

ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Description
ASF	African swine fever
ASFV	African swine fever virus
CU	Customs Union
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
FAO	Food and Agriculture Organization of the United Nations
FSVPS	Russian Federal Service for Veterinary and Phytosanitary Supervision
GATT 1994	General Agreement on Tariffs and Trade 1994
OIE	World Organization for Animal Health
Vienna Convention	Vienna Convention on the Law of Treaties, Done at Vienna, 23 May 1969
Russia's accession protocol	Protocol on the accession of the Russian Federation
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
Terrestrial Code	OIE Terrestrial Animal Health Code
WTO	World Trade Organization

1. INTRODUCTION

1.1 Complaint by the European Union

- 1.1 On 8 April 2014, the European Union requested consultations with the Russian Federation (Russia) pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) with respect to the measures and claims set out below.¹
- 1.2 Consultations were held on 30 April and 1 May 2014. Those consultations were unsuccessful in resolving this dispute.²

1.2 Panel Establishment and Composition

- 1.3 On 27 June 2014, the European Union requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference as set

¹ European Union's request for consultations (WT/DS475/1).
² European Union's request for the establishment of a panel (WT/DS475/2).

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out in Article 7.1 of the DSU.³ At its meeting on 22 July 2014, the Dispute Settlement Body (DSB) established a panel pursuant to the request of the European Union in document WT/DS475/2, in accordance with Article 6 of the DSU.⁴

1.4 The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by the European Union in document WT/DS475/2 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁵

1.5 On 13 October 2014, the European Union requested the Director-General to determine the composition of the panel pursuant to Article 8.7 of the DSU.

1.6 On 23 October 2014, the Director-General accordingly composed the Panel as follows⁶:

Chairperson: Mr Mohammad Saeed

Members: Mr Juan Antonio Dorantes
Mr Ulrich Kihm

1.7 On 30 October 2014, Mr Ulrich Kihm resigned from the Panel. Pursuant to a request from the European Union of 3 November 2014, the Director-General appointed Mr Steve Hathaway as Panel member on 6 November 2014.⁷ On 26 November 2014, Mr Steve Hathaway resigned from the Panel. Pursuant to a request from the European Union of 28 November 2014, the Director-General appointed Ms Delilah Cabb Ayala as Panel member on 4 December 2014. Accordingly, the composition of the Panel is as follows:⁸

Chairperson: Mr Mohammad Saeed

Members: Ms Delilah Cabb Ayala
Mr Juan Antonio Dorantes

1.8 Australia, Brazil, China, India, Japan, the Republic of Korea, Norway, South Africa, Chinese Taipei, and the United States reserved their rights to participate in the Panel proceedings as third parties.

³ European Union's request for the establishment of a panel.

⁴ See WT/DSB/M/348.

⁵ Constitution of the Panel, para. 2. (WT/DS475/3)

⁶ Constitution of the Panel, para. 4.

⁷ Replacement of a Member of the Panel (WT/DS475/4).

⁸ Replacement of a Member of the Panel (WT/DS475/5).

1.3 *Panel Proceedings*

1.3.1 General

1.9 On 8 December 2014, after consultation with the parties, the Panel adopted its Working Procedures⁹ and timetable. Following the Panel's decision to consult with the World Organization for Animal Health (OIE) and individual scientific experts, and after consultation with the parties, the Panel adopted its revised timetable and additional Working Procedures for the Panel's Expert Consultation on 2 June 2015.¹⁰

1.10 The Panel held a first substantive meeting with the parties on 20 and 23 April 2015. A session with the third parties took place on 21 April 2015. The Panel held a meeting with the experts and the parties on 14 and 15 September 2015. The Panel held a second substantive meeting with the parties on 16 and 17 September 2015.

1.11 On 19 November 2015, the Panel issued the descriptive part of its Report to the parties. The Panel issued its Interim Report to the parties on 11 February 2016. The Panel issued its Final Report to the parties on 7 April 2016.

