

**KOREA – MEASURES AFFECTING THE IMPORTATION OF BOVINE MEAT  
AND MEAT PRODUCTS FROM CANADA**

Request for the Establishment of a Panel by Canada

The following communication, dated 9 July 2009, from the delegation of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 9 April 2009, the Government of Canada requested consultations with the Republic of Korea ("Korea") concerning measures affecting the importation of bovine meat and meat products from Canada, pursuant to Articles 1 and 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").

On 7 May 2009, consultations were held in Geneva, with a view to reaching a satisfactory resolution of the matter. Unfortunately, the consultations failed to settle the dispute.

Canada therefore requests the DSB to establish a panel to examine this matter with standard terms of reference, as set out in Article 7.1 of the DSU, pursuant to Articles 4 and 6 of the DSU, Article XXII of the GATT 1994 and Article 11 of the *SPS Agreement*.

Korea maintains a ban on the importation of bovine meat and meat products from Canada allegedly to protect against risks arising from bovine spongiform encephalopathy (BSE).

In addition, Korea has adopted measures that place unjustified restrictions on the resumption of imports of bovine meat and meat products from Canada. For instance:

- (i) Korea prohibits the importation of all beef and beef products derived from cattle 30 months of age and over that originate from countries where there has been a case of BSE in the last five years;
- (ii) Korea makes the import health requirements necessary for the lifting of the ban on bovine meat and meat products from Canada subject to the deliberation of its National Assembly;
- (iii) In the event that the ban on bovine meat and meat products from Canada were lifted, Korea may re-impose a ban on imports of all bovine meat and meat products from Canada indefinitely were an additional case of BSE to occur in Canada.

Moreover, Korea's measures discriminate between Canada and other WTO Members.

The measures covered in this panel request are the following:

- *Act on the Prevention of Contagious Animal Diseases* (Law No. 907), which entered into force on 30 December 1961, as amended, including by Korean Act No. 9130, which entered into force on 11 September 2008;
- *Enforcement Regulations of the Act on the Prevention of Livestock Epidemics*, as amended, including by Decree No. 68 of the Minister of Food, Agriculture, Forestry and Fisheries, dated 30 April 2009;
- Notice No. 1998-76 of the Minister of Agriculture and Forestry (*Animal Health Requirements for the importation of Canadian cloven-hoofed animals and their products into the Republic of Korea*), dated 7 December 1998;
- Administrative Order No. 51584-476, dated 21 May 2003;
- Notice No. 2004-23 of the Minister of Agriculture (*Prohibited Countries as Exporters of Designated Inspectable Articles*), dated 3 May 2004, as amended, including by Notice No. 2009-5 of the Minister of Food, Agriculture, Forestry and Fisheries (*Partial Amendment of the Clauses Applicable to the Prohibited DIA Exporting Countries*), dated 17 February 2009;
- Notice 2008-74 of the Minister of Food, Agriculture, Forestry and Fisheries (*Method of Import Risk Analysis Concerning Import of Designated Inspectable Articles*), dated 20 August 2008;
- Notice No. 2008-15 of the Minister of Food, Agriculture, Forestry and Fisheries (*Import Health Requirements for U.S. Beef and Beef Products*), dated 26 June 2008; and
- Any amendments or extensions to the above, or implementing measures on which Korea may rely on in imposing a prohibition on the importation of bovine meat and meat products from Canada or in placing further restrictions on the resumption of imports of bovine meat and meat products from Canada.

Each of these measures is inconsistent with the obligations of Korea under the *SPS Agreement*. In particular, Canada considers that each of these measures is inconsistent with the following provisions:

1. Article 2.2 of the *SPS Agreement* because they are not applied only to the extent necessary to protect human or animal life or health, they are not based on scientific principles and they are maintained without sufficient scientific evidence.
2. Article 2.3 of the *SPS Agreement* because they arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail and they are applied in a manner that constitutes a disguised restriction on international trade.
3. Article 3.1 of the *SPS Agreement* because they are not based on international standards, guidelines or recommendations.
4. Article 3.3 of the *SPS Agreement* because they result in a higher level of sanitary protection than would be achieved by measures based on the relevant international

standards, guidelines or recommendations, in the absence of a scientific justification or of a determination by Korea of its appropriate level of sanitary protection in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.

5. Article 5.1 of the *SPS Agreement* because they 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.
6. Article 5.5 of the *SPS Agreement* because Korea maintains arbitrary or unjustifiable distinctions in the levels of sanitary protection that it considers appropriate in different situations and those distinctions result in discrimination or a disguised restriction on international trade.
7. Article 5.6 of the *SPS Agreement* because they are more trade-restrictive than required to achieve Korea's appropriate level of sanitary protection.
8. Article 8 and Annex C(1)(a), first clause, because they cannot be undertaken and completed without undue delay.
9. Were Korea to invoke Article 5.7 of the *SPS Agreement* in justification of its measures, they do not meet the requirements necessary to allow for their provisional adoption and/or maintenance under that Article.

Canada also considers that each of these measures is inconsistent with the following provisions of the GATT 1994:

1. Article I:1 of the GATT 1994 because Korea does not accord the same treatment it grants to bovine meat and meat products originating in certain countries to the like products originating in Canada.
2. Article III:4 of the GATT 1994 because they result in less favourable treatment for imported bovine meat and meat product than for domestic bovine meat and meat products.
3. Article XI:1 of the GATT 1994 because they constitute prohibitions or restrictions on importation.

Canada asks that this request be placed on the agenda of the next meeting of the DSB, scheduled to be held on 20 July 2009.

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