

Pigs, African Swine Fever and the Principle of Regionalisation: Comments on the Appellate Body Report in the Russia – Pigs Dispute

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Abstract

This commentary examines the recent Appellate Body Report in Russia – Pigs. This case is salient because it offers further clarification of the principle of regionalisation in the context of WTO law. By reading the different terms of Article 6 of the SPS Agreement in a holistic way, the Appellate Body has offered an interpretation of the legal text that arguably strengthens the principle.

I. INTRODUCTION

At the end of February 2017, the Appellate Body issued its report in an important sanitary dispute between the European Union (“EU”) and the Russian Federation concerning various Russian import restrictions allegedly imposed by Russia due to risks of African swine fever (“ASF”).¹ The report is significant for at least two reasons.

First, it concerns trade in agricultural products, which is (or rather was) a vital part of the trade between the EU and the Russian Federation. It also relates to a sanitary and phytosanitary (“SPS”) measure, which is a category that is frequently problematic in mutual relations between the two trading partners: the summaries of the meetings of the SPS Committee provide proof of this.² For example, during the latest meeting the EU raised two SPS concerns: one relating to the import restrictions on processed fishery products from Estonia and Latvia, and one concerning the import restrictions on certain animal products from Germany.³ Under the previous “normal” circumstances, 42% of

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¹ Appellate Body Report, *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*, WT/DS475/AB/R, 23 February 2017 (*Russia – Pigs*).

² See also E Besedina and T Coupe, *Beggar Thy Neighbor? Application of SPS measures by the Russian Federation*, NUPI Working Paper 840 (arguing that SPS measures are used as means to exert political and economic pressure on the Russian trading partners).

³ Committee on Sanitary and Phytosanitary Measures, *Summary of the Meeting of 13–14 July 2017. Note by the Secretariat*, G/SPS/R/87.

Russian imports of agricultural products came from the EU. Clearly the major disruption of trade between the EU and Russia was caused by the series of trade sanctions imposed by both sides⁴ (resulting in circa 53% less exports of agricultural products from 2013 to 2015), with serious losses for both EU farmers as well as Russian consumers (by one estimate it has resulted in a 26% increase in food prices in Russia⁵). Yet, if trade relations are to resume and return to normal, the clarification on how to implement one of the contested SPS measures will be important, especially in light of the fact that more than 80% of imports in Russia are covered by some non-tariff barriers.⁶

Second, the report also has systemic importance for World Trade Organization law, as it sheds a new light on the so-called “principle of regionalisation”. Given its potential to facilitate trade, regionalisation is likely to become a salient principle in international trade law, and it is particularly significant for those WTO Members that are characterised by large and geographically diverse territories, such as both the EU and Russia.

This commentary proceeds as follows. Section II briefly summarises the facts of the dispute and selected findings of the panel. Section III turns to the Appellate Body report and analyses its approach to the regionalisation principle. The final section offers conclusions.

II. BACKGROUND

The first case of ASF was reported in Lithuania on 24 January 2014, and the disease was subsequently identified in Poland, Latvia, and Estonia. ASF “is a highly contagious haemorrhagic disease of pigs, warthogs, European wild boar, and American wild pigs,” with high mortality rates (“as high as 100%”),⁷ and with no cures or vaccines. In short, while it is not dangerous to humans, ASF is a serious threat for pigs. In response to these developments, Russia introduced a series of import restrictions on pigs, pork and other pig products originating in the above countries (so-called “individual import bans”, the first of which was adopted on 25 January 2014). In practice, it also refused to accept those products even if they came from other countries of the EU (the Union argued that this amounted to an “EU-wide ban”).⁸ Simultaneously with the outbreak of the disease, the EU started to take various protective and restrictive measures, in consultation with veterinary experts not only from the Union, but also from Russia, Belarus, and the World

⁴ For the economic assessment of trade sanctions imposed by the EU and countersanctions, see D Gros and M Di Salvo, *Revisiting Sanctions on Russia and Counter-Sanctions on the EU: The economic impact three years later*, CEPS Commentary, 13 July 2017, available at <bit.ly/2hXi0hc>, accessed 15 December 2017.

⁵ *Russian Food and Agricultural Import Ban* (Cornhusker Economics, 5 April 2017), available at <bit.ly/2AiTlc6>, accessed 15 December 2017.

