World Trade Organisation
Panel Proceedings

Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union

(WT/DS475)

Second Written Submission
by the European Union

Geneva, 9 June 2015

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TABLE OF CASES CITED

Short Title	Full Case Title and Citation
Australia – Salmon	Appellate Body Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, p. 3327
EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)	Appellate Body Reports, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Second Recourse to Article 21.5 of the DSU by Ecuador*, WT/DS27/AB/RW2/ECU, adopted 11 December 2008, and Corr.1 / *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States*, WT/DS27/AB/RW/USA and Corr.1, adopted 22 December 2008, DSR 2008:XVIII, p. 7165
EC — Hormones (Canada)	Panel Report, *EC - Measures Concerning Meat and Meat Products (Hormones), Complaint by Canada*, WT/DS48/R/CAN, adopted 13 February 1998, as modified by Appellate Body Report WT/DS26/AB/R, WT/DS48/AB/R, DSR 1998:II, p. 235
EC — Selected Customs Matters	Appellate Body Report, *European Communities – Selected Customs Matters*, WT/DS315/AB/R, adopted 11 December 2006, DSR 2006:IX, p. 3791
India- Agricultural Products	Appellate Body Report, *India – Measures Concerning the Importation of Certain Agricultural Products*, WT/DS430/R, circulated to WTO Members 4 June 2015 [adoption pending]
India- Agricultural Products	Panel Report, *India – Measures Concerning the Importation of Certain Agricultural Products*, WT/DS430/R and Add.1, circulated to WTO Members 14 October 2014 [appeal in progress]
US-Gasoline	Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, p. 3

TABLE OF ABREVIATIONS

ABBREVIATION	FULL FORM
ALOP	Appropriate level of protection or acceptable level of risk
ARES	Advanced Records System, European Commission
ASF	African Swine Fever
ASFV	African Swine Fever Virus
Customs Union	Customs Union of Belarus, Kazakhstan, and the Russian Federation
DSB	Dispute Settlement Body, World Trade Organization
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EFSA	European Food Safety Authority
EU	European Union
EUROSTAT	Statistical office of the European Union
FAO	Food and Agriculture Organization of the United Nations
FMD	Foot-and-mouth disease
FSVPS	Russian Federal Service for Veterinary and Phytosanitary Supervision (Rosselkhoznadzor)
FVO	Food and Veterinary Office of the European Commission
GATT 1994	General Agreement on Tariffs and Trade 1994
HPAI	Highly Pathogenic Avian Influenza
MFN	Most favoured nation
OIE	World Organisation for Animal Health
OIE Terrestrial Code	OIE Terrestrial Animal Health Code (2014)
OIE Terrestrial Manual	OIE Manual of Diagnostic Tests and Vaccines for Terrestrial Animals (2014)
SANCO	Directorate General for Health and Consumers, European Commission
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures

ABBREVIATION	FULL FORM
SPS Committee	The Committee on Sanitary and Phytosanitary Measures established under the SPS Agreement
US	United States of America
WAHIS	World Animal Health Information System
WTO	World Trade Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

LIST OF EXHIBITS

EU-179	Australian Veterinary Emergency Plan (AUSVETPLAN), Disease Strategy Bluetongue Version 3.2, 2013, 30 http://www.animalhealthaustralia.com.au/wp-content/uploads/2011/04/BTV3.2-13-FINAL8Jul13.pdf
EU-180	EU bluetongue no stamping out, http://ec.europa.eu/food/animal/diseases/controlmeasures/bluetongue_qa_en.htm
EU-181	a. (LT) Order on African swine fever Monitoring and Control Measures No B1- 939 of 31 October 2014, relevant excerpts (full version available at: https://www.e-tar.lt/portal/lt/legalAct/0646cf5060f711e4bf45e0caf7d247ff) b. (EN) translation
EU-182	Notification Procedure, OIE, http://www.oie.int/fileadmin/Home/eng/Animal_Health_in_the_World/docs/pdf/ Demonstration_guides/OIE_Guidelines_Terra_2015_demonstration_.pdf
EU-183	G/SPS/N/RUS/3 (CSF in Latvia)
EU-184	a. (RU) FSVPS, Instruction FS-NV-7/17830 of 16 December 2013 b. (EN) translation
EU-185	Follow-up report No.34, Reference OIE: 17791, Report Date: 25/05/2015, Country: Latvia

I. INTRODUCTION

1. Through its First Written Submission, Opening Oral Statement at the first substantive meeting and in its Responses to the Panel's Questions, the EU has demonstrated that the Russian measures at issue lack scientific justification and are clearly disproportionate.

2. Russia has not managed to explain why the measures it has taken against the products at issue from the EU are justified. Russia put forward different allegations which may be distilled into four main themes: the in-existence of the EU-wide ban; conformity of its measures with international standards; presentation of its measures as emergency measures; and insufficiency of information under the regionalisation provisions. The EU will highlight why these four main aspects of Russia's defence must all fail.

3. First, Russia attempts to argue that there is no EU-wide ban with respect to the products at issue. However, it clearly follows from Russia's submissions that it actually acknowledges the existence of the respective measure, but it only calls it differently: "provisional compliance with the terms of the veterinary certificates". It clearly results that both Parties agree on the existence of this measure at issue, which is an SPS measure attributable to Russia, as defined in the SPS Agreement.

4. Using a circular reasoning, Russia attempts to justify this measure relying on a memorandum from 2006, on the existing language in the veterinary certificates and on the distribution of competences within its Customs Union with Belarus and Kazakhstan. The EU explained in detail that this issue could have been easily resolved, provided that Russia was willing to consider the EU's regionalisation measures with regard to ASF. Adaptation of the certificates in question would have been a simple and logical next step. The EU also explained that Customs Union members were able to negotiate and conclude separately veterinary certificates for trade in the products at issue with third countries.

5. Second, Russia has dedicated considerable time and energy in its First Written Submission, during the first substantive meeting and in its responses to the Panel's

questions to the discussion of two concepts which are irrelevant to the present case: containment zones and compartmentalization.

6. The EU has clarified that it has not established containment zones within the meaning of the OIE Terrestrial Code with regard to ASF. The EU also explained in detail that the use of compartmentalization is not related to a subjective choice of an importing Member, but rather a solution which may (or may not) be adopted by an exporting and an importing Member according to the objective circumstances.

7. This being said, Russia in fact puts forward very few arguments in defence of its measures. Indeed, Russia is not able to demonstrate that the measures at issue conform with and are based on international standards. Once this becomes clear, Russia is required to provide a risk assessment within the meaning of Article 5.1 of the SPS Agreement. While repeatedly asked by the EU and by the Panel during the first substantive meeting to provide its risk assessment, Russia deferred answering the question and was not able to provide any supporting documentation. Finally, in its responses to the Panel's Questions 41 and 125 Russia makes a new attempt to explain why it does not have such a risk assessment, which is unconvincing and relies on the same alleged conformity with the OIE Terrestrial Code.

8. Third, once Russia's allegations of conformity with international standards are revealed to be unavailing, Russia attempts to present the measures at issue as emergency measures. The EU explained in detail that Russia did not conduct a "less" objective assessment of risk within the meaning of Article 5.7 of the SPS Agreement and why the other conditions of that provision are also not met. The EU also explained what the relationship between the different provisions of the SPS Agreement and Article 5.7 is.

9. Russia's fourth main allegation can be summarized as referring to the alleged insufficiency of the information provided by the EU under the process described in Article 6.3 of the SPS Agreement. The EU explained in detail why this argument must fail, as the amount of information provided by the EU to Russia was sufficient to allow Russia to reach a conclusion on the EU's ASF regionalisation measures. Russia repeatedly asked questions which were not relevant to its assessment and the EU offered several examples in this regard. Furthermore, the analysis under Article

6.3 is also relevant in the light of the EU's claims related to control, approval and inspection procedures.

10. The EU explained in detail how its regionalisation system with regard to ASF works. The EU promptly adapts the areas considered to be infected to the latest developments in the occurrence of the ASF, so as to anticipate and go ahead of any eventual important changes and preventing considerable disease spread. It is significant that since August 2014 there were no cases and outbreaks outside of the areas considered to be affected. It is also significant that only three clusters of outbreaks occurred outside of the areas considered to be affected since the first case in wild boar in Lithuania in January 2014. And it is again significant the cessation of outbreaks in domestic pigs in Latvia and Lithuania since September 2014.

11. The above facts, combined on the one hand with a very limited geographical presence of the ASFV, confined to border regions with Belarus and Russia (the countries at the source of the ASF introduction) and on the other hand with the non-transmission of the ASFV to any of our trade partners which continued to import the products at issue from the ASF-free areas in the recently affected EU Member States, give the EU a high degree of confidence in the robustness of our ASF regionalisation measures.

12. Besides these four main themes, Russia also did not manage to rebut the EU's *prima facie* case with regard to the discrimination claims. Russia was not able to justify the different treatment afforded to the products at issue from the EU in comparison to similar products from Russia, Ukraine and Belarus.

13. Finally, Russia fails to explain how it respected the transparency provisions of the SPS Agreement, by notifying with great delays or not notifying at all some of the measures at issue.

14. In light of the above, it is clear that Russia is in breach of the mentioned provisions of the SPS Agreement. The EU provided solid evidence with respect of each of its claims and will further develop some of these aspects in this Second Written Submission, taking into account Russia's latest submissions, including its Responses to the Panel's Questions.

II. THE MEASURES AT ISSUE

15. The EU notes that the Parties do not dispute that the four individual bans with respect to Lithuania, Poland, Latvia and Estonia are SPS measures within the meaning of Annex 1(a) of the SPS Agreement.

16. The EU also notes that the Parties do not dispute that the measures taken by Russia with respect to Latvia and Estonia are within the Panel's terms of reference, even if they correspond to or post-date the date of the panel request.

17. The EU explained that at the time the panel request was filed there were no individual Russian bans with respects to the products at issue coming from Latvia and Estonia.[1] However, most of the products were already covered by the EU-wide ban imposed by Russia since the first ASF case in Lithuania. In practice, the two individual measures extended the ban to heat treated and matured pig products: "ready to eat products, containing pork, except for cats and dog feed (which were heat treated no less than 70ºC for at least 20 minutes)" and "sausages and similar products of meat, canned meat".

18. The panel request clearly stated that it "relates to the measures at issue and to any amendments, supplements, extensions, replacement measures, renewal measures and implementing measures". The individual Russian bans with respect to Latvia and Estonia fall within the category of amendments, supplements, extensions and implementing measures and are thus clearly covered by the panel request.

19. The Appellate Body noted in this respect that:

> The term "specific measures at issue" in Article 6.2 suggests that, as a general rule, the measures included in a panel's terms of reference must be measures that are in existence at the time of the establishment of the panel. (Footnote omitted)
>
> This general rule, however, is qualified by at least two exceptions. First, in *Chile — Price Band System*, the Appellate Body held that a panel has the authority to examine a legal instrument enacted after the establishment of the panel that amends a measure identified in

[1] EU's Responses to the Panel's Questions, paras 127-131.

> the panel request, provided that the amendment does not change the essence of the identified measure. Secondly, in *US — Upland Cotton*, the Appellate Body held that panels are allowed to examine a measure "whose legislative basis has expired, but whose effects are alleged to be impairing the benefits accruing to the requesting Member under a covered agreement" at the time of the establishment of the panel.[2]

20. The Appellate Body is clear that at least two sets of circumstances justify the inclusion in a Panel's terms of reference of measures which are not in existence at the time of the establishment of the panel. The present case is similar to *Chile — Price Band System*, as the individual bans on the products at issue from Latvia and Estonia do not change the essence of the identified measures.

21. With regard to the EU-wide ban, the EU recalls that the Parties in fact agree on the existence of the measure at issue. What the EU calls the EU-wide ban is referred to by Russia as "provisional compliance with the terms of the veterinary certificates".[3]

22. The EU has put forward a significant amount of evidence with regard to the existence of the EU-wide ban and the fact that it is attributable to Russia: letters from Russian high officials; different announcements and notifications; and proof of rejected consignments from non-affected EU Member States.[4]

23. The EU offered several such examples of rejections of consignments of the products at issue during the first weeks following the introduction of the EU-wide ban.[5] These consignments originally possessed import permits issued before the introduction of the measures at issue. The EU understands that following the instruction FS-SA-7/1275 of 29 January 2014[6] Russia stopped issuing import permits for the products at issue from the EU. In addition, exporters were informed of the letter of 29 January 2014 FS-SA-8/1277 according to which Russia stopped accepting imports.[7]

24. The combined effect of the mentioned instruction and letter consisted in the disappearance of such instances of rejected consignments after the introduction of

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2 Appellate Body Report, *EC — Selected Customs Matters*, para. 184.

