

**CHILE – RESTRICTIONS ON THE IMPORT OF FRESH OR FROZEN
MEAT DUE TO FOOT-AND-MOUTH DISEASE**

Submission by Argentina

I. INTRODUCTION

1. Owing to the current epidemiological situation in Argentina, foreign market access restrictions have been imposed on Argentine products in the form of unjustified sanitary measures adopted by certain importing Members.

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

3. This inconsistency arises from the fact that the measures at issue are stricter than the international reference parameters, and lack sufficient scientific grounds and risk analysis to justify them. Moreover, they are also disproportionate to the objectives pursued. As a result, they are inconsistent with the provisions of Articles 2.2, 3.3, 5.1, 5.6 and related articles of the SPS Agreement.

II. ACCESS RESTRICTIONS TO THE CHILEAN MARKET

4. The draft resolution of the Chilean Agriculture and Livestock Service (SAG) lays down the sanitary requirements for the import into its territory of fresh or frozen bovine meat (of any origin).

5. It provides that the foot-and-mouth (FMD) status of the country or zone of origin may be either of the following:

- FMD free country/zone without vaccination
- FMD free country/zone with vaccination

6. Thus, the draft does not permit the import of *fresh or frozen bovine meat from FMD infected countries or zones*. In this respect the Chilean Standard is stricter than the international standard of reference, since Article 2.1.1.23 of the OIE International Animal Health Code provides the possibility of risk mitigating procedures to ensure that the virus is inactivated.

**III. DISCIPLINES DERIVING FROM THE AGREEMENT ON THE APPLICATION OF
SANITARY AND PHYTOSANITARY MEASURES (SPS AGREEMENT)**

7. What follows is a brief description of the disciplines deriving from the SPS Agreement that are relevant to the case at issue.

A. SCIENTIFIC EVIDENCE – ASSESSMENT OF RISK

8. One of the fundamental principles of the SPS Agreement is that sanitary and phytosanitary measures should be based on sufficient scientific evidence (Article 2.2) in order to ensure that they are not used as unjustified restrictions on trade. Accordingly, on the basis of the objectivity provided by science, the application of this type of measures is disciplined in order to avoid discretionary application by Members that would unjustifiably restrict international trade.

9. This basic principle is intrinsically related to the obligation to base sanitary and phytosanitary measures on an assessment of risks (Article 5.1). Indeed, this relationship between the two concepts (scientific evidence and assessment of risks) has been widely recognized in WTO precedent.

B. HARMONIZATION

10. Another principle enshrined in the SPS Agreement is the harmonization, on as wide a basis as possible, of sanitary and phytosanitary measures, on the basis of international standards, guidelines and recommendations where they exist. To that end, both the preamble to the SPS Agreement and Article 3.1, 3.4 et seq. refer to harmonization as a trade facilitation instrument and encourage Members to participate in international technical fora (Codex, OIE, IPPC) in order to promote the development and periodic review of standards.

11. Article 3.2 of the SPS Agreement stipulates that sanitary and phytosanitary measures which conform to the international standards and 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 the SPS Agreement and the GATT 1994. This presumption of consistency is a premium granted by the SPS Agreement to Members who base their measures on international standards.

12. If Members should decide to depart from the standards provided by the international rules of reference for the establishment of a sanitary or phytosanitary measure, the presumption of consistency disappears, and there is an inversion in the general rule of burden of proof. Consequently, the Member in question must provide sufficient information (including the corresponding assessment of risks) to justify the measure it wishes to introduce (Article 3.3 of the SPS Agreement).

13. Finally, it is important to point out that according to relevant WTO precedent, both the panels and the Appellate Body consider the said provisions as the scientific parameters to be taken into account in settling disputes relating to the determination of whether or not a sanitary or phytosanitary measure is consistent with the obligation set out in the SPS Agreement.

C. PROPORTIONALITY

14. Article 5.6 of the SPS Agreement requires Members to adopt proportionate measures. This principle is respected when, within the range of alternative measures suitable to achieve the appropriate level of protection, Members implement the measure which is the least trade restrictive.

IV. INTERNATIONAL ANIMAL HEALTH CODE OF THE INTERNATIONAL OFFICE OF EPIZOOTICS

15. The reference international organization in the field of animal health is the International Office of Epizootics (OIE). That Office approved the International Animal Health Code (hereinafter "the Code"), Chapter 2.1.1 of which sets out the regulations relating to foot-and-mouth disease.