⁶ *ibid.* In this context, it is worth noting that a number of disputes against Russia over its technical barriers to trade are currently pending in the WTO (all of them still at the consultation stage). This particularly includes: *Russian Federation – Recycling Fee on Motor Vehicles*, DS463 (complaint by Japan); *Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof*, DS499 (complaint by Ukraine); and *Russia – Measures Concerning the Importation and Transit of Certain Ukrainian Products*, DS532 (complaint by Ukraine).

⁷ Panel Report, *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*, WT/DS475/R, 19 August 2016, para. 2.1; the panel referred in this context to the OIE General Disease Information Sheets: African Swine Fever (ASF Disease Information Sheet) (Exhibits RUS-4 and RUS-171), available at <www.oie.int/fileadmin/Home/eng/Media_Center/docs/pdf/Disease_cards/ASF-EN.pdf>, accessed 15 December 2017.

⁸ Cf Panel Report, *Russia – Pigs*, *supra*, note 7, para. 7.37.

Organization for Animal Health (“OIE”).⁹ The aim of these actions was to contain ASF and prevent it from spreading to other areas (including within the affected EU Member States).

Since the informal consultations between the EU and Russia did not resolve the problem, on 8 April 2014 the European Commission launched a formal proceeding in the WTO, claiming that the individual import bans, as well as the EU-wide ban, violated various provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures (“SPS Agreement”). The panel was eventually established in July 2014. It circulated its report to the WTO Members only in August 2016, finding in favour of the EU on most of the issues.¹⁰ In September 2016 both parties decided to appeal the panel report. The Appellate Body issued its report on 23 February 2017. The reports were subsequently adopted by the Dispute Settlement Body one month later. In June 2017, the EU and Russia informed the Dispute Settlement Body that they had agreed on a reasonable period of time for implementation, which was set for 6 December 2017. Following unsuccessful consultation on a sequencing agreement, on 19 December 2017, the EU requested to suspend concessions pursuant to Article 22.2 of the DSU. Russia believes that it has complied, as the specific SPS bans were simply replaced by its general EU food embargo and has accordingly rejected the claim of non-compliance as well as the proposed level of retaliation (circa € 1.4 billion per year).¹¹

As a preliminary issue, the panel had to decide whether the import bans could qualify as SPS measures attributable to Russia. Russia, in fact, argued that this was not the case because its acts were dictated by the conditions established by agreements concerning bilateral veterinary certificates between the Russian Federation and the EU. According to these agreements, veterinary certificates could be issued only when “the entire European Union has been free from ASF during the previous three years in order for live pigs and pork products to be exported to Russia.” Hence (according to Russia) it was not that Russia imposed the measure, but rather the lack of compliance with such agreements that determined Russia’s decision not to import the said products. Following previous jurisprudence on what constitutes an SPS measure, the panel however disagreed with Russia and found that the EU provided sufficient evidence that “certain actions undertaken by Russia amount to an import ban applied to the importation of certain pig products from the entire European Union” (ie an EU-wide ban),¹² and that the measures were attributable to Russia.¹³ Another preliminary issue related to the bilateral veterinary

⁹ See B Salas, “Questions Raised in the Aftermath of the African Swine Fever Outbreak in the EU” (2014) 2 EJRR 218 at 218.

¹⁰ The delay was caused by the resignation of two members of the panel (and the subsequent need to reappoint new panellists) and the complexity of the dispute (eg the panel decided to appoint several scientific experts to advise it on technical aspects of the Russian measures).

¹¹ See respectively, *Russian Federation – measures on the importation of live pigs, pork and other pig products from the European Union*, Recourse to Article 22.2 of the DSU by the European Union, WT/DS475/17, 20 December 2017, and *Russian Federation – measures on the importation of live pigs, pork and other pig products from the European Union*, Recourse to Article 22.6 of the DSU by the Russian Federation, WT/DS475/17, 3 January 2018; available at <www.wto.org/english/tratop_e/dispu_e/cases_e/ds475_e.htm>, accessed 24 January 2018). For a first comment on these developments, see “EU-Russia arbitration in pork dispute unlikely to be completed in due time – WTO (TASS, 8 January 2018), available at <http://tass.com/economy/984204>, accessed 24 January 2018.

