

1. INTRODUCTION

1.1 Complaints by Canada and Norway

1.1 On 2 November 2009, Canada requested consultations with the European Union¹ 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 (GATT 1994), and Article 14.1 of the Agreement on Technical Barriers to Trade (TBT Agreement), with respect to the measures and claims set out below.² On 18 October 2010, Canada requested supplementary consultations with the European Union.³

1.2 On 5 November 2009, Norway requested consultations with the European Union pursuant to Article 4 of the DSU, Article XXII of the GATT 1994, Article 14 of the TBT Agreement, and Article 19 of the Agreement on Agriculture, with respect to the measures and claims set out below.⁴ On 20 November 2009, Canada requested, pursuant to Article 4.11 of the DSU, to join in the consultations requested by Norway on 5 November 2009.⁵ On 19 October 2010, Norway requested supplementary consultations with the European Union.⁶

1.3 On 28 and 29 October 2010, respectively, Canada and Norway requested to join each other's supplementary consultations.⁷

1.4 Consultations were held on 15 December 2009, and supplementary consultations were held on 1 December 2010. None of these consultations led to a mutually satisfactory resolution.⁸

1.2 Panel establishment and composition

1.5 On 11 February and 14 March 2011, respectively, Canada and Norway requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference.⁹

¹ For consistency and ease of reference, these Reports will refer to "the European Union" or "EU" for all events regardless of their date of occurrence.

² WT/DS400/1, Canada's request for consultations.

³ WT/DS400/1/Add. 1, Canada's request for consultations. Canada made its supplemental request pursuant to the same provisions as its original request for consultations with the addition of Article 1 of the DSU, and Article 14.1 of the TBT Agreement instead of Article 14 of the TBT Agreement.

⁴ WT/DS401/1, Norway's request for consultations.

⁵ WT/DS401/3.

⁶ WT/DS401/1/Add. 1, Norway's request for consultations.

⁷ WT/DS400/3 and WT/DS401/4.

⁸ WT/DS400/4, Canada's request for the establishment of a panel; WT/DS401/5, Norway's request for the establishment of a panel.

⁹ Canada's request for the establishment of a panel; Norway's request for the establishment of a panel.

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1.6 At its meeting on 25 March 2011, the Dispute Settlement Body (DSB) established a panel pursuant to the request of Canada in document WT/DS400/4, in accordance with Article 6 of the DSU.¹⁰ At its meeting on 21 April 2011, the DSB established a panel pursuant to the request of Norway in document WT/DS401/5, in accordance with Article 6 of the DSU, and agreed, as provided for in Article 9 of the DSU in respect of multiple complainants, that the panel established to examine the complaint by Canada would also examine the complaint by Norway.¹¹

1.7 The Panel's terms of reference are the following:

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/DS400/4, and by Norway in document WT/DS401/5, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.¹²

1.8 On 24 September 2012, Canada and Norway requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU.

1.9 On 4 October 2012, the Director-General accordingly composed the Panel as follows:

Chairperson: Mr Luzius Wasescha

Members: Ms Elizabeth Chelliah

Ms Patricia Holmes

1.10 Argentina, Canada (for WT/DS401), China, Colombia, Ecuador, Iceland, Japan, Mexico, Namibia (for WT/DS401), Norway (for WT/DS400), the Russian Federation¹³, and the United States notified their interest in participating in the Panel proceedings as third parties.

¹⁰ See WT/DSB/M/294, para. 73.

¹¹ See WT/DSB/M/295, para. 73, WT/DS400/5 and WT/DS401/6.

¹² WT/DS400/5 and WT/DS401/6.

¹³ On 18 October 2012, the Russian Federation notified its interest to participate as a third party in the dispute. After receiving the parties' views on this notification, the Panel indicated on 5 November 2012 that the Russian Federation would be added to the list of third parties. See also WT/DS400/5/Rev.1 and WT/DS401/6/Rev.1, para. 5.

