

SIXTH GNLU
INTERNATIONAL LAW MOOT COURT COMPETITION 2014

IN THE WORLD TRADE ORGANIZATION PANEL



RANDORNZK: MEASURES AFFECTING THE ONLINE GAMING INDUSTRY

WT/DSxxx

RODERLAM

(COMPLAINANT)

v.

RANDORNZK

(RESPONDENT)

MEMORANDUM ON BEHALF OF COMPLAINANT

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LIST OF ABBREVIATIONS

¶	Paragraph
Art.	Article
Annex	Annexure
AB/R	Appellate Body Report
BISD	Basic Instrument and Selected Documents
CPC	United Nations Central Product Classification
DSU	Dispute Settlement Understanding
EC	European Communities
ECU	Ecuador
ed.	Edition
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GNS	Group of Negotiations
HS	Harmonized System Classification
<i>Ibid</i>	<i>Ibidem</i>
ICJ	International Court of Justice
JIEL	Journal on International Economic Law
JWT	Journal on World Trade
MTN	Multilateral Trade Negotiations
Pg.	Page
UN	United Nations
UNTS	United Nations Treaty Series
US	United States
USA	United States of America
VCLT	Vienna Convention on Law of Treaties
Vol.	Volume

Ver.	Version
WTO	World Trade Organization
<i>WT/DS</i>	World Trade/Dispute Settlement

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STATEMENT OF FACTS

The Parties

Roderlam is a developed island country located in North America. Roderlam has a highly developed software industry and a well developed banking sector. The currency of Roderlam is Roda. Drastord is a developing country in an advanced stage of development, located in Africa. Randornzk is a developed country located in Southeast Asia. 75% of the population follows the religion Timor.

Gaming industry in Randornzk

GenX Gaming Inc (GenX) is one of the biggest developers of videogames in Randornzk. *Mystical Assassins* is one of the games produced by GenX. *Mystical Assassins* is inspired by the character of Raga. Raga is considered to be the last prophet by followers of the Timor religion. Raga is considered to have fought a fifteen year war against the Devil himself. The game itself focuses on the fifteen year war. The user may opt to play the role of Raga or the Devil. The game combines elements of strategy and action. For example, the character may strategize to form alliances or betray allies. They may also engage in violent battles against enemies.

Gaming industry in Roderlam

Kiwi Incorporated (Kiwi) is a developer, publisher and distributor of video games based in Siliconia, Roderlam. The staff at Kiwi comprises of a team of software engineers, graphic designers and psychologists. Prior to commercial release, every game developed at Kiwi is analyzed by a team of psychologists. As per the 2023-2024 Annual Reports published by Kiwi, prior to release, *“the psychologists are required to examine whether the game is immersive enough for the user”*. In January, 2022 Kiwi has launched two games that is *Roderlam Gangsters* and *Agency Z* which were fully compatible with Reality GP. *Roderlam Gangsters* is a multiplayer game which allows players to form part of a virtual street gang. Players can choose to be a part of any of four gangs. Each gang controls a part of the town. *Agency Z* is also a multiplayer game. In this game, players can choose to be members of an elite spy agency called *Agency Z* who find themselves behind enemy lines. Alternatively, they can form part of an elite military team which seeks to apprehend the spies. After the introduction of Reality GP and the two games, the market share of Kiwi Inc increased dramatically in Roderlam. It also started exporting Reality GP to various countries from the manufacturing unit in Drastord including to Randornzk. By the end of 2023, 75% of the

gamers in Randornzk had a GP console. The online gaming market in Randornzk is valued to be worth one billion U.S. Dollars.

Ban on import of Reality GP

In June, 2024 the Randornzk government enacted a ban on the import of Reality GP, based on the report of a three member committee who opined that the combined effect of the two games and Reality GP is creating desensitisation towards violence. Kiwi described the experience as “watching a 3D movie without 3D glasses”.

In order to retain market share, Kiwi started marketing non 3D versions of the two games, to which there was no enthusiasm. A market survey among gamers indicated that in the “*absence of Reality GP, the Kiwi games were not substantially better than the games available through other consoles*” and therefore there was “*limited incentive to invest in a GP console*”. Over the period 2024-2025, the number of new purchasers preferring a GP console to any other console fell to 15%. This also limited the ability of Kiwi to increase the user base for its games in Randornzk.

RBB Policy Directive 2024

In June 2024, the RBB of Randornzk issued the *RBB Policy Directive 2024*, which included a measure that any transaction on an online merchant site located outside Randornzk shall not be allowed unless a specific warning is issued to the user.

The warning read that since the merchant is located outside the territory of Randornzk, the transaction need not comply with Randornzk’s data protection laws and hence, the purchasers can continue at their own risk.

As a result of this Directive, the online purchases of Kiwi games or Clones through the GP Live Market fell by 90%.

Panel Establishment

On February, 2025, Roderlam and Drastord requested consultations with Randornzk under the WTO Dispute Settlement Understanding (DSU). The consultations with Roderlam were unsuccessful. In the meeting of the Dispute Settlement Body, Roderlam requested for the establishment of a Panel. Randornzk did not object to this request. The DSB established a panel on August, 2025. The WTO Director General composed the Panel on September, 2025.

MEASURE OF ISSUES

I. THE BAN ON THE IMPORT OF REALITY GP BY RANDORNZK VIOLATES ARTICLE XVI OF GATS

A. RANDORNZK HAS COMMITTED TO GRANT FULL MARKET ACCESS IN THE RELEVANT SERVICES SECTOR AND MODE OF SUPPLY

- i. The gaming services supplied by Kiwi Incorporated falls within the sub-sector of Motion Picture & Video Tape Production & Distribution Services
- ii. The gaming services supplied by Kiwi falls within Cross-border Supply of a service i.e., (Mode 1) as defined under Article I: 2(a) of GATS

B. RANDORNZK MAINTAINED OR ADOPTED MEASURES THAT LIMIT THE TOTAL NUMBER OF SERVICE OPERATIONS OR THE TOTAL QUANTITY OF SERVICE OUTPUT

C. THE MEASURES ADOPTED BY RANDORNZK ARE EXPRESSED IN TERMS OF DESIGNATED NUMERICAL UNITS IN THE FORM OF QUOTAS

II. THE ACT OF BANNING THE IMPORT OF REALITY GP HAS VIOLATED ARTICLE XVII OF GATS

A. RANDORNZK HAS UNDERTAKEN NATIONAL TREATMENT COMMITMENT IN THE RELEVANT SECTOR AND MODE

B. THE SERVICES AND SERVICE SUPPLIERS OF KIWI AND GENX ARE LIKE

- i. Characteristics of Services are like
- ii. End uses of services are like
- iii. Classification of Services evidences likeness
- iv. Consumers' tastes and Habits Concerning Services are like
- v. Unlikeness across modes is not to be considered
- vi. GenX and Kiwi are like service suppliers

C. THE MEASURE BY RANDORNZK AMOUNTS TO LESS FAVOURABLE TREATMENT TO FOREIGN SERVICES/SUPPLIERS THAN THAT GRANTED TO LIKE DOMESTIC SERVICES AND SUPPLIERS

- i. In Randornzk's market there exists competition between GenX and Kiwi
- ii. The measure results in the modification of the conditions of competition in the favour of the domestic suppliers

III. RANDORNZK THROUGH THE RBB POLICY DIRECTIVE 2024 HAS VIOLATED ITS OBLIGATIONS UNDER GATS

- A. THE DIRECTIVE AMOUNTS TO THE VIOLATION OF ARTICLE VI OF GATS
 - i. The Directive is a measure of general application
 - ii. The substantive content of a Measure which explains in part about the administration of the same falls within the scope of Art. VI: 1 of GATS
 - iii. The administration of the measure is partial and unreasonable
- B. RANDORNZK THROUGH THE DIRECTIVE HAS VIOLATED OBLIGATIONS UNDER ARTICLE XI OF THE GATS
 - i. The Directive falls within the meaning of the term restriction
 - ii. The circumstances mentioned under Article XII of GATS do not exist
 - iii. Randornzk by issuing the Directive restricted the international payment for the current transactions under Article XI: 1 of GATS
- C. RANDORNZK BY ISSUING THE DIRECTIVE VIOLATED ITS OBLIGATIONS UNDER ARTICLE XVI:1 OF GATS
 - i. Randornzk has committed to grant full market access in the relevant services sector and mode of supply:
 - ii. The measure adopted by Randornzk accords less favourable treatment than that provided for in its schedule
- D. RANDORNZK THROUGH THE DIRECTIVE VIOLATED ITS OBLIGATIONS UNDER ARTICLE XVI: 2(B) OF GATS

IV. RANDORNZK CANNOT CLAIM ANY JUSTIFICATION UNDER ARTICLE XIV OF GATS

- A. RANDORNZK CANNOT CLAIM ANY VALIDATION FOR ENACTING THE BAN ON THE IMPORT OF REALITY GP UNDER ARTICLE XIV OF GATS
- B. RANDORNZK CANNOT JUSTIFY THE DIRECTIVE UNDER ARTICLE XIV OF GATS

SUMMARY OF THE PLEADINGS

Argument I

The ban on the import of Reality GP by Randornzk has violated Article XVI of GATS. Randornzk's violation can be invoked for three reasons.

