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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY BRAZIL

The following communication, dated 15 October 2015, from the delegation of Brazil to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 16 October 2014, Brazil requested 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 ("DSU"), 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"), and Article 19 of the Agreement on Agriculture ("Agriculture Agreement") 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.¹ Brazil held consultations with Indonesia on 15 and 16 December 2014. Those consultations unfortunately failed to settle the dispute.

As a result, Brazil respectfully requests that a Panel be established to examine this matter pursuant to Article 6 of the DSU and Article XXIII:2 of the GATT 1994.

As described below, Indonesia: (I) imposes a general prohibition on the importation of chicken meat and chicken products through the individual and combined operation of WTO-inconsistent measures; and (II) applies several specific prohibitions and restrictions, through i.e. (i) measures imposing trade restrictions which do not conform to or are based on international standards; (ii) measures which are more trade-restrictive than required to achieve its appropriate level of protection; (iii) undue delay with regard to approval procedures; (iv) discriminatory treatment of imported chicken meat and chicken products over domestic like products; (v) restrictions on the importation of chicken meat and chicken products through its import licensing regime; and (vi) inconsistencies with regard to WTO transparency requirements.

I. GENERAL PROHIBITION ON THE IMPORTATION OF CHICKEN MEAT AND CHICKEN PRODUCTS

Indonesia imposes several prohibitions or restrictions on the importation of chicken meat and chicken products which, combined, have the effect of a general prohibition on the importations of these products, as follows:

¹ The products concerned in the present dispute are referred by the following HS codes of the *Gallus Domesticus* species: (i) 0207.11 (whole chicken, not cut into parts, fresh or chilled); (ii) 0207.12 (whole chicken, not cut into parts, frozen); (iii) 0207.13 (chicken cuts and offal, fresh or chilled); (iv) 0207.14 (chicken cuts and offal, frozen) and; (v) 1602.32 (chicken meat, other leftover meat and blood that has been processed or preserved).

- Indonesia does not allow the importation of animal and animal products not listed in the appendices of the relevant regulations². With regard to chicken, the list only contemplates HS codes referred to as whole chicken, fresh or chilled and frozen³. The HS codes for chicken meat cut into pieces⁴ are not described in any of the "positive lists" which contain the products that can be imported into Indonesia's territory;⁵
- Domestic food production (including "staple food"⁶, which encompasses chicken meat and chicken products) and national food reserve are prioritized over food import, which is only authorized as an exception, when domestic food supply in Indonesia is not considered "sufficient" by the government;⁷
- Imports of essential and strategic goods may be prohibited and/or restricted and prices may be controlled by the Indonesian government.⁸ Thus, import and export operations may be postponed by the Minister of Trade during a force majeure event. As chicken meat and chicken products fit into the categories of essential and strategic goods⁹, even if they were allowed to enter into Indonesia, their effective importation would be subject to the discretion of the Minister of Trade;
- The Indonesian government limits the importation of chicken meat and chicken products to certain intended uses. The importation of chicken meat and chicken products shall only be allowed to meet the needs of "hotel, restaurant, catering, manufacturing, other special needs, and modern market";¹⁰
- Indonesia has unduly refused to examine and approve the Health Certificates for poultry products (including chicken meat and chicken products) proposed by Brazil since 2009;
- Indonesia imposes prohibitions and/or restrictions to importation through its Import Licensing Regime.¹¹ In order to import chicken meat and chicken products, importers must obtain import licenses after several approval and overlapping authorization stages, covered by different regulations and authorities; and
- Indonesia establishes an import prohibition through different regulations regarding halal slaughtering and labelling requirements for imported chicken meat and chicken products.¹²

Brazil understands that the legal instruments through which Indonesia maintains these measures are:

- Law of the Republic of Indonesia Number 18/2012 Concerning Food ("Food Law"), in particular Articles 14, 15, 36, 55 and 56;

² The products allowed to be imported by Indonesia are currently listed in the Appendix I and II of MoA Regulation 139/2014 and the Appendix II of MoT Regulation 46/2013.

³ HS Codes 020711 and 020712.

⁴ HS Codes 020713 and 020714.

⁵ Furthermore, the HS code for processed chicken products is not described in the "positive list" of MoA Regulation 139/2014.

