



**RUSSIAN FEDERATION – MEASURES ON THE IMPORTATION OF LIVE PIGS,
PORK AND OTHER PIG PRODUCTS FROM THE EUROPEAN UNION**

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE RUSSIAN FEDERATION

REQUEST FOR CONSULTATIONS

The following communication, dated 25 January 2018, from the delegation of the Russian Federation to the delegation of the European Union and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

My authorities have instructed me to request consultations with the European Union, pursuant to Articles 1, 4 and 21.5 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994, and Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), in connection with a disagreement concerning Russia's compliance with the DSB's rulings and recommendations in *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union* ("Russia – Pigs (EU)" (WT/DS475).

1. Background to this Request

On 21 March 2017, the DSB adopted the Appellate Body Report, and the Panel Report, as modified by the Appellate Body Report, in *Russia – Pigs (EU)*. These reports concluded that five measures consisting of import bans on live pigs and pork products from Lithuania (FS-EN-8/1023 and FS-EN-8/5081), Poland (FS-NV-8/2972 and FS-EN-8/5081), Latvia (FS-NF-8/11315), and Estonia (FS-NV-8/17431), and the so called EU-wide import ban¹ on live pigs and certain pork products, were inconsistent with various provisions of the SPS Agreement.

In accordance with these reports, the DSB has recommended that the Russian Federation bring the measures found to be inconsistent with the SPS Agreement into conformity with its obligations under that Agreement.

On 19 April 2017, Russia informed the DSB, pursuant to Article 21.3 of the DSU, that it intended to implement the recommendations and rulings of the DSB in accordance with its WTO obligations. Russia explained that it needed a reasonable period of time for the implementation of the DSB's recommendations and rulings. It expressed its readiness to discuss this matter with the EU in due course, in accordance with Article 21.3(b) of the DSU.

On 19 May 2017, the Russian Federation and the European Union informed the DSB that they intended to mutually agree on a reasonable period of time that the Russian Federation will need in

¹ In accordance with para. 8.1 (a) of the Panel Report the EU-wide ban is a composite measure which "reflects Russia's refusal to accept certain imports of the products at issue from the European Union. The basis for Russia's refusal is the requirement contained in the veterinary certificates negotiated with the European Union. According to this general requirement, the whole of the European Union's territory, except for Sardinia, has to be ASF free for three years in order for the products at issue to be imported into Russia".

order to bring its measures into compliance with the recommendations and rulings of the DSB.² On 2 June 2017, the Russian Federation and the European Union informed the DSB that they had agreed on a reasonable period of time of 8 months and 15 days from the date of the adoption of the DSB recommendations and rulings. Accordingly, the reasonable period of time was set to expire on 6 December 2017.³

On 5 December 2017, the Federal Service for Veterinary and Phytosanitary Surveillance ("Rosselkhoz nadzor") issued Directive No. FS-NV-7/26504 ("the Letter") that addresses all the measures mentioned above. As a result, all measures found by the Panel and the Appellate Body to be inconsistent with Russia's WTO obligations were removed. The Russian Federation promptly informed the European Union about the issuance of the Letter.

In addition to this, on 8 December 2017, the Russian Federation informed the DSB that it had taken appropriate steps to comply with the DSB's recommendations and rulings within the reasonable period of time agreed by the parties.⁴

On 19 December 2017, the European Union made a request pursuant to Article 22.2 of the DSU seeking authorization from the DSB to suspend concessions under the covered agreements in the amount of 1.39 billion euro (total value of the relevant exports in 2013) plus a yearly increase rate of 15%.⁵ The Russian Federation objected to this request via its communication dated 20 December 2017 to the Chair of the DSB and in its oral statement at the DSB meeting held on 3 January 2018.⁶

2. Implementation actions by the Russian Federation

In accordance with the Letter the Russian Federation resumed the importation of live pigs, pork meat and raw meat preparations from the entire territory of the European Union and its Member States, excluding ASF affected administrative territories as set out in Appendix 1 of the Letter. Furthermore, the EU-Russia agreed forms of bilateral veterinary certificates were amended; specifically, the phrase "excluding Sardinia" has been replaced with the phrase "excluding the administrative territories in accordance with the attached list" (referring to Appendix 1 to the Letter).

