



9 November 2021

(21-8496)

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Committee on Sanitary and Phytosanitary Measures

Original: Spanish

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

COMMUNICATION FROM PERU

The following communication, received on 8 November 2021, is being circulated at the request of the delegation of Peru.

1. Peru would once again 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.<sup>1</sup>
2. First, Ecuador states that it has suspended imports of onions and grapes under Technical Resolution DAJ-20133EC-0201.0096 (2013) on the National Plan for the Monitoring and Control of Contaminants in Primary Production. Subparagraph 4 of paragraph 14.4.3, on border control samples, stipulates that the consequences range from suspending the approval of the packing plant for the crop to suspending the approval of the supplier country.<sup>2</sup> Paragraph 14.4.3 of the Resolution also established preliminary measures prior to the suspension of a supplier country that were not applied to Peru in this case.<sup>3</sup>
3. While Peru recognizes the legitimate objective of protecting health, it considers the actions taken by Ecuador to be 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 Peruvian grapes and onions, which violates even its own domestic legislation.<sup>4</sup> 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.

<sup>1</sup> Concerns previously presented in documents G/SPS/GEN/1937 and G/SPS/GEN/1907, and to the WTO SPS Committee on 5, 6 and 13 November 2020.

<sup>2</sup> Statement by Ecuador available in paragraph 3.140 of document G/SPS/R/101 and in Official Circular MPCEIP-VCE-2021-0377-O of the Ecuadorian Ministry of Production, Foreign Trade, Investment and Fisheries, dated 31 August 2021.

<sup>3</sup> 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 maximum residue limit (MRL)**, it is reported through the Inter-American Rapid Alerts System (SIAR) and the origin (company and country) and **importers 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.**"*

<sup>4</sup> Resolution DAJ-20133EC-0201.0096.

4. 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 Code. Moreover, Article 3 of the Code does not provide technical grounds for closing the market to grapes and onions from Peru, without considering the rest of the document's contents, the provisions of the SPS Agreement, particularly Article 5, and even Ecuadorian legislation.<sup>5</sup>

5. It is worth pointing out that the first notification received from the Agency for Phytosanitary and Animal Health Regulation and Control (AGROCALIDAD) regarding onions was through an official circular dated 25 June 2014<sup>6</sup>, 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 a notification and to inform it of the actions taken with the food that had entered Ecuador. The case of grapes is similar, insofar as an official circular was sent on 5 June 2015<sup>7</sup>, even though the sample was taken on 23 February 2015. Peru repeatedly asked AGROCALIDAD for a response regarding the notifications of maximum residue levels being exceeded and the action taken with the product. However, no response was received.<sup>8</sup> Furthermore, after the market was closed, Ecuador sent another two notifications two months later. 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 Food<sup>9</sup>, approved by the Codex Alimentarius, particularly with regard to the identification of the food concerned, the importation details and details of the rejection decision, and 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 the resolution in force when the market was closed did not establish such a requirement. Furthermore, as there was no action plan model, one was repeatedly proposed by Peru, but no response was received until AGROCALIDAD Resolution No. 0064 entered into force.

7. In this context, the fact that Ecuador claimed that Peru had responded regarding the required action plan in June 2018 is cause for concern, since, as stated above, Peru acceded to the Ecuadorian authorities' request in a timely manner, and did not receive a response.<sup>10</sup>

8. Unlike Ecuador's Resolution of 2013<sup>11</sup>, 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 interval 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 also have been notified to this Committee as an emergency measure, as it was provisional.

9. In addition, this situation would contravene Article 3 on harmonization of the SPS Agreement, since principle 3 on transparency of the Codex's Principles and Guidelines for National Food Control Systems<sup>12</sup>, which states that all aspects of a national food control system should be transparent and open to scrutiny by all stakeholders, was not considered. It should be noted that these guidelines are also part of the Ecuadorian Code of Practice.<sup>13</sup>

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<sup>5</sup> Statement by Ecuador on the Code of Ethics available in paragraph 3.140 of document G/SPS/R/101 and in Official Circular MPCEIP-VCE-2021-0377-O of the Ecuadorian Ministry of Production, Foreign Trade, Investment and Fisheries, dated 31 August 2021.

<sup>6</sup> Official Circular MAGAP-DE/AGROCALIDAD-2014-000600-OF.

<sup>7</sup> Official Circular MAGAP-CIA-AGROCALIDAD-2015-002045-OF.

<sup>8</sup> Memorandum-0024-2014-MINAGRI-SENASA-DIAIA-SIAG, OFICIO-0095-2014-MINAGRI-SENASA-DIAIA, OFICIO-0096-2014-MINAGRI-SENASA-DIAIA, OFICIO-0079-2015-MINAGRI-SENASA-DIAIA, OFICIO-0149-2015-MINAGRI-SENASA-DIAIA, OFICIO-0151-2015-MINAGRI-SENASA-DIAIA, OFICIO-0152-2015-MINAGRI-SENASA-DIAIA.

<sup>9</sup> CAC/GL 25-1997.

<sup>10</sup> Official Circular AGR-AGROCALIDAD/DE-2020-001220-OF.

<sup>11</sup> DAJ-20133EC-0201.0096.

<sup>12</sup> CAC/GL 82-2013.

<sup>13</sup> CPE INEN-CODEX CAC/GL 82.

10. Furthermore, Peru points out that, in accordance with Article 8 and Annex C of the SPS Agreement, sanitary and phytosanitary procedures must be undertaken and completed without undue delay, with information being provided to the interested party and with requirements that are limited to what is reasonable and necessary. Meetings have been held and communications have repeatedly been sent with the corrective measures requested by Ecuador from August 2014 to date. The responses received seem to delay opening longer than is necessary, for example:

- a. Ecuador submitted an unscheduled request for an inspection visit for grapes, which was conducted in February 2020, and the inspection report was sent to Peru after seven months;
- b. Ecuador unilaterally changed the action plan proposed by Peru to reopen the market for grapes;
- c. It was proposed, without any technical justification and disregarding the fact that, historically, trade is conducted by land, that grapes should enter by ship only via Guayaquil seaport;
- d. The use of refrigerated transport for grape shipments was proposed, despite this bearing no relation to the risk of the presence of pesticides;
- e. Ecuador indicated that it would respond to the proposed action plan for onions by December 2020<sup>14</sup>, but no response has been given to date.

11. 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.

12. 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 totalled USD 1.02 billion in 2020 with an average annual growth of 16.27% 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.

13. Considering that the measures applied by Ecuador are discriminatory and violate Articles 2, 3, 5, 7 and 8 and Annexes B and 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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<sup>14</sup> Official Circular AGR-AGROCALIDAD/DE2020-001260-OF.