

Original: English

AUSTRALIA – QUARANTINE REGIME FOR IMPORTS

Request for Consultations by the European Communities

The following communication, dated 3 April 2003, from the Permanent Delegation of the European Commission to the Permanent Mission of Australia and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

On behalf of the European Communities, I hereby request consultations with Australia pursuant to Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 11 of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) on the Australian quarantine regime, both as such and as applied to certain specific cases.

The Australian quarantine regime for imports appears to be governed both by legislation¹ as well as by the exercise of discretion granted to a Director of Quarantine² and by administrative guidance issued on the exercise of that discretion³. The effect of this regime appears to be that the import of products is *a priori* prohibited, although there is no risk assessment⁴. Risk assessments appear to be commenced, if at all, only once the import of a product has been specifically requested. In some cases, no risk assessment has been commenced despite such request⁵. In other cases it has been commenced but not completed⁶.

¹ The Quarantine Act 1908, the Quarantine Proclamation 1998, the Quarantine Regulations 2000, the Imported Food Control Act 1992, and the Food Standards Code.

² In particular but not limited to section 70 of the Quarantine Proclamation 1998.

³ Including but not limited to the *AFFA (draft) Administrative Process for Import Risk Analysis Handbook and the information contained in the internet service described as ICON - the Australian Quarantine and Inspection Service's import conditions database*.

⁴ This appears to be the case in particular for example for a number of fresh fruits and vegetables from the EC. For example for EC apples, pears, raspberries, blackberries, bananas, potatoes the *ICON* database states that "this commodity is prohibited entry into Australia because insufficient information is available on its risk status". For the following EC products the *ICON* database provides for no import conditions which appears to mean that their import into Australia is prohibited: plums, apricots, nectarines, peaches, cherries, strawberries, blackcurrants, redcurrants, lettuce, carrots, cucumbers, gherkins, aubergines, courgettes, marrows, tomatoes (other than from the Netherlands) and squash.

⁵ Examples are calf-milk replacer from the Netherlands, seed potatoes from Scotland, organic fertiliser based on chicken manure from the Netherlands and live pigs for breeding from the Netherlands.

⁶ This is the case for the following products from the EC: truss tomatoes from the Netherlands (assessment started 1997); fresh citrus fruit from Italy (import application made 1998); pig semen (risk assessment started 1998); edible eggs and egg products (risk assessment started 1998); fresh pigmeat (access request made 1980, risk assessment underway since 1998); uncooked poultry meat (risk assessment started December 1998).

Australia permits the import of deboned pigmeat from Denmark for processing in Australia. However Australia has refused the import of deboned pigmeat for Denmark which has been processed in the required manner in Denmark. Further, the processing requirements imposed in Australia may be more trade-restrictive than necessary in the circumstances to protect Australia from PRRS (Porcine Reproductive and Respiratory Syndrome). It also appears that requests have been made for access to Australia for processed pigmeat or deboned pigmeat for processing from other EU Member States which have been refused.

Australia permits the import of poultry meat which has been cooked to high temperature and for long periods to prevent the entry of IBD (infectious bursal disease). However it appears that IBD may already be present in the Australian poultry flock and that no efforts are being made to eradicate it. Further, the processing requirements imposed in Australia may be more trade-restrictive than necessary in the circumstances to protect Australia from IBD.

The EC considers that the measures referred to above may be contrary to the SPS Agreement, and in particular, although not limited to, its Articles 2.2, 2.3, 3.3, 4.1, 5.1, 5.6 and, if applicable, 5.7, 8 and Annex C.

The EC would welcome the opportunity for consultations with Australia for an explanation of the operation of its quarantine system and of the specific quarantine measures imposed for the particular products referred to above. The EC looks forward to receiving the reaction of the Government of Australia to the present request and to setting a mutually convenient date and place to begin consultations.