¹² Panel Report, *Russia – Pigs*, supra, note 7, para. 7.74.

¹³ *ibid.*, paras. 7.75–7.83.

certificates was whether the reference to these certificates in the Working Party Report of Russia's Accession Protocol could have shielded Russia from the application of the SPS Agreement. The panel again disagreed with Russia on this point, and held that the Working Party Report did not create any limits as to the assessment of the EU claims under the SPS Agreement.¹⁴

As far as the substance of the measures was concerned, the panel found, among other things, that neither individual nor EU-wide bans conformed to, or at least were based on, relevant international standards promulgated by the OIE (and as a consequence violated Articles 3.1 and 3.2 of the SPS Agreement). Although the panel found that Russia recognised the concepts of pest- or disease-free areas and areas of low pest or disease prevalence in respect of ASF (as required by Article 6.2), it also held that the EU provided Russia with all necessary information, while Russia neither adapted its measures to the SPS characteristics of the areas from where the products originated, nor to its own ASF-related characteristics (in violation of Articles 6.1 and 6.3 respectively). The panel also held that Russia did not base its measures on a proper risk assessment (as required by Articles 5.1–5.3). In consequence, the measures could not have been presumed to be based on sufficient scientific evidence (as required by Article 2.2). In a similar vein, the panel found that the import bans (both individual and EU-wide) were more trade restrictive than necessary to achieve the level of protection considered by Russia as appropriate (in violation of Article 5.6), and that by implication they were unnecessary (in violation of Article 2.2). Finally, the panel found that the Russian measures were not only discriminatory but also applied in a manner which constituted a disguised restriction on international trade (thus violating Article 2.3).

III. THE APPELLATE BODY REPORT AND ITS IMPLICATIONS

As mentioned, both parties decided to appeal the panel report. In particular, Russia argued, contrary to what was established by the panel, that: (i) the EU-wide ban was not attributable to Russia; (ii) the Russian accession protocol removed the measure from review under the SPS Agreement; (iii) the EU failed to provide Russia with necessary evidence to objectively demonstrate that certain areas within the EU were, and were likely to remain, ASF-free (re: Article 6.3); and (iv) Russia did not adapt the Latvian individual import ban to the ASF situation of areas within Latvian territory (re: Article 6.1). On the other hand, the EU requested in its appeal to reverse the panel's finding that Russia actually recognised the concepts of pest- or disease-free areas and areas of low pest or disease prevalence in respect of ASF (re: Article 6.2). Since the panel's other findings were not appealed, they become final.

With respect to two preliminary issues the Appellate Body upheld the panel's findings. First, it confirmed that Russia's decisions to prohibit imports constituted "composite measures" and that these decisions were attributable to Russia.¹⁵ In particular, the

¹⁴ *ibid.*, paras. 7.113–7.114. For a good general analysis on the relationship between WTO agreements and accession protocols, see JY Qin, "Mind the Gap. Navigating Between the WTO Agreement and Its Accession Protocols" in M Elsing, B Hoekman and J Pauwelyn (eds), *Assessing the World Trade Organization. Fit for Purpose?* (Cambridge University Press 2017).

¹⁵ See Appellate Body Report, *Russia – Pigs*, *supra*, note 1, paras. 5.21–5.23.

Appellate Body observed that the mere fact that the act of Russia (ie the decision to deny the importation of the product) is based on the rules not contained in its municipal law (here in the agreements concerning bilateral veterinary certificates between the Russian Federation and the EU) does not preclude the attribution of this act to the Russian Federation. What is important is the decision that was eventually taken by Russia (and which is undeniably attributable to that country). Second, it agreed with the panel that the Working Party Report (the document which is explicitly mentioned in the Russian accession protocol) should have not been read to limit the analysis of compatibility of the Russian measures with the SPS Agreement. In reaching this conclusion, the Appellate Body emphasised that the provisions of WTO-covered agreements must be read “in a way that gives meaning to *all* of them, harmoniously”¹⁶ (the so-called “principle of harmonious interpretation”). This meant that, although Russia had a right to use old bilateral veterinary certificates, it was also obliged to introduce all necessary changes to the certificates “so as to ensure that SPS measures taken on the basis of such certificates are in compliance with their WTO obligations.”¹⁷

However, the most interesting part of the Appellate Body’s report relates to its analysis of the regionalisation requirements provided in the SPS Agreement. Before going into details of this analysis, it is worth citing the relevant provision in full:

1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area – whether all of a country, part of a country, or all or parts of several countries – from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organisations.
2. Members shall, in particular, recognise the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.
3. Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

Article 6 can be characterised as establishing three sets of obligations: two for importing Members (the duty to adapt SPS measures to regional characteristics (Article 6.1), and the duty to recognise the concepts of pest- or disease-free areas (Article 6.2)); and one for

¹⁶ *ibid.*, para. 5.34.

