

As delivered

IN THE WORLD TRADE ORGANIZATION

Before the Appellate Body

***Korea – Import Bans, and Testing and Certification Requirements for
Radionuclides (AB-2018-1/DS495)***

**Oral Statement
by
Norway
as a Third Participant**

Geneva

3 December 2018

MR. CHAIR, MEMBERS OF THE DIVISION,

1. Norway welcomes the opportunity to make a statement before the Appellate Body in this appeal. In this oral statement, Norway will present its views on the publication requirement set forth in Annex B(1) of the SPS Agreement and the Panel’s interpretation of the obligation contained in this provision.

THE PUBLICATION OBLIGATION IN ANNEX B(1)

2. Korea appeals the Panel’s finding that Korea failed to publish its measures consistent with Annex B(1), and claims that the Panel’s finding that Annex B(1) requires the publication to “contain sufficient content that the importing Member will know the conditions (including specific principles and methods) that apply to its goods”, adds obligations to Annex B(1) that are not included in the provision.¹
3. As Norway argued in its submission to the Panel, Article 7 of the SPS Agreement contains an obligation on Members, namely that Members “shall provide information” on their sanitary or phytosanitary measures. This must be done in accordance with the provisions in Annex B, which clarify and specify the content of Article 7. As set out in Annex B(1), adopted SPS regulations must be “published promptly in such a manner as to enable interested Members to become acquainted with them”.
4. “Acquainted” can be understood as “familiar”, “conversant”, “up-to-date”, “informed” and “knowledgeable”.² In our context, this implies that Members must be provided with enough information not only to be aware of the measure, as Korea contends Japan was in this case, but, more importantly, be familiar with the content of the measure.
5. Pursuant to paragraph 1 of Annex B to the SPS Agreement, Members shall ensure that “all sanitary and phytosanitary regulations” are “published promptly”. In line with the wording of the SPS Agreement, it is the SPS regulation itself that must be published. Footnote 5 to Annex B(1) clarifies that “regulations” mean “sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally”, thus

¹ Korea’s Appellant Submission, paras. 347-375. Panel Report, para. 7.464.

² Online version of Merriam Webster Thesaurus: <https://www.merriam-webster.com>

referring back to the wording of Article 7 of the SPS Agreement. This entails an obligation to publish the *text* of the relevant SPS measures, regardless of the specificities of the relevant regulation.

6. This interpretation is also in line with the assessment of the panel in *Japan - Agricultural Products II*.³ Guidelines had here been distributed to a limited number of addressees, and the Ministry of Agriculture, Forestry and Fisheries was available to answer queries. Still, the panel found that this was not sufficient to satisfy the publication requirement in Annex B(1) of the SPS Agreement.⁴ Norway understands this to mean that access to information upon request would not fulfil the publication requirement. Rather, the publication requirement in paragraph 1 of Annex B and Article 7 must be interpreted to the effect that it entails a positive obligation on the Member, i.e. a duty to act on one's own initiative to publish all SPS regulations.
7. Thus, the publication requirement will be fulfilled only if SPS regulations are published in a manner that makes them publicly available, so all interested Members and traders can become acquainted with them.
8. The case at hand illustrates the need for precise information on SPS regulations, to ensure that Members and traders are able to gain knowledge about the regulatory framework within which they must operate. Moreover, the challenges highlighted by Japan in this case point back to the object and purpose of transparency as a fundamental principle of the WTO, namely to achieve a greater degree of clarity, predictability and information about trade policies, rules and regulations of Members for the benefit of all traders.
9. The SPS regulation itself must therefore – as a minimum – be published, irrespective of the level of detail in the regulation. Norway concurs, however, with the EU in that there may be circumstances in which a published SPS measure may not be understood without reference to other documents.⁵ In such a scenario, the level of detail required under Annex B(1) may very well go beyond the publication of the SPS regulation to

³ Ibid.

⁴ Panel Report, *Japan - Agricultural Products II*, para. 8.115.

⁵ Third Participant Submission by the European Union, para. 87.

include also any additional documents that are required for Members to understand the measure, for example interpretative guidelines or calculation methodologies.

10. In conclusion, Norway considers the Panel’s finding that Annex B(1) requires the publication to “contain sufficient content that the importing Member will know the conditions (including specific principles and methods) that apply to its goods”, to be well founded and fully supported by the text of the SPS Agreement.

11. Thank you.