3 Russia's First Written Submission, Section H.2.

4 EU's First Written Submission, paras 89-96.

5 EU's First Written Submission, paras 93- 96.

6 Exhibit EU-161.

7 Exhibit EU-14.

the measures at issue. Evidently, no operator was going to incur the ruinous costs of consigning shipments to the Russian border in the knowledge that they would be refused entry.

25. As explained in our previous submissions,[8] Russia attempts to justify the EU-wide ban by arguing that it cannot return to a situation where veterinary export certificates are discussed bilaterally with individual EU Member States, and Russia apparently considers that this should somehow be imputable to the EU. In making this argument, Russia acknowledges the existence and precise content of the EU-wide ban. It also acknowledges that the EU-wide ban is attributable to Russia.

26. Russia is simply wrong to suggest that anything on the record supports its assertion that the EU has, by implication, relinquished its right to bring this matter before a panel, pursuant to the terms of the DSU.[9]

27. According to Article 6.1 of the SPS Agreement, WTO Members are under a *continuing* obligation of *adaptation* to regional SPS characteristics.[10] It is in this context that the reference to the veterinary certificates in Russia's accession documents should be understood. The fact that the veterinary certificates remain in use after Russia's accession is a distinct element from the fact that the terms of such certificates should be continuously adapted to the SPS characteristics of specific regions in particular cases.

28. In fact, several of the mentioned certificates[11] contain a footnote which provides that "administrative territories, zones and time periods may be modified with a mutual agreement on the basis of the Memorandum of 4 April 2006 on zoning and regionalisation". Russia could have easily avoided trade disruptions by applying the OIE principles with regard to zoning/regionalisation.

29. Furthermore, the Appellate Body has made it very clear that Members cannot be considered to have relinquished their DSU rights other than expressly and

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8 EU's Responses to the Panel's Questions, paras 89-91; EU's Opening Oral Statement, para. 36.

9 Russia's Opening Oral Statement, para. 50.

10 Appellate Body Report, *India- Agricultural Products*, para. 5.154.

11 Exhibits EU-52, EU-53, EU-54 and EU-55.

unequivocally.[12] There is no such specific commitment undertaken by the EU not to challenge certain Russian measures:

> [W]e consider that […] if a WTO Member has not clearly stated that it would not take legal action with respect to a certain measure, it cannot be regarded as failing to act in good faith if it challenges that measure. In that vein, the Appellate Body found, in *EC – Export Subsidies on Sugar*, that it was not possible to identify any facts or statements made by the complainants admitting that the European Communities' measure was WTO-consistent or promising that they would not take legal action against the European Communities.[13]

30. It is also important to recall that Russia chose to obstruct the process of clarifying the export certificates in light of the current situation by referring to its arrangements within the framework of the Customs Union with Belarus and Kazakhstan.[14] These arguments should be rejected by the Panel, since by Decision of the Customs Union it is clearly provided that:

> The competent agencies of the Parties may bilaterally agree with the competent agencies of third countries upon model veterinary certificates for goods subject to inspection imported into the common customs territory of the Customs Union. The model veterinary certificates referred to shall be submitted to the Customs Union Commission for distribution to the customs border checkpoints of the Customs Union or other places, as determined by the legislation of the Parties.[15]

31. The EU explained that the approach of an annex to the certificate, clarifying the wording as appropriate, or, alternatively, an appropriate clarification of the wording of the certificates manually, by the official veterinarian signing the certificate, is frequently used in similar situations, contrary to what Russia seems to argue in its responses to the Panel's questions.[16] The EU offered two examples with regard to

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12 Appellate Body Report, *EC – Bananas III (Article 21.5 – Ecuador II)*, para. 217 ("With this in mind, we turn to analyze of the Understandings on Bananas at issue. We consider that the complainants could be precluded from initiating Article 21.5 proceedings by means of these Understandings only if the parties to these Understandings had, either explicitly or by necessary implication, agreed to waive their right to have recourse to Article 21.5. In our view, the relinquishment of rights granted by the DSU cannot be lightly assumed. Rather, the language in the Understandings must reveal clearly that the parties intended to relinquish their rights").

13 Appellate Body Report, *EC – Bananas III (Article 21.5 – Ecuador II)*, para. 228.

14 Exhibit RUS-53.

15 General Provisions, Decision by the Customs Union Commission on the Use of Veterinary-Sanitary Measures in the Customs Union, No. 317, 18 June 2010 (Exhibit RUS-25).

16 Russia's Responses to the Panel's Questions, para. 82.

the clarification of certificates accepted by Russia for imports from the EU (beef) and Canada (poultry).[17]

32. In September 2011 Russia accepted the regionalisation of the Bulgarian region of Burgas following the occurrence of foot-and-mouth disease (FMD). On that occasion a temporary arrangement was put in place with respect to EU-Russia certificates. The signing official veterinarian clarified the content of the certificate by adding to the relevant part (providing for the 12-month freedom of the Member State from the disease) the phrase "except the region of Burgas, Bulgaria".[18]

33. A second example concerns exports of poultry from Canada to Russia. In April 2015, following the occurrence of Highly Pathogenic Avian Influenza (HPAI) in Canada, Russia introduced restrictions on the import of live poultry, hatching eggs and poultry products only from the Oxford County, Ontario, Canada. Russia put in place a temporary arrangement, according to which the pre-existing certificate for live poultry and hatching eggs from Canada to Russia was clarified by adding to the relevant part (providing for a 6-month freedom of Canada from HPAI) the phrase "except the Oxford County, Ontario, Canada", manually or by printed text.[19]

34. Finally, Russia's allegation that the EU-wide ban does not constitute an SPS measure within the meaning of Annex A(1) must also fail. The EU-wide ban is clearly within the purview of Annex A(1) of the SPS Agreement, which contains a broad definition of an SPS measure.

35. This understanding is confirmed by Brazil, which considers that "in the present case, the characterization of the measures as an SPS measure in the context of Annex A(1) seems to be undisputable".[20] Similarly, the US considers that "'provisional

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17 EU's Responses to the Panel's Questions, paras 124-126.

18 Veterinary certificate for the export of beef meat with bones from the EU to the Russian Federation in force in 2011 (Exhibit EU-157) and Russian instruction FS-EN-2/11554 of 5 September 2011 (Exhibit EU-158).

19 Certificate for the export of live poultry and hatching eggs from Canada to the Russian Federation (Exhibit EU-159) and Russian instruction FS-EN-8/6139 of 15 April 2015 (Exhibit EU-160).

20 Brazil's Third Party Responses to the Panel's Questions, p. 3.

compliance' perhaps could be the measure at issue in a dispute" and that "yes, the measures at issue constitute SPS measures".[21]

III. CLAIMS

A. Claims related to harmonization

36. As already explained in our previous submissions, the EU is not required to demonstrate that its control measures are in accordance with the OIE Terrestrial Code – it is Russia that asserts that its SPS measures are in conformity with or are based on the OIE Terrestrial Code.[22] Nevertheless, the EU has demonstrated that our measures are in accordance with the OIE Terrestrial Code, and specifically with the use of regionalisation.

37. The EU has neither established containment zones nor compartments within the meaning of Chapter 4.3 of the OIE Terrestrial Code.

38. The EU has established areas considered to be infected with ASFV and ASF-free areas. The establishment of containment zones within the meaning of Article 4.3.3.3. of the OIE Terrestrial Code is not the only possible tool in applying regionalisation, but only a possible option (*may*).

39. The EU already explained in detail that we did not establish containment zones within the meaning of Article 4.3.3.3. of the OIE Terrestrial Code. The EU enumerated several reasons for which containment zones are not suitable for certain diseases or hardly feasible in cases when wildlife transmission is involved.[23]

40. The EU offered the example of bluetongue, for which regionalisation would be rendered almost impossible if the establishment of containment zones would be the only available possibility under the OIE Terrestrial Code.

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21 US Third Party Responses to the Panel's Questions, paras 11-12.

22 EU's Responses to the Panel's Questions, para. 218.

23 EU's Responses to the Panel's Questions, paras 71 -72.

41. Article 4.3.3.3.(b) of the OIE Terrestrial Code provides that "a stamping-out policy or another effective control strategy aimed at eradicating the disease should be applied and the susceptible animal population within the containment zones should be clearly identifiable as belonging to the containment zone". In cases of vector-borne diseases, like bluetongue, limited numbers of outbreaks occur only rarely (it rather occur many outbreaks), stamping-out is not an effective tool and vaccination does not ensure eradication of the disease. This is widely recognized by Members such as Australia, the EU and the US. Under these circumstances, it is not possible to establish containment zones according to the OIE criteria.

42. The Australian Veterinary Emergency Plan explains why stamping out is not a solution in the case of bluetongue:

> A stamping-out policy would not be justifiable for bluetongue because the disease is not spread by direct or indirect contact between animals, and it would be impossible to eliminate the insect vector. In some cases, it might be necessary to slaughter infected animals showing severe (i.e. life-threatening) clinical signs for animal welfare reasons; in practice, this will be a relatively small percentage of the affected population. Slaughter for trade purposes may be advocated, but should be strongly opposed.[24]

43. The EU concurs with this assessment:

> This vector-borne disease is not controlled by depopulating infected or at risk farms. The principal, and possibly the only, effective veterinary measure in response to bluetongue is vaccination accompanied by ancillary measures such as movement restrictions and surveillance. Vaccination using all available vaccines helps to reduce clinical disease and losses; to contain the spread of the disease and to facilitate safe trade in live animals.[25]

44. The same Australian document confirms that regionalisation is recommendable in the case of bluetongue:

> Zoning is an important strategy that will be implemented to re-establish the confidence of trading partners, minimise restrictions over the movement of susceptible animals within Australia and minimise disruptions to the export trade in live animals. The zones will be determined from the epidemiological investigation and

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[24] Australian Veterinary Emergency Plan (AUSVETPLAN), Disease Strategy Bluetongue Version 3.2, 2013, p. 39, http://www.animalhealthaustralia.com.au/wp-content/uploads/2011/04/BTV3.2-13-FINAL8Jul13.pdf (Exhibit EU-179).

[25] European Commission, Bluetongue : Questions and Answers, http://ec.europa.eu/food/animal/diseases/controlmeasures/bluetongue_qa_en.htm (Exhibit EU-180).

> information available from the National Arbovirus Monitoring Program (NAMP). Under the OIE Terrestrial Code, a zone may be considered free from bluetongue when a surveillance program, in accordance with Articles 8.3.16 to 8.3.21, has demonstrated no evidence of BTV in the zone during the past 2 years, or no evidence of *Culicoides* species likely to be competent vectors in the zone. This needs to be considered when zones are developed.[26]

45. Article 4.3.3.3.(b) of the OIE Terrestrial Code does not mention stamping-out as the only possibility, but alternatively provides for "another effective control strategy aimed at eradicating the disease". Such an effective strategy for bluetongue eradication is vaccination. However, it is not always necessary and possible to vaccinate all the animals susceptible to the disease and vaccination does not always ensure effective eradication. If the establishment of containment zones would be the only possibility under the OIE Code, in practice that would amount to almost an impossibility of effectively controlling diseases like bluetongue through the use of regionalisation.

46. Moreover, Russia itself accepted straightforward regionalisation in the case of the CSF occurrence in Latvia in December 2013. The EU recalls that differently from the ASF chapter, which does not contain any express reference to containment zones, the CSF chapter of the OIE Code contains such a reference in Article 15.2.5., entitled "Establishment of a containment zone within a CSF free country or zone":

> In the event of limited outbreaks or cases of CSF within a CSF free country or zone, including within a protection zone, a containment zone, which includes all outbreaks, *can* be established for the purpose of minimising the impact on the entire country or zone.[emphasis added]

47. The EU did not establish containment zones following CSF cases in wild boar in Latvia during the period November 2013- January 2014. Instead, the EU used a straightforward concept of regionalisation, delimitating between CSF-free areas and areas considered to be CSF infected, similarly to the ASF regionalisation applied in the present case. This did not prevent Russia from lifting a previous ban[27] with respect to the entire territory of Latvia on 16 December 2013.[28] The lifting of the ban

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[26] Australian Veterinary Emergency Plan (AUSVETPLAN), Disease Strategy Bluetongue Version 3.2, 2013, p. 40, http://www.animalhealthaustralia.com.au/wp-content/uploads/2011/04/BTV3.2-13-FINAL8Jul13.pdf (Exhibit EU-179).

[27] G/SPS/N/RUS/3 (Exhibit EU-183).

[28] FSVPS, Instruction FS-NV-7/17830 of 16 December 2013 (Exhibit EU-184).