¹⁷ *ibid.*

exporting Members (the duty to provide the necessary evidence of pest-free areas (Article 6.3)).

The Appellate Body upheld the panel's finding that the EU had provided the necessary evidence to objectively demonstrate to Russia that certain areas in the EU were, and were likely to remain, ASF-free, under Article 6.3. While the Appellate Body upheld the panel's finding, according to which Russia failed to comply with Article 6.1 by not adapting the ban on imports of the products at issue to the SPS characteristics related "to ASF in Russia", it did modify the panel's report according to which "Russia had failed to adapt the ban on imports of the products at issue from Latvia to the ASF-free areas within Latvia."¹⁸ Finally, the Appellate Body reversed the panel's finding that Russia recognises the concepts of pest- or disease-free areas pursuant to Article 6.2, but was unable to conclude the legal analysis on this issue due to the lack of necessary factual determinations.

What is important about the Appellate Body report is that it reinforces the regionalisation obligations of the SPS Agreement. The implementation of Article 6 remained for a long time rather unsatisfactory. WTO Members have frequently complained at the meetings of the SPS Committee about the length of the bilateral recognition processes¹⁹ and lack of consistency among WTO Members. In many countries, the relevant procedures were not transparent (and sometimes not even clearly defined), while the predictability of the recognition process was relatively low. Overall, the regionalisation requirements provided by the SPS Agreement were considered by many as relatively weak.²⁰ Some progress was made when the SPS Committee adopted the guidelines for implementation of Article 6, which set out the basic elements of the recognition process (including suggested time frames and typical administrative steps).²¹ Another important development was the Appellate Body report in *India – Agricultural Products*²² (which was the first case addressing recognition disciplines) and panel report in *US – Animals*²³. The *Russia – Pigs* reports build on this case law, clarifying the content of Article 6 and strengthening some of its obligations. These developments should be welcomed.

In this context, it is worth noting that the Appellate Body elucidated the *standard of review* (ie the level of scrutiny) applicable to evidence that is provided by the exporting WTO Member to the importing Member under Article 6.3. According to the Appellate Body, the task of the panel is limited, as it is only expected to review the assessment

¹⁸ Supra, note 1, paras. 5.103–5.108.

¹⁹ Cf eg Committee on Sanitary and Phytosanitary Measures, *Comments on Article 6 of the SPS Agreement – Regionalization. Communication by Mexico*, G/SPS/GEN/388, 1 May 2003. See also AG Micara, "Regionalization Within the SPS Agreement: Recent Developments" in G Adinolfi et al (eds), *International Economic Law. Contemporary Issues* (Springer 2017). At the same time, we are not aware of any statistical data that would provide information on the average length of the recognition process in WTO Members.

²⁰ L Gruszczynski, *Regulating Health and Environmental Risks under WTO Law. A Critical Analysis of the SPS Agreement* (Oxford University Press 2010) 261–62.

²¹ SPS Committee, *Guidelines to Further Practical Implementation of Article 6 of the Agreement on the Application of Sanitary and Phytosanitary Measures*, G/SPS/48, 16 May 2008.

²² Appellate Body Report, *India – Measures Concerning the Importation of Certain Agricultural Products*, AB/DS430/AB/R, 4 June 2015 (*India – Agricultural Products*).

