



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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 27 June 2014, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the establishment of a panel pursuant to Article 6 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) with respect to the adoption, maintenance and application of certain measures by the Russian Federation (Russia) affecting the importation of live pigs and their genetic material, pork and certain other pig products from the European Union (*Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union - DS475*).

On 8 April 2014, the European Union (EU) requested consultations with Russia pursuant to Articles 1 and 4 of the DSU, Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), concerning certain Russian measures affecting the importation of live pigs and their genetic material, pork and certain other pig products ("the products at issue") from the EU, purportedly because of concerns related to a limited number of cases of African swine fever (ASF)¹.

The consultations took place on 30 April and 1 May 2014 with a view to reaching a satisfactory settlement of the matter. Unfortunately, the consultations failed to settle the dispute. The EU therefore requests that a panel be established pursuant to Articles 4 and 6 of the DSU, Article 11 of the SPS Agreement and Article XXIII of the GATT 1994 to examine the matter based on the standard terms of reference, as set out in Article 7.1 of the DSU.

The EU challenges certain Russian measures adopting, maintaining or applying an import ban or import restrictions, which prevent the importation of the products at issue from the EU into Russia.

The specific measures at issue are:

- A ban on imports from Lithuania as described in the administrative notice from the Russian Federal Service for Veterinary and Phytosanitary Supervision of 25 January 2014 (FS-EN-8/1023). This notice announced a temporary restriction on imports of "live pigs and its genetic material; pork products (which were not heat treated no less than 72°C for at least 30 minutes); products from slaughter of wild boars; horn-hoofed and leather, intestinal materials; bristles; feed for pigs; hunting trophies, which were not subjected to full taxidermy treatment; previously used equipment for maintenance, transportation, slaughter and cutting of pigs" from Lithuania as of 25 January 2014. This measure was notified to the WTO on 10 February 2014 (G/SPS/N/RUS/48);

¹ Since January 2014, ASF was confirmed in the following cases in the EU: on 24 January in two wild boars in Lithuania, on 17 and 19 February in two wild boars in Poland. On 30 May 2014 two additional ASF cases were confirmed in wild boar in Poland, inside the already established restricted area. On 26 June 2014 ASF was confirmed in Latvia in three wild boars and in three pigs in a backyard farm in an area that has already been restricted due to Classical swine fever. All cases occurred very close to the Belarus border.

- A ban on imports from Poland as described in the administrative notice from the Russian Federal Service for Veterinary and Phytosanitary Supervision of 27 February 2014 (FS-NV-8/2972) announcing a temporary restriction on imports of "live pigs and its genetic material; pork products (which were not heat treated no less than 80°C for at least 30 minutes); products from slaughter of wild boars; horn-hoofed and leather, intestinal materials; bristles; feed for pigs; hunting trophies, which were not subjected to full taxidermy treatment; previously used equipment for maintenance, transportation, slaughter and cutting of pigs" from Poland as of 27 February 2014. This measure was notified to the WTO on 4 March 2014 (G/SPS/N/RUS/49);
- A ban on imports from Lithuania and Poland as described in the administrative notice of the Russian Federal Service for Veterinary and Phytosanitary Supervision of 2 April 2014 (FS-EN-8/5081). This notice announced the extension of the import restrictions in force to processed products containing pork excluding ready-to-use feed for cats and dogs which underwent thermal treatment (temperature not lower than 70°C, duration of treatment not less than 20 minutes), from Lithuania and Poland as of 7 April 2014. These measures were notified to the WTO on 4 April 2014 as updates to the original WTO notifications (G/SPS/N/RUS/48/Add.2 and G/SPS/N/RUS/49/Add.1);
- The refusal by Russia to accept imports of the products at issue from the entire EU, amounting to an EU-wide ban. The EU identifies this specific measure at issue both as an action (an import ban or restriction) and, in the alternative, as an omission (failure to accept imports from the EU). The EU seeks review of this specific measure at issue as such and as applied, *de jure* and *de facto* (that is, based on all the relevant facts). The EU also seeks review of this specific measure at issue both insofar as it is written, and insofar as it is unwritten. The EU notes the letter sent to the EU dated 29 January 2014 (FS-SA-8/1277) from the Russian Federal Service for Veterinary and Phytosanitary Supervision referring to certain export certificates previously used for certain exports from the EU to Russia, and notably the phrase "healthy animals grown in farms and/or administrative territories officially free from contiguous animal diseases, including African Swine Fever during 3 years in the whole territory of the EU except Sardinia." In this respect, the Russian authorities made the following statement: "veterinary doctors in the EU Member-States must stop certification of the abovementioned products. Otherwise these products accompanied with these veterinary certificates issued after 27.01.2014, cannot be allowed into the territory of the Member States of the Customs Union and are subject to returns."