⁶ According to Article 1.15 of Law 18/2012 ("Food Law"), the term "staple food" means "[...] food that is intended as the main daily food according to local potential resources and wisdom".

⁷ The determination of self-sufficiency is under the discretion of the Government authorities. The Government is empowered to establish a tax and/or tariff policy in favor of national interests or to regulate the import of staple food (Articles 14, 15, 36, 55 and 56 of Law 18/2012).

⁸ Law 7/2014 ("Trade Law") imposes a number of measures that institutionalize the government's central role in trade management as well as provides further instruments towards government intervention and protectionist actions.

⁹ According to the Trade Law, strategic goods are defined as goods that have "a strategic role in the smooth running of national development".

¹⁰ See Article 32(2) of MoA Regulation 139/2014.

¹¹ Imports of animals and animal products, including chicken cuts, which are not listed in the HS codes described in the positive lists of MoA Regulation 139/2014 and of MoT Regulation 46/2013, are prohibited. Furthermore, through the Trade Law and MoA Regulation 139/2014, the Indonesian government controls the type, quantity, price and use of chicken meat and chicken products allowed to be imported into Indonesia.

¹² See MoA Regulation 139/2014 and Law 33/2014.

- MoT Regulation 46/2013 on Provisions of Import and Export of Animal and Animal Product, in particular Appendix II;
- MoA Regulation Number 139/2014 Regarding Importation of Carcass, Meat, and/or Its Derivatives into the Territory of the Republic of Indonesia ("MoA Regulations 139/2014"), in particular Article 32(2) and Appendix II;
- Law of the Republic of Indonesia Number 7 of Year 2014 Concerning Trade ("Trade Law"), in particular Article 26; and
- Halal Product Assurance Act, Law 33/2014.

as well as any amendments, replacements, related measures, or implementing measures.

Brazil considers that the general import prohibition described above is inconsistent with Indonesia's obligations under the following provisions:

- Article XI:1 of the GATT 1994 as these measures are a "prohibition or restriction other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia;
- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties";
- Article 2.2 of the SPS Agreement, since Indonesia's measures are applied beyond the extent necessary to protect human and animal life, are not based upon scientific principles, and are maintained without sufficient scientific evidence;
- Articles 3.1, 3.2 and 3.3 of the SPS Agreement since the Indonesian measures do not conform to nor are based on international standards, guidelines or recommendations and, without any scientific justification, result in a higher level of sanitary and phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations;
- Articles 5.1, 5.2 and 5.4 of the SPS Agreement since these measures restrict the importation of the products without a proper assessment of the risk;
- Article 5.6 of the SPS Agreement, since Indonesia maintains sanitary measures that are more trade restrictive than required to achieve its appropriate level of protection;
- Article 8 and Annex C of the SPS Agreement as the undue delay impedes the completion of control, inspection and approval procedures towards the importation of chicken meat and chicken products to Indonesia;
- Articles 2.2 of the TBT Agreement as the Indonesian measures are applied with a view to and with the effect of creating unnecessary obstacles to international trade; and
- Articles 3.2 and 3.3 of the Agreement on Import Licensing Procedures, as these measures, combined, have trade-restrictive effects on imports.

II. SPECIFIC RESTRICTIONS AND PROHIBITIONS ON THE IMPORTATION OF CHICKEN MEAT AND CHICKEN PRODUCTS

In addition to the general prohibition on imports of the products at issue, Indonesia also applies individual restrictions and prohibitions on the importation of chicken meat and chicken products.

i Indonesia maintains measures restricting and prohibiting imports of chicken meat and chicken products which do not conform to nor are based on international standards

Indonesia imposes several specific restrictions on the importation of chicken meat and chicken products, which do not conform to nor are based on international standards, guidelines or recommendations. These restrictions derive from the following measures:

- Prohibition on the importation of chicken cuts, as the relevant regulations only allow the whole chicken, fresh or chilled and frozen.¹³ The HS codes for chicken meat cut into pieces¹⁴ are not described in any of the "positive lists" which contain the products that can be imported into Indonesia's territory;
- Limitation of the importation of chicken meat and chicken products to certain intended uses. The importation of chicken meat and chicken products shall only be allowed to meet the needs of "hotel, restaurant, catering, manufacturing, other special needs, and modern market";¹⁵
- Restrictions on the transportation of imported products by limiting the ports of entry for chicken meat and chicken products, and also by requiring direct transportation from the country of origin to the entry points in Indonesia. The transportation requirements for imported chicken meat and chicken products have no scientific justification and appear to be imposed by Indonesia to add further obstacles to the importation of those products.¹⁶

Brazil understands that the legal instruments through which Indonesia maintains these measures are:

- Law N. 18/2009 on Husbandry and Animal Health (" Law 18/2009"), as amended by Law 41/2014;
- MoA Regulation 83/2012, in particular Article 6; and
- MoA Regulation 139/2014, in particular Articles 20(1), 32(1) and Appendix II.

as well as any amendments, replacements, related measures, or implementing measures.

Brazil considers that the measures described above are inconsistent with Indonesia's obligations under the following provisions:

- Articles 3.1, 3.2 and 3.3 of the SPS Agreement since the Indonesian measures do not conform to nor are based on international standards, guidelines or recommendations and, without any scientific justification, result in a higher level of sanitary and phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations;
- Articles 5.1, 5.2 and 5.4 of the SPS Agreement as these measures restrict the importation of the products without a proper assessment of the risk;
- Article 2.2 of the SPS Agreement since Indonesia's measures are applied beyond the extent necessary to protect human and animal life, are not based upon scientific principles, and are maintained without sufficient scientific evidence;
- Article XI:1 of the GATT 1994 as these measures are a "prohibition or restriction other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia; and

¹³ HS Codes 020711 and 020712.

¹⁴ HS Codes 020713 and 020714.

¹⁵ See Article 32(2) of MoA Regulation 139/2014.

¹⁶ See Article 6 of MoT Regulation 83/2012 and Article 20 of MoA Regulation 139/2014.

- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties".

ii. Indonesia maintains measures which are more trade restrictive than required to achieve its appropriate level of protection

Indonesia adopts measures imposing several restrictions on the importation of chicken meat and chicken products, which are more trade-restrictive than necessary to achieve its appropriate level of sanitary protection. These restrictions derive from the following measures:

- Prohibition on the importation of chicken cuts, as the relevant regulations only allow the whole chicken, fresh or chilled and frozen.¹⁷ The HS codes for chicken meat cut into pieces¹⁸ are not described in any of the "positive lists" which contain the products that can be imported into Indonesia's territory;
- Limitation of the importation of chicken meat and chicken products to certain intended uses. The importation of chicken meat and chicken products shall only be allowed to meet the needs of "hotel, restaurant, catering, manufacturing, other special needs, and modern market";¹⁹
- Restrictions on the transportation of imported products by limiting the ports of entry for chicken meat and chicken products, and also by requiring direct transportation from the country of origin to the entry points in Indonesia. The transportation requirements for imported chicken meat and chicken products have no scientific justification and appear to be imposed by Indonesia to add further obstacles to the importation of those products.

Brazil understands that the legal instruments through which Indonesia maintains these measures are:

- Law N. 18/2009 on Husbandry and Animal Health (" Law 18/2009"), as amended by Law 41/2014;
- MoA Regulation 83/2012, in particular Article 6; and
- MoA Regulation 139/2014, in particular Articles 20(1), 32(1) and Appendix II.

as well as any amendments, replacements, related measures, or implementing measures.

Brazil considers that by maintaining measures which are more restrictive than required to achieve its appropriate level of protection Indonesia is in breach of the following WTO provisions:

- Article 5.6 of the SPS Agreement, since Indonesia maintains sanitary measures that are more trade restrictive than required to achieve its appropriate level of protection;
- Article 2.2 of the SPS Agreement, since Indonesia's measures are applied beyond the extent necessary to protect human and animal life, are not based upon scientific principles, and are maintained without sufficient scientific evidence;
- Articles 2.2 of the TBT Agreement as the Indonesian measures are applied with a view to and with the effect of creating unnecessary obstacles to international trade;
- Article XI:1 of the GATT 1994 as these measures are a "prohibition or restriction other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia; and

¹⁷ HS Codes 020711 and 020712.

