

CHILE - MEASURES AFFECTING EXPORTS OF PET FOOD

Submission by Argentina

I. INTRODUCTION

1. The Government of Chile submitted a notification (G/SPS/N/CHL/104) to the WTO Committee on Sanitary and Phytosanitary measures concerning a draft standard establishing the import requirements for pet food whose formula contains meat and bone meal of ruminant origin.

2. Under this draft standard, the products in question would be required to undergo thermal treatment, as provided for by the International Office of Epizootics (OIE). The relevant text of the draft resolution reads as follows: "The raw material shall be reduced to particles of a maximum size of 50 before undergoing thermal treatment; after which it shall be submitted to thermal treatment in a vapour saturated atmosphere at a temperature of at least 130°C for a minimum period of 20 minutes, and at a pressure of three bars."

3. If this draft is definitively approved, it will constitute an access restriction that is 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).

4. This inconsistency arises from the fact that the draft is stricter than the international reference parameters, and lacks sufficient scientific grounds and risk analysis to justify a higher level of protection.

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

5. 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

6. 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 measure is disciplined in order to avoid discretionary application by Members that would unjustifiably restrict international trade.

7. 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

8. 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.

9. Article 3.2 of the SPS Agreement stipulates that sanitary or phytosanitary measures which "conform" to the 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 the SPS Agreement and the GATT 1994. This presumption of consistency is a premium granted by the SPS Agreement to Members whose measures "conform" to international standards.

10. 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 the Member in question must provide sufficient information (including the corresponding assessment of risks) to justify the added protection – compared to the international standard – provided by the measure it wishes to introduce (see Article 3.3 of the SPS Agreement)

11. 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 obligations set out in the SPS Agreement.

C. PROPORTIONALITY

12. 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.

D. REGIONALIZATION

13. Article 6.1 of the SPS Agreement stipulates that Members shall ensure that their sanitary or phytosanitary measures are adapted to the 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.

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

14. Chapter 3.2.13 of the OIE International Animal Health Code lays down the international reference regulations with respect to bovine spongiform encephalopathy (BSE). These regulations are divided into three parts:

- establishment of the criteria for determining the BSE status of a country or zone;
- positive listing of products that do not present a risk of BSE transmission, and cannot therefore be subject to any requirement related to that disease;

- establishment of the requirements that the Veterinary Administration of the country of destination should impose, such requirements varying according to the sanitary status of the country or region of origin and the product risk.

15. Specifically in the case of imports from BSE-free countries or zones, the Code lays down the following requirements to be imposed by the Veterinary Administration of the country of destination:

- (a) For all commodities from cattle not mentioned in the list of risk-free products, the presentation of an international veterinary certificate attesting that the country or zone is free of BSE in conformity with Article 3.2.13.2;
- (b) Gelatin and collagen prepared from bones and intended for food or feed, cosmetics, pharmaceuticals or medical devices, the presentation of an international veterinary certificate attesting that the bones came from a BSE-free country or zone;
- (c) For tallow (other than protein-free tallow) intended for food, feed, fertilizers, cosmetics, pharmaceuticals or medical devices, the presentation of an international veterinary certificate attesting that the bones came from a BSE-free country or zone;
- (d) For tallow derivatives (other than those made from protein-free tallow) intended for food, feed, fertilizers, cosmetics, pharmaceuticals or medical devices, presentation of an international veterinary certificate attesting that they originate from a BSE-free country or zone.

IV. SANITARY STATUS OF ARGENTINA

16. The EU Scientific Steering Committee has given Argentina a Level 1 rating, i.e. "highly unlikely that domestic cattle are (clinically or pre-clinically) infected with BSE agent". It is important to bear in mind that this level represents the best guarantee of the absence of BSE in a territory.

V. LEGAL INCONSISTENCY OF DRAFT STANDARD

17. According to the principles enshrined in the SPS Agreement mentioned in Part II above and the regulations laid down by the OIE Code, the Chilean draft standard is inconsistent from the legal point of view for the following reasons.

18. Firstly, the draft lays down requirements (thermal treatment) for "pet food ... whose formula contains meat and bone meal of ruminant origin", without distinction as to the sanitary status of the region or country of origin. Thus, it departs from the OIE Code, which clearly states that requirements with respect to BSE must be established in accordance with the sanitary status of the country or region of origin.

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

20. Similarly, the lack of scientific evidence that the products in question from BSE-free countries present a risk of transmission of the disease is clearly inconsistent with the obligations laid down in Articles 2.2 and 5.1 of the SPS Agreement.

21. Secondly, the draft standard is disproportionate with the aims pursued, in that the Chilean authorities have alternatives for achieving the desired level of protection at a lower level of trade restriction. Indeed, even if Chile were to impose a "zero risk" level of protection with respect to BSE, it should accept imports from countries declared as BSE-free since, as stated in the OIE Code, they do not present any risk of transmission of the disease.

22. Finally, the draft standard does not respect the principle of regionalization established in the SPS Agreement and adopted for BSE in the OIE Code, since the requirements established are general, and imposed regardless of the place of origin of the product.

VI. APPEAL BY ARGENTINA

23. In view of the above considerations, Argentina requests that prior to the entry into force of the draft standard, 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 (Chapter 3.2.13).
