



6 April 2022

(22-2754)

Page: 1/4

Committee on Sanitary and Phytosanitary Measures

Original: Spanish

**RESTRICTIONS IMPOSED BY BOLIVIA ON PERUVIAN
AGRICULTURAL EXPORTS (STC NO. 530)**

COMMUNICATION FROM PERU

The following communication, received on 4 April 2022, is being circulated at the request of the delegation of Peru.

1. Peru would like to express before WTO Members its trade concern regarding various restrictive measures that the Government of Bolivia has applied on Peruvian agricultural exports over the past three years. These measures have established (*de facto*) blockades on the entry into the Bolivian market of the main products originating in Peru, such as potatoes and onions. Measures restricting the exportation of whole trout, which have no technical basis, are also in place.
2. In this connection, it should be mentioned that on 21 July 2021 the Bolivian government authorities, represented by the Ministry of Rural Development and Lands, the Vice-Ministry for Anti-Smuggling, the Directorate-General for Anti-Smuggling, the National Directorate of the National Service for Agricultural Health and Food Safety (SENASAG), and the Cochabamba Regional Customs Office, in conjunction with the Federation of Agricultural Producers of Valle Bajo and the Federation of Horticultural Farmers of the Paria and Soracachi Municipality in the Oruro Department, signed a memorandum of understanding, as part of which they made short-, medium-, and long-term commitments to, *inter alia*, control and restrict access to the Bolivian market for agricultural products by increasing tariffs and imposing restrictive non-tariff measures such as the operation of quotas.
3. The commitments laid down in the above-mentioned memorandum of understanding are in contravention of the provisions of Article XI of the GATT 1994 on the general elimination of quantitative restrictions, given that no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, licences or other measures, shall be instituted or maintained by any Member on the importation of any product of the territory of any other Member.¹
4. The sanitary and phytosanitary restrictions imposed by the Government of Bolivia consist of the following:
 - a. The fact that SENASAG has not granted any phytosanitary permits for the importation of Peruvian agricultural products such as potatoes and onions since July 2021;
 - b. The fact that SENASAG has not been conducting phytosanitary inspections on perishable agricultural products originating in Peru at the Binational Border Service Centre (CEBAF) at Desaguadero²;

¹ Communications sent to the Bolivian Vice-Ministry of Foreign Trade and Integration: Official Note No. 239 - 2021 - MINCETUR/VMCE, dated 27 July 2021; Official Note No. 221 - 2021 - MINCETUR/VMCE, dated 12 July 2021.

² The CEBAF at Desaguadero is an enclosed set of facilities located in the Republic of Peru, which includes access routes, enclosures, facilities, equipment, furniture and areas necessary for the provision of the integrated control service for the flow of people, luggage, goods and means of transport, where basic and complementary services are provided to facilitate guidance, service and control in a fast and simplified manner for the user at the border entry and exit (Article 1(a) of the "Specific Agreement between the Republic of Peru and the Plurinational State of Bolivia for the Binational Border Service Centre (CEBAF) at Desaguadero").

-
- c. The fact that, following the detection of a larva in a tuber, the importation of potato consignments certified by the Peruvian National Agrarian Health Service (SENASA) was refused in November 2021 without any evidence that the larva was a quarantine or exotic pest for Bolivia, in which case the ban would be justified as an emergency measure.
5. With regard to the failure to grant phytosanitary import permits, SENASAG stopped granting these permits for the importation of potatoes and onions in July 2021, without explaining the reasons for doing so or adhering to the International Standards for Phytosanitary Measures (ISPMs) and the WTO SPS Agreement, under which such a measure could be justified. Instead, it simply stated that the systems were not set up to record the process or that they were not authorized to perform this function, which prevented the importation of Peruvian perishable products. Bolivia has been periodically suspending the issuance of phytosanitary import permits since 2018, in contravention of the provisions of the SPS Agreement and even of its own national regulations, particularly Administrative Resolution No. 085/2016 of 6 June 2016 approving the "Phytosanitary Import Procedure Manual", in which it is indicated that paper and electronic phytosanitary permits are issued in two working days and one working day respectively.
6. As regards the phytosanitary inspections, SENASAG is required to conduct these inspections prior to the clearance of the product, and to undertake any relevant verification tests, in accordance with the requirements of the corresponding procedure. Depending on the results, SENASAG may authorize the clearance of the product where it is subject to fulfilment of the requirements set forth in the corresponding phytosanitary import permit.
7. However, SENASAG has not been conducting phytosanitary inspections on imports of perishable products from Peru (potatoes, onions and fruit, among others) on the premises of the CEBAF at Desaguadero. Instead, it has simply indicated that the inspectors are not authorized to perform this task, or that its systems are not set up to record the inspection of these products. This prevents small business owners from exporting perishable products. Moreover, when inspections are permitted, Bolivia creates delays and unjustified barriers to trade.
8. The failure to grant phytosanitary import permits and to conduct phytosanitary inspections constitutes a breach of the provisions of Articles 2 and 8 of, and Annex C to, the SPS Agreement, because SPS measures should not be applied in a manner which would constitute a disguised restriction on international trade. Moreover, inspection and control procedures should be undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products.
9. Furthermore, with respect to the refusal to import potato consignments due to the detection of a larva in a tuber, Peru has not received from Bolivia any notification of non-compliance justifying such a measure, which would enable the relevant corrective measures to be taken and trade in this product to be continued. In this connection, Peru has asked to be informed of the taxonomic identification and condition in Bolivia of the pest intercepted, as well as of the official laboratory report, with no response received to date.
10. Bolivia's actions are contrary to the International Plant Protection Convention's (IPPC) basic principles of "necessity" and "technical justification" for the protection of plants and the application of phytosanitary measures in international trade, which indicate that the parties may apply phytosanitary measures only where such measures are necessary to prevent the introduction and/or spread of quarantine pests and that they shall technically justify phytosanitary measures on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information. In addition, Bolivia, as the importing country, has failed to transmit to Peru the corresponding notifications identifying the pest intercepted in the potato consignments so that Peru, as the exporting country, may investigate and make the necessary corrections. This is contrary to ISPM No. 13 of the IPPC, which contains guidelines for the notification of non-compliance and emergency action.
11. In this respect, we consider that Article 3 of the SPS Agreement on harmonization has been violated, in which it is indicated that Members shall base their measures on international standards, guidelines, or recommendations. Articles 2 and 5 would also be contravened, since phytosanitary measures must be applied where necessary, *inter alia*, to protect plant life or health, and be based on scientific principles, taking into account the objective of minimizing negative trade effects.

