

World Trade Organization

Panel Proceedings

***Russian Federation – Tariff Treatment of Certain Agricultural and
Manufacturing Products (DS485)***

Third Party Oral Statement

by

Norway

at the Third Party Session of the Panel

Geneva, 16 September 2015

Mr. Chair, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these proceedings. I will not repeat the points we made in our written statement, but rather briefly set out Norway's view on one of the other legal issues raised; namely the application of *ad valorem* duties exceeding the bound rates that are temporarily not applied.
2. The facts relating to tariff line 4810 92 100 0 (certain paper and paper board products), as the case stood at the date of the establishment of the panel, seem to be undisputed: the bound rate for this tariff line is 5%, while the Common Customs Tariff of the Eurasian Economic Union provides for an *ad valorem* duty of 15% for these products. However, there has been a temporary reduction of the *ad valorem* duty to 5% between 20 April 2013 and 31 December 2015.
3. The Russian Federation (Russia) has offered some new information in its First Written Submission. Decision no. 85 of the Board of the Eurasian Economic Commission of 2 June 2015 apparently ensures that a 5% *ad valorem* duty will be applied on a permanent basis to this tariff line in the future.¹ Russia thus argues that the measure described by the European Union (EU) “simply does not exist”² and that the Panel should 1) abstain from making a finding on this measure as it falls outside its terms of reference,³ and 2) find the measure in accordance with Russia's WTO commitments.⁴
4. Norway understands Russia's statements as a reference to Articles 6.2 and 7.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). In terms of the temporal limitations of a panel's terms of reference, the Appellate Body has underlined that “[t]he term ‘specific measures at issue’ in Article

¹ First Written Submission of Russia, para. 29.

² First Written Submission of Russia, para. 30, Request for a Preliminary Ruling pursuant to Article 6.2 by Russia, para. 54.

³ First Written Submission of Russia, para. 42, and Request for a Preliminary Ruling pursuant to Article 6.2 by Russia, para. 63.

⁴ First Written Submission of Russia, para. 42.

(As delivered)

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**.⁵ As we know, the Panel in this case was established on 25 March 2015. Norway thus struggles to see how the measure identified by the EU is not within the Panel’s terms of reference.

5. The question is then whether Decision no. 85 of the Board of the Eurasian Economic Commission, adopted after the date of the establishment of the Panel, is also within the Panel’s terms of reference. Norway will not go into detail on this question, but notes that the EU seems to agree that this could be the case.⁶ If this approach is followed, a duty of 5% would be applied to the tariff line in question, thus ending the application of WTO-inconsistent duties. This would however not necessarily mean that the claims related to these duties are automatically dispersed with. Norway refers to the panel in *Japan – Film*, which observed that there are several cases where panels have proceeded to adjudicate claims involving measures which no longer exist or which are no longer being applied.⁷ In those cases, the measures typically had been applied in the very recent past, as is the case in the case at hand. For example, the panel in *EEC – Measure on Animal Feed Proteins*, ruled on a discontinued measure, but one that had terminated after the terms of reference of the panel had already been agreed. In line with this, even if the Panel should find that Decision no. 85 is within the Panel’s terms of reference, it should still rule on the measure as identified by the EU. This would counteract the possibility of having to chase a moving target and would be in line with the object and purpose of the dispute settlement system, as contained in DSU Article 3.2 and 3.3.
6. As for the consistency of the measure identified by the EU with Russia’s WTO commitments, Norway agrees with the EU that a temporary reduction of a duty that exceeds the bound rate is not in accordance with GATT Article II:1(a).⁸ The panel in

⁵ Appellate Body Report, *EC – Chicken Cuts*, para. 156, emphasis added.

⁶ Reply to Russia’s Preliminary Ruling Request by the EU, para. 90.

⁷ Panel Report, *Japan – Film*, para. 10.58.

⁸ First Written Submission of the EU, para. 53.

EC – IT Products underlined that “...we are of the view that the duty suspension measure does not eliminate the inconsistency with Article II:1(a) because there remains the potential of deleterious effects on competition.” Norway agrees with the EU that the measure at issue corresponds to the situation in *EC – IT Products*. The duty suspension creates the potential of deleterious effects on competition and is thus inconsistent with Article II:1(a).

Mr. Chair, Members of the Panel,

7. This concludes Norway’s statement. Thank you for your attention.