



## KOREA – IMPORT BANS, AND TESTING AND CERTIFICATION REQUIREMENTS FOR RADIONUCLIDES

### REQUEST FOR CONSULTATIONS BY JAPAN

The following communication, dated 21 May 2015, from the delegation of Japan to the delegation of the Republic of Korea and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the Government of the Republic of Korea ("Korea") pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 11.1 of the Agreement on Sanitary and Phytosanitary Measures ("SPS Agreement"), regarding Korea's import bans, and its additional testing and certification requirements for radionuclides, that both affect the importation of food products from Japan.

#### I. Background

1. Following the accident at the Fukushima Daiichi nuclear power plant that occurred subsequent to the Great East Japan Earthquake of 11 March 2011, the Government of Japan ("Japan") understands that Korea adopted a series of measures that (i) ban the import of *certain* food products from some 13 Japanese prefectures, and (ii) in the event radionuclides, including cesium 134 or 137 (collectively "cesium") or iodine 131, are detected in *certain* food products from Japan, impose additional testing and additional certification requirements regarding the presence of other radionuclides.<sup>1</sup> Further, Japan understands that, in September 2013, Korea (i) extended the scope of its import bans to *all* fishery products caught or landed in 8 Japanese prefectures, and (ii) extended the additional testing and additional certification requirements regarding the presence of radionuclides other than cesium and iodine 131 to *all* food products from Japan that are not subject to import bans, where cesium or iodine 131 are detected. To date, Korea has failed to publish these measures, such that the evidence and information at Japan's disposal is, to a significant extent, limited to that which can be gleaned from press releases issued by the relevant Korean agencies and ministries.

2. For many months, Japan has engaged in intense efforts to identify and understand Korea's measures, and to satisfy Korea's concerns. Japan has participated in numerous bilateral meetings with Korea to discuss the matter,<sup>2</sup> consistent with the spirit of the *SPS Agreement*. In this spirit, Japan has repeatedly provided volumes of detailed information to Korea (i) as a part of information regularly provided to foreign missions in Japan, and (ii) in response to specific requests received

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<sup>1</sup> Based on a response from Korea's SPS Enquiry Point, dated 26 August 2014, Japan understands that the additional radionuclides are: plutonium 238, plutonium 239, plutonium 240, americium 241, strontium 90, ruthenium 106, iodine 129, uranium 235, sulfur 35, cobalt 60, strontium 89, ruthenium 103, cerium 144, iridium 192, hydrogen 3, carbon 14 and technetium 99.

<sup>2</sup> Japan and Korea engaged in bilateral meetings discussing this matter on 16 September 2013; 15 January 2014; 30 April 2014 and 18 September 2014, as well as in bilateral meetings in the margin of SPS Committee meetings (15 October 2013; 24 March 2014; 8 July 2014; 15 October 2014 and 25 March 2015). See *further*, paragraph 6, below.

from Korea.<sup>3</sup> Japan has also repeatedly offered to hold additional meetings between our respective technical experts, to further understand and address Korea's concerns.

3. Moreover, to enable Japan to demonstrate to Korea the equivalence of Japan's own SPS measures to Korea's SPS measures, and because Japan has reason to believe that Korea's SPS measures have the potential to and do constrain export from Japan, and are not based on relevant international standards, guidelines or recommendations, on 18 March 2014, Japan requested Korea, under Articles 4 and 5.8 of the *SPS Agreement*, to provide: an explanation of the objectives and reasons for Korea's SPS measures; an identification of the risks that its measures are intended to address; an indication of the level of protection its SPS measures are designed to achieve; and, a copy of any risk assessments Korea has undertaken. On 9 June 2014 and 12 August 2014, Japan sent further letters reiterating its request. Although Korea is obliged by Articles 4 and 5.8 of the *SPS Agreement* to have provided all of the requested information, it has failed to provide meaningful responses to Japan's request.<sup>4</sup>

4. In light of Korea's failure to publish its measures, and its failure meaningfully to respond to Japan's request under Articles 4 and 5.8 of the *SPS Agreement*, Japan is deeply concerned about a fundamental lack of transparency concerning the Korean SPS measures at issue. Accordingly, on 24 June 2014, Japan requested Korea's SPS enquiry point to provide copies of its measures, and to respond to basic questions regarding the scope and meaning of those measures. Pursuant to Article 7 and Annex B of the *SPS Agreement*, Korea is obliged to provide responses to the substantive questions and requests. A response from Korea's SPS enquiry point, dated 26 August 2014, failed however to provide meaningful substantive responses to many of Japan's questions, and failed altogether to answer other of those questions.

