

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

Report of the Panel

A. REQUEST FOR CONSULTATIONS

1. In a communication dated 9 April 2009, Canada requested consultations with Korea 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) with respect to measures affecting the importation of bovine meat and meat products from Canada.¹

2. Canada stated in its request that since 2003, Korea has had in place measures that adversely affect the importation of bovine meat and meat products from Canada. These measures include, *inter alia*, Administrative Order No. 51584-476, which prohibits the importation into Korea of bovine meat and meat products from Canada allegedly to protect against risks arising from bovine spongiform encephalopathy (BSE); and Korea Act No. 9130 amending the *Act on the Prevention of Contagious Animal Diseases*, which sets out a number of new conditions for lifting the import ban. Canada alleged that Korea's measures are inconsistent with Articles 2.2, 2.3, 3.1, 3.3, 5.1, 5.5, 5.6, 5.7, 6.1 and 8 and Annex C of the SPS Agreement and Articles I:1, III:4 and XI:1 of GATT 1994.

3. On 7 May 2009, Canada and Korea held consultations in Geneva with a view to reaching a satisfactory resolution of the matter. However, the parties failed to reach a mutually satisfactory solution.

B. ESTABLISHMENT AND COMPOSITION OF THE PANEL

4. In a communication dated 9 July 2009, Canada requested that the Dispute Settlement Body (DSB) establish a panel pursuant to Article 6 of the DSU, with standard terms of reference as set out in Article 7.1 of the DSU.² In its panel request, Canada claimed that Korea maintains a ban on the importation of bovine meat and meat products from Canada allegedly to protect against risks arising from BSE. In addition, Canada claimed that Korea had adopted measures that place unjustified restrictions on the resumption of imports of bovine meat and meat products from Canada.

5. Canada alleged that Korea's measures discriminate between Canada and other WTO Members. Canada's claims of inconsistency in its request for the establishment of a panel (panel request) were identical to those set out in its request for consultations, except that Canada did not assert a claim under Article 6.1 of the SPS Agreement in its panel request.

6. The DSB established a panel in accordance with Article 6 of the DSU at its meeting of 31 August 2009.³ In accordance with Article 7.1 of the DSU, the terms of reference of the Panel were:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by Canada in document WT/DS391/3 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.

7. On 4 November 2009, pursuant to Article 8.7 of the DSU, Canada requested the Director-General to determine the composition of the panel. Accordingly, on 13 November 2009, the Director-General composed the Panel as follows:

¹ Canada's Request for Consultations, WT/DS391/1.

² Canada's Request for the Establishment of a Panel, WT/DS391/3.

³ Constitution of the Panel Established at the Request of Canada – Note by the Secretariat, WT/DS391/4.

Chairperson: Ms Margaret Liang

Members: Mr Mathias Francke
Mr Guðmundur Helgason

8. Argentina, Brazil, China, the European Communities⁴, India, Japan, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), and the United States reserved their rights to participate in the Panel proceedings as third parties.

C. PANEL PROCEEDINGS

1. Adoption of working procedures and timetables

9. On 19 November 2009, the Panel invited the parties to an organizational meeting and circulated for discussion a draft of its proposed Working Procedures as well as two sets of draft timetables.⁵ One timetable was prepared assuming that the Panel would consult scientific experts in the course of the proceedings, while the other was prepared assuming no such consultation. The organizational meeting was held on 23 November 2009.

10. In response to an exchange of comments and proposals from the parties, the Panel made modifications to the draft timetable that contemplated the consultation of experts by the Panel. The Panel adopted the Working Procedures and the modified timetable on 1 December 2009 and sent them to the parties on the same day,⁶ and to the third parties on 4 December 2009.⁷

2. Korea's request for a preliminary ruling

11. On 16 November 2009, Korea requested a preliminary ruling pursuant to Article 6.2 of the DSU.

12. The Panel received comments on Korea's preliminary ruling request from Canada on 7 December 2009 and from the third parties on 14 December 2009. The Panel issued its preliminary ruling to the parties and third parties on 11 January 2010.

3. Course of the proceedings

13. On 1 February 2010, Canada submitted its first written submission. Korea submitted its first written submission on 5 March 2010. The Panel also received written submissions on 18 March 2010 from the following third parties: Brazil, China, the European Union, Japan, and Chinese Taipei.

