

EFTA Surveillance Authority
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6 December 2011

Subject: Complaint concerning the implementation by the Icelandic State of the EEA Joint Committee No 134/2007 of 26 October 2007 amending Annex I and Annex II to the European Economic Area Agreement

Complainant: SVTH - Federation of Trade & Services
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I. General

SVTH - Federation of Trade & Services (hereafter referred to as “SVTH”) is a countrywide federation of companies in commerce and services in Iceland. This includes private retailers and the consumer co-operative sector as well as importers of goods, including goods originating from the European Economic Area (hereafter referred to as “the EEA Area”).

Concerning this complaint SVTH refers to the decision of the EEA Joint Committee No 134/2007 of 26 October 2007 amending Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the European Economic Area Agreement (hereafter referred to as the “the EEA Agreement”).

In accordance with the aforementioned decision Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (hereafter referred to as “the Regulation”) was incorporated into the EEA Agreement.

According to Article 1 of the Regulation it provides the basis for the assurance of a high level of protection of human health and consumers' interest in relation to food, taking into account in particular the diversity in the supply of food including traditional products, whilst ensuring

the effective functioning of the internal market. The Regulation also establishes common principles and responsibilities, the means to provide a strong science base, efficient organisational arrangements and procedures to underpin decision-making in matters of food and feed safety.

SVTH would like to inform the EFTA Surveillance Authority (hereafter referred to as “ESA”) on the implementation of the Icelandic State concerning the abovementioned Regulation as well as the compliance with the relevant EEA Joint Committee Decision.

II. The EEA Agreement

The basic principles concerning free movement of goods are listed in part II of the EEA Agreement. In relation with import of goods, including agricultural and fishery products, and the Regulation SVTH would like to indicate that the relevant Articles of the EEA Agreement are Articles 11, 13, 17 and 18 of the EEA Agreement.

Article 11 states that quantitative restrictions on imports and all measures having equivalent effect are prohibited between the Contracting Parties, that is between members of the EEA Agreement on the internal EEA market.

According to Article 13 the provisions of Articles 11 and 12 of the EEA Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the members of the EEA Agreement.

The general rules on free movement of goods concerning agricultural and fishery products are in Articles 17 and 18. Article 17 states that Annex I to the EEA Agreement contains specific provisions and arrangements concerning veterinary and phytosanitary matters. In Article 18 it is stated that without prejudice to the specific arrangements governing trade in agricultural products, the Member States shall ensure that the arrangements provided for in Articles 17 and 23 (a) and (b), as they apply to products other than those covered by Article 8(3), are not compromised by other technical barriers to trade. Finally it is stated that Article 13 shall apply.

In addition with the aforementioned articles of the EEA Agreement the Icelandic State has also obligations in accordance with the Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market as the directive is a part of the EEA Agreement.

As stated in the preamble of the Directive the harmonious operation of the common organization of the market in livestock products and products of animal origin implies the dismantling of veterinary barriers to the development of internal market trade in the products concerned; whereas in this respect the free movement of agricultural products is a fundamental feature of the common organization of markets and should facilitate the rational development of agricultural production and the optimum use of the factors of production.

As stated in Article 1 of the Directive Member States shall ensure that the veterinary checks to be carried out on products of animal origin which are covered by the Directives listed in Annex A or by Article 14 and which are intended for trade are no longer carried out at frontiers but are carried out in accordance with this Directive.

As the Directive is a part of the EEA Agreement the Icelandic State is bound to act in accordance with the scope of the Directive.

III. Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002

In this chapter is an overview of relevant articles of the Regulation relating to this matter, especially concerning the action taken by the Icelandic State to implement the Regulation into Icelandic legislation. References are also made to the preamble of the Regulation where appropriate. Whereas the Regulation is now a part of the EEA Agreement citations to “the Community” in the Regulation will in the following text be referred to as “the EEA Area”. The same applies concerning the terms “the Treaty” and “the EEA Agreement”.

As stated in the preamble of the Regulation the free movement of safe and wholesome food is an essential aspect of the internal market and contributes significantly to the health and well-being of citizens, and to their social and economic interests. The free movement of food and feed within the EEA Area can be achieved only if food and feed safety requirements do not differ significantly from Member State to Member State.

