

February 28, 2013

WTO Update

Hello all,

Following the World Trade Organization (WTO) hearing last week, I am pleased to forward the following update. The FIC office has electronic versions of the Canadian written submission and the Oral presentation transcripts of Canada, Norway, the European Union and the United States of America. If you would like a copy, please contact Valerie Labelle (info@fur.ca) at the FIC office.

World Trade Organisation (WTO) Update CANADA and NORWAY vs. the EUROPEAN UNION (EU)

Background

The WTO is an intergovernmental organisation based in Geneva, established in 1994 and comprising 154 countries. It institutionalises the GATT (General Agreement on Tariffs and Trade) Agreements made in 1947.

The WTO makes and enforces rules that liberalize trade between its members. Principally, this means members develop agreements to reciprocally diminish tariffs on imports and to remove regulations that hamper the flow of goods, services and capital.

As a treaty-based organisation, the WTO is above all a political body which enjoys real clout due to its rule-making and binding dispute settlement capacity. Countries who feel that they are negatively affected by legislation or standards can launch a complaint procedure at the WTO. The WTO being a fairly young institution, much of its rules are still untested and developed by case law.

WTO does not specifically refer to animal welfare nor does it prevent countries to adopt trade restrictions on the basis of animal welfare, but these restrictions need to be in line with WTO rules. To date there have been no dispute settlements on the basis of public morality based on animal welfare.

The EU Regulation (EC) No. 1007/2009, which effectively bans the placing of seal products on the market within the EU, is being challenged by Canada and Norway at the WTO. The regulation exempts products coming from;

- 1) subsistence hunts carried out by Inuit and other indigenous communities;
- 2) by-products from sustainable marine resources management sold on a non-profit basis; and
- 3) products for personal use of travelers or their families.

In this case, Canada and Norway are the *complainants*, the European Communities (EU) are the *respondent* and Argentina, Namibia, China, Columbia, Ecuador, Iceland, Japan, Mexico, United States and Russia are *third parties*.

(http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm#top)

The Third Parties are observers to the case. Registering as a third party signals to the Panel that the Member State in question has an interest in the dispute. Under the rules of the Dispute Settlement Understanding, Third Parties have the right to make a submission similar to *amicus curiae* brief.

Status

The Panel is composed of Chairman Mr. Luzius Wasescha (Switzerland), Ms. Mary Elizabeth Chelliah (Singapore) and Ms. Patricia Holmes (Australia).

Panels are composed of WTO diplomats who hear the respective submissions of the parties, as a court would. It looks at all the evidence and arguments provided by the parties and ultimately issues a panel report which aims to clarify the interpretation of WTO rules in order to resolve the dispute. Panel reports are not binding *per se* and must first be adopted by the General Assembly of WTO members. If the parties to the dispute are unhappy with the panel decision, they may lodge an appeal. The dispute then evolves to the Appellate Body stage.

The **Dispute Settlement Body** (DSB) is the ultimate dispute solving mechanism at the WTO. It has two levels of jurisdiction: **the Panel and the Appellate Body**.

When attempts to resolve a dispute through conciliation fail and an issue remains, the parties may request the formation of a **Panel**. This is the first formal stage of the WTO dispute settlement procedure.

The **Appellate Body** is the most senior level of jurisdiction and in many ways resembles a court of appeal. It is composed of well-known international lawyers and scholars; its decisions are final and binding. It is this organ which ultimately defines how the WTO law should be interpreted

If the ban remains, it will confirm that countries are entitled to introduce trade restrictions and trade bans on the basis of “public morality” and “animal welfare” provided that these comply with WTO rules.

If the ban is overturned, the EU does not necessarily have to repeal its legislation. Firstly we expect that they (the EU) will appeal. Then it has the option of changing the legislation to bring it into compliance with WTO rules, based on the ruling of the Dispute Settlement Body. Although the general trend is for countries to comply with WTO rulings, the EU could also maintain the law

without changes. This has been the decision in the Beef/Hormone case where, as a result of serious consumer concern, the EU chose not to open its market for beef products and accepted to have higher tariffs applied to certain EU products exported to the US and Canada.

Oral Hearing (February 18-20)

The parties have now submitted their written presentations, and from February 18-20 oral presentations were made in Geneva, Switzerland. The panel report will come out after the summer of 2013. In the case that the EU decides to appeal the decision, the expected final judgment in the dispute settlement will be in spring 2014.

During the **first day** of hearings on February 18 in Geneva, Switzerland, the main parties made their first oral presentations. Canada and Norway challenged the EU Regulation, primarily on its moral grounds, that while allowing seal products from hunts that have no welfare requirements – namely Greenland, Sweden and Finland, the same seal species hunted in Canada and Norway, have no possibility of meeting the narrow exemptions provided – thus discrimination.

The EU oral presentation was dominated by a 1.5 hour video of seal hunting practices from 2005 to 2011, largely provided by anti-seal activist groups, and a commentary by Dr. Donald Broom, from the Department of Veterinary Medicine, Cambridge University.

On the **second day**, 3rd parties, including Columbia, Japan, Mexico, the United States of America and Namibia made their first oral presentation. We were pleased to hear that all the Third Parties that presented were opposing the EU ban. Not necessarily because of the seal trade itself (USA have a ban on marine mammal products since 1972), but because of the concerns about the implications of a broad interpretation of the public morality defence, and the possibility that it will be used more often as a means for WTO Members to justify protectionist trade measures. There is serious concern by all parties of where this will lead. Questions and answers between the Parties then followed.

During the exchange between the Parties, Dr. Broom's credibility on seal welfare was challenged, where it was established that he has never personally witnessed seals being hunted, nor has he carried out any research on seal hunting practices or produced any scientific papers on seal hunting and animal welfare.

There was also significant discussion on the science of animal welfare and seal hunting, with references to numerous scientific reports, some peer reviewed, (The Canadian Harp seal hunt by Dr. Daoust & Dr. Caraguel, Marine policy by Butterworth & Richardson) others not and to the European Food and Safety Authority (EFSA). Dr. Broom did sit on the EFSA Panel, which concluded that video evidence on its own is not reliable evidence of consistent non-compliance with hunting regulations or the proof of inherent animal suffering.

The **third day** consisted of Questions from the Panel and Closing Statements.

One of the main discussion points between the Parties and to the Panel was the issue of proving discrimination of “Like” products, as noted earlier in this brief. The Chair reminded the parties that the case will be judged on WTO rules, not animal welfare aspects of seal hunting.

The EU, in effect, conceded that it is allowing “like” seal products from certain countries or ethnic people, but not others, based on their opinion of ability to comply with welfare requirements. [I would like to remind you that Inuit hunters and Organizations in Canada and Greenland are challenging the EU ban at the EU General Court because of their opinion that the exempt afforded them is an empty box].

Over the next two months, the Parties will answer written questions from the Panel, based on the Oral Hearing, submit a second round of written arguments and the second and final Oral Hearing, in Geneva, Switzerland on April 29 -30th, where it is expected that more legal technicalities will dominate presentations and discussion.

Members who represented our industry in Geneva at the WTO Hearing:

Rob Cahill - Fur Institute of Canada. International Fur Trade Federation

Dion Dakins – Carino Processing Ltd.

Brian Roberts – Fur Institute of Canada

Eldred Woodford – Canadian Sealers Association

Yolanda Miller – Government of Newfoundland and Labrador (Dept.of Fisheries and Aquaculture)

Anders Arnesen - GC Reiber Norway

Hatem Yavuz - Yavuz Group Turkey

David McCullough - IFTF

Further updates will follow. We will do our best to answer any questions that you might have.