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Committee on Sanitary and Phytosanitary Measures

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FMD MEASURES AFFECTING EXPORTS OF ARGENTINE PRODUCTS

Communication from Argentina Presented
at the 10-11 July 2001 Meeting

Revision

Introduction

Argentina hereby reports that, as of April 2001, the new Secretary of Agriculture, Livestock, Fisheries and Food is Mr. Marcelo Regúnaga and the President of the National Agriculture and Food Quality and Health Service (SENASA) is Dr. Bernardo Cané, who held the same office in this agency from 1989 to 1996. This reshuffle aims to promote information exchange and transparency, especially as regards the development of pest and disease control programmes.

The new authorities have developed the "National Foot-and-Mouth Disease Eradication Plan 2001-2005", which has been submitted to the authorities of multinational organizations, such as the International Office of Epizootics (OIE), Inter-American Institute for Cooperation on Agriculture (IICA), Pan-American Health Organization (PAHO), the River Plate Basin Group and all countries with which Argentina trades agricultural products.

In this connection, and to lend transparency to the development of this Plan, we wish to report that, as planned, the first vaccination campaign for all bovine livestock (50 million head) located to the north of the Rivers Barranca and Negro is nearing completion. It should be recalled that Patagonia is still a "Foot-and-Mouth Disease Free Zone where Vaccination is Not Practised".

Another critical issue dealt within the Plan is the movement of animals; this has been regulated by retention in zones of epidemiological restriction, thereby affecting even as important an event as the International Agriculture and Livestock Show in Palermo, set to take place at the end of this month.

Situation

The epidemiological situation which Argentina is currently going through has resulted in its products being subjected to foreign market access restrictions in the form of unjustified sanitary measures adopted by some importing Members.

These access restrictions are inconsistent with the obligations established within the framework of the multilateral trading system, in particular with the commitments in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

This inconsistency stems from the fact that the measures in question lack sufficient scientific grounds or risk analysis, or are disproportionate in relation to the established objectives and are

therefore inconsistent with the provisions of Articles 2.1, 3.1, 5.1 and other related Articles of the SPS Agreement.

A full rationale for this submission from Argentina is presented below.

I. INTERNATIONAL RULES OF REFERENCE

The mainstay of one of the objectives of the SPS Agreement, namely preventing sanitary and phytosanitary measures from being used as unjustified restrictions to international trade, is the obligation for any sanitary or phytosanitary measure to be based on scientific evidence (as required by Article 2.2 of the SPS Agreement).

This guiding principle is reflected in a series of obligations for Members which regulate the application of sanitary and phytosanitary measures. One such obligation is to ensure that their measures are based on an assessment of risks (provided for in Article 5.1), the intrinsic relation of which to scientific evidence has been widely acknowledged in WTO case law.

The other obligation is to harmonize, insofar as is possible and where applicable, sanitary and phytosanitary measures on the basis of international standards, guidelines and recommendations. To that end, both the preamble to the SPS Agreement and Articles 3.1, 3.4 *et seq.* refer to harmonization as an element which facilitates trade and encourage Members to play a full part in international technical fora (Codex Alimentarius Commission - CODEX, International Office of Epizootics - OIE, International Plant Protection Convention - IPPC) in order to promote the development and periodic review of standards.

With regard to harmonization on the basis of international standards, it should be emphasized that the standards, guidelines and recommendations of the competent international organizations constitute the mandatory reference framework which Members should observe when adopting a sanitary or phytosanitary measure.

Article 3.2 of the SPS Agreement stipulates that sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

Likewise, according to existing WTO case law on the matter, both the Panels and the Appellate Body consider these provisions as the scientific parameters to be taken into consideration in settling disputes relating to the determination of whether or not a sanitary or phytosanitary measure is consistent with the obligations set out in the SPS Agreement.

This statement does not mean that Members may not depart from the standards set out in the international rules of reference; rather it means that, when introducing a sanitary or phytosanitary measure which involves departing from these regulations, Members must furnish sufficient scientific justification (pursuant to Article 3.3 of the SPS Agreement).

II. INTERNATIONAL ANIMAL HEALTH CODE OF THE INTERNATIONAL OFFICE OF EPIZOOTICS (OIE)

The international organization of reference for animal health is the International Office of Epizootics. This Office drew up and approved the International Animal Health Code (hereinafter referred to as the "Code"), Chapter 2.1.1 of which sets out precautionary measures relating to foot-and-mouth disease (FMD).

This Chapter first of all establishes the criteria for placing countries/zones in the different FMD sanitary categories. Secondly, it stipulates the products and by-products considered likely to transmit the FMD virus. Thirdly, it states the FMD-related requirements to be implemented by the sanitary authorities of importing countries, taking two variables into consideration, namely the sanitary status of the product's country of origin and the sanitary risk of the export product.

