

**6<sup>th</sup> GNLU  
INTERNATIONAL MOOT COURT COMPETITION, 2014**

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BEFORE THE



**DISPUTE SETTLEMENT BODY**

**RANDORNZK – MEASURES AFFECTING THE ONLINE GAMING INDUSTRY**

**WT/ DS/\*\*\***

**RODERLAM**

*(Complainant)*

V.

**RANDORNZK**

*(Respondent)*

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MEMORIAL FOR THE RESPONDENT

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### LIST OF ABBREVIATIONS

¶	Paragraph number
2D	Two Dimensional
3D	Three- Dimensional
AB	Appellate Body
Art.	Article
DSU	Dispute Settlement Understanding
Eds.	Editor
Et al.	Among others
FATF	Financial Action Task Force
GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade and Tariffs
Gen X	Gen X Gaming Incorporated
GP	Gaming Paradise
HMD	Head Mounted Display
HS	Harmonized System of Nomenclature
I.C.Q.L.	International and Comparative Law Quarterly
<i>Id.</i>	Ibidem
I.L.S.P	International Legal Studies Program
IMF	International Monetary Fund
Int. T.L.R	International Trade Law Review
Lit.	Littera(e) (letter(s))
U.N.T.S.	United Nation Treaty Series

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U.N.C.P.C	United Nations Central Product Classification
U.N.C.T.A.D	United Nations Conference on Trade and Development
VCLT	Vienna Convention on the Law of Treaties
Ver.	Version
W/120	Services Sectoral Classification List
World T.R.	World Trade Review
WTO	World Trade Organization

**INDEX OF AUTHORITIES****AGREEMENTS, TREATIES & CONVENTIONS**

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**STATEMENT OF FACTS**

- Randornzk is a developed country. Gen X is one of the biggest developers of gaming services and supplies an action based game ‘Mystical Assassins’, whose software is embedded in Blu-Ray disks.
- The game is inspired by Randornzk mythology but faced protests from NGOs with regard to its violent nature. The government enacted a ban on the game in 2022, which was overturned by the Supreme Court on the grounds of ‘freedom to profess religion’.
- In 2023, Kiwi Corporation, based in Roderlam (developed country) with a manufacturing industry in Drastord, started supplying the virtual gaming using Reality GP as a mode of delivery. This head mounted display device displays 3D stereoscopic images and is compatible only with a GP console. Kiwi Corporation has a team of psychologists that determined whether the game is ‘immersive’ enough for the user before its commercial release.
- Roderlam Gangsters and Agency Z, were launched which are action and strategy based games. These games can be played online and all purchases have to take place online via GP Live Market. There are 50 other games sold online.
- Even a cloning service is provided to enhance the user experience. Access to the Internet and a credit card are a prerequisite for access to the gaming service.
- By the end of 2023, 75% Randornzk gamers had access to Reality GP, which costs 300 Randzk. In response to protests by NGOs, a committee of eminent psychologists was constituted by the Randornzk government to examine the psychological effects of the games. It stated that the combined effect of Reality GP with Agency Z and Roderlam Gangsters caused ‘desensitization towards violence’ and a subsequent ban on Reality GP was enacted in June 2024.
- The ban was enforced and compliance was proven to be 90%. After the ban, non-3D versions of the games were marketed which did not garner much response. Preference for GP consoles fell to 15%.
- In June 2024, RBB policy directive was issued to prevent online financial fraud by requiring banks to file compliance reports, followed by a physical inspection. A

warning was issued to the consumers, cautioning them about online transactions with foreign service suppliers as physical inspection of such suppliers is not possible. This resulted in a fall of online transactions on GP live market by 90%.

- In February 2025, Roderlam and Drastord requested consultations with Randornzk under the WTO Dispute Settlement Understanding (DSU). Drastord held secret negotiations with Randornzk and did not request the establishment of a panel.
- Due to unsuccessful consultations with Roderlam, on the request of the parties, DSU established a panel on August 2025, which was composed on September 2025.



**MEASURES AT ISSUE**

The two measures at issue in the present case are:

- The ban imposed by Randoznk on the import and usage of Reality GP to prevent desensitization towards violence.
- The warning issued by the RBB as a part of its policy directive that seeks to prevent online financial fraud.

**SUMMARY OF PLEADINGS**

**1. RANDORNZK HAS NOT SCHEDULED COMMITMENTS IN THE AUDIO-VISUAL SECTOR.**

- The term motion picture and video tape distribution service does not include virtual reality gaming services.
- The supplied services fall under the cross border mode of supply.
- Therefore no commitments have been scheduled in the audio-visual sector.

**2. THE BAN ON THE IMPORT OF THE REALITY GP AND THE RBB POLICY DIRECTIVE IS NOT INCONSISTENT WITH ARTICLE XVI: 1 AND ARTICLE XVI: 2 OF THE GATS.**

- The ban on the import of the Reality GP does not accord less favourable treatment to the foreign-service suppliers than is mentioned in the schedule of commitments.
- The RBB policy directive does not accord less favourable treatment to the foreign-service suppliers than is mentioned in the schedule of commitments.
- The implemented measures do not result in a limitation on the number of service suppliers or on the service operations/service output.

**3. THE RBB POLICY DIRECTIVE DOES NOT VIOLATE OF ARTICLE VI:1 OF THE GATS.**

- The RBB policy directive has been implemented in a reasonable, objective and impartial manner.

**4. THE BAN ON THE IMPORT OF REALITY GP DOES NOT VIOLATE ARTICLE XVII OF THE GATS.**

- Virtual reality gaming services and video gaming services are not 'like' services.
- There has been no less favourable treatment of foreign services in favour of domestic services.
- Regulatory objectives should be considered under national treatment.

**5. THE RBB POLICY DIRECTIVE DOES NOT VIOLATE ARTICLE XI OF THE GATS**

- The RBB policy directive is not a 'restriction' within the meaning of Article XI:1.
- Even if it is, the policy directive can be justified under Article XIV(c).
- Similarly, the directive can be justified under para 2 lit. a of Annex on Financial Services.

**6. THE BAN ON THE HMD IS JUSTIFIED UNDER PARAGRAPHS (a) AND (b) OF ARTICLE XIV OF THE GATS.**

- The ban's objective satisfies the public morals exception under paragraph (a).
- The ban's objective satisfies the human health exception under paragraph (b).
- It is also consistent with the chapeau of Article XIV.

**LEGAL PLEADINGS**

**1. RANDORNZK HAS NOT SCHEDULED COMMITMENTS IN THE AUDIO-VISUAL SECTOR.**

**MOTION PICTURE AND VIDEO TAPE DISTRIBUTION SERVICES DO NOT INCLUDE  
VIRTUAL REALITY GAMING SERVICES**

- 1.1. The schedule of commitments is a positive list wherein Members have to expressly lay down the service sectors for which they wish to grant market access or national treatment. Services not included in the Members' Schedules fall outside the scope of Articles XVI and XVII.<sup>1</sup> Schedules are an integral part of the GATS agreement.<sup>2</sup> Their interpretation is governed by the customary rules of interpretation under Article 31 and 32 of the VCLT.<sup>3</sup>
- 1.2. It is contended that the entry for Mode 1 of supply (cross-border supply) reads *unbound*. The virtual reality gaming service delivered by Reality GP is not committed to. Even if the services at issue fall under audio-visual sub-sector, the "*common intention*" of the parties,<sup>4</sup> could not have existed with respect to a service that did not exist at the time of scheduling commitments. Both parties are founding Members of the WTO.<sup>5</sup> Investments to develop Reality GP began in March 2019. Thus, Randornzk may introduce measures inconsistent with Article XVI and XVII.<sup>6</sup>

**RECOURSE TO ARTICLE 31 OF THE VCLT**

- 1.3. Good faith must guide treaty interpretation. Terms must be given ordinary meaning in their context, consistent with the objects and purpose of the GATS.<sup>7</sup> For the ordinary meaning, dictionary meanings should be interpreted with regard to the object and

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<sup>1</sup> Molinuevo, *Article XX*, in WTO TRADE IN SERVICES 445, 445-465 (Rüdiger Wolfrum et al. eds., 2008).

<sup>2</sup> GATS Article XX:3.

<sup>3</sup> Appellate Body Report, *United States – Measures Affecting The Cross-Border Supply Of Gambling And Betting Services*, ¶ 159, WT/DS285/AB/R (Apr. 7, 2005) [hereinafter AB US – Gambling]; Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, ¶ 19 WT/DS2/AB/R (Apr. 29, 1996) [hereinafter AB US – Gasoline].

<sup>4</sup> See AB US – Gambling, *supra* note 3, ¶ 159; Appellate body report, *European Communities – Customs Classification of Certain Computer Equipment*, ¶ 6, WT/DS62/AB/R (Jun. 5, 1998) [hereinafter AB EC – Computer Equipment].

<sup>5</sup> Moot Proposition ¶ 6.

<sup>6</sup> Committee on specific commitments, *Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS)*, S/L/92 (March 28, 2001).

