

**UNITED STATES - MEASURES AFFECTING THE IMPORTATION OF ANIMALS,
MEAT AND OTHER ANIMAL PRODUCTS FROM ARGENTINA**

Request for the Establishment of a Panel by Argentina

The following communication, dated 6 December 2012, from the delegation of Argentina to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

I have been instructed by my authorities to request the establishment of a panel pursuant to Article 6 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) with respect to the United States measures affecting the importation of animals, meat and other animal products from Argentina (*United States - Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina - DS447*).

To that end I would ask that this item be placed on the agenda of the next regular meeting of the Dispute Settlement Body (DSB), based on the following request:

On 30 August 2012, Argentina requested consultations with the United States in accordance with Articles 1 and 4 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXIII of the *General Agreements 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 United States measures affecting the importation of animals, meat and other animal products from Argentina.

The consultations took place on 18 and 19 October 2012, in Geneva, Switzerland, with a view to reaching a satisfactory settlement of the matter. Unfortunately, the consultations failed to settle the dispute.

Argentina therefore requests that a panel be established pursuant to Articles 4 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 11 of the SPS Agreement to examine the matter based on the standard terms of reference as set out in Article 7.1 of the DSU.

1. Prohibition of the import of fresh (chilled or frozen) bovine meat¹

Argentina questions the prohibition that has been maintained by the United States for more than ten years on imports of fresh (chilled or frozen) bovine meat from Argentina, as contained in the provisional and final regulations of the Animal and Plant Inspection Service (APHIS), amending the regulations established in the Code of Federal Regulations (CFR), Title 9, Part 94 (9 CFR-Part 94) [Docket No. 01-032-2] published in the Federal Register on 4 June 2001 (66 FR, 29897-29899)

¹ Hereinafter "fresh (chilled or frozen) meat".

and 11 December 2001 (66 FR, 63911), respectively. The maintenance of that prohibition lacks scientific justification and disregards the reinstatement, internationally, of Argentina's sanitary status as a zone free of foot-and-mouth disease (FMD).

At the same time, the United States maintains a general import prohibition, as contained in Title 9, Part 94.1(b) of the CFR, on fresh (chilled or frozen) meat from Argentina, with no scientific justification. This import ban is a consequence of the US failure to recognize the territory of the Argentine Republic as an FMD-free zone. And yet, Argentina is recognized by the World Organisation for Animal Health (OIE) as an FMD-free zone. The region located south of parallel 42° S (South Patagonia) has been recognized by the OIE since May 2002 as an FMD-free zone without vaccination and this region was extended to the Rio Negro (Patagonia North B) in May 2007, pursuant to Resolution No. XXI adopted during the 75th General Session of the OIE International Committee. The remainder of the country has been recognized by the OIE through the same Resolution XXI as an FMD-free zone with vaccination since May 2007, when the status it had enjoyed since July 2003 was reinstated.

The United States failure to recognize the zone of Argentine territory recognized by the OIE as FMD-free without vaccination constitutes a deviation from the relevant international standards, guidelines and recommendations that lacks scientific justification, as does the continued application of the general prohibition based on that lack of recognition.

Regarding the zone of Argentine territory where vaccination is practised, Argentina considers that the US prohibition on imports of fresh (chilled and frozen) meat from areas recognized as FMD-free with vaccination lacks scientific justification. According to the relevant international standards, guidelines and recommendations on sanitary protection, the prohibition on imports of fresh (chilled and frozen) meat from regions or countries free from FMD with vaccination represents a disproportionate measure in relation to a risk which is negligible given that appropriate mitigation measures have been taken. Thus, the prohibition applied entails a greater degree of restriction on trade than is necessary to achieve the said level of protection.

Moreover, Argentina questions the criteria adopted by the United States, contained in the APHIS Policy Regarding Importation of Animals and Animal Products published in the Federal Register of 28 October 1997 (Vol. 62, No. 208, 56027-56033), according to which regions or countries recognized by the OIE as FMD-free with vaccination are not considered FMD-free.

