

**UNITED STATES – MEASURES AFFECTING THE IMPORTATION
OF FRESH LEMONS**

Request for the Establishment of a Panel by Argentina

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

My authorities have instructed me to request the establishment of a panel pursuant to Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) of the World Trade Organization (WTO) concerning US measures affecting the importation of fresh lemons from the North-West region of Argentina ("*United States - Measures Affecting the Importation of Fresh Lemons*" - DS448).

To this end, I should be grateful if this item could be placed on the agenda of the next regular meeting of the Dispute Settlement Body (DSB) on the basis of the request set forth hereunder.

On 3 September 2012, Argentina requested consultations with the United States pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXIII 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) concerning US measures affecting the importation of fresh lemons¹ from the North-West region² of Argentina. This request was circulated to WTO Members on 5 September 2012 in document WT/DS448/1, "*United States - Measures Affecting the Importation of Fresh Lemons*".

Consultations were held on 17 and 18 October 2012 in Geneva, Switzerland, with a view to the satisfactory adjustment of the matter. These consultations unfortunately failed to resolve the dispute.

Argentina accordingly requests that a panel be established under Articles 4 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 11 of the SPS Agreement.

¹ *Citrus limon* (L.) Burm. f. (Rutaceae).

² The North-West region of Argentina comprises the provinces of Catamarca, Jujuy, Salta and Tucumán.

Argentina contests the import prohibition contained in the regulations established under Title 7, Part 319, Subpart 28(a) (1, 2 and 3) of the Code of Federal Regulations (CFR) (7 CFR 319.28(a) (1, 2 and 3)) and imposed by the United States on fresh lemons from the North-West region of Argentina to prevent the introduction into the former of the following diseases: citrus canker [*Xanthomonas campestris* pv. *citri* (Hasse) Dye], sweet orange scab (*Elsinoe australis* Bitanc. and Jenkins) and canker B.

Argentina also contests the continuation, with no scientific justification, of the application to fresh lemons from the North-West region of Argentina of the general import prohibition contained in Title 7, Part 319, Subpart 56-1(b) of the CFR (7 CFR 319.56-1(b)). The application of this general prohibition to the importation of fresh lemons from the North-West region of Argentina appears to ensue from the following:

- (i) The Final Rule of the Animal and Plant Health Inspection Service (APHIS), published in the *Federal Register* on 25 June 2003 (68 FR, 37904-37923), which, on the basis of the judgement in the case "*Harlan Land Company, et al.*"³, repeals ("*removing and reserving*") the administrative instructions in 7 CFR 319.56-2f governing the importation of lemons from Argentina; and
- (ii) the failure by the United States to approve the importation of fresh lemons from the North-West region of Argentina, as requested by our country in 2005, in the context of the approval procedures under Title 7, Part 319, Subpart 56 "Fruits and Vegetables" (7 CFR 319.56 to 319.56.56) and related provisions.

The maintenance, in respect of fresh lemons from the North-West region of Argentina, of the prohibition established in 7 CFR 319.28(a) (1, 2 and 3), as well as of the application of the general import prohibition contained in 7 CFR 319.56-1(b), has no scientific justification and constitutes an import prohibition inconsistent with the rules of the SPS Agreement and the GATT 1994.

The prohibition on the importation of fresh lemons from the North-West region of Argentina constitutes a disproportionate measure in relation to the possible risk to the United States of the above-mentioned diseases once the appropriate mitigation measures have been taken. In this regard, the prohibition applied entails a greater degree of restriction on trade than is necessary in respect of the level of protection sought by the aforementioned US measures.

Likewise, as far as certain pests are concerned, the Animal and Plant Health Inspection Service (APHIS) appears to make import approval for fresh lemons from the North-West region of Argentina contingent upon certain requirements also lacking in scientific justification.

Furthermore, by means of the import prohibition, the United States is unjustifiably discriminating between fresh lemons from the North-West region of Argentina and those from other WTO Members or originating in the United States.

³ *Harlan Land Company, et al. vs. United States Department of Agriculture, et al.*, Case #CV-F-00-6106-REC/LJO (D. Ariz. Sept. 27, 2001).

In short, with regard to the prohibition on the importation of fresh lemons from the North-West region of Argentina and the continued application of the general prohibition to import these products, this panel request covers the following US measures which are contested by Argentina, as well as any amendments thereto, related measures or implementation measures:

- The import prohibitions contained in 7 CFR 319.28(a) (1, 2 and 3);
- the application of the general import prohibition contained in 7 CFR 319.56-1(b);
- the Final Rule of the Animal and Plant Health Inspection Service (APHIS) [Docket No. 02-026-4], published in the *Federal Register* on 25 June 2003 (68 FR, 37904-37923);
- the judgment in the case *Harlan Land Company, et al. vs. United States Department of Agriculture, et al.*, Case #CV-F-00-6106-REC/LJO (D. Ariz. Sept. 27, 2001).

Furthermore, Argentina contests the undue delays by the United States in applying the approval procedures for the importation of fruit and vegetables into that country contained in 7 CFR 319.56 to 319.56.56 and related provisions.

These undue delays have occurred with regard to the import approval procedures for fresh lemons from the North-West region of Argentina.

Seven years have elapsed since these procedures were initiated in accordance with the request made by Argentina in 2005, but no action has even been taken to publish a proposal for amendment of the relevant regulation in order to authorize the importation of fresh lemons from the North-West region of Argentina.

These undue delays are inconsistent with the rules of the SPS Agreement.

In short, Argentina contests the undue delays in applying the procedures contained in 7 CFR 319.56 to 319.56.56 and related provisions during the approval procedure relating to fresh lemons from the North-West region of Argentina, initiated in 2005.

Finally, through the aforementioned measures, the United States also discriminates against fresh lemons from the North-West region of Argentina.

In view of the foregoing, the US measures appear to be inconsistent with that country's obligations under the following rules of the covered agreements:

- (i) Articles 1.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.2, 5.4, 5.6, 7 and Annex B, 8 and Annex C.1 and Article 10.1 of the SPS Agreement;
- (ii) Articles I:1, III:4, X:1, X:3 and XI:1 of the GATT 1994;
- (iii) Article XVI:4 of the Marrakesh Agreement.

The US measures appear to nullify or impair the benefits accruing, directly or indirectly, to Argentina under the covered agreements.

Argentina requests that the panel be established with the standard terms of reference, in accordance with Article 11 of the SPS Agreement and Article 7.1 of the DSU. To that end, it asks that this request be placed on the agenda of the meeting of the Dispute Settlement Body to be held on 17 December 2012.