<sup>7</sup> Vienna Convention on the Law of Treaties, Art 31, Jan. 27, 1980, 1155 U.N.T.S. 331 [hereinafter VCLT].

purpose of the WTO agreement and GATS.<sup>8</sup> The context is provided by the schedules of all Members and GATS provisions.<sup>9</sup>

**Ordinary Meaning**

- 1.4. ‘Virtual Reality’ refers to “*computer generated software of an image or environment that appears real to the senses.*”<sup>10</sup> Game is defined as “*a sport played to amuse.*”<sup>11</sup> Video games are games “*played by electronically manipulating images displayed on a television screen.*”<sup>12</sup>
- 1.5. ‘Motion Picture’ is defined as “*cinema film.*”<sup>13</sup> A cinema is the production of cinematographic films,<sup>14</sup> through rapid projection of successive photographs and recorded sound.<sup>15</sup> No virtual reality game can fall under ‘motion picture’, as the games involve “*electronically manipulating images*”, and not images recorded on a film. Also, virtual reality generates an environment which appears *real to the senses*, which is not the case in motion picture cinema. Reality GP users have to download the game from ‘GP Live Market’. Magnetic recordings<sup>16</sup> are distinct from electronically manipulated images. The latter requires active participation of the user.
- 1.6. Recordings, in contrast to virtual reality games wherein images and sound can be manipulated, are permanent in nature. The cloning service enables consumers to also customize their character. Users of virtual reality games are engaged in interactive action, in contrast to the passive participation while viewing cinema.<sup>17</sup> Thus, the ordinary meaning of the word ‘videotape’ does not encompass virtual reality games. Similarly, ‘motion picture projection service’ does not cover virtual reality gaming. If at all, gaming services fall under sub-sector (f); “*other audio-visual services*”.

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<sup>8</sup> See AB US – Gambling, *supra* note 3, ¶ 164.

<sup>9</sup> See AB US – Gambling, *supra* note 3, ¶ 178; Appellate Body Report, *China – Measures Affecting Trading Rights And Distribution Services For Certain Publications And Audiovisual Entertainment Products*, ¶ 361 ¶ 373 ¶ 382, WT/DS363/AB/R (Dec. 21, 2009) [hereinafter AB China – Audiovisual].

<sup>10</sup> 2 SHORTER OXFORD ENGLISH DICTIONARY, 3538 (Angus Stevenson et al. eds., 6<sup>th</sup> ed., 2007).

<sup>11</sup> 1 *Id.* at 1072.

<sup>12</sup> 2 *Id.* at 3529.

<sup>13</sup> 1 *Id.* at 1845.

<sup>14</sup> *Id.* at 414.

<sup>15</sup> *Id.*

<sup>16</sup> 2 *Id.* at 3529.

<sup>17</sup> Andy Ramos et. al., *The Legal Status of Video Games: Comparative Analysis in National Approaches*, WORLD INTELLECTUAL PROPERTY ORGANISATION, (July 29, 2013), available at [http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/comparative\\_analysis\\_on\\_video\\_games.pdf](http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/comparative_analysis_on_video_games.pdf) (Last visited: Jan 3, 2014).

**Member's Own Schedule**

- 1.7. A Member's schedule is part of the General Agreement, and relevant to its interpretation<sup>18</sup> Since the Head Mounted Display (HMD) is imported from Roderlam's territory, the mode is "cross-border supply (Mode 1)". Online supply of the gaming service also falls under Mode 1.<sup>19</sup> The distinguishing criteria between Mode 1 and Mode 2, is the place of delivery.<sup>20</sup> If delivery is within the Member's territory, it is cross-border supply, and if it is outside, then the mode is consumption abroad. All of Kiwi's gaming services, including the HMD, are delivered and used within Randornzk's territory.
- 1.8. Playing games online combines a variety of media formats- film, audio, video, sounds, visuals, and performing arts. These are examples of multimedia formats and modes of cultural expression. 'Online games' must be classified in the GATS sub-category "other audio-visual services".<sup>21</sup>

**Provisions of the GATS**

- 1.9. The structure of the GATS is relevant to interpreting schedules of commitments.<sup>22</sup> Members should set out specific commitments by qualifying the scope of sectors or subsectors inscribed in the schedules.<sup>23</sup> This is done by including or excluding modes of supply, and by listing limitations, qualifications, or conditions on market access and national treatment.<sup>24</sup> Randornzk has not set out any specific commitments in the schedule with respect to virtual reality gaming services.
- 1.10. At the time of enlisting commitments, the service at issue, as supplied by Reality GP, did not exist. Randornzk, thus, entered no commitment for virtual reality gaming services.

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<sup>18</sup> GATS Article XX:3.

<sup>19</sup> See Appellate Body Report, US – Gambling, *supra* note 3, ¶ 215.

<sup>20</sup> Committee on specific commitments, *Guidelines For The Scheduling Of Specific Commitments Under The General Agreement On Trade In Services (GATS)*, MTN.GNS/W/164 (Sept. 3, 1993).

<sup>21</sup> Council for Trade in Services, *Audiovisual Sector: Background note by the Secretariat*, S/C/W/40 (Jun. 15, 1998) ; See also Thomas Steiner, *Online Games under WTO Law: Unresolved Classification Issues*, (Swiss National Centre for Competence in Research, Working paper No 2009/3,2009), available at [http://phase1.nccr-trade.org/images/stories/Steiner\\_Working%20Paper%202009%202009%2020\\_final.pdf](http://phase1.nccr-trade.org/images/stories/Steiner_Working%20Paper%202009%202009%2020_final.pdf) (Last visited: Jan 3, 2014).

<sup>22</sup> See AB US Gambling, *supra* note 3, ¶ 180.

<sup>23</sup> GATS Article XX.

<sup>24</sup> *Id.*

**Schedules of Other Members**

- 1.11. The ordinary meaning of treaty terms is interpreted in context of the schedules of other members.<sup>25</sup> Schedules of all Members form an integral part of GATS.<sup>26</sup>
- 1.12. Randornzk contends that video games do not fall within the scope of Audio-visual services. Members like Argentina, Canada, China, Israel, Italy, the Russian Federation, Singapore, Spain or Uruguay do not treat video games as audio-visual works. The EU recognizes video games as multimedia products, and has made no commitments in this regard. The cultural value of audio-visual services,<sup>27</sup> prompts the view that measures to promote cultural diversity and protect the culture and health of the society might affect the market access and national treatment of foreign players. Most Members have scheduled no commitments with respect to audio-visual services.<sup>28</sup>

**Object and Purpose**

- 1.13. The Preamble of the GATS contains the object and purpose,<sup>29</sup> including the overarching objective of ‘progressive liberalization’.<sup>30</sup> This entails gradual liberalization, through negotiations<sup>31</sup> The GATS framework does not prescribe rapid or forced liberalization. The Preamble also allows regulatory autonomy to achieve national policy objectives.<sup>32</sup> All measures are taken to protect the health, and safety of consumers. Reading virtual reality games into Randornzk’s commitments will go against its scheduled commitments.

**SUPPLEMENTARY MEANS OF INTERPRETATION UNDER ARTICLE 32 VCLT**

- 1.14. Further interpretation is needed if ambiguity, obscurity, manifest absurdity or unreasonableness remains.<sup>33</sup> ‘Preparatory work’ includes the W/120, UNCPC and guidelines.<sup>34</sup>

**Services Sectoral Classification List (W/120) and CPC**

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<sup>25</sup> See AB US Gambling, *supra* note 3, ¶ 182.

<sup>26</sup> GATS Article XX:3.

<sup>27</sup> *Questionnaire On Services In The Recreational Software Sector*, EUROPEAN COMMISSION, available at [http://ec.europa.eu/avpolicy/docs/ext/multilateral/gats/conrs\\_en.htm](http://ec.europa.eu/avpolicy/docs/ext/multilateral/gats/conrs_en.htm) (Last visited: Jan. 3, 2014).

<sup>28</sup> Audiovisual Sector: Background note by the Secretariat, *supra* note 24.

<sup>29</sup> See China – Audiovisuals *supra* note 9, ¶ 390.

<sup>30</sup> GATS Preamble.

<sup>31</sup> See China – Audiovisuals *supra* note 9, ¶ 395

<sup>32</sup> Preamble, *supra* note 33.

<sup>33</sup> See VCLT, *supra* note 7 at Article 32.

<sup>34</sup> See AB US – Gambling, *supra* note 3, ¶196.

1.15. The W/120 comprehensively lists services sectors and sub-sectors covered under the GATS. Each item is accorded a CPC reference number.<sup>35</sup> For the audio-visual sector, 9611 is the accorded CPC reference number. In the CPC list,<sup>36</sup> audio-visual and related services come under the broad heading of Recreational and Sporting Activities.

1.16. The explanation of ‘Motion picture, videotape and television programme distribution services’ (CPC Number 96140), reveals that none of them include virtual reality gaming of the type the HMD facilitates. Under the CPC, the relevant sector for classification is the ‘Telecommunications, broadcasting and information supply services’. ‘Online games’<sup>37</sup> falls within the online content sub-sector,<sup>38</sup> under ‘other online content’. Kiwi’s games are strategy and action based, and are purchased and delivered online. The categories in document W/120, and the CPC, are exhaustive and mutually exclusive.<sup>39</sup> They are thus covered under telecommunications sector.

### **2001 Scheduling Guidelines**

1.17. The guidelines form the framework for scheduling commitments.<sup>40</sup> Whatever is entered into a schedule is legally binding.<sup>41</sup> Mode 1 supply is described to include the supply through telecommunications or mail. Services supplied through a physical medium, such as a computer diskette or drawings represent examples of cross-border supply. The supplier’s absence from the consumer’s territory is a key factor.<sup>42</sup>

### **Circumstances of the conclusion of the treaty**

1.18. Circumstances for the conclusion of the treaty do not provide for commitment scheduled for virtual reality gaming service. These services are new, and could not even have been foreseen at the time. The measures at issue are thus beyond the scope of scheduled commitments, and can’t be challenged for market access or national treatment violations.

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<sup>35</sup> United Nation International Trade Statistics Knowledgebase Sectoral Classification List(W/120), UNITED NATIONS STATISTICS DIVISION, available at: <http://unstats.un.org/unsd/tradekb/Knowledgebase/Sectoral-Classification-List-W120> (last visited: Jan 3, 2014).

