



INDONESIA – MEASURES CONCERNING THE IMPORTATION OF CHICKEN MEAT AND CHICKEN PRODUCTS

REQUEST FOR CONSULTATIONS BY BRAZIL

The following communication, dated 16 October 2014, from the delegation of Brazil to the delegation of Indonesia and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the Republic of Indonesia ("Indonesia") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), Article 6 of the Agreement on Import Licensing Procedures ("Import Licensing Agreement"), Article 14 of the Agreement on Technical Barriers to Trade ("TBT Agreement"), Article 19 of the Agreement on Agriculture ("Agriculture Agreement") and Article 8 of the Agreement on Preshipment Inspection concerning certain measures imposed by Indonesia on the importation of meat from fowls of the species *Gallus domesticus* and products from fowls of the species *Gallus domesticus* hereinafter referred to as chicken meat and chicken products.

For the last five years, Brazil has endeavored to gain access to the Indonesian poultry market, particularly to the market of chicken meat and of chicken products. In spite of Brazil's best efforts, Indonesia has adopted and maintained restrictive rules and procedures which effectively prohibit Brazilian chicken meat and chicken products to enter the Indonesian market.

In 2009, Brazil sent its health certificate proposal for poultry meat to the Indonesian Government. One year later, a specific proposal was sent regarding turkey and duck meat. None of the proposals have been approved so far by the Indonesian authorities, despite the fact that the Brazilian authorities have promptly provided all of the requested information, as well as additional information supplied at Brazil's own initiative. Indonesia has not taken any effective steps to approve the certificate nor has it presented a risk assessment indicating the existence of any scientific reasons for not approving it. Instead, Indonesia seems to condition the approval of the health certificate on matters unrelated to sanitary issues and lacking scientific basis.

The non-approval of the health certificate is not the only measure of concern. Brazil has reasons to believe its chicken meat and its chicken products would still meet significant barriers of entry after the granting of the health certificate.

Indonesia's sanitary regulation (Regulation 84/2013) contains a positive list of animal products that may be imported into its territory, which is mirrored in its import licensing regulation (46/2013). In both lists, the Harmonized System codes for fresh and frozen uncut chicken meat are described as being duck meat. It is thus uncertain whether chicken meat is allowed to be imported at all. Furthermore, Indonesia does not seem to allow for the importation of cut chicken meat, whether frozen or fresh.

Brazil has also reasons to believe that certain Indonesian measures, particularly regarding shipping and quarantine on the importation of chicken meat and chicken products, are unnecessarily

constraining and discriminatory against its exports, and, moreover, are not based on the relevant international standards, guidelines or recommendations. There also appears to be a series of other regulations which seem to further constrain Brazilian exports of chicken meat and chicken products.

Should it be allowed, the importation of chicken meat and of chicken products from Brazil would still be subject to the approval by multiple agencies and acquisition of multiple licenses in a complex and opaque system. Indonesia also imposes a non-automatic import licensing regime to chicken meat and chicken products which seems to unjustifiably restrict trade, for it has put in place and administers its non-automatic licensing regime in an inconsistent and unpredictable manner which seems to unduly burden and restrict the access of imports.

Importers must obtain an Importer Identity Number (Angka Pengenal Importir or "API"), from the Ministry of Trade, issued at the discretion of the Minister of Trade. They must also register at the Directorate General of Customs and Excise, within the Ministry of Finance. Importers of chicken meat and chicken products must then obtain the accreditation as a registered importer of "certain products" by Indonesia's Minister of Trade ("Registered Importer of Certain Products"). These licenses have strict deadlines and have very short terms and may restrict the ports of entry of the imports.

Chicken meat imports and chicken product imports all require a prior recommendation from the Minister of Agriculture, which apparently has the discretion to restrict the quantity, the destinations and/or the uses of those products. This request also has strict deadlines and short terms and does not seem to be administered in a transparent manner.

Furthermore, Indonesia seems to impose pre-shipment inspection requirements, which may cause unreasonable delays and be applied in a discriminatory manner.

Finally, Indonesia's legislation authorizes the adoption of measures relating to price policy and management of imports which may impose restrictions in order to manage the internal supply of "strategic goods", a concept in which chicken meat and chicken products are inserted.

The legal instruments through which Indonesia imposes and administers these measures in a manner that affects Brazil's rights under the WTO include, but are not limited to, the following instruments, as well as the regulations and complementary provisions and/or amendments:

- Law of the Republic of Indonesia Number 7 of Year 2014 Concerning Trade ("Trade Law");
- Law of the Republic of Indonesia No. 18 of 2009 on Husbandry and Animal Health;
- Regulation of the Minister of Agriculture No. 84/Permentan/PD.410/8/2013 on Importation of Carcass, Meat, Offal, and/or Processed Products thereof into Indonesian Territory, as amended by Regulation of the Minister of Agriculture No. 96/Permentan/PD.410/9/2013 and Regulation of the Minister of Agriculture No. 110/Permentan/OT.410/9/2014 ("MoA Regulation 84/2013");
- Regulation of the Minister of Trade No. 46/M-DAG/PER/8/2013 on Provisions of Import and Export of Animal and Animal Product as amended by Regulation of the Minister of Trade No. 57/M-DAG/PER/9/2013 and by Regulation of the Minister of Trade 17/M-DAG/PER/3/2014 ("MoT Regulation 46/2013");
- Regulation of the Minister of Trade No. 83/M-DAG/PER/12/2012 on Provisions of Import of Certain Products as amended by Minister of Trade Regulation No. 61/M-DAG/PER/9/2013 ("MoT Regulation 83/2012");
- Regulation of the Minister of Trade No. 27/M-DAG/PER/5/2012 on Provisions of Importer Identity Number, as amended by Minister of Trade Regulation No. 59/M-DAG/PER/9/2012 and Minister of Trade Regulation No. 84/M-DAG/PER/12/2012 ("MoT Regulation 27/2012");

- Regulation of the Minister of Trade No. 54/M-DAG/PER/10/2009 on General Provisions on Import ("MoT Regulation 54/2009");
- Decree of the Minister of Finance No. 454/KMK.04/2002 on Registration of Importer ("MoF Decree 454/2002").

In Brazil's views, these measures appear to be inconsistent with Indonesia's obligations under the following provisions of the covered agreements:

- (i) Article 2.2, 2.3, 3.1, 5, 5.1, 5.2, 5.5, 5.6, 8 and Annex C of the SPS Agreement;
- (ii) Articles 2.1, 2.2, 2.4, 5.1 and 5.2, of the TBT Agreement;
- (iii) Articles 4.2 and 14 of the Agreement of Agriculture;
- (iv) Articles 1.3, 3.2 and 3.3 of the Agreement on Import Licensing Procedures;
- (v) Articles 2.1 and 2.15 of the Agreement on Preshipment Inspection.
- (vi) Articles III:4, X:1, X:3 and XI:1 of the GATT 1994.

Brazil reserves the right to raise further factual and legal claims in the course of the consultations. Particularly, Brazil has taken notice that the Indonesian parliament approved, on 14 October 2014, an amendment to Law No. 18 of 2009 on Husbandry and Animal Health, which has not yet come into force. Brazil specifically reserves the right to address these legislative changes in the consultations and in further proceedings relating to the matter at issue.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
