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EUROPEAN COMMUNITIES – MEASURES CONCERNING MEAT AND MEAT PRODUCTS (HORMONES)

Recourse to Article 21.5 of the DSU by the European Communities

Request for Consultations

The following communication, dated 22 December 2008, from the delegation of the European Communities to the delegation of Canada and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

The European Communities hereby requests consultations with Canada under Articles 21.5 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU").

On 16 September 1996 Canada requested the establishment of a panel, referring to the following measures:

> The European Communities measures prohibiting the importation of livestock and meat from livestock that have been treated with certain substances having a hormonal action ("EC measures") include the following: Council Directive 88/146/EEC; the directives referenced in that directive (72/462/EEC, 81/602/EEC, 81/851/EEC, 81/852/EEC, and 85/358/EEC); the decisions referred to in Article 6(2) of directive 88/146/EEC; the control programme referred to in Article 6(7) of directive 88/146 EEC; the derogations referred to in Article 7 of directive 88/146/EEC; and any amendments or modifications, including Council Directives 96/22/EC and 96/23/EC.[1]

The original panel report states that the dispute concerned in particular Directive 81/602/EEC, Directive 88/146/EEC and Directive 88/299/EEC,[2] and refers to other measures relevant to the dispute, including Directive 96/22.[3] The original panel report also records that on 29 April 1996 the European Communities adopted Directive 96/22, replacing Directive 81/602/EEC, Directive 88/146/EEC and Directive 88/299/EEC;[4] and that EC Member States were required to comply with Directive 96/22 by 1 July 1997 at the latest.[5] The original panel report explains that, *inter alia*, these measures prohibited or restricted the administering to farm animals of six hormones, or the placing on

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[1] WT/DS48/5, 16 September 1996.

[2] Panel Report, *EC – Hormones (Canada)*, WT/DS48/R/CAN, para. 2.1.

[3] Panel Report, *EC – Hormones (Canada)*, footnote 2.

[4] Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (*Official Journal of the European Communities* L 125 of 23 May 1996, p. 3).

[5] Panel Report, *EC – Hormones (Canada)*, para. 2.5.

the market of animals or meat from animals to which such hormones have been administered.[6] The six hormones involved in the dispute were: oestradiol 17β; testosterone; progesterone; trenbolone acetate; zeranol; and melengestrol acetate (MGA).[7] Canada claimed that, as a result of these measures, there was discrimination against Canadian beef imports and a disguised restriction on international trade.[8]

On 13 February 1998, the Dispute Settlement Body ("DSB") adopted the Appellate Body report in *European Communities – Measures Concerning Meat and Meat Products (Hormones)* ("*EC – Hormones"*) and the panel report as modified by the Appellate Body report.[9] The Appellate Body upheld the panel's findings that the measures were inconsistent with Article 5.1 of the *SPS Agreement*, because they were not based on a risk assessment within the meaning of Articles 5.1 and 5.2 of the *SPS Agreement*.[10] The Appellate Body recommended that the DSB request the European Communities to bring the SPS measures found in the Appellate Body report and in the panel report, as modified by the Appellate Body report, to be inconsistent with the *SPS Agreement* into conformity with the obligations of the European Communities under that Agreement.

In light of the DSB recommendations and rulings in *EC – Hormones*, and in order to comply with them, the European Communities initiated and funded a number of specific studies and research projects, requested third countries (including Canada) for any scientific data and information in their possession, reviewed the findings of independent expert bodies, taking into account information from relevant international organisations, and performed an extensive review of the available scientific evidence and of available pertinent information concerning the six substances at issue.[11] For oestradiol 17β, the European Communities disposed of sufficient scientific evidence to perform a risk assessment within the meaning of Article 5.1 of the *SPS Agreement.* For the other five substances, having regard to the European Communities appropriate level of protection, relevant scientific evidence was insufficient for performing a risk assessment within the meaning of Article 5.1 of the *SPS Agreement*, and risk assessments within the meaning of Article 5.7 of the *SPS Agreement* were performed on the basis of available pertinent information.

Based on these risk assessments and on the basis of all other available pertinent information, the European Communities adopted Directive 2003/74/EC,[12] which entered into force on 14 October 2003.[13] Pursuant to Directive 2003/74/EC, there is a permanent prohibition for the placing on the

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[6] Panel Report, *EC – Hormones (Canada)*, paras 2.1 to 2.5.

[7] Panel Report, *EC – Hormones (Canada)*, paras 2.8 to 2.9; Appellate Body Report, *EC – Hormones*, paras 2 to 5.

[8] Panel Report, *EC – Hormones (Canada)*, para. 3.1, final sentence.