16. To begin with, the said Chapter sets out the conditions governing the categorization of countries/zones according to their sanitary status. It then goes on to establish the products and subproducts considered to present a risk of transmission of the FMD virus. Finally, it lays down the requirements to be imposed by the Veterinary Administration of the importing country with respect to FMD, taking account of two variables: the sanitary status of the country of origin of the product and the sanitary risk of the product to be exported.

17. Accordingly, Article 2.1.1.23 establishes the requirements that the Veterinary Administration of the importing country should impose on exporting FMD infected countries for fresh meat of bovines (excluding feet, head and viscera):

" ... the presentation of an *international veterinary certificate* attesting that the entire consignment of meat:

1. Comes from animals which:
 - (a) Have remained in the *exporting country* for at least 3 months prior to slaughter;
 - (b) have remained, during this period, in a part of the country where cattle are regularly vaccinated against FMD and where official controls are in operation;
 - (c) have been vaccinated at least twice with the last vaccination not more than 12 months and not less than 1 month prior to slaughter;
 - (d) were kept for the past 30 days in an *establishment*, and that FMD has not occurred within 10 km during that period;
 - (e) have been transported, in a *vehicle* which was cleansed and disinfected before the cattle were loaded, directly from the *establishment* of origin to the *approved abattoir* without coming into contact with other animals which do not fulfil the required conditions for export;
 - (f) have been slaughtered in an *approved abattoir*:
 - (i) which is officially designated for export;
 - (ii) in which no FMD has been detected during the period between the last *disinfection* carried out before slaughter and the shipment for export has been dispatched;
 - (g) have been subjected to ante-mortem and post-mortem inspections for FMD with favourable results within 24 hours before and after slaughter;
2. Comes from deboned carcasses:
 - (a) from which the major lymphatic glands have been removed;
 - (b) which, prior to deboning, have been submitted to maturation at a temperature above + 2°C for a minimum period of 24 hours following slaughter and in which the pH value was below 6.0 when tested in the middle of both the longissimus dorsi."

V. ANALYSIS OF THE LEGAL CONSISTENCY OF THE CHILEAN DRAFT

18. The draft resolution prepared by the SAG does not comply with the requirements of the SPS Agreement for the reasons provided:

A. HARMONIZATION – SCIENTIFIC EVIDENCE

19. As mentioned, Article 2.1.1.23 of the OIE Code stipulates that the Veterinary Administrations of the importing countries **must** accept fresh meat of bovines (excluding feet, head and viscera) where the Veterinary Administration of the exporting countries is able to provide certification of the risk mitigation procedures expressly provided for in that article.

20. In spite of this, the Chilean regulation only permits imports of meat from FMD free countries or zones (with or without vaccination), and in no circumstances provides for the possibility importing meat from infected countries.

21. As already stated, Members may depart from international parameters where they can supply sufficient scientific evidence to justify the measure in question. In this case, the Chilean authorities have not produced any evidence to justify imposing stricter requirements than those provided for in the OIE regulations, so that the draft resolution is inconsistent with Article 3.3 of the SPS Agreement.

22. Similarly, the lack of scientific evidence means that there is a clear inconsistency with the obligation laid down in Articles 2.2 and 5.1 of the SPS Agreement.

B. PROPORTIONALITY

23. Argentina considers the prohibition of imports on meat from FMD infected countries to be disproportionate to the objectives pursued, since the Chilean authorities have an alternative measure at their disposal which is less trade restrictive while nevertheless ensuring the appropriate level of protection, and have failed to demonstrate otherwise.

24. This measure is the acceptance of the risk mitigation procedures established in the OIE Code for fresh meat from countries infected with FMD (Article 2.1.1.23).

25. Consequently, the Chilean draft resolution is inconsistent with Article 5.6 of the SPS Agreement.

VI. ARGENTINA APPEAL

26. In view of the above consideration Argentina requests that prior to the entry into force of the draft resolution, Chile provide sufficient scientific evidence to support its departure from the international reference parameters, in conformity with Article 3.3 of the SPS Agreement, or failing this, that it follow the recommendations provided in the OIE International Animal Health Code mentioned above (Chapter 2.1.1, Article 2.1.1.23).
