

**In the World Trade Organization**

**European Communities – Measures Prohibiting the Importation  
and Marketing of Seal Products**

**(DS400, DS401)**

**Third-Party Submission  
by Iceland**

**Geneva, 25 January 2013**

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## 1. INTRODUCTION

1. The measure at issue in this dispute is the EU legislation<sup>1</sup> (the “EU Seal Regime”) that prohibits importation of seal products into the EU market.
2. Sealing has a long tradition in Iceland and the rational utilization of seals is part and parcel of Iceland's main principle of sustainable utilization of all living marine resources. Today the hunting of seals is conducted on a small scale in Iceland. However, seal products are exported from Iceland and there is a high probability that the EU’s import ban may hurt those exports. Moreover, the seal population around Iceland is a potential resource that is presently underutilized. The EU’s Seal Regime therefore puts a substantial limitation on any possible future utilization of this resource.
3. The main legal questions raised in this case also have implications beyond seal hunting and trade with seal products. This case raises the question of whether WTO Member States can prohibit or severely restrict trade with products that result from the fully sustainable utilization of a living marine resource - in the absence of any scientific justification for such restrictive trade measures. Given the economic importance of its marine resources, Iceland has an obvious and fundamental interest in ensuring that trade with marine products is regulated in a manner that contributes to the sustainable management of marine resources without creating unnecessary obstacles for trade with marine products that have been harvested in a fully sustainable manner.
4. The facts of this case and its pertinent legal issues have already been described and discussed in considerable detail in the Parties Submissions<sup>2</sup>. For the sake of brevity, Iceland’s Third-Party Submission will therefore be limited to discussing two issues. First, Iceland will in the second section provide the panel with information on seal hunting in Iceland, including the applicable legal framework. Second, in the third

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<sup>1</sup> The EU Seal Regime consists of two legal acts: Regulation (EC) No-1007/2009 of the European Parliament and of the Council, of 16 September 2009, on trade in seal products (the "Basic Regulation")<sup>1</sup>; and Commission Regulation (EU) No 737/2010, of 10 August 2010, laying down detailed rules for the implementation of the Basic Regulation (the "Implementing Regulation").

<sup>2</sup> See Canada’s first written submission, dated 9 November 2012, Norway’s first written submission, also dated 9 November 2012 and the European Union’s first written submission, dated 21 December 2012.

section of this submission Iceland will discuss the relevance of this case for the sustainable utilization of marine resources.

## 2. SEALING IN ICELAND

5. The tradition of seal hunting goes back to the arrival of the first settlers in the ninth century and seal hunting was first codified in the 13<sup>th</sup> century<sup>3</sup>. The right of seal hunting in Iceland is directly linked to the ownership of the land and therefore virtually all such hunting is carried out by farmers on their own land, or with the land owner's permission. Seal farmers in Iceland have established the Seal Farmers Society.
6. Seal hunting in Iceland is limited to two species of seal; the grey seal and the harbour seal. Both seal stocks are closely monitored by regular sighting surveys. In recent surveys the populations of grey and harbour seals around the Icelandic coast have been estimated at 6,100 and 12,000 animals, respectively, in line with the management objectives of maintaining close to 4,100 grey seals and 12,000 harbour seals.
7. Hindisvík bay in the Vatnsnes peninsula has from 1940 been an area of conservation for seals in Iceland. Furthermore, the shooting of seals is prohibited in defined areas<sup>4</sup> by law according to the Directive of 20 June 1849 on hunting in Iceland as amended. According to scientific assessment by the Marine Research Institute of Iceland, grey seals and harbour seals are not under any threat. Grey and harbour seals are harvested in Iceland based on scientific advice given by the Marine Research Institute of Iceland, various individual provisions of Icelandic law and management objectives issued by the Ministry of Industries and Innovation. Icelandic seal hunting is subject to international rules on inspection and observation within the North Atlantic Marine Mammal Commission (NAMMCO).
8. Icelandic legislation does not provide for trade restrictions regarding seal products. All trade in seal products is allowed in Iceland. Seal products are treated as any other marine products according to the principle of sustainable utilization of living marine resources. Iceland has with Regulations No 993/2004 and 829/2005, on the basis of Act No 85/2000, ratified and implemented the CITES Convention to ensure that

<sup>3</sup> In "Jónsbók", a code of law from the year 1281. Some provisions of Jónsbók still remain applicable law.

<sup>4</sup> The defined areas are the so-called "sellátur", occupied by seals when pupping, mostly in shore areas within tidal reach.

international trade in specimens of wild animals and plants do not threaten the survival of the species.

9. Considering that the hunting of seals in Iceland does not pose a threat to the conservation of its seal stocks, and is therefore conducted in a sustainable manner, Iceland would therefore like to highlight the point that no scientific justification has been brought forward justifying restrictions on trade in Icelandic seal products.