²³ Panel Report, *United States – Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina*, WT/DS447/R, 24 July 2015 (*US – Animals*).

conducted by the importing Member. This means that a panel is prohibited from conducting a *de novo* review of this evidence.²⁴ It should rather assess “whether the evidence provided by the exporting Member to the importing Member is of a nature, quantity, and quality sufficient to enable the importing Member’s authorities ultimately to make a determination as to the pest or disease status of the relevant areas within the exporting Member’s territory.”²⁵ Such an approach closely corresponds with the general treatment of scientific evidence under the SPS Agreement. Under the already-established case law, a panel should not decide whether a municipal risk assessment is correct, but only whether it is rational – that is based on coherent reasoning and respectable scientific evidence.²⁶ This limited role of the panel is normally justified by its lack of competences in scientific matters and the need to preserve the right of WTO Members to establish their own appropriate level of protection. When it comes to the assessment of evidence under Article 6.3, a panel is not in any better position than when confronted with a risk assessment under Article 5.1.

A reader familiar with the SPS case law may also recognise two other standards here that have been used in the context of risk assessment and of provisional measures that are adopted in case of an insufficiency of scientific evidence (ie Article 5.7). First, the Appellate Body explained that “an exporting Member is expected to provide particularised evidence with respect to the pest or disease and the area concerned, and cannot merely adduce generic information or unsubstantiated assertions.”²⁷ This standard reminds the specificity requirement, which calls for the evaluation of the particular potential for harm arising from a specific SPS risk rather than a general discussion or assessment of whole categories of hazardous agents.²⁸ Second, the Appellate Body characterised the obligation of Article 6.3 as a perpetual one. WTO Members need to ensure that their SPS measures are up-to-date with the regional SPS characteristics. In other words, the obligation is not exhausted when a measure is adopted, but also applies afterwards. A similar standard was adopted under Article 5.1 (ie a measure is expected to have scientific backup in the form of a risk assessment during its entire regulatory life)²⁹ and under Article 5.7 (the obligation to seek to obtain additional information).³⁰ The specificity requirement, although it may be burdensome for an exporting Member, ensures that the level of protection sought by an importing Member is not compromised. The same function is performed by the perpetuity requirement.

²⁴ A similar conclusion is reached by Brendan McGivern, *WTO Appellate Body Report: Russia – Pigs (EU)*, White & Case WTO report, available at <bit.ly/2g2224U>, accessed 15 December 2017.

²⁵ Appellate Body Report, *Russia – Pigs*, supra, note 1, para. 5.66.

²⁶ For a more detailed discussion, see L Gruszczynski and V Vadi, “Standard of Review and Scientific Evidence in WTO Law and International Investment Arbitration: Converging Parallels?” in L Gruszczynski and W Werner (eds), *Deference in International Courts and Tribunals. Standard of Review and Margin of Appreciation* (Oxford University Press 2014).

²⁷ Appellate Body Report, *Russia – Pigs*, supra, note 1, para. 5.63.

²⁸ Cf eg Appellate Body Report, *European Communities – Measures Concerning Meat and Meat Products (EC-Hormones)*, WT/DS26/AB/R, WT/DS48/AB/R, 13 February 1998, para. 200.

²⁹ Cf eg Panel Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/R, 31 March 2008, para. 7.605.

³⁰ Cf Appellate Body Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/AB/R, 16 October 2008, para. 679.

Another interesting finding of the Appellate Body relates to the relationship between Articles 6.3 and 6.1. It held, contrary to the Russian argument, that the failure of an exporting country to provide necessary evidence under Article 6.3 did not automatically relieve an importing Member from its obligations under Article 6.1.³¹ In other words, it is possible to establish a violation of Article 6.1 even when an exporting Member did not comply with Article 6.3.³² The Appellate Body's interpretation strengthens the principle of regionalisation by clarifying that compliance with Article 6.3 should not be viewed as a precondition for finding a violation of Article 6.1.³³ Yet, it is plausible to expect that in most cases compliance with Article 6.1 will depend on compliance on Article 6.3, as in practice the exporting Member is best placed to gather and provide the relevant information. At the same time, there may be situations when the importing Member has, from other sources, all the information necessary to make a determination, such as for instance from the relevant international organisation (eg the OIE).³⁴ In this sense, the Appellate Body's conclusion is logical and ensures that the principle of regionalisation can be implemented in a wide variety of cases.