1.3.2 Working procedures concerning Strictly Confidential Information (SCI)

1.12 At Russia's request and after consultation with both parties, the Panel adopted, on 8 December 2014, additional working procedures concerning SCI.¹¹

1.3.3 Arrangements for language interpretation

1.13 On 16 April 2015, just before the first substantive meeting, Russia requested the Panel to authorize simultaneous English-to-Russian and Russian-to-English interpretation during the first substantive meeting. Following exchanges with the parties, and after listening to the parties' views in the course of the first substantive meeting, the Panel informed the parties, that for the purposes of the first substantive meeting with the parties (i) interpreters could be present at the meeting, provided that Russia included their names in its delegation list and that the interpreters were provided and financed by Russia; (ii) the interpreters could use the interpretation booths to provide only English-to-Russian simultaneous interpretation for the benefit of Russia's delegation; (iii) Russia's delegation must make statements and submissions to the Panel and other parties only in English; and (iv) for the purpose of the proceedings, only statements and submissions made in English must form part of the record.

⁹ See the Panel's Working Procedures in Annex A-1.

¹⁰ See the Panel's additional Working Procedures for Panel's Expert Consultation in Annex A-3.

¹¹ See the Panel's additional Working Procedures concerning Strictly Confidential Information in Annex A-2.

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1.14 At the beginning of the third-party session, after listening to the third parties' views, the Panel authorized simultaneous English-to-Russian interpretation for the third-party session with the same conditions as those for the first substantive meeting with the parties.

1.15 On 1 June 2015, well before the second substantive meeting with the parties, Russia renewed its request for simultaneous English-to-Russian and Russian-to-English interpretation, in particular, in respect of the Panel's meeting with the experts. On 13 August 2015, following exchanges with the parties, and after consultation with the third parties¹², the Panel informed the parties that it would authorize simultaneous English-to-Russian and simultaneous Russian-to-English interpretation during the Panel's meeting with the experts, and simultaneous English-to-Russian interpretation during the second substantive meeting with the parties (replicating the arrangements at the first substantive meeting with the parties). The Panel also confirmed that the interpreters could use the interpretation booths, as available, in the rooms booked for the meeting with the experts and for the second substantive meeting with the parties.

1.16 Furthermore, the Panel emphasized that the arrangements for interpretation were conditioned on the following: (i) the interpretation was conducted only by the interpreters included in Russia's delegation; (ii) the cost of the interpretation was covered exclusively by Russia; (iii) only statements made in English would form part of the official record of the proceedings; and (iv) the interpreters' statements, when interpreting what a member of Russia's delegation said in a language other than English, would be considered the only statements forming part of the record.

1.17 The arrangements communicated to the parties by the Panel on 13 August 2015 were followed in the course of the meeting with the experts and of the second substantive meeting.

1.3.4 Consultation with experts and relevant international organizations

1.3.4.1 Panel's decision to consult with experts

1.18 At the organizational meeting of the Panel with the parties held on 21 November 2014, the European Union indicated that at that point in time, it did not see the need for the Panel to consult with experts. Russia suggested that the Panel's decision on whether to consult with experts should be made after the first

¹² The Panel did not receive any requests for enhanced third-party rights from any third party. However, through a communication dated 19 June 2015, the European Union invited the Panel to seek, due to the systemic interests involved, the third parties' views on Russia's request for interpretation during the second substantive meeting and the meeting with the experts. After consulting with the parties and pursuant to paragraph 12 of the Panel's Working Procedures, the Panel decided to ask the third parties to provide their views on the use of interpretation in any subsequent meeting of the Panel.

substantive meeting. The Panel decided to postpone deciding on the matter until after the first substantive meeting.