5. As a result of these failures, on 13 November 2014, Japan sent a further communication to Korea's SPS enquiry point, reiterating those questions from its 24 June 2014 request that remained unanswered, and posing follow-up questions and requests to clarify matters left ambiguous by the Korean enquiry point's 26 August 2014 response. To date, Japan has not even received an acknowledgement of receipt, let alone a response, to its enquiry of 13 November 2014.

6. Although, for many months, Korea did not respond to Japan's repeated offers to hold meetings at the level of each side's technical experts, Korea finally agreed to send a group of technical experts and representatives of consumer's association ("the group") to Japan, purportedly as part of an effort to review the Korean measures. Throughout its visits to Japan, which took place in December 2014 and January 2015, Japan provided the group with further information and opportunities to visit various sites so as to allow them to develop a first-hand understanding of the current situation. Moreover, during and following the visits, upon request by Korea, Japan and Korea conducted joint sampling of fishery products and ocean water for comparison of testing results. Results of these joint inspections show that the levels of radionuclides in fishery products are significantly below applicable Japanese and Korean thresholds, and that there are no more than trace amounts of radionuclides in ocean water. Additionally, at Korea's request, Japanese technical experts visited Korea on 2 April 2015, to address questions raised by Korean technical experts in relation to the testing results.

7. Despite these developments, Korea has not offered any indication of appreciable progress toward review and lifting of its measures. Moreover, Korea continues its failure to provide meaningful information to Japan that would allow Japan to understand the operation of and concerns behind Korea's measures, and to address and resolve these concerns.

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<sup>3</sup> For example, in response to questionnaires received from Korea, Japan provided large amounts of information to Korea on 28 August 2013; 5 September 2013; 12 September, 2013; 29 January 2014, 9 June 2014, 12 December 2014; 7 January 2015; 8 January 2015; 9 January 2015; 14 January 2015; 29 January 2015; 5 February 2015; 10 February 2015. In addition, Japan responded to numerous additional requests for information.

<sup>4</sup> In particular, Korea's letters of 4 July 2014 and 15 September 2014 fail to provide: (i) "an explanation of the reasons" for the Korean SPS measures, under Article 5.8 of the *SPS Agreement*; and (ii) an explanation of the objectives and rationale of the SPS measures, a clear identification of the risks that its measures are intended to address, and a copy of any risk assessments Korea has undertaken and on which these SPS measures are based, or a technical justification based on a relevant international standard, guideline or recommendation, under Article 4 of the *SPS Agreement* and the SPS Committee's Decision on the Implementation of Article 4 of the *SPS Agreement* (G/SPS/19/Rev.2).

## II. Measures at issue

8. This request for consultations concerns two groups of Korean measures. First, the Korean measures covered by this request include, but are not limited to, the following omissions relating to Korea's transparency obligations under the *SPS Agreement*:

- a. Korea's failure to publish promptly, upon their adoption, the SPS measures listed in paragraphs 10 and 11, below, in such a manner as to enable Japan to become acquainted with them;
- b. Korea's failure, following Japan's requests of 18 March 2014, 9 June 2014 and 12 August 2014 under Article 5.8 of the *SPS Agreement*, to provide Japan with "an explanation of the reasons for" the SPS measures listed in paragraphs 10 and 11, below;
- c. Korea's failure, following Japan's requests of 18 March 2014, 9 June 2014 and 12 August 2014 under Article 4 of the *SPS Agreement* and the SPS Committee's Decision on the Implementation of Article 4 of the *SPS Agreement*,<sup>5</sup> to provide Japan with, in particular, an explanation of the objectives and rationale of the SPS measures referred to in paragraphs 10 and 11, below; a clear identification of the risks that these same SPS measures are intended to address; and, a copy of the risk assessment on which these same SPS measures are based, or a technical justification based on a relevant international standard, guideline or recommendation, so as to enable Japan to demonstrate to Korea the equivalence of Japan's own SPS measures; and,
- d. Korea's failure, in particular the failure of its SPS enquiry point, to respond to most of Japan's 24 June 2014 questions and requests for documents related to the measures listed in paragraphs 10 and 11, below, and its failure to respond to any of Japan's 13 November 2014 reiterations of unanswered questions and follow-up questions and requests related to the measures referred to in paragraphs 10 and 11, below.

