

**UNITED STATES - MEASURES AFFECTING THE IMPORTATION OF ANIMALS,
MEAT AND OTHER ANIMAL PRODUCTS FROM ARGENTINA**

Request for Consultations by Argentina

The following communication, dated 30 August 2012, from the delegation of Argentina to the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the United States pursuant to Articles 1 and 4 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXIII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), and Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement), concerning United States measures affecting the importation of animals, meat and other animal products from Argentina, as described below.

Prohibition of the import of fresh (chilled or frozen) bovine meat

For more than ten years, the United States has maintained the prohibition on imports of fresh (chilled or frozen) bovine meat from Argentina, as contained in the provisional and final regulations of the Animal and Plant Inspection Service (APHIS), amending the regulations established in the Code of Federal Regulations (CFR), Title 9, Part 94 (9 CFR-Part 94) [Docket No. 01-032-2] published in the Federal Register on 4 June 2001 (66 FR, 29897-29899) and 11 December 2001 (66 FR, 63911), respectively. The maintenance of that prohibition lacks scientific justification in view of the reinstatement, internationally, of Argentina's sanitary status as a zone free of foot-and-mouth disease (FMD).

At the same time, the United States imposes a general import prohibition, as contained in Title 9, Part 94.1(b) of the CFR, on fresh (chilled or frozen) meat from Argentina, with no scientific justification. This import ban is a consequence of the US failure to recognize the territory of the Argentine Republic as a foot-and-mouth disease-free zone. Argentina is recognized by the World Organisation for Animal Health (OIE) as a foot-and-mouth disease-free zone. The region located south of parallel 42° S (South Patagonia) has been recognized by the OIE since May 2002 as a foot-and-mouth disease-free zone without vaccination and this region was extended to the Rio Negro (Patagonia North B) in May 2007, pursuant to Resolution No. XXI adopted during the 75th General Session of the OIE International Committee. The remainder of that country has been

recognized by the OIE as an FMD-free zone with vaccination since May 2007¹, when the status it had enjoyed since July 2003 was reinstated.

The United States failure to recognize the zone of Argentine territory recognized internationally as FMD-free without vaccination lacks scientific justification, as does the continued application of the general prohibition based on that lack of recognition.

Regarding the zone of Argentine territory where vaccination is practised, Argentina considers that the US prohibition² on imports of fresh (chilled and frozen) meat from areas recognized as FMD-free with vaccination lacks scientific justification, according to international standards of sanitary protection, and represents a disproportionate measure in relation to a risk which is negligible given that appropriate mitigation measures have been taken.

Moreover, even on the basis of the level of sanitary protection determined by the US authorities, the prohibition applied entails a greater degree of restriction on trade than is necessary to achieve the said level of protection.

In fact, imports of fresh (chilled or frozen) bovine meat from the whole of Argentina were allowed into the United States from 1997, when Argentina was considered an FMD-free zone with vaccination. Paradoxically, imports of these products are currently prohibited in the United States, even though not only has Argentina's international health status as an FMD-free zone with vaccination been reinstated, but part of the country is recognized by the OIE as an FMD-free zone with vaccination.

Failure to recognize the FMD-free zone comprising the regions of South Patagonia and Patagonia North B³

Argentina also questions the United States' application of prohibitions on imports of animals, meat and other animal products, as contained in Title 9, Part 94 of the CFR, as a consequence of its failure to recognize the FMD-free zone made up of the regions of South Patagonia and Patagonia North B. This lack of recognition and the consequent ban on imports of the products in question is being maintained, without scientific justification, despite the fact that this region was recognized more than ten years ago (May 2002) by the OIE as an FMD-free zone where vaccination is not practised.

In this connection, Argentina considers that the general requirement contained in the Notice of Policy titled *APHIS Policy Regarding Importation of Animals and Animal Products*, published in the Federal Register of 28 October 1997 (Vol. 62, No. 208, 56027-56033), which lays down conditions for the recognition of a zone as FMD-free without vaccination in the country in question, lacks scientific justification.

In addition, the United States is in violation of its obligation to adapt the sanitary measure to the characteristics of the area of origin of the products.

¹ Resolution No. XXI adopted by the International Committee of the OIE during the 75th General Session, 20-25 May 2007 and Resolution No. 14 adopted by the World Assembly of Delegates of the OIE during the 79th General Session (22-27 May 2011).

² *APHIS Policy Regarding Importation of Animals and Animal Products*, published in the Federal Register of 28 October 1997 (Volume 62, No. 208, 56027-56033).

³ Zone located south of parallel 42° S, extended up to the Rio Negro in accordance with OIE Resolution XXI.

The United States also discriminates between Argentina and other WTO Members with regard to the recognition of FMD-free zones.

Undue delays in approval procedures

Furthermore, the United States has been guilty of undue delays in the procedures under the Code of Federal Regulations (CFR), Title 9, Part 92.2, regarding recognition of the animal health status of a region, or the approval of exports of animals or animal products from that region. Such undue delays have occurred with regard to both procedures for the approval of imports of fresh (chilled and frozen) bovine meat from Argentina and the recognition of the FMD-free zone comprising South Patagonia and Patagonia North B.

In both cases, the United States itself has recognized in the WTO that the corresponding risk analyses have been completed.

What is more, the United States has confirmed that "imports of ruminants and ruminant products from Argentina entail a negligible risk of foot-and-mouth disease". In 2007 the United States had already published in the Federal Register and notified to the WTO a proposed amendment to the corresponding regulation for the purpose of authorizing imports from the zone located south of parallel 42° S, which was declared free from foot-and-mouth disease. Since then, no new sanitary events relating to foot-and-mouth disease have taken place anywhere in Argentina, nor has the United States requested fresh information or compliance with additional technical regulations.

In addition, the Omnibus Appropriations Act of 2009 (H.R. 1105, 111th Congress), Article 737, imposes conditions, without any scientific justification or risk analysis, on APHIS activities for the importation into the United States of ruminants or swine, or any other fresh (including chilled or frozen) meat or products of any ruminant or swine born, reared or slaughtered in Argentina. The conditions laid down in that law are in violation of most-favoured-nation status and also violate the US obligation to ensure that the procedures established in the CFR, Title 9, Part 92.2, are fulfilled without undue delays and in a manner no less favourable for Argentine products than for US products.

The United States has also failed to explain the delays that have occurred.

In view of the foregoing, the US measures would be inconsistent with that country's obligations under the following rules of the covered agreements:

- (i) Articles I:1, III:4, XI:1 of the GATT 1994;
- (ii) Articles I.1, 2.2 2.3, 3.1, 3.3, 5.1, 5.2, 5.4, 5.6, 6.1, 6.2, 8 and Annex C.1 and Article 10.1 of the SPS Agreement;
- (iii) Article XVI.4 of the Marrakesh Agreement Establishing the World Trade Organization.

The United States measures would nullify or impair the benefits accruing to Argentina, directly or indirectly, under the covered agreements.

Argentina reserves the right to include rules related to or amending those referred to in this request for consultations, as well as to increase the claims relating thereto, in the course of the consultations.

Argentina looks forward to a favourable response to this request for consultations and expresses its readiness to coordinate a mutually convenient date and place for the consultations.