- while at the time there were CSF restricted regions in Latvia[29] - means that in practice Russia accepted the Latvian regionalisation measures. However, Latvia did not establish containment zones following the occurrence of the CSF cases, but it applied a straightforward concept of regionalisation.

48. It clearly follows from the above that even Russia has itself previously accepted EU regionalisation measures which did not constitute containment zones. The EU is therefore surprised to notice that Russia raises for the first time the notion of containment zones for the purposes of its defence in this dispute.

49. One of the recurring themes in Russia's submissions is the so-called "lack of adequate mandated standstill, i.e. restrictions on movements of animals and other commodities by EU legislation".[30] Again, Russia invokes Article 4.3.3.3.(a) of the OIE Terrestrial Code, which speaks of the conditions for the establishment of containment zones. The EU did not establish containment zones within the meaning of the mentioned provisions with regard to ASF.

50. However, the EU has taken the appropriate measures with regard to the products at issue from the restricted areas. As a general rule, and on top of the main control measures,[31] the EU instituted a prohibition on the dispatch of live pigs, porcine semen, ova and embryo, pig meat, pig meat preparations, pig meat products and any other products containing pig meat as well as consignments of animal by-products from porcine animals from certain areas listed in the Annex to the Decision 2014/709:

> The Member States concerned shall prohibit:
>
> (a) the dispatch of live pigs from the areas listed in Parts II, III and IV of the Annex;
>
> (b) the dispatch of consignments of porcine semen, ova and embryos from the areas listed in Parts III and IV of the Annex;
>
> (c) the dispatch of consignments of pig meat, pig meat preparations, pig meat products and any other products containing such meat from the areas listed in Parts III and IV of the Annex;

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29 Follow-up report No.34, Reference OIE: 17791, Report Date: 25/05/2015, Country: Latvia (Exhibit EU-185).

30 Russia's First Written Submission, paras 139, 141 and 289.

31 Directive 2002/60 (Exhibit EU-31).

> (d) the dispatch of consignments of animal by-products from porcine animals from the areas listed in Parts III and IV of the Annex.[32]

51. The same instrument provides also for several derogations, subject to additional high biosecurity requirements and other risk mitigation measures. Other additional biosecurity requirements are described in in the approved national eradication plans. These requirements supplement the basic control requirements laid down in Directive 2002/60.

52. The derogation from the prohibition on the dispatch of live pigs from the areas listed in Part II of the Annex is applicable if pigs come from a holding:

> (a) that has been subjected at least twice a year, with an interval of at least 4 months, to inspections by the competent veterinary authority, which:
>
> (i) followed the guidelines and procedures laid down in Chapter IV of the Annex to Decision 2003/422;
>
> (ii) included a clinical examination and sampling in which the pigs over the age of 60 days have been subjected to laboratory testing in accordance with the checking and sampling procedures laid down in Part A of Chapter IV of the Annex to Decision 2003/422 and
>
> (iii) checked the effective application of the measures provided for in the second indent and in the fourth to seventh indents of Article 15(2)(b) of Directive 2002/60;
>
> (b) that implements bio-security requirements for African swine fever as established by the competent authority.[33]

53. The derogation from the prohibition on the dispatch of consignments of live pigs for immediate slaughter from the areas listed in Part III of the Annex and the dispatch of consignments of pig meat, pig meat preparations and pig meat products obtained from such pigs is applicable only if:

> the pigs have been resident for a period of at least 30 days or since birth on the holding and no live pigs have been introduced into that holding from the areas listed in Parts II, III and IV of the Annex to Decision 2014/709 during a period of at least 30 days prior to the date of the movement.[34]

54. With regard to animal by-products, the EU Member States concerned may authorise the dispatch of unprocessed carcases of pigs other than feral pigs and of animal

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32 Article 2 of Decision 2014/709 (Exhibit EU-44).

33 Article 3(3) of Decision 2014/709 (Exhibit EU-44).

by-products of porcine origin from areas listed in Part III of the Annex only to a processing, incineration or co-incineration plant located outside the areas listed in Part III of the Annex, provided that:

(a) the animal by-products originate from holdings or from slaughterhouses situated within the areas listed in Part III of the Annex, where there has been no outbreak of African swine fewer during at least 40 days prior to the dispatch;

(b) each truck and other vehicles that are used for transport of those animal by-products has been individually registered by the competent authority in accordance with Article 23 of Regulation (EC) No 1069/2009, and:

(i) the covered leak-proof compartment for the transport of those animal by-products is constructed in a way permitting its effective cleaning and disinfection and the construction of floors facilitates the draining and collection of liquids;

(ii) the application for registration of the truck and other vehicles contains evidence that the truck or vehicle had been successfully subject to regular technical checks;

(iii) each truck must be accompanied by a satellite navigation system to determine his real time location. The operator of the transport shall enable the competent authority to control the real time movement of the truck and to keep the electronic records of the movement for at least 2 months;

(c) after loading the compartment for the transport of those animal by-products shall be sealed by the official veterinarian. Only the official veterinarian may break the seal and replace it with a new one. Each loading or replacement of seals shall be notified to the competent authority;

(d) any entry of the trucks or vehicles into pig holdings shall be prohibited and the competent authority ensures a safe collection of the carcases of pigs;

(e) the transport to the above referred plants takes place directly to those plants only, without stopping at the route authorised by the competent authority from the designated disinfection point at the exit from the area listed in Part III of the Annex. At the designated disinfection point the trucks and vehicles must be subject to proper cleansing and disinfection under control of the official veterinarian;

(f) each consignment of animal by-products is accompanied by the duly completed commercial document referred to in Chapter III of Annex VIII to Commission Regulation (EU) No 142/2011. The official veterinarian responsible for the processing plant of destination must confirm each arrival to the competent authority referred to in point (b)(iii);

(g) after unloading of the animal by-products the truck or vehicle and any other equipment which are used in the transport of that animal by-

[34] Article 4(1) of Decision 2014/709 (Exhibit EU-44).

> products and that might be contaminated, are cleaned, disinfected and if necessary disinsectised in its entirety within the closed area of the processing plant under the supervision of the official veterinarian. Article 12(a) of Directive 2002/60/EC shall apply;
>
> (h) the animal by-products are processed without any delay. Any storage in the processing plant shall be prohibited;
>
> (i) the competent authority shall ensure that the dispatch of animal by-products does not exceed the relevant daily processing capacity of the processing plant;
>
> (j) before the first dispatch from Part III of the Annex takes place, the competent authority shall ensure that the necessary arrangements with the relevant authorities within the meaning of point (c) of Annex VI to Directive 2002/60/EC in order to ensure the emergency plan, the chain of command and full cooperation of services in case of accidents during the transport, mayor breakdown of truck or vehicle or any fraudulent action of operator. The operators of the trucks shall immediately notify the competent authority of any accident or breakdown of truck or vehicle.[35] [footnotes omitted]

55. The same Decision also provides for a Prohibition on the dispatch to other Member States and third countries of consignments of animal by-products from porcine animals from the areas listed in the Annex.[36]

56. In addition to the cited provisions in Decision 2014/709, the national eradication plans also contain such additional biosecurity requirements.

57. By way of example, the Polish eradication plan provides that:

> The hunters must follow the biosecurity measures pertaining to the following limitations and prohibitions:
>
> 1) persons participating in hunts for game or in game catches must not perform activities associated with pig handling, unless 72 hours have passed since such hunt or catch;
>
> 2) at a holdings, all persons who have had contact with wild boar, maintain the appropriate means of hygiene to limit the risk of ASFV spreading, including disinfection of hands and shoes;
>
> 3) it is prohibited to bring into the holding any parts of wild boar, shot or found sick or dead, and any materials or equipment that could be contaminated with the ASFV, including hunting equipment and weapons.[…]
>
> For the purposes of this plan, the basic and high levels of biosecurity have been established:
>
> Basic level of biosecurity means that the holdings complied with the following rules:

35 Article 7(2) of Decision 2014/709 (Exhibit EU-44).

36 Article 10 of Decision 2014/709 (Exhibit EU-44).

> 1) pigs are kept in a holding in such a way so as to prevent contact with free-living wild boar,
>
> 2) pigs are fed on feeding stuff protected against access of free-living animals,
>
> 3) disinfection mats are placed (and are kept in a condition allowing to maintain the effectiveness of the disinfectant action):
>
> a) at entrances and entryways to holdings where the pigs are kept and at exits from these holdings,
>
> b) at entrances to premises where the pigs are kept and at exits from these premises,
>
> 4) persons having contact with wild boar should apply hygiene measures necessary to reduce the risk of the spread of African swine fever, including decontamination of hands and shoes,
>
> 5) tools and equipment used to handle pigs should be cleaned and disinfected on an ongoing basis,
>
> 6) activity concerning handling of pigs are carried out by persons who do not participate in hunting wild game or catching them, unless 72 hours have passed from the end of such hunting.
>
> High level of biosecurity means that the holdings complied with the following rules:
>
> 1) holding meets the basic level of biosecurity, and
>
> 2) pigs are kept in closed premises,
>
> 3) the material, used as litter in premises where pigs are kept, is protected against the access of wild boar,
>
> 4) sick pigs are kept in such a manner as to prevent the contact with healthy pigs.[37]

58. The eradication plan of Latvia provides that:

> According to the national legislation all pig keepers are obliged to implement strict biosecurity measures and the official checks are performed by official veterinarians. In a case pig owners cannot implement biosecurity measures in the farm they must slaughter pigs and sign the document on refraining from keeping pigs for at least one year[38]. […]
>
> The main requirements determined by the Regulation No 621 concerning biosecurity:
>
> For non-commercial farms:
>
> - no swill feeding
>
> - no contact between the pig(s) of the non-commercial farms and susceptible animals (indoor keeping)

[37] Eradication plan of African swine fever in feral pigs in certain areas of Poland, pp. 11, 13 and 14 (Exhibit EU-102).

[38] Eradication plan for African swine fever in wild boar in Latvia, p.3 (Exhibit EU-116).

> - no contact to any part of feral pig (hunted or dead wild boar/meat/by-products)
>
> - the owner (respectively the person in charge of the pigs) should change clothes on entering the stable and leaving the stable having disinfection at the entrance of holding (stable)
>
> - no unauthorized persons are allowed to enter the pig holding
>
> - home slaughtering only under veterinary supervision
>
> - no sows and/or boar for reproduction are allowed on farm (this does not apply to commercial and outdoor farms).
>
> For commercial farms:
>
> - same criteria as for non-commercial farms plus:
>
> - biosecurity plan approved/recommended by VS according to the profile of farm and national legislation.
>
> Biosecurity criteria for outdoor farms:
>
> - same criteria as for commercial farms plus:
>
> - double fencing around the farm.
>
> Regular inspections will be organized by FVS in pig farms (including backyard farms) to check implementation of biosecurity requirements set by the regulation of the Cabinet of Ministers No 621 on biosecurity requirements in animal holdings dated on August 13, 2013. All pig holdings located within territories of Part II and III will be checked twice but pig holdings located within Part I and area currently free from ASF will be checked (depending on capacity of FVS) once per year.[39]

59. Similar measures are described in the national eradication plan of Estonia.

> Biosecurity measures are listed in Infectious Animal Disease Control Act § 7. According to that animal keeper must follow the next biosecurity measures:
>
> • management of movements of persons and vehicles;
>
> • take measures to prevent free entry by unauthorized persons into livestock buildings and constructions;
>
> • persons arriving from foreign states are not permitted to enter livestock buildings or constructions within 48 hours after arrival in Estonia;
>
> • new animals brought into herd must be kept separately from the herd/flock, based on their disease status;
>
> • infected animal must be separated from healthy ones;
>
> • management of handling of feed, beddings and other possible sources of infection and regular cleaning and disinfection of above mentioned materials;
>
> • regular deratization and disinsection;

[39] Eradication plan for African swine fever in wild boar in Latvia, p. 14 (Exhibit EU-116).

- measures to prevent wild and domestic animals entering livestock buildings, constructions and premises and other appropriate measures for preventing animal disease from spreading.

With reference to European Union Emergency Team mission strategy domestic pig farms are grouped into 3 categories:

- non-commercial farms (NCF)
- commercial farms (CF)
- outdoor farms

The following biosecurity requirements are implemented in addition to the biosecurity measures listed above:

Biosecurity criteria for non-commercial farms:

- no swill feeding.
- no contact between the pig(s) of the NCF and susceptible animals (indoor keeping).
- no contact to any part of feral pig (hunted or dead wild boar/meat/by-products).
- the owner (respectively the person in charge of the pigs) should change clothes on entering the stable and leaving the stable having disinfection at the entrance of holding (stable).
- no unauthorized persons are allowed to enter the pig holding (stable).
- home slaughtering only under veterinary supervision.
- no sows and/or boar for reproduction are allowed on farm (this does not apply to commercial and outdoor farms).