9. Second, the Korean measures covered by this request also include SPS measures in the form of (i) import bans, and (ii) additional testing and additional certification requirements adopted by Korea. As noted above, Korea has failed to engage in the bilateral consultations held in the spirit encouraged by the *SPS Agreement*, and has failed to meet its express obligations under the *SPS Agreement* to provide information and documents requested by Japan, including copies of the Korean measures at issue. Accordingly, and taking account of the extent to which Korea has made available relevant information regarding its measures, Japan refers, in paragraphs 10 and 11, below, to Korean measures, as evidenced by and/or reflected in press releases issued by the relevant Korean agencies and ministries.

10. As noted in point (i) of paragraph 9, the Korean SPS measures covered by this request include import bans on certain food from particular regions in Japan, imposed in or after March 2011, following the accident at the Fukushima Daiichi nuclear power plant. Japan understands that the import bans are evidenced by, and/or are reflected in, *inter alia*, the following publicly available documents:

- a. Press release by the Prime Minister's Secretariat, dated 23 March 2011, "Prime Minister Hwang-Shik Kim demands stringent inspection of imported food products";
- b. Press release by the Korea Food and Drug Administration ("KFDA"), dated 23 March 2011, "Status of KFDA's response and management measures regarding Japanese nuclear crisis (1)";
- c. Press release by KFDA, dated 24 March 2011, "Status of KFDA's response and management measures regarding Japanese nuclear crisis (2)";
- d. Press release by the Prime Minister's Secretariat, dated 25 March 2011, "Temporary import suspension of foods from regions in Japan contaminated with radioactivity";

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<sup>5</sup> G/SPS/19/Rev.2.

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- e. Press release by Ministry of Food, Agriculture, Forestry and Fisheries ("MIFAFF"), dated 21 April 2011, "Temporary ban on import of sand lances from Fukushima";
  - f. Press release by KFDA, dated 5 October 2011, "Status of KFDA's response and management measures regarding Japan nuclear crisis";
  - g. Press release by MIFAFF, dated 16 April 2012, "Temporary ban on import of char from Fukushima";
  - h. Press release by MIFAFF, dated 20 April 2012, "Temporary ban on import of sea-bass, blue drum, flat fish, channel catfish and crucian carp from Ibaraki-ken";
  - i. Press release by MIFAFF, dated 23 April 2012, "Temporary ban on import of white mullet and masou salmon from Miyagi-ken";
  - j. Press release by MIFAFF, dated 30 April 2012, "Temporary ban on import of common carp and crucian carp from Fukushima-ken";
  - k. Press release by MIFAFF, dated 3 May 2012, "Temporary ban on import of cod from Miyagi-ken and Iwate-ken";
  - l. Press release by MIFAFF, dated 8 May 2012, "Temporary ban on import of Japanese eel from Ibaraki-ken, etc.";
  - m. Press release by MIFAFF, dated 9 May 2012, "Temporary ban on import of panther puffer from Miyagi-ken";
  - n. Press release by MIFAFF, dated 15 May 2012, "Temporary ban on import of white mullet from Iwate-ken";
  - o. Press release by MIFAFF, dated 16 May 2012, "Temporary ban on import of char from Miyagi-ken";
  - p. Press release by MIFAFF, dated 31 May 2012, "Temporary ban on import of flat fish from Miyagi-ken";
  - q. Press release by MIFAFF, dated 4 June 2012, "Temporary ban on import of thornback rays from Ibaraki-ken";
  - r. Press release by MIFAFF, dated 21 June 2012, "Temporary ban on import of char from Tochigi-ken";
  - s. Press release by MIFAFF, dated 26 June 2012, "Temporary ban on import of 35 fishery products including yellowfish from Fukushima-ken";
  - t. Press release by MIFAFF, dated 29 June 2012, "Temporary ban on import of black sea bream from Miyagi-ken";
  - u. Press release by MIFAFF, dated 9 July 2012, "Temporary ban on import of stone flounder from Ibaraki-ken";
  - v. Press release by MIFAFF, dated 17 July 2012, "Temporary ban on import of barfin flounder, etc. from Fukushima-ken";
  - w. Press release by MIFAFF, dated 24 July 2012, "Temporary ban on import of crucian carp from Chiba-ken";
  - x. Press release by MIFAFF, dated 27 July 2012, "Temporary ban on import of starspotted dogfish from Fukushima-ken";

