

Statement by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, January 3, 2018

1. RUSSIAN FEDERATION – MEASURES ON THE IMPORTATION OF LIVE PIGS, PORK AND OTHER PIG PRODUCTS FROM THE EUROPEAN UNION
 - A. RECOURSE TO ARTICLE 22.2 OF THE DSU BY THE EUROPEAN UNION (WT/DS475/17)
 - The United States intervenes at this meeting to comment on two issues.
 - First, the United States understands that Russia objected in advance of this meeting to the request of the European Union (“EU”) made pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”).
 - Upon Russia’s objection to the EU’s request, the matter was automatically referred to arbitration under Article 22.6 of the DSU, as provided for in the text of that provision.
 - Therefore, this item could have been removed from the agenda and this meeting could have been canceled.
 - Second, the United States notes Russia’s statement that the EU “failed” to commence compliance proceedings under Article 21.5 of the DSU before submitting its request under Article 22.2.
 - Article 22.2 of the DSU states that if a Member fails to bring a challenged measure found to be inconsistent with a covered agreement into compliance therewith within the reasonable period of time determined under Article 21.3 of the DSU, then such Member shall, if requested, enter into negotiations with the complaining Member “with a view to developing mutually acceptable compensation.”
 - If no such agreement is reached, DSU Article 22.2 states that “any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application of the Member concerned of concessions or other obligations under the covered agreements.”
 - Further, DSU Article 23.2 sets out the actions to obtain redress for a breach of WTO rules and confirms that a Member shall “follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.”

- There is thus no support in the text of Article 22.2, or Article 23.2, for the suggestion that a Member would be required to first bring a separate compliance proceeding under Article 21.5 of the DSU.
- The United States notes, however, that any level of suspension of concessions determined in the arbitration must be equivalent to the current level of nullification and impairment.
- This is clear from the text of Article 22.4 of the DSU, which states that the “level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment,” thus referring to the present level at the time suspension is authorized by the DSB.