1.19 On 28 April 2015, after the first substantive meeting, the Panel asked the parties to identify issues that the parties considered would benefit from inputs from experts and international organizations, in the hypothetical event the Panel were to consult experts and/or international organizations pursuant to Article 11.2 of the SPS Agreement. The Panel also asked for the parties' views on (i) the profiles of experts that would be most valuable for the Panel to consult in this dispute; (ii) whether the Panel should conduct written consultations, oral consultations, or both; (iii) whether the Panel should consult other relevant organizations – either international or regional; and (iv) a revised timetable and additional working procedures.¹³

1.20 On 19 May 2015, the European Union and Russia expressed their views on these matters.

1.21 On 26 May 2015, the Panel informed the parties of its decision to consult the OIE as well as individual experts. The Panel also requested the parties to submit the following: (i) the parties' agreed list of names of individual experts; (ii) a list of potential questions for the experts; and (iii) comments on the revised timetable and additional working procedures incorporating the expert consultation process. On 1 June 2015, the parties submitted their comments on the revised timetable and additional working procedures.

1.22 On 2 June 2015, the Panel adopted the revised timetable and Additional Working Procedures for the Panel's consultation with experts.

1.3.4.2 Expert selection

1.23 On 28 May 2015, the Panel requested the Food and Agriculture Organization of the United Nations (FAO) and the OIE to provide names and contact details of possible individual experts who could assist the Panel in five areas related to African swine fever: epidemiology, virology, wild boar behavioural ecology, monitoring and surveillance, and control and biosecurity. The Panel received lists of names from the OIE and FAO on 8 and 11 June 2015, respectively.

1.24 On 12 June 2015, in accordance with the timetable, the parties submitted their suggested questions for the OIE and the individual experts. The parties did not submit any agreed list of names of individual experts. Russia, however, sent its own list of suggested names of experts. Except for one, the names submitted by Russia were already included in the lists of names submitted by the OIE and the FAO on 8 and 11 June 2015, respectively.

1.25 On the same day, the Panel sent to the parties a communication noting the list of experts' names suggested by Russia and requesting the European Union to

¹³ Panel question No. 1 following the first substantive meeting.

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comment on whether the Panel should contact the expert suggested by Russia but not included in the lists submitted by the FAO and the OIE.

1.26 On 15 June 2015, the European Union expressed its preference for the Panel to contact only the persons on the list of potential experts who were suggested by the FAO and OIE. On the same day, the Panel sent preliminary communications to the experts suggested by the FAO and OIE. On 17 June 2015, Russia sent additional comments.

1.27 On 18 June 2015, the Panel informed the parties that it had contacted the experts suggested by the FAO and the OIE.

1.28 On 29 June 2015, the Panel sent to the parties a consolidated list of names of experts, along with the available relevant accompanying documentation.¹⁴ In addition, the Panel requested the parties to comment on whether the Panel should contact two additional experts whose names were suggested by one of the experts from the list submitted by the OIE and the expert suggested by Russia but not included in the lists submitted by the FAO and the OIE. On 3 July 2015, the parties provided their comments. The European Union considered that the experts already contacted by the Panel provided sufficient basis for the next steps in the procedure. Russia considered that it was not appropriate to contact either of the experts suggested by the expert proposed by the OIE while supporting contacting the expert Russia had previously identified.

1.29 On 8 July 2015, following reception of the response from one of the experts recommended by the OIE, the Panel sent to the Parties an updated consolidated list of names of experts and requested the parties to comment on the list. On 15 July 2015, the parties submitted their comments. The European Union welcomed the amount of expertise available in the experts contacted by the Panel and requested the Panel not to consider retaining one of the potential experts due to potential conflict of interests. Russia expressed its preference for the Panel to choose as its experts Professor Penrith, Dr Thomson, and Dr Thiermann.

1.30 On 21 July 2015, the Panel informed the parties that it had selected the following experts to assist the Panel: (i) Dr Gideon Brückner¹⁵; (ii) Professor Mary Louise Penrith¹⁶; (iii) Dr Alejandro Thiermann¹⁷; and (iv) Dr Gavin Thomson.¹⁸

¹⁴ This documentation included, where available for each candidate: (i) CV, (ii) list of publications, (iii) declaration of potential conflicts of interest, and (iv) response received from the expert to the Panel's communication requesting availability and interest to serve as expert to the Panel.