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- y. Press release by MIFAFF, dated 6 August 2012, "Temporary ban on import of Japanese eel from Fukushima-ken";
  - z. Press release by MIFAFF, dated 13 August 2012, "Temporary ban on import of masou salmon from Tochigi-ken";
  - aa. Press release by MIFAFF, dated 28 August 2012, "Temporary ban on import of purple puffer from Fukushima-ken";
  - bb. Press release by MIFAFF, dated 29 August 2012, "Temporary ban on import of cod from Aomori-ken";
  - cc. Press release by MIFAFF, dated 26 October 2012, "Temporary ban on import of sea bass from Iwate-ken";
  - dd. Press release by MIFAFF, dated 7 November 2012, "Temporary ban on import of black sea bream from Iwate-ken";
  - ee. Press release by MIFAFF, dated 13 November 2012, "Temporary ban on import of cod from Ibaraki-ken";
  - ff. Press release by the Prime Minister's Office, dated 6 September 2013, "Government bans import of all fishery products from 8 ken near Fukushima";
  - gg. Press release by the Ministry of Food and Drug Safety of Korea ("MFDS"), dated 27 September 2013, "Results of radiation inspection of imports from Japan (Sept. 13 – 26, 2013)"; and,
  - hh. MFDS Notice of Temporary Special Measure for Safety for Food Imported from Japan, dated 6 September 2013, referred to by Korea in its notification of emergency measures to the SPS Committee of 28 October 2013 that has been circulated as WTO document G/SPS/N/KOR/454/Add.1 ("G/SPS/N/KOR/454/Add.1").

Japan further understands that the import bans that are the subject of this request for consultations implement, and/or were adopted on the basis of, *inter alia*, the following:

- ii. Korea's Food Sanitation Act as it relates to potential contamination with radionuclides, including Articles 4, 7, 7-2, 14, 15, 15-2, 17, 21, 22, 57 and 58;
- jj. Korea's Standards and Specifications for Foods (Food Code) as it relates to potential contamination with radionuclides, including Articles 1.1 (paragraphs 33 and 34), 2 and 5;
- kk. Korea's Enforcement Decree of the Food Sanitation Act as it relates to potential contamination with radionuclides, including Articles 4, 5, 7 and 11;
- ll. Korea's Enforcement Regulation of the Food Sanitation Act as it relates to potential contamination with radionuclides, including Articles 10 and 12, and Annex 4 thereto;
- mm. Korea's Livestock Products Sanitation Control Act as it relates to potential contamination with radionuclides, including Articles 4, 15, 15-2, 26.3, 26-4, 33 and 33-2;
- nn. Korea's Enforcement Decree of the Livestock Products Sanitary Control Act as it relates to potential contamination with radionuclides, including Articles 18-5, 26-3 and 26-4;
- oo. Korea's Enforcement Regulation of Livestock Products Sanitation Control Act as it relates to potential contamination with radionuclides, including Article 21;

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- pp. Korea's Processing Standards and Composition Specifications regarding Livestock Products as it relates to potential contamination with radionuclides;
  - qq. Korea's Agricultural and Fishery Product Quality Control Act as it relates to potential contamination with radionuclides;
  - rr. Korea's Enforcement Decree of the Agricultural and Fishery Product Quality Control Act as it relates to potential contamination with radionuclides; and,
  - ss. Korea's Enforcement Regulation of the Agricultural and Fishery Product Quality Control Act as it relates to potential contamination with radionuclides.

11. In addition, as noted in point (ii) of paragraph 9, the Korean SPS measures covered by this request include additional testing requirements and additional certification requirements regarding the presence of other radionuclides in food from Japan, in the event that radionuclides, including cesium or iodine 131, are detected in them. These measures were imposed in or after March 2011, following the accident at the Fukushima Daiichi nuclear power plant. Japan understands that these measures are evidenced by, and/or are reflected in, *inter alia*, the following publicly available documents:

