

***RUSSIA – ADDITIONAL DUTIES ON CERTAIN PRODUCTS FROM THE UNITED STATES
(DS566)***

First Substantive Meeting of the Panel with the Parties

Closing Statement of the United States

October 1, 2019

1. The United States again expresses its thanks to the Panel, and the Secretariat staff assisting you, for your work in this first substantive meeting with the parties.
2. Over the last two days, you heard Russia – and other Members who are both responding and third parties in disputes brought by the United States against retaliatory duties imposed by them on U.S. products – advance a baseless interpretation of Article XIX of the GATT 1994 and the Safeguards Agreement. Incredibly, Russia and the other respondents have endorsed the view that any border measure that a Member *deems* inconsistent with a GATT obligation is a “safeguard.” And, on that basis, that Member can decide, *for itself*, to adopt retaliatory measures disguised as “rebalancing” measures. This is a stunning position. As we mentioned yesterday, we are not aware of any Member that had taken this view of Article XIX since the founding of the GATT in 1947.
3. As this dispute proceeds, the United States will elaborate two key legal issues. First, Russia’s approach has no basis on the text of the relevant WTO provisions. In contrast, the U.S. position is grounded on the text of the relevant agreements. Second, Russia’s approach, if adopted, would radically undermine the WTO dispute settlement mechanism and the WTO as a whole.
4. Regarding the first issue, Russia’s approach to determining whether a measure constitutes a safeguard measure under Article XIX of the GATT is deeply flawed. Russia’s approach is not

grounded on the text of Article XIX or the Safeguards Agreement. Instead, Russia attempts to apply the reasoning from an Appellate Body report (*Indonesia – Iron or Steel Products*) that is not applicable here.

5. And when Russia has attempted to find support in the text of the WTO Agreement, Russia has made unsupportable assertions. For instance, Russia has now taken the position that the measure at issue is authorized by Article 8.2 of the Safeguards Agreement because, according to Russia, the Council for Trade in Goods has not disapproved it. This argument is erroneous because the notification and negotiation procedures for a safeguard measure are a precondition for another Member to implement a rebalancing measure under Article 8.2. Moreover, Russia's argument is divorced from reality: the Council for Trade in Goods did not even *consider* Russia's application to suspend concessions.

6. Regarding the second legal issue, Russia has no answer to the U.S. observation that its "test" to assess the existence of a safeguard measure would be met nearly any border measure. The effect would be to endorse safeguard "rebalancing" of any perceived WTO breach, undermining the plan and utility of the WTO dispute settlement mechanism.

7. The United States looks forward to providing additional explanations and analysis as this dispute unfolds. Again, we thank you for your ongoing work in this dispute.