- Firstly, the gaming services supplied by Kiwi Incorporated fall within the sub- sector of Motion Picture & Video Tape Production & Distribution Service. The mode in which Kiwi supplies the gaming service is cross-border mode of supply defined under Article I 2(a) of GATS. Randornzk has committed to grant full market access for the services supplied through cross border mode of supply under the sub- sector of Motion Picture & Video Tape Production & Distribution Service.
- Secondly, Randornzk by banning the import of Reality GP limited the total service operations or service output thereby covered under Article XVI: 2 (c) of GATS.
- Thirdly, the measures adopted by Randornzk resulted in zero quota which is one of the forms of numerical quota as laid down in Article XVI: 2(c) of GATS.

Argument II

The act of banning the import of Reality GP by Randornzk has violated Article XVII of GATS. Randornzk's violation can be invoked for three reasons.

- Firstly, the gaming services supplied by Kiwi Incorporated fall within the sub- sector of Motion Picture & Video Tape Production & Distribution Service. The mode in which Kiwi supplies the gaming service is cross-border mode of supply defined under Article I 2(a) of GATS. Randornzk has undertaken full commitment under national treatment obligation for the services supplied through cross border mode of supply under the sub- sector of Motion Picture & Video Tape Production & Distribution Service.
- Secondly, the services and service suppliers of Kiwi and GenX are like because the Characteristics, End-uses, Classification and Consumers' Tastes and Habits of both the Services are like.
- Thirdly, Randornzk by enacting a ban on the import of Reality GP accorded less favourable treatment to foreign services/suppliers than that granted to like domestic

services/suppliers and thereby modified conditions of competition in favour of domestic suppliers.

Argument III

Randornzk through RBB Policy Directive violated Article VI of GATS for three reasons.

- Firstly, the RBB Policy Directive is a measure of General Application as it is the Directive which falls under the meaning of the term 'measure' referring to all online transactions taking place and is not specific to any transaction.
- Secondly, the RBB Policy Directive issued by Randornzk in part refers to the administration of the measure that is through the warning and therefore, it falls within the scope of Article VI of GATS.
- Thirdly, the online merchant sites have no relation with the payment transactions, as it is the banks which will proceed with the payment related transactions and the confidential information of the users is not disclosed to the online merchant sites. Subsequently, Randornzk by issuing the RBB Policy Directive has been unreasonable and partial violating Article VI: 1 of GATS.

Randornzk through RBB Policy Directive violated Article XI of GATS for the reasons given below.

- The RBB Policy Directive falls within the meaning of the term 'restriction' as it has affected the payment for the services produced by Kiwi. It is evident by the fall in online purchases by 90% of Kiwi games or Clones through GP Live.
- Exceptions to Article XI of GATS are the circumstances mentioned under Article XII of GATS. They are not present as there is no balance of payments situation and also the term threat is interpreted to mean a decline in the monetary reserve and thus, Randornzk's issuance of RBB Policy Directive is not covered by exceptions.
- All the services provided by Kiwi are being paid via online transactions and Randornzk through the RBB Policy Directive has restricted the payments related to the services to which Sectoral Commitment has been made and thus, Randornzk violated Article XI.

Randornzk through the RBB Policy Directive violated Article XVI 1 of GATS. Randornzk's violation can be invoked by two reasons.

- Firstly, Randornzk has committed to grant full market access in the relevant services sector and mode of supply, and
- Secondly, the RBB Policy Directive issued by Randornzk provided for less favourable treatment than that inscribed in its schedule of specific commitments. The RBB policy Directive treated Kiwi less favourably than that inscribed under Randornzk's schedule of specific commitments thereby, violating Article XVI: 1 of GATS.

Randornzk through the RBB Policy Directive violated Article XVI: 2(b) of GATS due to the following reasons:

- Firstly, after the issuance of the RBB Policy Directive, online purchase on GP Live was as less as 100 transactions in a month in comparison to 10000 transactions a day in the beginning of June, 2024. Also, as a result of the Directive, the online purchases of Kiwi games or Clones through GP Live fell by 90%.
- Secondly, the effect of Directive is the limitation on number of service transactions thus, clearly violating Article XVI: 2(b) of GATS.

Argument IV

Randornzk cannot claim any justification under Article XIV for the following reasons.

- Randornzk cannot claim justification for enacting a ban on the import on Reality GP as it amounts to arbitrary and unjustifiable discrimination thereby, violating the requirement of Article XIV of GATS
- Randornzk further cannot seek any justification for issuing the RBB Policy Directive as the online merchant sites have no connection with the payments which take place as it is the bank's which have a control over these payments and therefore placing a restriction on the merchant's site creates an arbitrary discrimination between countries where like conditions prevail.

LEGAL PLEADINGS

I. THE BAN ON THE IMPORT OF REALITY GP BY RANDORNZK VIOLATES ARTICLE XVI OF GATS

The essence of Art.XVI: 1 of GATS is that a Member should provide, with respect to market access, no less favourable treatment than that provided for in the Members' respective schedules.¹ Article XVI provides for, in six sub-paragraphs, measures that a Member, having undertaken a specific commitment, should not adopt or maintain, “unless otherwise specified in its Schedule.”²

Thus, for there to be any inconsistency with Article XVI: 2(c), it must be established that:

- i. Randornzk has committed to grant full market access in the relevant services sector and mode of supply,³
- ii. Randornzk maintained or adopted measures that limit the total number of service operations or the total quantity of service output,⁴ and
- iii. The measures adopted by Randornzk are expressed in terms of designated numerical units in the form of quotas.⁵

A. RANDORNZK HAS COMMITTED TO GRANT FULL MARKET ACCESS IN THE RELEVANT SERVICES SECTOR AND MODE OF SUPPLY

i. The gaming services supplied by Kiwi Incorporated falls within the sub-sector Motion Picture & Video Tape Production & Distribution Services

The full nature and extent of each Member's obligations under the GATS can only be determined by reference to their respective “schedules of specific commitments.”⁶ Once

¹ Panel Report, *United States-Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, (10 November 2004) ¶ 6.263, [hereinafter Panel Report, *US-Gambling*].

² WTO- TRADE IN SERVICES, *DELIMATISIS & MOLINUEVO ON ARTICLE XVI*, MAX PLANCK COMMENTARIES ON WORLD TRADE LAW, Vol. 6, ¶¶ 14&15, (Rüdiger Wolfrum, Peter-Tobias Stoll & Clemens Feinäugle, Martinus Nijhoff Publishers, 2008).

³ Appellate Body Report, *United States-Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, (7 April 2005) ¶ 214, [hereinafter Appellate Body Report, *US- Gambling*].

⁴ Panel Report, *US- Gambling Supra* Note 1, ¶ 6.293.

⁵ NELLIE MUNIN, *LEGAL GUIDE TO GATS*, GLOBAL TRADE LAW SERIES 196, 31 (Wolters Kluwer Law & Business); Appellate Body Report, *US- Gambling, Supra* Note 3 ¶ 143.

the Schedules of Specific Commitments of Members are developed, “it shall be annexed to GATS and shall form an integral part thereof.”⁷

The meaning of the provision of any WTO agreement is to be clarified in accordance with customary rules of interpretation of public international law.⁸ The terms of a schedule are to be interpreted as treaty terms.⁹ Article 31 and 32 of the Vienna Convention on the Law of Treaties [hereinafter VCLT]¹⁰ represents the ‘customary rules of interpretation of public international law.’¹¹ Article 31(1) of the VCLT provides for a treaty to be interpreted, using the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose.¹² Therefore, VCLT can be applied to interpret the Schedule of Specific Commitments.

