

**EUROPEAN COMMUNITIES – CERTAIN 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 25 September 2007, 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 certain measures taken by Belgium and the Netherlands regarding the importation, transportation, manufacturing, marketing, and sale of seal products. Consultations with the European Communities were held on 14 November 2007 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) *la Loi relative à l'interdiction de fabriquer et de commercialiser des produits dérivés de phoques*, F. 2007 – 1590 [C – 2007/11138], 16 March 2007, (the "Belgian trade ban");
- (ii) *l'Arrêté ministériel modifiant l'arrêté ministériel du 15 septembre 1995 soumettant à licence l'importation de certaines marchandises*, F. 2004 – 1983 [C – 2004/11258], 28 May 2004 (the "Belgian import licensing requirement"); and,
- (iii) Articles 5 and 13 of the Dutch *Flora and Fauna Act*, when read in conjunction with the *Decree of 4 July 2007 amending the Designation of Animal and Plant Species (Flora and Fauna Act) Decree and the Protected Animal and Plant Species (Exemptions) Decree in relation to the ban on trade in products originating from harp seals and hooded seals* (the "Dutch trade ban").

For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures.

The Belgian trade ban prohibits the preparation for sale or delivery to consumers, transport for sale or delivery, possession for the purpose of sale, importation, distribution and transfer of seal products. The Belgian import licensing requirement imposes a requirement that an import licence be issued for the importation of seal products.

The Dutch trade ban prohibits the importation of and trade in all harp seal and hooded seal products regardless of the animal's age. This includes a prohibition against asking for the sale, the buying or acquisition, the holding for sale or in stock, the selling or offering for sale, the transportation or offering for transport, the delivery, the use for commercial profit, the renting or hiring, the exchange or offer in exchange, the trade or exhibiting for commercial purposes or the bringing or possessing within or outside the territory of the Netherlands, of harp seal and hooded seal products.

Canada considers that these measures are inconsistent with the European Union's obligations under the *GATT 1994* and under the *TBT Agreement*. Specifically, the Belgian and Dutch 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 Belgium and the Netherlands.
- (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.

Canada also considers that the Belgian trade ban violates the following provisions of the *GATT 1994*:

- (1) Article V:2 because the trade ban restricts freedom of transit through Belgium for seal products of Canadian origin.
- (2) Article V:3 because the trade ban results in seal products of Canadian origin in transit being subject to unnecessary delays or restrictions.
- (3) Article V:4 because the trade ban constitutes an unreasonable regulation on transit of Canadian seal products in Belgium.

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.