By resuming the importation of the goods at issue in this dispute from all EU Member States (excluding ASF-infected administrative territories) and by amending the requirements previously contained in the EU-Russia bilateral veterinary certificate, which was found by the Panel and Appellate Body to serve as a basis for the EU-wide ban, the Russian Federation has brought the so called "EU-wide ban" into conformity with its obligations of the SPS Agreement.

The Russian Federation removed the restrictions imposed in 2014 on the imports of live pigs and pork products from Lithuania, (FS-EN-8/1023 and FS-EN-8/5081, including amendments), Poland (FS-NV-8/2972 and FS-EN-8/5081, including amendments), Latvia (FS-NF-8/11315, including amendments), and Estonia (FS-NV-8/17431, including amendments). Imports of the products at issue in this dispute are now allowed, with the exclusion of a number of ASF affected administrative territories as set out in Appendix 1 of Directive FS-NV-7/26504. Thus, Russia has withdrawn the country-specific import bans, and instead, applied regionalization in accordance with the SPS Agreement, including the requirements of Articles 3.2 and 6.

The Russian Federation fully implemented the DSB rulings within the reasonable period of time.

² Communication from the Russian Federation and the European Union, WT/DS475/14, circulated on 23 May 2017.

³ Communication from the Russian Federation and the European Union concerning Article 21.3(b) of the DSU, WT/DS475/15 circulated on 7 June 2017.

⁴ Communication from the Russian Federation, WT/DS475/16, circulated on 13 December 2017.

⁵ Recourse to Article 22.2 of the DSU by the European Union, WT/DS475/17, circulated on 20 December 2017.

⁶ Recourse to Article 22.6 of the DSU by the Russian Federation, WT/DS475/18, circulated on 3 January 2018.

3. Systemic issues arising in this dispute

As it appears from the EU Request under Article 22.2 of the DSU dated 19 December 2017, the European Union disagrees that the Russian Federation's measures taken to comply are consistent with the WTO covered agreements and underlines "the Russian Federation's failure to bring its measures into compliance with the recommendations and rulings of the DSB [...]".

The Russian Federation reaffirms its disagreement with the European Union's allegations that the Russian Federation failed to comply with the recommendations and rulings of the DSB within the reasonable period of time in this dispute.⁷

The Russian Federation notes that Article 21.5 of the DSU explicitly states that "[w]here there is a disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures [...]". Thus, in a case the Russian Federation considers that it has brought itself into full compliance and the European Union disagrees on that, the issue of compliance must be decided following the procedures of Article 21.5 of the DSU.

It is a key element for predictability and effective functioning of the dispute settlement system that, in situations where there is no agreement over compliance between the parties, the compliance proceedings must precede retaliation. However, the European Union failed to take the necessary steps to institute Article 21.5 proceedings. Instead, it submitted a request for suspension of obligations and concessions pursuant to Article 22.2 of the DSU.

In these circumstances, the Russian Federation considers it appropriate to seek recourse to Article 21.5 itself, in order to resolve the disagreement over the existence and/or consistency of Russia's compliance measures, and restore the ordinary course of proceedings.

4. Request for consultations

Thus, in light of the fact that the European Union and the Russian Federation disagree that the Russian Federation has brought its measures into compliance with the recommendations and rulings of the DSB, the Russian Federation invokes Article 21.5 of the DSU and respectfully requests consultations concerning this matter with the European Union.

The Russian Federation looks forward to receiving the EU's response to this Request, and to fixing a mutually acceptable date for consultations.

⁷ Recourse to Article 22.6 of the DSU by the Russian Federation, WT/DS475/18, circulated on 3 January 2018.