

**PANAMA: CONCERNS REGARDING THE INSPECTION
REGIME APPLYING TO IMPORTS OF
PRODUCTS OF ANIMAL ORIGIN**

Questions Posed by Costa Rica

The following communication, dated 27 June 2005, is being circulated at the request of the delegation of Costa Rica.

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1. The Government of Costa Rica requests the Government of Panama to provide risk assessment information and scientific evidence in support of Resolution No. DAL 005-ADM-2005 modifying the sanitary and phytosanitary requirements for importing a series of products, including *dulce de leche* (a caramelized milk spread) and condensed milk. In particular, it inquires what are the scientific grounds and risk assessment on which, pursuant to the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Panama bases its requirement of two on-site plant inspections – one by Ministry of Health officials and another by officials of the Ministry of Agricultural Development (MIDA) – for authorizing imports of *dulce de leche* and condensed milk.
 2. The Government of Costa Rica requests the Government of Panama to explain why the inspection visit and authorization from the Ministry of Health are not sufficient to guarantee the safety of a product such as *dulce de leche* and the reasons for requiring another visit, conducted by MIDA inspectors, for a product of this kind.
 3. The above requests are made having regard to the fact that, according to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, Panama is under the obligation to apply to imports from Costa Rica a measure which, while ensuring product safety, is the least trade-restrictive. Otherwise, such measures would constitute disguised restrictions on free trade.
 4. The Government of Costa Rica's request to the Government of Panama is that Panama's Ministry of Agricultural Development should recognize the Panamanian Ministry of Health certificate as sufficient to guarantee the safety of *dulce de leche* and condensed milk.

PANAMA: CONCERNS REGARDING INSPECTION VISITS REQUIRED FOR PRODUCTS OF ANIMAL ORIGIN FROM COSTA RICA

Communication from Costa Rica

A. BACKGROUND

1. In November 2004, officials of Costa Rica's Ministry of Foreign Trade (COMEX) were contacted by a Costa Rican company, which informed them that it had become impossible to export *dulce de leche* and tomato paste from Costa Rica to the Panamanian market, because the Panamanian customs authorities were retaining shipments of such products on entry, whereas the company had previously been exporting them without any major difficulties.

2. The Costa Rican company's exports of the products had thus far been covered by a sanitary permit from the Panamanian Ministry of Health, which even went as far as to require an inspection visit to the company's plants in Costa Rica before confirming the safety of the products.

3. The sanitary certificate from the Ministry of Health notwithstanding, as of December 2004 the Panamanian authorities began requesting a plant or animal health licence for imports of tomato paste (which had not been the case so far) and a visit by Panama's Ministry of Agricultural Development (MIDA) to inspect the company's plants exporting *dulce de leche* and other products of interest, such as condensed milk.

4. In order to support the company in its dealings with the Panamanian authorities, COMEX sent a note (DVI-268-4) signed by the Vice-Minister to Mr José Manuel Paredes, Panama's Vice-Minister for Trade and Industry, requesting that a solution be found to the problem.

5. Subsequently, Panama's Ministry of Agricultural Development issued note DECA-N-1071 dated 22 December 2004 to inform the general public of the following:

6. "All imports of agricultural goods require a plant or animal health licence from the Executive Directorate of Agricultural Quarantine prior to importation. Failing prior licensing, the goods may not be unloaded in ports or airports or cross border points, and the penalties laid down in the Law shall be applied." The note goes on to state that "products previously listed as exempt from the plant or animal health import licensing requirement shall be granted a licence for a period of 90 days. Once that period has elapsed, imports of such products will be required to comply with the legal provisions with respect to the country's eligibility and plant certification."

7. On 7 January 2005, Panama's Ministry of Agricultural Development adopted Resolution No. DAL 005-ADM-2005, which was notified to the WTO after its entry into effect, by means of document G/SPS/N/PAN/43 dated 15 April 2005. The Resolution establishes sanitary and phytosanitary requirements different from those previously in force for certain products, in particular *dulce de leche* and condensed milk, which used to be imported under sanitary authorization from the Ministry of Health without having to undergo an inspection visit. It should be noted that the Government of Panama gave no opportunity for comments on this new provision, which was notified subsequently to its entry into effect without qualifying as an emergency measure, contrary to the transparency obligations in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

8. Essentially, the new provisions established by the Panamanian authorities in Resolution No. DAL 005-ADM-2005, which apply to imports of products and by-products of animal origin, provide in the Preamble that "the following product classification by plant or animal health risk was

made: List A includes products that do not require a plant or animal health licence for importation into Panama; List B contains products that require a plant or animal health licence for importation into Panama but are exempt from regional, country, area and/or establishment assessment and plant inspection; and other agricultural products that require a plant or animal health licence and that must comply with requirements on regional, country, area and/or establishment assessment and approval and plant inspection and other requirements under Panamanian sanitary and phytosanitary legislation."