<sup>36</sup> United Nations Statistics Division, *Detailed structure and correspondences of CPC Ver.2 subclasses to ISIC Rev.4 and HS 2007*, UNSTATS.UN.ORG, available at: [http://unstats.un.org/unsd/cr/registry/docs/CPCv2\\_structure.pdf](http://unstats.un.org/unsd/cr/registry/docs/CPCv2_structure.pdf) (Last visited Jan 4, 2014).

<sup>37</sup> UNCPD 8439.

<sup>38</sup> UNCPD 843.

<sup>39</sup> Panel Report, *China – Measures Affecting Trading Rights And Distribution Services For Certain Publications And Audiovisual Entertainment Products*, ¶ 7.1223, WT/DS363/R (Aug. 12, 2009).

<sup>40</sup> Committee on specific commitments, *supra* note 2.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*



**2. RANDORNZK HAS NOT VIOLATED ARTICLE XVI OF THE GATS.**

**Measures at Issue**

- 2.1. The measures at issue are the ban on the import of the Reality GP and the RBB policy directive. It is Roderlam's burden to establish a *prima facie* case of the measures' inconsistency.<sup>43</sup>

**THE BAN ON THE IMPORT OF THE REALITY GP DOES NOT ACCORD LESS FAVOURABLE TREATMENT TO FOREIGN SUPPLIERS THAN IS SCHEDULED**

- 2.2. Randornzk contends that the ban on the import of Reality GP does not violate market access commitments.

**Article XVI:1: Less Favourable Treatment**

- 2.3. The ban on the import of Reality GP does not violate Article XVI:1 of the GATS. The provision specifies that unless explicitly mentioned in a Member's schedule, less favourable treatment cannot be accorded to other service suppliers. Randornzk has not undertaken market access commitments in the audio-visual sector. Conditional to the Panel finding otherwise, Randornzk contends that there has still been no market access violation. Roderlam cannot raise a claim of having received treatment less favourable than what Randornzk has committed to in its schedule.
- 2.4. Under Article XVI:1, once a Member undertakes to provide a minimum standard of treatment, it can maintain a market access restriction less restrictive than what is mentioned in its schedule.<sup>44</sup> No restrictions exist on Roderlam's gaming services, and foreign service suppliers may still market games. Thus, the treatment accorded to the gaming services of foreign service suppliers is less restrictive than that provided for in the schedule of commitments.

**Article XVI:2(a): Limitations on service suppliers**

- 2.5. Randornzk has not made any market access commitments, and can thus maintain measures inconsistent with Article XVI:2. Market access commitment in a particular sector does not imply *complete market openness*.<sup>45</sup>

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<sup>43</sup> Panel Report, *China – Certain Measures affecting Electronic Payment Services*, ¶ 7.7, WT/DS413/R, (Jul. 16, 2012) [hereinafter Panel China – Electronic Payment Services].

<sup>44</sup> See Panel *China – Audiovisual*, *supra* note 39, ¶ 7.1353.

<sup>45</sup> Delimatsis & Molinuevo, *Article XVI*, in WTO TRADE IN SERVICES 377, 367-396 (Rüdiger Wolfrum et al. eds., 2008).

- 2.6. The list of measures, under Article XVI:2 of the GATS, is exhaustive.<sup>46</sup> Provided that the measures do not fall under any of these enlisted measures, the member may maintain these. The Appellate Body in *US – Gambling* noted that a total ban on the supply of services would constitute a *zero quota*, which would fall under the ambit of Article XVI:2(a) and (c).<sup>47</sup> The present case is different; Roderlam has *not restricted* gaming services provided by Roderlam. Hence, Roderlam cannot claim that the ban violates Article XVI, since it does not *totally* prohibit the supply of gaming services offered by Roderlam.
- 2.7. Article XVI: 2(a) prohibits Members from maintaining limitations on the number of service suppliers, either as a numerical quota, or as an economic needs test. “*Service supplier*”, is defined as *a supplier of a service*, and supply of a service includes the *means of delivery*.<sup>48</sup> *US – Gambling* recognized the principle of *technological neutrality*, albeit narrowly.<sup>49</sup> The principle applies to all *possible* means of delivery.<sup>50</sup> New means of delivery not existing at the time of conclusion of Members’ schedules are outside the ambit of *possible* means of delivery.<sup>51</sup> Reality GP is a patented device, and a *first-of-its-kind* invention. The statement of Kiwi’s Chairman confirms that Reality GP is *twenty years ahead* of its competition. Therefore, usage of Reality GP as a means of delivery could not have been anticipated. *Unduly extending* a Member’s schedule of commitments would contravene the principle of progressive liberalization, the core object of the GATS.<sup>52</sup> Change in technology has led to the emergence of a new type of service,<sup>53</sup> thereby changing its inherent nature. Reality GP is a 3D head mounted device for virtual gaming. The schedule does not extend to include virtual gaming.
- 2.8. The common intention of WTO Members is ascertained based on their schedules, and not on *subjective and unilaterally determined* expectations of any one Member.<sup>54</sup> Therefore, Roderlam may have intended to cover all technological means of delivery in the schedules, but Members’ common intention is the decisive factor. The principle *in*

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<sup>46</sup> Panel Report, *United States – Measures affecting the Cross-Border Supply of Gambling and Betting Services*, ¶ 6.278, WT/DS285/R, 10 November 2004 [hereinafter Panel US – Gambling].

<sup>47</sup> See AB US – Gambling, *supra* note 3, ¶ 237 ¶ 247.

<sup>48</sup> GATS Article XXVIII (g) and (b).

<sup>49</sup> Sacha Wunsch- Vincent, *The Internet, cross border trade in services, and the GATS: lessons from US Gambling*, World T.R. 2006, 5(3), 319-355, available at [www.westlawindia.com](http://www.westlawindia.com).

<sup>50</sup> See Panel US Gambling, *supra* note 46, ¶ 6.285.

<sup>51</sup> First Written Submission of China, See Panel China – Audiovisuals, *supra* note 39, ¶ 4.158.

<sup>52</sup> *Id.* at ¶ 4.159.

<sup>53</sup> Arguments of Third Parties. *Id.* at ¶ 5.35.

<sup>54</sup> See AB EC – Computer Equipment, *supra* note 4, ¶ 109 ¶ 84.

*dubio-mitius* should apply in interpreting Members' schedules of commitments.<sup>55</sup> Panels may not simply assume that Members undertook more, rather than less burdensome "*obligations by mandating conformity or compliance with such standards, guidelines and recommendations.*"<sup>56</sup>

- 2.9. The ban on the import of the HMD does not violate the market access commitment, as Randornzk could not have foreseen the HMD as a means of delivery. Therefore, the ban does not restrict the number of service suppliers.

**Limitations on the number of service operations**

- 2.10. Article XVI:2(c) concerns limitations on the total number of service operations and total quantity of service output. *Total* implies *maximum* limitations on service operations or service output, which should be 'quantitative'.<sup>57</sup> The import ban on the HMD does not completely restrict the number of service operations. Online supply is still possible. The ban therefore does not result in a *zero quota* prohibition.<sup>58</sup>

**Prohibition of consumers**

- 2.11. The fine for non-disclosure of the HMD, affects the service consumer, not the supplier, and cannot be challenged under Article XVI. Article XVI:2(a) and (c) relate to the supply, and not the consumption of the service.<sup>59</sup> Consequently, measures imposing criminal liability on consumers for consuming a service are not covered by Article XVI:2.<sup>60</sup>

**THE RBB POLICY DIRECTIVE DOES NOT ACCORD LESS FAVOURABLE TREATMENT TO FOREIGN SERVICE SUPPLIERS THAN IS SCHEDULED**

**Article XVI:1: Less Favourable Treatment**

- 2.12. This article refers to market access sought through the different modes of supply.<sup>61</sup> The RBB policy directive is consistent with Randornzk's scheduled commitments. Even if it appears that a commitment is scheduled, Randornzk contends that the gaming services fall under '*other services*'. Randornzk can apply measures, as the entry for 'other services' reads 'unbound'.<sup>62</sup>

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<sup>55</sup> First Written Submission of China, See Panel China – Audiovisuals, *supra* note 39, ¶ 4.161.

<sup>56</sup> Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)*, ¶ 165, WT/DS26/AB/R, WT/DS48/AB/R, (16 Jan. 1998) [Hereinafter EC – Hormones].

<sup>57</sup> DELIMATSI & MOLINUEVO, *supra* note 45 at 380.

<sup>58</sup> See AB US Gambling, *supra* note 3, ¶ 252.

<sup>59</sup> *Id.* at ¶¶ 253-254.

<sup>60</sup> *Id.*

<sup>61</sup> DELIMATSI & MOLINUEVO, *supra* note 45 at 372.

<sup>62</sup> WTO SECRETARIAT PUBLICATION, A HANDBOOK ON THE GATS AGREEMENT, 18 (1<sup>st</sup> ed. 2005).

2.13. Article XVI:1 prohibits treatment less favourable than that mentioned in Members' schedule. The Panel must compare the minimum treatment in a Member's schedule with the actual treatment accorded to the service suppliers, to determine whether market access violation occurred.<sup>63</sup> Minimum treatment applies to the supply of a service through likely means of delivery. The directive applies to both domestic, and foreign service suppliers. The directive's objective, prevention of online financial fraud protects consumers in Randornzk. The mandatory warning is a prudential measure, to counteract the inability to physically inspect a foreign merchant.

