

**RUSSIA – TARIFF TREATMENT OF CERTAIN  
AGRICULTURAL AND MANUFACTURING  
PRODUCTS**

**Report of the Panel**  
WT/DS485/R\* and Add.1

*Adopted by the Dispute Settlement Body  
on 26 September 2016*

**TABLE OF CONTENTS**

	Page
1. INTRODUCTION .....	1561
1.1 Complaint by the European Union .....	1561
1.2 Panel Establishment and Composition .....	1562
1.3 Panel Proceedings.....	1562
1.3.1 General .....	1562
1.3.2 Working procedures on Business Confidential Information (BCI) .....	1563
1.3.3 Preliminary ruling .....	1563
2. FACTUAL ASPECTS.....	1564
2.1 The Measures at Issue .....	1564
3. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS.....	1565
4. ARGUMENTS OF THE PARTIES .....	1565
5. ARGUMENTS OF THE THIRD PARTIES .....	1566
6. INTERIM REVIEW .....	1566
6.1 General Interpretative Issues Arising Under Article II:1(b), First Sentence, of the GATT 1994 .....	1566
6.2 Claims Concerning Applied ad valorem Duty Rates that Allegedly Exceed Bound ad valorem Duty Rates (the first to sixth measures).....	1567

\* The corrections notified in WT/DS485/R/Corr.1 and Corr.2 have been made in this report.

Report of the Panel	
6.3	Claims Concerning Applied Combined Duty Rates that Allegedly Exceed Bound Duty Rates (the seventh to eleventh measures at issue) ..... 1568
6.4	Claims Concerning the Twelfth Measure ("Systematic Duty Variation")..... 1571
7.	FINDINGS ..... 1573
7.1	Overview of Claims ..... 1573
7.2	General Interpretative Issues Arising Under Article II:1(b), First Sentence, of the GATT 1994 ..... 1575
7.3	Claims Concerning Applied ad valorem Duty Rates that Allegedly Exceed Bound ad valorem Duty Rates (the first to sixth measures)..... 1582
7.3.1	Claims concerning the first to fifth measures ..... 1582
7.3.1.1	Measures and applied duty rates at issue ..... 1583
7.3.1.2	Consistency with Article II:1(b), first sentence, of the GATT 1994..... 1585
7.3.1.3	Consistency with Article II:1(a) of the GATT 1994..... 1590
7.3.2	Claims concerning the sixth measure..... 1592
7.3.2.1	Measure and applied duty rate at issue ..... 1593
7.3.2.2	Preliminary issues ..... 1597
7.3.2.3	Consistency with Article II:1(b), first sentence, of the GATT 1994..... 1605
7.3.2.4	Consistency with Article II:1(a) of the GATT 1994 (consequential claim) ..... 1608
7.3.2.5	Consistency of the sixth measure with Article II:1(a) of the GATT 1994 (independent claim) ..... 1609
7.4	Claims Concerning Applied Combined Duty Rates that Allegedly Exceed Bound Duty Rates (the seventh to eleventh measures at issue) ..... 1615
7.4.1	Claims concerning the seventh to ninth measures ..... 1615
7.4.1.1	Measures and applied rates at issue ..... 1615
7.4.1.2	Consistency with Article II:1(b), first sentence, of the GATT 1994..... 1621
7.4.1.3	Ceiling mechanism ..... 1639
7.4.1.4	Conclusion ..... 1640
7.4.1.5	Consistency with Article II:1(a) of the GATT 1994..... 1641
7.4.2	Claims concerning the tenth and eleventh measures..... 1641

	Russia - Tariff Treatment
7.4.2.1	Measures and applied rates at issue..... 1641
7.4.2.2	Consistency with Article II:1(b), first sentence of the GATT 1994 ..... 1645
7.4.2.3	Consistency with Article II:1(a) of the GATT 1994 ..... 1653
7.5	Claims Concerning the Twelfth Measure ("Systematic Duty Variation") ..... 1654
7.5.1	Measure at issue ..... 1655
7.5.1.1	Systematic application..... 1659
7.5.1.2	Certain types of tariff treatment ..... 1664
7.5.1.3	Significant number of individual tariff lines ... 1668
7.5.1.4	General practice ..... 1670
7.5.1.5	Conclusion on the definition of the measure at issue..... 1671
7.5.2	Existence of the measure..... 1671
7.5.2.1	Evidence submitted by the European Union ... 1672
7.5.2.2	Assessment of evidence ..... 1674
7.5.3	Conclusion on the SDV..... 1690
8.	CONCLUSIONS AND RECOMMENDATIONS ..... 1691