In *US- Gambling* case, the term “public morals” was divided and interpreted individually and a combination of the meanings of the two words were used to explain the term.¹³ In the absence of any treaty definition and pursuant to Articles 31(1) and 31(2) of VCLT, the Panel should, as a starting point, resort, to the dictionary definitions of these terms.¹⁴ Accordingly, the ordinary meaning of the word “motion” is defined as an action of moving and “picture” is defined as an image on a screen.¹⁵ By combining the two words, we can deduce that motion picture means and includes any moving picture. Therefore, the gaming services provided by Kiwi Incorporated [herein after

⁶ General Agreement on Trade in Services, Article XX: 1, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183 [hereinafter GATS].

⁷ GATS, *Supra* Note 6, Article XX: 3.

⁸ Understanding on Rules and Procedures Governing the Settlement of Disputes, Art.3.2, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

⁹ Appellate Body Report, *European Communities – Customs Classifications of Certain Computer Equipment*, ¶ 84, WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, (5 June 1998).

¹⁰ Vienna Convention on the Law of Treaties, 1969 (Adopted 22 May 1969, opened for signature 23 May 1969, entry into force 27 January 1980) 1155 U.N.T.S. 331, Article 31, 32 [hereinafter VCLT].

¹¹ Appellate Body Report, *United States - Standards for Reformulated and Conventional Gasoline*, Pg. 17, WT/DS2/AB/R, (29 April 1996)[hereinafter Appellate Body Report, *US-Gasoline*]; *Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, 1994 I.C.J. 6, 41 (February 3); *Case Concerning the Aerial Incident of July 27th, 1955 (Israel v. Bulgaria.)*, Preliminary Objections, 1959 I.C.J. 127, 188(May 26); ROBERT HOWSE, *ADJUDICATIVE LEGITIMACY AND TREATY INTERPRETATION IN INTERNATIONAL TRADE LAW: THE EARLY YEARS OF WTO JURISPRUDENCE, IN THE EU, THE WTO, AND THE NAFTA: TOWARDS A COMMON LAW OF INTERNATIONAL TRADE?*, 57-58 (Joseph H. H. Weiler, 2000); Campbell McLachlan, *The Principle of Systematic Integration and Article 31 (3) (c) of the Vienna Convention*, 54 I.C.L.Q 279, 291 (2005).

¹² VCLT, *Supra* Note 10, Art. 31.1.

¹³ Panel Report, *US- Gambling*, *Supra* Note 1, ¶ 3.278.

¹⁴ Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos Containing Products*, ¶ 92, WT/DS135/AB/R, (12 March 2001) [hereinafter Appellate Body Report, *EC-Asbestos*]; Appellate Body Report, *Canada –Measures Affecting the Export of Civilian Aircraft*, ¶ 153, WT/DS70/AB/R, (2 August 1999); Panel Report, *US- Gambling* *Supra* Note 1, ¶ 6.270.

¹⁵ THE NEW OXFORD ENGLISH DICTIONARY, (Catherine Soanes & Angus Stevenson, Oxford University Press 11th ed., Rev.) Pg. 581 *id* 667.

referred to as “Kiwi”] falls under the sub-sector of Motion Picture & Video Tape Production & Distribution Services as it includes moving pictures. This interpretation has further been reiterated by the Motion Picture Act¹⁶ in Canada and further it is humbly submitted that, the motion picture industry¹⁷ encompasses video games.

Therefore, the services provided by Kiwi falls within the sub-sector of Motion Picture & Video Tape Production & Distribution Services under the Audio Visual Service Sector as provided in the Schedule of Specific Commitments of Randornzk.

ii. The gaming services supplied by Kiwi falls within Cross-border Supply of a service i.e., (Mode 1) as defined under Article I: 2(a) of GATS

Cross-border supply¹⁸ is defined as "the supply of a service" from the territory of one Member into the territory of any other Member. In *Mexico- Telecommunications*¹⁹ case, the Panel held that, the ordinary meaning of the words of Art. I: 2(a) of GATS indicate that, the service is supplied from the territory of one Member into the territory of another Member and the words of this Article do not address the service supplier or specify where the service supplier must operate, or be present. The silence of subparagraph (a) in Art. I: 2 of GATS with respect to the territory of the supplier suggest that the place where the supplier itself operates, or is present, is not directly relevant to the definition of cross-border supply.²⁰ Further in *EC-Bananas* it was held that, if the parent company is registered in a Member and engages in substantive business operations there or in the territory of another Member, the Member where the parent company is registered may invoke the provisions of GATS.²¹ By drawing an analogy from the above lines, it can be implied that, the service provided by Kiwi falls within the cross-border mode of supply of a service as defined under Art. I: 2(a) of GATS.

Randornzk’s Schedule of Specific Commitments in relation to the limitation on market access in the sub-sector of Motion Picture & Distribution Services regarding supply

¹⁶ Motion Picture Act [RSBC 1996], (Canada), Chapter 314.

¹⁷ Jehoshua Eliasberg, Anita Elberse & Mark A.A.M. Leenders, “*The Motion Picture Industry: Critical Issues in Practice, Current Research & New Research Directions*,” 23rd February, 2005.

¹⁸ GATS, *Supra* Note 6, Art. I: 2(a).

¹⁹ Panel Report, *Mexico-Measures Affecting Telecommunications Services*, ¶ 7.30, WT/DS204/R, (2 April 2004). [Hereinafter Panel Report, *Mexico-Telecommunications Services*].

²⁰ *Id.*, Note 19.

²¹ Panel Report, *European Communities-Regime For The Importation, Sale And Distribution of Bananas*, ¶ 7.328, WT/DS27/R/ECU, (22 May 1997). [Hereinafter Panel Report, *EC-Bananas*].

through mode 1 reads “None.”²² The term “none” means that a Member undertakes a full market access commitment.²³ Hence, Randornzk has committed to grant full market access to gaming services provided by Kiwi.

B. RANDORNZK MAINTAINED OR ADOPTED MEASURES THAT LIMIT THE TOTAL NUMBER OF SERVICE OPERATIONS OR THE TOTAL QUANTITY OF SERVICE OUTPUT

In the present factual milieu, it is humbly submitted that, Randornzk enacted a ban on the import of Reality GP²⁴ in the absence of which, it was impossible for Kiwi to supply virtual gaming services.

Any measure taken, resulting in one of the six specified limitations would be subject to Art. XVI: 2.²⁵ This interpretation leads to the conclusion that, any alleged infringement of Article XVI would be decided subject to the actual effect of any measure taken.²⁶ ‘Supply of a service’ includes the production, distribution, marketing, sale and delivery of a service.²⁷ The ban enacted on the import of Reality GP has affected the production and sale of virtual gaming service which therefore, has limited the supply of service. In the *US- Gambling* case, the Panel held that, the limitation on the supply of service is a limitation on the total number of service operations or on the total quantity of service output within the meaning of Art. XVI: 2(c).²⁸ Here, the ban on the import of Reality GP by Randornzk, which limits the supply of a service is a limitation on the service operations of Kiwi, thereby, falling under the terms mentioned in Article XVI: 2(c) of GATS.

C. THE MEASURES ADOPTED BY RANDORNZK ARE EXPRESSED IN TERMS OF DESIGNATED NUMERICAL UNITS IN THE FORM OF QUOTAS

In *US – Gambling*,²⁹ a question arose as to whether, a total prohibition on the cross border supply of a service can be deemed to be a market access limitation under

²² Compromis, Annexure, Pg. 11.

²³ Mitsuo Matsushita / Aya Iino, *Cross Border Gambling and Betting Services Under WTO Disciplines*, Vol. 1 No. 1, 14, Asian Journal of Comparative Law, 2006.

²⁴ Compromis, ¶18.

²⁵ *Supra* Note 5, Pg. 190.

²⁶ *Id.*, Note 25.

²⁷ GATS, *supra* note 6, Article XXVIII (b).

²⁸ Panel Report, *US-Gambling*, *Supra* Note 1, ¶ 6.392.

²⁹ Appellate Body Report, *US – Gambling*, *Supra* Note 3, ¶69.

paragraph (c) of Art. XVI: 2, although such prohibition does not explicitly refer to numbered units. The Appellate Body in *US-Gambling* held that, ‘the thrust of sub – paragraph (c) is not on the form of limitation, but on their numerical, or quantitative, nature.’³⁰ It was added that, the words *in the form of* should not be taken ‘as prescribing a rigid mechanical formula.’³¹ Also, any interpretation that allows for non-compliance with the rules of GATS would decrease the credibility, security and predictability of the multilateral trading system.³² The Appellate Body further held that, completely prohibiting the supply of services in respect of which a market access commitment has been taken, amounts to "zero quota" which is one of the form of numerical quota³³ on service operations or output with respect to such services and as such, they fall within the scope of Article XVI: 2(c).³⁴ In a similar way, Randornzk by banning the import of Reality GP resulted in the total prohibition of virtual gaming services which amounted to a zero quota ban on the virtual gaming service provided by Kiwi. Hence, the measures adopted by Randornzk are expressed in the form of designated numerical quotas violating Art. XVI: 2(c).

