

**COLOMBIA: CONCERNS REGARDING EXPORTS OF
PROCESSED CHICKEN PRODUCTS FROM PANAMA**

Communication from Panama

The following communication, dated 11 June 2009, is being circulated at the request of the delegation of Panama.

I. QUESTIONS POSED BY PANAMA

1. The Government of Panama requests the Government of Colombia to provide risk assessment information and scientific evidence in support of the non-recertification of the processing plant, owned by the company MELO S.A., for the exportation of processed chicken products to the Colombian market. In particular, it inquires what are the scientific grounds and risk assessment which, pursuant to the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), justify the undue delay caused by the Colombian authorities in not authorizing the Panamanian processing plant.

2. The Government of Panama requests the Government of Colombia to explain why its competent authorities have not issued a scientific finding in support of the measure imposed by Colombia on Panamanian processed chicken exports.

3. The above requests are made having regard to the fact that, in accordance with the SPS Agreement, Colombia is under the obligation to apply to imports from Panama a measure which, while ensuring product safety, is the least trade-restrictive. Otherwise, the measure would constitute a disguised restriction on free trade.

4. The Government of Panama's request to the Government of Colombia is that the authorities of its Colombian Agricultural Institute (ICA) and its National Institute for Food and Drug Surveillance (INVIMA) recertify or authorize the MELO S.A. processing plant as soon as possible, in order to permit the resumption of Panamanian processed chicken exports, which began on a regular basis in 2003.

II. BACKGROUND

5. During 2008, the cumulative trade flow between Panama and Colombia amounted, in value terms, to US\$285.4 million, of which 4.3 per cent corresponded to Panamanian exports and 95.7 per cent to Panamanian imports, with a cumulative trade deficit of US\$261.2 million.

6. Panamanian processed chicken exports to the Colombian market have been increasing and during the last six years have averaged more than US\$300,000, accounting for 7.7 per cent of total

exports to that market. These figures indicate the fundamental economic importance of the trade, which also has the multiplier effect of generating jobs and opportunities for improving quality of life.

7. Accordingly, Melo S.A. has been exporting processed chicken products continuously to the Colombian market since 2003. However, there have been delays in the proceedings which the company, with due notice, initiated in June 2007, through the Ministry of Agricultural Development (MIDA), for the purpose of having the plant recertified and authorized to continue exporting processed chicken to the Colombian market. Melo S.A. has encountered technical barriers to its exports of processed chicken products to the Colombian market since the end of September 2007 and is still encountering them.

8. To establish a framework for agreement that would lead to the opening up of the Colombian market to Panamanian processed chicken products, MIDA and ICA together held a bilateral technical meeting on 6 and 7 March 2008, in Cartagena de Indias, with a view to the resumption of the Panamanian trade. So far, we have not had any scientific response from the Colombian authorities.

9. At the last meeting of the WTO's SPS Committee, in April 2008, the Panamanian delegation considered it important to address these specific trade concerns, within that forum, in a bilateral context and, accordingly, we are requesting the Colombian authorities for a bilateral meeting to discuss Panama's concerns. So far, we have not received any satisfactory response from the Colombian authorities.

10. At the above-mentioned meeting, Panama indicated that the main aim was to make a statement and inform the WTO, within the context of the meetings of the SPS Committee, of the specific concern relating to trade with Colombia. This concern is focused on the trade in Panamanian processed chicken products, as these Panamanian exports to Colombia have been interrupted since September 2007. It is important to note that this is a high-priority issue for Panama and, accordingly, our Government would like to know the current status of ICA's assessment of the Panamanian company, as well as the result of the assessment made by INVIMA.

11. In this connection, the delegation of Colombia thanked its Panamanian counterpart for the invitation to this bilateral meeting, within the framework of the WTO SPS Committee meeting. It is important to note that at the bilateral meeting in April 2008, INVIMA stated that it had not yet received the information from ICA concerning the assessment of the Panamanian processing plant that would enable it to conduct a more general analysis of the situation. They would therefore ask ICA to send them the information concerning the assessment of the Panamanian processing plant so that they could conduct such an analysis. So far, we have not received any statement from Colombia in this respect.

12. Panama stressed that it was of the utmost importance that INVIMA should make every effort to submit a final report to enable processed chicken exports to the Colombian market to be resumed.

13. The ICA authorities have not reported any progress in relation to processed chicken products, which clearly indicates that there is no scientific balance or readiness and commitment on the part of the Colombian authorities to rescind the discriminatory measures against exports of processed chicken products from Panama. It should be noted that following technical meetings between the two countries the fertile egg trade has been fully regularized.

III. LEGAL BASIS OF CONFORMITY WITH THE WTO AGREEMENTS

14. The above explanations are being requested in conformity with the rights and obligations assumed by Panama and Colombia under WTO trade disciplines.

15. In particular, they are being requested in conformity with the SPS Agreement, according to which:

- The Agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade (Article 1);
- Members have the right to take sanitary measures provided that they are consistent with the provisions of the Agreement, are based on scientific principles, are not maintained without sufficient scientific evidence, do not arbitrarily or unjustifiably discriminate between Members where similar conditions prevail, do not constitute a disguised restriction on international trade and are based on international standards issued by the organizations recognized in the SPS Agreement (Articles 2 and 3.1);
- Members may introduce a sanitary measure which results in a higher level of protection than would be achieved by measures based on the relevant international standard if there is a scientific justification, or as a consequence of a risk assessment for the purpose of determining the appropriate level of protection, carried out in accordance with Article 5 of the SPS Agreement;
- Members must ensure that the measures adopted are not more trade-restrictive than required to achieve their appropriate level of sanitary protection (Article 5.6);
- When a Member has reason to believe that a specific sanitary measure introduced by another Member is constraining its exports and the measure is not based on an international standard, it may request an explanation of the reasons for that measure and the Member maintaining the measure must provide one (Article 5.8);
- The Committee on Sanitary and Phytosanitary Measures is the regular and appropriate forum for consultations on sanitary matters (Article 12);
- Members are fully responsible for the implementation and observance of all obligations set forth in the SPS Agreement (Article 13); and
- Control, inspection and approval procedures must be conducted without undue delay and in no less favourable manner for imported products than for like domestic products, in accordance with Annex C of the SPS Agreement.

IV. CONCLUSION

16. In view of the above considerations, the Government of the Republic of Panama formally requests the authorities of the Republic of Colombia to comply with the provisions of the SPS Agreement and in particular Annex C, in such a way as to ensure that the requisite inspection procedures are conducted without undue delay, so that there are no disguised restrictions on international trade.