12. We also consider that the provisions of Article 7 of, and Annex B to, the SPS Agreement have been violated, which establish, *inter alia*, that where urgent problems of phytosanitary protection arise or threaten to arise for a Member, this Member must immediately notify other Members, through the Secretariat, of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s); and allow other Members to make comments and discuss the urgent measure. However, Bolivia has not submitted any emergency notifications to the WTO SPS Committee concerning the measures applied on Peruvian potatoes.

13. Moreover, on 10 September 2021, Peruvian and Bolivian health, trade and customs authorities met on the premises of the CEBAF at Desaguadero, where the Deputy Ministers of Foreign Trade for both countries signed an agreement in which they made various commitments, such as addressing any type of issue relating to bilateral trade in agricultural products from that date, as well as ensuring the issuance of phytosanitary permits and conducting of phytosanitary inspections at the border. These commitments have also been ignored by Bolivia, which continues to maintain the blockade on the above-mentioned agricultural exports.

14. Potatoes and onions are the most important cases, with problems still occurring to date in relation to their entry because the Bolivian authority is not granting phytosanitary import permits or conducting the inspections required for the Bolivian importer to complete the clearance process for these products. This can be seen in the trends for vegetable exports, as, among Peru's Andean partners, Bolivia is the second largest destination for these exports. Peru's potato exports to Bolivia for the period from January to June 2021 amounted to USD 263,000 or 2,381 tonnes, while there were no Peruvian exports between June and December 2021. A similar trend was observed for onions, with Peruvian exports to Bolivia for the period from January to July 2021 amounting to USD 1.034 million or 9,067 tonnes, while there were no exports from August 2021.

15. As regards trout, SENASAG gave formal notice of the approval of the harmonized health certificate for the exportation of fresh or chilled/whole or loose trout in 2017.³

16. Against this backdrop, in order to implement binational commitments, the Peruvian National Fisheries Health Service (SANIPES) carried out activities at the border throughout 2019, 2020 and 2021 so that trout could be marketed and a safe and healthy product guaranteed.⁴ Likewise, in July 2020 and March 2021, meetings were held between senior management staff from SANIPES and SENASAG, at which both health authorities made commitments that would contribute to formalizing the exportation of whole or loose/fresh or chilled trout to Bolivia.

17. In spite of the agreements between the two parties, SENASAG has failed to comply with, *inter alia*, the following commitments that would enable whole trout to be exported to Bolivia:

- a. It is not known if Bolivia has established mechanisms to improve transport, the cold chain and evisceration practices.
- b. SENASAG did not attend the technical field visit focused on aquaculture establishments;⁵
- c. As of December 2021, SENASAG had failed to incorporate 20 businesses or authorized persons in its register of importers.

18. It is even more concerning that, in January 2022, SENASAG indicated that its regulations only allowed for the marketing of eviscerated animals and that other types of products could not be

³ CITE/SENASAG/DN No. 1232/2017.

⁴ Activities undertaken:

- Training at the border for Bolivian aquaculture professionals;
- Meeting at the CEBAF at Desaguadero for the sharing of experiences between SANIPES and SENASAG;
- Approval of the document "Implementation of the document for the health certification at the Peru-Bolivia border of fresh/chilled hydrobiological products";
- Running of seminars aimed at Bolivian importers and marketers;
- Running of a pilot test for the issuance of the health certificate at the border, with the participation of representatives from SANIPES and SENASAG. This involved simulating trade in hydrobiological products, with a view to showing Bolivian counterparts how to use the integrated health system in the health certificate issuance process.

⁵ Commitment made at the follow-up meeting between the directors of SANIPES and SENASAG on 18 March 2021 - Official Note No. 111-2021-SANIPES/PE.

accepted under its regulatory framework. In other words, five years after approving a health certificate for the exportation of whole trout, SENASAG is unjustifiably restricting access for this product.

19. The review of the Bolivian regulation, which was not notified beforehand to the WTO SPS Committee in accordance with Article 7 of, and Annex B to, the SPS Agreement, reveals no technical or legal reason preventing Peruvian exports of whole trout.

20. This ban would not only be unfounded under the SPS Agreement, but it would also contravene the provisions of Article XI of the GATT 1994 on the general elimination of quantitative restrictions.

21. Based on the foregoing, Bolivia would be in breach of the provisions of Article XI of the GATT 1994, as well as Articles 2, 3, 5, 7 and 8 of, and Annexes B and C to, the SPS Agreement. In this connection, we ask Bolivia to rescind any *de jure* or *de facto* restrictions in place on Peruvian exports of perishable goods and whole trout.