Further, it is humbly submitted that, Randornzk has made no benevolent acts to fulfil its market access commitments. The general international law principle of good faith applies to all WTO rules.³⁵ Whenever the assertion of a right “impinges on the field covered by a treaty obligation, it must be exercised *bona fide*, that is to say, reasonably.”³⁶ Randornzk has failed and continues to fail to respect the market access commitment made in its schedule of commitments in a reasonable manner.

II. THE ACT OF BANNING THE IMPORT OF REALITY GP VIOLATED ARTICLE XVII OF GATS

Art. XVII of GATS, which is entitled “National Treatment” provision, obliges WTO Members, not to discriminate between domestic and foreign services and service suppliers by treating foreign services and suppliers less favourably than like domestic

³⁰*Id.*, Note 29, ¶ 232.

³¹*Id.*, Note 29, ¶¶ 231-232.

³² Bryan Mercurio, *Improving Dispute Settlement in the World Trade Organisation: The Dispute Settlement Understanding Review – Making it work*, Vol. 38, 5, Pg. 839, Journal of World Trade, 2004.

³³ Appellate Body Report, *US-Gambling*, *Supra* Note 3, ¶ 241.

³⁴*Id.*, Note 33, ¶ 251.

³⁵ Ernst- Ulrich Petersmann, *From the Hobbesian International Law of Coexistence to Modern Integration Law: The WTO Dispute Settlement System*, Vol. 1, 2, 190, Journal of International Economic Law, 1998.

³⁶ Appellate Body Report, *United States-Transitional Safeguard Measure on Combed Cotton Yarn From Pakistan*, ¶ 81, WT/DS192/AB/R, (8 October 2001).

services and suppliers, subject to any limitations noted in the Schedule of Specific Commitments.³⁷ The Agreement also provides that ‘formally identical or formally different treatment’ shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.³⁸

Under Art. XVII, both de jure and de facto discrimination are prohibited.³⁹ De jure discrimination takes place when the measures openly link a formally different treatment to the origin of a service or service supplier.⁴⁰ Here, there is de jure discrimination due to a formally different treatment between foreign and domestic services. This is a result of Randornzk’s act of banning the import of Reality GP.⁴¹

It has been established by WTO jurisprudence,⁴² for there to be an inconsistency with Art. XVII, it must be established that

- i. Randornzk has undertaken national treatment commitment in the relevant sector (Motion Picture & Video Tape Production & Distribution Services) and mode;
- ii. GenX and Kiwi Services and Service Suppliers are like; and
- iii. The measure by Randornzk accords less favourable treatment to foreign services/suppliers than that accorded to *like* domestic services/suppliers⁴³ and modify the conditions of competition⁴⁴ in favour of domestic services/service suppliers.⁴⁵

³⁷ GATS, *Supra* Note 6, Art. XVII(1); W. Zdouc, ‘WTO Dispute Settlement Practice Relating to the GATS,’ 324, *Journal of International Economic Law* 2(1999).

³⁸ GATS, *Supra* Note 6, Art. XVII: 3.

³⁹ Appellate Body Report, *Canada-Certain Measures Affecting The Automotive Industry*, ¶ 78, WT/DS139/AB/R, WT/DS142/AB/R, (31 May 2000) [hereinafter Appellate Body Report, *Canada-Autos*].

⁴⁰ WTO- TRADE IN SERVICES, KRAJEWSKI & ENGELKE ON ARTICLE XVII, MAX PLANCK COMMENTARIES ON WORLD TRADE LAW, Vol. 6, ¶ 42, (Rüdiger Wolfrum, Peter-Tobias Stoll & Clemens Feinäugle, Martinus Nijhoff Publishers, 2008).

⁴¹ Compromis, ¶ 18.

⁴² Panel Report, *China – Measures Affecting Trading Rights And Distribution Services For Certain Publications and Audiovisual Products*, ¶¶ 7.962, 7.970 and 7.972, WT/DS363/R, (12 August 2009) [hereinafter Panel Report, *China-Audiovisual Products*]; Panel Report, *China – Certain Measures Affecting Electronic Payment Services*, ¶ 7.641, WT/DS413/R, (16 July 2012) [hereinafter Panel Report, *China-Electronic Payment*];

⁴³ Appellate Body Report, *Korea – Measures Affecting Imports Of Fresh, Chilled And Frozen Beef*, ¶ 137, WT/DS161/AB/R, WT/DS169/AB/R, (11 December 2000)[hereinafter Appellate Body Report, *Korea- Beef*]; Panel Report, *Italian Discrimination Against Imported Agricultural Machinery*, L/833, Adopted 23rd October 1958, BISD 7S/60, ¶ 12 [hereinafter Panel Report, *Italy –Agricultural Machinery*]; Panel Report, *US- Section 337 of the Tariff Act of 1930*, BISD 36S/354, ¶ 5.10, (7 November 1989) [hereinafter Panel Report, *US Section 337*]

**A. RANDORNZK HAS UNDERTAKEN NATIONAL TREATMENT COMMITMENT IN
THE RELEVANT SECTOR AND MODE**

As elaborated earlier, the gaming services by Kiwi falls within the sub-sector of Motion Picture & Video Tape Production & Distribution Services. Also, as already stated, it falls under the mode of cross border supply. Randornzk has undertaken national treatment commitment for the sub-sector of Motion Picture & Video Tape Production & Distribution Services with respect to cross border mode of supply.⁴⁶

B. THE SERVICES AND SERVICE SUPPLIERS OF KIW AND GENX ARE LIKE

It is humbly submitted that, Kiwi and GenX services are like. This is supported by an examination of the criteria established by the Working Party on *Border Tax Adjustments*⁴⁷ which has been consistently referred to in GATT/WTO jurisprudence.⁴⁸ These criteria also apply to the GATS context, because the concept of national treatment in the GATT and in the GATS is identical.⁴⁹ It is also an established opinion among WTO scholars who support the application of this likeness test.⁵⁰ Accordingly, likeness must be assessed by the test focussed on the basis of Characteristics of the service,⁵¹ Consumer tastes and habits,⁵² End-uses,⁵³ Services Classification.⁵⁴ The

⁴⁴ Joost Pauwelyn, *Some Thoughts on the Concept of Likeness in the GATS*, WTO Staff Working Paper ERSD-2006-08 (2006); Appellate Body Report, *United States – Measures Affecting The Production And Sale Of Clove Cigarettes*, ¶ 180, WT/DS406/AB/R, (4 April 2012) [hereinafter Appellate Body, *US-Cloves Cigarettes*].

⁴⁵ Panel Report, *United States - Taxes on Automobiles*, DS31/R (11 October, 1994, Unadopted) ¶ 5.54.

⁴⁶ Compromis, Annexure.

⁴⁷ Border Tax Adjustments, Report of the Working Party, Adopted on 2 December, 1970, BISD/ 18(97-109).

⁴⁸ Appellate Body Report, *Japan - Taxes on Alcoholic Beverages*, ¶ 20-21, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, (4 October 1996); Appellate Body Report *EC-Asbestos*, , *Supra* Note 14, ¶ 85; Panel Report, *Canada - Certain Measures Concerning Periodicals*, ¶ 5.18, WT/DS31/R, (14 March 1997) [hereinafter Panel Report, *Canada-Periodicals*].

⁴⁹ SENTI, RICHARD & CONLAN, PATRICIA, *WTO: REGULATION OF WORLD TRADE AFTER THE URUGUAY ROUND*, (Zurich, 1998).

⁵⁰ A. Mattoo, *National Treatment in the GATS, Corner-Stone or Pandora's Box?*, Vol. 31 No. 1, Pg. 25 JWT, 1997; M. Cossy, *Determining "likeness" under GATS: Squaring the Circle?*, WTO Staff Working Paper ERSD-2006-08, Pg. 23.

⁵¹ Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, ¶ 7.322, WT/DS27/R/USA, (22 May 1997). [Hereinafter Panel Report, *EC-Bananas*].

⁵² Border Tax Adjustments, Report of the Working Party, Adopted 2 December, 1970, BISD/ 18(97-109).