Biosecurity criteria for commercial farms:

- same criteria as for NCF plus:
- biosecurity plan approved/recommended by veterinary services according to the profile of farm and national legislation.

Biosecurity criteria for outdoor farms

- same criteria as for CF plus:
- double fencing around the farm.

The general requirements for hygiene measures in the primary production are specified in annex of Regulation (EC) No 852/2004 of 29 April 2004 on the hygiene of foodstuffs.

In case biosecurity rules are deemed not sufficient and a high risk of ASF virus infection is assessed by the competent authority, to stop production within the frame of a preventing slaughter scheme and keep the farm empty of pigs for one year is under the consideration.

Farms situated in the infected area are inspected once a month by interviewing the owner. In case of disease with fever, mortality due to infectious disease or suspicion at home slaughtering, the farm is inspected physically.

> Pig farms situated in the infected area are under restrictions. Those restrictions include also provisions for animal movements. Moving pigs in our out from the farm is allowed only with the permission of the Head of County Veterinary Centre. Domestic pigs moving from infected area only when accompanied with veterinary certificate, if animals are taken to slaughterhouse food chain information is also added. Pigs, their semen, embryos or ova are not allowed to be moved from the infected area for intra-Community trade.
>
> Movements of the pigs are in accordance with provisions in Decision 2014/709.[40]

60. It follows from the above that the EU ASF regionalisation measures are robust, giving us a high degree of confidence in their adequacy.

61. Finally, as explained in our previous submissions, Russia's allegation of conformity of the measures at issue with the relevant international standards within the meaning of Article 3.2 should be dismissed, as the OIE Terrestrial Code recommends trade from the ASF-free areas and not the imposition of bans.

B. Claims related to risk assessment

1. Articles 5.1, 5.2 and 2.2 of the SPS Agreement

62. Russia's measures do not "conform to" and are not "based on" the OIE recommendations. In spite of that, Russia did not perform any risk assessment.

63. While repeatedly asked by the EU and by the Panel during the first substantive meeting to provide its risk assessment, Russia deferred answering the question and was not able to provide any supporting documentation.

64. Russia makes a new attempt to explain why it does not have a risk assessment in its Responses to Panel's Questions.[41] However, Russia's construction remains unpersuasive and relies on the same alleged conformity with the OIE Terrestrial Code, including its new theory with respect to containment zones.

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[40] Plan for the eradication of African swine fever from feral pig population in Estonia, pp. 6-7 (Exhibit EU-117).

[41] Russia's Responses to the Panel's Questions, paras 54-56 and 226-234.

65. The EU explained that a violation of Article 5.1 of the SPS Agreement results in principle in a consequential violation of Article 2.2 of the SPS Agreement, unless the conditions of Article 5.7 are fulfilled.[42]

2. Article 5.7 of the SPS Agreement

66. It is already clear at this stage that the measures at issue do not conform to and are not based on the OIE standards, in spite of Russia's creative efforts to give an original interpretation to the OIE Terrestrial Code.

67. It is equally clear at this stage that Russia did not conduct, does not have and did not provide the Panel and the EU with any risk assessment as required by Article 5.1 of the SPS Agreement.

68. The one and the only provision in the SPS Agreement which may still shelter a Member's measures in such circumstances is Article 5.7 of the SPS Agreement. But Russia does not fulfil any of its requirements:

- the relevant scientific information is sufficient and it was provided by the EU to Russia, through numerous letters, emails, faxes, meetings and inspections;[43]

- the Russian measures were not adopted on the basis of available pertinent information, but rather *ignoring* the available pertinent information; for instance, Russia attempted to draw conclusions from the mere imposition of bans by other WTO Members,[44] instead of rather closely scrutinizing their *underlying scientific evidence* and of rather observing that none of the numerous EU trade partners allowing trade to continue did suffer any ASF introduction;[45]

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42 EU's Responses to the Panel's Questions, para. 257.

43 For instance, Exhibits EU-62, EU-64, EU-65, EU-89, EU-91, EU-92, EU-94, EU-132 to EU-148.

44 The Appellate Body found in a similar case that "The mere fact that one or several countries have adopted a particular measure does not mean that such a measure is based on, or conforms to, the relevant international standard. It may be, for instance, that these measures were adopted in a manner inconsistent with the relevant standard, or adopted so as to maintain a higher level of protection than would be achieved by basing them on the relevant standard, as provided for under Article 3.3 of the SPS Agreement. Indeed, the arguments and evidence advanced by India offer a limited account of the practice of these countries and do not identify or discuss the grounds upon which the various countries adopted their respective measures". [footnotes omitted] Appellate Body Report, *India- Agricultural Products*, para. 5.104.

45 EU's Responses to the Panel's Questions, paras 39-41.

- Russia did not seek to obtain the additional information necessary for a *more objective* assessment of risk, but rather asked for information which was not necessary, like proof of ASF freedom for the EU Member States *historically free* according to the provisions of the OIE Terrestrial Code; and

- Russia did not review its measures accordingly within a reasonable period of time; the more time passes by, the more apparent Russia's failure to comply with Article 5.7 becomes, and the more egregious its breach of Article 5.1 and the other relevant provisions of the SPS Agreement.

69. For instance, in its First Written Submission Russia contends that the information from the EU was insufficient within the meaning of Article 5.7 of the SPS Agreement and did not enable Russia to conduct a risk assessment. Russia reiterates earlier requests related to different statistics and proof of ASF freedom of EU Member States which are ASF-free: "the European Union has failed to demonstrate that other EU Member States are, and will remain, ASF-free".[46] As stated during the first substantive meeting, the EU would like to recall that Article 1.4.6.(b) of the OIE Terrestrial Code provides that:

> Historically free
>
> Unless otherwise specified in the relevant disease chapter, a country or zone may be recognised as free from infection without formally applying a pathogen-specific surveillance programme when:
>
> i) there has never been occurrence of disease, or
>
> ii) eradication has been achieved or the disease or infection has ceased to occur for at least 25 years,
>
> provided that for at least the past 10 years:
>
> i) the disease has been a notifiable disease;
>
> ii) an early detection system has been in place for all relevant species;
>
> iii) measures to prevent disease or infection introduction have been in place; no vaccination against the disease has been carried out unless otherwise provided for in the Terrestrial Code;
>
> iv) infection is not known to be established in wildlife within the country or zone. A country or zone cannot apply for historical freedom if there is any evidence of infection in wildlife.

70. In its responses to the Panel's questions, Russia submits that:

[46] Russia's First Written Submission, para. 396.

> For diseases for which the OIE makes official declarations as to whether or not a country is free of that disease pursuant to Chapter 1.6 of the OIE Terrestrial Code, the Russian Federation relies on the OIE's determination with respect to determining whether or not a country or area of that country may be considered disease-free.
>
> For diseases that require Member States to self-declare their disease-status, the Russian Federation looks to the provisions set out in Article 4.3.3.3 of the OIE Terrestrial Code to determine whether certain areas may be considered disease-free or of low disease prevalence. This is specified in Customs Union Decision 317, which provides that the well-being of a country or its administrative territory is done through regionalisation, which "is carried out in accordance with the World Organisation for Animal Health . . ."[47]

71. In making this argument, Russia ignores once again the provisions of Article 15.1.3. of the OIE Code, referring to Article 1.4.6. of the OIE Terrestrial Code with respect to ASF historically free status. Russia's Figure 3 is biased, as in the columns concerning diseases for which there is no official disease status granted by OIE it gives too much weight to Articles 4.3.3.3 (which describes a specific situation that is only optional) and 5.3.7 (which describes the general procedure for bilateral recognition of status for trade purposes).[48] Russia seems to ignore the specific provisions of the disease specific chapter, e.g. the reference to historical freedom in Article 15.1.3. of the OIE Terrestrial Code. Accordingly, the reference to the disease specific chapter should come first.

72. Let us now have a closer look at the Article 5.7 requirements through the prism of the other relevant provisions of the SPS Agreement.

73. According to Article 5.7 of the SPS Agreement, an importing Member is not absolved of any obligation in an emergency situation. Instead, what Article 5.7 envisages is a *"less" objective assessment of risk*, as opposed to a "more objective assessment of risk", which shall trigger the review of its sanitary measure within a reasonable period of time.

74. This "less" objective assessment of risk is not attributable to any bias, but is linked to the objective fact that the relevant scientific evidence is insufficient for the purposes of making a definitive decision. The Member has to rely solely on the

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47 Russia's Responses to the Panel's Questions, paras 24-25.

48 Russia's Responses to the Panel's Questions, Figure 3.

available pertinent information. Thus, in an emergency situation the importing Member is not compelled to perform a risk assessment within the meaning of Article 5.1, but rather to conduct a *"less" objective assessment of risk* within the meaning of Article 5.7. What that might amount to can only be assessed on a case-by-case basis, and, depending on the circumstances, the less objective assessment of risk might be initially rather cursory. However, as the situation evolves, one would expect it to crystalize further.

75. In this particular case the issue is not a general lack of scientific knowledge about the disease or issue under consideration. Furthermore, the EU has provided vast amounts of information about the actual situation on the ground and its control measures. The issue is rather that Russia is acting under the guise of the spurious assertions that the EU-wide ban does not exist and in any event is attributable solely to the EU, and is refusing to even recognise the principle of zoning/regionalisation provided for in the OIE Terrestrial Code. Article 5.7 was not designed for such purposes, and it does not protect a Member seeking to abuse it in such a manner.

76. The available pertinent information may fall within the categories described in Article 5.2: available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; *existence of disease-free areas*; relevant ecological and environmental conditions; and quarantine or other treatment. However, due to the time limitations, the importing Member is under no obligation to take into account these factors in a similar way as under Article 5.1 of the SPS Agreement.[49]

77. Similarly to the connection between Articles 5.1 and 5.7 through the concept of a "less" objective assessment of risk, we consider that Articles 5.6 and 5.7 are connected in the same way, insofar as they at least inform each other contextually. Thus, if, as a matter of fact, a panel is faced with a measure that the importing Member is attempting to shield under Article 5.7, but that measure is manifestly unnecessary and disproportionate, that would be pertinent to determining whether or not the measure is in fact based on pertinent information, or whether it is rather a

[49] EU's Responses to the Panel's Questions, paras 249-251.

disguised restriction on international trade. Thus, it would be capable of supporting the conclusion that the measure breaches both Article 5.7 and Article 5.6.

78. Accordingly, the EU considers that even in emergency situations such as those envisaged by Article 5.7 the measures taken by the importing Member should not be disproportionate to the risks, in the sense that it should be necessary, taking into account any available alternatives. A rational relationship should exist in any case. For instance, in the case of a well-known disease like ASF, if there is only one case in wild boar only few kilometres from the border with Belarus, Russia should have not banned, even provisionally under Article 5.7, the products at issue from the whole territory of the EU, including areas thousands of kilometres away, given the robustness of the EU measures and the epidemiology of the disease.

79. The Article 5.7 analysis may also be supported by the Panel's findings related to the non-discrimination claims, raised under Articles 2.3 and 5.5 of the SPS Agreement.

80. Russia's difference in treatment of Ukraine and Belarus in comparison to the EU with respect to similar situations is relevant in the context of Article 5.7.[50] Indeed, the EU does not consider that there is any basis in the available pertinent information for discriminating between EU and Ukraine or Belarus with regard to the ASF regionalisation measures.

81. The EU has already explained that in an emergency situation it may be that the importing Member does not have the opportunity to precisely determine and quantify its ALOP. However, once the importing Member establishes its ALOP it has to do so in a non-discriminatory way, as provided for in Article 5.5 of the SPS Agreement.[51]

82. The EU considers that Russia's ALOP cannot be deducted from the measures at issue as they are purely protectionist. However, assuming *arguendo* that a rather high ALOP can be deducted from the respective bans, then Russia maintains

[50] EU's Responses to the Panel's Questions, paras 259-261.

[51] EU's Opening Oral Statement, para. 126 and EU's Responses to the Panel's Questions, paras 269-270.

different ALOPs in *comparable* situations, as it clearly has a rather low ALOP with respect to ASF in Russia according to the evidence on the record.[52]

83. In light of the above, it clearly follows that Russia cannot provisionally shelter its measures under Article 5.7 of the SPS Agreement, which does not give a carte blanche to the Members invoking it, but rather provides for a set of rational requirements each of which should be fulfilled.