¹⁸ HS Codes 020713 and 020714.

¹⁹ See Article 32(2) of MoA Regulation 139/2014.

- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties".

iii. Undue Delay with regard to approval procedures

Indonesia has unduly refused to examine and approve the Health Certificates for poultry products (including chicken meat and chicken products) proposed by Brazil. The unjustified delay on the approval procedures has lasted six years. Since 2009, Indonesia has never provided a formal satisfactory answer for the non-approval of the Brazilian health certificates.

Brazil considers that by unduly refusing to proceed with the approval procedures Indonesia is in breach of the following provision:

- Article 8 and Annex C of the SPS Agreement as the undue delay impedes the completion of control, inspection and approval procedures towards the importation of chicken meat and chicken products to Indonesia.

iv. Indonesia maintains measures which discriminate against imported chicken meat and chicken products

Indonesia discriminates chicken meat and chicken products imported from third countries vis-à-vis its domestic like products through the following measures:

- Law 18/2012 establishes that the Indonesian government shall prioritize domestic food production and national food reserve over imports. Most of the provisions of Law 18/2012 are explicitly designed to protect the domestic industries of "Staple Food" products and grant a more favourable treatment to national products in detriment of foreign products;
- Indonesia prohibits the importation of chicken meat cut into pieces²⁰ while domestically produced chicken cuts are largely traded in its domestic market;
- Imported chicken meat and chicken products may only be allowed to enter the Indonesian market to meet specific uses as described in Article 32(2) of MoA Regulation 139/2014: "hotels, restaurants, catering, manufacturing, other special needs and modern market". It means that chicken meat and chicken products will not be allowed to be imported if they are not for the specific purposes established by the relevant legislation. There is no such restriction of use for like domestic products; and
- Surveillance and implementation of halal slaughtering and labelling requirements for imported chicken meat and chicken products established by different Indonesian regulations²¹ are much stricter than the surveillance and the implementation of halal requirements applied to the domestic production in Indonesia.

Brazil understands that the legal instruments through which Indonesia maintains these measures are:

- Law of the Republic of Indonesia Number 18/2012 Concerning Food ("Food Law"), in particular Articles 14, 15, 36, 55 and 56;
- MoT Regulation 46/2013, in particular Appendix II;
- Law 7/2014 ("Trade Law") , in particular Article 26;
- MoA Regulation 139/2014, in particular Articles 13, 21, 32(2) and Appendix II; and
- Halal Product Assurance Act, Law 33/2014.

²⁰ According to the "positive lists" established by the Appendices of MoA Regulation 139/2014 and MoT Regulation 46/2013.

²¹ See MoA Regulation 139/2014 and Law 33/2014.

as well as any amendments, replacements, related measures, or implementing measures.

Brazil considers that the abovementioned measures are inconsistent with Indonesia's obligations under the following provisions:

- Article 2.3 of the SPS Agreement as these measures consist in an arbitrarily and unjustifiably discrimination between imported products in identical or similar conditions to domestic products;
- Articles 2.1 and 2.2 of the TBT Agreement as the Indonesian halal measures accord less favourable treatment to imported products than that accorded to like products of national origin; and
- Article III.4 of GATT 1994 as these measures accord to the imported products less favorable treatment than that accorded to like domestic products.

v. Restrictions on the importation of chicken meat and chicken products through Indonesia's Import Licensing regime

Indonesia's import licensing regime restricts and/or prohibits the importation of chicken meat and chicken products. The importer may obtain an import licensing after several approvals, authorizations and recommendations granted under the discretion of Indonesian authorities, which comprises: (i) an Importer Designation from the Ministry of Trade for animals and animal products; (ii) an animal and animal products Import Recommendation from the Ministry of Agriculture; and (iii) an Import Approval from the Ministry of Trade.