9. Further on, the document lists a series of products on List A and products on List B. Tomato paste, the importation of which formerly necessitated no more than a certificate from Panama's Ministry of Health, was included in List B, meaning that from then on a plant or animal health certificate from Panama's Ministry of Agricultural Development was required for the importation of tomato paste.

10. *Dulce de leche* was not included in either of the two lists; consequently, although this product had previously not been subject to any plant or animal health requirement for importation other than the Ministry of Health certificate, the authorities began requiring not only the plant or animal health certificate issued by the Ministry of Agricultural Development but also an on-site plant inspection by agricultural inspectors. The Costa Rican exporter of *dulce de leche* was thus faced with in a new situation, outlined as follows:

- One of its consignments of *dulce de leche* had been retained since November 2004 because the Panamanian customs authorities were not authorizing entry.
- In discussions with the Panamanian authorities in December 2004, the exporter was informed that the certificate of product safety, issued by the Panamanian Ministry of Health on the basis of a plant inspection visit, was no longer sufficient to allow entry of the goods (as had been the case on many occasions in the past) but what was now required was a plant or animal health certificate from the Ministry of Agricultural Development, for which it would be necessary to request another inspection visit.
- Not until January 2005 did the MIDA publish a new regulation establishing Lists A and B and sanitary and phytosanitary requirements different from those in force until then.
- The MIDA notified the WTO of this new regulation in April 1995, thus eliminating any possibility of submitting comments on the regulation before its entry into effect, in violation of the transparency provisions contained in the SPS Agreement.

11. It should be noted that List B includes "*dulces (cheesecake, pasteles y postres congelados) a base de leche*" (milk-based confectionery such as cheesecake, cakes and frozen desserts) among the products subject to a MIDA plant or animal health licence but exempt from the plant inspection requirement. The exportation of *dulce de leche*, however, does require an on-site plant inspection visit, which prompts us to inquire what are the scientific grounds for this change in export conditions to Panama and in particular why a plant inspection visit by the Ministry of Agricultural Development, in addition to that performed by the Ministry of Health, is necessary in order to export *dulce de leche*.

12. Costa Rica's Ministry of Foreign Trade sent notes to the Panamanian trade authorities (DGCE-049-05 - El Ángel and DGCE-062-05 - INLATEC), dated between 26 and 28 January 2005, seeking explanations for a number of difficulties encountered by Costa Rican enterprises to the detriment of their exports of *dulce de leche* and condensed milk to the Panamanian market. These letters have failed to elicit any response from Panama so far.

B. THE QUESTIONS

- The Government of Costa Rica requests the Government of Panama to provide risk assessment information and scientific evidence in support of Resolution No. DAL 005-ADM-2005 modifying the sanitary and phytosanitary requirements for importing a series of products, including *dulce de leche* (a caramelized milk spread) and condensed milk. In particular, it inquires what are the scientific grounds and risk assessment on which, pursuant to the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Panama bases its requirement of two on-site plant inspections – one by Ministry of Health officials and another by officials of the Ministry of Agricultural Development (MIDA) – for authorizing imports of *dulce de leche* and condensed milk.
- The Government of Costa Rica requests the Government of Panama to explain why the inspection visit and authorization from the Ministry of Health are not sufficient to guarantee the safety of a product such as *dulce de leche* and the reasons for requiring another visit, conducted by MIDA inspectors, for a product of this kind.
- The above requests are made having regard to the fact that, according to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, Panama is under the obligation to apply to imports from Costa Rica a measure which, while ensuring product safety, is the least trade-restrictive. Otherwise, such measures would constitute disguised restrictions on free trade.
- The Government of Costa Rica requests the Government of Panama to make the relevant legal and administrative modifications so that the new rules governing plant inspection are consistent with the principles established in the WTO SPS Agreement and Annex C thereto. A measure to that effect would be, for example, for the authorities of Panama's Ministry of Agricultural Development to recognize the Panamanian Ministry of Health certificate as sufficient to guarantee the safety of *dulce de leche* and condensed milk.

C. THE GROUNDS

D. LEGAL BASIS OF CONFORMITY WITH THE WTO AGREEMENTS

13. The above explanations are being requested in conformity with the rights and obligations assumed by Panama and Costa Rica under WTO trade rules.