Furthermore, in its application of the prohibition on imports of fresh (chilled and frozen) meat the United States is discriminating between Argentina and other Members enjoying a similar international status.

In short, regarding the prohibition on imports of fresh (chilled and frozen) meat, this request for the establishment of a panel covers the following US measures contested by Argentina as well as any amendments, related measures or implementing measures:

- I. Provisional and final regulations of the Animal and Plant Inspection Service (APHIS) [Docket No. 01-032-2], published in the Federal Register on 4 June 2001 (66 FR, 29897-29899) and 11 December 2001 (66 FR, 63911), respectively.
- II. Application of the general import prohibition as contained in Title 9, Part 94.1(b) of the CFR.
- III. APHIS Policy Regarding Importation of Animals and Animal Products, published in the Federal Register of 28 October 1997 (Vol. 62, No. 208, 56027-56033).

2. Failure to recognize the FMD-free zone comprising the regions of South Patagonia and Patagonia North B²

Argentina questions the United States' application of prohibitions on imports of animals, meat and other animal products, as contained in Title 9, Part 94 of the CFR, as a consequence of its failure to recognize the FMD-free zone made up of the regions of South Patagonia and Patagonia North B. This lack of recognition and the consequent ban on imports of the products in question is being maintained, without scientific justification, despite the fact that this region was recognized more than ten years ago (May 2002) by the OIE as an FMD-free zone where vaccination is not practised.

In this connection, Argentina considers that the general requirement contained in the APHIS Policy Regarding Importation of Animals and Animal Products, published in the Federal Register of 28 October 1997 (Vol. 62, No. 208, 56027-56033), whereby the recognition of a zone as FMD-free is conditional on vaccination not being carried out in any part of the country in question, lacks scientific justification.

In addition, the United States is in violation of its obligation to adapt the sanitary measure to the characteristics of the area of origin of the products.

The United States also discriminates between Argentina and other WTO Members which have a similar international sanitary status as regards the recognition of FMD-free zones.

In short, with respect to the failure to recognize the FMD-free zone comprising the regions of South Patagonia and Patagonia North B, this request for the establishment of a panel covers the following US measures contested by Argentina, as well as any amendments, related measures, or implementing measures:

- Application of prohibitions on imports of animals, meat and other animal products, as contained in Title 9, Part 94 of the CFR;
- APHIS Policy Regarding Importation of Animals and Animal Products, published in the Federal Register of 28 October 1997 (Vol. 62, No. 208, 56027-56033).

3. Undue delays in approval procedures

Furthermore, the United States has been guilty of undue delays in the procedures under the Code of Federal Regulations (CFR), Title 9, Part 92.2, regarding recognition of the animal health status of a region, or the approval of exports of animals or animal products from that region. Such undue delays have occurred with regard to both procedures for the approval of imports of fresh (chilled and frozen) bovine meat from Argentina and the recognition of the FMD-free zone comprising South Patagonia and Patagonia North B.

In both cases, the United States has recognized in the WTO that the corresponding risk analyses have been completed.

In addition, the Omnibus Appropriations Act of 2009 (H.R. 1105, 111th Congress), Article 737, imposes conditions, without any scientific justification or risk analysis, on APHIS activities for the importation into the United States of ruminants or swine, or any other fresh (including chilled or frozen) meat or products of any ruminant or swine born, reared or slaughtered

² Zone located south of parallel 42° S, extended up to the Rio Negro in accordance with OIE Resolution XXI, adopted by the OIE International Committee during the 75th General Session, 20-25 May 2007.

in Argentina. The conditions laid down in that law are in violation of most-favoured-nation status and also violate the US obligation to ensure that the procedures established in the CFR, Title 9, Part 92.2, are fulfilled without undue delays and in a manner no less favourable for Argentine products than for US products.

The United States has also failed to explain the delays that have occurred.

In short, Argentina is questioning:

- I. The undue delays in the procedures under the Code of Federal Regulations (CFR), Title 9, Part 92.2;
- II. The Omnibus Appropriations Act of 2009 (H.R. 1105, 111th Congress), Article 737.