⁵³ M. Cossy, *Determining "likeness" under GATS: Squaring the Circle?*, WTO Staff Working Paper, ERSD-2006-08, 2006, 21; W. Zdouc, *'WTO Dispute Settlement Practice Relating to the GATS'*, Journal of International Economic Law 2(1999), Pgs. 295-346, at 333 in: Ortino & Petersmann (eds), 381, 395; M. Krajewski, *National Regulation and Trade Liberalization in Services-The Legal Impact of The General Agreement on Trade in Services(GATS) on National Regulatory Autonomy*, The Hague: Kluwer Law International, 2005, Pg. 99.

⁵⁴ A. Mattoo, *supra* Note 50, Pgs. 1, 107, 128.

Border Tax Adjustments likeness test is not a closed treaty-mandated list of criteria, but it rather follows a holistic and indicative approach.⁵⁵

i. Characteristics of Services are like

The characteristics of the services include the nature of the service.⁵⁶ Role playing video games are a video game genre where the player controls a central game character, or multiple game characters and achieves victory by solving puzzles and engaging in tactical combat.⁵⁷ *Mystical Assassins* involves playing the role of Raga or Devil⁵⁸ and *Agency Z* involves playing the role of a spy⁵⁹ and leading their respective teams to victory. Also, both *Mystical Assassins* and *Roderlam Gangsters* involve engaging in tactical combat. Furthermore, both the games can be played by one or more players. Hence, the nature of the services provided by GenX and Kiwi is ‘like’.

ii. End-uses of services are like

The concept of end-use assesses the ability of the services to perform the same particular function.⁶⁰ In *Canada – Autos*,⁶¹ the term “like” in the GATS has been interpreted in a manner that, the services and suppliers at issue were found to be “like” by focusing on the similarity of the activity performed and the result of such activity. The Appellate Body, in *US-Clove Cigarettes*⁶² held that, both domestically manufactured menthol cigarettes and imported cigarettes had the same end-use as both satisfied an addiction to nicotine and created a pleasurable experience associated with the taste of the cigarette and the aroma of the smoke. In the present case, Kiwi and GenX games result in the same end-use i.e., entertainment and recreation.

⁵⁵ Appellate Body Report, *EC–Asbestos*, *Supra* Note 14, ¶ 102.

⁵⁶ Panel Report, *EC-Bananas*, *Supra* Note 51, ¶ 7.322.

⁵⁷ ADAMS, ERNEST; ROLLINGS, ANDREW, *ANDREW ROLLINGS AND ERNEST ADAMS ON GAME DESIGN*, 347 (New Riders Publishing, 1st ed., May 2003).

⁵⁸ *Compromis*, ¶ 4.

⁵⁹ *Compromis*, ¶ 10.

⁶⁰ Appellate Body Report, *EC–Asbestos*, *Supra* Note 14, ¶ 117.

⁶¹ Panel Report, *Canada – Certain Measures Affecting the Automotive Industry*, ¶¶ 10.248, 10.285 and 10.289, WT/DS139/R, WT/DS142/R, (11th February 2000) [hereinafter Panel Report, *Canada-Autos*].

⁶² Appellate Body Report, *US-Clove Cigarettes*, *Supra* Note 44, ¶ 132.

iii. Classification of Services evidences likeness

The Appellate bodies in *Canada- Periodicals*⁶³ and *EC-Asbestos*⁶⁴ as well as the Panels in *United States- Section 337*,⁶⁵ and *Korea – Taxes on Alcoholic Beverages*,⁶⁶ have referred to the tariff classification of products in determining likeness between products. In *Chile- Taxes on Alcoholic Beverages*,⁶⁷ the Panel held that, the domestic distilled alcoholic beverages produced in Chile and the imported products are like because they are identified by Harmonized System Classification 2008 in the same category and are directly competitive or substitutable products. Further it can be presumed that, when two services fall within one sector, they are like services.⁶⁸ WTO Panels have considered services classifications while determining likeness.⁶⁹ In the instant factual matrix, it has already been proved that, the games produced by Kiwi fall under the sub-sector of Motion Picture, Video Tape, Television and Radio Programme Production Services⁷⁰ of Central Product Classification (herein after CPC). Also, the games produced by GenX fall under the same category of Motion Picture, Video Tape, Television and Radio Programme Production Services⁷¹ of CPC as that of Kiwi games. Therefore, it can be stated that, the games produced by Kiwi and GenX are like games.

iv. Consumers' tastes and Habits Concerning Services are like

This criterion examines the extent to which consumers perceive and treat the services as alternative means for performing particular functions in order to satisfy a particular want or demand.⁷² The fact that both, *Mystical Assassins* and *Kiwi* games are extremely popular in *Randornzk* and that they share characteristics of role playing and multiplayer games reflects that one is the alternative for the other among gamers. Thus, it can be concluded that, the consumers' tastes and habits concerning services are like.

⁶³ Appellate Body Report, *Canada - Certain Measures Concerning Periodicals*, Pg. 29, WT/DS31/AB/R, (30 June 1997).

⁶⁴ Appellate Body Report, *EC-Asbestos*, *Supra* Note 14, ¶ 101.

⁶⁵ Panel Report, *United States – Section 337*, *Supra* Note 43, ¶ 5.14.

⁶⁶ Panel Report, *Korea-Taxes on Alcoholic Beverages* ¶ 10.100, WT/DS75/R, WT/DS84/R, (17 September 1998).

⁶⁷ Panel Report, *Chile- Taxes on Alcoholic Beverages*, ¶ 8.1, WT/DS87/R, WT/DS110/R, (15 June 1999).

⁶⁸ A. Mattoo, *Supra* Note 50, Pg. 128.

⁶⁹ Panel Report, *EC-Bananas*, *Supra* Note 21, ¶ 7.322; Panel Report, *Canada-Autos*, *Supra* Note 61, ¶ 10.289

⁷⁰ Division 96, Group 961, Class 9612, Sub- Class 96121 , *Central Product Classification (CPC)*, Department of Economic and Social Affairs –Statistics Division, Statistical Papers, Series M No. 77, Ver. 1.1, (United Nations, New York, 2002).

⁷¹ *Id.*, Note 70.

⁷² *Supra* Note 47.

v. *Unlikeness across modes of supply is not to be considered*

Another issue concerning the determination of likeness of services is whether different modes of supply are to be taken into account when establishing likeness.⁷³ According to Panel view in *Canada-Autos* case, the mode of supply doesn't change the likeness of a service.⁷⁴ Therefore, the services supplied through different methods of supply should generally be considered unlike.⁷⁵

vi. *GenX and Kiwi are like service suppliers*

The Panel in *EC-Bananas* stated: "To the extent that entities provide these like services, they are like service suppliers."⁷⁶ In *Canada-Autos*, the Panel made the same finding.⁷⁷ Hence it can be implied that as the service supplied by Kiwi and GenX are like, they are also like service suppliers.

C. THE MEASURE OF ENACTING A BAN ON THE IMPORT OF REALITY GP BY RANDORNZK ACCORDS LESS FAVOURABLE TREATMENT TO FOREIGN SERVICES/SUPPLIERS THAN THAT ACCORDED TO LIKE DOMESTIC SERVICES/SUPPLIERS

Art. XVII of GATS applies to "all measures affecting the supply of service." A "measure" includes "any measure by a member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form."⁷⁸ The word "Affecting" indicates that the measure must have some effect on the supply of service.⁷⁹ Thus, the ordinary meaning of the word 'affecting' implies a measure that has 'an effect on' which indicates a broad interpretation. However, it is not necessary for a measure to regulate or directly aim at the supply of services.⁸⁰ Hence, the measure of

⁷³ A. Mattoo, *Supra* Note 50, Pgs. 1, 107, 119-121; G. Verhoosel, *National Treatment and WTO Dispute Settlement- Adjudicating the Boundaries of Regulatory Autonomy*, 2002, 59-60.

⁷⁴ Panel Report, *Canada-Autos*, *Supra* Note 61, ¶ 10.307.

⁷⁵ KRAJEWSKI & ENGELKE, *Supra* Note 40, Pg. 406, ¶ 27.

⁷⁶ Panel Report, *EC- Bananas*, *Supra* Note 21 ¶ 7.322.

⁷⁷ Panel Report, *Canada-Autos*, *Supra* Note 61, ¶ 10.248.

⁷⁸ GATS *Supra* Note 6, Art. XXVIII.

⁷⁹ Panel Report, *Italy –Agricultural Machinery*, *Supra* Note 43, ¶ 12.

