

AUSTRALIA – QUARANTINE REGIME FOR IMPORTS

Request for the Establishment of a Panel by the European Communities

The following communication, dated 29 August 2003, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 3 April 2003, the European Communities requested consultations with the Government of Australia pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) with regard to the Australian quarantine regime for imports. This request was circulated to the WTO Members on 9 April 2003 as document WT/DS287/1, "*Australia – Quarantine Regime for Imports*".

Consultations were held on 8 May 2003. Unfortunately, these consultations failed to settle the dispute.

The European Communities therefore requests that a panel be established pursuant to Article 6 of the DSU, Article XXII:2 of GATT 1994 and Article 11 of the *SPS Agreement*.

The relevant legal provisions of the Australian regime for the importation of live animals, dead animals and animal parts, meat and meat products, dairy products, bee products, living plants, seeds, plant parts, and fresh fruits and vegetables are Sections 37, 38, 39, 40, 42, 62, 63 and 64 of the Quarantine Proclamation 1998¹ which prohibit importation of those products unless a Director of Quarantine grants a permit to import them into Australia. For example, Section 64 of the Quarantine proclamation provides that "(t)he importation into Australia of a fresh fruit or vegetable is prohibited unless a Director of Quarantine has granted the person a permit to import it into Australia".

The procedures and criteria applied by Directors of Quarantine for deciding whether or not to grant a permit for importation of those products are laid down in Sections 5D and 13 of the Quarantine Act 1908², Sections 64(2) and 70 of the Quarantine Proclamation 1998, and the related administrative frameworks³.

The European Communities seeks examination by the panel of the unduly restrictive quarantine measures applied by Australia of the following products from Member States of the European Communities: tomatoes, fresh citrus fruit, apples, peaches, nectarines, cucumbers, lettuce,

¹ Quarantine Proclamation 1998, of 7 July 1998, as amended.

² Quarantine Act 1908, No. 3, of 30 March 1908, as amended.

³ AFFA Import Risk Analysis Handbook (Canberra, 2003), AQIS Import Risk Analysis Process Handbook (Canberra 1998), and AFFA Draft Guidelines to Import Risk Analysis (Canberra, 2001).

carrots, apricots, edible eggs and egg products, uncooked pigmeat, pig semen, uncooked poultry meat, calf-milk replacer, and organic fertiliser based on chicken manure.

For those products, an assessment of quarantine risk has not been carried out, and a Director of Quarantine therefore has not made a decision whether or not to grant a permit for their importation into Australia. Consequently, importation of those products into Australia is prohibited.

The European Communities considers that the restrictions on the above products constitute SPS measures within the meaning of Article 1.1 and paragraph 1 of Annex A of the *SPS Agreement* which are in breach of Australia's obligations under the provisions of the *SPS Agreement*, in particular, but not necessarily exclusively of:

- Article 5.1 of the *SPS Agreement*, because, *inter alia*, these measures are not based on an assessment of risks.
- Article 2.2 of the *SPS Agreement* because, *inter alia*, in so far as these SPS measures are not based on an assessment of risks, they are maintained without sufficient scientific evidence.

In addition, the European Communities seeks examination by the panel of the specific conditions for import of pigmeat into Australia⁴. According to those conditions, pigmeat cannot be imported into Australia from Member States of the European Communities, with the exception of (i) canned pigmeat⁵ and (ii) fresh deboned pigmeat from Denmark which has been heat-treated to a minimum core temperature of 56°C for not less than 60 minutes (or an approved equivalent heating process) at an approved facility in Australia⁶.

The European Communities considers that the restrictions on the importation of the above products are SPS measures within the meaning of Article 1.1 and paragraph 1 of Annex A of the *SPS Agreement* which are in breach of Australia's obligations under the provisions of the *SPS Agreement*, in particular, but not necessarily exclusively of:

- Article 4.1 of the *SPS Agreement* because, *inter alia*, the measures do not accept as equivalent measures adopted by Denmark for the heat-treatment of fresh pigmeat.
- Article 5.6 of the *SPS Agreement* because, *inter alia*, by prohibiting imports of pigmeat from Members other than Denmark, and by prohibiting imports of bone-in fresh pigmeat heat-treated to the same core temperature as deboned fresh meat, the measures are more trade-restrictive than necessary.

The European Communities requests that a Panel be established with standard terms of reference, in accordance with Article 11 of the *SPS Agreement* and Article 7 of the DSU.

⁴ These conditions are available on the internet service described as *ICON - the Australian Quarantine and Inspection Service's import conditions database* under the commodity heading "pig meat".

⁵ In accordance with "Condition C9451 Foods canned with more than 5% meat content, commercial imports", available at the internet service described as *ICON - the Australian Quarantine and Inspection Service's import conditions database* under the commodity heading "pig meat".

⁶ In accordance with "Condition C8960 Quarantine requirements for the importation of uncooked pig meat from Denmark", available at the internet service described as *ICON - the Australian Quarantine and Inspection Service's import conditions database* under the commodity heading "pig meat".