1.3 Panel proceedings

1.3.1 General

1.11 After consultation with the parties, the Panel adopted its Working Procedures¹⁴ and timetable on 23 October 2012. Upon request of the parties, the Panel modified the timetable on 4 March 2013 and 8 May 2013.

1.12 The Panel held a first substantive meeting with the parties on 18-20 February 2013. A session with the third parties took place on 19 February 2013. The Panel held a second substantive meeting with the parties on 29-30 April 2013.

1.13 On 19 June 2013, the Panel issued the descriptive part of its Reports to the parties. The Panel issued its Interim Reports to the parties on 3 September 2013. The Panel issued its Final Reports to the parties on 8 October 2013.

1.3.2 Procedures for open hearings

1.14 At the organizational meeting held on 15 October 2012, the parties requested and the Panel agreed that the substantive meetings with the Panel would be open to public viewing subject to additional procedures to ensure the security and orderly conduct of the proceedings. On 4 December 2012, the Panel submitted proposed additional working procedures to the parties for comment. After it had received comments from the parties, the Panel adopted on 20 December 2012 additional Working Procedures for its open hearings at the first and second substantive meetings of the Panel, providing for public viewing by means of simultaneous closed-circuit television broadcasting of the proceedings to a separate room.

1.3.3 Requests for enhanced third-party rights

1.15 At the organizational meeting held on 15 October 2012, Canada made a request for enhanced third-party rights to allow third-party access to both substantive meetings and all written submissions. The European Union objected to Canada's request on the grounds that no third party had submitted such a request. After considering Canada's request and the views of the other parties, the Panel informed the parties on 23 October 2012 that it had decided to decline Canada's request. In reaching its decision, the Panel took particular note of the fact that Canada's request was made by a party to the dispute, and that no third party had made a request for enhanced rights. Furthermore, because the substantive meetings were to be open to public viewing and thus would serve to provide third-party access to the Panel's substantive meetings, the Panel did not consider it necessary to grant the enhanced third-party rights requested by Canada.

¹⁴ See the Panel's Working Procedures in Annex A-1.

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1.16 Following the first substantive meeting with the parties on 18-20 February 2013, the Panel received on 6 March 2013 a request from Namibia "to participate in the second substantive meeting" in order to rebut comments made by the European Union at the first substantive meeting regarding the Namibian seal hunt. After consulting the parties on Namibia's request, the Panel informed Namibia that it had considered Namibia's request, taking into account Namibia's status as a developing country and the material on the record relating to Namibia, which included Namibia's third-party written submission, oral statement at the first substantive meeting and its written responses to the Panel's questions. On the basis of its review and in light of the parties' comments, the Panel decided that there was no need to provide Namibia with an opportunity for further rebuttal and therefore declined Namibia's request to participate in the second substantive meeting.

1.3.4 *Amicus curiae submissions*

1.17 On 25 January 2013, the Panel received an unsolicited *amicus curiae* submission from a group of non-governmental organizations (NGOs).¹⁵ On 29 January 2013, the Panel notified the parties of the unsolicited *amicus curiae* submission and advised the parties that any *amicus curiae* submission it received would be immediately forwarded to the parties. The parties would be invited to provide their views on the admissibility and relevance of any *amicus curiae* submission either at the first or second substantive meeting. The Panel further informed the parties that any *amicus curiae* brief submitted to the Panel after the second substantive meeting would be automatically rejected, as the Panel was of the view that the consideration of any new information at that stage of the proceedings would risk causing undue delays.

1.18 Subsequently, the Panel received four additional unsolicited *amicus curiae* submissions prior to the second substantive meeting with the parties.¹⁶

1.19 During the first substantive meeting with the parties, the European Union indicated that it had incorporated the *amicus curiae* submission provided by the

¹⁵ This submission was made jointly by a group of the following organizations: Anima, Animal Rights Action Network (ARAN), Animalia, Bont Voor Dieren (BVD), Change for Animals Foundation (CFAF), Compassion in World Farming (CIWF), Djurens Rätt (Animal Rights Sweden), Eurogroup for Animals, Fondation Brigitte Bardot (FFB), Fondation Franz Weber (FFW), Four Paws, Global Action in the Interest of Animals (GAIA), Humane Society of the United States/Humane Society International (HSUS/HSI), International Fund for Animal Welfare (IFAW), Lega Anti Vivisezione (LAV), Prijatelji životinja (Animal Friends Croatia), Respect for Animals, Royal Society for the Prevention of Cruelty to Animals (RSPCA), Svoboda zvířat and World Society for the Protection of Animals (WSPA).