**Article XVI:2 (a): Limitations on the number of service suppliers**

2.14. Roderlam cannot claim that the directive is a protectionist measure that has resulted in a limitation on the number of service suppliers. The directive has not facilitated the development of the domestic industry of Randornzk. It does not restrict the entry of foreign service suppliers. The directive only entails adherence to certain technical standards.<sup>64</sup> It has been argued that "*Article XVI: 2 (a) extends to limitations that are quantitative in nature and therefore, Article XVI does not extend to measures that merely have the effect of limiting the number of service suppliers.*"<sup>65</sup> However, as the Panel noted, this would lead to the overlap of the Article with other provisions of the GATS, and intrude upon member's rights.<sup>66</sup>

2.15. Thus, the RBB policy is not a quantitative restriction, and does not impose a numerical quota on service suppliers. That it has the 'effect' of limiting the number of service suppliers, is not sufficient to establish a claim under the GATS.

**Article XVI:2(c): Limitations on the number of service operations**

2.16. Article XVI: 2(c) prohibits limitations of any kind on the number of service operations or service output. *US – Gambling* defined service operations as activities involved in the production of a service.<sup>67</sup> Service output was defined as the result of production of the service.<sup>68</sup> The directive does not restrict any activities that may affect the production of the gaming service.

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<sup>63</sup> DELIMATSI & MOLINUEVO, *supra* note 45 at 372.

<sup>64</sup> US Claims under Article XVI of the GATS, See Panel China- Electronic Payment, *supra* note 43, ¶ 7.577.

<sup>65</sup> *Id.* at ¶ 7.583.

<sup>66</sup> *Id.*

<sup>67</sup> See Panel US – Gambling, *supra* note 46, ¶ 6.349.

<sup>68</sup> *Id.*

- 2.17. Article XVI focuses on the ‘numerical’ or ‘quantitative’ nature, not the ‘form’ of the limitations.<sup>69</sup> The RBB policy directive does not expressly provide for the quantitative limit on the number of service operations. Article XVI covers limitations that are quantitative, it is necessary to draw the line between the quantitative and the qualitative measures.<sup>70</sup> The present case can be distinguished from US Gambling as there was a complete ban on the gambling services; the RBB policy directive is merely a measure that is implemented to protect the consumers while still permitting the gaming services. The fall in the number of service transactions cannot be attributed to the warning as there was no enthusiasm for the 2D versions of the game. This means that consumers did not even visit the GP Live Market, for them to be dissuaded by the warning.
- 2.18. Footnote 9 of Article XVI:2(c) does not cover measures that limit the inputs for the supply of services. It aims to protect Members from unwanted liberalization.<sup>71</sup> Market access commitments do not imply that suppliers of a service committed to, can supply uncommitted services as inputs.<sup>72</sup> Thus, Randornzk’s commitment, if any, is limited to 2D games, not virtual gaming. Reality GP transforms 2D games into 3D format. It extends Randornzk’s commitments to uncommitted services. The HMD when connected to a GP console results in the supply of the end service, that is, the gaming service. It is therefore an input. Thus, the RBB policy directive is not inconsistent with the market access commitments made by Randornzk.

**Prohibition of consumption**

- 2.19. The warning is directed at the customers, the service consumers and not the service suppliers. Thus, it is a measure directed at the service consumers and not service suppliers, and cannot be challenged.<sup>73</sup>

**3. THE RBB POLICY DIRECTIVE DOES NOT VIOLATE ARTICLE VI:1 OF THE GATS.**

- 3.1. For a commitment under the schedule, Members are obliged to ensure that measures of general application are administered in a ‘*reasonable, objective and impartial manner*’. Implementation should not be arbitrary or biased.<sup>74</sup> The right of Members to regulate the supply of services within their jurisdiction is well recognized, as one concerning

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<sup>69</sup> See AB US – Gambling, *supra* note 3, ¶ 232.

<sup>70</sup> *Id.* at ¶ 248.

<sup>71</sup> DELIMATIS & MOLINUEVO, *supra* note 45 at 381.

<sup>72</sup> *Id.*

<sup>73</sup> See AB United States – Gambling, *supra* note 3, ¶¶ 253-254.

<sup>74</sup> Krajewski, *Article VI*, in WTO TRADE IN SERVICES 168, 165-197 (Rüdiger Wolfrum et al. eds., 2008).

domestic policy autonomy.<sup>75</sup> The Preamble recognizes that liberalization need not be immediate, and must take into account the national policy objectives of Members.<sup>76</sup> Roderlam fails to recognize Randerzck's right to regulate trade in a manner that is consistent with the WTO Agreement.<sup>77</sup>

**THE RBB POLICY DIRECTIVE IS IMPLEMENTED IN A REASONABLE, OBJECTIVE AND IMPARTIAL MANNER**

- 3.2. Reasonableness is an essential requirement. A measure must be executed in conformity with '*accepted standards of rationality and sound judgment*'.<sup>78</sup> Reasonableness and 'necessity' under Article XIV must be distinguished. To determine 'necessity', a balance must be struck between the end sought and the means employed.<sup>79</sup> Reasonableness, on the other hand, calls for rational reasons for the conduct.<sup>80</sup> Cases of online financial fraud have forced the enforcement of the impugned directive. The measure is not arbitrary; that is, it is well reasoned.
- 3.3. The use of 'objective' implies discounting *irrational, emotional and personal intentions*.<sup>81</sup> The directive applies to all service suppliers. It has been implemented with the sole objective of reducing online financial fraud, which can destabilize the economy. It is also linked to organized crime such as money laundering and funding of terrorist activities. The use of credit cards hampers online merchants' ability to verify the identity of consumers. The directive has not been implemented to evade the commitments under national treatment or market access.
- 3.4. 'Partial' refers to decisions made by providing special privileges to one party while denying these to another.<sup>82</sup> No party, either the domestic or the foreign service supplier, has been provided any privilege in the manner of implementation. A measure that seeks to treat two like situations differently, with good reason, does not violate Article VI: 1 of the GATS.<sup>83</sup>

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<sup>75</sup> Roger Kampf, *Liberalisation of financial services in the GATS and domestic regulation*, Int. T.L.R. 1997, 3(5), 155-166, available at: [www.westlawindia.com](http://www.westlawindia.com).

<sup>76</sup> *Id.*

<sup>77</sup> See Panel *China – Audiovisual*, *supra* note 39, ¶ 4.275.

<sup>78</sup> KRAJEWSKI, *supra* note 74 at 171.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 172.

- 3.5. Public policy objectives like consumer protection require regulatory support.<sup>84</sup> The directive prevents financial loss to consumers, as online transactions lack transparency. The Financial Action Task Force (FATF) and the EU recognize the use of the international financial system for funding, and also laundering of funds obtained by terrorist organizations.<sup>85</sup> Special attention is drawn to services favouring anonymity of users.<sup>86</sup> The FATF and EU Directive stipulate exercise of due diligence if institutions suspect transactions to be related to money laundering.<sup>87</sup> The RBB has implemented the directive in furtherance of fiduciary duty owed to users.
- 3.6. Expositions by adjudicatory bodies on Article X: 3(a) of the GATT are relevant to interpreting Article VI:1 of the GATS.<sup>88</sup> The substantive content of a legal instrument being administered cannot be challenged.<sup>89</sup> The ‘implementation’ of the directive and not the ‘content’ may be challenged.<sup>90</sup> The warning is an integral part of the directive.

**4. RANDORNZK HAS NOT VIOLATED ANY NATIONAL TREATMENT OBLIGATION.**

- 4.1. Establishing a national treatment violation includes determining the entry inscribed in the schedule, and the measure that affects the supply.<sup>91</sup> The services’ ‘likeness’ and whether less favourable treatment than the domestic service suppliers is provided must also be determined.<sup>92</sup>

**TEST 1: LIKENESS: VIRTUAL REALITY GAMING SERVICES AND VIDEO GAMING SERVICES ARE NOT ‘LIKE’ SERVICES**

- 4.2. The virtual reality gaming services were aimed at developing something different from the video gaming services as acknowledged by the Kiwi.<sup>93</sup>
- 4.3. In *EC – Bananas III*, it was expressed that ‘the nature’ and ‘characteristics’ will determine the ‘likeness’. Under the principle of technological neutrality, a difference in

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<sup>84</sup> WTO SECRETARIAT PUBLICATION, *supra* note 62 at 21.

<sup>85</sup> Jonathan Herbt & Peter Snowden, *Money Laundering and Financial Crime*, in Financial Services Law 311, 305-369 (Micheal Blair QC & George Walker eds., 2006); Directive 2005/60/EC of the European Parliament and of the Council on the use of the financial system for the purpose of money laundering and terrorist financing [Hereinafter EU- Directive].

<sup>86</sup> FATF Standards, *FATF 40 Recommendations*, (October 2003), available at <http://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20%2040%20Recommendations%20rc.pdf>

<sup>87</sup> *Id.* EU Directive, *supra* note 85.

<sup>88</sup> KRAJEWSKI, *supra* note 74 at 168.

<sup>89</sup> Appellate Body Report, *EC – Selected Customs Matters*, ¶ 200, WT/DS315/AB/R, 13 November 2006 [Hereinafter AB EC – Selected Customs Matters].

<sup>90</sup> KRAJEWSKI, *supra* note 74 at 171.

<sup>91</sup> See Panel report *China Audiovisuals*, *supra* note 64, ¶ 7.944.

<sup>92</sup> *Id.*

<sup>93</sup> Moot Proposition ¶ 10.

the mode of delivery does not make the service unlike.<sup>94</sup> In the present case, the mode of delivery changes the end service to virtual reality, which is distinct from video gaming.

