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

**NOTIFICATION OF AN APPEAL BY THE RUSSIAN FEDERATION
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),
AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 23 September 2016, from the Delegation of the Russian Federation, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17.1 of the *DSU*, the Russian Federation hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *Russian Federation – Measures on the importation of live pigs, pork and other pig products from the European Union*). Pursuant to Rule 20(1) of the *Working Procedures for Appellate Review*, the Russian Federation simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

2. The Russian Federation is restricting its appeal to those errors that it believes constitute serious errors of law and legal interpretation that need to be corrected. Non-appeal of an issue does not signify agreement therewith.

3. For the reasons to be further elaborated in its submissions to the Appellate Body, the Russian Federation appeals, and requests the Appellate Body to modify or reverse, certain issues of law and legal interpretations developed by the Panel in this dispute.¹

I. THE PANEL'S FINDINGS REGARDING THE ALLEGED EU-WIDE BAN

4. The Russian Federation seeks review by the Appellate Body of the Panel's findings that the so-called EU-wide ban is a measure that can be attributed to the Russian Federation.² The Russian Federation also appeals the underlying findings of the Panel that led to this erroneous finding: the Panel's failure to differentiate between national Russian Federation SPS measures and the terms of the bilateral EU-Russia veterinary certificates³, the Panel's failure to give full legal effect to the Russian Federation's Accession Protocol,⁴ and, alternatively, the Panel's failure to recognize the sequencing inherent in the bilateral veterinary certificates. As a result, the Panel erred, under Articles 1.1, 2.2, 2.3, 3.1, 5.1, 5.2, 5.3, 5.6, 5.7, 6.1, 6.3, 8 and Annex C of the SPS Agreement, and Article 3.3 DSU, in concluding that the Russian Federation's so-called EU-wide ban is conduct attributable to the Russian Federation that is inconsistent with the SPS Agreement.⁵ These findings

¹ Pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of the Russian Federation to refer to other paragraphs of the Panel Report in the context of its appeal.

² See, e.g., Panel Report, paras. 7.74, 7.76, 7.77, 7.78, 7.79, 7.80, 7.81, 7.82, 7.83, and 7.84.

³ See, e.g., Panel Report, paras. 7.76, 7.77, 7.78, 7.80, 7.81, 7.82, 7.83 and 7.84.

⁴ See, e.g., Panel Report, paras. 7.108, 7.109, 7.110, 7.111, 7.112, 7.114, 7.115, 7.116.

⁵ See, e.g., Panel Report, paras. 7.216- 7.220, 7.235, 7.237, 7.484, 7.494, 7.571, 7.591, 7.707, 7.714, 7.719, 7.720, 7.783, 7.834, and 7.846.

are in error, and the Russian Federation respectfully requests that the Appellate Body reverse them.

II. THE PANEL'S FINDINGS ON ARTICLE 6 OF THE SPS AGREEMENT

5. The Russian Federation seeks review by the Appellate Body of the Panel's failure to interpret Article 6.3 of the SPS Agreement to require panels to take into account science-based and technical evidence relied upon by the importing Member, in accordance with the importing Member's appropriate level of protection.⁶ The Russian Federation also appeals the Panel's conclusions – based on this interpretative error – that the European Union has provided the necessary evidence to objectively demonstrate to the Russian Federation that areas within the European Union are and are likely to remain ASF-free under Article 6.3 of the SPS Agreement.⁷ Similarly, the Panel incorrectly found that the European Union had provided the necessary evidence to objectively demonstrate to the Russian Federation that there are areas in Lithuania, Poland, Latvia and Estonia that are ASF-free pursuant to Article 6.3⁸, and that the European Union had provided the necessary evidence to objectively demonstrate to the Russian Federation that there are areas in Lithuania, Poland and Estonia that are likely to remain ASF-free pursuant to Article 6.3.⁹ These findings are in error and are based on the Panel's erroneous findings of law and legal interpretations of Article 6.3. The Russian Federation respectfully requests that the Appellate Body reverse the Panel's findings.

6. The Russian Federation also seeks review of the Panel's legal interpretation of Article 6.3 of the SPS Agreement as not requiring a reasonable period of time for exporting Members to collect the necessary evidence, on the one hand, and for importing Members to review the necessary evidence, on the other hand.¹⁰ As a consequence of the Panel's erroneous interpretation of Article 6.3 as not requiring the production, translation and review of the necessary evidence over a "reasonable period of time", the Panel erroneously found in paragraphs 7.963 and 7.1003 that the European Union had provided the necessary evidence to objectively demonstrate to the Russian Federation that parts of Estonia are and are likely to remain disease-free based on a three-day window from the first African Swine Fever outbreak in Estonia. Thus, the Russian Federation requests that the Appellate Body to reverse the Panel's erroneous legal interpretation and its conclusion with respect to Estonia.

7. The Russian Federation further seeks review of the Panel's interpretation of Article 6.1 and its relationship to Article 6.3 of the SPS Agreement.¹¹ The Panel found that in situations involving a request by an exporting Member for zone recognition pursuant to Article 6.3, a finding of a violation of Article 6.1 regarding conditions in the *exporting Member* can still be found even absent a finding that the exporting country provided the necessary evidence to objectively demonstrate that areas in its territory are and are likely to remain disease-free under Article 6.3. Based on this erroneous legal interpretation, the Panel found that while the European Union had failed to provide the necessary evidence objectively demonstrating that parts of Latvia are likely to remain ASF-free, the Russian Federation nevertheless violated Article 6.1, in part, because it failed to adapt its measures to the SPS characteristics in Latvia.¹² The Russian Federation requests the Appellate Body to reverse the Panel's erroneous legal interpretation and its erroneous conclusion with respect to Latvia under Article 6.1 of the SPS Agreement.¹³

⁶ See, e.g., Panel Report, paras. 7.384, 7.389, 7.391-6, 7.399, 7.404, 7.406, 7.412, 7.413, 7.414, 7.416, 7.454, 7.930, 7.932, 7.933, 7.938, 7.939, 7.940, 7.969, 7.976, 7.978, 7.985, 7.987, 7.996, 7.1003, and 7.1004.

⁷ See, e.g., Panel Report, paras. 7.449, 7.455 and 7.456.

⁸ See, e.g., Panel Report, para. 7.963.

⁹ See, e.g., Panel Report, paras. 7.976, 7.985, 7.1001, 7.1003, and 7.1004 (second and third sentences).

¹⁰ See, e.g., Panel Report, paras. 7.384, 7.393, 7.394, 7.395, 7.396, 7.399, 7.404, 7.406, 7.412, 7.413, 7.414, 7.416, 7.454, 7.930, 7.932, 7.933, 7.938, 7.939, 7.940, 7.969, 7.978, 7.987, and 7.996.

¹¹ See, e.g., Panel Report, paras. 7.365, 7.1011 (second sentence), 7.1020, 7.1027, 7.1028.

¹² See, e.g., Panel Report, paras. 7.995, and 7.1028.

¹³ To the extent that the Appellate Body reverses the Panel's findings under Article 6.3 with respect to Lithuania, Poland, Estonia and the EU-wide ban in accordance with the argumentation set out in paras. 93-194 above, the Russian Federation also request the Appellate Body to reverse the Panel's findings that the import restrictions on Lithuania, Poland and Estonia and the alleged EU-wide ban are inconsistent with Article 6.1 of the SPS Agreement. See, e.g., paras. 7.484, 7.1020, 7.1028.