It is recognised that there is important differences in relation to concepts, principles and procedures between the food laws of the Member States. When Member States adopt measures governing food, these differences may impede the free movement of food, create unequal conditions of competition, and may thereby directly affect the functioning of the internal market of the EEA Agreement.

The preamble also refers to risk assessment concerning food safety where it is stated that in order for there to be confidence in the scientific basis for food law, risk assessments should be undertaken in an independent, objective and transparent manner, on the basis of the available scientific information and data.

The Regulation also recognises the precautionary principle and is stated that the principle has been invoked to ensure health protection, thereby giving rise to barriers to the free movement of food or feed. Therefore it is stated in the preamble that it is necessary to adopt a uniform basis throughout the EEA Area for the use of this principle. In those specific circumstances where a risk to life or health exists but scientific uncertainty persists, the precautionary principle provides a mechanism for determining risk management measures or other actions in order to ensure the high level of health protection chosen in the EEA Area.

It is clear from the preamble, as well as Article 1 of the Regulation, that the aim and scope, hence the objective, of the Regulation is to set a clear EEA Area framework to regulate the assurance of a high level of protection of human health and consumers' interest in relation to food, taking into account in particular the diversity in the supply of food including traditional products, whilst ensuring the effective functioning of the internal market. Following the

decision of the EEA Joint Committee No 134/2007 the framework also applies to the EEA-EFTA Member States, including Iceland. Liechtenstein is however exempted from the scope of the decision.

According to Article 1 the Regulation applies to all stages of production, processing and distribution of food and feed.

The Regulation defines food law as laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at the EEA Area or national level. It also covers any stage of production, processing and distribution of food, and also of feed produced for, or fed to, foodproducing animals. In this sense the general rules set out in the Regulation are not limited EEA Area legislation but also applies to domestic law as well as relevant administrative provisions, including domestic rules and regulations and ministerial decision, orders and recommendations.

Chapter II of the Regulation includes a framework on general food law. It relates to all stages of the production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals. According to Article 4(2) the principles laid down in the chapter shall form a general framework of a horizontal nature to be followed when measures are taken. In Article 4(3) it is stated that all existing food law principles and procedures shall be adapted as soon as possible.

Food law shall aim to achieve the free movement in the EEA Area of food and feed manufactured or marketed according to the general principles and requirements in Chapter II.

An important factor of the Regulation, and the framework that the Regulation establishes, is the so-called risk analysis which is detailed in Article 6. In Article 6(1) it is stated that in order to achieve the general objective of a high level of protection of human health and life, food law shall be based on risk analysis except where this is not appropriate to the circumstances or the nature of the measure. According to Article 6(2) the risk assessment shall be based on the available scientific evidence and undertaken in an independent, objective and transparent manner. As a result, this clause limits the opportunity for governments, or individual governmental members, to give rise to reasoning or views to protect domestic production by excluding import from other EEA Area Member States and thereby directly affecting the functioning of the EEA internal market.

In Article 6(3) it is also further stated that the risk management shall take into account the results of risk assessment, and in particular, the opinions of the European Food Safety Authority (hereafter referred to as “the EFSA”), established in accordance with the Regulation, other factors legitimate to the matter under consideration and the precautionary principle, in order to achieve the general objectives of food law. The use of the precautionary principle is however not without limits, whereas it’s stated the principle is only applicable when further detailed conditions concerning the principle are fulfilled. Those conditions are further detailed in Article 7.

The general rule concerning the application of the precautionary principle is further elaborated in Article 7(1) where it is stated that in specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified

but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the EEA Area may be adopted, pending further scientific information for a more comprehensive risk assessment.

The use of this principle is therefore by definition a preliminary application, but not a continuing application.

The precautionary principle entails specific criteria's that must be fulfilled in order to apply the principle. Those criteria's are as follows:

- An assessment of available information.
- The possibility of harmful effects on health is identified.
- Scientific uncertainty persists.
- Provisional risk management measures.
- Pending further scientific information.

According to this all of the above mentioned criteria's have to be fulfilled so the use of the precautionary principle can be justifiable. In addition to this those measures can only be provisional ones, not continuing measures.

In Article 7(2) are provisions concerning the duration of measures taken on the grounds of the general provisions set out in Article 7(1). Those measures shall be proportionate and no more restrictive of trade than is required to achieve the high level of health protection chosen in the EEA Area, regard being had to technical and economic feasibility and other factors regarded as legitimate in the matter under consideration. The measures must be reviewed within a reasonable period of time, depending on the nature of the risk to life or health identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment.

