



PERMANENT MISSION OF NORWAY

H.E. Ambassador Elin Østebø Johansen
Chairperson, Dispute Settlement Body
World Trade Organization
Centre William Rappard
Rue de Lausanne 154
1211 Geneva 21

Your ref.:

Our ref.:

Date:
14 March 2011

Dear Ambassador Johansen,

**EUROPEAN COMMUNITIES – MEASURES PROHIBITING
TRADE IN SEAL PRODUCTS (WT/DS401)**

Request for the Establishment of a Panel by Norway

On 5 November 2009, Norway requested consultations with the European Union (“EU”)¹ concerning certain measures affecting trade in seal products, comprising the “EU seal regime”.² On 15 December 2009, Norway and the EU held consultations on the EU seal regime.

On 10 August 2010, the EU adopted implementing rules as part of the EU seal regime. Following this, on 19 October 2010, Norway presented a further request for consultations.³ On 1 December 2010, Norway and the EU held further consultations on the EU seal regime.

Unfortunately, the two rounds of consultations have failed to settle the dispute.

Norway 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 *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”), pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”), Article 19 of the *Agreement on Agriculture* and Article 14 of the *Agreement on Technical Barriers to Trade* (“TBT Agreement”).

¹ Following the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has succeeded the European Communities (“EC”), including as a Member of the WTO. In this request, for the sake of simplicity, Norway uses the phrase “European Union” or “EU” to refer both to the European Communities and the European Union, before and after, respectively, the entry into force of the Treaty of Lisbon.

² Document WT/DS401/1, G/L/912, G/TBT/D/37, G/AG/GEN/88.

³ Document WT/DS401/1/Add.1, G/L/912/Add.1, G/TBT/D/37/Add.1, G/AG/GEN/88/Add.1.

The measures at issue, which Norway collectively refers to as the “EU seal regime”, are the following:

- Regulation (EC) No. 1007/2009 of the European Parliament and of the Council on trade in seal products, adopted on 16 September 2009 (the “Basic Regulation”);⁴
- Commission Regulation (EU) No. 737/2010, laying down detailed rules for the implementation of the Basic Regulation, adopted on 10 August 2010 (the “Implementing Regulation”);⁵
- Omissions to adopt adequate procedures for establishing that seal products conforming to the relevant conditions, set forth in exceptions in the EU seal regime, may be placed on the EU market; and
- Any other related measures adopted by the EU or its member States that provide guidance on, amend, supplement, replace, and/or implement the rules set forth in the Basic Regulation and Implementing Regulation, whether adopted pursuant to these regulations or otherwise.

The EU seal regime imposes a general prohibition on the importation and sale of processed and unprocessed seal products in the EU, thereby depriving Norway of access to a significant market for its exports of these products. The EU seal regime contains certain exceptions that set forth conditions under which seal products may be placed on the EU market. However, these exceptions appear to discriminate in favour of seal products originating in the EU and in certain third countries.

The EU seal regime also includes elements of a system for certifying that seal products are in conformity with the relevant conditions for being placed on the EU market under the exceptions. However, the EU does not appear to have established adequate procedures for the assessment of conformity of imported seal products with the relevant conditions for being placed on the EU market.

As a result, the EU seal regime appears to be inconsistent with the EU’s obligations under the *Agreement on Agriculture*, the *TBT Agreement* and the GATT 1994. In particular:

- (i) Through the general prohibition and the exceptions set out therein, the EU seal regime appears to discriminate among like products originating in different countries, in violation of Article I:1 of the GATT 1994 and Article 2.1 of the *TBT Agreement*;
- (ii) Through the general prohibition and the exceptions set out therein, the EU seal regime appears to discriminate between imported products and like products originating in the EU, in violation of Article III:4 of the GATT 1994 and Article 2.1 of the *TBT Agreement*;

⁴ Official Journal of the European Union, L 286/36, published 31.10.2009.

⁵ Official Journal of the European Union, L 216/1, published 17.08.2010.

- (iii) By restricting the importation of seal products, the EU seal regime appears to violate Article XI:1 of the GATT 1994 and Article 4.2 of the *Agreement on Agriculture*;
- (iv) By restricting the importation of seal products without that being necessary to achieve a legitimate objective, and by failing to adopt adequate administrative provisions, the EU seal regime appears to create unnecessary obstacles to international trade and, thus, violate Article 2.2 of the *TBT Agreement* ;
- (v) By failing to prepare, adopt and apply conformity assessment procedures in a way that grants non-discriminatory access to suppliers from WTO Members, and that does not create unnecessary obstacles to international trade, the EU appears to violate both subparagraphs of Article 5.1 of the *TBT Agreement*;
- (vi) By failing to ensure compliance with the procedural guarantees set forth in Article 5.2 of the *TBT Agreement*, the EU appears to violate that provision, including all of its subparagraphs;
- (vii)By failing to base conformity assessment procedures on relevant guides or recommendations completed, or imminently to be completed, by international standardizing bodies, the EU appears to be violating Article 5.4 of the *TBT Agreement*;
- (viii) By failing to follow the procedural steps set out in the subparagraphs of Article 5.6 of the *TBT Agreement*, and in particular by failing properly to notify the procedures for assessment of conformity with the requirements of the EU seal regime, the EU has acted inconsistently with this provision;
- (ix) By failing to publish promptly all conformity assessment procedures to enable interested parties to become acquainted with them, the EU appears to violate Article 5.8 of the *TBT Agreement*;
- (x) By imposing unduly burdensome requirements for the recognition of conformity assessment bodies, irrespective of whether these offer an equivalent assurance of conformity, and by failing to ensure that its conformity assessment procedures permit acceptance of the results of conformity assessment procedures carried out in other Members, the EU appears to violate Articles 6.1 and 6.2 of the *TBT Agreement*;
- (xi) By failing to ensure that local government conformity assessment bodies within the EU comply with the requirements laid out in Articles 5 and 6 of the *TBT Agreement*, by encouraging these bodies not to comply with such requirements, and by failing to implement positive measures to ensure compliance with such requirements, the EU appears to violate Articles 7.1, 7.4 and 7.5 of the *TBT Agreement*;
- (xii)By failing to take reasonable measures to ensure that non-governmental conformity assessment bodies within the EU comply with the requirements laid out in Articles 5 and 6 of the *TBT Agreement*, by encouraging these bodies

not to comply with such requirements, and by relying nonetheless on the results of conformity assessment procedures operated by these bodies, the EU appears to violate Articles 8.1 and 8.2 of the *TBT Agreement*;

- (xiii) By failing to take reasonable measures to ensure that regional systems for conformity assessment comply with the requirements laid out in Articles 5 and 6 of the *TBT Agreement*, by encouraging these systems not to comply with such requirements, and by relying nonetheless on these systems, the EU appears to violate Articles 9.2 and 9.3 of the *TBT Agreement*.

These violations appear to nullify or impair benefits accruing to Norway directly or indirectly under the covered agreements within the meaning of Article XXIII:1(a) of the GATT 1994.

Moreover, the EU seal regime appears to nullify or impair benefits accruing to Norway under the covered agreements, within the meaning of Article XXIII:1(b) of the GATT 1994, in particular, benefits accruing to Norway pursuant to tariff concessions granted with respect to the various seal products that can no longer be imported into the EU.

Norway requests that this matter be put on the agenda of the next DSB meeting, scheduled to be held on 25 March 2011.

Yours sincerely,



Monica Nagelgaard
Deputy Permanent Representative to the WTO

Cc: H.E. Mr. Angelos Pangratis, Ambassador, Permanent Mission of the European Union to the WTO