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Committee on Sanitary and Phytosanitary Measures

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**IMPORT RESTRICTIONS IMPOSED BY ECUADOR ON GRAPES AND ONIONS  
(NO. 498)**

COMMUNICATION FROM PERU

The following communication, received on 25 March 2021, is being circulated at the request of the delegation of Peru.

1. Peru would like to present to WTO Members its trade concern with respect to the restrictive measures applied by Ecuador on the reopening of access for grapes and onions from Peru.
2. In 2015, Ecuador closed the market to Peruvian grapes, on the basis of three notifications, which indicated the need for Peru to develop an action plan to mitigate the risk of contamination due to the presence of pesticides that exceeded the maximum levels established in that market.<sup>1</sup> This action was taken despite the existence of the "National Plan for Surveillance and Control of Pollutants in Primary Sector Production", Resolution DAJ-20133EC-0201.0096, which established actions to be implemented by the Ecuadorian health authority in cases such as this one, such as, for example, the performance of stricter sampling on the basis of consecutive shipments from a single provider (paragraphs 14.4.3 and 5.1 of Annex 1.1 of this Resolution). However, Ecuador, proceeded directly with the closure of the market.
3. Similarly, in 2016, Ecuador closed the market to exports of Peruvian onions, indicating, once again, the need to develop an action plan to mitigate the risk of contamination, without implementing more stringent sampling<sup>2</sup> and/or other actions established in the Resolution that was in force that year.
4. It is important to highlight that the legislation empowering the Ecuadorian health authority to require an "action plan" is Resolution No. 0064 of the Ecuadorian Agency for Phytosanitary and Animal Health Regulation and Control (AGROCALIDAD), which has only been in force since 2017, which was two years and one year after the closure of the market to grapes and onions, respectively, thus violating paragraph 1(c) of Annex C and Article 8 of the SPS Agreement, as more information was required than necessary.
5. While Peru recognizes the legitimate objective of protecting health established in Article 5 of the SPS Agreement, it considers that the actions taken by Ecuador were disproportionate, as corrective actions were not followed up and the most stringent sampling was not carried out, in order to safeguard public health, as established in its national legislation. Ecuador therefore could violate paragraph 4 of Article 5 of the SPS Agreement, given that no attempt has been made to minimize negative trade effects.
6. Furthermore, it should be noted that, unlike Resolution DAJ-20133EC-0201.0096, which was notified to this Committee in document G/SPS/N/ECU/132, AGROCALIDAD Resolution No. 0064 of 2017 was not notified in accordance with Article 7 and Annex B of the SPS Agreement, despite the

<sup>1</sup> Official Circular MAGAP-DE/AGROCALIDAD-2015-000792-OF, Official Circular MAGAP-DE/AGROCALIDAD-2015-000793-OF and Official Circular MAGAP-DE/AGROCALIDAD-2015-000831-OF.

<sup>2</sup> Official Circular MAGAP-DE/AGROCALIDAD-2014-000600-OF, Official Circular MAGAP-DE/AGROCALIDAD-2015-000131-OF, Official Circular MAGAP-CIA-AGROCALIDAD-2015-001835-OF.

fact that this measure establishes additional requirements that have an impact on the trade of other Members. We regret that Ecuador has not provided a reasonable period of time for Members of this Committee to submit their comments and to ensure predictability in trade.

7. Moreover, Peru recalls that, in accordance with paragraph 1 of Annex C and Article 8 of the SPS Agreement, sanitary and phytosanitary procedures must be addressed and concluded without undue delay, with the provision of information to the interested Party and with requirements that are limited to what is reasonable and necessary. However, various meetings were held and repeated communications were submitted with the corrective measures requested between August 2014 and November 2019.<sup>3</sup> Yet no response was received from Ecuador regarding the actions that we took as a country to find a technical solution.

8. This lack of respect furthermore contravenes the Guidelines for the Exchange of Information Between Countries on Rejections of Imported Food<sup>4</sup>, approved by Codex Alimentarius, particularly with regard to the identification of the food concerned, importation details, and details of the rejection decision and of the measures adopted.

9. In this context, we are concerned by the fact that Ecuador stated that it was only in June 2018 that Peru responded regarding the required action plan, since, in accordance with the aforementioned communications, we addressed the request by the Ecuadorian authorities in a timely manner, and did not receive a reply.<sup>5</sup> However, Ecuador submitted an unscheduled request for an inspection visit, which was conducted in February 2020, and the inspection report was sent to Peru after seven months. These actions taken by Ecuador are evidence of the creation of undue delays that stall access for Peruvian products to the Ecuadorian market.