¹⁵ Dr Brückner is President of the OIE Scientific Commission for Animal Diseases and a former National Director of Veterinary Services of South Africa, former Head of the OIE Scientific and Technical Department and former Deputy Director General of the OIE.

¹⁶ Professor Penrith is a veterinary consultant and professor at the University of Pretoria in South Africa, former Assistant Director, Onderstepoort Veterinary Institute and Vice Chairperson of the Education Committee of the South African Veterinary Association.

1.3.4.3 Panel's questions to the OIE and to the individual experts

1.31 On 24 July 2015, the Panel sent written questions to the individual experts and to the OIE. On 13 August 2015, the Panel received written responses from Dr Thiermann. On 19 August 2015, the Panel received written responses from Professor Penrith. On 21 August 2015, the Panel received written responses from Drs Brückner and Thomson.

1.32 In light of the responses submitted by the experts, on 24 August 2015, the Panel requested the OIE to provide an official electronic copy of the 23rd edition of the Terrestrial Code.¹⁹ The Panel further requested the OIE to clarify whether any changes were made to Chapter 15.1 (African swine fever) of the 22nd edition of the Code that were reflected in the 23rd edition.

1.33 On 25 August 2015, the Panel received an electronic copy of the 23rd edition of the Terrestrial Code from the OIE. The OIE indicated that in its view, no material changes were made to Chapter 15.1 (African swine fever) from the 22nd to the 23rd editions of the Terrestrial Code. On 26 August 2015, the OIE further opined that any perceptible changes in the text of Chapter 15.1 as reflected in the 23rd edition of the Terrestrial Code were purely editorial. The Panel provided the parties with a copy of the OIE correspondence.

1.34 On 24 August 2015, the Panel requested the experts to confirm whether and to what extent their responses to the Panel's questions would materially differ in light of the changes in Chapter 15.1 (African swine fever) from the 22nd to the 23rd editions of the Terrestrial Code. None of the individual experts indicated that the editorial changes would have any material impact on the responses they had submitted to the Panel's questions.

1.35 On 28 August 2015, the Panel received written responses from the OIE to its questions.

1.36 On 7 September 2015, the parties submitted comments on the responses provided by the OIE and the individual experts.

1.37 On 23 September 2015, the Panel sent additional questions to the OIE. On 25 September 2015, the Panel received the OIE's written responses to the additional questions. The Panel requested the parties to comment on OIE's

¹⁷ Dr Thiermann is Senior International Organization Coordinator for the Animal and Plant Health Inspection Services of the US Department of Agriculture, based at the OIE, and former President of the OIE Terrestrial Animal Health Standards Commission.

¹⁸ Dr Thomson is Co-director of TAD Scientific CC, a registered consulting company in South Africa, and formerly employed by the FAO as the principal Epidemiologist of the Pan-African Programme for the Control of Epizootics, and former Director of the Onderstepoort Veterinary Institute.

¹⁹ One of the experts brought to the attention of the Panel the fact that Exhibit EU-3, entitled "Chapter 15.1 of the 23rd edition of the Terrestrial Code", appears to correspond to the 22nd edition of the Terrestrial Code.

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responses. The European Union directed the Panel to its response to Panel question No. 241; Russia did not submit any comments on the OIE's responses.

1.3.4.4 Panel's meeting with the experts and the parties

1.38 In preparation for the Panel's meeting with the experts and the parties, on 7 September 2015, the parties submitted advance questions to the experts.

