

**BOLIVIA – RESTRICTIONS ON ARGENTINE EXPORTS  
DUE TO FOOT-AND-MOUTH DISEASE**

Submission by Argentina

**I. INTRODUCTION**

1. As a result of the outbreak of foot-and-mouth disease in the Argentine Republic in 2001, unjustified sanitary measures have led to foreign market access restrictions on a number of Argentine products.

2. This particular case is an exceptional situation in that the restriction on access for Argentine products is prompted by the "suspected" existence of a focus of foot-and-mouth disease in the north of Argentina, which was duly eliminated by the Argentine National Agriculture and Food Quality and Health Service (SENASA). In other words, restrictions are being imposed on our exports although there is no occurrence of the disease in our country.

3. Without prejudice to the above, even if the presence of the disease had been confirmed on our territory the measure imposed by Bolivia would have been inconsistent with Articles 2.2, 3.3, 5.1, 5.6, 7 and related Articles of the SPS Agreement.

**II. RESTRICTIONS ON ACCESS TO THE BOLIVIAN MARKET**

4. On 4 January 2002, the Bolivian National Service for Agricultural Health and Food Safety (SENASAG) adopted Administrative Resolution No. 003/2002, providing for the temporary suspension, for a period of 90 days, of importation from the Argentine Republic of ruminants and live swine, semen and embryos of ruminants or pigs, fresh, chilled or frozen meat, entrails and offal, untanned hides and skins, unwashed or greasy wool, and products of these species used in animal feed, organic products, fodder and feed. This Resolution was prompted by the "suspected" occurrence of foot-and-mouth disease in Argentina's Salta Province.

**III. MEASURES TAKEN BY ARGENTINA ON ACCOUNT OF SUSPECTED FDM**

5. On 22 November 2001, the headquarters of the Argentine National Agriculture and Food Quality and Health Service (SENASA) was notified of the presence, in the district of Aguas Blancas (Orán Department), of animals presenting symptoms consistent with foot-and-mouth disease. In view of the suspicion, five serum samples were taken, which gave negative results to serological testing (using ELISA 3ABC as a filter and EITB as a corroborative test). Although none of the animals showed visible signs of foot-and-mouth disease, all prohibition measures provided for in the event of suspicion of disease were taken, pursuant to SENASA's Manual of Procedures for the Handling of Foci.

6. Further clinical inspections were carried out on 23 and 26 November, with no new health developments.

7. On 28 November, the necessary steps were taken to carry out inspection controls of all livestock. The animals were clinically inspected; 31 serum samples and one epithelium sample, in the case of an animal showing an oral lesion, were taken. The latter resulted negative.

8. On 4 December, the animals were inspected once again. No developments were registered.

9. Another clinical inspection was carried out on 9 January. No new health developments were observed. For the final elimination of all suspicion, the local veterinary was asked to collect probang samples of oesophageal-pharyngeal fluid. The 18 samples taken all resulted negative.

10. It should be emphasized that both the suspected FMD and the evolution of the epidemiological situation were handled in an entirely transparent manner.

#### **IV. ABSENCE OF FMD FOCI**

11. The principal reason for this submission is – as explained above – that suspicion of an FMD focus in the district of Aguas Blancas (Orán Department) was definitively eliminated and notified in a timely fashion to the SENASAG authorities. Accordingly, there are no health grounds for the adoption of Administrative Resolution No. 003/2002 or for subjecting Argentine exports to any other conditionalities on account of foot-and-mouth disease.

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

12. What follows is a brief description of the disciplines deriving from the SPS Agreement that might be related to the case at issue, had the presence of FMD foci been confirmed.

##### **A. SCIENTIFIC EVIDENCE – ASSESSMENT OF RISK**

13. One of the fundamental principles of the SPS Agreement is that sanitary and phytosanitary measures must be based on sufficient scientific evidence (as stipulated in Article 2.2 of the Agreement), in order to ensure that they are not used as unjustified restrictions on trade. Accordingly, on the grounds of the objectivity offered by science, application of this type of measure is disciplined in order to avoid discretionary application by Members that unjustifiably restricts international trade.

