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COSTA RICA – MEASURES CONCERNING THE IMPORTATION OF FRESH AVOCADOS FROM MEXICO

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY MEXICO

The following communication, dated 22 November 2018, from the delegation of Mexico to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 8 March 2017, Mexico requested consultations with Costa Rica pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 11.1 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), concerning certain measures adopted by Costa Rica with respect to the importation of fresh avocados for consumption from Mexico.¹

The consultations between the two countries were held on 26 and 27 April 2017. Unfortunately, these consultations failed to settle the dispute.

Accordingly, Mexico respectfully requests the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, and Article 11.1 of the SPS Agreement, concerning certain measures that prohibit or restrict the importation of fresh avocados from Mexico. Mexico further requests that the panel to be established examine this matter on the basis of the standard terms of reference as set out in Article 7.1 of the DSU.

I. BACKGROUND

On 22 April 2015, Costa Rica issued an emergency phytosanitary measure temporarily suspending "the issuing of phytosanitary import certifications for avocados" from the following countries: Australia, Ghana, Guatemala, Israel, Mexico, South Africa, Spain and Venezuela. It also ordered the revision of phytosanitary requirements, through the updating of the pest risk analysis for Avocado sunblotch viroid (ASBVd).² Subsequently, on 10 July 2015, a resolution was issued specifically for Mexico establishing the requirements for the importation of fresh avocados.³

Some time later, following the implementation of the Pest Risk Analysis established following the review of a policy in respect of the importation of fresh avocados (*Persea americana Mill*) from Mexico for consumption (Report ARP-002-2017) on 10 July 2017, Costa Rica published a draft phytosanitary measure specifically for Mexico⁴ on which Mexico commented on 21 December 2017.

¹ Request for consultations by Mexico, Costa Rica – Measures Concerning the Importation of Fresh Avocados from Mexico, 8 March 2017, document WT/DS524/1, G/L/1178, G/SPS/GEN/1539, circulated on 13 March 2017.

² Resolution DSFE-03-2015 of 22 April 2015, notified to the WTO in document G/SPS/N/CRI/160, circulated on 5 May 2015. See also document G/SPS/N/CRI/160/Add.1, circulated on 12 May 2015.

³ Resolution DSFE-11-2015 of 10 July 2015, notified to the WTO in document G/SPS/N/CRI/162, circulated on 13 July 2015. This resolution is based on Report ARP-003-2015 of 10 July 2015.

⁴ Draft Resolution for the importation of fresh avocados (*Persea americana*) of Mexican origin, notified to the WTO in document G/SPS/N/CRI/162/Add.1, circulated on 24 October 2017.

On 29 January 2018, Costa Rica issued two phytosanitary measures: (1) a specific and definitive phytosanitary measure for Mexico,⁵ and (2) a general phytosanitary measure for "any country in which the pest Avocado sunblotch viroid (ASBVd) is present".⁶ While both measures replaced and repealed the emergency measure (Resolution DSFE-03-2015), in the case of the specific measure for Mexico, it also replaced and repealed the previous resolution applicable to Mexico (Resolution DSFE-11-2015). Similarly, the specific measure for Mexico annulled the pest risk analyses carried out by Costa Rica in July and November 2015.⁷ Although the two measures are similar in substance, since they both establish requirements for the importation of fresh avocados for consumption, the general measure also imposes requirements for the importation of plants for planting, which are not the subject of a complaint by Mexico.⁸

II. SPECIFIC MEASURES AT ISSUE

The specific measures at issue are those by which Costa Rica prohibits or restricts, either jointly or individually, the importation of fresh avocados for consumption from Mexico. These measures include, but are not limited to:

1. Resolutions DSFE-003-2018 and DSFE-002-2018 issued by the State Phytosanitary Service of the Ministry of Agriculture and Livestock of Costa Rica, dated 29 January 2018;
2. Reports ARP-002-2017 and ARP-006-2016 by the Pest Risk Analysis Unit of the State Phytosanitary Service, dated 10 July 2017, as well as manual NR-ARP-PO-01_M-01 containing the qualitative methodology applied in the said risk analyses.

This panel request relates to the aforementioned measures at issue and to any additional measures that amend, supersede, update or replace them.