¹⁶ The Panel received submissions from Robert Howse, Joanna Langille, and Katie Sykes, dated 11 February 2013; Pamela Anderson on behalf of People for the Ethical Treatment of Animals (PETA), dated 12 February 2013; the International Fur Trade Federation, dated 28 March 2013; and Jude Law, received 20 April 2013.

group of NGOs on 25 January 2013 as an integral part of its written submissions to the Panel.¹⁷

1.3.5 Preliminary ruling

1.20 On 19 December 2012, the European Union filed a request for a preliminary ruling to remove two exhibits from the record. On 16 January 2013, both Canada and Norway responded to the European Union's preliminary ruling request. In addition, the United States provided comments on the European Union's request in its third-party written submission pursuant to the Panel's invitation to all third parties to do so.

1.21 The Panel issued its preliminary ruling to the parties, with a copy to third parties, on 29 January 2013, granting the European Union's request to remove the exhibits from the record and inviting the complainants to submit replacement exhibits. After consulting with the parties, the Panel requested the Chairperson of the DSB to circulate its preliminary ruling to all WTO Members. The Panel further decided that the circulated ruling would be incorporated as an integral part of the Panel's findings in its Reports.¹⁸ The Panel's preliminary ruling was circulated on 5 February 2013 in documents WT/DS400/6 and WT/DS401/7.

1.3.6 Request under Article 13 of the DSU

1.22 On 16 January 2013, the same day that the complainants provided their comments on the European Union's request for preliminary ruling, Norway requested the Panel to exercise its power under Article 13 of the DSU to seek copies of the two documents that were the object of the European Union's request for removal from the record. Further to the Panel's invitation, the Panel received on 8 February 2013 comments from the European Union and Canada on Norway's request, as well as third-party comments from the United States. On 8 April 2013, the Panel informed the parties that the Panel did not consider it necessary to seek the information requested by Norway. Consequently, the Panel denied Norway's request for the Panel to exercise its authority under Article 13 of the DSU and indicated that the Panel would provide the reasons for its decision in its Reports.¹⁹

¹⁷ This submission is included on the record as Exhibit EU-81.

¹⁸ In its preliminary ruling, the Panel reserved the right to modify its ruling and observed that the ruling would be incorporated as an integral part of the Panel's findings in its modified form if any modifications were made.

¹⁹ The reasoning for the Panel's decision is provided in section 7 of these Reports.

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2. FACTUAL ASPECTS*2.1 Measures at issue²⁰*

2.1 The claims brought by Canada and Norway concern the European Union's measures relating to seal products.

2.2 Canada submits that the measures at issue are the following²¹:

- a. Regulation (EC) No. 1007/2009 of the European Parliament and of the Council, of 16 September 2009 on trade in seal products;
- b. Regulation (EU) No 737/2010 laying down detailed rules for the implementation of Regulation (EC) No. 1007/2009 of the European Parliament and of the Council on trade in seal products; and
- c. For each of the measures referred to above, any amendments, replacements, extensions, implementing measures or other related measures, administrative orders, directives, or customs guidelines including those issued by individual European Union member States.

2.3 Canada refers to the Basic Regulation and the Implementing Regulation together as the "EU Seal Regime".

2.4 Norway submits that the measures at issue are the following²²:

- a. 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");
- b. 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");
- c. 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
- d. 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.

²⁰ The Panel's use of the term "measures" in this Section does not prejudice any disputed factual or legal issues relating to that term.

²¹ Canada's request for the establishment of a panel.

²² Norway's request for the establishment of a panel.