A key element in Article 7(2) is that those measures must be proportionate and no more restrictive of trade than is required to achieve the high level of health protection and they must be reviewed within a reasonable period of time.

Section 4 of Chapter II of the Regulation entails general requirements of food law. Concerning the definition of food law SVTH refers to aforementioned definition. The main rule concerning this matter is listed in Article 14(1) where it is stated in a clear manner that food shall not be placed on the market if it is unsafe. According to Article 14 food shall be deemed to be unsafe if it is considered to be either injurious to health or unfit for human consumption. However, the essential requirement must always be that those measures shall be supported by scientific basis or other comparable basis.

Article 14 further details specific matters concerning food safety requirements that seek to maintain high standard of food safety in relation to human health. Equivalent provisions concerning feed products are in Article 15 of the Regulation.

However it is stated in Article 15(8) that the conformity of a food with specific provisions applicable to that food shall not obstruct the competent authorities from taking appropriate measures to impose restrictions on it being placed on the market or to require its withdrawal

from the market where there are reasons to suspect that, despite such conformity, the food is unsafe. The key element in this paragraph is however that those restrictions must always be based on reasons to suspect that the food is unsafe, for example with reference to scientific data.

Finally it is important to refer to Chapter III of the Regulation that establishes the EFSA. The Regulation therefore establishes EFSA which has the function, among other things, to provide scientific advice and scientific and technical support for the Community's legislation, including the relevant EEA legislation, and policies in all fields which have a direct or indirect impact on food and feed safety. EFSA purpose is also to provide independent information on all matters within these fields and communicate on risks. EFSA shall also contribute to a high level of protection of human life and health, and in this respect take account of animal health and welfare, plant health and the environment, in the context of the operation of the internal market.

According to this EFSA plays an important role by collecting and analysing data to allow the characterisation and monitoring of risks which have a direct or indirect impact on food and feed safety. Therefore the Regulation establishes a single competent authority – EFSA - to collect, analyse and distribute the relevant documents and evaluate the scientific data needed to ensure food and feed safety as well as to justify any limitations on the importation of food or feed. EFSA and relevant authorities, as well as Member States, shall cooperate to promote the effective coherence between risk assessment, risk management and risk communication functions.

It is without a doubt that EFSA plays an important role in maintaining harmonisation concerning food safety and relevant criteria's concerning food and feed safety on the internal market. Therefore the responsibility concerning this matter rests on EFSA, not unilaterally on individual Member States.

IV. Incorporation of the Regulation into Icelandic law

As already mentioned the Regulation was incorporated into the EEA Agreement in accordance with the decision of the EEA Joint Committee No 134/2007. However, due to constitutional requirements, the decision did not enter into force at the day of adoption. The Icelandic State was given the period of 18 months the lift the constitutional requirements and incorporate the relevant legislation into Icelandic legislation, including necessary amendments to several relevant acts.

In order to lift the constitutional requirements the Minister of Fisheries and Agriculture placed before the Parliament – Althingi - a Government Bill on the review of exemptions from Chapter I of Annex 1 of the EEA Agreement. According to the Bill the Icelandic State is authorised to implement the relevant EEA legislation into Icelandic legislation.

The first Government Bill on this matter was placed before Althingi on 1 April 2008¹. However the Bill was not passed from Althingi as law. The same Bill was placed before

¹ <http://www.althingi.is/dba-bin/ferill.pl?ltg=135&mnr=524>

Althingi on 19 December 2008 and again the Bill was not passed from Althingi as law². Those two Government Bills on this subject were in many ways identical, that is they were placed before Althingi without any substantial changes made on their subject.

The Bill was placed again, and for the third time, on 8 July 2009³. This time some substantial changes were made to the Bill, compared to the previous Bills. Among those changes was the status quo on the ban on importing fresh meat according to Article 10 of the Act No 25/1993, Governing Animal Diseases and Preventive Measures Against Them. This entails that the Minister of Fisheries and Agriculture recommended that Iceland would maintain importation ban on fresh meat which is not in line with effective functioning of the internal market of the EEA Agreement.

