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Page: 1/4

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## EUROPEAN UNION – MEASURES CONCERNING THE IMPORTATION OF CERTAIN POULTRY MEAT PREPARATIONS FROM BRAZIL

### REQUEST FOR CONSULTATIONS BY BRAZIL

The following communication, dated 8 November 2021, from the delegation of Brazil to the delegation of the European Union, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

1. My authorities have instructed me to request consultations with the European Union ("EU"), pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), and Article XXII of the General Agreement on Tariff and Trade 1994 ("GATT 1994"), concerning EU measures affecting the importation of certain poultry meat preparations from Brazil, in particular salted poultry meat and turkey meat with pepper.

#### I. BACKGROUND

2. This request concerns the EU's application of *Salmonella* food safety criteria on **fresh poultry meat** and certain **poultry meat preparations**, and the appropriate level of sanitary protection necessary to address risks to human health from the contamination of *Salmonella* in products under these food categories.

3. *Salmonella* is a gram-negative rods genus belonging to the *Enterobacteriaceae* family.<sup>1</sup> Within the species *Salmonella bongori* and *Salmonella enterica*, over 2,500 different serotypes have, thus far, been identified. The species *Salmonella enterica* features *Salmonella enterica* serotype *Enteritidis* (*S. Enteritidis*) and *Salmonella enterica* serotype *Typhimurium* (*S. Typhimurium*), the two most important serotypes of *Salmonella* transmitted from animals to humans in most parts of the world.<sup>2</sup>

4. In the EU, the most commonly reported *Salmonella* serotypes are *S. Enteritidis* and *S. Typhimurium* (including *monophasic S. Typhimurium*), representing 70.3% of confirmed human cases of *salmonellosis* with known serotypes.<sup>3</sup>

5. In December 2003, the EU adopted **Parliament and Council Regulation (EC) No. 2160/2003** on the control of *Salmonella* to ensure that proper and effective measures were taken to detect and control *Salmonella* and other zoonotic agents at all relevant stages of production, processing and distribution, in order to reduce their prevalence and the risk they pose to public health.<sup>4</sup>

<sup>1</sup> [https://www.who.int/news-room/fact-sheets/detail/salmonella-\(non-typhoidal\)](https://www.who.int/news-room/fact-sheets/detail/salmonella-(non-typhoidal))

<sup>2</sup> [https://www.who.int/news-room/fact-sheets/detail/salmonella-\(non-typhoidal\)](https://www.who.int/news-room/fact-sheets/detail/salmonella-(non-typhoidal))

<sup>3</sup> European Union One Health Zoonoses Report 2019, p. 67.  
<https://efsa.onlinelibrary.wiley.com/doi/pdf/10.2903/j.efsa.2021.6406>

<sup>4</sup> Article 1.1 of Regulation No. 2160/2003. OJ L 325, 12.12.2003, p.1.

6. Regulation No. 2160/2003 established that, as of 1 December 2011, **fresh poultry meat** would meet the following microbiological criterion for *Salmonella*:<sup>5</sup>

"... *fresh poultry meat* (...) *may not be placed on the market for human consumption unless it meets the following criterion: 'Salmonella: absence in 25 grams'* ".

7. The criterion adopted required the absence of *all* serotypes of *Salmonella* in a direct test using a sample size of 25 grams of fresh poultry meat.

8. According to Regulation No. 2160/2003, in order to achieve the EU's targets for the reduction of zoonoses, microbiological criteria must take into account, *inter alia*, the *Salmonella* serotypes with public health significance, which are "the most frequent *Salmonella* serotypes in human *salmonellosis*, on the basis of data collected through the EU's monitoring systems".<sup>6</sup>

9. In December 2005, the EC adopted Commission **Regulation (EC) No. 2073/2005**, laying down the microbiological criteria for certain microorganisms and the implementing rules to be complied with by business operators.<sup>7</sup>

10. Regulation No. 2073/2005 extended the *Salmonella* food safety criteria applied to **fresh poultry meat** to **poultry meat preparations** intended to be eaten cooked.<sup>8</sup> Thus, as of 1 December 2011, poultry meat preparations could not be placed on the market for human consumption unless it met the criterion that *all* serotypes of *Salmonella* be absent in a direct test using a sample size of 25 grams.

11. However, in October 2011, the EU adopted **Commission Regulation (EC) No. 1086/2011**, amending Regulation No. 2160/2003 and changing the *Salmonella* food safety criteria for **fresh poultry meat**.<sup>9</sup>

12. Under Regulation No. 1086/2011, as of 01 December 2011, **fresh poultry meat** may not be placed in the market for human consumption unless it meets the criterion: '*Salmonella typhimurium, Salmonella enteritidis: absence in 25 grams*'.<sup>10</sup> This change meant that **fresh poultry meat** is not to be placed in the market only if two serotypes of *Salmonella* are detected: *S. Enteritidis* and *S. Typhimurium*. **Poultry meat preparations**, in contrast, continue to be subject to a food safety criterion that requires the absence of *all* serotypes of *Salmonella* in a 25 grams sample.

13. Among the justifications provided by the EU regarding the change in the food safety criterion for fresh poultry meat was that approximately 80% of human *Salmonellosis* cases are caused by *S. Enteritidis* and *S. Typhimurium*.<sup>11</sup> A criterion for only these two serotypes would provide the best balance between reducing human *Salmonellosis* attributed to the consumption of poultry meat and the economic consequences of the application of that criterion.<sup>12</sup>

14. As a result of the aforementioned legal instruments, the EU presently applies to **fresh poultry meat** a *Salmonella* food safety criterion that is different from and less stringent than that applied to **poultry meat preparations**, without adequate technical or scientific evidence. The application of different *Salmonella* food safety criteria between these two product categories has adversely affected Brazilian exports of poultry meat preparations to the EU, in particular exports of salted poultry meat and turkey meat with pepper.