This measure was confirmed and re-iterated in a letter of 14 February 2014 (HF-12-26/1650) from the Ministry of Agriculture of the Russian Federation, stating that "this incident considerably changes the epizootic status not only of Lithuania, but of the whole EU". Since the end of January 2014, imports of the products at issue were no longer accepted, as evidenced *inter alia* by:

- an official announcement of the Russian Federal Service for Veterinary and Phytosanitary Supervision from 6 February 2014, according to which the importation of pork products (frozen heads and hearts) of Austrian and German origin was banned in the Tver and Pskov regions, because of alleged ASF risks in the whole EU.²
- Before the imposition of the import ban against Poland, Russia already rejected a frozen pork meat consignment that was subsequently re-imported to the EU on 31 January 2014. The reason for rejection was that in the export certificate, the situation on ASF would not be correctly certified as regards ASF outbreaks on the territory of Lithuania.

Each of the measures at issue appears to be inconsistent with Russia's obligations under the following provisions of the SPS Agreement and the GATT 1994, except as stated otherwise in the following paragraphs.

Article 2.2 of the SPS Agreement, because Russia has not ensured, and does not ensure, that the measures at issue are not applied beyond the extent necessary to protect human or animal life or

² <http://fsvps.ru/fsvps/news/8935.html>.

health. It is not necessary from a safety point of view for Russia to restrict imports from disease-free and, therefore, unaffected areas in the EU³; and to restrict imports of those products that pose no risk of disease transmission.

Further, Russia did not ensure that the measures at issue were based on scientific principles. There is no scientific basis, whether specific or general, for restricting imports from non-affected areas of the EU and for restricting imports of those products that pose no risk of disease transmission. Russia failed and fails to ensure that the measures at issue are not maintained without sufficient scientific evidence.

Articles 3.1, 3.2 and 3.3 of the SPS Agreement, because the Russian measures are neither "based on" nor "conform to" the relevant international standards, guidelines or recommendations, as provided for in Articles 3.1 and 3.2 of the SPS Agreement. Furthermore, they are inconsistent with Article 3.3 of the SPS Agreement, as there is no scientific justification for departing from the relevant standards, guidelines or recommendations, nor are the measures at issue a consequence of the level of sanitary protection sought by Russia.

Articles 5.1 and 5.2 of the SPS Agreement, because Russia does not ensure that the measures at issue are based on an assessment, as appropriate to the circumstances, of the risks to human or animal life or health, taking into account risk assessment techniques developed by the relevant international organizations, as required by Article 5.1 of the SPS Agreement. Russia has neither provided, nor referred to, any such risk assessment.

Moreover, in adopting, maintaining and/or applying the measures at issue, Russia did not and does not take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; the prevalence of specific diseases or pests; the existence of pest- or disease-free areas; the relevant ecological and environmental conditions; and quarantine or other treatment. Russia has provided no evidence that it has taken these matters into account, as required by Article 5.2 of the SPS Agreement. Had Russia properly taken these matters into account, it would have concluded that the measures at issue are unnecessary and unjustified.

Article 5.7 of the SPS Agreement, because Russia has failed to comply with any of its requirements: in this case, it is incorrect to proceed on the basis that relevant scientific evidence is insufficient. The measures at issue do not appear to be provisional. Russia did not proceed on the basis of available pertinent information, including that from the relevant international organizations, as well as from sanitary measures applied by other Members. Although Russia obtained the information necessary for a more objective assessment of risks, it has not shown, and does not show any sign of, reviewing the sanitary measure accordingly within a reasonable period of time.

Articles 6.1, 6.2 and 6.3 of the SPS Agreement, because Russia has not ensured, and does not ensure, that the measures at issue are adapted to the sanitary characteristics of the area from which the products at issue originate and to which they are destined. In assessing the sanitary characteristics of the affected area, Russia failed to take into account, *inter alia*, the level of prevalence of ASF, the existence of eradication and control programs (immediately implemented in accordance with international standards laid down by the OIE), and appropriate criteria or guidelines developed by the relevant international organizations.

Furthermore, Russia fails to recognise the concepts of pest- or disease-free areas and areas of low pest or disease prevalence, as required by Article 6.2 of the SPS Agreement. Russia also does not make any determination with respect to such areas based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary controls. Russia fails to recognise the EU territory, excluding the restricted areas, as disease-free areas, despite the implementation of appropriate regionalisation measures.

³ Commission Implementing Decision concerning animal health control measures relating to African swine fever in certain Member States (2014/178/EU), OJ L 95, 29.3.2014, p. 47, defines the affected areas in the EU in which protective measures apply, i.e. Sardinia and certain areas in South-eastern Lithuania and North-eastern Poland, bordering Belarus (so-called "regionalisation measures"). As regards the most recent cases of ASF in South-eastern Latvia, see the Commission Implementing Decision concerning certain interim protective measures relating to African swine fever in Latvia.

