

IN THE WORLD TRADE ORGANIZATION

WT/DS495

**Korea — Import Bans, and Testing and Certification Requirements for
Radionuclides**

Oral Statement

by

Norway as a Third Party

AS DELIVERED

Geneva

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Mr. Chairman, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings.
2. In its written third party statement, Norway addressed some interpretative issues relating to the transparency obligations in Article 7 and Annex B of the SPS Agreement, namely the scope and content of the publication requirement. Today Norway would like to focus on *three legal issues* regarding the interpretation of paragraph 3 of Annex B to the SPS Agreement; *First*, on the relationship between Article 7 SPS and Annex B, *second* on whether there is an obligation to provide answers and documents in paragraph 3 of Annex B and *third* on the content of the obligation to provide “relevant documents” in paragraph 3 of Annex B.
3. In its First Written Submission, Japan submits that Korea failed to fulfil its obligations under Article 7 SPS and paragraph 3 of Annex B, because Korea’s SPS enquiry point failed to provide Japan with copies of the measures and to respond fully to the questions posed by Japan.¹
4. Korea, on the other hand, argues that the obligation that is imposed on Members concerns the existence of an enquiry point with the responsibilities described in Annex B paragraph 3 and that individual failures to respond to a question or provide a document cannot result in a violation of that provision.²
5. First, on the relationship between Article 7 and Annex B; Article 1(3) of the SPS Agreement states that “[t]he annexes are an integral part of this Agreement”. Article 7 SPS refers to Annex B, stating that “Members [...] shall provide information on their sanitary or phytosanitary measures in accordance with Annex B”. In *India – Agricultural Products* the panel clarified that “Article 7 must be read together with the provisions of Annex B of the SPS Agreement.” And, moreover, that “an inconsistency with the

¹ Japan’s First Written Submission, point V.B.

² Korea’s First Written Submission, paragraphs 392 and 393.

provisions of Annex B results in an inconsistency with Article 7”.³ The Appellate Body report in *Japan – Agricultural Products II* also confirmed this interpretation.⁴

6. Accordingly, it is quite clear that a violation of paragraph 3 of Annex B will result in a violation of Article 7 SPS. Whether this is the situation in the case at hand, will depend on an interpretation of paragraph 3 and the assessment of the facts. Norway will not go in to the specific facts of this case, however, we would like to make a few comments on the interpretation of paragraph 3.
7. Turning now to the second issue, that of whether there is an obligation to provide answers and documents in paragraph 3 of Annex B, Norway would like to make the following observations; Annex B to the SPS Agreement is entitled “Transparency of Sanitary and Phytosanitary Regulations” and concerns in its entirety different forms of transparency provisions. This reflects the importance of clarity, predictability and information on national regulations for the trade in food products.
8. Paragraph 3 requires Members to establish enquiry points which are responsible for “the provision of answers to all reasonable questions from interested Members” and “for the provision of relevant documents”. The obligation to have an enquiry point is not disputed in this case, rather the disagreement between Korea and Japan concerns the precise content of the obligation in paragraph 3.
9. To this, Norway would argue that an obligation on Members to answer reasonable questions and to provide relevant documents follow from the wording of paragraph 3. The answers and the documents may not necessarily be prepared by the enquiry point itself, for instance other governmental entities may assist the enquiry point. However, the basic idea with the enquiry point is that interested Members shall have one point of contact in another Member where it will be able to obtain answers to its questions.
10. Read in the context of the wording of Article 7 SPS, which states that “Members shall [...] provide information [...] in accordance with [...] Annex B”, it is further underlined that the Member that receives a reasonable question through its enquiry point, is obligated

³ Panel Report in DS439 - India - Measures Concerning the Importation of Certain Agricultural Products (*India – Agricultural Products*), paragraph 7.741.

⁴ Appellate Body Report 1998-8/DS76 - Japan - Measures Affecting Agricultural Products, paragraph 108.

to answer the question. Likewise, if a Member receives a request for relevant documents through its enquiry point, it is obligated to provide them.

11. This interpretation finds support not only in an ordinary reading of the text and its context, but also in the revised Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7), adopted by the SPS Committee.⁵ In paragraph 1, in the final sentence, it is stated that “[t]ransparency under the SPS Agreement also includes answering reasonable questions”. In paragraph 52 of the Recommended Procedures, under the heading “Guidelines for National Enquiry Points”, it is stated that the enquiry point “is an effective avenue for obtaining information regarding SPS systems and measures from other Members”.
12. Moreover, an interpretation of paragraph 3 under which a Member was not obliged to provide answers, but merely to have an enquiry point with no obligations to follow up on requests received, would not be in line with the purpose of the provision, namely to increase transparency to facilitate international trade. If the provision were to be interpreted as Korea suggests,⁶ it would be rendered a mere formalistic provision – to establish an enquiry point – but with no real content. In Norway’s view, such a reading of the provision would defeat its very purpose.
13. Finally, Norway will turn to the content of the obligation to provide “relevant documents” in paragraph 3. What constitutes “relevant documents” must be assessed on a case by case basis. However, the interpretation of which type of documents that are relevant is informed by the context in which this term is used. In this respect, Norway refers in particular to Article 7 SPS, which imposes an obligation to provide information on SPS measures in accordance with Annex B. Moreover, paragraph 1 of Annex B, contains an obligation to publish SPS regulations, which is to be understood as meaning SPS measures.⁷
14. As demonstrated by Norway in its written third party submission, paragraph 1 of Annex B contains an obligation to publish the SPS regulation itself, or at least to give complete and sufficiently detailed information on the regulation that allow other Members achieve the

⁵ G/SPS/7/rev.3.

⁶ Korea’s First Written Submission, paragraphs 392 and 393.

⁷ Cf footnote 5 of paragraph 1 Annex B.

clarity and predictability necessary to facilitate international trade in food products.⁸ In light of the obligation to publish and provide information on SPS measures, such measures are indeed “relevant documents” in the context of paragraph 3 of Annex B. The obligation to publish the measure cannot be interpreted as excluding the measure itself from the obligation of the SPS enquiry point to provide relevant documents.

15. Accordingly, Norway does not share Korea’s assertion that “there is no basis for Japan to complain that it was not provided with “copies of the measures at issue””.⁹ Rather, the provision of copies of the measure itself seems to be at the very heart of what are “relevant documents” in the context of paragraph 3 of Annex B.

16. Mr. Chairman, distinguished Members of the Panel, this concludes Norway’s statement today.

Thank you for your attention

⁸ Norway’s Written Third Party Submission, paragraphs 15 and 16.

⁹ Korea’s First Written Submission, paragraph 395.