

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

(AB-2016-5 / DS475)

**THIRD PARTICIPANT ORAL STATEMENT
OF THE UNITED STATES OF AMERICA**

November 24, 2016

I. Introduction

1. Good morning. In our third participant submission, the United States explained why three of Russia's allegations that the panel misinterpreted Article 6 of the SPS Agreement are incorrect, and reflect a fundamental misunderstanding of Article 6. This morning, the United States will offer additional thoughts on assertions made by Russia about veterinary certificates and the implications of Russia's Protocol of Accession to the WTO.

2. Before doing so, however, the United States would take note of what is, and what is not, at issue in the appeal. In particular, what is at issue is whether the Panel committed the specific legal errors alleged by Russia and the European Union in their respective Notices of Appeal and Appellant's Submissions. What is not at issue is whether the Panel committed any legal errors not alleged in those documents.

3. As the United States explained in its third participant submission, the Panel did not misinterpret Article 6 in the ways that Russia alleges in its Appellant submission. Accordingly, Russia's claims on appeal concerning the interpretation of Article 6 should be rejected.

II. Russia's Veterinary Certificates and Protocol of Accession

4. The United States will now address certain points raised by Russia concerning veterinary certificates and Russia's protocol of accession. In its Appellant Submission, Russia denies that bilaterally negotiated veterinary certificates for the importation of goods into Russia constitute Russian SPS measures.¹ Russia also claims that its protocol of accession to the WTO enables it to insist on certification requirements in veterinary certificates existing at the time of its accession. Both of these positions are incorrect.²

¹ Russia's Appellant Submission, para. 56.

² Russia's Appellant Submission, paras 31, 57-72.

5. First, a requirement that imports be accompanied by a veterinary certificate with particular attestations is unquestionably an SPS measure – whether the content of the attestations was imposed unilaterally by the importing Member or negotiated with one or more other Members. Requiring an attestation on a veterinary certificate that must accompany imports is a mechanism for requiring that the products or their production circumstances have the characteristics to which the certificate attests. Annex A of the SPS agreement makes clear that SPS measures “include all relevant laws, decrees, regulations, requirements and procedures.” Accordingly, required veterinary certificates and required attestations on them are unquestionably SPS measures. Nothing in Annex A supports the proposition that there is any relevance to the question of whether the certificate or any attestation on it was developed unilaterally by the importing Member or was developed in agreement with another Member. If the certificate or attestation is required for a product to enter the country, then it is an SPS measure.

6. Second, Russia is incorrect that its protocol of accession would allow it to maintain a veterinary certificate, or required certificate attestation, that is not in accordance with the SPS Agreement.³ Russia bases its argument on paragraph 893 of its Working Party Report. But the Panel correctly concluded that “the text and context of paragraph 893 do not provide that the direct or indirect application of the veterinary requirements contained in the bilateral export certificates, in any situation, is automatically consistent with Russia’s rights and obligations under the SPS Agreement.”⁴ Rather, paragraphs 1.2 and 1.3 of Russia’s Protocol of Accession, together with paragraph 1450 of Russia’s Working Party Report, incorporate into the “WTO

³ Russia’s Appellant Submission, paras 31, 57-72.

⁴ Panel Report, para. 7.108.

Agreement to which the Russian Federation accedes” the “commitments *by the Russian Federation*”⁵ in the paragraphs of the Working Party Report enumerated in paragraph 1450 of that report – including paragraph 893. Paragraph 893 thus does not provide exceptions for Russia to otherwise applicable WTO commitments, but commitments by Russia to obligations that might not otherwise be applicable under the WTO Agreement. Accordingly, while paragraph 893 provides Russia with an obligation to accept certificates as provided in that paragraph, it does not provide Russia with a right to insist on the use of any certificate or attestation under circumstances where doing so is not in accordance with the disciplines of the SPS Agreement.

III. Conclusion

7. Mr. Chairman, thank you for your attention. We look forward to participating in the discussion over the next two days.

⁵ Emphasis added.