⁸⁰ Appellate Body Report, *European Communities – Regime For The Importation, Sale And Distribution Of Bananas*, WT/DS27/AB/R, ¶ 220, (9 September 1997) [hereinafter Appellate Body Report, *EC-Bananas*]; Panel Report, *Canada-Autos*, *Supra* Note 61, ¶ 10.80-10.82; Appellate Body Report, *Canada-Autos*, *Supra* Note 39, ¶ 164-166.

banning the import of Reality GP by Randornzk is affecting the supply of gaming service which is covered by Art. XVII of GATS.

i. In Randornzk's market there exists competition between GenX and Kiwi

In order to examine the existence of competition between the services and service suppliers, they are to be viewed by the market as substitutes.⁸¹ Since, Kiwi games and GenX games are like services and are viewed as substitutes; therefore, there exists competition in the instant factual matrix.

ii. The measure results in the modification of the conditions of competition in favour of the domestic suppliers

In *China- Publications and Audiovisual Products*⁸² the Panel held that, where a measure 'deprives the foreign service supplier of any opportunity to compete with the like domestic suppliers, such treatment modifies the conditions of competition in the most radical way, by eliminating all competition...' In the instant case, Randornzk by depriving Kiwi from supplying virtual gaming service is depriving it of an opportunity to compete with the like domestic supplier GenX and thereby modifies the conditions of competition.

This point has been reiterated in *Canada- Autos*,⁸³ wherein it was stressed by the Panel, the context of the equivalent GATT Art.III:4, that, the equality of competitive opportunities... is affected if a measure accords an advantage to the sale or use of domestic products but not to the sale or use of the like imported products, regardless of whether or not that advantage can also be obtained by other means. In the present factual matrix, the measure of banning the import of Reality GP by Randornzk has led to a major advantage to the sale of domestic service suppliers by limiting the new purchasers preferring a GP console.

⁸¹ D.H.Ragen, 'Regulatory Purpose and "Like Products" in Article III: 4 of the GATT (With Additional Remarks on Article III: 2)', 447, 36 JWT (2002).

⁸² Panel Report, *China-Audiovisual Products*, *Supra* Note 42, ¶ 7.979.

⁸³ Panel Report, *Canada – Autos*, *Supra* Note 61, ¶ 10.87.

Further, in *United States- Standards for reformulated and Conventional Gasoline*⁸⁴ where, the Gasoline Rule would require the importer to sell on one hand, the whole cleaner gasoline and on the other hand, the sale of the chemically-identical batch of domestic gasoline would not require a domestic refiner to sell on the whole cleaner gasoline over the period in order to remain in conformity with the Gasoline Rule. The Panel held that, there was less favourable treatment towards imported products.⁸⁵

In the present factual milieu, the ban on the import of Reality GP would result in Kiwi not supplying virtual gaming service on one hand and on the other hand, the like domestic supplier GenX would be free to supply virtual gaming service. Hence, there was less favourable treatment towards Kiwi under Art. XVII of GATS.

Furthermore, it is humbly submitted that imported games are subjected to more stringent regulation and less favourable treatment. This is because, sufficient regulation is not put in place to address the threat of desensitization towards violence from games produced by GenX and other domestic game producers. In addition, the rights to ban GenX is limited due to the freedom of religion making the enforcement mechanism for regulating production of violent games highly ineffective. Therefore, in substance, the imports are subjected to much more stringent regulation and accorded less favourable treatment.

III. RANDORNZK THROUGH THE RBB POLICY DIRECTIVE 2024 HAS VIOLATED ITS OBLIGATIONS UNDER GATS

A. THE DIRECTIVE AMOUNTS TO THE VIOLATION OF ARTICLE VI OF GATS

The Directive violates Art. VI: 1 of GATS, because: Firstly, it is a measure of general application⁸⁶ and secondly, it is not administered in a reasonable, objective and impartial manner.⁸⁷

⁸⁴ Panel Report, *United States - Standards for Reformulated and Conventional Gasoline*, ¶6.10, WT/DS2/R (29 January 1996).

⁸⁵ *Id.*, Note 84, ¶ 6.11.

⁸⁶ KRAJEWSKI & ENGELKE, *Supra* Note 40, Pg. 169 ¶ 8.

⁸⁷ *Id.*, Note 86, Pg. 170 ¶ 9.

i. The Directive is a measure of general application

Art. VI: 1 of GATS widely corresponds with Art. X: 3(a) of GATT; thus, principles developed under that Article can also apply to Art. VI: 1 of GATS.⁸⁸ For the purposes of brevity and clarity of this Article the term ‘measure’ is to be defined and therefore, the definition of “measures” in Article XXVIII lit. a applies.⁸⁹ Accordingly, Article VI: 1 of GATS covers any measure “whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.”⁹⁰ Here, the RBB Policy Directive [hereinafter “Directive”] is covered under the term measure. A measure is not of general application only if the restraint was addressed to a specific company or applied to a specific shipment.⁹¹ A measure applies in a general manner if it addresses a multitude of unidentified persons and to a loose number of cases.⁹² In the present case, the Directive falls under the meaning of the term measure because it refers to all online transactions taking place and is not specific. Hence, the Directive is a measure of general application.

ii. The substantive content of a Measure that explains in part about the administration of the same falls within the scope of Article VI: 1 of GATS

It is humbly submitted that, Art. VI of GATS applies to the administration of a measure and not to its substantive content.⁹³ The Appellate Body in *EC-Selected Customs Matters*, discussed about Article X: 3 of GATT and stated that, “The statements of the Appellate Body in *EC-Bananas*⁹⁴ and *EC-Poultry*⁹⁵ do not exclude, however, the possibility of challenging under Article X: 3(a) of GATT the substantive content of a legal instrument that regulates the administration of a legal instrument of the kind

⁸⁸ MITSUO MATSUSHITA/THOMAS SCHOENBAUM/PETROS C. MAVROIDIS, *THE WORLD TRADE ORGANIZATION: LAW, PRACTICE AND POLICY*, 630. (2nd ed., Oxford 2006).

⁸⁹ KRAJEWSKI & ENGELKE, *Supra* Note 40, Pg. 169 ¶ 6.

⁹⁰ *Id.*, Note 89.

⁹¹ Panel Report, *United States - Restrictions on Imports of Cotton and Man-Made Fibre Underwear*, ¶ 7.65, WT/DS24/R, (8 November 1996); Panel Report, *Japan - Measures Affecting Consumer Photographic Film and Paper*, ¶ 10.385, WT/DS44/R, (31 March 1998).

⁹² Appellate Body Report, *United States-Restrictions on Imports of Cotton and Man-Made Fibre Underwear*, ¶ 21, WT/DS/AB/R, (10 February 1997).

⁹³ Appellate Body Report, *European Communities- Selected Customs Matters*, ¶ 200, WT/DS315/AB/R, (13 November 2006) [hereinafter Appellate Body Report, *EC-Selected Customs Matters*].

⁹⁴ Appellate Body Report, *EC-Bananas*, *Supra* Note 79, ¶ 200-204.

⁹⁵ Appellate Body Report, *European Communities-Measures Affecting the Importation of Certain Poultry Products*, ¶ 115, WT/DS69/AB/R, (13 July 1998).

described in Article X: 1 of GATT. While the substantive content of the legal instrument being administered is not challengeable under Article X: 3(a), we see no reason why a legal instrument that regulates the application or implementation of that instrument cannot be examined under Article X: 3(a) of GATT if it is alleged to lead to a lack of uniform, impartial, or reasonable administration of that legal instrument.⁹⁶

In the instant case, the Directive issued by Randoznk in part refers to the administration of the measure i.e., the warning. The warning is the only means through which the Directive is being operated. Therefore, it can be concluded that, the measure is being administered through the warning. Thus, such kinds of measures which in itself state the administration of it can be brought within the scope of Article VI: 1 of GATS.

iii. The administration of the measure is partial and unreasonable

A WTO Member can challenge the application of a general measure on the basis of one, two or all three requirements of Article VI: 1 of GATS.⁹⁷ If a WTO Member challenges under Article X: 3(a) of GATT the substantive content of a legal instrument that regulates the administration of a legal instrument of the kind described in Article X: 1 of GATT, it will have to prove that this instrument necessarily leads to a lack of uniform, impartial, or reasonable administration. The administration of a measure is “reasonable,” if it is in accordance with the generally accepted standards of rationality and of sound judgment.⁹⁸ “Impartial” means that a decision is taken without giving special consideration or privileges to one party or commercial interest concerned while not giving the same amount of consideration or privileges to other parties or interests which are equally affected by the decision.⁹⁹

When a card holder presents a payment card to pay for a transaction the particular payment card network then forwards the request to the relevant card company.¹⁰⁰ There are two kinds of models for online transactions.¹⁰¹

⁹⁶ Appellate Body Report, *EC- Selected Customs Matters*, *Supra* Note 93, ¶ 200.

