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**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 THE ESTABLISHMENT OF A PANEL

The following communication, dated 18 October 2018, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 21 March 2017, the DSB adopted the Appellate Body Report, and the Panel Report, as modified by the Appellate Body Report, in *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union (DS475) (Russia – Pigs (EU))*. These reports concluded that the individual import bans on live pigs and pork products from Lithuania, Poland, Latvia, and Estonia, as well as the EU-wide import ban on live pigs and certain pork products, were inconsistent with various provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The DSB has recommended that the Russian Federation (Russia) brings the measures specified in the reports into conformity with its obligations under the SPS Agreement.¹

On 2 June 2017, Russia and the European Union (EU) 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 expired on 6 December 2017.²

On 25 October 2017 Russia issued the Decree of the Government of the Russian Federation No. 1292, amending the annex to the Decree of the Government of the Russian Federation No. 778 of 7 August 2014.³ On 5 December 2017, the Federal Service for Veterinary and Phytosanitary Surveillance (Rosselkhozadzor) issued Directive No. FS-NV-7/26504.⁴

The EU is of the opinion that these measures, far from bringing the original measures into conformity with Russia's WTO obligations, perpetuate the nullification and impairment of benefits accruing to the EU directly or indirectly under the SPS Agreement, and are not justified by any other provisions of the covered agreements, including, notably, Article XXI of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

On 25 January 2018, Russia requested consultations with the EU with regard to its alleged compliance with the recommendations and rulings of the DSB.⁵ On 2 February 2018 the EU also requested 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 GATT 1994, and Article 11 of SPS Agreement, with regard to a disagreement as to the existence or consistency

¹ Minutes of the Meeting held in the Centre William Rappard on 21 March 2017, WT/DSB/M/394.

² Communication from the Russian Federation and the European Union concerning Article 21.3(b) of the DSU, WT/DS475/15, 7 June 2017.

³ <http://government.ru/docs/29853/>.

⁴ <http://fsvps.ru/fsvps/download/attachment/115007/26504.pdf>, notified through G/SPS/N/RUS/146.

⁵ WT/DS475/19.

with the covered agreements of measures taken to comply with the recommendations and rulings in *Russia-Pigs (EU)*.⁶

The consultations took place in Geneva on 28 February 2018. Unfortunately, they failed to resolve the dispute. Consequently, the EU requests the establishment of a panel under Article 21.5 of DSU.

The EU is concerned that the measures identified in this request for the establishment of a panel 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).

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 request⁷ or subject to the original proceedings, 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 panel request each and all of the measures identified in the original panel request or reports, 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 or reports. 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 panel request each and all of the legal bases for the complaint set out in the original panel request or reports, 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

⁶ WT/DS475/20.

⁷ WT/DS475/2.

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 measures at issue are inconsistent with Article X:1 of 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 DSU (unilateral determination of violation, nullification or impedance; and failure to follow the rules and procedures in Articles 21 and 22 of DSU).

* * *

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