In an endeavour to prevent FMD from spreading to their territory, some WTO Members have adopted sanitary measures which are inconsistent with the provisions of Chapter 2.1.1 of the Code.

(a) Products presenting no risk of transmitting the FMD virus

Given that the list of risk products in Chapter 2.1.1 (Article 2.1.1.8) is exhaustive, all products not expressly mentioned therein, such as equine meat, poultry meat, plant products in general, etc., are considered to be "no-risk".

Any provision impeding the entry of these products or requiring certification of a risk mitigation procedure, and for which sufficient scientific evidence and the corresponding risk analysis supporting the measure are not furnished, therefore constitutes a breach of the obligations under the SPS Agreement.

(b) Products subject to risk mitigation procedures

Pursuant to Chapter 2.1.1 of the Code, the animals, products and by-products from FMD-infected countries and zones which, once they have complied with the corresponding risk mitigation procedures, must be accepted by the importing countries, are as follows:

- Domestic ruminants and pigs (under Article 2.1.1.11);
- semen of domestic ruminants and pigs (under Article 2.1.1.15);
- *in vivo* derived embryos of cattle (under Article 2.1.1.17);
- fresh meat of bovines, excluding feet, head and viscera (under Article 2.1.1.23);
- meat products of domestic ruminants and pigs (under Article 2.1.1.24);
- milk and cream (under Article 2.1.1.26);
- blood and meat meal from domestic or wild ruminants and pigs (under Article 2.1.1.28);
- wool, hair, bristles, raw hides and skins from domestic or wild ruminants and pigs (under Article 2.1.1.29);
- straw and forage (under Article 2.1.1.30);
- skins and trophies from wild animals susceptible to FMD (under Article 2.1.1.32).

Any ban on the import of those products/by-products or import requirement in addition to or different from the risk mitigation procedures set out in this Chapter and lacking either sufficient scientific evidence or the corresponding risk analysis therefore constitutes a breach of the commitments under the SPS Agreement.

Consequently, as the Argentine sanitary authorities are in a position to certify the risk mitigation procedures established for the designated products, any additional restriction imposed is unjustified.

With regard to **plant products** in particular, Article 2.1.1.30 establishes the risk mitigation procedures applicable when exporting straw and forage from FMD-infected countries/zones. In the light of the above comments on the exhaustive nature of the list and as straw and forage are the only products of plant origin specified in Chapter 2.1.1, all other plant products are considered as not presenting any risk of spreading the FMD virus.

It should also be emphasized that the Communiqué entitled "International standards concerning the risks of foot-and-mouth disease associated with trade in animals and animal products", signed by the Director-General of the OIE in April 2001, confirms Article 2.1.1.30.

This Communiqué lists the animals and products that present a risk of transmitting the FMD virus. The plant products category includes only straw and forage, in compliance with Article 2.1.1.30 of the Code. It also states that other commodities, including cereal grains, fruit, vegetables and tubers, are not considered by the Code as likely to present such a risk.

In the case of plant products, a clear distinction is therefore made between:

- Straw and forage: these are subject to risk mitigation procedures to ensure that the FMD virus is inactivated.
- Other plant products: these present no risk of transmitting FMD and should not, therefore, be subject to further requirements.

The above-mentioned document was submitted by the OIE to the WTO Committee on Sanitary and Phytosanitary Measures; document G/SPS/GEN/240 therefore reiterates and reaffirms the terms of the Communiqué of the OIE Director-General.

The WTO document adds that outbreaks of FMD in countries that had previously eradicated the disease, for example South America, in no way bring into question the sanitary policies for international trade recommended by the OIE. It also highlights that, in providing this information, the OIE wishes to help WTO Members to fulfil their obligations arising from the SPS Agreement.

III. APPEAL BY ARGENTINA

As mentioned above, several of the access restrictions imposed on Argentine products do not respect the criteria set out in the corresponding OIE regulations. Given that no Members have proved that they have sufficient scientific evidence, nor made available to Argentina risk analyses adequately supporting their measures, they are not legally entitled to adopt measures implying a level of protection higher than that achieved by international measures.

Such measures are therefore inconsistent with Article 2.2 of the SPS Agreement, since they are not "based on scientific principles", Article 3.1 of the Agreement, since they are not based on international standards, guidelines or recommendations, and Article 5.1, since they are not based on an assessment of risks.

Therefore, in the light of this inconsistency and the serious injury that it is causing to Argentine exports, Members are hereby reminded of the need to bring domestic sanitary provisions

into line with the commitments established under the SPS Agreement as soon as possible in order to strengthen the close-knit relationship that should exist between sanitary measures and scientific evidence.