The reasoning given by the Minister of Fisheries and Agriculture on this matter that he supported the on-going ban as a part of the policy to protect the health of human as well as animals. In his arguments the Minister of Fisheries and Agriculture stated that *“his reasoning for the importation ban of fresh meat are above any doubt and perfectly in line with the obligations placed on the Icelandic authorities according to Article 13 of the EEA Agreement.”* The Minister of Fisheries and Agriculture also stated that any attempts by surveillance authorities (including ESA) to argue otherwise would be met “with full determination” in maintaining this importation ban.

In his speech during the Parliamentary debates the Minister stated that the requirement that all imported meat must be frozen would serve the purpose of maintaining zero level of trichina in the meat on the domestic market. The Minister also stated that fresh meat would only increase the threat of importation of trichina infected meat. This was followed by another statement by the Minister where he states that it is only possible for trichina transmission for humans to consume fresh meat. The Minister also refers to the practise concerning the importation of meat in both Australia and South-Africa as an example to support the on-going ban on importation of fresh meat. Both those countries are however neither members of the Agreement or the Community and therefore not obligated in same the same manner as EEA Member States concerning the internal market rights and duties.

The aforementioned statements by the Minister of Fisheries and Agriculture are well documented in the Parliamentary debates on the Bill and can be accessed on the Althingi online archive (Icelandic version only)⁴.

It should be noted that the first two Bills recognised the contractual obligations of the Icelandic State to implement the relevant EEA legislation concerning this matter, including lifting the previous importation ban on fresh meat as well as dairy products and eggs. Therefore they were completely in line with the relevant EEA legislation and the obligations of the Icelandic State regarding the functioning of the internal market. This opinion is documented in the previous two Bills as well as in the Parliamentary debate concerning those bills, including speeches and arguments given by the previous Minister of Fisheries and Agriculture.

² <http://www.althingi.is/dba-bin/ferill.pl?ltg=136&mnr=258>

³ <http://www.althingi.is/dba-bin/ferill.pl?ltg=137&mnr=147>

⁴ <http://www.althingi.is/altxt/raeda/137/rad20090723T211546.html>

It should be noted that the Bill also proposed that special import licenses concerning fresh meat would be issued by the Minister of Fisheries and Agriculture. However the previous Bills proposed that the power to issue import licenses would be handed over to the newly established Icelandic Food and Veterinary Authority⁵. By doing so the Minister proposed to maintain a one level administration concerning importation on fresh meat. Applicants for those import licenses would therefore need to direct their enquiries as well as applications to the same administrative party. This would also result in the fact that applicants would not be able to have the decisions of the Minister reviewed by a higher authority, as would have been done if earlier amendments in the previous Bills would have been accepted.

Again, this time the Bill was not passed as law from Althingi. The Bill was therefore placed before Althingi, without any changes made to the previous Bill, on 8 October 2009⁶. This time the Bill was passed as law from Althingi on 18 December the same year as Act No 143/2009. According to Article 78 the Icelandic Government was, by the authorisation of Althingi, permitted to confirm, among others, the decision of the EEA Joint Committee No 134/2007 of 26 October 2007 amending Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the European Economic Area Agreement.

It should also be noted that Act No 143/2009 imposes stricter rules concerning veterinary checks than those set out in the Regulation as well as in the Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market.

Act No 143/2009 came into force on 1 March 2010. However Articles concerning the Regulation, Chapter II-IV, came into force on 1 November 2011.

The Regulation was implemented into Icelandic legislation with a Regulation No 102/2010, issued by the Minister of Fisheries and Agriculture on 22 January 2010.

V. Rules on importing meat to Iceland

Hereafter is an overview giving an insight into the system of importation of meat into the Icelandic market, whether it's an import from EEA Member States or third countries.

The Icelandic Food and Veterinary Authority (hereafter referred to as "MAST") is the Authority in Iceland responsible for the control of import and export of live animals, animal breeding materials, animal products and animal feeds. The office of import and export within MAST executes this control on a daily basis. This is a voluminous task which covers all products and live animals which can carry contagious material dangerous for animals or humans. The main task of the office of import and export is to prevent contagious material, drug residues hazardous to animals and humans from entering the country by means of live

⁵ Act No 167/2007, passed by the Icelandic Parliament on 14 December 2007, provides for the establishment of the Icelandic Food and Veterinary Authority. The Act lays the foundation for the merger of authorities and services dedicated to food and agriculture related inspection and administration into a single inspection and administrative body, the Icelandic Food and Veterinary Authority.