Finally, in its interpretation of Article 6.2 the Appellate Body has also reinforced the rules on regionalisation. As mentioned above, Article 6.2 establishes the obligation for importing Members to recognise the concept of pest- or disease-free areas or of low pest/disease prevalence. The Appellate Body read this provision as not simply an obligation to recognise the concept "in the abstract", but "an obligation to render operational the concepts of pest- or disease-free areas and areas of low pest or disease prevalence."³⁵ This means that the importing Member should give "an effective opportunity" to the exporting Member to make the claim that a particular area is pest- or disease-free. This interpretation complements the findings in *US – Animals*, where the panel provided concrete guidance on the type of factors that should be considered in order for a disease-free area to be recognised as such.³⁶ Such an interpretation of Article 6.2 is to be welcomed as it minimises the risk that a domestic regulation formally recognising the concepts of pest/disease free areas enables Members "to pay lip service" to the recognition of these concepts, while in practice denying it.³⁷

IV. CONCLUSIONS

In terms of trade it remains uncertain what the impact of this dispute report will be. It is worth recalling that most of the measures restricting pork imports are also covered by the

³¹ Appellate Body Report, *Russia – Pigs*, supra, note 1, para. 5.99.

³² This may not have been entirely clear from the *US – Animals* panel which first conceded that "the obligations in 6.1 and 6.2 are not necessarily contingent on the actions of the exporting Member under Article 6.3", but then concluded that in certain cases the possibility for a Member to adapt the measures in line with Art 6.1 is "dependent on the exporting Member's compliance with Article 6.3" and talked of compliance with Art 6.3 as a "precondition for the application of Art 6.1". Cf Panel Report, *US – Animals*, supra, note 23, paras. 7.663, 7.664 and 7.667 respectively.

³³ Appellate Body Report, *Russia – Pigs*, supra, note 1, paras. 5.97–5.98. See also Appellate Body Report, *India – Agricultural Products*, supra, note 22, para. 5.157.

³⁴ Appellate Body Report, *Russia – Pigs*, supra note 1, paras. 5.97–5.98.

³⁵ *ibid*, para. 5.126.

³⁶ Panel Report, *US – Animals*, supra, note 23, para. 7.660. Here the panel referred to both the factors listed in Art 6.2 and the Art 6 Guidelines.

³⁷ This risk was presented by the EU as one of its arguments in the appeal (*cf ibid*, para. 5.131).

restrictions on the trade of certain agricultural products adopted in the context of the sanctions regime. Incidentally, it may also be noted that Russia has displayed a relatively active role in the dispute settlement mechanism. From 2012, the year in which Russia obtained WTO membership, the country has acted as respondent in eight cases (some of them still at the level of consultations) and as complainant in six cases.³⁸ This may be regarded as both positive and negative development. On the positive side, one may argue that active engagement indicate an overall commitment on the part of Russia to the WTO system. It could also mean that, even if gradual and marginal, WTO law will influence the discourses on liberalisation and international standardisation in Russian Ministries. On the negative side, a number of complaints against Russia may also indicate some systemic failures in its implementation of WTO rules. Only time will tell whether the politics underpinning the disruptive trade relations between Russia and the EU, shaped by the sanctions, will be overcome by friendly relations regulated by a rule-based system. The recent recourse to Article 22 in this case may suggest that trade relations will remain bumpy in the near future. Particularly important in this context (considering the highly political nature of those disputes) will also be the Russian reaction to possible unfavorable WTO “judgements” in all cases brought by Ukraine.

Irrespective of EU-Russia trade relations and of how we assess the trade consequences of this dispute, the interpretation given by the Appellate Body to the terms in Article 6 of the SPS Agreement greatly contributes to the clarification of the principle of regionalisation. The holistic interpretation envisaged by the Appellate Body is likely to facilitate the liberalisation of trade, while respecting geographical differences. In uncertain times like the present, when the Appellate Body is under serious attack,³⁹ it may be worth emphasising the sobriety and accuracy of its legal analysis. In its report, the Appellate Body has carefully balanced the needs of trade liberalisation with the respect of other values, such as the protection of safety, which are embedded in the principle of regionalisation.

³⁸ Cf <www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm>, accessed 15 December 2017. This is a relatively high number compared with other countries of comparable size and relatively short history in the WTO.

³⁹ See G Shaffer, M Elsig and M Pollak, “The Slow Killing of the World Trade Organization”, *Huffington Post*, 17 November 2017, available at <www.huffingtonpost.com/entry/the-slow-killing-of-the-world-trade-organization_us_5a0ccd1de4b03fe7403f82df?ncid=engmodushpimg00000004#>>, accessed 15 December 2017.