1.39 The Panel held a meeting with the experts and the parties on 14 and 15 September 2015.

1.40 On 1 October 2015, the Panel sent a transcript of the meeting to the individual experts and to the parties, with a request for them to verify that the transcript accurately reflected their interventions. Following receipt of comments on the transcript, and having made certain corrections requested by the experts and the parties, the Panel sent a final version of the transcript to the experts and the parties on 19 November 2015.²⁰

2. FACTUAL ASPECTS

2.1 *The Relevant Disease: African Swine Fever*

2.1 African swine fever (ASF) is a highly contagious haemorrhagic disease of pigs, warthogs, European wild boar, and American wild pigs, equally susceptible to both genders and all age groups. The organism which causes ASF is the African swine fever virus (ASFV), a DNA virus in the *Asfarviridae* family; genus *Asfivirus*. Virulence of ASFV isolates vary greatly.²¹ Severe cases of ASF disease are characterized by high fever, loss of appetite, respiratory

²⁰ Pursuant to paragraph 1.13 of the additional Working Procedures for Panel's Expert Consultation, this transcript will not be annexed to the Panel report. On 8 October 2015, the Panel received Russia's comments to the transcript. Russia requested the Panel to change, among other things, a word in the intervention made by Ms. Ausheva, a member of Russia's delegation during the meeting with the experts consulted by the Panel. The Panel did not change that particular word in the final version of the transcript sent to the parties and to the experts on 19 November 2015. On 3 December 2015, Russia, in its comments to the draft descriptive part, requested the Panel to introduce the change of that word. The Panel does not accept this request. As we note in para. 1.16 above, the Panel would authorise simultaneous English-to-Russian and simultaneous Russian-to-English interpretation during the Panel's meeting with the experts, on the understanding that the interpreters' statements, when interpreting what a member of Russia's delegation said in a language other than English, would be considered the only statements forming part of the record. After listening again to the recording of the meeting, it is clear that the word Russia requested to modify was clear in the recording of what was said by the interpreter addressing the Panel in English. In light of these considerations, the Panel will not modify the final transcript on record. Moreover we note that in the context of the evidence on record, the change requested by Russia would not have materially affected our findings below.

²¹ OIE General Disease Information Sheets: African Swine Fever (ASF Disease Information Sheet) (Exhibits RUS-4 and RUS-171). http://www.oie.int/fileadmin/Home/eng/Media_Center/docs/pdf/Disease_cards/ASF-EN.pdf (last accessed 23 October 2015).

distress, diarrhoea, haemorrhages in the skin and internal organs, and death in 2-10 days on average. Mortality rates may be as high as 100%.²²

2.2 ASF is a disease covered by Chapter 15.1 of the Terrestrial Code and must be reported to the OIE.²³ Chapter 15.1 of the Terrestrial Code distinguishes between:

- a. domestic pigs (including permanently captive and farmed free-range pigs) and wild pigs (including feral pigs and wild boars); and
- b. *Sus scrofa* and African pig species (e.g. warthogs).²⁴

2.3 ASF occurs through transmission cycles involving domestic pigs, wild boars, wild African swine, and soft ticks. African wild swine species, such as warthogs (*Phacochoerus aethiopicus*), bush pigs and giant forest hogs (*Hylochoerus meinertzhageni*) are usually inapparently infected and act as reservoir hosts of ASFV in Africa. However, domestic pigs (*Sus domestica*), European wild boar, American wild pigs, and *Sus scrofa* are hosts that manifest the disease. Ticks of the genus *Ornithodoros* are considered the natural arthropod host and there is some speculation that ASFV is a virus of arthropods, and that mammalian species, such as domestic swine, represent "accidental hosts".²⁵

2.4 Direct transmission of ASFV can occur through contact between sick and healthy animals. As ASFV can remain infectious for 3-6 months in uncooked pork products, indirect transmission can occur through feeding on garbage containing infected meat. Other indirect means of transmission include through biological vectors (soft ticks of the genus *Ornithodoros*), and fomites, such as premises, vehicles, implements and clothes.²⁶

2.5 The virus is found in blood, tissues, secretions and excretions of sick and dead animals, as well as soft ticks of the genus *Ornithodoros*. Animals that have recovered from either acute or chronic infections may become persistently infected, acting as virus carriers, especially in African wild swine, and in domestic pigs in enzootic areas. The incubation period of ASFV in nature is usually 4-19 days or 3-4 days in acute form. For the purpose of the Terrestrial Code, the incubation period in *Sus scrofa* is indicated as 15 days.²⁷

²² ASF Disease Information Sheet (Exhibits RUS-4 and RUS-171).