LIST OF ANNEXES

ANNEX A

PRELIMINARY RULING OF THE PANEL

Contents		Page
Annex A-1	Preliminary Ruling of the Panel	1695

ANNEX B

WORKING PROCEDURES OF THE PANEL

Contents		Page
Annex B-1	Working Procedures of the Panel	1735
Annex B-2	Additional Working Procedures on BCI	1742

ANNEX C

ARGUMENTS OF THE PARTIES

EUROPEAN UNION

Contents		Page
Annex C-1	First Part of the integrated executive summary of the arguments of the European Union	1745
Annex C-2	Second part of the integrated executive summary of the arguments of the European Union	1759

Report of the Panel

RUSSIAN FEDERATION

Contents		Page
Annex C-3	First Part of the integrated executive summary of the arguments of the Russian Federation	1771
Annex C-4	Second part of the integrated executive summary of the arguments of the Russian Federation	1782

ANNEX D

ARGUMENTS OF THE THIRD PARTIES

Contents		Page
Annex D-1	Executive summary of the arguments of Australia	1791
Annex D-2	Executive summary of the arguments of Brazil	1794
Annex D-3	Executive summary of the arguments of Canada	1798
Annex D-4	Executive summary of the arguments of Chile	1802
Annex D-5	Executive summary of the arguments of Colombia	1803
Annex D-6	Executive summary of the arguments of Japan	1805
Annex D-7	Executive summary of the arguments of Norway	1811
Annex D-8	Executive summary of the arguments of Ukraine	1817
Annex D-9	Executive summary of the arguments of the United States	1819

WTO AND GATT CASES CITED IN THIS REPORT

Short Title	Full Case Title and Citation
<i>Argentina – Hides and Leather</i>	Panel Report, <i>Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather</i> , WT/DS155/R and Corr.1, adopted 16 February 2001, DSR 2001:V, p. 1779
<i>Argentina – Import Measures</i>	Appellate Body Reports, <i>Argentina – Measures Affecting the Importation of Goods</i> , WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R, adopted 26 January 2015
<i>Argentina – Textiles and Apparel</i>	Appellate Body Report, <i>Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items</i> , WT/DS56/AB/R and Corr.1, adopted 22 April 1998, DSR 1998:III, p. 1003
<i>Argentina – Textiles and Apparel</i>	Panel Report, <i>Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items</i> , WT/DS56/R, adopted 22 April 1998, as modified by Appellate Body Report WT/DS56/AB/R, DSR 1998:III, p. 1033
<i>Australia – Salmon</i>	Appellate Body Report, <i>Australia – Measures Affecting Importation of Salmon</i> , WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, p. 3327
<i>Brazil – Aircraft</i>	Appellate Body Report, <i>Brazil – Export Financing Programme for Aircraft</i> , WT/DS46/AB/R, adopted 20 August 1999, DSR 1999:III, p. 1161
<i>Canada – Renewable Energy / Canada – Feed-in Tariff Program</i>	Panel Reports, <i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program</i> , WT/DS412/R and Add.1 / WT/DS426/R and Add.1, adopted 24 May 2013, as modified by Appellate Body Reports WT/DS412/AB/R / WT/DS426/AB/R , DSR 2013:I, p. 237
<i>Canada – Wheat Exports and Grain Imports</i>	Appellate Body Report, <i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i> , WT/DS276/AB/R, adopted 27 September 2004, DSR 2004:VI, p. 2739
<i>Chile – Alcoholic Beverages</i>	Panel Report, <i>Chile – Taxes on Alcoholic Beverages</i> , WT/DS87/R, WT/DS110/R, adopted 12 January 2000, as modified by Appellate Body Report WT/DS87/AB/R, WT/DS110/AB/R, DSR 2000:I, p. 303
<i>Chile – Price Band System</i>	Appellate Body Report, <i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i> , WT/DS207/AB/R, adopted 23 October 2002, DSR 2002:VIII, p. 3045 (Corr.1, DSR 2006:XII, p. 5473)
<i>China – Auto Parts</i>	Appellate Body Reports, <i>China – Measures Affecting Imports of Automobile Parts</i> , WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R, adopted 12 January 2009, DSR 2009:I, p. 3
<i>China – Electronic Payment Services</i>	Panel Report, <i>China – Certain Measures Affecting Electronic Payment Services</i> , WT/DS413/R and Add.1, adopted 31 August 2012, DSR 2012:X, p. 5305

