

**EUROPEAN COMMUNITIES – MEASURES PROHIBITING THE IMPORTATION
AND MARKETING OF SEAL PRODUCTS**

Request for the Establishment of a Panel by Canada

The following communication, dated 11 February 2011, from the delegation of Canada to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 2 November 2009, the Government of Canada ("Canada") requested consultations with the delegation of the European Communities, 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 14 of the *Agreement on Technical Barriers to Trade* ("TBT Agreement"), concerning *Regulation (EC) No. 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products*, as well as any subsequent amendments, replacements, extensions, implementing measures or other related measures. Consultations with the European Union were held on 15 December 2009.¹

On 17 August 2010, the European Commission published *Commission Regulation (EU) No 737/2010 laying down detailed rules for the implementation of Regulation (EC) No. 1007/2009 of the European Parliament and of the Council on trade in seal products*. On 18 October 2010, the Government of Canada requested supplementary consultations with the European Union. Supplementary consultations were held on 1 December 2010 with a view to reaching a satisfactory resolution of the matter. Unfortunately, the consultations failed to settle the dispute.

Canada therefore requests the Dispute Settlement Body 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 4.7 and 6 of the DSU, Article XXIII of the *GATT 1994* and Article 14 of the *TBT Agreement*.

The measures covered in this panel request are the following:

- (i) Regulation (EC) No. 1007/2009 of the European Parliament and of the Council, of 16 September 2009 on trade in seal products (the "European Union trade ban").
- (ii) Regulation (EU) No 737/2010 laying down detailed rules for the implementation of Regulation (EC) No. 1007/2009 of the European Parliament and of the Council on trade in seal products (the "implementing measure").

¹ In this Panel Request, Canada refers to the respondent as the European Communities in respect of events that took place before the entry into force of the Lisbon Treaty on 1 December 2009. In respect of events taking place after 1 December 2009, Canada refers to the respondent as the European Union.

For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures, administrative orders, directives, or customs guidelines including those issued by individual European Union Member States.

The European Union trade ban prohibits the importation and the placing on the market for sale in the European Union customs territory of any seal product except: (a) those derived from hunts traditionally conducted by Inuit and other indigenous communities, which contribute to their subsistence; and (b) those that are by-products of a hunt regulated by national law and with the sole purpose of sustainable management of marine resources. In addition, seal products for personal use may be imported but may not be placed on the market. The effect of the trade ban, in combination with the implementing measure, is to restrict virtually all trade in seal products within the European Union, and in particular with respect to seal products of Canadian origin.

Canada considers that each of the measures referred to above is inconsistent with the European Union's obligations under the *GATT 1994* and under the *TBT Agreement*. Specifically, the European Union measures violate the following provisions:

- (1) Article I:1 of *GATT 1994* because Canadian seal products are not accorded immediately and unconditionally any advantage, favour, privilege or immunity granted to like products originating in any other country.
- (2) Article III:4 of *GATT 1994* because the measures result in less favourable treatment of seal products from Canada than like products originating in the European Union.
- (3) Article XI:1 of *GATT 1994* because the measures result in a prohibition or restriction on the importation of seal products from Canada into the European Union.
- (4) Article 2.1 of the *TBT Agreement* because the measures result in less favourable treatment accorded to seal products from Canada than to like products of European Union origin and like products originating in any other country.
- (5) Article 2.2 of the *TBT Agreement* because the measures create an unnecessary obstacle to international trade, lack a legitimate objective and are more trade-restrictive than necessary to fulfil a legitimate objective if any such objective were to exist.

In addition, Canada considers that the implementing measure, either in itself or in combination with Regulation (EC) No. 1007/2009, is inconsistent with the European Union's obligations under the following provisions of the *TBT Agreement*:

- (1) Article 5.1.1 because access for suppliers of Canadian seal products is granted under conditions less favourable than those accorded to other suppliers of like products, in a comparable situation.
- (2) Article 5.1.2 because the conformity assessment procedures set out in the implementing measure create an unnecessary obstacle to international trade.
- (3) Article 5.2.1 and 5.2.2 in relation to the timeliness of implementation of the conformity assessment procedures set out in the implementing measure.
- (4) Article 5.2.3 in relation to the necessity of information requirements under the conformity assessment procedures set out in the implementing measure.

- (5) Article 5.6 because the European Union has not properly notified the conformity assessment procedures set out in the implementing measure.
- (6) Article 7.1 because the European Union has not taken reasonable measures to ensure compliance with the measures by individual Member States and their respective customs authorities.

The violations stated above nullify or impair the benefits accruing to Canada under those agreements. Moreover, the measures also nullify or impair the benefits accruing to Canada in the sense of Article XXIII:1(b) of the *GATT 1994*.

Canada requests that this matter be put on the agenda of the next DSB meeting, scheduled to be held on 24 February 2011.