10. Peru regrets that, despite having fulfilled all the requirements imposed by Ecuador in order to re-establish access, the restrictions on access to the Ecuadorian market for Peruvian grapes and onions remain in force, with no technical justification provided, thus violating Articles 2.2 and 5.1 of the SPS Agreement.

11. Furthermore, by means of Official Circular AGR-AGROCALIDAD/CIA-2021-000238-OF of 18 March 2021, Ecuador stated, without sufficient technical support, and in a discriminatory manner, that Peruvian grapes must only be exported by sea, despite the fact that trade in these grapes is conducted primarily by land, a measure which Ecuador did not apply to other neighbouring countries.

12. It is concerning that Ecuador systematically disregards technical agreements that were previously established between health authorities, and that it has unilaterally added further requirements concerning the action plan submitted by Peru, which was not commented on at the time.<sup>6</sup>

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<sup>3</sup> Communications submitted:

1. OFICIO-0095-2014-MINAGRI-SENASA-DIAIA, 27 August 2014;
2. OFICIO-0096-2014-MINAGRI-SENASA-DIAIA, 27 August 2014;
3. OFICIO-0030-2015-MINAGRI-SENASA-DIAIA, 16 March 2015;
4. OFICIO-0029-2015-MINAGRI-SENASA-DIAIA, 16 March 2015;
5. OFICIO-0079-2015-MINAGRI-SENASA-DIAIA, 11 June 2015;
6. OFICIO-0149-2015-MINAGRI-SENASA-DIAIA, 24 November 2015 ;
7. OFICIO-0151-2015-MINAGRI-SENASA-DIAIA, 11 December 2015;
8. OFICIO-0152-2015-MINAGRI-SENASA-DIAIA, 11 December 2015;
9. OFICIO-0029-2016-MINAGRI-SENASA-DIAIA, 24 February 2016;
10. OFICIO-0253-2016-MINAGRI-SENASA-DIAIA, 3 October 2016;
11. OFICIO-0337-2016-MINAGRI-SENASA-DIAIA, 20 December 2016;
12. OFICIO-0025-2017-MINAGRI-SENASA-DIAIA, 11 January 2017;
13. OFICIO-0076-2017-MINAGRI-SENASA-DIAIA, 7 February 2017;
14. OFICIO-0378-2018-MINAGRI-SENASA-DIAIA, 18 June 2018;
15. OFICIO-0389-2018-MINAGRI-SENASA-DIAIA, 2 July 2018;
16. OFICIO-0499-2018-MINAGRI-SENASA-DIAIA, 19 September 2018;
17. OFICIO-0319-2019-MINAGRI-SENASA-DIAIA, 16 April 2019;
18. OFICIO-0320-2019-MINAGRI-SENASA-DIAIA, 22 April 2019;
19. OFICIO-0446-2019-MINAGRI-SENASA-DIAIA, 30 October 2019.

<sup>4</sup> CAC/GL 25-1997.

<sup>5</sup> Official Circular AGR-AGROCALIDAD/DE-2020-001220-OF.

<sup>6</sup> CARTA-0167-2020-MIDAGRI-SENASA-DIAIA and CARTA-0014-2021-MIDAGRI-SENASA-DIAIA.

13. The measures applied by Ecuador have caused damage to exports of Peruvian grapes amounting to around USD 6.6 million, and USD 500 million for exports of Peruvian onions. It is important to underscore that trade in Peruvian grapes with the world totals USD 811 million, with entry to 73 markets at present, and with an average annual growth of 4% in the past five years. Trade in Peruvian onions with the world amounts to USD 85 million, with entry to 24 markets at present, and with an average annual growth of 7.8% in the past five years.

14. Considering that the measures applied by Ecuador are discriminatory and violate Articles 2, 5, 7, 8, Annex B and Annex C of the SPS Agreement, we request Ecuador to:

- a. avoid proposing measures that violate the provisions of the SPS Agreement and the basic principles of the WTO;
  - b. ensure that it does not disregard the technical agreements previously established;
  - c. notify its measure and give the other WTO Members the opportunity to submit comments;  
and
  - d. reopen access to the Ecuadorian market for grapes and onions from Peru.
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