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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 13 July 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. 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, when Ecuador closed its market to Peruvians grapes and onions, which violates even its own domestic legislation.¹

3. In paragraph 14.4.3 of Resolution DAJ-20133E -0201.00962², Ecuadorian legislation established preliminary measures prior to the suspension of a supplier country that were not applied to Peru in this case. Ecuador is therefore in violation of Article 5.4 of the SPS Agreement, given that no attempt has been made to minimize negative trade effects.

4. Regarding Ecuador's statements at the SPS Committee meeting of 25 and 26 March 2021, it should be noted that the Code of Ethics for International Trade in Foods including concessional and food aid transactions (CAC/RCP/20-1979) does not limit rights and obligations under WTO Agreements, as set forth in footnote 2 of Article 4.2 of the aforementioned document. Moreover, Article 3 of document CAC/RCP/20-1979 does not provide technical grounds for closing the market to grapes and onions from Peru, without considering the rest of the content in document CAC/RCP/20-1979, the provisions of the SPS Agreement, particularly Article 5, and even Ecuadorian legislation.

¹ Resolution DAJ-20133EC-0201.0096.

² Paragraph 14.4.3 cited by Ecuador provided for the gradual application of stricter measures, as follows:

"At the border, a (targeted) control sample is always taken, which may vary in the form of reduced sampling or strict sampling.

A control with reduced sampling is based on the assumption that there is no negative history or suspicions surrounding the type of crop, origin (country and/or packer), or importer.

Therefore, all border checks begin with reduced sampling and without product retention.

If **a lot contains a pesticide exceeding the established MRL**, it is reported through SIAR and the origin (company and country) and **importer for that product go from reduced sampling to strict sampling for five consecutive shipments**, with retention of goods. **If all five consecutive shipments are below the MRL, reduced sampling resumes. If any shipment exceeds the MRL, then the product is rejected (destruction)**, SIAR is informed, **and another five strict samplings will follow**. If another sample exceeds the MRL, SIAR is informed, and a decision on whether to continue to authorize the imports is taken.

Consequences range from suspending the approval of the packing plant for the crop to suspending the approval of the supplier country."

5. It should be noted that the first notification received by AGROCALIDAD regarding onions was through Official Circular MAGAP-DE/AGROCALIDAD-2014-000600-OF. This document was sent on 25 June 2014, more than seven months after the samples were taken, on 1 October 2013. Moreover, AGROCALIDAD failed to inform Peru whether it was a health alert report or notification, or to inform it of the actions taken with the food that had entered Ecuador. The case of grapes is similar, insofar as Official Circular MAGAP-CIA-AGROCALIDAD-2015-002045-OF was sent on 5 June 2015, even though the sample was taken on 23 February 2015. Furthermore, after the market was closed, Ecuador sent, two months later, another two notifications. We therefore consider that the information was not sent in a timely manner, as set out in the Guidelines for the Exchange of Information Between Countries on Rejections of Imported Food³, 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.

6. Similarly, with respect to Ecuador's statements at the SPS Committee meeting of 25 and 26 March 2021, Ecuador confirmed that it requested an action plan, but Resolution DAJ-20133EC-0201.0096 did not establish such a requirement. Furthermore, as there was no action plan model in Resolution DAJ-20133EC-0201.0096, such a plan was repeatedly proposed by Peru, but no response received until AGROCALIDAD Resolution No. 0064 entered into force.

7. 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 fact that this measure establishes additional requirements that have an impact on the trade of other Members. Peru therefore regrets 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. Moreover, Ecuador has failed to comply with the provisions of paragraph 6 of Annex B and Article 7 of the SPS Agreement, as the closure of the market should have also been notified to this Committee, as an emergency measure, as it was provisional.

8. Peru points out 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. In this regard, meetings were held and repeated communications were submitted with the corrective measures requested by Ecuador between August 2014 and November 2019.⁴ Yet no response was received regarding the actions that we took as a country to find a technical solution. In this context, the fact that Ecuador stated that it was in June 2018 that Peru responded regarding the required action plan is cause for concern, since, as stated above, Peru addressed the request by the Ecuadorian authorities in a timely manner, and did not receive a response.⁵

³ CAC/GL 25-1997.

⁴ 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.

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

9. As indicated in the trade concern presented in document [G/SPS/GEN/1907](#), Peru noted that it is concerning that Ecuador systematically disregards technical agreements that were previously established between health authorities. Thus, during the meeting of 9 March 2021, it was agreed that Ecuador would send a response to the action plan on onions on 23 March 2021; however, this has not yet been done. Likewise, by means of CARTA-0090-2021-MIDAGRI-SENASA-DIAIA of 30 April 2021, CARTA-0111-2021-MIDAGRI-SENASA-DIAIA of 24 May 2021, and Note RE(DPE) No. 6-12/42 of 10 June 2021, and Official Circular 068-2021-MINCETUR/VMCE/DGPDCE/DRTCE of 11 June 2021, it has been reiterated to AGROCALIDAD, the Ecuadorian Ministry of Production, Foreign Trade, Investment and Fisheries, and the Embassy of Ecuador in Peru, that Ecuador should inform Peru of its requirements and the date for the resumption of grape exports. However, there has been no response to date.

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. Peru must emphasize that the concerns previously presented in document [G/SPS/GEN/1907](#) and to the WTO SPS Committee on 5, 6 and 13 November 2020 are coordinated at a multisectoral level, highlighting Peru's interest in resuming exports of onions and grapes. 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 1.03 billion, with entry to 96 markets at present, and with an average annual growth of 12.86% in the past five years. Trade in Peruvian onions with the world amounts to USD 96 million, with entry to 27 markets at present, and with an average annual growth of 7.8% in the past five years.

12. 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.