C. Claims related to regionalisation

84. Article 6 of the SPS Agreement addresses the adaptation to regional conditions, including disease-free areas. Adaptation to the regional conditions is a factor which should be taken into account for the purposes of conformity with international standards within the meaning of Article 3.2 of the SPS Agreement, as long as the relevant international standards recommend regionalisation.

> [T]he fact that a relevant international organization has determined that the concepts of pest- or disease-free areas […] are, or are not, relevant with respect to a specific pest or disease may have a bearing on the assessment of a Member's compliance with Article 6 with respect to such pest or disease.[53]

85. Moreover, should a Member not conform to or base its measures on international standards, it has the possibility to conduct a risk assessment, as appropriate to the circumstances, within the meaning of Article 5.1 of the SPS Agreement. In conducting such a risk assessment, one of the relevant factors mentioned in Article 5.2 is the existence of disease-free areas. Even in emergency situations of the kind contemplated in Article 5.7, the importing Member should take into account the same category of data mentioned in Article 5.2, but to a different extent.[54]

86. According to the Appellate Body:

> [A]ll three paragraphs of Article 6 are interconnected, addressing different aspects of the obligation to adapt SPS measures to regional conditions. The main and overarching obligation under Article 6 for

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52 Exhibits EU-23, EU-24, RUS-3.

53 Appellate Body Report, *India- Agricultural Products*, para. 5.137.

54 EU's First Written Submission, paras 187-188.

> a Member to ensure that its SPS measures are adapted to regional SPS characteristics is set out under the first sentence of Article 6.1. In turn, the remainder of Article 6 elaborates on the specific aspects of such obligation, notably, with respect to pest- or disease-free areas and areas of low pest or disease prevalence, as well as the respective duties that apply to importing and exporting Members in this connection.[55]

87. The Appellate Body further describes in the following way the relationship between Articles 6.1 and 6.2 of the SPS Agreement:

> We observe that the use of the words "in particular" in the first sentence of Article 6.2 underscores the link between Articles 6.1 and 6.2. […] These considerations, in our view, indicate that, together, Articles 6.1 and 6.2 accord prominence to the content of Article 6.2 as one particular way through which a Member can ensure that its SPS measures are "adapted", as required by Article 6.1.[56]

88. The recognition of the concept of disease-free areas under Article 6.2 should not be understood in abstract terms, but as reflected in the measures at issue:

> [W]e also question the Panel's statement that "adaptation" of an SPS measure "presupposes" that a Member has first "recognized" the concepts of such areas, inasmuch as such statement may suggest that recognition of the concepts must consist of an affirmative act that is *distinct from* and *taken prior to* the adoption of an SPS measure. […] recognition of the concepts could be done through and upon adoption of the very SPS measure that is adapted to the SPS characteristics of the relevant areas.[57]

89. Russia has devoted considerable space explaining that its legislation "recognizes the concept of disease-free areas in the abstract, pursuant to Article 6.2 of the SPS Agreement".[58] Russia contends that this dispute can be distinguished from *India-Agricultural Products* due to the explicit recognition of regionalisation in its legislation.[59] It further notes that the memorandum of 2006 and the bilateral certificates in use *before* the occurrence of the ASF cases and outbreaks in the four recently affected EU Member States also demonstrate that Russia recognizes regionalisation.[60]

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55 Appellate Body Report, *India- Agricultural Products*, para. 5.141.

56 Appellate Body Report, *India- Agricultural Products*, para. 5.133.

57 Appellate Body Report, *India- Agricultural Products*, para. 5.143.

58 Russia's First Written Submission, para. 410, referring to paras 218-229.

59 Russia's First Written Submission, para. 281.

60 Russia's Responses to the Panel's Questions, para. 61.

90. Comparing Russia's understanding of "recognition" with the recent guidance from the Appellate Body, it is clear that Russia is actually in breach of its obligations under Article 6 of the SPS Agreement. Indeed, what matters for the present analysis is not the abstract, *distinct from and taken prior to*, recognition of the concept of disease-free areas in the Russian legislation, but the recognition of this concept *through and upon adoption of the very SPS measure* that is required to be adapted to the SPS characteristics of the relevant areas.

91. The four individual bans and the EU-wide ban clearly fail to distinguish, on the basis of objective factors related to the abundant evidence supplied, between ASF-free areas and areas considered infected with ASF within the four partially affected EU Member States. Furthermore, Russia does not recognize the concept of disease-free areas as applicable to the vast majority of the EU Member States, *historically* ASF-free as per Article 1.4.6.(b) of the OIE Terrestrial Code. Instead, Russia required detailed information with regard to the fact that the non-affected EU Member States are actually ASF-free.[61]

92. The explicit "recognition" of regionalisation by Russia is thus contradicted by the facts of the case. It may be inferred from the unreasonable refusal to accept the regionalisation measures of the exporting Member, including irrelevant questions asked pursuant to Article 6.3 of the SPS Agreement, that an importing Member does not, in fact, recognize the concept of disease-free areas.[62] Russia's actions and inactions with respect to ASF-related regionalisation in the EU do not match - and in fact contradict - the allegedly explicit recognition.

93. In the same vein, the EU agrees with the panel's finding in *India- Agricultural Products*[63] and with Australia's proposition[64] that for a measure to comply with Article 6.2 it must at least not deny or contradict the recognition of such areas.

94. As already mentioned, Russia extended the same reasoning applicable to its abstract recognition of disease free areas in its legislation to the recognition of such areas in

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61 "Absence of any proof of non-existence of ASF in the territory of other EU member states" (Exhibit EU-90).

62 EU's First Written Submission, para. 339.

63 Panel Report, *India- Agricultural Products*, paras 7.698, 7.699 and 7.701.

the relevant veterinary certificates, explaining how it chose to "provisionally comply with the terms of these veterinary certificates".[65]

95. The European Union considers that this line of argument from Russia is very revealing. Instead of "provisionally" complying with the terms of the veterinary certificates, Russia was under an obligation to *adapt* its measures to the sanitary characteristics from which the products at issue originate and to which they are destined.

96. In the words of the Appellate Body:

> We, however, see the obligation to ensure that a Member's SPS measures are "adapted" to the relevant areas as a *continuing* obligation. In our view, the requirement to ensure the adaptation of an SPS measure to the SPS characteristics of the relevant areas implies that such measures may need to be modified if the relevant SPS characteristics change. As explained above, the very notion of "adaptation" implies a certain degree of flexibility in order to respond, on an ongoing basis, to changes in the relevant circumstances. Therefore, the general "adaptation" obligation in Article 6.1 may well encompass both a requirement to adapt appropriately at the time the SPS measure is adopted, as well as a requirement to adapt appropriately if and when relevant SPS characteristics in relevant areas in the territory of the importing or exporting Member change or are shown to warrant an adaptation of a specific SPS measure.[66][original footnote omitted]

97. The measure called by Russia "provisional compliance with the terms of the veterinary certificates" is in fact the measure identified by the EU as the EU-wide ban. Russia was and is under an obligation, pursuant to Article 6.1 of the SPS Agreement, to adapt its measures to the SPS characteristics of the areas from which the products at issue originate.

98. Russia incorrectly asserts that "with respect to the four ASF-infected countries, the EU Member States notified to the OIE that the ASF outbreak affects the whole territory".[67] Instead, Russia should know very well as a user of the OIE WAHIS that upon the first occurrence of a disease in a previously free country, even if there is

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64 Australia's third party written submission, paras 19-20.

65 Russia's First Written Submission, para. 411.

66 Appellate Body Report, *India- Agricultural Products*, para. 5.154.

67 Russia's Responses to the Panel's Questions, para. 105.

only one isolated case, the notification should pertain to the whole territory of that country.

99. This is clearly confirmed by the OIE itself in a document entitled Notification Procedure, which reads in the relevant part:

> Indicate if the event applies to a zone / compartment or the whole country.
>
> Important:
>
> - The option "whole country" should be chosen when it is the first historical occurrence of the disease in your country, even if the reported event is limited to a single zone.
>
> - First occurrence in a zone would mean that the disease was previously present in your country in another zone.[68]

100. Russia did not take into account factors of the kind non-exhaustively mentioned in Articles 6.1 and 6.2 of the SPS Agreement in order to *recognize* the concept of disease-free areas with regard to ASF in the EU and to *adapt* its measures accordingly. In particular, Russia failed to take into account factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary controls.

101. The factors mentioned in Article 6.2 of SPS Agreement are reflected in Article 9(2) of Directive 2002/60, which provides that:

> When establishing zones, the competent authority must take account of:
>
> (a) the results of the epidemiological inquiry carried out in accordance with Article 8;
>
> (b) the geographical situation, particularly natural or artificial boundaries;
>
> (c) the location and proximity of holdings;
>
> (d) patterns of movements and trade in pigs and the availability of slaughterhouses and facilities for processing carcases;
>
> (e) the facilities and personnel available to control any movement of pigs within the zones, in particular if the pigs to be killed have to be moved away from their holding of origin.[69]

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[68] Notification Procedure, OIE, p. 13, http://www.oie.int/fileadmin/Home/eng/Animal_Health_in_the_World/docs/pdf/Demonstration_guides/OIE_Guidelines_Terra_2015_demonstration_.pdf (Exhibit EU-182).

[69] Exhibit EU-31.

102. With regard to geography, Article 4.3.3.1. of the OIE Terrestrial Code states that:

> The extent of a zone and its geographical limits should be established by the Veterinary Authority on the basis of natural, artificial and/or legal boundaries, and made public through official channels.

103. The EU recalls that it explained to Russia that the distances between the limits of the areas where restrictions apply and the locations where infected wild boars were found are several times wider than the distance such animals could be expected to travel, according to the EFSA ASF Scientific Opinion 2010,[70] which was communicated to Russia as an annex to the letter of 7 February 2014.[71]

104. With the letter of 13 June 2014 the EU further explained that besides the distance from the disease cases, other factors were taken into account, such as:

- natural barriers (such as the Võrtsjärv lake in Estonia and the Daugava river in Latvia) and artificial (fenced motorways) barriers;
- forest limits; and
- administrative boundaries.[72]

105. In March 2015 the European Commission provided Russia with copies of the eradication plans of Lithuania and Poland and in April 2015 the eradication plans of Estonia and Latvia followed.

106. The Lithuanian eradication plan provides that:

> [T]he infected area in the Eastern part has a natural barrier – the river Neris, which partially separates the infected area from the risk area. In the Northern part the infected area has another natural barrier – the biggest Lithuanian river Nemunas. The artificial obstacle to stop the movement of wild boars is the road No A16, which links Vilnius and Marijampole and practically separates the infected area from the risk area and it is fenced to stop the wild animal movement.[73]

107. The situation in Poland is different:

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[70] "Wild boar do not migrate, at least according to the classic definition of migration. Some small seasonal movements are registered but always inside the usual individual home range that varies from 20-100 km2." EFSA ASF Scientific Opinion 2010, p. 29 (Exhibit EU-24).

[71] Exhibit EU-65.

[72] Exhibit EU-94.

[73] Eradication plan of African swine fever in feral pigs in certain areas of Lithuania, p. 8 (Exhibit EU-101).

> [I]n the infected area and buffer zone there are no natural or artificial barriers that would limit wild boar movements. Although wild boar are not migrating animals (the radius of their home range is about 5-10 km), some expert opinions indicate that there is a possibility that wild boar may move at the distances of several dozen kilometers. Taking the above into account, the area of application of measures as regards wild boar should be greater than the area of application of measures on holdings and consequently the measures concerning the wild boar population should encompass both the infected area and the buffer zone.[74]

108. Russia received a document containing the detailed administrative regions in Poland as part of the Polish contingency plan attached to the letter of 21 May 2014.[75]

109. The Latvian eradication plan provides that

> [I]nfected areas are established by the Chief veterinary officer using the principle of ~ 8 km radius around each new wild boar case confirmed. The territory of the infected area is not smaller than 200 km2 and is usually defined as smallest administrative division – pagasts. At the later stage infected areas are included in restricted territories defined by the European Commission Implementing Decision 2014/709/EU of 9 October 2014.[76]

110. Finally, the Estonian eradication plan mentions that:

> [T]he infected area is an area where at least one infected wild boar is diagnosed and it covers at least 200 km2. All infected areas are established around the finding place of infected wild boar. Infected area around the first positive case is 314km2 and around other positive cases are around 200km2 each.[77]

111. With regard to ecosystems it is relevant to ascertain the capacity of a biotope or habitat to sustain a susceptible population and the degree of concentration/dispersion. This is a relevant factor to the present case because of the wild boar presence. The density of wild boar in the affected regions of the four EU Member States, with possibly the exception of Latvia, is not very high compared with other regions within the EU.[78]

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74 Eradication plan of African swine fever in feral pigs in certain areas of Poland, p. 8 (Exhibit EU-102).