[9] Action by the Dispute Settlement Body (WT/DS48/11, 19 February 1998); Appellate Body report (WT/DS48/AB/R, 16 January 1998); Panel Report (WT/DS48/R/CAN, 18 August 1997).

[10] Appellate Body Report, *EC – Hormones*, paras 253(l) and 208.

[11] Opinion of the Scientific Committee on Veterinary Measures Relating to Public Health (SCVPH): Assessment of potential risks to human health from hormone residues in bovine meat and meat products (30 April 1999); Opinion on review of previous SCVPH opinions of 30 April 1999 and 3 May 2000 on the potential risks to human health from hormone residues in bovine meat and meat products (adopted on 10 April 2002) and Review of specific documents relating to the SCVPH opinion of 30 April 99 on the potential risks to human health from hormone residues in bovine meat and meat products (adopted on 3 May 2000). These opinions have been made available to the public and are still accessible on:
http://ec.europa.eu/food/food/chemicalsafety/contaminants/hormones/sci_opinion_en.htm.

[12] Directive 2003/74/EC of the European Parliament and of the Council of 22 September 2003 amending Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists (*Official Journal of the European Union* L 262 of 14 October 2003, p. 17). Recitals 1-13 of Directive 2003/74/EC summarise the reasons for its adoption.

[13] Directive 96/22/EC was most recently amended by Directive 2008/97/EC of the European Parliament and the Council of 19 November 2008 amending Council Directive 96/22/EC concerning the

market of meat and meat products from animals treated with oestradiol 17β for growth-promotion purposes, and a provisional prohibition for the placing on the market of meat and meat products from animals treated with testosterone, progesterone, trenbolone acetate, zeranol and melengestrol acetate (MGA) for growth-promotion purposes, pending the obtaining of additional information.[14]

The European Communities continues to observe scientific developments in this area and gathers additional information on these five substances. In June 2007, the European Food Safety Authority completed another review of the available pertinent information and concluded that the new data did not call for a revision of the previous assessments of the Scientific Committee on Veterinary Measures relating to Public Health that were performed in 1999, 2000 and 2002.[15]

The European Communities considers that by gathering and analysing all the available pertinent scientific and other evidence, by performing risk assessments, by adopting Directive 2003/74/EC, by properly notifying it to the WTO, and by continuing to seek to obtain additional information on testosterone, progesterone, trenbolone acetate, zeranol and melengestrol acetate (MGA), it has brought the measures found to be inconsistent into compliance with the relevant provisions of the *SPS Agreement*, in line with the recommendations and rulings of the DSB. This remains the case as of the date of this consultation request.

In light of the above, the European Communities considers that the measures taken to comply are:

– in compliance with Article 5.1 of the *SPS Agreement*, as far as oestradiol 17β is concerned, since it is "based on an assessment, as appropriate to the circumstances, of the risk to human […] life or health, taking into account risk assessment techniques developed by the relevant international organisations"; and

– in compliance with Article 5.7 of the *SPS Agreement*, as far as testosterone, progesterone, trenbolone acetate, zeranol and melengestrol acetate (MGA) are concerned, since for each of these substances the "relevant scientific evidence is insufficient", the measure is maintained "provisionally" and "on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members", and the European Communities sought "to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time".

The European Communities therefore considers that the conditions in the first sentence of Article 22.8 of the DSU have been met and, as a consequence, Canada must terminate the suspension of concessions without delay.

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prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists (*Official Journal of the European Union* L 318 of 28 November 2008, p. 9).

[14] The European Communities notified the DSB of the adoption of Directive 2003/74/EC with a Communication on 27 October 2003, circulated under reference WT/DS26/22, where the European Communities stated that it considered that it had fully implemented the recommendations and rulings of the DSB and, as a consequence, the suspension of concessions to the EC by the United States and Canada was no longer justified.

[15] Opinion of the Scientific Panel on contaminants in the food chain (CONTAM) related to hormone residues in bovine meat and meat products, question number: EFSA-Q-2005-048, adopted on 12 June 2007, published in The EFSA Journal (2007) 510, pages 1 – 62, available on: http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_1178622336805.htm.

The European Communities understands that the Canada disagrees with these positions, as demonstrated by the fact that Canada maintains the suspension of concessions to the European Communities by continuing to impose import duties in excess of bound rates on imports from the European Communities.

With these consultations, the European Communities intends to enable the European Communities and Canada to resolve their disagreement on the substantive compliance with the DSB rulings and recommendations achieved by the measures taken to comply, and to have Canada terminate the suspension of concessions immediately.

The European Communities looks forward to receiving in due course Canada's reply to this request and to setting a mutually convenient date and modality for these consultations.