III. BRIEF SUMMARY OF THE LEGAL BASIS OF THE COMPLAINT

Mexico considers the measures at issue, both individually and collectively, to be inconsistent with Costa Rica's obligations under the SPS Agreement and the GATT 1994, more specifically with:

A. SPS Agreement

- Article 1.1 of the SPS Agreement, because Costa Rica's measures are applied in a manner that is inconsistent with the provisions of the SPS Agreement;
- Article 2.1 of the SPS Agreement, because Costa Rica's measures are inconsistent with the provisions of the SPS Agreement;
- Article 2.2 of the SPS Agreement, because Costa Rica's measures are not applied only to the extent necessary to protect plant life, are not based on scientific principles, and are maintained without sufficient scientific evidence;
- Article 2.3 of the SPS Agreement, because Costa Rica's measures are applied in a manner which constitutes a disguised restriction on international trade and because they arbitrarily or unjustifiably discriminate between Costa Rica's own territory and the territory of Mexico;
- Article 3.1 of the SPS Agreement, because Costa Rica failed to base its measures on international standards, guidelines or recommendations;
- Article 3.3 of the SPS Agreement, because Costa Rica failed to comply with the conditions established therein for departing from the requirement set forth in Article 3.1 of the

⁵ Resolution DSFE-003-2018 of 29 January 2018, notified to the WTO in document G/SPS/N/CRI/162/Add.2, circulated on 7 February 2018.

⁶ Resolution DSFE-002-2018 of 29 January 2018, notified to the WTO through in document G/SPS/N/CRI/191/Add.1, circulated on 7 February 2018.

⁷ ARP-003-2015 of 10 July 2015 and ARP-003-2015 of 5 November 2015.

⁸ Since resolutions DSFE-003-2018 and DSFE-002-2018 are similar as regards the regulation of fresh avocados for consumption, the panel's findings in respect of Resolution DSFE-003-2018 should also apply, *mutatis mutandis*, to Resolution DSFE-002-2018.

Agreement. Costa Rica departs from the international recommendations and guidelines without any scientific justification for its high level of sanitary protection. Moreover, its measures are inconsistent with other provisions of the SPS Agreement;

- Article 5.1 of the SPS Agreement, because Costa Rica's evaluation of risks is not based on an assessment, as appropriate to the circumstances, of the risks to plant life of the avocados imported for consumption as a pathway for the transmission of ASBVd, taking into consideration risk assessment techniques developed by the International Plant Protection Convention;
- Article 5.2 of the SPS Agreement, because in its risk assessment, Costa Rica failed to take account, *inter alia*, of available scientific evidence;
- Article 5.3 of the SPS Agreement because, in assessing the risk, Costa Rica failed to take into account as relevant economic factors the costs of control or eradication in its territory and the relative cost-effectiveness of alternative approaches to limiting risks;
- Article 5.5 of the SPS Agreement, because through its measures Costa Rica is applying levels of sanitary or phytosanitary protection that involve arbitrary or unjustifiable distinctions;
- Article 5.6 of the SPS Agreement, because Costa Rica's measures are more trade-restrictive than required to achieve its appropriate level of phytosanitary protection, other measures being reasonably available that are technically and economically feasible and significantly less restrictive to trade;
- Article 6.1 of the SPS Agreement, because Costa Rica's measures were not adapted to the sanitary or phytosanitary characteristics of the area to which the product is destined, i.e. its territory.

B. GATT 1994

- Article III:4 of the GATT 1994, because Costa Rica is according treatment less favourable to avocados imported for consumption from Mexico than that accorded to like products of national origin in respect of regulations and requirements affecting the sale, offering for sale, and distribution of the said products in the Costa Rican market;
- Article XI:1 of the GATT 1994, because Costa Rica's measures constitute prohibitions or restrictions other than duties, taxes or other charges on the importation of avocados for consumption, in violation of that provision.

The aforementioned measures appear to nullify or impair the benefits accruing to Mexico under the provisions of the covered agreements cited above.

IV. REQUEST

In view of the above considerations, and pursuant to Article 4.7 of the DSU, Article 6 of the DSU, Article XXIII of the GATT 1994 and Article 11.1 of the SPS Agreement, Mexico respectfully requests that a panel be established to examine this matter, with the standard terms of reference provided for in Article 7.1 of the DSU.

Mexico further requests that this matter be placed on the agenda for the special meeting of Dispute Settlement Body on 4 December 2018.
