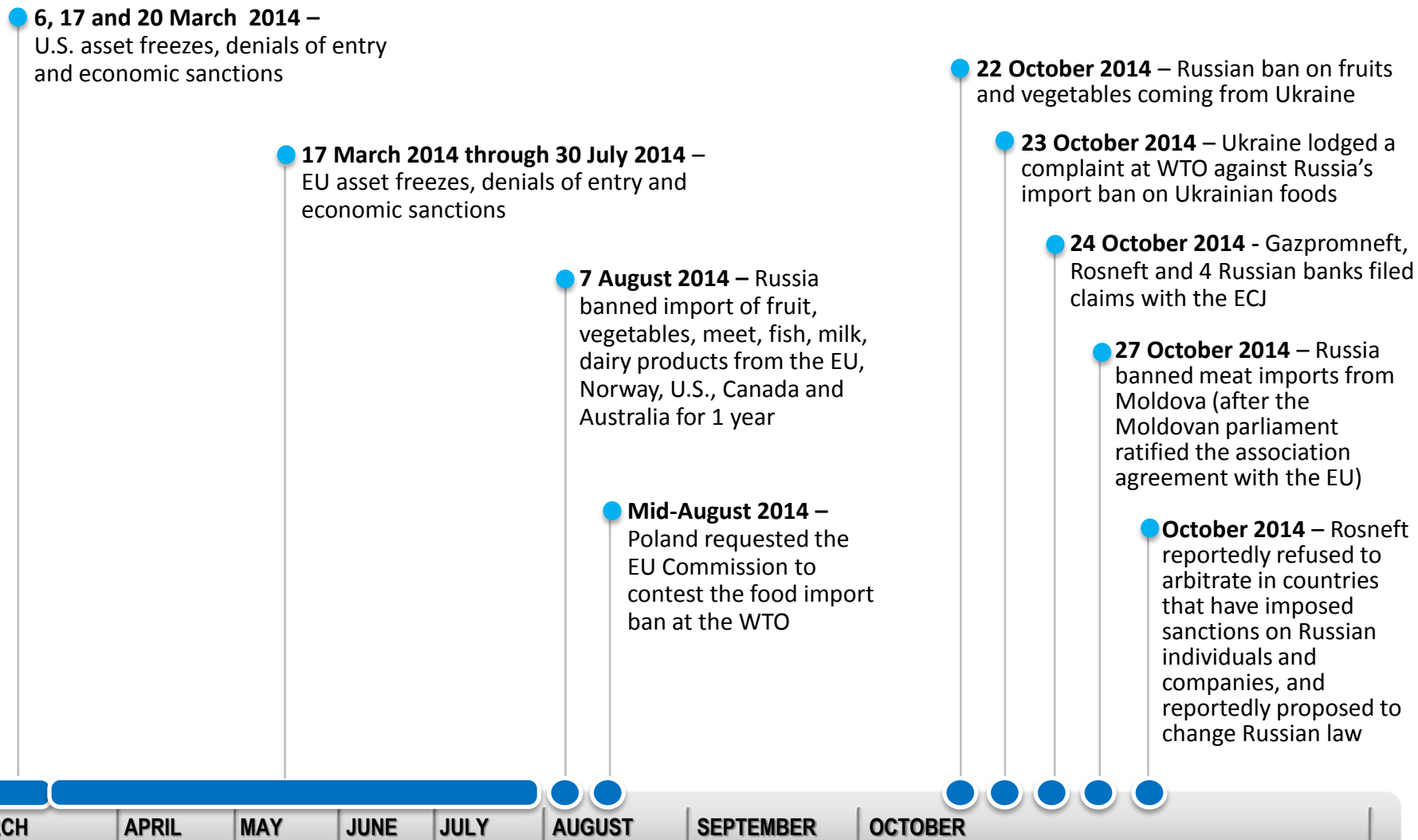


Russian Food Import Ban and Legal Remedies to Counter It

Kiev Arbitration Days 2014
Kiev, 7 November 2014

Timeline



Initial U.S. and EU sanctions: block property and deny entry to:

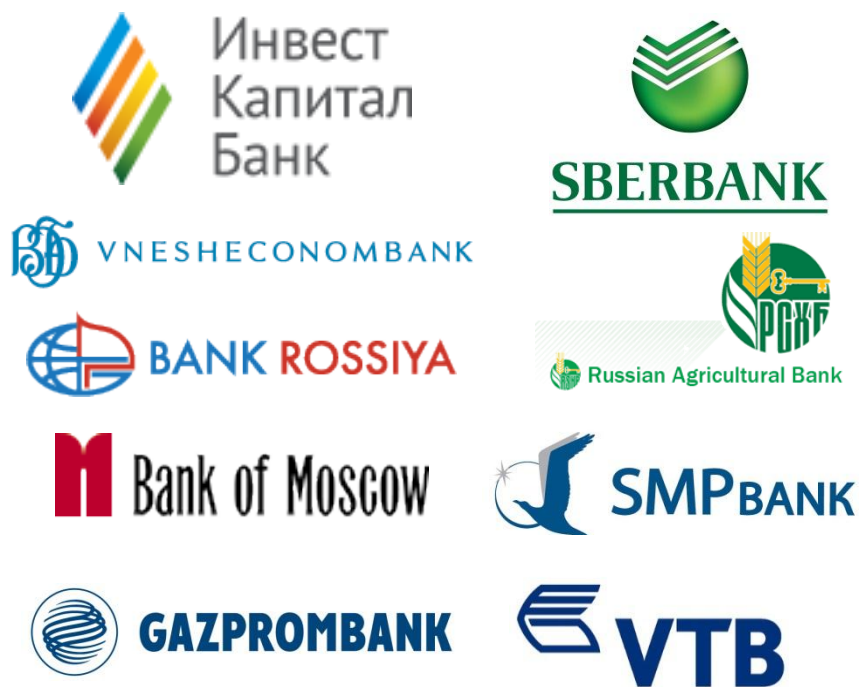


- **Certain Russian government officials**
- **Certain Crimean government officials**
- **Certain Ukrainian (Donetsk, Lugansk) government officials**
- **Certain companies confiscated in the Crimea**
- **Certain militia groups and defense companies**

Further U.S. economic sanctions: limit certain financing to banks and energy companies:



Banks



Energy Companies



Further EU economic sanctions: limit financing to banks, energy and defense companies:



- 5 Russian banks



- 3 energy companies

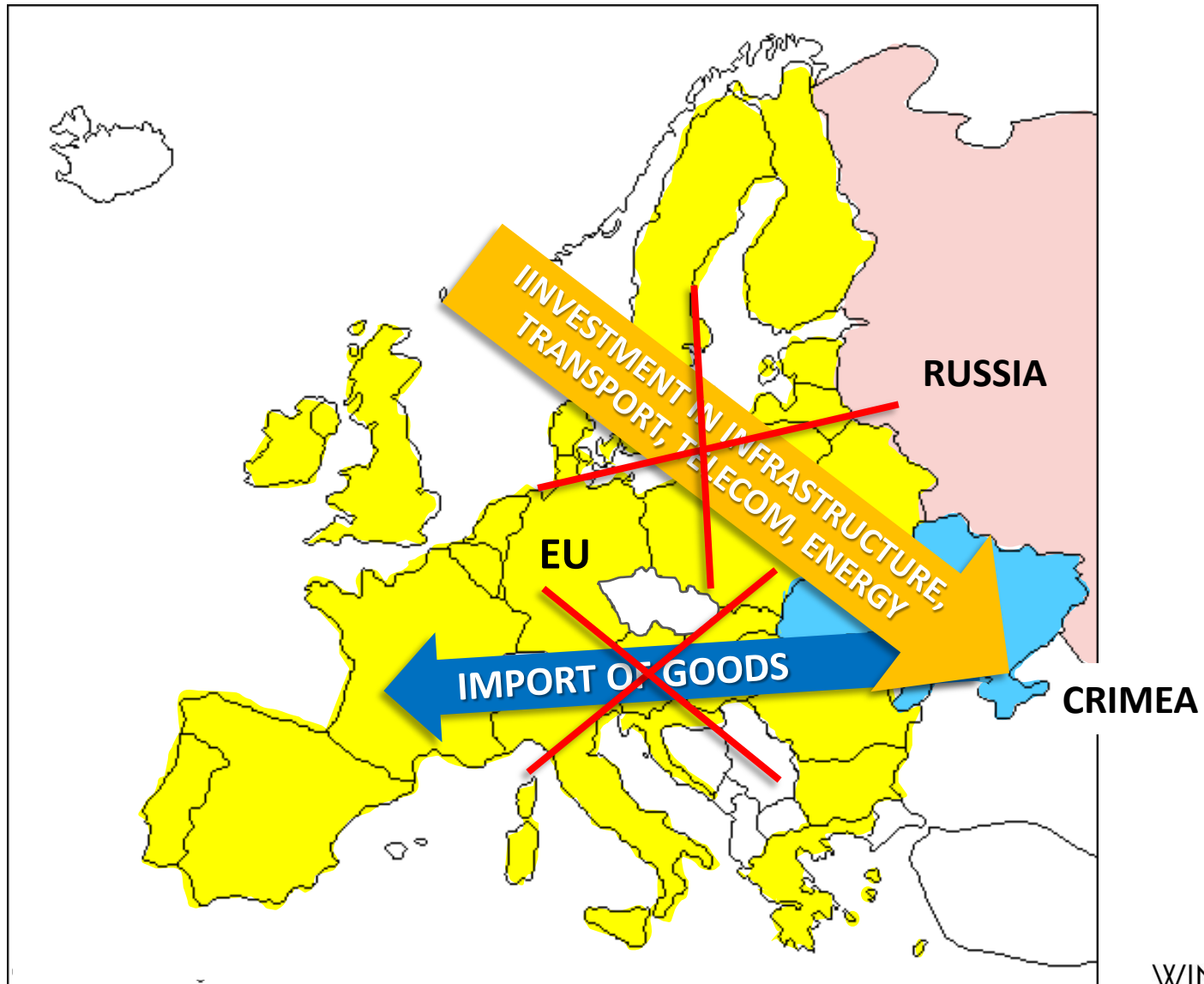


- 3 defense companies