- a. Press release by KFDA, dated 14 April 2011, "Status of KFDA's response and management measures regarding Japanese nuclear crisis (5)";
- b. Press release by the Prime Minister's Office, dated 6 September 2013, "Government bans import of all fishery products from 8 *ken* near Fukushima";
- c. Press release by MFDS, dated 27 September 2013, "Results of radiation inspection of imports from Japan (Sept. 13 – 26, 2013)";
- d. Press release by the Ministry of Oceans and Fisheries of Korea, dated 21 August 2014, "As regards media reports 'Fish, untrustworthy' (explanation material)";
- e. MFDS Notice of Temporary Special Measure for Safety for Food Imported from Japan, dated 6 September 2013, referred to by Korea in G/SPS/N/KOR/454/Add.1;
- f. Press releases by Korea's MFDS since 14 April 2011,<sup>6</sup> publishing the results of testing for cesium and iodine 131 in food from Japan and other exporting countries, and indicating that additional testing and additional certification is required for food from Japan in which cesium or iodine 131 are found; and,
- g. Notices issued by Korea since 14 April 2011 to individual importers into Korea or exporters from Japan into Korea of food from Japan, requiring additional testing and additional certification for radionuclides, in the event that cesium or iodine 131 were detected in such food.

Japan further understands that the additional testing requirements and additional certification requirements that are the subject of this request for consultations implement, and/or were adopted on the basis of, *inter alia*, the following:

- h. Korea's Food Sanitation Act as it relates to potential contamination with radionuclides, including Articles 4, 7, 7-2, 14, 15, 15-2, 17, 19, 19-4, 21, 22, 24, 57 and 58;
- i. Food Code as it relates to potential contamination with radionuclides, including Articles 1.1 (paragraphs 33 and 34), 2 and 5;
- j. Korea's Enforcement Decree of the Food Sanitation Act as it relates to potential contamination with radionuclides, including Articles 4, 5, 7 and 11;

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<sup>6</sup> Korea's MFDS publishes these press releases at:  
<http://www.mfds.go.kr/index.do?mid=979&pageNo=1> (last visited 18 May 2015); and  
<http://www.mfds.go.kr/index.do?mid=977&pageNo=1> (last visited 18 May 2015).

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- k. Korea's Enforcement Regulation of the Food Sanitation Act as it relates to potential contamination with radionuclides, including Articles 10 and 12, and Annex 4 thereto;
  - l. Korea's Livestock Products Sanitation Control Act as it relates to potential contamination with radionuclides, including Articles 4, 15, 15-2, 33 and 33-2;
  - m. Korea's Enforcement Decree of the Livestock Products Sanitary Control Act as it relates to potential contamination with radionuclides, including Articles 18-5, 26-3, 26-4 and 65;
  - n. Korea's Enforcement Regulation of Livestock Products Sanitation Control Act as it relates to potential contamination with radionuclides, including Article 21;
  - o. Korea's Processing Standards and Composition Specifications regarding Livestock Products as it relates to potential contamination with radionuclides;
  - p. Korea's Agricultural and Fishery Product Quality Control Act as it relates to potential contamination with radionuclides;
  - q. Korea's Enforcement Decree of the Agricultural and Fishery Product Quality Control Act as it relates to potential contamination with radionuclides; and,
  - r. Korea's Enforcement Regulation of the Agricultural and Fishery Product Quality Control Act as it relates to potential contamination with radionuclides.

12. Where press releases are cited above as a reflection and/or evidence of the measures at issue, it is due to Korea's failure to observe the transparency and publication obligations of the *SPS Agreement*, as explained in, *e.g.*, section I, above. Thus, where press releases are cited, this request for consultations also covers: Korean legal instruments or any other form of a measure giving rise to and/or described in the press releases, whether of, *inter alia*, a legislative, regulatory, administrative, executive or judicial nature; and, notices or guidance issued to Korean agencies, Korean importers, or foreign exporters to assist with implementation and/or application of all Korean legal instruments or any other form of measure giving rise to and/or described in the press releases.

13. In addition, this request also covers in whatever form: any amendments, supplements, or extensions to or of the measures referred to in paragraphs 8-11, above; any measures replacing, renewing or implementing the measures referred to in paragraphs 8-11, above; and, any measures related to the measures referred to in paragraphs 8-11, above. Japan reserves the right to raise further facts and address additional measures during the course of consultations.