²³ OIE website, *Listed diseases, infections and infestations in force in 2015* (Exhibit RUS-177).

²⁴ See Article 15.1.1 (first paragraph) of the 23rd edition of the Terrestrial Code. OIE, *Terrestrial Animal Health Code* 23rd edn (2014), Vol. II, p. 649.

²⁵ OIE Technical Disease Card: African Swine Fever (ASF Technical Disease Card) http://www.oie.int/fileadmin/Home/eng/Animal_Health_in_the_World/docs/pdf/Disease_cards/AFRI_CAN_SWINE_FEVER.pdf (last updated April 2013; last accessed 23 October 2015). See OIE ASF Technical Disease Card (Exhibit RUS-186).

²⁶ ASF Technical Disease Card (Exhibit RUS-186).

²⁷ ASF Technical Disease Card (Exhibit RUS-186). See also Article 15.1.1 (General provisions) of the Terrestrial Code. OIE, *Terrestrial Animal Health Code* 23rd edn (2014), Vol. II, p. 649.

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2.6 According to the OIE, ASFV remains viable for long periods in blood, faeces and tissues, especially infected uncooked or undercooked pork products. ASFV also has the ability to multiply in vectors (*Ornithodoros sp.*). The OIE's Technical Disease Card indicates that ASFV is highly resistant to low temperatures but can be heat-inactivated at 56°C for 70 minutes or 60°C for 20 minutes.²⁸ The OIE's Technical Disease Card further indicates that ASFV is also inactivated at a pH less than 3.9, or greater than 11.5 in a serum-free medium; it is also susceptible to chemicals and disinfectants such as ether and chloroform.²⁹

2.7 As indicated in the OIE's Technical Disease Card (last updated in April 2013), ASF is enzootic in most countries of Sub-Saharan Africa including Madagascar. In Europe, it has been reported and successfully eradicated from the Iberian Peninsula but continues to be found in Sardinia. In the 1970s, ASF was present in the Caribbean (Haiti and the Dominican Republic), and in one country in South America (Brazil), but was successfully eradicated. Most recently, it has appeared in the Caucasus (Georgia, Azerbaijan, and Armenia) and Russia.³⁰ The situation as of the time of this Panel proceeding will be further examined below.³¹

2.2 *The Measures at Issue*

2.8 In these proceedings, the European Union challenges "certain Russian measures adopting, maintaining or applying an import ban or import restrictions, which prevent the importation of the products at issue from the EU into Russia".³²

2.9 In its panel request, the European Union enumerates the specific measures at issue as follows:

A ban on imports from Lithuania as described in the administrative notice from the Russian Federal Service for Veterinary and Phytosanitary Supervision of 25 January 2014 (FS-EN-8/1023). This notice announced a temporary restriction on imports of "live pigs and its genetic material; pork products (which were not heat treated no less than 72°C for at least 30 minutes); products from slaughter of wild boars; horn-hoofed and leather, intestinal materials; bristles; feed for pigs; hunting trophies, which were not subjected to full taxidermy treatment; previously used equipment for maintenance, transportation, slaughter and cutting of pigs" from Lithuania as of 25 January 2014. This measure was notified to the WTO on 10 February 2014 (G/SPS/N/RUS/48);

²⁸ ASF Technical Disease Card (Exhibit RUS-186).

²⁹ *Ibid.*

³⁰ ASF Technical Disease Card (Exhibit RUS-186).

³¹ See paras. 2.22. to 2.23 below. See also Appendix 1 and para. 7.208 below.

³² European Union's panel request, p. 1.