2.5 Norway refers to the Basic Regulation and the Implementing Regulation together as the "EU Seal Regime".

2.2 *Products at issue*

2.6 This dispute concerns products, either processed or unprocessed, deriving or obtained from seals, including meat, oil, blubber, organs, raw fur skins and tanned fur skins, as well as articles (such as clothing and accessories, and omega-3 capsules) made from fur skins and oil.²³

2.7 In accordance with Article 3(3) of Regulation (EC) No. 1007/2009 of the European Parliament and of the Council, the EU Commission issued a "Technical Guidance Note Setting Out an Indicative List of the Codes of the Combined Nomenclature that May Cover Prohibited Seal Products" (Technical Guidance Note).²⁴ The Technical Guidance Note includes products listed according to their Combined Nomenclature (CN) codes. In its foreword, the Note explains that only "those CN codes with the greatest likelihood of covering products subject to prohibition" are included therein, and those listed are indicative.²⁵ For example, it includes the following sections of the CN codes:

- "live animals, animal products" (Section I);
- "animal or vegetable fats and oils and their cleavage products ..." (Section III);
- "prepared foodstuffs, beverages, spirits and vinegar ..." (Section IV);
- "products of the chemical or allied industries" (Section VI);
- "rawhides and skins, leather, fur skins and articles thereof; ... handbags and similar containers" (Section VIII);
- "textiles and textile articles" (Section XI);
- "footwear, headgear ..." (Section XII);
- "... precious metals, metals clad with precious metal, and articles thereof; imitation jewellery ..." (Section XIV);

²³ See Article 2(2) of the Regulation (EC) No. 1007/2009 of the European Parliament and of the Council; Canada's first written submission, paras. 61-70; Norway's first written submission, paras. 86-102.

²⁴ Technical guidance note setting out an indicative list of the codes of the combined nomenclature that may cover prohibited seal products, Official Journal of the European Union, C Series, No. 356 (29 December 2010), (Exhibit JE-3).

²⁵ *Ibid.* p. 44.

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- "optical, photographic, ... , medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof" (Section XVIII);
- "miscellaneous manufactured articles" (Section XX); and
- "works of art, collectors' pieces and antiques" (Section XXI).

3. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

3.1 *Canada*

3.1 Canada requests that the Panel find that the "EU Seal Regime":

- a. is a technical regulation in the sense of Annex 1.1 of the TBT Agreement;
- b. is inconsistent with the European Union's obligations under the TBT Agreement, in particular Articles 2.1, 2.2, 5.1.2, and 5.2.1;
- c. is inconsistent with the European Union's obligations under the GATT 1994, in particular Articles I:1, III:4, and XI:1; and
- d. is not justified by Article XX(a) or XX(b) of the GATT 1994.²⁶

3.2 Canada requests, pursuant to Article 19.1 of the DSU, that the Panel recommend to the DSB that it request the European Union to bring its measures into conformity with its obligations under the TBT Agreement and the GATT 1994.²⁷

3.3 In the event that the European Union's measures are not found to violate the European Union's obligations under the TBT Agreement or the GATT 1994, Canada requests that the Panel find that the EU Seal Regime has nullified and impaired benefits accruing to Canada in the sense of Article XXIII:1(b) of the GATT 1994, and that the Panel recommend to the DSB that it request the European Union to make a mutually satisfactory adjustment as required by Article 26.1 of the DSU.²⁸

3.2 *Norway*

3.4 Norway requests that the Panel find that the "EU Seal Regime":

- a. violates Articles I:1, III:4 and XI:1 of the GATT 1994;
- b. is not justified by Article XX(a) or (b) of the GATT 1994;

²⁶ Canada's first written submission, para. 752; Canada's second written submission, para. 359.

²⁷ Canada's first written submission, para. 753; Canada's second written submission, para. 360.

²⁸ Canada's first written submission, para. 754; Canada's second written submission, para. 361.

