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**COSTA RICA – MEASURES CONCERNING THE IMPORTATION
OF FRESH AVOCADOS FROM MEXICO**

REQUEST FOR CONSULTATIONS BY MEXICO

The following communication, dated 8 March 2017, from the delegation of Mexico to the delegation of Costa Rica and the Chair of the Dispute Settlement Body, is being distributed in accordance with Article 4.4 of the DSU.

I have been instructed by my authorities to inform you that pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 11.1 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), the Government of Mexico hereby requests consultations with the Government of the Republic of Costa Rica regarding measures it has adopted that restrict or prohibit the importation of fresh avocados for consumption from Mexico, including certain control, inspection and approval procedures, as well as the failure of the Republic of Costa Rica to implement or recognize in its legal instruments certain obligations laid down in the SPS Agreement, such as adaptation to regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence, i.e. the establishment of processes or practices that ensure the effective opportunity to receive claims of the existence of such areas, and thus to render operational the concept of regionalization.

The measures introduced by the Republic of Costa Rica include, but are not limited to, the following:

- (a) Law No. 7664 (Phytosanitary Protection Law), published in the Official Journal of the Republic of Costa Rica, *La Gaceta*, on 2 May 1997;
- (b) Regulation No. 26921-MAG (Regulations implementing the Phytosanitary Protection Law), published in the Official Journal of the Republic of Costa Rica, *La Gaceta*, on 22 May 1998;
- (c) Resolution DSFE-03-2015, State Phytosanitary Service of the Ministry of Agriculture and Livestock of the Republic of Costa Rica, of 22 April 2015;
- (d) ARP-003-2015 by the Pest Risk Analysis Unit of the State Phytosanitary Service, Ministry of Agriculture and Livestock of the Republic of Costa Rica, dated 10 July 2015. (Pest Risk Analysis established following the review of a policy in respect of the importation of avocados (*Persea americana Mill.*) from Mexico for consumption);
- (e) Resolution DSFE-11-2015, State Phytosanitary Service, Ministry of Agriculture and Livestock of the Republic of Costa Rica, dated 10 July 2015;
- (f) ARP-003-2015 by the Pest Risk Analysis Unit of the State Phytosanitary Service, Ministry of Agriculture and Livestock of the Republic of Costa Rica, dated 5 November 2015. (Pest Risk Analysis established following the review of a policy in respect of the importation of avocados (*Persea americana Mill.*) from Mexico for consumption);

- (g) Sampling of avocado sunblotch viroid (ASBVd) in avocado (*Persea americana*) plantations at the national level, and Report CIBM-CM-PCDV-021-2015 from the Cellular and Molecular Biology Research Centre of the University of Costa Rica;
- (h) Technical Report 025-2015-ARP-SFE of 25 May 2015 describing the information gathered during the visit by a Costa Rican official of the main avocado-producing area of Mexico;
- (i) Failure by the Government of the Republic of Costa Rica to respond to the comments submitted by Mexico to Costa Rica's SPS enquiry point on 10 July 2015 in relation to Resolution DSFE-03-2015;
- (j) Failure by the Government of the Republic of Costa Rica to respond to the comments submitted by Mexico to Costa Rica's SPS enquiry point on 10 September 2015 in relation to Resolution DSFE-11-2015; and
- (k) Document on "tests – method for detecting ASBVd in avocados", issued by the Pest Diagnosis Laboratory of the State Phytosanitary Service, Ministry of Agriculture and Livestock of the Republic of Costa Rica, received by the Government of Mexico in October 2016.

This request for consultations relates to the measures at issue and to any additional measures that prolong, replace, amend, implement, extend or apply the measures at issue. It also relates to a number of Costa Rica's domestic legislative provisions that fail to implement or recognize various obligations under the SPS Agreement, such as adaptation to regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence, i.e. to render operational the concept of regionalization by establishing a procedure or practice which provides an effective opportunity to receive claims of the existence of such areas.

These measures appear to be inconsistent with the obligations of the Republic of Costa Rica under the GATT 1994 and the SPS Agreement. The provisions of these Agreements with which the measures appear to be inconsistent include in particular, but not necessarily exclusively, the following:

- (i) Articles 2.1, 2.2, 2.3, 3.1, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.1, 6.2, 7, 8, and paragraphs 2, 5 and 6 of Annex B and paragraph 1 of Annex C to the SPS Agreement; and
- (ii) Articles I:1, III:4, X and XI of the GATT 1994.

Similarly, these measures also appear to nullify or impair the benefits accruing to Mexico directly or indirectly under the mentioned Agreements and appear not to be justified under any provision of the GATT 1994 or of the covered Agreements.

Mexico reserves the right to raise additional factual or legal claims or matters regarding the measures at issue during the course of the consultations.

Mexico looks forward to receiving the response of the Republic of Costa Rica to this request in order to set a mutually convenient date and venue for the consultations.