In view of the situation described in the three preceding sections, the US measures would be inconsistent with that country's obligations under the following provisions of the covered agreements:

SPS Agreement

- I. Article 1.1, because the contested measures are sanitary measures which directly affect international trade and are not applied in accordance with the provisions of the SPS Agreement.
- II. Article 2.2, because the sanitary measures relating to US imports of animals, meat and other animal products from Argentina are applied beyond the extent necessary to protect human or animal life or health and are not based on scientific principles. In fact, the United States maintains the contested sanitary measures without sufficient scientific evidence. Furthermore, the contested measures are not provisional measures under paragraph 7 of Article 5 of the SPS Agreement.
- III. Article 2.3, because the contested sanitary measures arbitrarily and unjustifiably discriminate between Argentina and other WTO Members where identical or similar conditions prevail. For example, while the United States permits the importation of fresh (chilled or frozen) meat from other Members considered to be FMD-free with vaccination, and has also recognized areas as FMD-free within the territory of other WTO Members which carry out vaccination, it does not do so in the case of Argentina. Moreover, the measures are applied in a manner which constitutes a disguised restriction on international trade.
- IV. Article 3.1, because the sanitary measures in question are not based on the international standards, guidelines or recommendations of the World Organisation for Animal Health (OIE), nor are they in conformity with Article 3.3 of the SPS Agreement.
- V. Article 3.3, because the US measures in question result in a higher level of sanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, without any scientific justification or a determination by the US of its appropriate level of protection in accordance with the provisions of paragraphs 1 through 8 of Article 5 of the SPS Agreement.

- VI. Article 5.1, because the sanitary measures in question are not based on an assessment, as appropriate to the circumstances, of the risks to human or animal life or health, taking into account risk assessment techniques developed by relevant international organizations.
- VII. Article 5.2, because the United States, having failed to carry out a risk assessment appropriate to the circumstances, is not taking into account available scientific evidence; relevant inspection, sampling and testing methods; prevalence of diseases; existence of disease-free areas; ecological and environmental conditions; or quarantine or other treatment.
- VIII. Article 5.4, because in determining the appropriate level of sanitary protection, the United States has not taken into account the objective of minimizing negative trade effects.
- IX. Article 5.6, because the sanitary measures in question are more trade-restrictive than required to achieve the United States' appropriate level of protection, taking into account the technical and economic feasibility of existing alternative measures that are significantly less trade-restrictive.
- X. Article 6.1, because the US FMD measures are not adapted to the sanitary characteristics of the areas from which the Argentine imports originate and do not take into account the absence of FMD in certain regions or the low level of prevalence of the disease in others, or the existence of eradication or control programmes. Furthermore, the United States fails to take into consideration the appropriate criteria or guidelines developed by the OIE for assessing the sanitary characteristics of a region.
- XI. Article 6.2, because the United States, in failing to recognize the area comprising the regions of South Patagonia and Patagonia North B as an FMD-free zone, is not basing the recognition of these FMD-free or low disease prevalence zones on factors such as geography, ecosystems, epidemiological surveillance and the effectiveness of sanitary controls.
- XII. Article 8, because the United States has not acted in accordance with the provisions of Annex C.1.
- XIII. Article 10.1, because, in the application of its sanitary measures, the United States has not taken account of Argentina's special needs as a developing country.

GATT 1994

- XIV. Article I.1, because the United States is not granting Argentina, immediately and unconditionally, the same advantages in respect of the importation of animals, meat and other products of animal origin, as it does to like products originating in other Members.
- XV. Article XI.1, because the US measures constitute an import prohibition or restriction other than duties, taxes or other charges.

Marrakesh Agreement Establishing the World Trade Organization

XVI. Article XVI.4, because the United States has not ensured that its laws, regulations and administrative procedures are applied in accordance with SPS Agreement obligations.

The US measures nullify or impair the benefits accruing to Argentina directly or indirectly under the covered Agreements, within the meaning of Article XXIII:1 of the GATT 1994.

In light of the foregoing, Argentina asks that this request for the establishment of a panel be placed on the agenda of the Dispute Settlement Body meeting to be held on 17 December 2012.