- c. violates Article 4.2 of the Agreement on Agriculture;
- d. is a technical regulation in the sense of Annex 1.1 of the TBT Agreement;
- e. violates Articles 2.2, 5.1.2 and 5.2.1 of the TBT Agreement; and
- f. nullifies or impairs benefits accruing to Norway in the sense of Article XXIII:1(b) of the GATT 1994, whether or not it conflicts with relevant provisions.²⁹

3.5 Norway therefore requests the Panel, pursuant to Article 19.1 of the DSU, to recommend that the DSB request that the European Union bring the EU Seal Regime into conformity with the European Union's obligations under the GATT 1994, the TBT Agreement and the Agreement on Agriculture.³⁰

3.6 If, and to the extent, that the Panel finds that the EU Seal Regime does not conflict with relevant WTO provisions, but nonetheless finds that the measures nullify or impair benefits accruing to Norway in the sense of Article XXIII:1(b) of the GATT 1994, Norway requests the Panel to recommend that the DSB request the European Union to make a mutually satisfactory adjustment as required by Article 26.1 of the DSU.³¹

3.3 *European Union*

3.7 The European Union requests the Panel to reject all the claims submitted by Canada and Norway against the "EU Seal Regime".³²

4. **ARGUMENTS OF THE PARTIES**

4.1 The arguments of the parties are reflected in their executive summaries, provided to the Panel in accordance with paragraph 19 of the Working Procedures adopted by the Panel (see Annexes B-1, B-2 and B-3).

5. **ARGUMENTS OF THE THIRD PARTIES**

5.1 The arguments of Colombia, Iceland, Japan, Mexico, Namibia and the United States are reflected in their executive summaries, provided in accordance with paragraph 20 of the Working Procedures adopted by the Panel (see

²⁹ Norway's first written submission, para. 1039; Norway's second written submission, para. 439.
³⁰ Norway's first written submission, para. 1040; Norway's second written submission, para. 440.
³¹ Norway's first written submission, para. 1041; Norway's second written submission, para. 441.
³² European Union's first written submission, para. 628; European Union's second written submission, para. 387. The European Union refers to its regulations at issue in this dispute as the "EU Seal Regime". (See European Union's first written submission, para. 1).

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Annexes C-1, C-2, C-3, C-4, C-5, and C-6). Argentina, China, Ecuador and the Russian Federation did not submit written or oral arguments to the Panel.

6. INTERIM REVIEW

6.1 On 3 September 2013, the Panel submitted its Interim Panel Reports to the parties. On 17 September 2013, Canada, Norway, and the European Union each submitted written requests for the review of precise aspects of the Interim Reports. On 24 September 2013, Canada, Norway, and the European Union submitted comments on a number of requests for review presented by the other parties. None of the parties requested an interim review meeting.

6.2 In accordance with Article 15.3 of the DSU, this section of the Panel Reports sets out the Panel's response to the arguments made at the interim review stage, providing explanations where necessary. The Panel has modified aspects of its reports in light of the parties' comments where it considered it appropriate to do so, as explained below. The Panel has also made certain technical and editorial corrections and revisions to the Interim Panel Reports for the purposes of clarity and accuracy. References to sections, paragraph numbers, and footnotes in this section relate to the Interim Panel Reports, except as otherwise noted.

6.1 *General comments*

Reference to "Greenland"

6.3 The complainants observed that the Interim Reports variously refer to "Greenland", "Greenland (Denmark)", and "Denmark (Greenland)" and requested that the Panel follow a consistent approach. Specifically, Canada proposed that the Panel uniformly refer to "Greenland (Denmark)" in the Reports. For its part, the European Union noted that the term "Denmark (Greenland)" does not accurately describe the constitutional relationship between Denmark and Greenland and requested that "Greenland" be used instead.

6.4 The Panel has used the term "Greenland" consistently throughout the Reports.

6.2 *Preliminary question on commercial seal hunts* (Section 7.3.2.3.2)

6.5 Norway made both general and specific comments regarding the emphasis given to certain aspects of its hunting practices and regulations as well as practices in other seal hunts. Norway expressed concern with the Panel's portrayal and characterization of the risks of inhumane killing in seal hunts. In particular, Norway stated that evidence from the Norwegian hunt of "compliance with humane seal hunting ... is omitted or downplayed" and that, conversely,