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Page: 1/4

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**PANAMA – MEASURES CONCERNING THE IMPORTATION  
OF CERTAIN PRODUCTS FROM COSTA RICA**

**REQUEST FOR CONSULTATIONS BY COSTA RICA**

The following communication, dated 11 January 2021, from the delegation of Costa Rica to the delegation of Panama, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with Panama pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 19 of the Agreement on Agriculture, Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), and Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), with respect to measures taken by Panama that restrict or prohibit the importation of various products originating in Costa Rica, including: (i) strawberries; (ii) milk products; beef; pork; processed poultry meat; cured beef, pork and poultry products (including ham, sausages, mortadella, bacon, chorizo made of pork, chicken and turkey, pâté, pepperoni, salami, legs, ribs, loin of pork, roast beef and beef loin); prepared beef, pork and chicken, chicken and turkey breast, pork rind and dry chorizo; and fish food; (iii) pineapples; and (iv) plantains and bananas.

**I. Measures at issue**

The measures covered by this request for consultations include, but are not limited to, those described below.

(a) Measures restricting or prohibiting imports of strawberries originating in Costa Rica

On 20 February 2020, through communication AUPSA-AG-051-2020, and without prior notice, Panama took the decision to ban imports of strawberries from Costa Rica due to the alleged detection of oxamyl residues in shipments of Costa Rican strawberries - sent in February 2020 - that exceeded Panama's maximum levels for this substance, established in Executive Decree No. 467 of 7 November 2007.

According to the above-mentioned communication from Panama, the ban on these imports will be maintained until the phytosanitary authority of Costa Rica indicates that it has taken corrective measures.

In this respect, Costa Rica provided Panama with relevant information on this matter through a number of communications, including official letters DSFE-0343-2020 of 5 May 2020 and DSFE-0525-2020 of 12 June 2020. Nevertheless, despite there being no evidence of the use or presence of oxamyl in the production of strawberries in Costa Rica, Panama has maintained the ban on imports of this Costa Rican product, causing the market to close down completely.

- (b) Measures restricting or prohibiting imports of milk products; beef; pork; processed poultry meat; cured beef, pork and poultry products (including ham, sausages, mortadella, bacon, chorizo made of pork, chicken and turkey, pâté, pepperoni, salami, legs, ribs, loin of pork, roast beef and beef loin); prepared beef, pork and chicken, chicken and turkey breast, pork rind and dry chorizo; and fish food originating in Costa Rica

Panama decided, without any prior notice, not to renew the sanitary approval that allowed various Costa Rican plants to export to Panama milk products; beef; pork; processed poultry meat; cured beef, pork and poultry products (including ham, sausages, mortadella, bacon, chorizo made of pork, chicken and turkey, pâté, pepperoni, salami, legs, ribs, loin of pork, roast beef and beef loin); prepared beef, pork and chicken, chicken and turkey breast, pork rind and dry chorizo; and fish food, which expired on 30 June 2020. Panama took this step even though the affected Costa Rican establishments had requested the renewal of their respective sanitary approvals sufficiently in advance. Unlike the practice previously applied to Costa Rican establishments and that applied to other countries, the Panamanian authority refused to extend the validity of the approvals, thereby preventing the export of these products to Panama.

In communication AUPSA-AG-229-2020 of 10 July 2020, Panama stated that instead of renewing the previous approvals, it was, in this case, necessary to conduct a new evaluation and approval procedure "from scratch", which involved re-recognition of the Costa Rican sanitary system, and new on-site sanitary inspections and audits.

In note DG-1420-2020 of 24 November 2020 sent to AUPSA, Costa Rica stated that it was not appropriate to start the process "from scratch", taking into account the relevant international standards and applicable Central American regulations. In that note, the Director-General of the National Animal Health Service of Costa Rica (SENASA) therefore requested that exports resume. Costa Rica has not, however, received any reply from the Panamanian health authorities in this respect.

Despite Costa Rica's long history of exporting milk products; beef; pork; processed poultry meat; cured beef, pork and poultry products; prepared beef, pork, chicken and turkey; and fish food to Panama, and Costa Rica's sanitary status not having changed in the slightest, Panama decided to maintain an import ban on these Costa Rican products without giving any prior notice, and to date has not taken any steps to allow for the resumption of trade in these products.

- (c) Measures restricting or prohibiting imports of fresh pineapple originating in Costa Rica

On 20 January 2019, through communication AUPSA/AG-032-2019, and without giving prior notice, Panama took the decision to ban imports of fresh pineapple from Costa Rica, which were previously permitted in line with the requirements established by Panama in Decision AUPSA-DINAN-116-2008. Panama stated that the import ban was due to the alleged detection of the pink hibiscus mealybug pest (*Maconellicoccus hirsutus*).

According to the above-mentioned communication from Panama, the import ban will be maintained until Costa Rica indicates and provides information on its current phytosanitary status in pineapple production areas, in relation to the pink hibiscus mealybug (*Maconellicoccus hirsutus*) and other pests.