75 Exhibit EU-92.

76 Eradication plan for African swine fever in wild boar in Latvia, pp. 9-10 (Exhibit EU-116).

77 Plan for the eradication of African swine fever from feral pig population in Estonia, p.2 (Exhibit EU-117).

78 Exhibit RUS-3.

112. Human intervention in the ecosystem, in particular by managing practices such as hunting and feeding wild boars is essential to understanding how the ecosystem has been considered by the EU when applying regionalisation and claiming disease free status. The EU Member States concerned kept a constant hunting pressure and did not aim at the depopulation of wild boar, in order to not facilitate spread of the ASFV. Baiting is still allowed, in the form of limited food supply for the purposes of attracting wild boar for selective controlled hunting. At the same time, sustained feeding (foraging) is in principle forbidden in the Parts I, II and III regulated by Decision 2014/709. It is permitted only inside a "hot spot"[79] of infection to avoid movement of infected animals.[80]

113. The intensity and effectiveness of the EU's epidemiological surveillance should have been a key element in Russia's analysis of the EU ASF regionalisation measures. The combination of active and passive surveillance, with special emphasis on the areas at risk located relatively close to the disease cases already identified, provide a very solid reassurance that the limits of the ASF-free zones and the zones considered to be affected are properly demarcated.

114. As repeatedly explained, intense surveillance allowed the adaptation of the EU zones so as to go "ahead" of potential developments and catch the possible future cases and outbreaks. It is significant that since August 2014 there were no cases and outbreaks outside of the areas considered to be affected.[81] It is also significant that only three clusters of outbreaks occurred outside of the areas considered to be affected since the first case in wild boar in Lithuania in January 2014. And it is again significant the cessation of outbreaks in domestic pigs in Latvia and Lithuania since September 2014.

115. Russia claims that the EU failed to adequately increase surveillance after the ASF outbreaks, relying on an early audit report carried out by the European Commission

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79 A hot spot is the area of 4 km radius around infected cases of wild boar and is defined and approved by the veterinary service.

80 EU Veterinary Emergency Team, Vilnius, 8 – 10 October 2014: http://ec.europa.eu/food/committees/regulatory/scfcah/animal_health/docs/2014110304_ah_asf-strategy_lt-pl-lv-ee_cvet.pdf (Exhibit EU-109).

81 The last case occurred outside of an area already considered infected on 15 August 2014 (Exhibit EU-118).

in Lithuania in April 2014.[82] As already explained in our submissions to the Panel, the European Commission frequently carries such audits in the EU Member States, and transparently makes them available on our website.[83] What Russia did not mention is that the Lithuanian authorities responded and incorporated in the ASF legislation, including the national eradication plan, the Commission's recommendations.

116. With respect to domestic pigs the FVO report recommended:

> To improve passive surveillance in domestic pigs by increasing the number of laboratory analysis carried out on pigs that have died on farm in order to ensure effective implementation of the section 'surveillance in domestic pigs' in the ASF guideline.[84]

117. Lithuania took the recommendation into account through the following provisions in its legislation:

> 4.3. For SFVS territorial units within their competence: […]
>
> 4.3.4. to tighten biosecurity measures in pig keeping areas, approved by the State Food and Veterinary Service Director by Order No. B1-384 of 11 July 2011 On bio-security measures requirements for pigs in farms (hereinafter - Biosecurity measures in pig keeping areas), control of pig farms, continuously monitoring of pig health status and information about increased pig mortality has immediately to be notified by e-mail svs@vet.lt to the State Food and Veterinary Service emergency operations department.
>
> 4.4. to SFVS territorial units, controlling pig keeping places inside the infected and high-risk areas: […]
>
> 4.4.2 to instruct delegated or authorised official veterinarian to carry out official controls in the controlled territory in pig keeping places, as set out in Annex 3 to this Order and to oblige: […]
>
> 4.4.2.2. upon receipt of the information from pig keepers about changes in pig behaviour (loss of appetite, lethargy, etc.), sick or dead pigs, not respecting of biosecurity requirements in pig keeping areas in point 19 recommended 48-hour period, immediately to carry out clinical examination of pigs, in each pig keeping area the use of disposable protective clothing, boots, disinfectants for taking of samples from different age pigs with increased temperature, and from pigs, that were kept in keeping places where increased mortality of pigs is reported and after each check of pig keeping area to carry out the disinfection of vehicles […]

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82 Exhibit RUS-69.

83 EU's Responses to the Panel's Questions, para. 112.

84 European Commission, Final Report of an Audit Carried out in Lithuania from 14 to 16 April 2014 in order to evaluate the implementation of animal health controls in relation to African Swine Fever, p. 15 (Exhibit RUS-69).

> 4.5. for pig keepers keeping pigs in infected area and area of increased risk, immediately to inform in writing or by phone SFVS territorial unit or authorized veterinarian as indicated in point 4.4.2 of this order, about the death of each pig.[85]

118. In addition, the Lithuanian eradication plan approved by Decision 2014/442 incorporates the corrective actions needed with respect to surveillance in wild boar. The FVO recommendation stated:

> To ensure that each wild boar carcass is inspected by an official veterinarian as required by Article 15.2(c) of Council Directive 2002/60/EC. These inspections should also be used to verify that each wild boar hunted is appropriately sampled for laboratory analysis.[86]

119. In response, the Lithuanian eradication plan provides that:

> An epidemiological enquiry within the infected area performed by the SFVS will be carried out on each wild boar found dead or hunted. This enquiry will include the completing of an epidemiological report form, which provides detailed information on each wild boar found dead or shot. Each location where a dead wild boar was discovered is marked via GPS coordinates not only in infected area, but in all territory of Lithuania. […]
>
> An epidemiological enquiry performed by the SFVS will be conducted on each wild boar whether shot or found dead. This enquiry will include the filling in of an epidemiological report which supplies information about:
>
> (i) the geographical area where the animal was found dead or shot,
>
> (ii) the date on which the animal was found dead or shot,
>
> (iii) the person who found or shot the animal,
>
> (iv) the age and sex of the animal,
>
> (v) if shot, symptoms before shooting,
>
> (vi) if found dead: the state of the carcass.
>
> All data including the results of virological and serological investigations will be collected in a national data base for their assessment and analysis. Furthermore, the data will be transmitted to the European Reference Laboratory for ASF in Spain.[87]

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[85] Order on African swine fever Monitoring and Control Measures No B1- 939 of 31 October 2014, https://www.e-tar.lt/portal/lt/legalAct/0646cf5060f711e4bf45e0caf7d247ff (Exhibit EU-181).

[86] European Commission, Final Report of an Audit Carried out in Lithuania from 14 to 16 April 2014 in order to evaluate the implementation of animal health controls in relation to African Swine Fever, p. 15 (Exhibit RUS-69).

[87] Eradication plan of African swine fever in feral pigs in certain areas of Lithuania, pp. 2 and 10 (Exhibit EU-101).

120. The effectiveness of the sanitary controls has been repeatedly demonstrated at different levels. The disease control measures put in place after the occurrence of the few outbreaks reported proves that the contingency plans and the control measures applied in holdings (based on diligent stamping out and other very strict sanitary measures) are highly effective as no further outbreaks have been reported as secondary outbreaks in Lithuania and Latvia since September 2014 because all outbreaks were properly extinguished.[88]

121. In addition, the sanitary controls at the external borders with infected pork products from Belarus seized, together with awareness campaigns, have minimised the risk of ASF introduction through that route.

122. The list of factors enunciated in Article 6.2 is non-exhaustive. A similar relevant factor may be the epidemiology of the disease, which is related to the characteristics of the disease agent and of the host species. It is important to notice that there is no evidence of soft ticks (*Ornithodoros sp.*) being involved in the epidemiology of the disease in the four recently affected EU Member States.[89] Furthermore, the existence of a single host species (pigs) makes the epidemiology simpler than other diseases affecting pigs and ruminants (like FMD).

123. Russia maintains that the EU failed to take significant actions to eliminate backyard production in the four ASF-infected EU Member States. The EU does not believe that total elimination of backyard production is necessary. As already explained in our Opening Oral Statement and in the Responses to the Panel's Questions, even before ASF reached the EU, as early as of 2013, the EU has taken measures to reduce backyard production under low biosecurity conditions in certain risk areas.

124. In particular, Decision 2013/498 allocates EU funds to Lithuania to establish a "buffer zone" of 10 kilometres along the border with Belarus,[90] in which the density of susceptible hosts is decreased by promoting slaughter of pigs and preventing

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88 Exhibit EU-118.

89 In the EU ticks involvement in ASF epidemiology is documented only in Portugal and Spain. EFSA ASF Scientific Opinion 2010, p. 9 (Exhibit EU-24).

90 EU's First Written Submission, para. 61.

restocking of pig holdings.[91] In addition, Decision 2014/236 grants EU support to Lithuania and Poland in order to decrease the density of susceptible hosts in low bio-security pig holdings of the infected area by promoting the slaughter of pigs and preventing restocking of pig holdings for at least one year.[92] At the same time, the EU supported awareness campaigns in the respective regions.[93]

125. In light of the above, an objective assessment of factors such as geography, ecosystems, epidemiological surveillance, the effectiveness of sanitary controls and the ASF epidemiology should have easily led Russia to reaching a conclusion on the appropriateness of the EU ASF regionalisation measures. Instead, Russia preferred to misleadingly invoke internal Customs Union arrangements, require compartmentalization and repeatedly ask irrelevant questions, delaying the adoption of any decision and meanwhile maintaining an EU-wide ban and four individual bans with regard to the respective EU Member States.

126. By not taking into account factors such as geography, ecosystems, epidemiological surveillance, the effectiveness of sanitary controls and the ASF epidemiology, Russia failed to determine disease-free areas on the basis of the mentioned factors and breached its obligations under Article 6.2 of the SPS Agreement.

127. In light of the above, the situation in the present case is in fact similar to that in *India-Agricultural Products* and the EU respectfully requests the Panel to find that Russia does not recognize the concept of disease-free areas with respect to ASF in the EU. As a consequence, Russia also fails to adapt its measures to the sanitary characteristics of the areas from which the products at issue originated and to which the products are destined, within the meaning of Article 6.1 of the SPS Agreement.

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91 Article 5 and recital 5 of the Commission Implementing Decision 2013/498/EU of 10 October 2013 concerning a Union financial contribution towards surveillance and other emergency measures implemented in Estonia, Latvia, Lithuania and Poland against African swine fever in neighbouring third countries, OJ L272, p.47 (Exhibit EU-106).

92 Article 1(3) and recital 10 of the Commission Implementing Decision 2014/236/EU of 24 April 2014 concerning a Union financial contribution towards surveillance and other emergency measures implemented in Estonia, Latvia, Lithuania and Poland against African swine fever, OJ L125, p.86 (Exhibit EU-107).

93 Article 3 of the Decision 2013/498 and Article 1(2) of the Decision 2014/236 (Exhibits EU-106 and EU-107).

128. Finally, one of the interesting requirements in Article 6.1 is that measures are adapted not only to the area from which a product originates, but also to the area to which it is destined. This provision is relevant when there are particularities of the region of destination which distinguishes it from other regions within the same Member. In the circumstances of the present case, the EU has understood that there are regions in Russia where wild boars do not occur.[94] To the extent to which domestic pigs also do not occur in those regions, the introduction of the products at issue would not present ASF-related sanitary risks and importation to consumers in those regions should be allowed.

D. Claims related to risk management

129. Article 2.2 is a more general provision and Articles 5.1, 5.2 and 5.6 are more specific provisions. This understanding is confirmed with regard to the relationship between Articles 2.2 and 5.6 by previous panels.[95]

130. It follows that a finding of violation of Article 5.6 with regard to risk management will consequentially result in a violation of Article 2.2 of the SPS Agreement, more precisely with regard to the necessity requirement.

131. Where a relevant international standard provides for alternative requirements – "ASF free country, zone or compartment", an importing Member must accept products that meet one or more of the identified alternatives in order to "conform to" the international standard, on the basis of objective criteria of the kind described in Article 6.2 second sentence of the SPS Agreement.