Report of the Panel

Short Title	Full Case Title and Citation
<i>China – Publications and Audiovisual Products</i>	Panel Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R, DSR 2010:II, p. 261
<i>China – Raw Materials</i>	Appellate Body Reports, <i>China – Measures Related to the Exportation of Various Raw Materials</i> , WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, adopted 22 February 2012, DSR 2012:VII, p. 3295
<i>Colombia – Textiles</i>	Panel Report, <i>Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear</i> , WT/DS461/R and Add.1, circulated to WTO Members 27 November 2015 [appeal/adoption pending]
<i>Dominican Republic – Import and Sale of Cigarettes</i>	Appellate Body Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/AB/R, adopted 19 May 2005, DSR 2005:XV, p. 7367
<i>EC – Approval and Marketing of Biotech Products</i>	Panel Reports, <i>European Communities – Measures Affecting the Approval and Marketing of Biotech Products</i> , WT/DS291/R, Add.1 to Add.9 and Corr.1 / WT/DS292/R, Add.1 to Add.9 and Corr.1 / WT/DS293/R, Add.1 to Add.9 and Corr.1, adopted 21 November 2006, DSR 2006:III, p. 847
<i>EC – Bananas III</i>	Appellate Body Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, p. 591
<i>EC – Chicken Cuts</i>	Appellate Body Report, <i>European Communities – Customs Classification of Frozen Boneless Chicken Cuts</i> , WT/DS269/AB/R, WT/DS286/AB/R, adopted 27 September 2005, and Corr.1, DSR 2005:XIX, p. 9157
<i>EC – Computer Equipment</i>	Appellate Body Report, <i>European Communities – Customs Classification of Certain Computer Equipment</i> , WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, adopted 22 June 1998, DSR 1998:V, p. 1851
<i>EC – Computer Equipment</i>	Panel Report, <i>European Communities – Customs Classification of Certain Computer Equipment</i> , WT/DS62/R, WT/DS67/R, WT/DS68/R, adopted 22 June 1998, as modified by Appellate Body Report WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, DSR 1998:V, p. 1891
<i>EC – Fasteners (China)</i>	Panel Report, <i>European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China</i> , WT/DS397/R and Corr.1, adopted 28 July 2011, as modified by Appellate Body Report WT/DS397/AB/R, DSR 2011:VIII, p. 4289
<i>EC – Hormones</i>	Appellate Body Report, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, DSR 1998:I, p. 135