#### **The Working Report in Border Tax Adjustment Framework**

- 4.4. GATS (Art XVII) draws from GATT (Art III: 4) jurisprudence, especially when the relevant provisions use similar language.<sup>95</sup>
- 4.5. The Working Party on Border tax adjustment framework has certain criteria to adjudicate on the likeness of goods.<sup>96</sup> Under GATS, ‘likeness’ will be determined by services’ nature and characteristics, the consumer perception ,tastes and habits, the end use and the classification under UN CPC and W/120 list.<sup>97</sup>

#### **The Nature and Characteristics**

- 4.6. This should be examined in terms of the substitutability of the games.<sup>98</sup> Difference in quality can render the products unlike.<sup>99</sup> In the present case, the quality of the programming content differs to such an extent that it renders them unlike. Virtual Reality gaming are 3D games which involve removal of all peripheral vision.<sup>100</sup> The domestic gaming display 2D images using consoles. The cloning service provided by Kiwi has no domestic comparison. Thus, any service delivered by Reality GP has no other ‘like’ service because it is unique.
- 4.7. “*Evidence relating to the health risks associated with a product may be pertinent in an examination of ‘likeness’ under Article III: 4 of the GATT 1994.*”<sup>101</sup> The committee, after due consideration, recommended a ban on the games as well as Reality GP, as

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<sup>94</sup> Council for Trade in Services, *Work Programme on ecommerce*, S/L/74 (Jul. 27, 1999).

<sup>95</sup> Appellate Body Report, *United States – Section 211 Omnibus Appropriations Act Of 1998*, ¶ 242, WT/DS176/AB/R (Jan. 2, 2002); Krajewski & Engelke, *Article XVII*, in WTO TRADE IN SERVICES 398, 396-420 (Rüdiger Wolfrum et al. eds., 2008).

<sup>96</sup> Appellate Body Report, *European Communities – Measures Affecting Asbestos And Asbestos-Containing Products*, ¶ 101 WT/DS135/AB/R (March 12, 2001) [Hereinafter EC-Asbestos]; Panel Report, *Canada – Certain Measures Concerning Periodicals*, ¶ 5.18, WT/DS31/R (Mar. 14, 1997) ; Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, ¶ 20, WT/DS8/AB/R (Oct. 4, 1996).

<sup>97</sup> Mireille Cossy, *Determining “likeness” under the GATS: Squaring the circle?*(World Trade Organisation Economic Research and Statistics Division, Working paper No ERSD-2006-08, 2006), available at [http://www.wto.org/english/res\\_e/reser\\_e/ersd200608\\_e.htm](http://www.wto.org/english/res_e/reser_e/ersd200608_e.htm) (Last visited: Jan. 3, 2014).

<sup>98</sup> NICHOLAS F. DIEBOLD, *NON DISCRIMINATION IN INTERNATIONAL TRADE IN SERVICES*, 256, (Lorand Bartels et al. eds., 1<sup>st</sup> ed. 2010).

<sup>99</sup> Panel Report, *Dominican Republic – Measures Affecting The Importation And Internal Sale Of Cigarettes*, ¶ 7.333, WT/DS302/R (Nov. 26, 2004).

<sup>100</sup> Moot Proposition ¶ 13.

<sup>101</sup> See AB EC – Asbestos, *supra* note 96, ¶ 113.



these lead to *desensitization* due to the immersive-ness factor. Kiwi has a group of psychologists who test the *immersive-ness* of the game before releasing it.<sup>102</sup>

#### **End Uses**

- 4.8. End use determines the competitive relationship between the products; it is objective and differs from consumer tastes and habits.<sup>103</sup> All services that perform the function of recreation and entertainment are not ‘like’.<sup>104</sup> The end use of ‘Mystical Assassins’ is religious expression. This end use cannot be achieved by the Kiwi games as the end use of the virtual reality gaming is to ‘feel close to an illusionary reality’.<sup>105</sup> Thus, for the purpose of ‘end-uses’, the services are not directly competitive or substitutable.

#### **Consumer Tastes and Habits**

- 4.9. “*Consumers tastes and habits are constituted by their willingness to use the products to perform similar functions.*”<sup>106</sup> The reasons for opting for virtual gaming services are different from that of domestic video gaming. Virtual reality gaming services provide an escape from the reality. The type of gamers seek a normal gaming experience will not opt for Reality GP. Thus, they have a different consumer base.

#### **Classification**

- 4.10. The UNCPC and W/120 list are means of classification under the GATS.<sup>107</sup> These sources should not play a significant role in determining likeness.<sup>108</sup> They can be used to confirm a finding but not to over-turn any previous finding on likeness.<sup>109</sup> The virtual reality gaming service has not been incorporated in the UNCPC and W/120 list.

#### **Directly Competitive and Substitutable**

- 4.11. *Like products* can be determined based on their ‘directly competitive and substitutable relationship’.<sup>110</sup> “*The burden is on the complaining Members to establish that, despite the pronounced physical properties, there is a competitive relationship between the products such that the products are ‘like’.*”<sup>111</sup> All ‘like products’ are directly

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<sup>102</sup> Moot Proposition ¶ 7.

<sup>103</sup> See AB EC – Asbestos, *supra* note 96, ¶ 117.

<sup>104</sup> *Id.* at ¶ 138.

<sup>105</sup> Moot Proposition ¶ 8.

<sup>106</sup> See AB EC – Asbestos, *supra* note 96, ¶ 117.

<sup>107</sup> Panel Report, *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, ¶ 7.289 WT/DS27/R/ECU (May 22, 1997) [hereinafter Panel EC-Bananas III].

<sup>108</sup> US Submission, See Panel US – Gambling, *supra* note 46, ¶ 3.196.

<sup>109</sup> MIREILLE COSSY, *supra* note 97; KRAJEWSKI & ENGELKE, *supra* note 95 at 404.

<sup>110</sup> See AB EC – Asbestos, *supra* note 96, ¶ 99.

<sup>111</sup> *Id.* at ¶ 118.

competitive and substitutable but all may not be ‘like’.<sup>112</sup> Likeness is to be determined on a case-by-case basis.<sup>113</sup>

- 4.12. Services may be competitive because a consumer will face trade-off between different services due to limited resources, but, for an analysis under non-discrimination, it is limited to directly substitutable products.<sup>114</sup> Elasticity of substitution is relevant to determine ‘likeness’.<sup>115</sup> Cross price elasticity can be used to determine the competitive and substitutable relationship.<sup>116</sup>
- 4.13. The price of virtual reality gaming is higher than video gaming. Normal video gaming includes the price of a console and the game itself, but virtual reality gaming, the consumers has to additionally invest to avail of the Reality GP or the cloning services. Thus, they were not substitutable. It is not known if the sales of domestic gaming services were affected by the ban on Reality GP. Substitutability is to be looked from the consumer’s view and not that of the supplier. The supplier did not suffer any additional costs to make the service compliant with the measure. It is due to the inherent characteristic of the games supplied by Kiwi that purchases fell.
- 4.14. “*Relying unduly on quantitative analysis of competitive relationship*” is not necessary to determine *likeness*.<sup>117</sup> Article III:2 (GATT) protects “*expectations on competitive relationship and not on expectations on trade volume*”.<sup>118</sup> Thus, even if the trade data indicates fall in sales, the competitive relationship has to be examined. As virtual reality gaming was never substitutable by video gaming service doesn’t make them competitive. If it is considered that the services are directly competitive and substitutable, it does not make them like and an analysis of all the factors together point towards their *un-likeness*.<sup>119</sup>

#### **Likeness of Service Suppliers**

- 4.15. It is contended that for an examination under National Treatment, an analysis of both services’ and service suppliers’ needs is necessary. Suppliers of like services constitute

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<sup>112</sup> Appellate Body Report, *Korea – Taxes on Alcoholic Beverages*, ¶ 118, WT/DS75/AB/R (Jan.18, 1999) [hereinafter *Korea – Alcoholic Beverages*].

<sup>113</sup> See AB EC – Asbestos, *supra* note 96, ¶ 99 ¶¶ 101-103; See Japan – Alcoholic Beverages II, *supra* note 96, at 20.

<sup>114</sup> See EC – Asbestos, *supra* note 8, ¶ 99.

<sup>115</sup> See Japan – Alcoholic Beverages II, *supra* note 96 at 25.

<sup>116</sup> Panel Report, *Thailand – Customs And Fiscal Measures On Cigarettes From The Philippines*, ¶ 7.25-7.41, WT/DS371/R (Nov. 15, 2010).

<sup>117</sup> See *Korea – Alcoholic Beverages*, *supra* note 112, ¶ 134.

<sup>118</sup> Panel Body, *Japan – Customs Duties, Taxes And Labelling Practices On Imported Wines And Alcoholic Beverages*, ¶ 5.11, L/6216 - 34S/83 (Oct. 13, 1987) [Hereinafter *Japan – Alcoholic Beverages*].

<sup>119</sup> See *Korea – Alcoholic Beverages*, *supra* note 112, ¶ 118.

‘like suppliers’.<sup>120</sup> In the present case, the services supplied are not ‘like’ and do not constitute ‘like’ suppliers. GenX, Papel Inc and Box X are domestically owned and Kiwi Corporation is an MNC. Thus, even the composition of the suppliers is very different, enough to make them ‘unlike’.

**TEST 2: LESS FAVOURABLE TREATMENT: THERE HAS BEEN NO LESS FAVOURABLE TREATMENT OF FOREIGN SERVICES IN FAVOUR OF DOMESTIC SERVICES.**

4.16. When the conditions of competition are modified in favour of the domestic services, it amounts ‘less favourable treatment’. It is not necessary that ‘any’ foreign - supplier be treated less favourably than ‘any’ domestic service supplier.<sup>121</sup> Members can distinguish between products which are ‘like’, without, according *less favourable treatment* to the ‘like’, imported products.<sup>122</sup> The disproportional impact of the measure on the foreign goods as compared to the domestic goods needs to be proved.<sup>123</sup> Thus, it is pertinent to note that for establishing ‘less favourable treatment’ it has to be proved by the complaining party that the foreign services as a group have been affected when compared to domestic services, the impact has to be ‘disproportionate’. Proving that a few foreign service suppliers have been affected by the measure is insufficient to establish ‘less favourable treatment’. As seen in the present case, only Kiwi Corporation has been hit by the measure. There is no data to prove that the measure affects all or majority of foreign suppliers or that the domestic industries benefited from it.

