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Committee on Sanitary and Phytosanitary Measures

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NOTIFICATION G/SPS/N/RUS/48

COMMUNICATION FROM THE EUROPEAN UNION

The following communication, received on 18 February 2014, is being circulated at the request of the Delegation of the European Union.

1. The European Union (EU) acknowledges notification G/SPS/N/RUS/48 submitted by the Russian Federation, dated 10 February 2014, wherein the Russian Federation informs WTO Members of the introduction of emergency measures with regard to Lithuania. These measures comprise a temporary restriction on the export of live pigs and its genetic material, pork products and certain other commodities from the entire territory of Lithuania to the Russian Federation, as of 25 January 2014, due to the detection of the African Swine Fever (ASF) virus in Lithuania.
2. The European Union has serious concerns with regard to both the notification and the severity of the trade restrictions introduced by the Russian Federation.
3. Firstly, the European Union regrets the fact that the notification was only received more than two weeks after the restrictive measures had already entered into force. The European Union also notes with regret that, while the Russian Federation claims its measures to be of an emergency nature, they were not notified *immediately*, despite the requirement in point 6(a) of Annex B of the SPS Agreement.
4. It is worth recalling that the ASF virus was detected in two wild boar in two districts in the southern part of Lithuania on 24 January 2014. Stringent measures to prevent any possible spread of the disease were taken by Lithuania promptly, in close cooperation with the European Commission as provided for in EU legislation and in accordance with international standards. The steps taken to secure the area concerned - namely six districts in southern Lithuania - and prevent the spread of the disease were in strict accordance with the internationally recognised principle of regionalisation, as provided for by the World Organisation for Animal Health (OIE). This common practice, observed by the European Union, applies whenever an outbreak of a disease is detected.
5. Russia has been kept fully informed of all steps taken and indeed, has also participated in an EU and OIE expert mission on the spot to analyse the situation.
6. The European Union is highly concerned that the decision by the Russian Federation - as per the notification, to ban the export of live pigs and pork products from the entire territory of Lithuania - runs counter to one of the fundamental principles of the WTO SPS Agreement, namely Article 6 on disease-free areas, the so-called principle of regionalisation.
7. The Russian Federation also claims that its measures are in line with the relevant standard of the OIE referred to as "Chapter 2.8.1 (2012)". This is understood as a reference to Chapter 2.8.1. of the OIE *Manual of Diagnostic Tests and Vaccines for Terrestrial Animals*, which merely sets the standards for diagnostic tests for ASF. The pertinent OIE standards with regard to specific trade recommendations for ASF are set in Chapter 15.1. of the OIE *Terrestrial Animal Health Code*. By its action, the Russian Federation ignores the internationally accepted principle of regionalisation (also referred to as zoning) that is a cornerstone of animal health mitigation measures in the OIE Terrestrial Code "Zoning and compartmentalisation". This is in violation of Article 3 of the

SPS Agreement, which obliges Members to base their SPS measures on international standards, guidelines or recommendations, where they exist.

8. The European Union would also like to underline the fact that the decision of the Russian Federation to ban the export of live pigs and pork products is de facto not restricted to the affected part of the European Union, but applies to the entire EU territory.

9. This means that, not only is the notification misleading, but it is also, in addition to the issues highlighted above:

- disproportionate;
- more trade restrictive than necessary; and
- discriminatory.

10. It is disproportionate, as an EU-wide ban, restricting the trade in live pigs or pig products from any unaffected part of the European Union, is wholly unjustified and unnecessary. This is particularly so given the comprehensive steps have been taken to fulfil the international norms that regulate such situations, namely regionalisation. It is also to be noted that the disease in the European Union has, at least so far, only concerned the wild boar population. The measures applied by Russia, however, ban trade in pork and pork products originating from domestic pigs.

11. It is also far more trade restrictive than necessary. Even if the restriction in place were limited, as claimed by Russia in its notification, to solely Lithuania - it would remain far more trade restrictive than necessary. As Lithuania has been regionalised, the remaining areas of Lithuania - that is, those outside the regionalised area - should be free to trade. This is presently not the case: not for Lithuania, nor for the rest of the European Union.

12. It is also discriminatory as the Russian Federation is itself a territory where ASF is present. It is widely accepted that WTO Members should not "arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members."

13. The Russian Federation has failed to demonstrate the measures it is taking to prevent the spread of the ASF virus on its own territory. Indeed, in the last years, this disease spread both in the domestic pig and the wild boar population in a very large area of Russia, as shown by the notifications made to the OIE since 2007. Indeed, there can be little doubt that the Russian Federation has taken wholly insufficient measures to prevent the spread of the ASF virus in its own territory. Scientific studies conducted in recent days show that the virus found in the European Union indeed originates from Russia, and was later transmitted to the European Union via Belarus.

14. The view that the measures are discriminatory is further compounded by the reaction taken by Russia after the detection of the ASF virus in Ukraine earlier this year. Russia introduced restrictive measures on exports of live pigs and pork products from solely the affected region of Ukraine (the Luhansk region). These measures - detailed in notification G/SPS/N/RUS/46 - were issued merely days before the rather less serious outbreak in Lithuania.

15. The Russian Federation is clearly applying discriminatory policies not only in treating imports in a discriminatory way when compared with domestic product, but also by discriminating between its trading partners.

16. The European Union finds it worrying that the Russian Federation, more than one and a half years after its accession to the WTO, still fails to respect its commitments to adhere to the WTO SPS Agreement which it explicitly signed up to when acceding to the WTO in August 2012. It is also of concern that the Russian Federation so blatantly violates the international standards which are upheld and enshrined in the WTO SPS Agreement.

17. The European Union is committed to working with all its trade partners and will continue to do so both bilaterally and within the WTO/SPS framework in order to allow safe trade to continue without hindrance.