Costa Rica has explained to Panama in various communications, including official letters DSFE-083-2019 of 6 February 2019 and DSFE-0849-2019 of 10 October 2019, that its phytosanitary status has not at all changed, and that it has had no reports of the pest concerned being detected in pineapple shipments from Costa Rica to Panama.

Despite this, Panama has not taken any action in response to the information provided by Costa Rica, and is maintaining the ban on the importation into Panamanian territory of Costa Rican pineapple, thereby preventing trade in this product.

(d) Measures restricting or prohibiting the importation of plantains and bananas originating in Costa Rica

Panama prohibited imports of plantains and bananas from Costa Rica, without prior notice, through communications AUPSA-AG-392-2019, received on 24 October 2019, and AUPSA-AG-424-2019, of 25 October 2019, respectively. In these communications, Panama stated that the importation of these products would remain prohibited until it had completed a technical review of the existing phytosanitary requirements.

Subsequently, in communication DM-N-1352-2019 of 18 December 2019, Panama changed the reason for prohibiting imports of plantains and bananas from Costa Rica, stating that the ban was due to the declaration of a national state of alert on account of the risk of introduction of the "fungus *Fusarium oxysporum* f. sp. *cubense* tropical race 4 affecting musaceae". Panama stated that the adoption of new requirements for imports of plantains and bananas from Costa Rica would require a new risk analysis, which, in turn, would require verification visits to Costa Rica.

Despite the fact that the pest concerned is absent from Costa Rican territory and that Costa Rica's phytosanitary status remains unchanged in this respect, Costa Rica has expressed its willingness to let Panama carry out verification visits. Nevertheless, Panama has refused to proceed with these visits or to take any other steps to enable trade in plantains and bananas to resume and maintains a ban on the importation into Panamanian territory of plantains and bananas from Costa Rica.

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This request for consultations covers, in addition to the above-mentioned measures, any other measure that prolongs, replaces, amends, implements, extends or applies, or otherwise maintains, the conduct described above.

## II. Legal basis for the complaints

Each and every one of the measures described in Section I of this request for consultations appears to be inconsistent with each and every one of the following obligations assumed by Panama under the WTO covered agreements:

- Article 2.1 of the SPS Agreement, given that the measures do not appear to have been developed or applied in accordance with the provisions of the SPS Agreement.
- Article 2.2 of the SPS Agreement, because the measures do not appear to be applied only to the extent necessary to protect human, animal or plant life or health, or to be based on technical and/or scientific principles.
- Articles 2.3 and 5.5 of the SPS Agreement, given that the measures appear to arbitrarily or unjustifiably discriminate between different WTO Members where identical or similar sanitary or phytosanitary conditions prevail.
- Article 3.1 and 3.3 of the SPS Agreement, because the measures do not appear to be based on the relevant international standards, nor does there appear to be any scientific justification for departing therefrom.
- Article 5.1 of the SPS Agreement, since the measures do not appear to be based on a risk assessment, as appropriate to the circumstances. Consequently, the measures also appear to be inconsistent with the obligations set out in Article 5.2 and 5.3 of the SPS Agreement.
- Article 5.4 of the SPS Agreement, because, when determining the appropriate level of sanitary or phytosanitary protection, Panama appears not to have taken into account the objective of minimizing negative trade effects.
- Article 5.6 of the SPS Agreement, because the measures appear to be more trade-restrictive than required to achieve the appropriate level of sanitary or phytosanitary protection.

- Article 5.7 of the SPS Agreement, in that Panama's measures do not appear to meet the requirements for the provisional measures established in this provision.
- Article 5.8 of the SPS Agreement, because, in spite of Costa Rica's requests, Panama has not provided an explanation of the reasons for the measures.
- Article 6.1 of the SPS Agreement, given that the measures do not appear to be adapted to the sanitary or phytosanitary characteristics of the area from which the product originated and to which the product is destined.
- Article 7 and the provisions of Annex B of the SPS Agreement, because it appears that Panama has failed to meet its transparency obligations with regard to the measures at issue.
- Article 8 and the provisions of Annex C of the SPS Agreement, since it appears that Panama has failed to meet its obligations regarding control, inspection and approval procedures in relation to the measures at issue.
- Article I:1 of the GATT 1994, since Panama appears to have acted inconsistently with the most-favoured-nation treatment obligation in relation to the measures at issue.
- Article XI:1 of the GATT 1994, because Panama appears to have acted inconsistently with the obligation not to adopt import restrictions or prohibitions.
- Article 4.2 and note 1 of the Agreement on Agriculture, given that the measures at issue appear to constitute "quantitative import restrictions", or in any case "similar [...] measures", within the meaning of note 1 of the Agreement on Agriculture.

Furthermore, the measures described in Section I of this request appear to nullify or impair the benefits accruing to Costa Rica, directly or indirectly, under the SPS Agreement and the GATT 1994. The measures do not appear to be justified under any provision of the WTO covered agreements.

Costa Rica reserves its right to raise other matters, whether factual or legal, during the course of the consultations. This request also covers any other amendments, replacements, extensions, related measures or implementing measures that relate to the inconsistent measures at issue here.

Costa Rica looks forward to receiving Panama's reply to this request and to setting a mutually convenient date for consultations, with a view to resolving this dispute.

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