Moreover, Indonesia's trade-restrictive import licensing regime for chicken meat and chicken products includes, but is not limited to, the following measures:

- Importation activities in Indonesia may only be conducted by importer who has the Importer Identity Number (API).²² Along with the requirement of having an API, Indonesia requires the importer who is conducting customs operations to be registered before the Director General of Customs and Excise.²³ Moreover, as chicken is encompassed by the category of "certain products", the importer is subject to the accreditation as a registered importer of "certain products" (IT of Certain Products) under the discretion of the Minister of Trade;²⁴
- Indonesian legislation establishes that Recommendations and Import Approvals are valid for limited time periods. Recommendations are valid until the end of the relevant year, while Import Approvals are valid for periods of three months. Importers may apply for Recommendations and Import Approvals only during limited time periods before the beginning of each period of validity, and Indonesia issues the respective documents only at the beginning of each period. Furthermore, importers must complete all the operations of importation of animals and animal products – covered by the respective Recommendations and Import Approvals – within a given period of validity. Thus, all import operations must be loaded, shipped, transported, delivered, and cleared at the customs within the period for which the related Import Approval is valid (usually only until the end of the relevant year). Indonesia prohibits or restricts the importation of animals and animal products covered by Recommendations and Import Approvals issued for a previous period, which are considered expired;
- When applying for Recommendations and Import Approvals, importers must indicate the specific products to be imported, as well as the quantity, country of origin, port of entry, and intended use. Once issued, Recommendations and Import Approvals specify the type, quantity, country of origin, port of entry, and use of the products that each importer may purchase during the relevant three-month period. Importers are not allowed to import products of a different type, in a greater quantity, from

²² See Article 3, paragraph 1 of MoT Regulation 54/2009.

²³ See MoF Decree 454/2002

²⁴ See Article 3 of MoT Regulation 83/2012.

another country, through a different port, or for a different use than those specified in their Recommendations and Import Approvals;

- The MoA Regulations – and a MoT Recommendation – limit the type and quantity of animal products allowed to be imported by determining the types and quantities of products specified in a Recommendation or Import Approval;²⁵ and
- To secure price stabilization, import licenses may not be granted by the Indonesian authorities to attend its objectives of price policy and import management.

Brazil understands that the legal instruments through which Indonesia maintains these measures are:

- Minister of Finance Decree 454/KMK.04/2002 on registration of Importer ("MoF Decree 454/2002") , in particular Article 1;
- Law 18/2009, as amended by Law 41/2014, in particular Article 59;
- Minister of Trade Regulation N.54/M-DAG/PER/102009 on General Provisions on Import ("MoT regulation 54/2009"), in particular Article 3(1);
- 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"), in particular Articles 2, 3 and 4;
- Regulation of the Minister of Trade No. MoT Regulation 83/M-DAG/PER/12/2012, in particular Articles 3 and 4;
- MoT Regulation 46/2013, in particular Article 9(1) and 11(2); and
- MoA Regulation 139/2014, in particular Articles 4 and 23.

as well as any amendments, replacements, related measures, or implementing measures.

Brazil considers that these measures described above are inconsistent with Indonesia's obligations under the following provisions:

- Article XI:1 of the GATT 1994 as these measures are "prohibitions or restrictions other than duties, taxes or other charges" instituted or maintained on the importation of products into Indonesia;
- Articles 3.2 and 3.3 of the Agreement on Import Licensing Procedures, as these measures, combined, have trade-restrictive effects on imports; and
- Article 4.2 of the Agreement on Agriculture as these measures are "of the kind which have been required to be converted into ordinary customs duties."

vi. Inconsistencies with regard to WTO transparency requirements

By not notifying to the WTO the relevant laws and regulations, Indonesia is in breach with WTO transparency requirements. Considering the lack of notification of several of its relevant legislations, Indonesia is in breach with its obligations under the following provisions:

- Articles X:1 and X:3 of GATT 1994 as Indonesia's laws and regulations are not administered in a uniform, impartial and reasonable manner;

²⁵ See, e.g., Article 28 of MoA Regulation 139/2014 (stating that the quantity of animal product specified in a Recommendation is set by the Ministry of Trade).

- Article 7 and Annex B of the SPS Agreement, as Indonesia did not notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation;
- Article 3.3 of the Agreement on Import Licensing Procedures as the lack of information on the licensing requirements restrict the other Members' and traders' rights to know the basis for granting and/or allocating licenses in Indonesia.

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Therefore, Brazil respectfully requests that the Dispute Settlement Body establish a panel to examine this matter, with standard terms of reference as set out in Article 7.1 of the DSU.