132. Contrary to what Russia seems to believe, a country may not choose ASF-free zones or compartments according to its ALOP.[96] The three elements described in the international standards "ASF free country, zone or compartment" are related to the objective characteristics of the ASF situation and not to the subjective choice of the

94 EFSA ASF Scientific Opinion 2010, p. 28 (Exhibit EU-24).

95 Panel Report, *EC — Hormones (Canada)*, para. 8.99.

96 Russia's Responses to the Panel's Questions, paras 299-300.

importing Members. If the entire country is not ASF free, then the recommendation is to look into the regionalisation measures and allow trade form ASF free zones. If the extent of the disease spread is so significant that zones cannot be effectively established, then in principle the recommendation would be to allow trade from accepted established ASF free compartments.[97]

133. The EU recalls that in *India - Agricultural Products* India argued that the OIE Terrestrial Code allows importing countries, based on their ALOP, to choose whether to apply a recommendation pertaining to products from NAI-free or HPNAI-free territories, and whether to apply a recommendation on a country-wide, zone or compartment basis. The panel clearly rejected this contention:

> India's interpretative approach, whereby Chapter 10.4 would allow an importing country to choose as a 'condition of entry' the NAI-free status of the exporting country and apply that condition only on a country-wide basis, runs contrary to Chapter 10.4 of the [OIE] Code.[98]

134. In light of the above, it follows that Russia does not comply with the requirements in Article 5.6 and footnote 3, as the EU demonstrated that following the OIE standards and recognizing regionalisation would constitute a significantly less trade restrictive alternative measure.

E. Discrimination claims

1. Article 2.3 of the SPS Agreement

135. In this dispute the EU presents its claims related to discrimination starting with the claims under Article 2.3 and continuing with the claims under Article 5.5.

136. While for the purposes of Article 2.3 first sentence the discrimination should occur between WTO Members, the EU shares the US assessment[99] according to which the

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97 EU's Responses to the Panel's Questions, paras 229-231.

98 Panel Report, *India- Agricultural Products*, para. 7.270; Appellate Body Report, *India-Agricultural Products*, para. 5.102.

99 US Third Party Responses to the Panel's Questions, para. 45.

concept of disguised restriction on international trade in the second sentence of Article 2.3 does not have such a limitation.

137. In practice it means that similar factors should be taken into account by the Panel in its analysis of the Russian treatment of Belarus products and the conditions of discrimination between WTO Members. In the context of the similarly worded *chapeau* of Article XX of the GATT 1994 the Appellate Body took into account its analysis regarding "arbitrary and unjustifiable discrimination" in reaching its conclusions on "disguised restriction on international trade":

> "Arbitrary discrimination", "unjustifiable discrimination" and "disguised restriction" on international trade may, accordingly, be read side-by-side; they impart meaning to one another. It is clear to us that "disguised restriction" includes disguised *discrimination* in international trade. It is equally clear that *concealed* or *unannounced* restriction or discrimination in international trade does *not* exhaust the meaning of "disguised restriction." We consider that "disguised restriction", whatever else it covers, may properly be read as embracing restrictions amounting to arbitrary or unjustifiable discrimination in international trade taken under the guise of a measure formally within the terms of an exception listed in Article XX.[100]

138. With regard to the unjustifiable discrimination between trade in the products at issue from the EU and trade in similar products from Ukraine, the EU clarified that the relevant comparison is not between the treatment of Ukraine after the change of the political regime and the treatment of the EU by Russia.[101] In that respect presently there may or may not be any discrimination. However, as of the date of the first cases in the EU there was such discrimination.

139. Relevant to the present case are two instances of discrimination, both occurring before the date of the establishment of the panel. The first instance occurred in 2012, when Russia did not apply any ban to Ukrainian products following an ASF case in the Zaporozhye region. Russia considered at the time that the Ukrainian measures were sufficient to prevent any spread of the ASFV. [102]

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[100] Appellate Body Report, *US-Gasoline*, p. 25. A similar reasoning applies in the case of Article 2.3 of the SPS Agreement. Panel Report, *India- Agricultural Products*, para. 7.476.

[101] EU's Responses to the Panel's Questions, paras 340 - 346.

[102] Press release, Russian Federal Service for Veterinary and Phytosanitary Supervision, 2 August 2012, http://www.fsvps.ru/fsvps/news/5049.html (Exhibit EU-165).

140. The second instance of discrimination occurred at the beginning of 2014 with respect to the Lugansk region.[103] On 15 January 2014 Russia announced a ban on the trade from the Lugansk region, while accepting pig products from the rest of Ukraine[104]. This regional ban was notified to the WTO on 21 January 2014.

141. Strangely enough, in its First Written Submission Russia presents a letter sent to the Ukrainian authorities on 30 January 2014, that is 15 days after Russia already adopted the decision with respect to the Lugansk region and three days after the imposition of the EU-wide ban. In that letter Russia asked *inter alia* information on measures and proposals for regionalisation (after the decision on regionalisation was already taken);[105] this situation is also confirmed in a press release.[106]

142. It clearly follows from the above that two weeks after Russia adopted a decision with regard to the regionalisation of the Lugansk region in Ukraine, it attempted to dissimulate the discrimination against the EU by modifying its measures with respect to Ukraine.

2. Article 5.5 of the SPS Agreement

143. The EU notices that Russia's explanations with regard to the "infected objects" not notified to the OIE seem to be contradictory. While Russia quotes its legislation defining "infected objects" as, *inter alia*, factories, means of transport, refrigerators, it alleges that it notified to the OIE all the outbreaks and cases, including these infected objects.[107] But outbreaks and cases refer to animals infected by a pathogenic agent, while factories, means of transports and refrigerators are not animals.

144. A recent declaration by a Russian industry representative is supportive of the weak ASF control measures within Russia:

> In the beginning of June 2013, ASF outbreaks occurred in some private farm holdings located in other municipal districts of the Voronezh region. The regional government approved and

103 EU's First Written Submission, paras 299-305.

104 Exhibit EU-6.

105 Exhibit RUS-124.

106 Press release, Russian Federal Service for Veterinary and Phytosanitary Supervision (Exhibit EU-166).

107 Russia's Responses to the Panel's Questions, paras 5-7.

> implemented quarantine measures. In spite of these quarantine measures, and the fact that our complex was a Compartment IV – the highest level of biosecurity recognized under Russian law – ASF spread to our complex.[108]

145. This declaration clearly confirms that ASF spread from some municipal districts of the Voronezh region to other districts in spite of the fact that the competent Russian authorities took measures with regard to those ASF outbreaks and in spite of the fact that the cited holding was considered of the safest degree as per the Russian biosecurity standards.

146. Should this be an isolated event, then it would not bear a decisive meaning for the overall picture of how ASF is handled within Russia. Human mistakes may and do lead to such incidents. However, if such outbreaks are not isolated instances and become rather common, this is a relevant fact and it definitely speaks of the ALOP that Russia maintains internally with respect to ASF.

147. The situation in Russia is more worrying as the main factor of ASF spread are not the wild boars but rather domestic pigs, which can be associated with more human mistakes and loose enforcement measures:

> Currently, the role of wild boar in disease spread seems to be secondary. As a result of spillover infections from domestic pigs, they act as sentinels of the presence of the disease.[109]

148. As already shown in our First Written Submission, earlier reports reached similar conclusions, Russia also lacking an ASF contingency plan.[110]

149. All the above information has to be seen and assessed in the context of the very important - and relatively quick- geographical spread, thousands of kilometres from the initial ASF outbreaks.

150. The Panel may establish Russia's ALOP on the basis of the level of protection reflected in the SPS measures *actually applied*.[111] In light of the above, the lack of

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[108] Russia's Opening Oral Statement, para. 7.

[109] FAO, "African swine fever in the Russian Federation: risk factors for Europe and beyond", *Empres Watch* Vol. 28, May 2013, p. 3 (Exhibit RUS-3).

[110] African Swine Fever spread in the Russian Federation and the risk for the region, FAO, December 2009, p. 5 (Exhibit EU-23).

[111] Appellate Body Report, *Australia – Salmon*, para. 207.

proper application and enforcement of the Russian ASF legislation clearly leads to the conclusion that Russia's ALOP *actually applied* is rather low. This is evidenced *inter alia* by the high number of cases and outbreaks and the significant geographical spread.

151. This understanding is confirmed by Japan, according to which:

> The parties appear to disagree as to whether and to what extent the effectiveness of the Russia's domestic measures is relevant to identify the ALOP applied domestically. In Japan's view, the effectiveness or ineffectiveness of the measure is a necessary feature or attribute of the measure and as such cannot be a priori excluded from the examination of the measure. In other words, the effectiveness of the measure is one factor, among others, in the inquiry into "the level of protection reflected in the SPS measure actually applied".[112]

152. The EU explained in our responses to the Panel's questions that the ALOP may be inferred only from the non-protectionist elements of the measures at issue.[113] However, we were not able to identify non-protectionist elements in the Russian bans.

153. It follows that it is reasonable to infer Russia's ALOP from the domestic measures applied. In any event, even if the Panel finds a rather high ALOP reflected in the EU-wide ban and in the four individual bans, Russia is in breach of Article 5.5 of the SPS Agreement, as it makes arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, because such distinctions result in discrimination or a disguised restriction on international trade.

154. Finally, the EU recalls that, unlike Article 2.3, Article 5.5 of the SPS Agreement does not contain a reference to "Members". For the purposes of our Article 5.5 claims the discrimination with regard to Belarus is also relevant. The EU agrees with the US, which indicates in its Responses to the Panel's Questions that unlike the first sentence of Article 2.3, Article 5.5 does not limit itself to discrimination between Members.[114] The ALOP is a function of what Russia seeks to protect on Russian territory. It is not or should not be a function of different trade partners.

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112 Japan's Third party Oral Statement, para. 6.

113 EU's Responses to the Panel's Questions, paras 312, 313 and 317.

114 US Third Party Responses to the Panel's Questions, para. 46.

F. Claims related to control, inspection and approval procedures

155. Russia wrongfully considers that the EU's claims under Annex C and Article 8 of the SPS Agreement fall outside the scope of the mentioned provisions.[115] This assertion is also supported by the US in its Third Party Submission.[116]

156. According to Russia, the type of procedures covered by Article 8 refers only to the approval of a product or the use of additives. They do not cover "negotiations between Members leading to the adoption of a procedure".[117]

157. As already explained in our Opening Oral Statement, Russia's assertions are wrong for a number of reasons.[118]

158. First, the language used in Article 6.3 of the SPS Agreement, referring to "inspection and…other relevant procedures" is very similar to the language used in Annex C and Article 8, which also refer to "inspection, control and approval procedures". Against this background, the EU does not see any reason why there should be a different meaning attached to the type of procedures envisaged by Article 8 so as to exclude the type of inspections and other relevant procedures mentioned in Article 6.3.

159. The Article 6 Guidelines provide with respect to on- site verifications that:

> Such inspections may consider, *inter alia*, the administrative structure of the regulatory bodies concerned and the programmes they implement with a view to prevention, control and eradication of pests and diseases. The strength and credibility of the veterinary […] infrastructure of the exporting region(s) would also be part of this evaluation[119].

160. Footnote 7 to the SPS Agreement makes reference to control, inspection and approval procedures as including *inter alia* procedures for sampling, testing and

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115 Russia's First Written Submission, paras 420-425.

116 US Third Party Submission, paras 13 and following.

117 Russia's first written submission, para. 423.

118 EU's Opening Oral Statement, paras 134-137.

119 Guidelines to Further the Practical Implementation of Article 6 of the Agreement on the Application of Sanitary and Phytosanitary Measures, WTO Committee on Sanitary and Phytosanitary Measures, G/SPS/48, para. 27 (Exhibit EU-51).

certification. This is an open-ended enumeration and it cannot be interpreted in any way as excluding the type of control, inspection and approval procedures linked to the process of recognition of regionalisation.

161. Second, the EU does not view the acceptance of the regionalisation measures as a "negotiation" between two different Members. Russia refers to the steps taken in the approval of the regionalisation measures as "negotiations between Members leading up to the adoption of a procedure", as "negotiating process" or as "intensive negotiations between the European Union and the Russian Federation concerning regionalisation".[120]

162. The EU respectfully disagrees. This is rather an objective exchange of information and the decision of the importing Member is to be taken with consideration of the objective and rational factors of the kind non-exhaustively enunciated in Article 6.2 second sentence of the SPS Agreement. Contrary to what Russia seems to believe, this is a science-based process and not a process based on bargaining with the aim of obtaining mutual concessions. Article 6.3 makes it clear that the necessary information shall be provided in order to *objectively demonstrate* to the importing Member that the disease-free areas are disease-free and are likely to remain disease-free areas. This understanding is confirmed in Article 5.3.7 of the OIE Terrestrial Code, which describes the sequence of steps to be taken in establishing a zone and having it recognised for international trade purposes.

163. Similarly, Article 4.1 of the SPS Agreement equally speaks of "inspections, testing and other relevant procedures" and it also makes reference to the exporting Member *objectively demonstrating* to the importing Member that its measures are suitable.

164. It follows from the above that the EU claims pursuant to Annex C and Article 8 fall within the type of situations contemplated by those legal provisions.