⁶ <http://www.althingi.is/dba-bin/ferill.pl?ltg=138&mnr=17>

animals, animal products, and tourists or by any other means. Another task of the office of import and export is to certify that animal products, fish products and live animals exported from Iceland fulfil the requirements of the importing country and do not present undue health risk to animals and humans.

According to Act No 25/1993, on Governing Animal Diseases and Preventive Measures Against Them, all import of food of animal origin is forbidden. The Minister of Fisheries and Agriculture is permitted to deviate from this ban, following a positive evaluation by MAST. The recommendations of MAST are based on thorough risk assessments on case to case basis. This evaluation is in accordance with OIE procedures, mainly taking notice of the animal health status of the exporting country.

Regulation No 509/2004, on Measures to Prevent the Introduction of Animal Diseases and Contaminated Products into Iceland, is based on Act No 25/1993. According to Article 7 of Regulation No 509/2004 the Minister of Fisheries and Agriculture has the authority following a positive recommendation from MAST to permit the importation of products otherwise prohibited by Article 3 in Act No 25/1993. The recommendation has to be based on international risk assessment following standards laid down by OIE, CODEX and not the least articles of the SPS agreement, of which Iceland is a member. In Regulation No 509/2004 the required permit from the Minister and the certificates in order to permit importation are listed. These documents have to be shown before customs clearance can take place.

VI. Complaint and the legal arguments

As mentioned before the Regulation aims to limit the opportunity for governments, or individual ministers, to give rise to reasoning or views to protect domestic production by excluding import from other EEA Area member States thereby directly affecting the functioning of the internal market of the EEA Agreement. Article 13 of the EEA Agreements clearly states that prohibitions or restrictions by Member States may never constitute a means of arbitrary discrimination or a disguised restriction on trade between the members of the EEA Agreement. However it is clear that Act No 143/2009 is not in line with this aim and clearly discriminate producers of fresh meat on the internal market of the EEA Area. Therefore the aforementioned implementation is clearly in breach of, among others, Article 11, 13, 17, 18 and 105 of the EEA Agreement. On this matter SVTH refers to Judgment of the European Court of 20 October 2005, Commission of the European Communities v Kingdom of Sweden, concerning the failure of a Member State to fulfil obligations - Free movement of agricultural products, case C-111/03.

Article 105 of the EEA Agreement clearly states that in order to achieve the objective of the Contracting Parties to arrive at as uniform an interpretation as possible of the provisions of the EEA Agreement and those provisions of Community legislation which are substantially reproduced in the Agreement, the EEA Joint Committee shall act in accordance with this Article. The decision of the EEA Joint Committee No 134/2007 of 26 October 2007 amending Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the European Economic Area Agreement states the obligations of the EFTA-EEA Member States and the Icelandic State is obligated to act within the scope set out in the decision, as well as in accordance with the relevant EEA Agreement legislation. The decision of the EEA Joint Committee No 134/2007 does not include any

exemptions for the Icelandic State giving is the right to maintain the importation ban on fresh meat into Iceland.

A general reference to Article 13 of the EEA Agreement does not give the Icelandic State the right, or the duty, to maintain the importation ban of fresh meat into Iceland. Such a ban must be supported by scientific data or proved beyond a doubt that such an importation would seriously risk the human health as well as the wellbeing of animals. The Icelandic State, including the Minister of Fisheries and Agriculture, has argued that an importation would seriously harm human and animal welfare and risk the purity of the domestic veterinary. This has been argued by the authority without any proof of such risk or any real cases. Whereas the Icelandic State has not been able to provide such data the importation ban is clearly in breach of the EEA Agreement and therefore constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties as stated in Article 13 of the Agreement. What has to be kept in mind is that Article 13 is an exemption from general rule on the free movement of goods, i.e. Part II of the Agreement. Therefore the application of such exemption must be supported by arguments beyond any doubt. Such application must also be applied on case-by-case basis. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this Article. If applied the provision of Article 13 must be proportionate and no more restrictive of trade than is required to achieve the high level of health protection chosen in the EEA Area.