14. The Panel held a first substantive meeting with the parties on 13 April 2010. A meeting with the third parties was held on 14 April 2010. On 16 April 2010, the Panel provided written questions to both parties and to the third parties.⁸ On 5 May 2010, the parties and third parties submitted answers to the Panel's questions.

15. To assist in carrying out its mandate, and in accordance with Article 11.2 of the SPS Agreement and Article 13 of the DSU, the Panel consulted with experts and international organizations. Pursuant to the Working Procedures and in light of the views of both parties in the dispute, on 27 April 2010, the Panel requested the secretariats of the Codex Alimentarius Commission

⁴ On 1 December 2009, the European Union succeeded the European Community (WT/Let/679).

⁵ Communication from the Panel to the parties, 19 November 2009.

⁶ Communication from the Panel to the parties, 1 December 2009.

⁷ Communication from the Panel to the third parties, 4 December 2009. The Working Procedures and timetable were subsequently revised during the course of the proceedings.

⁸ Communication from the Panel to the parties and third parties, 16 April 2010.

(Codex), the Food and Agriculture Organization (FAO), the World Organisation for Animal Health (OIE), and the World Health Organization (WHO), to identify possible experts in areas the Panel deemed relevant to the dispute.⁹ The Panel forwarded to the parties the names of experts provided by the international organizations. In addition, the Panel provided the parties with curricula vitae, publication lists, and statements disclosing potential conflicts of interest as provided to the Panel by each expert who had expressed willingness to assist the Panel and was available to assist.¹⁰ The Panel selected seven experts to provide advice with respect to the scientific issues in the dispute and communicated its selection to the parties on 16 June 2010.¹¹ The Panel also sought information and technical advice from three international organizations: Codex; the OIE, and the WHO. The Panel sent written questions to the experts and international organizations on 25 June 2010.¹²

16. The Panel notified the DSB on 25 June 2010 that it would not be possible to complete its work within six months from the date of the Panel's composition due to Korea's request for a preliminary ruling and the fact that expert consultation would be involved.¹³

17. Both parties submitted their second written submissions on 20 September 2010.

18. The Panel met with the parties, the experts and representatives from international organizations on 26 and 27 October 2010, and held a second substantive meeting with the parties on 28 and 29 October 2010.

19. The Panel forwarded written questions to the parties on 2 November 2010. The parties submitted their answers on 17 November 2010. On 24 November 2010, the parties submitted their comments on the other party's responses.

20. The descriptive (factual and arguments) part of the draft interim report was issued to the parties on 10 December 2010. On the same date, the Panel sent to the third parties excerpts of the descriptive part of the report containing the summary of their respective arguments. Canada and Korea provided their respective comments on the descriptive part on 17 December 2010.

21. On 28 June 2011, the Panel received a letter from Canada requesting the Panel to suspend its proceedings in accordance with Article 12.12 of the DSU until further notice. Upon invitation from the Panel, Korea informed the Panel on 1 July 2011 that it agreed with Canada's request. On 4 July 2011, the Panel decided to grant Canada's request and suspend its work and informed the DSB of this decision.¹⁴

22. By a letter dated 19 June 2012, pursuant to Article 3.6 of the DSU, the parties notified the DSB that they had reached a mutually agreed solution, which was circulated as document WT/DS391/9 on 21 June 2012.

23. The Panel takes note of the mutually agreed solution between the parties to the dispute and of Article 3.7 of the DSU, which provides that "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred".

⁹ Letters from the Panel to Codex, the OIE, and the WHO, 27 April 2010.

¹⁰ Communication from the Panel to the parties, 11, 12, 14, and 17 May 2010.

¹¹ One of the originally selected experts became unavailable and was replaced. Letter from the Panel to the parties, 22 June 2010.

¹² The Panel provided the parties with an opportunity to comment on the proposed questions before they were sent to the experts and international organizations. Communication from the Panel to the parties, 19 May 2010.

¹³ Communication from the Chair of the Panel to the DSB, WT/DS391/5, 30 June 2010.

¹⁴ Communication from the Chair of the Panel to the DSB, WT/DS391/7, 6 July 2011.

24. The Panel also takes note of Article 12.7 of the DSU, which provides that "[w]here a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached". Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.
