



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

RECOURSE TO ARTICLE 21.5 OF THE DSU BY BRAZIL

NOTIFICATION OF AN OTHER APPEAL BY BRAZIL UNDER ARTICLE 16.4 AND ARTICLE 17.1
OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE
SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 23(1) OF THE
WORKING PROCEDURES FOR APPELLATE REVIEW

The following communication, dated 22 December 2020, from the delegation of Brazil, is being circulated to Members.

Pursuant to Article 16.4 and Article 17 of the DSU, Brazil hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel and certain legal interpretations developed by the Panel in its Report in the dispute *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products (Recourse to Article 21.5 of the DSU by Brazil)* (WT/DS484/RW).

Pursuant to Rule 23(1) of the *Working Procedures for Appellate Review*, Brazil simultaneously files this Notice of Other Appeal with the Appellate Body Secretariat.

Brazil restricts its appeal to those errors in the Panel report that it believes constitute serious errors of law and legal interpretation that need to be corrected. Non-appeal of an issue, reasoning or finding does not signify or imply agreement therewith.

For the reasons to be elaborated further in its submission to the Appellate Body, Brazil appeals the following errors of law and legal interpretation contained in the Panel Report¹, and requests the Appellate Body to reverse or modify the appealed findings and conclusions of the Panel, including related analysis, descriptions and reasoning, contained in the Panel Report as identified in the Notice of Appeal.

I. The Panel Erred in not Finding that the Positive List Requirement is Inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 and footnote 1 of the Agreement on Agriculture

1. Brazil submits that the Panel erred in finding that the positive list requirement, as set out in Regulations MoA 42/2019 and MoT 29/2019, does not constitute a prohibition or restriction to international trade inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 and footnote 1 of the Agreement on Agriculture, as set out in Section 7.4 of its Report.

¹ In the following descriptions of the legal errors of the Panel, Brazil provides an indicative list of the paragraphs of the Panel Report, in particular paragraphs with the primary instance of the errors. These errors may also be reflected in or have consequences for other parts of the Panel Report, and Brazil also appeals all findings and conclusions deriving from or relying on the appealed errors.

2. The relevant measure, as had been noted by the original panel, "is not the list as such, but rather the requirement to be on that list in order to be allowed to be imported".² With respect to this requirement, there is an unappealed finding of inconsistency with Article XI:1 of the GATT 1994 by the original panel. This finding must therefore be treated as a final resolution in respect of the positive list requirement, which has been maintained by Indonesia.

3. The Panel further erred by not deepening its analysis under Article 4.2 and footnote 1 of the Agreement on Agriculture. It found that "Brazil's claim under Article 4.2 is thus identical to the claim under Article XI:1 in all relevant aspects", and as a result "the outcome of our analysis will also necessarily be the same under both provisions". By doing so, the Panel disregarded any difference between these two provisions in terms of their respective legal standard.

4. For the above reasons, Brazil respectfully requests the Appellate Body to reverse the Panel's findings in paragraphs 7.111, 7.120, 7.123, 8.1(c)(i) and 8.1(c)(ii) of the Panel Report, together with the underlying reasoning and analysis, and to find instead that the positive list requirement, as enacted through MoA 42/2019 and MoT 29/2019, is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 and footnote 1 of the Agreement on Agriculture.

II. The Panel Erred In Not Finding That The Requirements For Modifying Licence Terms Are Inconsistent With Article XI:1 Of The GATT 1994

5. Brazil contends that the Panel erred in finding that the requirements for modifying licence terms do not violate Article XI:1 of the GATT 1994, as set out in Section 7.6 of the Panel Report.

6. The Panel incorrectly framed Brazil's argument regarding the requirement to submit a stamped statement letter setting out the reasons for requesting an amendment. Brazil argued that this is a burdensome and unjustified requirement on importers, as they must pay a stamp duty and provide a letter giving reasons for the amendment "even for slight deviations from the original terms"³, and therefore incur an administrative burden and cost "every time business opportunities change"⁴. Nonetheless the Panel framed Brazil's claim as "whether the obligation to state reasons for modifying the licence terms is burdensome enough to deny the possibility to amend licence terms".⁵

7. Based on this incorrect understanding, the Panel went on to find that the requirement to submit a stamped statement letter setting out the reasons for requesting an amendment, which was imposed under Article 44(2) of MoA 42/2019, did not amount to a restriction inconsistent with Article XI:1 of the GATT 1994, because it did not appear to impose a significant burden on importers. The Panel failed to consider whether said requirement was justifiable as absolutely necessary for the administration of Indonesia's import licensing regime, and, if not, to conclude that it would then constitute a burdensome, unjustifiable restriction on imports inconsistent with Article XI:1 of the GATT 1994.

8. For these reasons, Brazil respectfully requests the Appellate Body to *reverse* the Panel's findings in paragraphs 7.233, 7.234, 7.237 and 8(e)(i) of its Report, together with the underlying reasoning and analysis, and to find, instead, that the requirement imposed under Article 44(2) of MoA 42/2019 is inconsistent with Article XI:1 of the GATT 1994.

Pursuant to Rule 23(3) of the *Working Procedures for Appellate Review*, Brazil files this Notice of Other Appeal together with its Other Appellant's Submission with the Appellate Body Secretariat.

Brazil reserves the right, in addressing Indonesia's appeal, to disagree with any statement in the Panel Report made in the context of matter on which Brazil prevailed.

² Original panel report, para. 7.165.

³ Indonesia's first written submission, para. 69.

⁴ Indonesia's first written submission, para. 69.

⁵ Panel Report, para. 7.229.

Pursuant to Rule 23(2)(c)(ii)(C) of the *Working Procedures for Appellate Review*, this Notice of Other Appeal provides an indicative list of the paragraphs of the Panel Report containing the errors of law and legal interpretation by the Panel, without prejudice to Brazil's ability to rely on other paragraphs of the Panel Report in the context of its other appeal.

There is currently an insufficient number of Appellate Body Members to constitute a division for serving on appeal in this dispute. In these exceptional circumstances, and in the interests of fairness and orderly procedure in the conduct of the appeal, in accordance with Rule 16(1) and (2) of the *Working Procedures for Appellate Review*, Brazil will await further instructions from the division, when it may eventually be composed, or the Appellate Body, regarding any further steps to be taken by Brazil in this appeal.

Filing of the Other Appellant's Submission by Brazil should be without prejudice to its right to re-file it once the division becomes operational.