The same applies for the application of the precautionary principle according to Article 7 of the Regulation. As stated before the general rule concerning the application of the precautionary principle in Article 7(1) is that in specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the EEA Area may be adopted, pending further scientific information for a more comprehensive risk assessment. The use of this principle is therefore by definition a preliminary application, but not a permanent application. The precautionary principle, as well as Article 13 of the Agreement, is therefore only applicable as a mean in dealing with an on-going situation or a dilemma but not as a general barrier or restriction to trade or a possible threat to human or animal health for an indefinite period.

SVTH would also like to stress the fact that according to Article 53 of the Regulation Member State can in specific circumstances apply emergency measures for food or feed of EEA Area origin or imported from a third country. However such measures need to have been notified to ESA before they are applied. They can therefore never be unilaterally applied by a single Member State.

The Regulation clearly states in Article 6(2) that risk assessment shall be based on the available scientific evidence and undertaken in an independent, objective and transparent manner. The Icelandic State has nevertheless taken the decision to maintain the aforementioned importation ban on fresh meat without reference to any available scientific evidence or any other relevant risk assessment.

The implementation of the Regulation into Icelandic legislation is also not in line with the general rules according to the Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the

internal market. Therefore the Icelandic State has acted beyond the scope of the Directive as well as the Regulation. The infringement of the Directive should alone be in breach of the contractual obligations of the Icelandic State. In addition the Icelandic State is also in breach of the rules laid down in the Regulation.

The actions taken by the Icelandic State do not only affect importers of meat in Iceland in the way that they are not permitted to import fresh meat for domestic sale but it does also affect producers of meat on the EEA Area internal market. In that sense it should be noted that the requirements that all imported meat shall be frozen are not legal sanctions as such. However such requirements do in fact lessen the value of the meat for the producers, as well as the market value on the domestic market, and therefore serve as economic sanctions. The Icelandic legislation includes prohibitions and restrictions on imports and goods in transit. Those restrictions in constitute a means of arbitrary discrimination or a disguised restriction on trade between the members of the EEA Agreement.

It is clear from the wording of the Regulation that the competent authority to conduct general risk assessment on internal market is EFSA and also that risk analysis should be carried out on case-by-case basis. By maintaining the ban on importation of fresh meat into Iceland the Icelandic State has acted beyond the scope of the EEA legislation, both concerning health issues as well as food safety. By adopting the relevant EEA legislation the Icelandic State should be fully capable of maintaining a high level of protection of human health and consumers' interest in relation to food. Nevertheless the Icelandic State has decided to act beyond the scope of the relevant EEA legislation, constituting infringement of the EEA Agreement.

An important part of this matter is how the actions of the Icelandic State should be viewed in accordance with Article 13 of the EEA Agreement. In that sense SVTH would like to re-emphasise that Article 13 entered into force when the EEA Agreement itself came into force. Article 13 has therefore been valid as long as the EEA Agreement. The Article was recognised during the negotiation phase concerning incorporating the Regulation into the EEA Agreement as well as while preparing the first two aforementioned Government Bills to incorporate the Regulation into Icelandic Regulation. In addition to that the Icelandic State did neither apply for an exemption from the scope of the Regulation or was given such exemption according to the relevant Joint Committee Decision. The Icelandic State has therefore always recognised the existence of Article 13 and its scope. The Icelandic did therefore recognise their EEA Agreement obligations to allow the importation of fresh meat and it's not until mid-year 2009 that the Icelandic State starts to act in breach of those obligations concerning this matter when the Minister of Fisheries and Agriculture places before Althingi a new revised Bill which was not in line with neither previous Bills nor the EEA Agreement obligation of the State.

VII. Conclusion


SVTH recognises that the role of ESA is to ensure that the participating EFTA-EEA Member States respect their obligations under the Agreement. SVTH also recognises that ESA seeks to protect the rights of individuals and market participants who find their rights infringed by rules or practices of the EFTA-EEA Member States. Such rules or practices may, for example, be discriminatory, impose unnecessary burdens on commercial activity and ESA may in such

cases initiate proceedings against the EFTA-EEA Member State at the EFTA Court, seeking a change in the relevant rules or practices.

SVTH hereby notify ESA about the aforementioned implementation. In the view of SVTH the implementation by the Icelandic State cannot be viewed as sufficient implementation. The Icelandic State is therefore in breach of the EEA Agreement, especially concerning the provisions on the free movement of goods.

Respectfully,

on behalf of the Federation of Trade & Services



Andrés Magnússon
Secretary General



Lárus M. K. Ólafsson
Lawyer