With respect to Article 6.3 of the SPS Agreement, the EU considers that it has provided the necessary evidence to objectively demonstrate to Russia that the EU territory, excluding the restricted areas due to the presence of ASF, is a disease-free area or area of low ASF prevalence. For this purpose, access has been given, upon request, to Russia, for inspection, testing and other relevant procedures.

Articles 5.3, 5.4 and 5.6 of the SPS Agreement, because, in assessing the risk to animal health and determining the measures to be applied for achieving the appropriate level of sanitary protection, Russia failed to take into account all relevant economic factors referred to in Article 5.3 of the SPS Agreement, including the relative cost-effectiveness of alternative approaches to limiting risks.

Further, when determining the appropriate level of sanitary protection, Russia failed to take into account, or properly take into account, the objective of minimizing negative trade effects, as required by Article 5.4 of the SPS Agreement.

Russia failed and fails to ensure that the measures at issue are not more trade-restrictive than required to achieve its appropriate level of sanitary protection, taking into account technical and economic feasibility, as required by Article 5.6 of the SPS Agreement. Russia failed to take into account that there are other measures, which are reasonably available taking into account technical and economic feasibility, that achieve Russia's appropriate level of sanitary protection and that are significantly less restrictive to trade.

The alternative measures would be those that take into account the principle of regionalisation (zoning) provided for in Article 6, as further set out in the OIE Terrestrial Animal Health Code on Zoning and Compartmentalisation (Chapter 4.3), and as also reflected in the OIE Terrestrial Animal Health Code on ASF (Chapter 15.1). Russia should recognise the EU territory (excluding the restricted areas due to the presence of ASF), as a non-affected area. The alternative measures would also involve a narrower definition of the products at issue.

Article 2.3 and Article 5.5 of the SPS Agreement, because the Russian measures arbitrarily or unjustifiably discriminate between Members where similar conditions prevail, including between the Russian territory and that of other Members.

For example, while Russia applies the measures at issue to imported products from the entire EU territory, it does not apply similar measures with respect to like domestic products, and their internal movement within the Russian territory. In this context, it is noted that Russia does not appear to effectively control the spread of ASF in its own territory. Since its introduction in the Russian territory from the Caucasus region in 2007, ASF spread westwards and northwards, infecting the feral and domestic pig population. According to the notifications of Russia to the OIE, around 400 ASF outbreaks in farms affecting 500.000 domestic pigs and around 600 cases in wild boar were detected since 2007. The cases found in Lithuania and Poland, and later in Latvia, were located on the border with Belarus where the disease is also present, due to the spread of the disease from Russia. The genetic sequencing of virus isolates show a 100% homology between Lithuanian and Polish wild boar cases and the viral isolates circulating in Belarus and Russia.

Furthermore, as regards restrictive measures relating to ASF against other Members, according to the letter of the Russian Federal Service for Veterinary and Phytosanitary Supervision of 15 January 2014 (FS-NW-8/528), despite the finding of ASF in wild boars in a forester-hunting ground in the Luhansk Region of Ukraine, close to the Russian border, Russia restricted imports of live pigs and pig products from the said Luhansk region only and did not apply a *de jure* or *de facto* ban on all pigs and pig products originating in Ukraine.

In this respect, it is also noted that Russia lifted certain import restrictions against Belarus despite the fact that ASF has been identified and notified in two regions of Belarus since June 2013. The movement of live pigs and pig products from pig farms and meat processing companies of the Mogilev Oblast, Belarus, was allowed by virtue of the administrative notice from the Russian Federal Service for Veterinary and Phytosanitary Surveillance of 27 January 2014 (FS-EN-8/1093).

Russia continues refusing regionalisation with regard to the territory of the EU and its Member States. Thus, Russia is applying the measures at issue in a manner that constitutes a disguised

restriction on international trade. Russia fails to avoid arbitrary or unjustifiable distinctions in the levels it considers being appropriate in different situations, and such distinctions result in discrimination or a disguised restriction on international trade.