165. Russia did not manage to rebut the *prima facie* case made by the EU with respect to our Annex C and Article 8 claims.

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120 Russia's First Written Submission, paras 423, 426 and 430.

166. The delays in the operation of the control, approval and inspection procedures are clearly attributable to Russia. While the need for additional information does not amount to undue delay, the repeated request of non-necessary and irrelevant information does. It equally does amount to undue delays the lack of responsiveness for long periods of time, without further feedback on the key issues invoked in order to delay the procedures.

167. The EU explained in detail and illustrated with clear examples the type of information which Russia required from the EU, allegedly for the purpose of completing its approval procedures with respect to the EU regionalisation measures.[121]

168. Russia asked several such non-necessary questions in its letter of 5 February 2014.[122] For instance, Russia asked for "information about swine population in the industry sector and personal subsidiary farming with detailed density by region".[123] The information on "personal subsidiary farming" is not relevant and contains personal data related to owners and keepers. With the same letter Russia also asked for "detailed information about pig farms, pork processing factories and semi-finished products, graded by production volume".[124] The production volume of different farms and factories constitutes commercially sensitive data and is not relevant.

169. Russia further asked for "regulations on export of wild boar meat and trophies, number of killed animals and exported meat and trophies during 2013-2014".[125] However, the information on volumes of exported meat and trophies is not relevant, what matters are the health guarantees/requirements. Russia also asked for "detailed information about foreign hunters, who entered the country to hunt the wild boar during 2013-2014 detailed by region (including information about the number and the country of origin)".[126] This information is equally not necessary as what matters

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121 EU's Responses to the Panel's Questions, paras 383-384; EU's First Written Submission, para. 339.

122 Exhibit EU-84.

123 Exhibit EU-84.

124 Exhibit EU-84.

125 Exhibit EU-84.

126 Exhibit EU-84.

are the regulations with regard to hunting and trophies, the prohibitions and the biosecurity measures put in place in the partially affected EU Member States.

170. The EU explained to Russia, including by our letter of 21 May 2014, in the Annex regarding Russia's request for "detailed information about foreign hunters, who entered the country to hunt the wild boar during 2013-2014, detailed by country and region", that:

> The relevant article (Article 15) of Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever, notably paragraph (c), in conjunction with Commission Implementing Decision of 27 March 2014 (2014/178/EU) stipulate that carcasses of feral pigs, wild boar meat, wild boar products and trophies cannot be moved, unless under official supervision which is also subject to regulations.
>
> Thus, no hunter is allowed to move the carcasses or products mentioned above unless authorised as being safe, out of the infected area. Against this backdrop, information about individual 'hunters who entered the country to hunt wild boar' - be they nationals or foreigners - is not relevant.
>
> Please find below a copy of Article 15 and Article 16 of Council Directive 2002/60/EC of 27 June 2002 […].[127]

171. Russia was already well aware of the provisions of Article 15 of Directive 2002/60, which was communicated by the EU as attached to the letter of 7 February 2014,[128] as well as of the Decision 2014/178,[129] which was immediately communicated by fax on 27 March 2014.[130] The EU promptly notified all changes in the ASF situation in the recently affected EU Member States, as explained in detail in our Responses to the Panel's Questions.[131]

172. Russia also requested:

> - Detailed information about pig farms and meat processing factories attested to ship animals and products to the territory of the C[ustoms] U[nion], including information about the suppliers (number, country, region) and production volumes, detailed by region;

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127 Exhibit EU-92.

128 Exhibit EU-65.

129 Exhibit EU-37.

130 Exhibit EU-146.

131 EU's Responses to the Panel's Questions, para. 104.

> - Rough estimation of enterprises attested to ship animal products to the territory of the C[ustoms] U[nion], by level of zoosanitary condition, equivalent to the previously conducted evaluation of the Russian and Belarusian enterprises, detailed by regions and graded by production volumes.[132]

173. This information is not relevant for regionalisation. It might be, in some cases, relevant for compartmentalization, but the EU never claimed to have established compartments with regard to ASF. Instead, the EU delimitated between ASF-free areas and areas considered to be ASF infected. In addition, Russia has already the information with regard to pig farms and meat processing factories attested to ship to its territory. Finally, the level of sanitary condition is not relevant for regionalisation, as all farms /holdings in the free regions are actually ASF-free while all those establishments in the areas considered infected are not considered ASF-free and are therefore subjected to bans and strict restrictions.

174. The EU recalls that the agreed minutes of the meeting of 7 March 2014 mention that the EU veterinary representative "answered all the questions asked by the Russian party".[133]

175. However, in spite of that clear statement, the Russian authorities continued to claim that they need more information in order to reach a decision on regionalisation. The EU provided several such examples.

176. The letter of 12 March 2014 refers to "absence of any proof of non-existence of ASF in the territory of other EU member states".[134] The EU explained that according to Article 1.4.6.(b) of the OIE Terrestrial Code the vast majority of the EU Member States are *historically free*. Through such requests Russia sought in fact to impose on the EU a *probatio diabolica*, contrary to the provisions of the OIE Terrestrial Code.[135]

177. By letter dated 16 May 2014, received on 4 June 2014, Russia also asked about the:

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132 Exhibit EU-84.

133 Protocol of the technical meeting-consultation between the EU and the FGBI ARRIAH, FGBI VGNKI experts as well as Rosselkhoznadzor representatives which was held at the FGBI Federal Center for Animal Health, Vladimir, 7 March 2014 (Exhibit EU-89).

134 Exhibit EU-90.

135 EU's First Written Submission, para. 219.

> Zoo sanitary status of small farms (due to the big number of them in the territories of the infected/high risk zones with regard to ASF) and measure of their bio protection (possibility of free range, feed base, the regime of introducing the newly arrived animals in the herd, etc.).[136]

178. The EU answered by letter of 13 June 2014, explaining that:

> In accordance with the OIE code, the animal health status of farms/holdings, independently of their size, as regards ASF is defined by the status of the zone where they are located. This may be either infected/restricted or free from disease. Assigning such a status to individual farms - regardless of where they are located - does not exist in the OIE, nor as a consequence, in EU legislation.[137]

179. Russia not only asked questions not relevant to the ASF regionalisation, but also asked questions to which answers were already provided by the EU.[138]

180. By the same letter dated 16 May Russia asked for a

> Cartographical visualisation of the establishments attested to supply live pigs and swine products from the EU Member States (Poland and Lithuania, in particular) to the Russian Federation with indication of the raw material bases of these establishments.[139]

181. The EU answered in our letter of 13 June 2014 that:

> The EU position in regard to this question has been explained in our letter of 21 May 2014 (Ref. Ares(2014)1658269), in the Annex titled: Further information to the Russian Federation's request to provide "Detailed information about pig farms and meat processing factories attested to ship animals and products to the territory of the CU, including information about the suppliers and production volumes, detailed by country and region ".[140]

182. In the Annex to the letter of 21 May 2014 the EU explained that:

> *Pig population (farms and pigs)* - Detailed information for the whole of the EU was provided in our letter of 07/02/14 (Ref. Ares(2014)304571).
>
> An update of this information with more exhaustive data is provided below.

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136 Exhibit EU-93.

137 Exhibit EU-94.

138 EU's First Written Submission, para. 339.

139 Exhibit EU-93.

140 Exhibit EU-94.

> *Establishments* - Information on all establishments in the whole of the EU and in particular, statistics on establishments in Lithuania, Latvia, Estonia and Poland, were also provided in the above-mentioned letter of 07/02/14.
>
> The list of establishments of all EU Member States authorised for export to the Russian Federation continue to be publicly available in the following website of the Russian authorities: http://www.fsvps.ru/fsvps/importExport/eu/index.html. We understand that you are aware of this information as we have noted this has been recently accessed by the Russian Federation.
>
> *Suppliers of pig meat to establishments* - Please note that according to EU legislation, any meat establishment not subjected to restrictions can supply any other establishment.
>
> However, for African swine fever, Commission Implementing Decision 2014/178/EU establishes clear prohibitions on the dispatch and supply of live pigs and pig meat from the legally defined infected areas. Article 8 of that Decision establishes a prohibition of the dispatch to other Member States and third countries of consignments of animal by-products from porcine animals from the areas listed in the Annex. (http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32014D0178&rid=l)
>
> This Decision also establishes that, in order to ensure the enforcement of the prohibition above, and to further prevent the spread of African swine fever to other areas of the European Union and to third countries, the production of fresh pig meat, meat preparations and meat products consisting of, or containing meat of pigs from EU Member States with areas listed in the Annex, is subject to stringent conditions. In particular, such pig meat, is marked with special marks that make it impossible to be dispatched to other EU Member States or to any other third country.
>
> Therefore, from the defined areas, as listed in the annex to Decision 2014/178/EU (establishing regionalisation) **no establishment is allowed to supply pig meat or pig meat products to the establishments authorised to export to the Russian Federation**. (http://www.fsvps.ru/fsvps/importExport/eu/index.html)

183. It clearly follows from the above that the EU has provided abundant evidence to substantiate its claims under Annex C and Article 8 of the SPS Agreement. The EU explained in our First Written Submission, in our Responses to the Panel's Questions, as reflected in the exhibits already attached to our First Written Submission, why and how Russia breached the provisions of the SPS Agreement related to control, inspection and approval procedures.

184. Russia's information requirements were not limited to what is necessary for appropriate control, inspection and approval procedures as required by Annex

C(1)(c) of the SPS Agreement. To the contrary, the EU explained in detail that Russia's information requirements extended to numerous issues which were not necessary for the assessment of the EU regionalisation measures.

185. Russia's control, inspection and approval procedures were not undertaken and completed without undue delays, as required by Annex C(1)(a) of the SPS Agreement. To the contrary, Russia's requests for information which is not necessary within the meaning of Annex C(1)(c), coupled with requests for information which was already supplied, resulted in undue delays. The respective procedures are not completed even as of today, more than one year after the beginning of the information exchange process.

186. Furthermore, such procedures with respect to the products at issue from the EU were conducted in a less favourable manner than for the like domestic products, contrary to Annex C(1)(a) of the SPS Agreement. The EU explained in detail in the section dedicated to the discrimination claims how Russia discriminates between the products at issue from the EU and the like domestic products.

187. Finally, Russia did not publish or otherwise communicate to the EU the standard processing period and did not comply with any of the other requirements in Annex C(1)(b) of the SPS Agreement.

188. As Russia failed to rebut our *prima facie* case, the Panel should find that Russia is in breach of its obligations under Annex C(1)(a), (b), (c) and Article 8 of the SPS Agreement.

G. Transparency claims

189. Without reiterating the arguments already presented in our First Written Submission, the EU highlights that even in an emergency scenario an importing Member is not absolved of any obligation with regard to the transparency of its measures. Quite to the contrary, Annex B(6) contains a set of detailed requirements which should be followed.

190. Russia maintains that it immediately notified the EU regarding the import restrictions affecting exports from Lithuania on 25 January 2014.[141] However, Russia is unable to rebut the obvious: what Annex B(6) requires is that Russia immediately notifies other Members, through the WTO Secretariat. This did not happen. Instead, Russia notified its measures to the WTO Secretariat only more than 2 weeks after the adoption of the measure at issue with respect to Lithuania.

191. Similarly, Russia notified the ban on the products at issue from Latvia only on 16 July 2014, more than two weeks after its imposition on 27 June 2014.[142]

192. Russia is equally unable to rebut EU's arguments regarding the lack of any notification at all with respect to the EU wide ban, continuing on the one hand, to deny the existence of this measure, but accepting its existence, on the other hand, under the different name of "provisional compliance with the terms of the veterinary certificates".

193. In light of the above, Russia has failed to rebut the *prima facie* case made by the EU with regard to the breach of the provisions of Annex B(1), (2), (5) and (6) of the SPS Agreement and, consequently, of Article 7 of the SPS Agreement.

IV. CONCLUSIONS AND REQUEST FOR FINDINGS

194. Russia failed to rebut the EU's *prima facie* case on any of the claims we advanced in the First Written Submission. Accordingly, the EU requests the Panel to find that Russia's measures, as set out above, are inconsistent with Russia's obligations contained in Articles 2.2, 2.3, 3.1, 3.2, 3.3, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 6.1, 6.2, 6.3, 7, 8, Annex B(1), (2), (5), (6) and Annex C(1)(a), (b), (c) of the SPS Agreement.

141 Russia's First Written Submission, para. 443.

142 EU's First Written Submission, para. 86.

195. The EU respectfully requests the Panel to recommend that the Dispute Settlement Body requests Russia to bring the contested measures into conformity with its obligations under the SPS Agreement.