Russia - Tariff Treatment

Short Title	Full Case Title and Citation
<i>EC – IT Products</i>	Panel Reports, <i>European Communities and its member States – Tariff Treatment of Certain Information Technology Products</i> , WT/DS375/R / WT/DS376/R / WT/DS377/R, adopted 21 September 2010, DSR 2010:III, p. 933
<i>EC – Selected Customs Matters</i>	Appellate Body Report, <i>European Communities – Selected Customs Matters</i> , WT/DS315/AB/R, adopted 11 December 2006, DSR 2006:IX, p. 3791
<i>EC – Tariff Preferences</i>	Appellate Body Report, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries</i> , WT/DS246/AB/R, adopted 20 April 2004, DSR 2004:III, p. 925
<i>EC and certain member States – Large Civil Aircraft</i>	Appellate Body Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/AB/R, adopted 1 June 2011, DSR 2011:I, p. 7
<i>Japan – Alcoholic Beverages II</i>	Appellate Body Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, p. 97
<i>Japan – Film</i>	Panel Report, <i>Japan – Measures Affecting Consumer Photographic Film and Paper</i> , WT/DS44/R, adopted 22 April 1998, DSR 1998:IV, p. 1179
<i>Korea – Various Measures on Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, p. 5
<i>Mexico – Anti-Dumping Measures on Rice</i>	Appellate Body Report, <i>Mexico – Definitive Anti-Dumping Measures on Beef and Rice</i> , Complaint with Respect to Rice, WT/DS295/AB/R, adopted 20 December 2005, DSR 2005:XXII, p. 10853
<i>Mexico – Corn Syrup (Article 21.5 – US)</i>	Appellate Body Report, <i>Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS132/AB/RW, adopted 21 November 2001, DSR 2001:XIII, p. 6675
<i>Mexico – Taxes on Soft Drinks</i>	Panel Report, <i>Mexico – Tax Measures on Soft Drinks and Other Beverages</i> , WT/DS308/R, adopted 24 March 2006, as modified by Appellate Body Report WT/DS308/AB/R, DSR 2006:I, p. 43
<i>Thailand – H-Beams</i>	Appellate Body Report, <i>Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland</i> , WT/DS122/AB/R, adopted 5 April 2001, DSR 2001:VII, p. 2701
<i>Ukraine – Passenger Cars</i>	Panel Report, <i>Ukraine – Definitive Safeguard Measures on Certain Passenger Cars</i> , WT/DS468/R and Add.1, adopted 20 July 2015



Report of the Panel

Short Title	Full Case Title and Citation
US – Carbon Steel	Appellate Body Report, <i>United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany</i> , WT/DS213/AB/R and Corr.1, adopted 19 December 2002, DSR 2002:IX, p. 3779
US – Certain EC Products	Appellate Body Report, <i>United States – Import Measures on Certain Products from the European Communities</i> , WT/DS165/AB/R, adopted 10 January 2001, DSR 2001:I, p. 373
US – COOL	Panel Reports, <i>United States – Certain Country of Origin Labelling (COOL) Requirements</i> , WT/DS384/R / WT/DS386/R, adopted 23 July 2012, as modified by Appellate Body Reports WT/DS384/AB/R / WT/DS386/AB/R, DSR 2012:VI, p. 2745
US – Continued Zeroing	Appellate Body Report, <i>United States – Continued Existence and Application of Zeroing Methodology</i> , WT/DS350/AB/R, adopted 19 February 2009, DSR 2009:III, p. 1291

EXHIBITS REFERRED TO IN THIS REPORT

Exhibit	Title	Short title
EU-1	Communication from the Committee on Market Access, Rectification and Modification of Schedules, Schedule CLXV – The Russian Federation, 1 May 2015, G/MA/TAR/RS/406; and EU objection to the request of the Russian Federation to modify/rectify its WTO bound accession schedule CLXV	Russia's Request for Rectification
EU-3	Decision No. 54 of the Board of the Eurasian Economic Commission of 16 July 2012 "On the Common Customs Tariff Regulation of the Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation" (entered into force on 23.08.2012) – relevant parts in English and Russian	Decision No. 54
EU-4	Decision No. 9 of the Board of the Eurasian Economic Commission of 29 January 2014 "On the determination of the import customs duty rates in the Common Customs Tariff of the Customs Union with regard to certain types of paper and paperboard" – in English and Russian	Decision No. 9
EU-5	Decision No. 77 of the Board of the Eurasian Economic Commission of 26 May 2014 amending the Single Commodity Nomenclature of Foreign Economic Activities of the Customs Union and the Common Customs Tariff of the Customs Union in respect of certain goods in accordance with the WTO accession commitments of the Russian Federation and approving the draft Decision of the Council of Eurasian Economic Commission – relevant parts in English and Russian	Decision No. 77
EU-6	Decision No. 52 of the Council of the Eurasian Economic Commission of 16 July 2014 "On the determination of the import customs duty rates in the Common Customs Tariff of the Customs Union in respect of certain goods in accordance with the obligations of the Russian Federation in the WTO" – in English and Russian	Decision No. 52
EU-7	Decision No. 47 of the Council of the Eurasian Economic Commission of 23 June 2014 "Amending the Single Commodity Nomenclature of Foreign Economic Activity of the Customs Union and the Common Customs Tariff of the Customs Union in respect of certain goods in accordance with the obligations of the Russian Federation to the WTO" – relevant parts in English and Russian	Decision No. 47