*“The existence of a detrimental effect on an imported product resulting from a measure is not less favourable treatment if the detrimental effect is explained by factors or circumstances unrelated to the foreign origin of the product, such as the market share of the importer in this case.”<sup>124</sup>*

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<sup>120</sup> See Panel EC – Bananas, *supra* note 107, ¶ 7.322.

<sup>121</sup> See Panel EC – Bananas III, *supra* note 107, ¶¶ 7.332–7.338.

<sup>122</sup> See AB EC – Asbestos, *supra* note 96, ¶ 100.

<sup>123</sup> Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper*, ¶ 10.85, WT/DS44/R (Apr. 3, 1997).

<sup>124</sup> Appellate Body Report, *Dominican Republic – Measures Affecting The Importation And Internal Sale Of Cigarettes*, ¶ 96, WT/DS302/AB/R (Apr. 25, 2005); Panel Report, *European Communities – Measures Affecting The Approval And Marketing Of Biotech Products*, WT/DS291/R (Sept. 29, 2006).

- 4.17. Thus, it is contended that the features of the game itself can explain the detrimental effect; the gamers had limited incentive to invest in the games provided by Kiwi as they were not better than the other games in the market.<sup>125</sup>
- 4.18. Examination of ‘less favourable treatment’ need not be based on the *actual effects* in the marketplace.<sup>126</sup> The focus is on trade relations and not trade volume,<sup>127</sup> the implication on competitive relationship is to be examined. It has been established that there is no direct competitive relationship between virtual reality gaming and video gaming. In the present case, the asymmetric impact test has not been proved.

**VALID REGULATORY OBJECTIVE MUST BE CONSIDERED UNDER ARTICLE XVII**

- 4.19. A measure contravenes Article XVII if it furthers an illegitimate aim to protect domestic industries, but if enacted for a valid regulatory objective, is not violative of Article XVII.<sup>128</sup> The purpose of the non-discrimination clause is to root out protectionist measures.<sup>129</sup> A lesser frequent recourse to the exceptions does not render them futile or ineffective.<sup>130</sup> This applies to de facto/ origin neutral measure.
- 4.20. A valid regulatory objective should be considered either under likeness or less favourable treatment, *EC – Asbestos* put health effects under the purview of ‘likeness’. Article XVII:3 explicitly states that modification of competitive conditions *in favour of domestic services* is less favourable treatment. Thus, less favourable treatment requires a protectionist approach.
- 4.21. *EC – Bananas* rejected the aims and effect test under GATS.<sup>131</sup> However, in *EC – Asbestos*, the Appellate body ruled that the Article III:1 “*informs the entire Article III*”,<sup>132</sup> and in interpreting Article III: 4, the general principle of Article III:1 is to be considered.<sup>133</sup> In determining whether two products are like, it is necessary to consider

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<sup>125</sup> Moot Proposition ¶ 20.

<sup>126</sup> Appellate Body Report, *United States – Tax Treatment For "Foreign Sales Corporations, Recourse to Article 21.5 Of The DSU By The European Communities*, ¶ 215, WT/DS108/AB/RW (Jan. 14, 2002).

<sup>127</sup> See *Japan – Alcoholic*, *supra* note 118, ¶ 5.11.

<sup>128</sup> Robert E. Hudec, *GATT/WTO Constraints on National Treatment: Requiem for an "Aim and Effect" Test*, 32 *International Lawyer* 619-649 (1998), available at: <http://www.worldtradelaw.net/articles/hudecrequiem.pdf> (last visited: Jan 4, 2013).

<sup>129</sup> See Appellate Body *Japan – Alcoholic Beverages II*, *supra* note 96 at 16 ; See *Korea – Alcoholic Beverages*, *supra* note 112, ¶ 119; Appellate Body Report, *Chile – Taxes on Alcoholic Beverages* ¶ 67, WT/DS87/AB/R (Dec. 13, 1999) [Hereinafter *Chile – Alcoholic Beverages*]; See *AB EC – Asbestos*, *supra* note 96, ¶ 97.

<sup>130</sup> See *AB EC – Asbestos*, *supra* note 96, ¶ 115.

<sup>131</sup> See *Panel EC – Bananas*, *supra* note 107, ¶ 241.

<sup>132</sup> See *AB Japan – Alcoholic Beverages II*, *supra* note 96 at 18.

<sup>133</sup> See *AB EC – Asbestos*, *supra* note 96, ¶ 98.

whether product differentiation is done to afford protection to domestic production.”<sup>134</sup>

It held that such an approach under Article III:2 is in consonance with the overall purpose of Article III.<sup>135</sup>

4.22. Randornzk was pursuing a legitimate policy objective when enacting the ban. An attempt was made to ban *Mystical Assassins*, which was overturned by the judiciary. The highly immersive nature of the virtual games blurred distinction between illusion and reality. The Reality GP and cloning service fall under a totally different service sector. The impact of Reality GP, coupled with its *un-likeness* made for a more purposeful ban, as the other games are not as immersive. This is in consonance with the improved ‘aims and effect’ test, where there should be a rational nexus between the object and the measure.<sup>136</sup> This approach is necessary due to a narrow list of legitimate policy objectives under Art. XIV.<sup>137</sup> The design, structure and application of a measure can help determine whether it is a protectionist measure.<sup>138</sup> It is contended that the measure is not protectionist.

## **5. THE RBB POLICY DIRECTIVE DOES NOT VIOLATE ARTICLE XI OF THE GATS**

- 5.1. Article XI:1 of the GATS restrains Members from restricting payments for international current transactions tied to their specific commitments. This is crucial to “*secure the value of specific commitments undertaken under the GATS*”.<sup>139</sup>
- 5.2. To rebut Roderlam’s claim, Randornzk must demonstrate that the measure is not a *restriction* within the meaning of Article XI:1. Randornzk adduces arguments to justify the directive under Article XIV(c) and para 2 lit. a of the Annex FS.
- 5.3. Randornzk’s burden, first, is to provide evidence that the RBB policy directive does not restrict payments in relation to its specific commitments.

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<sup>134</sup> Panel Report, *United States – Measures Affecting Alcoholic And Malt Beverages*, ¶ 5.25, DS23/R - 39S/206 (Jun. 19, 1992); Panel Report, *United States – Taxes On Automobiles*, ¶ 5.8, DS31/R (Oct. 11, 1994).

<sup>135</sup> *Id.*

<sup>136</sup> MIREILLE COSSY, *supra* note 97; Joost Pauwelyn, *Comment: The unbearable lightness of Likeness*, in GATS AND THE REGULATION OF INTERNATIONAL TRADE IN SERVICES 358, 365 (Marion Panizzon et al. eds., 1<sup>st</sup> ed., 2008).

<sup>137</sup> KRAJEWSKI & ENGELKE, *supra* note 95 at 414.

<sup>138</sup> Appellate Body Report, *Thailand – Customs And Fiscal Measures On Cigarettes From The Philippines*, ¶ 134, WT/DS371/AB/R, ( Jun. 17, 2011) ; R. Howse and DH Regan, *The Product/Process Distinction- An Illusory Basis for Disciplining ‘Unilateralism’ in Trade Policy* 11 EJIL 249, 265 (2000).

<sup>139</sup> See Panel US – Gambling, *supra* note 46, ¶ 6.441 and 6.442.

**THE DIRECTIVE IS NOT A RESTRICTION ON INTERNATIONAL TRANSFERS RELATED TO RANDORNZK'S SPECIFIC COMMITMENTS**

5.4. In the absence of any definitive interpretation of the word *restriction* within the GATS jurisprudence, Randornzk turns to the general rule of interpretation and supplementary means of interpretation under Article 31 and Article 32 of the VCLT, respectively.

**Ordinary Meaning**

5.5. Article XI allows members to regulate financial instruments,<sup>140</sup> conditional to the regulation's consistency with Article VI and other GATS provisions.<sup>141</sup> The regulation has been defended under Article VI.1 in the earlier part of this submission.<sup>142</sup> "Restriction" is explained in the dictionary as "a thing which restricts (someone or something); a limitation on action; a limiting condition or *regulation*".<sup>143</sup>

5.6. Roderlam associates the fall in online purchases on GP Live with the policy directive. However, the reason for a fall in purchases of Kiwi games and Clones are varied. First, that the ban on the HMD was imposed in June 2024. Preference for 2D versions of the games, and Clones, subsequently, was only 15% more than other games. The 90% reduction may have occurred around the time the directive was imposed, but was not occasioned by it.

**Supplementary Means of Interpretation**

5.7. The role and jurisdiction of the IMF under Article XI and XII of GATS is due to its communications to the WTO Members during the Uruguay Round.<sup>144</sup> These are documents introduced "*in connexion with*" the GATS.<sup>145</sup>

5.8. The guiding principle used by the Fund in identifying restrictions is whether the measure is a "*direct governmental limitation*" on the availability of exchange.<sup>146</sup> Limitation on users' ability to enter into current transactions is not a restriction.<sup>147</sup> Construing restrictions as broadly as Roderlam asserts, will limit the right of Members

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<sup>140</sup> See Panel US – Gambling, *supra* note 46, ¶ 6.441 ¶ 6.442.

<sup>141</sup> *Id.*

<sup>142</sup> Legal Pleadings, p. 10.

<sup>143</sup> 2 SHORTER OXFORD ENGLISH DICTIONARY, *supra* note 10 at 2553.

<sup>144</sup> Group of negotiations on service, *Communication From The International Monetary Fund: The Role of the Fund in the Area of Services Under its Articles of Agreement*, MTN.GNS/W/91 (Jan. 10, 1991).

