Oxford English Dictionary</i> , 4th edn, L. Brown (ed.) (Clarendon Press, 1993) (excerpts)
US-69	Black’s Law Dictionary, ed. Bryan A. Garner, Eighth edition, 2004

1. The United States welcomes this opportunity to present its views to the Panel in this proceeding.
2. In its First Written Submission, the Russian Federation invoked Article XXI(b) of GATT 1994<sup>1</sup> as a defense to the claims of the European Union with respect to Resolution 1292. Despite the fact that the European Union and Russia are collaborating on disputes in which they challenge a U.S. invocation of Article XXI, ironically, they are not able to agree on what is the right approach for that (impermissible) review in this dispute.
3. Russia argues that the approach of a recent panel report should be followed, but does not recognize that Russia in fact seeks a more deferential approach than that panel utilized. The European Union, on the other hand, occasionally cites that panel report when favorable but in fact argues for a very different approach, inappropriately modeled on the approach of past reports to GATT 1994 Article XX.
4. Neither Russia nor the European Union is correct. Neither provides an interpretation of Article XXI based on applying customary rules of interpretation of public international law to the text of Article XXI.
5. GATT 1994 Article XXI is self-judging. The United States has explained the basis for this conclusion in detail in its recent submissions in certain disputes entitled *United States – Certain Measures on Steel and Aluminum Products*. To ensure that the Panel in this dispute is aware of the full basis for this conclusion, the United States incorporates in this submission and is attaching as Annex A the First Written Submission of the United States in *United States – Certain Measures on Steel and Aluminum Products (India)*, DS547. That submission also explains in detail why the panel in *Russia – Traffic in Transit* erred in deciding that it had authority to review a responding Party’s invocation of Article XXI.
6. The self-judging nature of Article XXI can be seen from the text of the Article itself, read in its context and in light of the object and purpose of the GATT 1994; it is confirmed by a subsequent agreement between Members, the provision’s negotiating history to clarify the provision as self-judging, and longstanding practice in the GATT and WTO. To further assist the Panel in understanding why Article XXI is self-judging, the United States is submitting as exhibits US-22 through US-69 evidence that it presented to the panel in DS547 that buttresses this understanding. For ease of reference, the United States has designated each exhibit with the same exhibit number that it has in DS547.
7. The United States thanks the Panel for providing an opportunity to comment on important legal issues at stake in this proceeding.

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<sup>1</sup> *General Agreement on Tariffs and Trade 1994* (“GATT 1994”).