15. Brazil has raised this issue with the EU under the auspices of the SPS Committee. Particularly, Brazil presented a specific trade concern about the EU's *Salmonella* food safety criteria for fresh

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<sup>5</sup> Item E of Annex II of Regulation No. 2160/2003, in <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02003R2160-20130701&from=EN>.

<sup>6</sup> Annex III of Regulation No. 2160/2003.

<sup>7</sup> Regulation No. 2073/2005. OJ L 338, 22.12.2005, p.1.

<sup>8</sup> Chapter 1 of Annex I of Regulation No.2073/2005.

<sup>9</sup> Regulation No.1086/2011. OJ L 287, 28.10.2011, p. 7.

<sup>10</sup> Item 4 of the Preamble to Regulation No.1086/2011.

<sup>11</sup> Item 9 of the Preamble to Regulation No.1086/2011.

<sup>12</sup> Item 10 of the Preamble to Regulation No.1086/2011.

poultry meat and poultry meat preparations in four distinct occasions.<sup>13</sup> Unfortunately, the EU has failed to address the concerns raised by Brazil before the SPS Committee.

## II. MEASURES AT ISSUE

16. The measures covered by this request for consultations include, but are not limited to, the following:

- **Regulation (EC) No. 2160/2003** of the European Parliament and of the Council, of 17 November 2003, on the control of *Salmonella* and other specified food-borne zoonotic agents;<sup>14</sup>
- **Commission Regulation (EC) No. 2073/2005**, of 15 November 2005, on microbiological criteria for foodstuffs;<sup>15</sup> and
- **Commission Regulation (EC) No. 1086/2011**, of 27 October 2011, amending Annex II to Regulation (EC) No. 2160/2003 of the European Parliament and of the Council and Annex I to Commission Regulation (EC) No. 2073/2005 as regards *Salmonella* in fresh poultry meat.<sup>16</sup>

17. This request also covers any amendments, replacements, supplements, extensions, renewals, implementing measures or other related measures that otherwise maintain the conduct described above, as well as any scientific studies or evidence that purportedly justify the measures. Brazil reserves the right to raise further facts and address additional measures during the course of consultations.

## III. LEGAL BASIS FOR THE COMPLAINT

18. The measures covered in this request for consultations, resulting in different *Salmonella* food safety criteria for fresh poultry meat and poultry meat preparations, appear to be inconsistent with the EU's WTO obligations, including, but not limited to, the following provisions:

- Article 2.2 of the SPS Agreement, because the measures are not based on scientific principles; are not applied only to the extent necessary to protect human, animal or plant life or health, and are maintained without sufficient scientific evidence;
- Article 2.3 of the SPS Agreement, because the measures arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail and because the measures are applied in a manner that constitutes a disguised restriction on international trade;
- Article 5.1 of the SPS Agreement, because the measures are not based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations;
- Article 5.2 of the SPS Agreement, because in its assessment of risks the EU did not take into account available scientific evidence, relevant process and production methods, and relevant inspection, sampling and testing methods;
- Article 5.4 of the SPS Agreement, because the EU did not take into account the objective of minimizing negative trade effects when determining the appropriate level of sanitary protection;

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<sup>13</sup> See Specific Trade Concern 432 in G/SPS/R/88, paras. 3.13 and 3.14; G/SPS/R/90, paras. 3.54 and 3.55; G/SPS/R/92/Rev.1, paras. 4.57 and 4.58; and G/SPS/R/94, paras. 3.87 and 3.88.

<sup>14</sup> OJ L 325, 12.12.2003, p.1.

<sup>15</sup> OJ L 338, 22.12.2005, p.1.

<sup>16</sup> OJ L 281, 28.10.2011, p. 7.

- Article 5.5 of the SPS Agreement, because the EU applies arbitrary or unjustifiable distinctions in the levels of protection it considers appropriate in different situations, resulting in discrimination or a disguised restriction on international trade;
- Article 5.6 of the SPS Agreement, because the measures are more trade-restrictive than required to achieve the EU's appropriate level of sanitary protection, taking into account technical and economic feasibility;
- Article 5.7 of the SPS Agreement, because the measures are not adopted or maintained in a case where relevant scientific evidence is insufficient, not adopted provisionally, not based on available pertinent information, and not reviewed within a reasonable period of time;
- Article 8 and paragraph 1(e) of Annex C to the SPS Agreement, because the food safety requirement applied to poultry meat preparation is not limited to what is reasonable and necessary;
- Articles III:4 of the GATT 1994, because the EU has failed to accord to certain poultry meat preparations from Brazil treatment no less favourable than that accorded to EU like products; and
- XI:1 of the GATT 1994, because the measures operate as a restriction on the importation of certain poultry meat preparation into the EU.

19. The measures in this request adversely affect Brazil's exports of certain poultry meat preparations to the EU and appear to nullify or impair the benefits accruing to Brazil under the SPS Agreement and the GATT 1994.

#### IV. CONCLUDING REMARKS

20. Brazil reserves the right to raise additional claims and measures and to address additional legal and factual issues under other provisions of the covered agreements during the course of consultations.

21. Brazil looks forward to receiving a reply from the EU to the present request and to agreeing upon a mutually convenient date for consultations, with a view to resolving this dispute.

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