<sup>145</sup> See Panel US – Gambling, *supra* note 46, ¶ 296; See Appellate Body Report Japan – Alcohol II, *supra* note 96, at 10-12; See AB US – Gasoline, *supra* note 3, at 17.

<sup>146</sup> *supra* note 144.

<sup>147</sup> *Id.*

to regulate their economies to meet their national policy objectives. The directive is the *least trade restrictive* measure possible, and is therefore reasonable.<sup>148</sup>

- 5.9. Roderlam forwards arguments in respect of Article XIV(c), conditional to the Panel finding the RBB Policy Directive to be a restriction under Article XI:1.

**THE RBB POLICY DIRECTIVE CAN BE JUSTIFIED UNDER ARTICLE XIV(C)**

- 5.10. A panel's examination of measures sought to be justified under Article XIV, involves a *two-tier process*; first, determining if the measure falls within the scope of any of the paragraphs of Article XIV, which in turn requires that; (a) challenged measure address the interest specified in the paragraph; and (b) adequate nexus exists between the measure and the interest sought to be protected; and second, determining whether the measure at issue satisfies the requirements of the chapeau of Article XIV.<sup>149</sup>

**Scope of Article XIV(c)**

- 5.11. Judicial decisions on Article XX(d) are relevant to the analysis of XIV(c).<sup>150</sup> Justification under paragraph (c) requires, first, that the measure must *secure compliance* with laws and regulations consistent with the GATS.<sup>151</sup> Second, the measure must be necessary to do so.<sup>152</sup>
- 5.12. The phrase secure compliance does not imply that a measure must be designed exclusively for this purpose.<sup>153</sup> It is enough if it even *partly* helps secure compliance with laws and regulation designed to prevent deceptive or fraudulent practices.<sup>154</sup> The mandatory user warning is of such nature. This is to encourage utmost compliance with Randornzk's anti-money laundering laws.

**Necessity**

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<sup>148</sup> UNCTAD, Transfer of Funds, in SERIES ON ISSUES IN INTERNATIONAL INVESTMENT AGREEMENTS, UNITED NATIONS NEW YORK AND GENEVA, 14, UNCTAD/ITE/IIT/2 (2000).

<sup>149</sup> Appellate Body Report US- Shrimps *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 147, WT/DS58/AB/R (Oct. 12, 1998) [hereinafter AB US – Shrimp]; See also Appellate Body US – Gasoline, *supra* note 3, p. 22.

<sup>150</sup> See Appellate Body US – Gambling, *supra* note 3, ¶ 292; See Panel US – Gambling, *supra* note 46, ¶ 6.537.

<sup>151</sup> Appellate Body, *Korea – Measures Affecting Imports Of Fresh, Chilled And Frozen Beef*, ¶ 157, WT/DS161/AB/R (Dec. 11, 2000) [hereinafter AB Korea – Beef].

<sup>152</sup> *Id.*

<sup>153</sup> See Panel US – Gambling, *supra* note 46, ¶¶ 5.539-40; Panel Report, *Korea – Measures Affecting Imports Of Fresh, Chilled And Frozen Beef*, ¶ 6.58; See AB Korea – Beef, *supra* note 152 ¶ 157.

<sup>154</sup> See Panel US – Gambling, *supra* note 46, ¶¶ 5.539-40; See Panel Korea – Beef, *supra* note 154, ¶ 6.58; See AB Korea – Beef, *supra* note 112, ¶ 157.

- 5.13. When deciding on the necessity of the measure, the factors for panels to consider are; first, the measure's "*contribution to the realization of the ends pursued*", and; second, the *restrictive impact* of the measure on international commerce.<sup>155</sup>
- 5.14. The Financial Action Task Force recommends minimum standards for combating money laundering and terrorism financing. These also link online fraud to terrorist activities. The directive grants the RBB powers to monitor information from financial institutions.<sup>156</sup> Randornzk therefore considers the warning pertinent to prevent the misuse of money originating from within. The mandatory warning *does not prevent* Roderlam's merchant sites from indicating compliance with financial data protection laws of Randornzk. In the present instance, no alternative less-restrictive measures exist. The FATF standards represent the minimum prescribed level of protection. The measure is therefore 'necessary' within the meaning of Article XIV(c).

#### Chapeau

- 5.15. The chapeau is an expression of good faith.<sup>157</sup> Members' measures must not discriminate arbitrarily or unjustifiably between countries where like conditions prevail, or constitute disguised restriction on trade.
- 5.16. The RBB policy directive's wording unequivocally suggests that it applies against *all* foreign merchant sites.<sup>158</sup> There is thus no discrimination between different foreign suppliers. Randornzk concedes that the directive sets different standards for foreign and domestic suppliers. However, this in itself does not amount to unjustifiable or unreasonable discrimination.<sup>159</sup> Good faith *mandates* bona fide exercise of a right whenever its assertion encroaches upon a treaty obligation.<sup>160</sup> This must not, however, defeat the objectives of GATS. The wide interpretation of exceptions is *essential*. The use of the general exception furthers WTO objectives of allowing Members to pursue

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<sup>155</sup> See Appellate Body US – Gambling, *supra* note 3, ¶¶ 306 – 307, See Appellate Body Korea – Beef, *supra* note 112 ¶162 ¶164 ¶166; See Appellate Body EC – Asbestos, *supra* note 96 ¶ 172.

<sup>156</sup> FATF 29, *supra* note 86.

<sup>157</sup> See AB US Shrimp, *supra* note 150, ¶ 158; Appellate Body Report, *United States – Anti-Dumping Measures On Certain Hot-Rolled Steel Products From Japan*, ¶ 101 WT/DS184/AB/R (Jul. 24, 2001) [hereinafter AB US-Hot rolled steel]; Appellate Body Report, *United States – Transitional Safeguard Measure On Combed Cotton Yarn From Pakistan*, ¶ 81, WT/DS184/AB/R ( Jul. 24, 2001) [hereinafter AB US – Cotton Yarn] (footnote 53); Appellate Body Report, *United States – Continued Dumping And Subsidy Offset Act Of 2000*, ¶ 297, WT/DS217/AB/R (Jan.16, 2003) [hereinafter US – Offset Act] 297.

<sup>158</sup> Moot Proposition ¶ 21.

<sup>159</sup> See Appellate Body US – Gambling, *supra* note 3, ¶ 350.

<sup>160</sup> See Appellate Body US – Shrimp, *supra* note 150, ¶158; See also Appellate Body US – Gasoline, *supra* note 3 at 22; Panel Report, *United States – Continued Dumping And Subsidy Offset Act Of 2000* ¶ 7.64, WT/DS217/R, (Sep. 16, 2002) [hereinafter Panel US – Offset Act].



national policy objectives.<sup>161</sup> In the present instance, the variable level of regulation with respect to foreign and domestic suppliers does not reach the level of unreasonable or unjustifiable. The directive is also *not a disguised restriction* on trade. Its objective, and enforcement, furthers consumer protection.

**THE RBB DIRECTIVE CAN BE JUSTIFIED UNDER PARA 2 LIT. a OF THE ANNEX ON FINANCIAL SERVICES**

- 5.17. Under para 2 lit. a, *prudential* measures are allowed, to protect persons to whom a fiduciary duty is owed, or to protect the financial system's integrity and stability. Financial services are exempted from the general fairness and objectivity requirements. To counter *external financial difficulties or threats thereof*, Members can maintain restrictions inconsistent with scheduled commitments.<sup>162</sup> Randornzk has not committed to financial services. Determination of the scope of *prudential regulations* is subjective,<sup>163</sup> and the list inscribed in the Annex FS is not exhaustive.<sup>164</sup> Para 2 lit. a sets a good faith standard,<sup>165</sup> of a *reasonable nexus* between the measure and its objective.<sup>166</sup> A prudential measure may not be the least trade restrictive.<sup>167</sup>
- 5.18. Lax regulation and weak supervision of financial services can also impact other countries.<sup>168</sup> National authorities can pursue multiple policy objectives with a single measure.<sup>169</sup> Also, the RBB possesses greater expertise (to exercise discretion) in public interest, than any international tribunal.<sup>170</sup> Even if incidental advantage is gained, the regulatory measure will be lawful so long as *prudence* is the dominant factor.<sup>171</sup>

<sup>161</sup> Appellate Body Report, *European Communities – Conditions For The Granting Of Tariff Preferences To Developing Countries*, ¶ 94, WT/DS246/AB/R (April 7, 2004) [hereinafter AB EC – Tariff Preferences]; first stated in, See AB EC – Hormones, *supra* note 56, ¶ 104.

<sup>162</sup> Mamiko Yokoi Arai, *GATS' prudential carve out in financial services and its relation with prudential regulation*, I.C.L.Q. 2008, 57(3), 613-648, available at [www.westlawindia.com](http://www.westlawindia.com).

<sup>163</sup> Myriam Vander Stichele SOMO, *Potential risks of Liberalization of Financial services in GATS*, August 2003, available at <http://www.somo.nl/html/paginas/pdf/potentialrisksofliberalisation.pdf>.

<sup>164</sup> *Von Bogdandy & Windsor, Annex on financial services*, in WTO TRADE IN SERVICES 635, 618-640 (Rüdiger Wolfrum et al. eds., 2008).

<sup>165</sup> *Id.*

<sup>166</sup> See Appellate Body US – Shrimp, *supra* note 151 at 35. Also see Byungsik Jung, *Standard of Review for Jurisprudence on prudential measures*, ILSP Law Journal, Washington College of Law, at 49, 53.

<sup>167</sup> Byungsik Jung, *Standard of Review for Jurisprudence on prudential measures*, ILSP Law Journal, Washington College of Law, at 49, 53.