⁹⁷ KRAJEWSKI & ENGELKI, *Supra* Note 40, Pg. 172.

⁹⁸ Panel Report, *Dominican Republic-Measures Affecting the Importation and Internal Sale of Cigarettes*, ¶ 7.385, WT/DS302/R, (26 November 2004).

⁹⁹ Panel Report, *Argentina-Measures Affecting the Export of Bovine Hides and Import of Finished Leather*, ¶ 11.100, WT/DS155/R, (19 December 2000).

¹⁰⁰ Panel Report, *China-Electronic Payment*, *Supra* Note 42, ¶ 7.21.

¹⁰¹ Paul De Grauwe & Laura Rinaldi, *A Model Of The Card Payment System And The Interchange Fee*, CESIFO Working Paper No. 796, Category 6: Monetary Policy and International Finance, October 2002.

Under a four-party model the issuer identifies the card holder's account and decides whether to authorize the transaction after confirming that the card is authentic, the account is in good standing, and the account limit is not exceeded (in the case of a credit transaction) or that sufficient funds are available (in the case of a debit transaction). The issuer then authorizes or rejects the transaction based on these validations as well as the card holder's record. The authorization (or rejection) information is sent back to the merchant via the payment card network. If the transaction has been authorized, the payment card company receives the approved transaction information. Then the payment card company returns the authorization information to the acquirer, or to the merchant processor or merchant, as the case may be. Finally, when the merchant receives the authorization, it completes the sale.¹⁰²

Whereas, under the three-party model, the payment card company, which is also the issuer and the acquirer, determines various transaction parameters, identifies the card holder's account and decides whether to authorize the transaction. The authorization (or rejection) information is sent by the payment card company to the online merchant site.¹⁰³

Accordingly, it can be deduced that, the online merchant sites have no relation with the payment transactions, as it is the banks which will proceed with the payment related transactions and the information of the purchaser is not disclosed to the merchant sites. Subsequently, Randornzk by issuing the RBB Policy Directive has been unreasonable and partial which is a breach of Article VI: 1 of GATS.

B. RANDORNZK THROUGH THE DIRECTIVE HAS VIOLATED OBLIGATIONS UNDER ARTICLE XI OF GATS

Article XI of GATS as a general rule prohibits any restriction on international transfer and payments,¹⁰⁴ but permits exceptions in five sets of circumstances.¹⁰⁵

¹⁰² Panel Report, *China-Electronic Payment*, *Supra* Note 42, ¶ 7.22.

¹⁰³ Panel Report, *China-Electronic Payment*, *Supra* Note 42, ¶ 7.23.

¹⁰⁴ WTO- TRADE IN SERVICES, CHRIST & PANIZZON ON ARTICLE XI OF GATS, MAX PLANCK COMMENTARIES ON WORLD TRADE LAW, Vol. 6, ¶11, 249 (Rüdiger Wolfrum, Peter-Tobias Stoll & Clemens Feinäugle, Martinus Nijhoff Publishers, 2008).

¹⁰⁵ *Id.*, Note 104, Pg. 253 ¶ 23.

i. The Directive falls within the meaning of the term ‘restriction’

As a basic rule, Art. XI of GATS prohibits any restrictions on international transfers and payments for transactions relating to specific commitments.¹⁰⁶ GATS intend to liberalize any and all international transfers and payments that are directly related to a service covered by a specific commitment.¹⁰⁷ For the purposes of Art. XI of GATS, the term “restriction” includes any measure that could negatively affect international transfers and payments.¹⁰⁸ In the present factual milieu, the Directive is one which falls within the meaning of the term restriction as it has affected the payment for the services produced by Kiwi. The online purchases of Kiwi games or Clones through the GP Live Market fell by 90% after the introduction of the Directive which is a restriction under Article XI of GATS.

ii. The circumstances mentioned under Article XII of GATS do not exist

“Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.”¹⁰⁹ In the event of serious balance-of-payments and external financial difficulties or threat thereof, any Member can invoke restrictions on the international transfers and payments.¹¹⁰ There exists no balance of payments situation in *Randornzk*.¹¹¹ The term threat used in Article XII cannot be interpreted to include online high level financial frauds. In *India-Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*,¹¹² the term threat was interpreted as a decline in the monetary reserve and not financial frauds. Hence, *Randornzk* has violated Article XI as it has placed a restriction on the international payments without the existence of the circumstances under Article XII of GATS.

¹⁰⁶ *Id.*, Note 104, Pg. 249 ¶ 11.

¹⁰⁷ M. Footer & C. George, *The General Agreement on Trade in Services*, 799,842. THE WORLD TRADE ORGANIZATION: LEGAL, ECONOMIC AND POLITICAL ANALYSIS, Vol. I, (P. Macrory, et al., 2005).

¹⁰⁸ UNCTAD, Transfer of Funds, 13, UNCTAD Series on Issues in International Investment Agreement, 2000; D. Siegel, *Legal Aspects of the IMF/WTO Relationship: The Fund’s Articles of Agreement and the WTO Agreements*, 561, 585, AJIL 96 (2002); NELLIE MUNIN, *Supra* Note 5, Pg. 210.

¹⁰⁹ GATS, *Supra* Note 6, Article XI: 1.

¹¹⁰ GATS, *Supra* Note 6, Article XII: 1.

¹¹¹ Question 27 of the Clarifications.

¹¹² Panel Report, *India-Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, ¶¶ 5.169, 5.173, WT/DS90/R, (6 April 1999).

iii. Randornzk by issuing the Directive restricted the international payment for the current transactions under Article XI: 1 of GATS

Art. XI of GATS exclusively applies to international transfers and payments that are related to a service provided pursuant to a specific commitment of a Member and thus, Members' obligations under Art. XI of GATS are conditional obligations. There must be a direct relationship between the service and the international transfer and payment in question.¹¹³

The value of specific commitments on market access and national treatment would be seriously impaired if Members could restrict international transfers and payment for service transactions in scheduled sectors. In ensuring, inter alia, that services suppliers can receive payments due under services contracts covered by a Member's specific commitment, Art. XI is an indispensable complement to GATS disciplines on market access and national treatment.¹¹⁴

This provision restricts any Member from placing restrictions on the international payments which is connected with the commitment provided to a service in the Schedule of Specific Commitments. In the present case, Randornzk provided Sectoral Commitment for the gaming services provided by Kiwi. All the services provided by Kiwi are paid online indicating that, the payments are made for the services only via the internet. The Directive is a restriction on the payment for the services to which Sectoral Commitment is granted. Thus, Randornzk by placing restrictions on International Payments has violated Article XI: 1 of GATS.

C. RANDORNZK THROUGH THE DIRECTIVE VIOLATED ITS OBLIGATIONS UNDER ARTICLE XVI: 1 OF GATS

The essence of Article XVI paragraph 1 is that a Member should provide, with respect to market access, no less favourable treatment than that provided for in the Members' respective schedules.¹¹⁵

Thus for there to be any inconsistency with Article XVI: 1 it must be established that:

¹¹³ CHRIST & PANIZZON, *Supra* Note 104, Vol.6, Pgs. 245- 257.

¹¹⁴ Panel Report, *US – Gambling*, *Supra* Note 1, ¶ 6.442.

¹¹⁵ Panel Report, *US – Gambling*, *Supra* Note 1, ¶ 6.263.

- (i) Randornzk has committed to grant full market access in the relevant services sector and mode of supply,¹¹⁶ and
- (ii) The measure by Randornzk provided for less favourable treatment than that provided for in its schedule.¹¹⁷

i. Randornzk has committed to grant full market access in the relevant services sector and mode of supply

As was elaborated above, the gaming services provided by Kiwi fall under the sub-sector of Motion Picture & Video Tape Production & Distribution Services within mode 1(cross border supply). Randornzk has committed to grant full market access to Motion picture & Video Tape Production & Distribution services with respect to cross border mode of supply.¹¹⁸ A member is obliged to allow cross-border movement of capital and transfers of capital into its territory if these are an essential part of the service itself.¹¹⁹ Any capital movement in the absence of which the service cannot be supplied, such as, for instance the ability to make outward transfers of funds to benefit from the commitments with regard to the cross-border supply of deposit services, should be considered “essential”.¹²⁰ The drafting of first sentence of footnote 8 confirms that the capital movements covered are only those inherently linked with the service itself. The term “capital” is defined to include money thereby, including money payments.¹²¹ Here, the transfer of capital forms an essential part of the service provided by Kiwi because without the transfer of capital the service cannot be supplied. Hence, Randornzk is obliged not to place any restrictions on the transfer of capital.

ii. The measure adopted by Randornzk provides for less favourable treatment than that provided for in its schedule

The GATS negotiating history reveals that Members construed market access under GATS as extending beyond any notion of access for foreign service suppliers to encompass all policies, mostly of a quantitative nature, that restrict market access; and

¹¹⁶ Appellate Body Report, *US- Gambling*, *Supra* Note 3, ¶ 214.

