

The Meaty Impact Of WTO's Argentina Beef Ruling

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A World Trade Organization dispute settlement panel has issued its report on *United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina*, finding that the United States is in violation of its obligations under the relevant provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS agreement). The panel concluded that the United States has acted inconsistently with various provisions of the SPS Agreement, leading to nullification or impairment of benefits accruing to Argentina and has recommended that the United States brings its measures into conformity with the SPS Agreement.

Alleged U.S. Noncompliant Measures

Pursuant to Title 9 of the U.S. Code of Federal Regulations, Part 94, the United States prohibits the importation of animals and animal products from regions not included in the list of foot-and-mouth disease (FMD)-free regions maintained by the Animal and Plant Health Inspection Service (APHIS). However, a region or country can request to be recognized as FMD-free or can seek approval to export specific products to the United States under procedures set forth in 9 CFR 92.2.

Argentina's complaint covers four broad areas:

- That the United States had unduly delayed reviewing Argentina's requests for importation of fresh (chilled or frozen) beef from Northern Argentina and recognizing Patagonia as free from FMD and that this delay had resulted in the United States' continued prohibition on importing fresh (chilled or frozen) beef from Northern Argentina and animals, meat and other animal

products from the Patagonian region. This is in violation of Article 8 and Annex C(1) of the SPS Agreement;

- That the U.S. measures did not follow the relevant international standards, guidelines and recommendations of the Terrestrial Code developed under the World Organization for Animal Health (OIE) and were not maintained based on risk assessment or scientific justification, inconsistent with Articles 3.1 5.1, 5.2 and 2.2 of the SPS Agreement;
- That the measures were more trade restrictive than necessary; and
- That the United States had discriminated against Argentina in prohibiting importation of the meat products.

WTO Panel Findings

The panel first established that the U.S. measures are SPS measures subject to the disciplines of the SPS Agreement. Notably, the panel found that:

- The procedures in 9 CFR 92.2 are part of the process to determine whether products from a country or region pose a particular risk of introducing or disseminating a pest or livestock disease into the United States and are, thus, “regulations, requirements and procedures” within the second sentence of Annex A(1). The panel further noted that, as the procedures are for the purpose of determining the disease status of a region in order to decide whether imports will be authorized, they are “control, inspection and approval procedures” within the scope of Article 8 and Annex C(1).
- Section 737 of the 2009 Omnibus Appropriations Act (Section 737) sets out another step in the approval process for allowing importation of products from Argentina[1] and is, thus, directly linked to the risks to health of domestic animals in the United States, an SPS measure as defined in Annex A(1).

After establishing the U.S. measures as SPS measures, the panel proceeded to examine Argentina’s complaint.

The panel acknowledged that “not every lapse of time amounts to a delay, as a certain period of time is usually necessary for a member to undertake and complete a control, inspection or approval procedure.” However, in examining all the facts and circumstances presented, and with references to the standard processing time reflected in APHIS’ policy and practice and OIE guidelines, the panel concluded that the United States’ failure to act on Argentina’s application was outside the normal course of the procedure and constituted undue delay within the meaning of Article 8 and Annex C(1)(a).

The panel agreed with Argentina, finding that the U.S. measures contradict the Terrestrial Code’s recommendations for import measures to apply (i) on a product-specific basis to shipments of fresh (chilled or frozen) beef from countries or zones that vaccinate fresh meat of cattle and buffalo (the United States considers such regions as “FMD-infected” and not “FMD-free”) and (ii) to zones or compartments that are FMD-free where vaccination is not practiced (the United States applies on a country-wide basis). The panel further found that the United States did not maintain the measures based on risk assessment or scientific justification, and that the measures were more trade restrictive than necessary.

Finally, the panel found that the United States had discriminated against Argentina in prohibiting importation of the meat products; the United States had allowed importation of the same meat products from Uruguay, which had similar conditions to Argentina. The differential treatment is further compounded in terms of access to APHIS' regulatory process as the United States had maintained its prohibition on imports from Northern Argentina without a risk assessment but conducted a risk analysis and issued a positive determination for Uruguay within a reasonable period of time.

Impact on U.S. Business

As the United States has already lifted the ban on beef from Northern Argentina and recognized Patagonia as FMD-free[2] while the dispute was ongoing, the panel decision would not have significant impact on Argentina's meat exports. However, for meat products from other countries/regions currently prohibited from export to the United States pursuant to the U.S. measures, these products would benefit from the now WTO-compliant review process. While it is unlikely that the United States will see an immediate influx of meat products, there will be more import sources for fresh (chilled or frozen) beef and animals, meat and other animal products from FMD-free regions.

The panel's conclusion that procedures for determining import status of food products are SPS measures is particularly significant. Countries that employ procedural requirements and delays to block food imports, and not just meat products, may similarly be in violation of the SPS Agreement. The findings from *U.S. — Animals from Argentina* are likely to have an impact on two disputes currently in consultations, *Korea — Import Bans and Testing and Certification Requirements for Radionuclides* and *Indonesia — Measures Concerning the Importation of Chicken Meat and Chicken Products*.

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[1] Section 737 requires the U.S. secretary of agriculture to have “reviewed the domestic animal health aspects of the pending proposal to allow the importation of such products into the United States and has issued a report to the Committees on the findings of such review” before approving the importation of the products from Argentina.

[2] See revised 9 CFR 94.1, paragraphs (b)(4) and (d) and 9 CFR 94.29 Restrictions on importation of fresh (chilled or frozen) beef and ovine meat from specified regions.