14. This basic principle is intrinsically related to the obligation to base sanitary and phytosanitary measures on an assessment of risks (as required by Article 5.1). It should be stressed that the relationship between the two concepts (scientific evidence and assessment of risks) has been widely recognized in WTO jurisprudence.

##### **B. HARMONIZATION**

15. Another principle enshrined in the SPS Agreement is the harmonization, to the greatest extent possible, of sanitary and phytosanitary measures on the basis of international standards, guidelines and recommendations, where they exist. To that end, the preamble and Articles 3.1, 3.4 *et seq.* of the SPS Agreement refer to harmonization as a trade facilitation instrument and encourage Members to take part in international technical fora (CODEX, OIE, IPPC) with a view to promoting the development and review of standards.

16. Article 3.2 of the SPS Agreement provides that sanitary and phytosanitary measures which conform to international standards, guidelines and 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 that base their measures on international standards.

17. If Members should decide to depart from the standards provided by the international reference rules for the establishment of a sanitary or phytosanitary measure, the presumption of consistency disappears, and the Member in question must provide sufficient scientific evidence (including the corresponding assessment of risks) to justify the measure that it wishes to introduce (in accordance with Article 3.3 of the SPS Agreement).

#### C. PROPORTIONALITY

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

### **VI. INTERNATIONAL ANIMAL HEALTH CODE OF THE INTERNATIONAL OFFICE OF EPIZOOTICS (OIE)**

19. The International Office of Epizootics is the international reference body for animal health. Chapter 2.1.1 of the International Animal Health Code adopted by the OIE establishes precautionary measures applicable to foot-and-mouth disease.

20. First, Chapter 2.1.1 lays down the conditions for classifying countries/zones according to health status. Second, it defines the products and byproducts considered to present a risk of transmission of the FMD virus. Third, it stipulates the requirements that the Veterinary Administrations of importing countries should impose in respect of FMD, having regard to two variables, that is, the sanitary status of the country of origin of the product and the health risk presented by the product to be exported.

### **VII. ANALYSIS OF THE LEGAL CONSISTENCY OF THE RESTRICTION IMPOSED BY BOLIVIA**

21. Without prejudice to Part IV above (crux of Argentina's argument), the Bolivian measure is seriously inconsistent with the SPS Agreement, even if the presence of foot-and-mouth disease in Argentina had been confirmed.

22. The following sections set forth the aspects of the Bolivian Resolution that would be inconsistent with the SPS Agreement, had the presence of foot-and-mouth disease been confirmed.

#### A. SCIENTIFIC EVIDENCE – ASSESSMENT OF RISKS

23. As mentioned above, Chapter 2.1.1 of the OIE International Animal Health Code lays down the requirements which the Veterinary Administrations of importing countries have to accept in respect of the different products presenting a risk of transmission of the FMD virus, according to the sanitary status of the country of origin.

24. The above notwithstanding, Resolution No. 003/2002 stipulates temporary closure to Argentine exports without affording SENASA the possibility of attesting that the various risk mitigation procedures provided for in the OIE Code have been observed.

25. As already stated, Members may depart from the international parameters where they can provide sufficient scientific evidence to support the measure in question. In this case, the Bolivian authorities have not supplied any evidence to justify imposing stricter requirements than those

provided for in the OIE regulations, so that the restriction imposed is inconsistent with Article 3.3 of the SPS Agreement.

26. Similarly, the lack of scientific evidence is clearly inconsistent with the obligations deriving from Articles 2.2 and 5.1 of the SPS Agreement.

**B. PROPORTIONALITY**

27. Argentina considers that the prohibition on imports notified by SENASAG is disproportionate with the aims pursued, in that the Bolivian authorities have an alternative for achieving their appropriate level of protection at a lower level of trade restriction, and there has been no demonstration to the contrary. That alternative is to accept the risk mitigation procedures laid down in the OIE Code for the different products presenting a risk of transmission of the FMD virus. Accordingly, the restriction on access notified by SENASAG is inconsistent with Article 5.6 of the SPS Agreement.

**VIII. REQUEST BY ARGENTINA**

28. In view of the above considerations, Argentina formally requests the Bolivian authorities to put an end to the restriction imposed on Argentine exports, since the suspicion of foot-and-mouth disease has been definitively eliminated in the Department of Orán.

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