

ROMANIA'S MEASURES ON ANIMAL PRODUCTS

Communication from Moldova

A. INTRODUCTION

1. Romania recently introduced new sanitary and phytosanitary measures on imports of certain animal products.

2. As a result of these measures, Moldovan exports of animal products, in particular meat, meat products, milk and milk products and eggs were in fact banned. The product sector is vital for the economy of Moldova: last year it represented about 2.9 per cent of Moldova's total exports and 17.4 per cent of exports to Romania. The impact on the national economy has been severe particularly at a time when Moldova faces serious economic problems. Domestic producers have been seriously affected, the damage already caused will be difficult to repair.

3. Bilateral discussions have taken place with Romania with a view to arriving at a mutually satisfactory solution but so far with no results. It may be useful to note that the bilateral trade relations with Romania are also governed by a free trade agreement.

4. Moldova considers that the Romanian measures are not in conformity with WTO rules, specifically those laid down in the SPS Agreement and that they constitute a disguised restriction on international trade.

5. According to the newly applicable provisions, imported products must meet "sanitary and phytosanitary requirements at least equivalent to those provided for in EU directives". The inconsistent nature of the said measures results from the fact that given the current level of sanitary standards applied by Romania in its own territory, the measures introduce an arbitrary discrimination against the export trade of Moldova and other WTO Members to Romania. According to the new provisions, imports into Romania must meet sanitary and phytosanitary conditions that are more rigorous and strict than those at present applicable in Romania. They are based neither on scientific evidence nor on any assessment of the risks to human, animal or plant life or health. The measures therefore contravene a number of provisions of the SPS Agreement, including in particular Articles 2.1, 2.2, 2.3, 3.3, 5.1, 5.5 and Annex B of the SPS Agreement.

B. THE RESTRICTIONS PREVENT ACCESS TO THE ROMANIAN MARKET

6. The market access restrictions of Romania applied to products of animal origin are based on: Government Decision n° 409 of 25 April 2002, on Minister Order n° 234 of 13 July 2001 and on two implementing service notes of the Ministry of Agriculture, Food and Forestry, n° 54157 of 12 March 2002 and n° 55554 of 10 May 2002.

7. These two service notes provide that imports must conform with paragraphs c), d) and e) of Article 3 of Order n° 234/200. Products of animal origin that are allowed to be imported into Romania are only those that:

(c) come from third countries which are included in the official lists approved for export to the European Union;

(d) come from entities of third countries included in the official lists approved for export to the European Union;

(e) from third countries whose veterinary services are able to guarantee compliance with sanitary requirements at least equivalent to those established by EU Directives.

C. THE RELEVANT PROVISIONS OF THE SPS AGREEMENT

8. This section describes succinctly the various SPS disciplines which Romania breached by introducing the above measures.

Risk Assessment

9. A basic principle of the SPS Agreement is the obligation to base sanitary and phytosanitary measures on an adequate assessment of risk to human, animal and plant health or life (Art. 5.1). Romania has not presented any scientific evidence of risk that could justify its measures and did not prove that its measures were necessary to protect human, animal and plant health or life.

Harmonization

10. The SPS Agreement encourages WTO Members to base their national measures as much as possible on international standards, guidelines or recommendations where they exist (Art. 3.1).

11. Moldova readily recognizes the necessity and legitimacy of harmonization and full implementation of the "acquis communautaire", including the SPS regime, by its trading partners, which have applied for accession to the European Communities, including Romania, as from their date of accession. We recognize and accept that a process of appropriate and progressive adjustment is inevitable. Moldovan institutions have already started working in that direction. However this process needs time and for Moldova progress will depend to an important extent on outside technical assistance.

12. However, Moldova considers that the sudden adoption and application of European SPS standards in trade with third countries even before such standards are fully applied throughout the territory of the EU candidate country itself does not respond to SPS concerns, that it is artificial and clearly protectionist. In sum, the Romanian measures unjustifiably and arbitrarily discriminate against the export trade of Moldova.

Proportionality

13. Article 5.6 of the SPS Agreement obliges Members to adopt measures that respect the principle of proportionality and are not more restrictive than required to achieve the appropriate level of sanitary and phytosanitary protection taking into account technical economic feasibility.

14. This principle is respected when, among alternative measures aiming at ensuring the appropriate level of SPS protection, Members take measures that are not more trade-restrictive than required. The applied restrictions in fact are entirely prohibitive in respect of imports of products of

animal origin from Moldova and thus completely disproportionate to the necessity to obtain an acceptable risk level, equivalent to that practiced at present in Romania.

Transparency

15. Under the SPS Agreement (Art.7), Members are obliged to notify other Members when they modify their SPS measures in a way that may affect trade. Annex B to the SPS Agreement prescribes detailed transparency procedures. In spite of the fact that Order n° 234/2001 was formally issued by the Ministry of Agriculture, Food and Forestry on 13 July 2001 and that the two service notes of March and May this year concerning the new SPS measures imposed on imports have a significant effect on trade, they were not notified to the WTO secretariat. Neither was Moldova notified on a bilateral basis.

16. The way the SPS measures concerned were introduced did not provide any reasonable period of time for the Moldovan producers "to adapt their products and methods of production" to the new sanitary requirements.

17. In addition, item e) of Article 3 of Order n° 234/2001, mentioned in paragraph 7 above, does not indicate the precise EU Directives referred to.

D. CONCLUSIONS AND REQUEST

18. In the light of the above, Moldova considers that the SPS measures adopted by Romania in respect of products of animal origin are inconsistent with the SPS Agreement.

19. The Government of Moldova asks that these measures be rescinded without delay pending the submission of convincing scientific evidence of any risks that such trade could cause to human, animal or plant life or health.

20. Moldova is ready to engage discussions with all interested members with a view to rapidly finding a satisfactory solution.