14. In particular, they are being requested in conformity with the SPS Agreement, according to which:

- The Agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade (Article 1);

- Members have the right to take sanitary measures provided that they are consistent with the provisions of the Agreement, are based on scientific principles, are not maintained without sufficient scientific evidence, do not arbitrarily or unjustifiably discriminate between Members where similar conditions prevail, do not constitute a disguised restriction on international trade and are based on international standards issued by the organizations recognized in the SPS Agreement (Article 2);
- Members may introduce a sanitary measure which results in a higher level of protection than would be achieved by measures based on the relevant international standard if there is a scientific justification, or as a consequence of a risk assessment for the purpose of determining the appropriate level of protection, carried out in accordance with Article 5 of the SPS Agreement;
- Members must ensure that the measures adopted are not more trade-restrictive than required to achieve their appropriate level of sanitary protection (Article 5);
- When a Member has reason to believe that a specific sanitary measure introduced by another Member is constraining its exports and the measure is not based on an international standard, it may request an explanation of the reasons for that measure and the Member maintaining the measure must provide one (Article 5);
- Members are fully responsible for the implementation and observance of all obligations set forth in the SPS Agreement (Article 13);
- The Committee on Sanitary and Phytosanitary Measures is the regular and appropriate forum for consultations on sanitary matters (Article 12).
- Control, inspection and approval procedures must be conducted without undue delay and in no less favourable manner for imported products than for like domestic products, in accordance with Annex C of the SPS Agreement.

E. CONCLUSION

15. In view of the above considerations, the Government of Costa Rica formally requests the authorities of Panama to comply with the provisions of the SPS Agreement and in particular Annex C, in such a way as to ensure that the requisite inspection procedures are conducted without undue delay, so that there are no disguised restrictions on trade.

WORLD TRADE ORGANIZATION

G/SPS/N/PAN/43
15 April 2005

(05-1570)

Committee on Sanitary and Phytosanitary Measures

Original: Spanish

NOTIFICATION

1.	Member to Agreement notifying: <u>REPUBLIC OF PANAMA</u> If applicable, name of local government involved:
2.	Agency responsible: Ministry of Agricultural Development
3.	Products covered (provide tariff item number(s) as specified in national schedules deposited with the WTO; ICS numbers should be provided in addition, where applicable): Resolution No. DAL-005-ADM-2005, Panama, 7 January 2005 (attached) contains the list of products covered.
4.	Regions or countries likely to be affected, to the extent relevant or practicable: Trading partners of Panama.
5.	Title, language and number of pages of the notified document: Resolution No. DAL-005-ADM-2005, Panama, 7 January 2005 (6 pages). This Resolution establishes the following product classification by plant and animal health risk to national agriculture: List A: products that do not require a plant or animal health permit for importation into Panama; List B: products that require a plant or animal health permit for importation into Panama, but which are exempt from regional, country, area and/or establishment assessment and plant inspection; other agricultural products: products that require a plant or animal health import permit and that must comply with requirements on regional, country, area and/or establishment assessment and approval and plant inspection and other requirements under Panamanian sanitary and phytosanitary legislation.
6.	Description of content: Establishes a product classification by plant and animal health risk to national agriculture.
7.	Objective and rationale: [X] food safety, [X] animal health, [X] plant protection, [] protect humans from animal/plant pest or disease, [] protect territory from other damage from pests

8.	<p>International standard, guideline or recommendation: <input type="checkbox"/> Codex Alimentarius Commission, <input type="checkbox"/> World Organization for Animal Health (OIE), <input type="checkbox"/> International Plant Protection Convention, <input checked="" type="checkbox"/> None If an international standard, guideline or recommendation exists, give the appropriate reference and briefly identify deviations:</p>
9.	<p>Relevant documents and language(s) in which these are available: Available in Spanish from the enquiry points notified by Panama. Official Gazette No. 25, 220 of 19 January 2005.</p>
10.	<p>Proposed date of adoption: Not indicated</p>
11.	<p>Proposed date of entry into force: 19 January 2005</p>
12.	<p>Final date for comments: Not applicable Agency or authority designated to handle comments: <input checked="" type="checkbox"/> National notification authority, <input type="checkbox"/> National enquiry point, or address, fax number and E-mail address (if available) of other body:</p>
13.	<p>Texts available from: <input type="checkbox"/> National notification authority, <input checked="" type="checkbox"/> National enquiry point, or address, fax number and E-mail address (if available) of other body: Texts available from the enquiry points notified by Panama.</p> <p>Enquiry point of competent authority Dirección Nacional de Sanidad Animal Río Tapia, Tocumen, Panamá Apartado postal: 5390 Zona 5, Panamá Tel.: (507) 266-1812 Fax: (507) 266-2943 / (507) 220-7981 E-mail: dinasa1@cwpanama.net; dinasa2@cwpanama.net</p> <p>Dirección Nacional de Sanidad Vegetal Río Tapia, Tocumen, Panamá Tel./Fax: (507) 220-7979 and (507) 220-0733 Apartado postal: 5390 Zona 5, Panamá</p> <p>Authority designated to handle comments and responsible for notifications Dirección Nacional de Negociaciones Comerciales Internacionales Avenida Ricardo J. Alfaro, Edison Playa, Piso N° 2 Apartado postal: 378, Zona 3, Panamá Tel.: (507) 360-0690/0600/0700, Ext. 2308-2355 Fax: (507) 360-0691 E-mail: smoreno@mici.gob.pa</p>