RESTRICTED

WT/DSB/M/405

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Dispute Settlement Body
3 January 2018

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 3 JANUARY 2018

Chairman: Mr. Junichi Ihara (Japan)

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

A. Recourse to Article 22.2 of the DSU by the European Union (WT/DS475/17)

1.1. The Chairman drew attention to the communication from the European Union contained in document WT/DS475/17 and invited the representative of the European Union to speak.

1.2. The representative of the European Union said that the EU had requested a special DSB meeting in order to ensure that there was legal certainty and to avoid ambiguities since the parties to the dispute had not been able to enter into a sequencing agreement. He said that the EU had requested the suspension of concessions to preserve its rights in these dispute settlement proceedings. If the Russian Federation had agreed to a sequencing agreement as proposed by the EU, this step would not have been necessary at this stage. The EU took note of the information provided by the Russian Federation on measures taken to implement the DSB's recommendations and rulings. These were very important, including on the issue of adaptation of sanitary measures to regional conditions under the terms of Article 6 of the SPS Agreement. The EU was currently in the process of analysing all relevant elements. The EU understood that the Russian Federation had objected to the proposed level of suspension and that the matter would now be referred to arbitration, in line with Article 22.6 of the DSU.

1.3. The representative of the Russian Federation referred to Russia's communication, dated 8 December 2017 and contained in WT/DS475/16. He noted that by virtue of this communication, Russia had informed the Membership and the DSB that all rulings and recommendations of the DSB in the dispute "Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union" (DS475) had been fully implemented within the reasonable period of time, as agreed by the parties to this dispute. The Federal Service for Veterinary and Phytosanitary Surveillance had issued the Letter of 5 December 2017 No. FS-NV-7/26504 that addressed all measures that had been found to be inconsistent with the WTO obligations of the Russian Federation in this dispute. The SPS restrictions in respect of the whole territory of the EU (the so-called EU-wide ban) and in respect of the whole territory of a number of individual EU member States (Estonia, Latvia, Lithuania and Poland) had been lifted and replaced by SPS restrictions only in respect of ASF affected administrative territories of certain EU member States. It included the administrative territories of EU member States that had been declared by the EU as ASF affected. The list of these territories was attached to the Letter of the Federal Service. With regard to the products from the EU and its member States, specifically, Estonia, Latvia, Lithuania and Poland, the Russian Federation said that the prior SPS restrictions that had been found inconsistent with the SPS Agreement had been replaced in line with international standards; i.e. the requirements of Chapter 15 of the OIE Code. Therefore, as a result of these steps, the Russian Federation had fully implemented the DSB's rulings and recommendations in this dispute pursuant to Article 19.1 of the DSU.

1.4. In light of the action taken and its communication of 20 December 2017 (WT/DS475/18), the Russian Federation reiterated its strong disagreement with the allegations of the EU contained in document WT/DS475/17. Therein, the EU claimed that the Russian Federation had failed to comply with the DSB's recommendations and rulings within the reasonable period of time in this dispute. The Russian Federation therefore reiterated its objection to the request from the EU for a suspension of concessions or other obligations, including the proposed level as contained in document WT/DS475/17. Therefore, the matter should be referred to arbitration pursuant to Article 22.6 of the DSU. The Russian Federation further stated that the EU had failed to address disagreement concerning the existence or consistency with a covered agreement of measures that had been taken by the Russian Federation to comply with the DSB's recommendations and rulings in dispute. In the view of the Russian Federation, the EU should have taken recourse to the appropriate mechanisms set out in the DSU, namely, Article 21.5 of the DSU, before submitting its request for suspension of concessions or other obligations pursuant to Article 22.2 of the DSU. The Russian Federation further noted that compliance proceedings had to precede retaliation in case of any disagreement over compliance and such disagreement had to be resolved through the establishment of a compliance panel. The Russian Federation wished to take the opportunity to request the EU to provide its reasons for filing its request pursuant to Article 22.2 of the DSU and its allegations that the Russian Federation had failed to comply with the DSB's recommendations and rulings. The Russian Federation stood ready to discuss pending issues, including any possible procedural approaches.

1.5. The representative of the United States said that his delegation intervened at the meeting to comment on two issues. First, the United States understood that the Russian Federation had objected in advance of this meeting to the request from the EU made pursuant to Article 22.2 of the DSU. The United States noted that, upon the Russian Federation's objection to the EU's request, the matter had been automatically referred to arbitration under Article 22.6 of the DSU, as provided for in the text of that provision. Therefore, this item could have been removed from the Agenda and this meeting could have been cancelled. Second, the United States noted the Russian Federation's statement that the EU had "failed" to commence compliance proceedings under Article 21.5 of the DSU before submitting its request under Article 22.2 of the DSU. The United States noted that Article 22.2 of the DSU stated that if a Member failed to bring a challenged measure found to be inconsistent with a covered agreement into compliance therewith within the reasonable period of time determined under Article 21.3 of the DSU, then such Member shall, if requested, enter into negotiations with the complaining Member "with a view to developing mutually acceptable compensation". If no such agreement was reached, DSU Article 22.2 stated that "any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application of the Member concerned of concessions or other obligations under the covered agreements".

1.6. The United States noted that, further, DSU Article 23.2 set out the actions to obtain redress for a breach of WTO rules and confirmed that a Member shall "follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time". There was thus no support in the text of Article 22.2, or Article 23.2, for the suggestion that a Member would be required to first bring a separate compliance proceeding under Article 21.5 of the DSU. The United States noted, however, that any level of suspension of concessions determined in the arbitration must be equivalent to the current level of nullification and impairment. This was clear from the text of Article 22.4 of the DSU, which stated that the "level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment", thus referring to the present level at the time suspension was authorized by the DSB.

1.7. The representative of the European Union reiterated that the EU was in the process of analysing all available information. The EU regretted that the Russian Federation had not agreed to a sequencing agreement in this dispute, which would have made the current step unnecessary at this point.

1.8. The DSB took note of the statements and that the matter raised by the Russian Federation in document WT/DS475/18 has been referred to arbitration, as required by Article 22.6 of the DSU.