

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

(DS475)

**Third Party Oral Statement of
the United States of America
at the Third-Party Session of the
First Meeting of the Panel with the Parties**

April 21, 2015

I. Introduction

Mr. Chairperson, Members of the Panel:

1. The United States appreciates the opportunity to appear before you today and provide our views as a third party in this dispute. In our written statement, we addressed certain issues of systemic concern regarding the interpretation and application of the SPS Agreement.¹

2. In our statement today, the United States will focus on the interpretation and application of Articles 6, 5.5, and 5.7 of the SPS Agreement.

II. A Member that Recognizes the Concept of Disease-Free Areas with Respect to a Disease May Nonetheless Breach Article 6.1 of the SPS Agreement

3. In the U.S. third-party submission, we discussed the relationship between Article 6.1 and Article 6.2 of the SPS Agreement. At this session today, we would like to highlight one additional point.

4. The United States recalls that Article 6.2 of the SPS Agreement requires the recognition of *concepts*: namely, the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. By contrast, Article 6.1 imposes obligations on Members with respect to specific measures: Members must ensure that “their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of” both the area from which the product originated and to which the product is destined. These articles thus provide different (albeit related) obligations.

5. One could imagine a scenario in which a Member has complied with Article 6.2, but not Article 6.1. In particular, a Member may have recognized the concepts of pest- and disease-free areas, in accordance with Article 6.2. The recognition of the concept, however, would not

¹ *Agreement on the Application of Sanitary and Phytosanitary Measures* (“SPS Agreement”).

necessarily mean that the Member had complied with its obligation under Article 6.1 to ensure that any specific SPS measure was adapted to the sanitary or phytosanitary characteristics of the area from which the product originated.²

III. A Member’s compliance with Article 5.7 does not preclude a breach of Article 5.5

6. Next, the United States would like to address the relationship between Articles 5.5 and 5.7 of the SPS Agreement.

7. The Russian Federation appears to take the position that where a Member’s measure falls within the scope of Article 5.7 of the SPS Agreement, that measure would necessarily be consistent with Article 5.5.³ The United States does not understand this position to reflect the proper relationship between Articles 5.5 and 5.7.

8. Article 5.5 concerns a Member’s determinations of its appropriate levels of protection (“ALOP”). In particular, Article 5.5 states that “each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade.” By contrast, Article 5.7 addresses a Member’s adoption of a measure where it cannot base the measure on a risk assessment because relevant scientific information is insufficient, providing that in such cases, “a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information.”

² *India – Agricultural Products*, para. 7.691.

³ *See* Russian Federation First Written Submission, para. 409.

9. While the SPS Agreement, through Article 5.7, permits Members, in situations where the scientific evidence is insufficient, to adopt an SPS measure on the basis of available pertinent information, the measure would still aim to achieve an underlying ALOP. And, Article 5.7 does not contain disciplines on whether ALOPs may differ in different situations. This separate and distinct issue is governed by Article 5.5. Accordingly, while Article 5.7 could serve to excuse compliance with Article 5.1 of the SPS Agreement, a Member's compliance with Article 5.7 would not decide the question of whether that Member's selection of differing ALOPs in different situations is consistent with obligations under Article 5.5.

IV. Conclusion

10. This concludes the U.S. oral statement. The United States would like to thank the Panel for its consideration of the views of the United States.