

(As delivered)

IN THE WORLD TRADE ORGANIZATION

Before the Appellate Body

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

(AB-2016-5 / DS475)

Oral Statement

by

Norway as a Third Participant

**Hearing of the Appellate Body
Geneva**

24 November 2016

Presiding Member, Members of the Division,

1. Norway welcomes this opportunity to make a brief statement as a Third Participant before the Appellate Body in this appeal. In this statement, we will offer some views on the interpretation of the first sentence of Article 6.2 of the SPS Agreement, and what the obligation to “recognize the concepts of pest- or disease-free areas” entails.
2. In this dispute, the Panel concluded that the Russian Federation recognises the concepts of pest- or disease-free areas and areas of low pest or disease prevalence in respect of African swine fever in line with the obligations set out in the SPS Agreement Article 6.2. This finding has been appealed by the European Union, who argues that the Panel erred in its assertion that there can never be a breach of this obligation if such recognition “is stated in abstract terms in the importing Member’s legislation”.¹
3. In Norway’s view, the Panel in this dispute appears, to a large extent, to rely on an isolated reading of the Appellate Body’s statement in *India – Agricultural Products* that “[w]e consider that the fact that Article 6 does not prescribe the particular manner by which Members must ‘ensure’ adaptation of their SPS measures or ‘recognize’ the relevant concepts suggests that Members enjoy a degree of latitude in determining how to do so within their domestic SPS regime”.² Although we acknowledge the point made by the Panel in this dispute that “[t]he first sentence of Article 6.2 does not prescribe whether a Member’s recognition of the relevant concepts must be done in writing through a formal governmental act, or whether it may be accomplished in some other manner”,³ it is crucial to read Article 6.2 in its context.
4. The Appellate Body in *India – Agricultural Products* pointed out that “[t]he main and overarching obligation under Article 6 for 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”.⁴ This is also supported by the wording “in particular” in the first sentence of

¹ European Union’s Other Appellant Submission, para. 12.

² Appellate Body Report, *India – Agricultural Products*, para. 5.137.

³ Panel Report, para. 7.367.

⁴ Appellate Body Report, *India – Agricultural Products*, para. 5.141.

Article 6.2. In this regard, the Appellate Body has also confirmed that an assessment of a measure's conformity with Articles 6.1 and 6.2 should start with the first sentence of Article 6.2, followed by the second sentence of Article 6.2, before turning to Article 6.1.

5. Hence, Norway agrees with the European Union, as well as with Australia in its third participant submission, that interpreting the first sentence of Article 6.2 in isolation from the requirement in Article 6.1 would be incorrect as it is clear that the former develops the obligation contained in Article 6.1, and the two paragraphs should be harmoniously interpreted.
6. In conclusion, Norway considers that a mere formal recognition of the concepts described in the first sentence of Article 6.2 would be insufficient to fulfil the obligation contained in that provision.
7. Thank you.