<sup>168</sup> Sydney J. Key, *Trade Liberalization and prudential regulation: the international framework for financial services*, available at <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/Blanket%20File%20Import/inta060.pdf> (Last visited: 4th Jan 2014).

<sup>169</sup> BYUNGSIK JUNG, *supra* note 171 at 49, 53.

<sup>170</sup> *Id.* at 51.

<sup>171</sup> *Id.* at 53.

Randornzk cannot place its own financial system potential at risk, merely to enable Roderlam to supply gaming services.

- 5.19. The directive is non-discriminatory as it applies to both the domestic and foreign suppliers alike. The warning for foreign merchant sites Randornzk is necessary, as physical inspection in such cases is not possible. The warning is also the least trade restrictive measure. Thus, the warning is a reasonable and prudent measure to protect the consumers of Randornzk.

**Basel Committee on Banking Supervision**

- 5.20. Banks cannot determine if international transactions they facilitate, in turn facilitate criminal activity.<sup>172</sup> They are, however, responsible for preventing their channels from being used for criminal acts, and for reporting such acts to the authorities.<sup>173</sup> Banks must have comprehensive risk management processes to identify, control, monitor and mitigate material risk.<sup>174</sup>
- 5.21. The Core principles of the Basel Committee permit *on-site* and *off-site* supervision.<sup>175</sup> Supervisory measures are to be considered prudential if they aim to protect the depositor's interests, mitigate banking risks, and ensure safe operation of the banking system.<sup>176</sup> In the present case, Randornzk's financial system and economy could have been destabilised. The directive is thus essential to ensure the safe operation of Randornzk's banking system.

**6. THE BAN ON THE HMD IS JUSTIFIED UNDER PARAGRAPHS (a) AND (b) OF ARTICLE XIV OF GATS**

- 6.1. Article XIV of the GATS represents consensus that, the general exceptions enlisted therein confirm the right of WTO Members to pursue their domestic objectives,<sup>177</sup> even while acting inconsistently with other obligations within the Agreement.<sup>178</sup> Analysis under paragraphs (a) and (b) follows the same *two-tier scheme* as used in the analysis under paragraph (c).<sup>179</sup>

**Burden of Proof**

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<sup>172</sup> CHARLES GOODHART, THE BASEL COMMITTEE ON BANKING SUPERVISION, 303 (1st ed. 2011).

<sup>173</sup> Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision*, (Sept. 2012)

<sup>174</sup> CHARLES GOODHART, *supra* note 176 at 310.

<sup>175</sup> BASEL COMMITTEE ON BANKING SUPERVISION, *supra* note 177.

<sup>176</sup> Committee on Trade in Financial Services, *Report of the Meeting held on 27<sup>th</sup> November 2006*, S/FIN/M/53 (Nov. 30, 2006).

<sup>177</sup> See Appellate Body US – Gambling, *supra* note 3, ¶ 291.

<sup>178</sup> See Appellate Body US – Gambling, *supra* note 3, ¶ 291.

<sup>179</sup> See Appellate Body US – Shrimp, *supra* note 151, ¶ 147 ; See also Appellate Body US – Gasoline, *supra* note 3 at 22, DSR 1996:I, 3, at 20.

6.2. Roderlam raises this defence if the Panel finds the service in issue to be ‘like’ its domestic counterpart. Having asserted an affirmative defence,<sup>180</sup> Randornzk’s burden is to prove to the Panel that, the ban on the HMD is ‘necessary’, as also consistent with the chapeau of Article XIV.<sup>181</sup> “*The more vital or important [the] common interests or values*”, the *easier* it would be to accept the measures as *necessary* to achieve those ends.<sup>182</sup>

**THE BAN’S OBJECTIVE SATISFIES THE PUBLIC MORALS EXCEPTION OF PARAGRAPH (a)**

**Audio-visual Services, Culture and Public Morals**

6.3. Audio visual services are cultural vectors.<sup>183</sup> Their import leads to an influx of cultures with different standards of right and wrong.<sup>184</sup> The standards of right and wrong represent the public morals of different Members.<sup>185</sup> The 33 MFN exemptions claimed by Members indicate that Members wish to retain their rights in regulating services that affect culture.<sup>186</sup>

**Necessity**

6.4. The measure at issue imposes a ban on a service that Randornzk believes to be harmful to its public morals. The 3D service *Clones*, and the blocking of peripheral vision by the HMD, coupled with the visual content, create the ultimate virtual reality experience. The gamer forgets that she or he isn’t in the real world. In this state, being exposed to violent audio-visual content can desensitise a person to everyday real-life violence.<sup>187</sup> Emotionally or psychologically vulnerable people may even be incited into violence by playing violent video games.

**Contribution of the Measure to Objectives**

6.5. Reduced sensitivity to violence implies a higher tolerance for witnessing tolerance. Certain violent acts might not evoke emotional reaction, even if they are more violent

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<sup>180</sup> Panel Report, *United States – Import Prohibition Of Certain Shrimp And Shrimp Products*, ¶ 7.8, WT/DS58/AB/R (Oct. 12, 1998); Panel Report, *Turkey – Restrictions On Imports Of Textile And Clothing Products*, ¶ 9.57, WT/DS34/R (May 31, 1999); Panel Report, *United States – Sections 301-310 Of The Trade Act Of 1974*, ¶ 7.14-15, WT/DS152/R (Dec. 22, 1999) [hereinafter US – Section 301].

<sup>181</sup> Panel Report, *United States – Import Prohibition Of Certain Shrimp And Shrimp Products*, ¶ 7.8, WT/DS58/AB/R (Oct. 12, 1998); Panel Report, *United States – Sections 301-310 Of The Trade Act Of 1974*, ¶ 7.14-15, WT/DS152/R (December 22, 1999) [Hereinafter Panel US – Section 301].

<sup>182</sup> See AB EC – Asbestos, *supra* note 96, ¶ 172.

<sup>183</sup> China’s submission, See Panel China – Audio-visual, *supra* note 39, ¶ 7.712.

<sup>184</sup> *Id.*

<sup>185</sup> See Panel US – Gambling, *supra* note 46, ¶ 6.465.

<sup>186</sup> COUNCIL FOR TRADE IN SERVICES, *supra* note 24.

<sup>187</sup> Desensitization to Media Violence: Links With Habitual Media Violence Exposure, Aggressive Cognitions, and Aggressive Behavior, *Journal of Personality and Social Psychology* © 2010 American Psychological Association 2011, Vol. 100, No. 4, 630 – 646.

than the accepted moral standard within the society. That increased levels of desensitization among citizens indicate an increased acceptance of violence, points towards a drop in Randornzk's public morals. Second, that exposure of mentally or emotionally unstable persons to such games will evoke responses which may lead to a public order disruption.

**Trade Restrictiveness**

- 6.6. The ban on the HMD ensures that the desensitising element, the virtual reality experience, no longer exists. The ban on the HMD is the minimum level of protection Randornzk deems necessary,<sup>188</sup> and therefore has the right to enforce.<sup>189</sup>

**THE BAN'S OBJECTIVE SATISFIES THE HUMAN HEALTH EXCEPTION OF PARAGRAPH (b)**

**Necessity**

- 6.7. The psychological health of the HMD users stands at risk. The risk to mental faculties, the likelihood of desensitisation to violence, is equally important from an individual's perspective. The existence of this risk, as under paragraph (a), may be nullified only through the ban. No other measure such as game content ratings or age restrictions for underage users, may work to prevent desensitisation if the HMD is readily accessible. Randornzk still reserves the right to introduce other measures, but such measures may only augment the ban, not replace it.<sup>190</sup> Also, since health is only one of the interests the ban aims to protect, the ban must be examined under paragraph (a).<sup>191</sup>

**THE BAN IS ALSO CONSISTENT WITH THE CHAPEAU OF ARTICLE XIV**

- 6.8. The good faith and other requirements under the chapeau have been explained earlier. No other model or versions of the HMD exist, so as to allow Randornzk to discriminate in the first place. Regardless, the ban addresses the wide-spread and increasing use of the HMD. The ban objectively identifies the HMD as a threat, and takes effect only against the HMD and its users. Same conditions do not exist, since moral standards of countries vary.<sup>192</sup> The ban is also not a disguised trade-restriction. The ban is an inward-directed measure intended at preventing normalisation to violence.

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<sup>188</sup> See Appellate Body EC – Asbestos, *supra* note 96 ¶ 168 (level of health); See Appellate Body Korea – Beef, *supra* note 112, ¶ 176 (level of enforcement).

<sup>189</sup> Cottier, Delimatsis & Diebold, *Article XIV, in* WTO TRADE IN SERVICES, 302, 2187-328 (Rüdiger Wolfrum et al. eds., 2008); See Appellate Body US – Gambling, *supra* note 3, ¶ 298, ¶¶ 308-311.

<sup>190</sup> *Id.*

<sup>191</sup> COTTIER, DELIMATIS & DIEBOLD, *supra* note 193 at 303. See Panel US – Gambling, *supra* note 46 ¶¶ 6.510–6.514, and See Appellate Body US – Gambling, *supra* note 3, ¶¶ 283–284.

<sup>192</sup> See Panel US – Gambling, *supra* note 46, ¶ para. 6.461.

**REQUEST FOR FINDINGS**

Randomzk requests the panel to:

1. Find that the ban on Reality GP is consistent with the Randomzk's commitments under Article XVI and XVII and is capable of being justified under Article XIV (a) or (b) or (c) of the GATS.
2. Find that the RBB Policy Directive 2024 is consistent with Randomzk's obligations under Articles VI.1, XVI.1, XVI.2 and XI and is capable of being justified under Article XIV (a) or (b) or (c) of the GATS.