



**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 EUROPEAN UNION

REQUEST FOR CONSULTATIONS

The following communication, dated 2 February 2018, from the delegation of the European Union to the delegation of the Russian Federation and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

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I refer to the request for consultations from the Government of the Russian Federation (Russia) dated 25 January 2018 in *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union (Russia-Pigs (EU), WT/DS475)*.

My authorities have also instructed me to request consultations with Russia 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 (GATT 1994), and Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), concerning certain measures adopted by Russia affecting the importation of the products at issue from the European Union (EU), and concerning a disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings in *Russia-Pigs (EU)*.

The EU is concerned that the measures identified in this request for consultations are inconsistent with Russia's obligations under the WTO Agreement, as further detailed below:

The measures at issue

The measures at issue include the following:

- first, the Decree of the Government of the Russian Federation No. 1292 of 25 October 2017, amending the annex to the Decree of the Government of the Russian Federation No. 778 of 7 August 2014;
- second, the Letter of 5 December 2017 from the Russian Federal Service for Veterinary and Phytosanitary Surveillance (Rosselkhoznadzor) to the Directorate General for Health and Food Safety (DG SANTE) of the European Commission (No. FS-NV-7/26502);
- third, the Letter of 9 January 2018 from Rosselkhoznadzor to the State Veterinary Administration of the Czech Republic (FS-KS-7/72); and
- fourth, the Letter of 16 January 2018 from Rosselkhoznadzor to the State Veterinary Officer of the Republic of Poland (FS-KS-7/539).

In light of the fact that the first measure at issue effectively replaces the measures at issue in the original dispute, thereby effectively maintaining them in force and effect, in whole or in part, the measures at issue in these compliance proceedings also include each and all of the measures at issue identified in the original panel request,<sup>1</sup> to the extent that each of them is effectively maintained in force and effect by the first measure at issue, in whole or in part. Only in order to avoid unnecessary repetition, the EU hereby formally incorporates by reference in this consultations request each and all of the measures identified in the original panel request, to the extent that they are effectively maintained in force and effect by the first measure at issue.

#### The legal basis for the complaint and the reasons for the request

Each of the measures at issue, considered individually in isolation and in any combination, appears to be inconsistent with Russia's obligations under the provisions of the SPS Agreement and the GATT 1994 detailed in the original panel request. Only in order to avoid unnecessary repetition, with respect to each and all of the measures at issue, the EU hereby formally incorporates in this consultations request each and all of the legal bases for the complaint set out in the original panel request, as well as the brief summaries sufficient to present the problem clearly. The EU recalls that this includes the following provisions of the SPS Agreement: Articles 2.2; 3.1, 3.2 and 3.3; 5.1 and 5.2; 5.7; 6.1, 6.2 and 6.3; 5.3, 5.4 and 5.6; 2.3 and 5.5; Article 8 and Annex C.1(a), (b) and (c); Article 7 and Annex B, paragraphs 1, 2, 5 and 6. The EU further recalls that this also includes Article I:1, III:4 and XI:1 of GATT 1994.

#### Additional and further requests

As a matter that is separate and independent from the foregoing matters, the EU is concerned that the first measure at issue appears to be inconsistent with:

- Article I:1 of 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;
- Article III:4 of 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 GATT 1994, because the Russian measures constitute an import prohibition or restriction other than duties, taxes or other charges.

The EU also considers that the first to fourth measures are inconsistent with Article X:1 of the GATT 1994, because they have not been published promptly in such a manner as to enable the EU and traders to become acquainted with them.

The EU is also concerned that Russia's conduct in this case is inconsistent with Article 21(3) of DSU because, notwithstanding Russia's statement of intentions in respect of implementation of the recommendations and rulings of the DSB, it is clear that such implementation has not occurred, and that Russia has not intended it to occur. Furthermore, Russia's conduct in this case would also appear to be inconsistent with Article 21(3) of DSU because Russia has requested and obtained a reasonable period of time in which to comply, but has in fact used that period in order to maintain and compound the original violations. For the same reasons, the EU is concerned that Russia's conduct in this case is inconsistent with Article 3(10) of DSU.

Finally, on the basis of the communication from Russia to the EU of 2 January 2018, especially its final sentence, relating to the link between the DSU proceedings in DS475 and the first measure at issue or measures of a comparable type, the EU is concerned that, taken as a whole, Russia's actions and omissions are inconsistent with Russia's other obligations under the DSU. Specifically, the EU is concerned that Russia's actions and omissions are inconsistent with Article 23(1) of DSU (failure to have recourse to and abide by the rules and procedures of the DSU) and Article 23(2) of

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<sup>1</sup> WT/DS475/2.

DSU (unilateral determination of violation, nullification or impedance; and failure to follow the rules and procedures in Articles 21 and 22 of DSU).

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In light of the foregoing, it appears that, through its actions and omissions, Russia has failed to comply with the recommendations and rulings adopted by the DSB in the original proceedings.

Russia's measures appear to adversely affect exports to Russia of the products at issue originating in the EU and its Member States, and also appear to nullify or impair the benefits accruing to the EU and its Member States directly or indirectly under the cited agreements.

This consultation request relates to the measures at issue and to any amendments, supplements, extensions, replacement measures, renewal measures and implementing measures, including but not limited to any such measures referred to by either party during the consultations.

The EU reserves the right to address additional measures and claims under other provisions of the covered agreements regarding the above matters during the course of the consultations.

The EU hereby informs Russia, pursuant to Article 4.3 of DSU, that it agrees to enter into consultations with Russia on the basis of Russia's consultations request dated 25 January 2018 and this consultations request. The EU looks forward to receiving Russia's reply to this request and expresses its readiness to consider a mutually convenient date and place for the consultations

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