

**STATEMENT BY COLOMBIA REGARDING
NOTIFICATION G/SPS/N/DEU/9**

Meeting of 29 and 30 October 2003

1. Colombia would first of all like to inform the Committee of the background to this issue. On 17 June 2003, the European Commission notified the Committee in document G/SPS/N/DEU/9 of a draft ordinance in which the Government of Germany establishes maximum levels of Ochratoxin A (OTA) for a group of products including roasted and soluble coffee. Although the notification indicates that the measure would enter into force in September 2003, we have been informed that its approval has been postponed but that it will in any case enter into force before the end of 2003.
2. Within the set time, we transmitted our comments regarding the notified measure to the Government of Germany and to its enquiry point, and this led to a valuable exchange of information and comments, which we appreciate. We take this opportunity to inform the Committee of our main concerns about the measure.
3. The notified legislation establishes a maximum OTA level of 3ppb (parts per billion) for roasted coffee and 6ppb for soluble coffee, which we consider to be disproportionate. The units of measurement are so small that the possible OTA contamination of even a tiny amount of coffee could lead to the rejection of a whole shipment. Given that coffee is a product with a high value per unit weight, this measure could lead to major economic losses.
4. The OTA levels for roasted and soluble coffee established in the German regulation would entail some very strict requirements for the raw material, in other words green coffee, which, according to calculations by experts, could lead to the rejection of approximately 6 per cent of the coffee entering Germany.
5. Upon entering into force, the measure notified by Germany could potentially have adverse effects on the Colombian coffee-growing industry and would add to the damaging effects of the current global coffee crisis. As an indication of the importance of this market for our exporters, in 2002, Colombia exported to Germany 1,767,000 sacks of coffee in green, roasted and soluble form, equivalent to 17 per cent of its total coffee exports.
6. We have raised our concerns with the Government of Germany regarding the scientific evidence of the possible harmful effects of OTA on human health; the scientific laboratories that would be conducting the tests; the other products that contribute to the German population's OTA intake; and the contribution of each of these to the total OTA intake. Similarly, we have expressed our concern that the measure could possibly constitute a discrimination or disguised trade restriction *vis-à-vis* coffee producers since it does not cover all products whose contribution to OTA intake may be greater. We have also expressed our concern about the arbitrary requirements that might be imposed in the future on imports of green coffee. In addition, we have asked for a clarification of the

relationship between this measure and the European Union regulations on the matter. Lastly, we have requested that the measure notified by the Government of Germany should not be applied.

7. These concerns were transmitted to the European Commission on 9 October 2003. We expressed concern that some of our rights under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) would be affected if the measure were applied, in particular because the measure appeared to be inconsistent with some of the provisions of the Agreement, especially Articles 2.1, 2.2, 5.1, 5.4, 5.5 and 5.6, and that furthermore the measure could constitute a disguised trade restriction.

8. We thank the Government of Germany for the latest clarifications, which are being examined by our experts so that further comments can be made. More or less at the same time, we put four specific questions to the European Commission regarding notification G/SPS/N/DEU/9. We asked that these questions, which appear in document G/SPS/GEN/434 of 22 October 2003, be circulated to the Committee.

SPECIFIC OBSERVATIONS ON THE PROPOSED MEASURE

9. Colombia is of the opinion that establishing maximum OTA levels for coffee is unwarranted from the scientific point of view and under the SPS Agreement.

10. On the first point, scientific evidence about the toxicity of OTA and its risks for human health appears to be inconclusive. On 13 September 2003, the Dutch Institute for Public Health and the Environment (RIVM) concluded that there were no health risks associated with the daily intake of OTA in the Netherlands. In fact, scientific evidence presented to date pertains to the carcinogenic effects of OTA in pigs, rats and dogs, species in which exaggerated doses of OTA produced kidney tumours.

11. With regard to the relationship between coffee and OTA, various studies suggest that coffee's contribution to total OTA intake in the European Union is very low. In fact, a study by the Scientific Co-operation or "SCOOP" indicates that cereals are the main contributor to the European population's total OTA intake, accounting for 50 per cent, followed by wine at 10 per cent, coffee at 8 per cent and beer at 7 per cent. Another study, by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) concludes that cereals and wine contribute to 56 per cent and 22 per cent respectively of the average intake of OTA, while coffee accounts for 5.5 per cent.

12. Secondly, the establishment of maximum OTA levels for coffee in the conditions set out by Germany impairs Colombia's rights under the SPS Agreement, in particular under Article 2 (Basic Rights and Obligations) and Article 5 (Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection).

13. In short, our main concerns about the measure notified by Germany in document G/SPS/N/DEU/9 are as follows:

14. The minimum levels of 3 ppb for roasted coffee and 6 ppb for soluble coffee are exaggerated in comparison, for example, with European countries such as Greece which accept maximum OTA levels of 20 ppb for each type of coffee (Report on Tasks for Scientific Co-operation, January 2002 "Assessment of dietary intake of Ochratoxin A by the population of EU Member States" Directorate-General of Health and Consumer Protection, p.27).

15. The measure is clearly discriminatory, given that the German authorities regulate maximum levels of Ochratoxin A for products such as soluble and roasted coffee but do not regulate products

such as beer and wine, which are consumed in greater quantities than coffee. Moreover, this could be interpreted as constituting an unjustified barrier to trade under the SPS Agreement.

16. Lastly, we would like to thank the Government of Germany for having been sympathetic to our concerns and earnestly request that the measure not be brought into force. Moreover, Colombia would be grateful for replies to the questions it has sent through this Committee.