¹¹⁷ Panel Report, *US – Gambling*, *Supra* Note 1, ¶ 6.263.

¹¹⁸ Compromis, Annexure

¹¹⁹ GATS, *Supra* Note 1, Art. XVI.

¹²⁰ DELIMATIS & MOLINUEVO, *Supra* Note 2, ¶ 12.

¹²¹ *Supra* Note 15, Pg 120.

this even in a non- discriminatory manner.¹²² Therefore, Article XVI also covers discriminatory measures. The measure by Randornzk prohibiting any transaction on an online merchant site operating from outside the territory of Randornzk unless a specific warning is issued to the user is a less favourable treatment as for domestic online merchant sites which are operating from within the territory of Randornzk there is no such measure which is adopted.

The term “restriction” includes any measure that could negatively affect international transfers and payments.¹²³ In the present factual milieu, the Directive is one which falls within the meaning of the term restriction as it has affected the payment for the services produced by Kiwi. The online purchases of Kiwi games or Clones through the GP Live Market fell by 90% after the introduction of the Directive.¹²⁴ Hence, this Directive is according a less favourable treatment under Article XVI: 1 of GATS to Kiwi by acting in the form of restriction.

D. RANDORNZK THROUGH THE DIRECTIVE VIOLATED ITS OBLIGATIONS UNDER ARTICLE XVI: 2(B) OF GATS

For there to be inconsistency with Article XVI: 2(b) it should be proved that (1) there are limitations on the number of service transactions and (2) the measure should be in the form of numerical quota.

(1) Limitations on the number of Service transactions

Due to the issuance of the Directive the online transactions of Kiwi was limited to 100 at the beginning of 2025 in a month in comparison to 10000 transactions a day in the begging of June, 2024.¹²⁵ So, there are limitations on the number of service transactions.

(2) Measures should be in the form of numerical quota

¹²² Group of Negotiations on Services, Uruguay Round, Note on the Meeting of 27 May to 6 June 1991, MTN.GNS/42, 24 June 1991, 1-3; Group of Negotiations on Services, Uruguay Round, Note on the Meeting of 24-28 June, 1991, MTN.GNS/43, 15 July 1991, ¶ 34-36; Group of Negotiations on Services, Uruguay Round, Note on the Meeting of 10-25 July 1991, MTN.GNS/44, 28 August 1991, ¶ 45; Group of Negotiations on Services, Uruguay Round, Scheduling of Initial Commitments in Trade in Services, Explanatory Note, MTN.GNS/W/164, 3 September 1993, ¶ 4; P.C. Mavroidis, *Highway XVI Re-Visited: The Road from Non-Discrimination to Market Access in GATS*, 1, 9, World Trade Rev. 6(2007).

¹²³ *Supra* Note 106.

¹²⁴ Compromis, ¶ 22.

¹²⁵ *Id.*, Note 124.

As already elaborated, the effect of the measure should be taken into consideration instead of the form of the measure. A measure that is not expressed in the form of numerical quota or economic need test may still fall within the scope of Art. XVI: 2(b) of GATS.¹²⁶ Here, the effect of Directive is the limitation on number of service transactions thus clearly violating Art. XVI: 2(b) of GATS.

IV. RANDORNZK CANNOT CLAIM ANY JUSTIFICATION UNDER ARTICLE XIV

In *EC-Bananas*, the Appellate Body confirmed that the jurisprudence under the GATT 1994 could be relevant for the interpretation of analogous provisions contained in GATS.¹²⁷ Given the textual similarity, Article XX of the GATT 1994 and the Article XIV of the GATS, the former is relevant and useful in the interpretation of the latter.¹²⁸ Under the requirements of the chapeau of Art. XIV, the emphasis is on the application of the challenged measure,¹²⁹ as opposed to its substantive content, because the purpose of the chapeau is to prevent abuse of the Article XIV exceptions.¹³⁰ The Chapeau articulates that a measure must not be applied in a manner that constitutes (a) arbitrary discrimination between countries where like conditions prevail, (b) unjustifiable discrimination between countries where like conditions prevail, or (c) a disguised restriction on international trade.¹³¹ In the present case, the ban on the import of Reality GP leads to discrimination as well as disguised restriction.

A. RANDORNZK CANNOT CLAIM ANY JUSTIFICATION FOR ENACTING THE BAN ON THE IMPORT OF REALITY GP UNDER ARTICLE XIV OF GATS

Under the requirements of the chapeau of Article XIV of GATS, it is important that the measure must be applied in a manner that does not constitute an arbitrary or unjustifiable discrimination between countries where same conditions exist. The gaming service supplied by Kiwi is deprived of supplying an additional feature (i.e.,

¹²⁶ Panel Report, *US- Gambling*, *Supra* Note 1, ¶ 6.332; Ortino, JIEL 9 (2006), 117-148; Mavroidis, *Supra* Note 120.

¹²⁷ Appellate Body Report, *EC-Bananas*, *Supra* Note 79, ¶ 231.

¹²⁸ Panel Report, *US-Gambling*, *Supra* Note 1, ¶ 6.448.

¹²⁹ Panel Report, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 6.580, WT/DS58/R (15 May, 1998); Appellate Body Report, *US-Gambling*, *Supra* Note 3, ¶ 184; Appellate Body Report, *US-Gasoline* *Supra* Note 11, Pg. 22.

¹³⁰ Panel Report, *US – Gambling*, *Supra* Note 1 ¶ 6.574; Appellate Body Report, *US-Gasoline* *Supra* Note 11, Pg. 22.

¹³¹ GATS, *Supra* Note 6, Art. XIV.

virtual gaming service) by enacting a ban on the import of Reality GP.¹³² On the contrary, the games supplied by the domestic suppliers in Randornzk are not subjected to any restriction. This leads to arbitrary as well as unjustifiable discrimination. It is further submitted that, in the present factual milieu, same conditions prevail in the two countries. Therefore, the ban on the import of Reality GP is in violation of the chapeau requirement of Art. XIV of GATS.

B. RANDORNZK CANNOT CLAIM ANY JUSTIFICATION FOR THE DIRECTIVE UNDER ARTICLE XIV OF GATS

Art. XIV of GATS is similar to Art. XX of GATT.¹³³ The online merchant sites have no connection with the payments for service which take place as, it is the bank's which have a control over these payments¹³⁴ and therefore, placing a restriction on the merchant's site creates an arbitrary discrimination between countries where like conditions prevail thereby, violating the requirements of the chapeau of Art. XIV. Moreover, in *US-Wool Shirts and Blouses*, the Appellate Body stated that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence.¹³⁵ Accordingly, the burden of proof rests on Randornzk which is seeking to invoke Art. XIV of GATS.

¹³² Compromis ¶ 18.

¹³³ Appellate Body Report, *US – Gambling*, *Supra* Note 3, ¶ 29; General Agreement on Tariffs and Trade, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 1A, 1867, U.N.T.S., 187.

¹³⁴ Panel Report, *China-Electronic Payment*, *Supra* Note 42, ¶¶ 7.21 & 7.22.

¹³⁵ Appellate Body Report, *United States-Measures Affecting Imports Of Woven Wool Shirts And Blouses From India*, Pgs. 15-16, WT/DS33/AB/R, (25 April 1997).

REQUEST FOR FINDINGS

Wherefore for the foregoing reasons, Roderlam respectfully requests the panel to adjudge and declare:

- 1) Randornzk by banning the import of Reality GP violated Article XVI of the GATS by failing to respect the market access commitment prescribed in its schedule of commitments.
- 2) Randornzk violated Article XVII of the GATS by “depriving Kiwi of the market advantage accruing from use of Reality GP” and “forcing equal treatment of unequal situations”
- 3) Randornzk through the RBB Policy Directive 2024 violated its obligations under Articles VI.1, XVI.1, XVI.2 and XI of the GATS.
- 4) Randornzk cannot claim justification its measures either under Article XIV (a), (b), (c)

Respectfully submitted,

X

Agent(s) on behalf of the Complainant.