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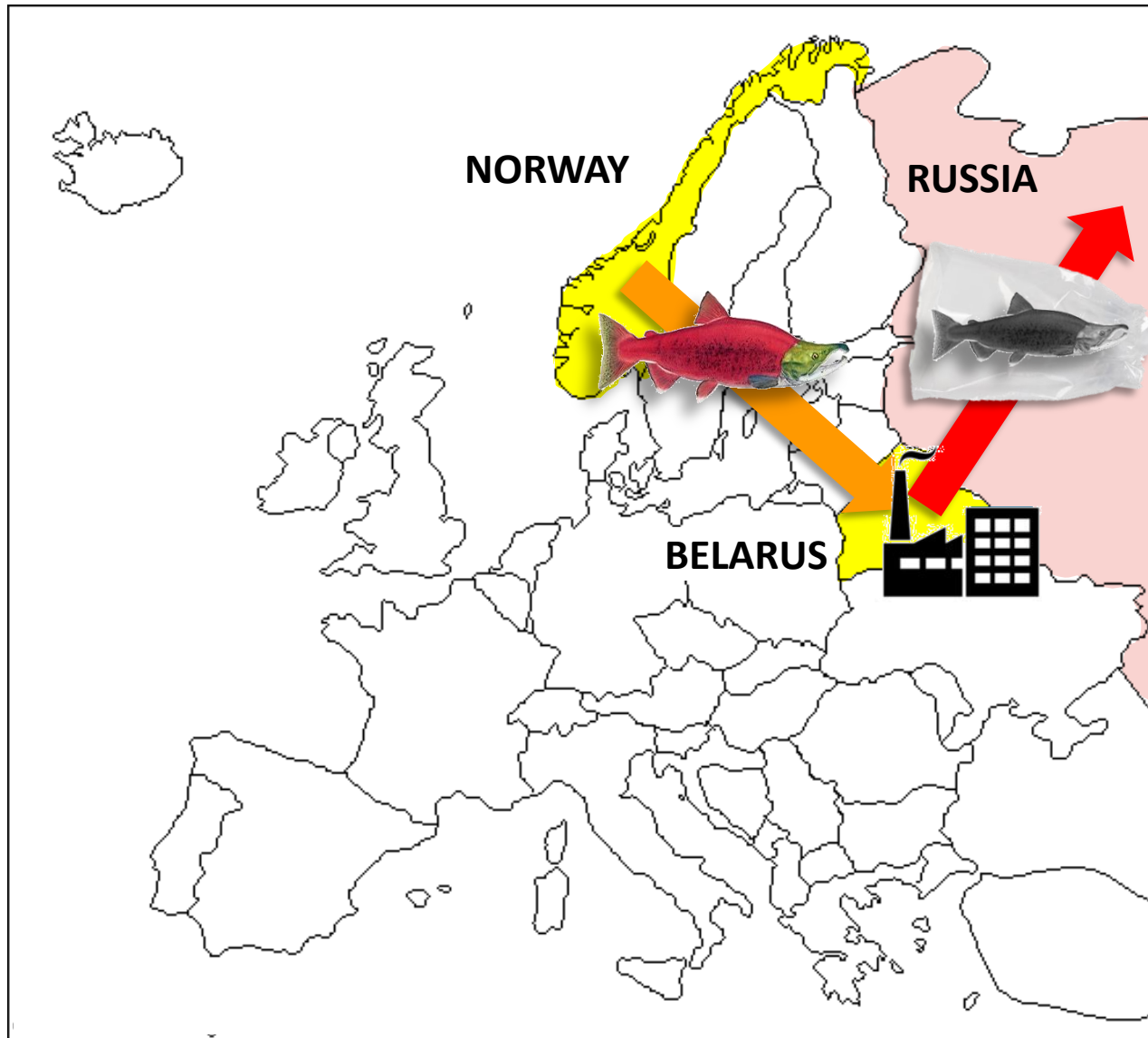
Further EU sanctions: isolate the Crimea:



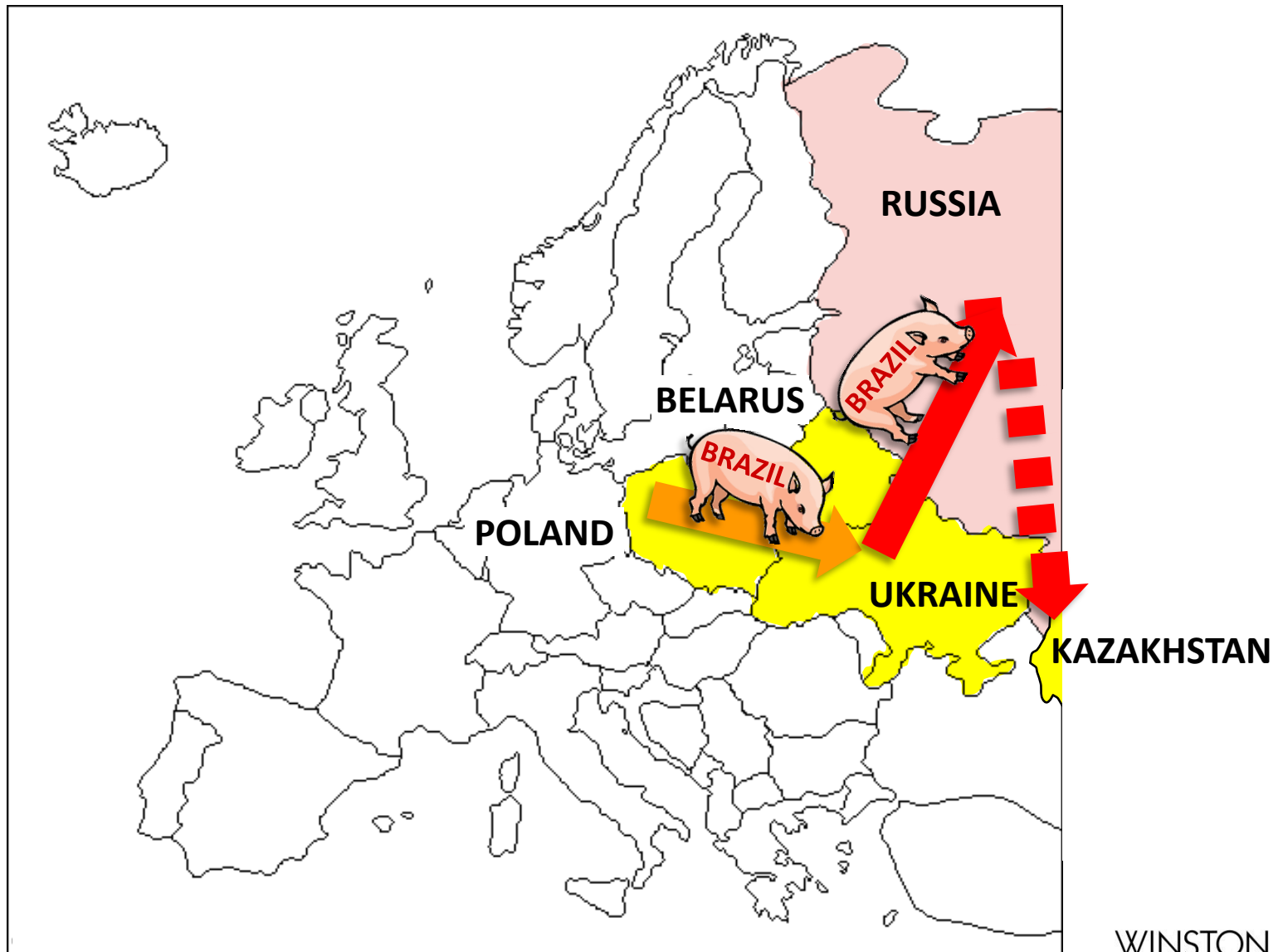
Russian food import ban



Evading the Russian food import ban



Evading the Russian food import ban



Legal remedies to counter the Russian food import ban



Option 1: BIT arbitration

- Direct claims
- Difficult to establish **jurisdiction** under the BIT because difficult to show an “**investment**” based solely on **trade/export transactions**
- But can show an “investment” if have a **Russian subsidiary**
- Possibility of monetary recovery

3 NAFTA cases

- ***Grand River v. United States* (2011):**
 - NO “investment” in the United States based on manufacture of cigarettes in Canada, and their export to the United States,
 - and therefore NO jurisdiction.
- ***Apotex v. United States* (2013):**
 - Canadian manufacturer of medicines and “trader” or “exporter” into the United States is NOT an investor in the United States,
 - and therefore NO jurisdiction.
- ***Cargill v. Mexico* (2009):**
 - YES “investment” in Mexico based on manufacturing of fructose corn syrup in the United States and its shipment **to the Mexican subsidiary, Cargill de Mexico**
 - YES jurisdiction.

Option 2: WTO proceedings

- **Indirect claims**
- **Need political will**
 - **For EU – company files a Trade Barrier Regulation complaint with the EU Commission, which can initiate WTO proceedings**
 - **For non-EU – company requests its government to initiate WTO proceedings**
 - **For the U.S. – company files a complaint with the U.S. Trade Representative, which can initiate WTO proceedings**
- **Retaliatory measures as a sanction**
- **No possibility of monetary recovery**



Thank you! Merci! Дякую! Спасибо!

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