### III. Legal basis for the complaint

14. Japan considers that the Korean measures identified in section II, above, are inconsistent with the *SPS Agreement*. In particular, Japan considers that:

- a. Korea's failure, identified in paragraph 8.a, above, to publish promptly, upon their adoption, the SPS measures listed in paragraphs 10 and 11, above, in such a manner as to enable Japan to become acquainted with them, is inconsistent with Article 7 and paragraph 1 Annex B to the *SPS Agreement*;
- b. Korea's failure, identified in paragraph 8.b, above, following Japan's requests of 18 March 2014, 9 June 2014 and 12 August 2014 under Article 5.8 of the *SPS Agreement* to provide Japan with "an explanation of the reasons for" the SPS measures listed in paragraphs 10 and 11, above, is inconsistent with Article 5.8 of the *SPS Agreement*;
- c. Korea's failure, identified in paragraph 8.c, above, following Japan's requests of 18 March 2014, 9 June 2014 and 12 August 2014 under Article 4 of the *SPS Agreement* and the SPS Committee's Decision on the Implementation of Article 4 of the *SPS*

*Agreement*,<sup>7</sup> to provide Japan with, in particular, an explanation of the objectives and rationale of the SPS measures referred to in paragraphs 10 and 11; a clear identification of the risks that these same SPS measures are intended to address; and, a copy of the risk assessment on which these same SPS measures are based, or a technical justification based on a relevant international standard, guideline or recommendation, so as to enable Japan to demonstrate to Korea the equivalence of Japan's own SPS measures, is inconsistent with Article 4 of the *SPS Agreement*; and,

- d. Korea's failure, identified in paragraph 8.d, above, to respond fully to Japan's 24 June 2014 and 13 November 2014 questions and requests for documents related to the measures referred to in paragraphs 10 and 11, above, is inconsistent with Article 7 and paragraph 3 of Annex B to the *SPS Agreement*.

15. Moreover, Japan believes that the measures referred to in paragraphs 10 and 11, above, are inconsistent with relevant provisions of the *SPS Agreement*. Specifically, Japan considers that:

- a. The measures in paragraphs 10 and 11, above, are inconsistent with Articles 2.2, 5.1 and 5.2 of the *SPS Agreement*, because they are not based on a risk assessment;
- b. The measures in paragraphs 10 and 11, above, are inconsistent with Article 5.7 of the *SPS Agreement*, because, contrary to what Korea appears to posit,<sup>8</sup> they are not adopted or maintained in a case where relevant scientific evidence is insufficient, not adopted provisionally, not based on available pertinent information, and not reviewed within a reasonable period of time;
- c. The measures in paragraphs 10 and 11, above, are inconsistent with Article 2.3 of the *SPS Agreement*, because they arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, or because they constitute a disguised restriction on international trade;
- d. The measures in paragraphs 10 and 11, above, are inconsistent with Article 5.5 of the *SPS Agreement*, because they entail arbitrary or unjustifiable distinctions in the levels of protection in different situations that result in discrimination or a disguised restriction on the importation of food products from Japan;
- e. The measures in paragraphs 10 and 11, above, are inconsistent with Article 5.6 of the *SPS Agreement*, because they are more trade-restrictive than required to achieve Korea's appropriate level of protection, taking into account technical and economic feasibility;
- f. The measures in paragraph 11, above, to the extent they constitute control, inspection or approval procedures, are inconsistent with Article 8 and paragraphs 1(a), 1(c), 1(e) and 1(g) of Annex C to the *SPS Agreement*, because the relevant procedures are not undertaken and completed in no less favorable manner for imported products than for like domestic products; because the information requirements for control, inspection and approval procedures are not limited to what is necessary; because the requirements for control, inspection and approval of individual specimens are not limited to what is reasonable and necessary; and, because the criteria used in the siting of facilities are not the same and do not minimize the inconvenience to applicants, importers, exporters or their agents.

16. Japan considers that the measures in questions also nullify or impair, within the meaning of Article XXIII:1 of the GATT 1994, benefits accruing to Japan directly or indirectly under the *SPS Agreement*.

17. Japan reserves the right to request Korea to produce further information and documents regarding the measures in question. Japan also reserves the right to raise further facts and claims

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<sup>7</sup> G/SPS/19/Rev.2.

<sup>8</sup> Korea's letter to Japan of 4 July 2014.



under other provisions of the covered agreements and address additional measures during the course of consultations.

18. Japan also anticipates, at consultations, to pose, *inter alia*, those questions already asked under Articles 4 and 5.8 of the *SPS Agreement* that have remained unanswered, as well as those questions already posed to Korea's SPS enquiry point that have remained unanswered.

19. Japan looks forward to receiving a reply from Korea to this request and to fixing a mutually convenient date to hold consultations.

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