

**PANAMA'S RESTRICTIONS REGARDING THE PROCEDURE TO REGAIN MARKET
ACCESS FOR PERUVIAN POTATOES AND ONIONS (STC NO. [512](#))**

COMMUNICATION FROM PERU

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

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1. Peru would like to express before WTO Members its trade concern regarding the suspension by Panama of imports of onions and potatoes for consumption from Peru and the undue delays in the phytosanitary efforts to restore trade in these products.
 2. Peru wishes to point out that Articles 2.2 and 5 of the WTO SPS Agreement state that Members shall establish sanitary and phytosanitary measures only where they are applied, *inter alia*, to protect plants, and that such measures must be based on a risk assessment. Likewise, Article 5.4 states that Members should take into account the objective of minimizing negative trade effects. However, we find it regrettable that Panama has not considered these provisions and that it has instead applied restrictive and unjustified measures to trade in potatoes and onions.
 3. With regard to trade in Peruvian onions, Panama failed to consider that this trade has amounted to over 19,000 metric tonnes since 2003, without any reports of pest interceptions since that date. In this respect, Panama suspended imports of this product in 2016 without having detected any quarantine pest in the shipments that would justify the suspension of imports as an emergency measure (section 5.1.6.4, ISPM No. 20, Guidelines for a phytosanitary import regulatory system). This suspension was based solely on an updated pest risk analysis (PRA), without there being any technical reason - as required under Article 5 of the SPS Agreement - for interrupting trade between the two parties. It should be noted that the PRA makes it possible to establish phytosanitary requirements for the importation of new products into our countries and/or update existing import requirements without paralysing the existing trade flow. Such requirements may have the same results or be stricter or less strict, and may even result in the repeal of existing rules. This step is also contrary to the principle of "technical justification" under the International Plant Protection Convention (IPPC), which states that the parties should 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.
 4. Turning to trade in potatoes for consumption, the importation of this product was suspended by Panama in 2009 following the interception of a pest in a consignment at destination. In May 2010, following an exchange of comments with its counterpart, Peru's phytosanitary authority sent Panama a proposed phytosanitary protocol for the exportation of potatoes, to which no response has been received to date. In this context, there is no technical justification for not reopening the Panamanian market.

5. In accordance with Article 8 and Annex C, sanitary and phytosanitary procedures, *inter alia*, must be undertaken and completed without undue delay, with information being provided to the interested party and requirements limited to what is reasonable and necessary. In this light, Peru has consistently provided technical information relating to the PRA in order to secure the reopening of the Panamanian market for potatoes and onions, without receiving any response from Panama's health authority concerning the results of its risk analysis, and has continually been asked for the same information that was sent in good time by the Peruvian health authority, which has led to the process being unnecessarily and unjustifiably prolonged.

6. Furthermore, despite the constant trade concerns raised in this Committee, Panama has so far kept its market closed for potatoes and onions, and has not responded to Peru's communications.

7. In light of the foregoing, Peru believes that Panama is continuing to cause undue delays in the establishment of the phytosanitary import requirements that would enable the importation of Peruvian potatoes and onions to resume.

8. The measures applied by Panama have caused damage to exports of Peruvian potatoes and onions. The last year for which export figures for potatoes to Panama were recorded, both in terms of volume and value, was 2009. The best year for the exportation of Peruvian potatoes to Panama was 2008, owing to the fact that over 604 tonnes were sent, with a value of USD 249,000. However, exports of Peruvian potatoes to Panama decreased by around 69% in 2009.

9. Furthermore, in 2017, Peruvian fresh onion exports to Panama fell substantially both in terms of value and volume. By the end of that year, exports of this product had fallen by around 98.04% in relation to 2016 and, as a result, the annual average growth for the period 2012-17 decreased by 53.17%, despite the fact that the export potential of this sector is USD 2.3 million.¹

10. In light of the foregoing, and in order to prevent a violation of Articles 2, 5 and 8, and Annex C of the SPS Agreement, Peru requests Panama to reopen the market to Peruvian potato and onion exports and to avoid any other action that may unnecessarily prolong this process, thereby creating unnecessary and unjustified barriers to trade.

11. Lastly, Peru reiterates the following queries that were raised during the Trade Policy Review of Panama held in February of this year. It would be appreciated if Panama could provide written answers to these questions.

- a. Considering that Annex C(1)(b) of the SPS Agreement establishes that, upon request, the anticipated processing period shall be communicated to the applicant and the applicant shall be informed of the stage of the procedure, with any delay being explained:
 - At what stage of the PRA is Panama in relation to reopening the market for Peruvian onions?
 - What are the reasons that Panama has found for not providing market access for Peruvian onions since 2016?
 - What is Panama's time frame for providing access to its market for Peruvian onions?
 - Why has Panama not responded to the proposed phytosanitary protocol sent by Peru in May 2010 for the reopening of the market for Peruvian potatoes?
 - What is Panama's time frame for providing access to its market for Peruvian potatoes?
- b. Based on Articles 2 and 5 of the WTO SPS Agreement and section 1.1.3 of ISPM No. 2, which establishes that, for existing trade, no new measures should be applied until the revision or new PRA has been completed, unless this is warranted by new or unexpected phytosanitary situations that may necessitate emergency measures, what are the technical reasons why Panama suspended imports of Peruvian onions? How does Panama consider that, by suspending imports of Peruvian onions, it has complied with the above-mentioned provisions?
- c. If Panama suspended Peruvian potato imports because of the interception of a pest at destination, what are the technical reasons for not considering any measure less restrictive than suspension under Article 5.4 of the SPS Agreement?

¹ According to the ITC's Export Potential Map for tariff heading 070310.

- d. If Panama considered closing its market by applying an emergency measure owing to the presence of a pest in a consignment of Peruvian potatoes, why did Panama not notify the WTO SPS Committee of the suspension in accordance with Annex B(6) of the SPS Agreement?
 - e. Considering paragraph 3.155 of document G/SPS/R/104, what are the technical reasons why Panama considers that this concern should be discussed in the WTO Committee on Technical Barriers to Trade?
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