### **3. THE SUSTAINABLE UTILIZATION OF MARINE RESOURCES**

10. Iceland is economically dependent on the use of its natural resources and the sustainability of its living marine resources is essential for the long-term prosperity of the country. Consequently, Iceland attaches great importance to conservation and sustainable use of living marine resources. This includes sustainable use of seals, which has a long tradition in Iceland.
11. Iceland participates actively in international cooperation on law of the sea issues. The United Nations Convention on the Law of the Sea, which entered into force in 1994, provides the legal basis for all deliberations in this area. Iceland has long been active in efforts to protect the health of the marine environment, including through the United Nations Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. The same applies to the International Convention on Persistent Organic Pollutants, a key instrument in protecting the marine environment and biological diversity. Furthermore, Iceland is a member of the Arctic Council and committed to the promotion of cooperation between countries in the Nordic and Arctic region, especially in the field of environmental protection and sustainable development, addressing issues related to the environment and communities in the region, such as response to environmental threats, navigation, search and rescue, cultural cooperation, health and the state of animal and plant species. Iceland is a party to the United Nations Convention on Biological Diversity and several regional conventions of importance in protecting biodiversity and habitats. In addition, Iceland supports the Rio commitment to make trade and environment policies mutually supportive.
12. Iceland is a founding member of the WTO and a strong supporter of the multilateral trading system. Within the WTO, Iceland has been a strong advocate for a rules-based

international trading system that contributes to the sustainable utilization of natural resources, including marine resources. A trading system based on these principles provides for a fair and transparent playing field. In Iceland's view, the rules of the WTO should therefore be applied in a manner that encourages the sustainable utilization of marine resources.

13. In view of this, Iceland finds it highly revealing that the European Union does not attempt in its submission to justify its prohibition on trade with seal products by claiming that its measures are necessary for the conservation or protection of seals. Rather, the European Union argues that should the Panel find its measures incompatible with the WTO rules, they would anyhow be justified by relying on the "public morals" exception of Article XX(a) of the GATT 1994.<sup>5</sup> This is a crucial point, as it implies that the interest that the EU's Seal Regime apparently is meant to protect is not the conservation of seals, but something else entirely.
14. There is a fundamental difference in justifying trade restrictions by relying on conservation concerns on the one hand, and public morals concerns on the other. The former allows for a scientific and facts-based assessment on the merits of the arguments put forward for justifying the measure in question, while the latter is bound to be based on more subjective and less tangible arguments. The former also allows the application of WTO law to contribute to the sustainable management of natural resources, while the latter's contribution to that objective is at best disputable.
15. Iceland therefore fails to see the relevance of the "public morals" exception of Article XX(a) for deciding this case. International environmental law and its influence on international trade law confirms that the rationale behind trade barriers must be in relation to conservation of exhaustible natural resources or that such measures are necessary to protect human, animal or plant life or health. Here, the European Union is attempting neither.
16. Nor does the European Union explain how trade with seal products could threaten the moral of its public. Instead, it seeks to rely on the broad public support that these measures supposedly enjoy and the size of the majority behind the proposal for adopting these measures in the European Parliament.<sup>6</sup> While nature conservation and animal welfare has an obvious moral element, Iceland would severely warn against the mere reference to a "public moral" concern as a sufficient justification for trade

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<sup>5</sup> See paragraphs 565 to 590 of the European Union first written submission,

<sup>6</sup> See paragraph 585 of the European Union's first written submission.

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restrictive measures in the absence of any scientific or objective justifications. It would undermine the objective of creating a predictable and non-discriminatory international trading system if mere claims of a broad political and public support for a measure would be deemed sufficient for relying on the “public moral” exception of Article XX(a). Surely, a WTO Member applying a trade restrictive measure must be required to provide more objective arguments in support of such a claim.

17. Furthermore, even if there were actual public moral concerns justifying trade restriction for seal products, that in itself would not be sufficient to meet the requirements of Article XX of GATT 1994. Article XX of the GATT imposes two requirements on trade measures that condition market access on other countries' policies. First, such measures must fit within one of Article XX's specific exceptions. But second, such measures must be applied in a manner consistent with Article XX's chapeau. That is, their application must neither give rise to unjustified or arbitrary discrimination between countries where the same conditions prevail, nor create a disguised restriction on international trade. As both Norway and Canada have argued in their submission, there is a serious doubt whether the EU Seal Regime affects WTO Member States in the same manner.<sup>7</sup>
18. To sum up, by seeking to rely on the public moral exception of Article XX of the GATT 1994, the EU does not attempt to justify its Seal Regime on the grounds that it's necessary for the conservation efforts, but rather seeks to rely on what it claims are its public attitude towards sealing. Considering Iceland's commitment to – but also economic reliance on – the sustainable use of its marine resources, Iceland cannot agree to such a broad and elastic interpretation of Article XX(a).

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<sup>7</sup> See in particular, section III of Norway's first written submission and section IV.A of Canada's first written submission.

#### **4. CONCLUSION**

19. In view of the foregoing, Iceland supports the request made by Canada and Norway to the Panel.