EC – SEAL PRODUCTS[1]
(DS400, 401)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Canada, Norway*	*TBT Arts. 2.1, 2.2, 5.1.2, and 5.2.1 GATT Arts. I:1, III:4, XI:I, XX(a) and (b), and XXIII:1(b) AA Art. 4.2*	Establishment of Panel	*25 March 2011 (DS400) 21 April 2011 (DS401)*
			Circulation of Panel Report	*25 November 2013*
Respondent	*European Communities*		Circulation of AB Report	*22 May 2014*
			Adoption	*18 June 2014*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue**: Regulations of the European Union ("EU Seal Regime") generally prohibiting the importation and placing on the market of seal products, with certain exceptions, including for seal products derived from hunts conducted by Inuit or indigenous communities (IC exception) and hunts conducted for marine resource management purposes (MRM exception).

- **Product at issue**: Products, either processed or unprocessed, deriving or obtained from seals.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **TBT Annex 1.1 (technical regulation):** The Appellate Body reversed the Panel's intermediate finding that the EU Seal Regime lays down "product characteristics", and consequently reversed the Panel's finding that the EU Seal Regime was a "technical regulation" within the meaning of TBT Annex 1.1. The Appellate Body was unable to complete the legal analysis and thus did not rule on whether the EU Seal Regime lays down "related processes and production methods" within the meaning of TBT Annex 1.1. The Appellate Body therefore declared moot and of no legal effect the Panel's conclusions under TBT Arts. 2.1, 2.2, 5.1.2, and 5.2.1.

- **GATT Art. I:1 (most-favoured-nation treatment):** The Appellate Body upheld the Panel's finding that the legal standard for the non-discrimination obligations under TBT Art. 2.1 does not apply equally to claims under GATT Art. I:1. The Appellate Body therefore upheld the Panel's finding that the EU Seal Regime was inconsistent with GATT Art. I:1 in respect of the IC exception, as it did not "immediately and unconditionally" extend the same market access advantage to Canadian and Norwegian seal products that it accorded to seal products from Greenland.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Appellate Body upheld the Panel's finding that the legal standard for the non-discrimination obligations under TBT Art. 2.1 does not apply equally to claims under GATT Art. III:4. The European Union did not appeal the Panel's finding that the EU Seal Regime was inconsistent with GATT Art. III:4 in respect of the MRM exception, as it accorded less favourable treatment to imported Canadian and Norwegian seal products than that accorded to like domestic products.

- **GATT Art. XX(a) (general exceptions – necessary to protect public morals):** The Appellate Body upheld the Panel's finding that the EU Seal Regime was "necessary to protect public morals" within the meaning of GATT Art. XX(a).

- **The "chapeau" of GATT Art. XX (general exceptions):** The Appellate Body found that the Panel erred in applying the same legal test to the chapeau of GATT Art. XX as it applied to TBT Art. 2.1, instead of conducting an independent analysis of the consistency of the EU Seal Regime with the specific terms and requirements of the chapeau. The Appellate Body therefore reversed the Panel's findings under the chapeau. However, the Appellate Body completed the analysis and found, as did the Panel, that the European Union had not demonstrated that the EU Seal Regime, in particular with respect to the IC exception, met the requirements of the chapeau of GATT Art. XX. Therefore, the Appellate Body found that the European Union had not justified the EU Seal Regime under GATT Art. XX(a).

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

2 Other issues addressed: GATT Art. XI:1 and AA Art. 4.2 (quantitative restrictions); GATT Arts. XX(b) (general exceptions – necessary to protect human, animal or plant life or health) and XXIII:1(b) (non-violation nullification or impairment); DSU Art. 11 (objective assessment of the matter before a panel).