Article 8 and Annex C.1(a), (b) and (c) of the SPS Agreement, because Russia failed and fails to modify the measures at issue in order to permit the resumption of imports to Russia of the products at issue from non-affected areas in the EU and/or with respect to appropriately treated or processed products. The EU repeatedly approached Russia since early February 2014 in order to achieve an adaptation of the measures at issue to the regional conditions in the EU. Russia was provided with all requested information, in addition to further information, provided at the EU's own initiative. Furthermore, a series of bilateral meetings were held between the EU authorities and the Russian authorities between February and June 2014, at which further information and explanations were provided. The resulting undue delay is reflected, *inter alia*, in:

- the letter of the Russian Federal Service for Veterinary and Phytosanitary Supervision of 12 March 2014 (FS-SD-4/3620);
- the failure to reply to invitations by EU authorities of 31 January and 14 February 2014 for urgent meetings;
- the failure to reply to additional information and explanations provided by the EU, with letter of 21 May 2014;
- requesting answers to questions where the EU already provided exhaustive replies – with a letter dated 16 May 2014, which however reached the EU only on 4 June 2014 (FS-EN-8/7999);
- requesting answers to questions irrelevant to the case (e.g. information on establishments in unaffected areas graded by production volume and biosecurity);
- the belated provisions of invitations for visas for a technical meeting agreed on 21 February to take place 24-25 February 2014, which finally only took place on 7 March 2014. Accordingly, Russia failed to observe the provisions of Annex C of the SPS Agreement on the operation of control, inspection and approval procedures and otherwise failed to ensure that its procedures are not inconsistent with the provisions of the SPS Agreement, as required by Article 8 of the SPS Agreement.

Furthermore, Russia failed to ensure, with respect to its procedures for checking and ensuring the fulfilment of sanitary measures, that such procedures have been undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products, as required by Annex C.1(a) to the SPS Agreement.

With respect to Annex C.1(b) to the SPS Agreement, Russia failed to ensure that the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; that when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; that the competent body transmits, as soon as possible, the results of the procedure in a precise and complete manner to the applicant, so that corrective action may be taken if necessary; that even when the application has deficiencies, the competent body proceeds, as far as practicable, with the procedure if the applicant so requests; and that upon request, the applicant is informed of the stage of the procedure, with any delay being explained.

Finally, as regards Annex C.1(c) to the SPS Agreement, Russia failed to ensure that information requirements are limited to what is necessary for appropriate control, inspection and approval procedures.

Article 7 and Annex B paragraphs 1, 2, 5 and 6 of the SPS Agreement, because certain measures at issue were taken by Russia against Lithuania on 25 January 2014 (ref. FS-EN-8/1032), but only notified to the WTO on 10 February 2014, that is, 16 days after their imposition. Another measure at issue, namely the import ban relating to the entire EU territory, has, to the knowledge of the EU, neither been published, nor notified to the WTO.

Specifically, Russia failed to notify changes in its sanitary measures and to provide information on such sanitary measures in accordance with the provisions of Annex B of the SPS Agreement.

With respect to the ban concerning Lithuania on the products at issue as notified in (G/SPS/N/RUS/48), Russia failed to *immediately* notify other Members, through the WTO Secretariat, of the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem. Russia also failed to provide copies of the regulation to other Members and to allow other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

With regard to the EU-wide ban, Russia failed to ensure that the relevant measure was published promptly in such a manner as to enable the EU and its Member States to become acquainted with them. It also failed to allow Members a reasonable interval between the publication and the entry into force of the ban to allow time for producers in exporting Members to adapt their products and method of production to the requirements of the importing Member. Further, given that the measure was not substantially the same as the content of the international standards, guidelines or recommendations and given that it had a significant effect on trade of the EU and its Member States, Russia failed to publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal; to notify at an early stage other Members, through the Secretariat, of the products to be covered together with a brief indication of the objective and rationale of the proposed regulation so that amendments could still be introduced and comments taken into account; to provide upon request to other Members copies of the proposed regulation and identify the parts which in substance deviate from international standards, guidelines or recommendations; without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

It is noted that, insofar as the EU-wide ban is concerned, were it to be the case that Russia considered that urgent problems of health protection arose, Russia failed to immediately notify other Members, through the WTO Secretariat, of the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem. Russia also failed to provide copies of the regulation to other Members and to allow other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

Article I:1 of the GATT 1994, because Russia is not granting the products at issue originating in the EU, immediately and unconditionally, the same advantages in respect of their importation, as it does to like products originating in any other country, in particular to products originating in Ukraine and Belarus, as already described in relation to claims on Article 2.3 and Article 5.5 of the SPS Agreement.

Article III:4 of the GATT 1994, because the measures at issue accord less favourable treatment to the imported products at issue than that accorded to like products originating in Russia, with respect to laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

Article XI:1 of the GATT 1994, because the Russian measures constitute an import prohibition or restriction other than duties, taxes or other charges.

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The Russian measures at issue adversely affect exports to Russia of live pigs, fresh pork and the other products at issue originating in the EU and its Member States, and they nullify or impair the benefits accruing to the EU and its Member States directly or indirectly under the cited agreements.

This request relates to the measures at issue and to any amendments, supplements, extensions, replacement measures, renewal measures and implementing measures.
