

1. INTRODUCTION

1.1 Complaint by Brazil

1. On 16 October 2014, Brazil requested consultations with 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), Article 19 of the Agreement on Agriculture, and Article 8 of the Agreement on Preshipment Inspection with respect to the measures and claims set out below.¹

2. Consultations were held on 15 and 16 December 2014. These consultations failed to resolve the dispute.

1.2 Panel Establishment and Composition

3. On 15 October 2015, Brazil requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference.² At its meeting on 3 December 2015, the Dispute Settlement Body (DSB) established a panel pursuant to the request by Brazil in documents WT/DS484/8 and WT/DS484/8/Corr.1, in accordance with Article 6 of the DSU.³

4. The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by Brazil in documents WT/DS484/8 and WT/DS484/8/Corr.1, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁴

5. Argentina, Australia, Canada, Chile, China, the European Union, India, Japan, the Republic of Korea, New Zealand, Norway, Paraguay, the Russian Federation, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), Thailand, the United States, and Viet Nam notified their interest in participating in the Panel proceedings as third parties.

¹ See WT/DS484/1.

² WT/DS484/8 and WT/DS484/8/Corr.1.

³ See WT/DSB/M/371.

⁴ WT/DS484/9.

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6. On 22 February 2016, Brazil requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU. On 3 March 2016, the Director-General accordingly composed the Panel as follows:

Chairperson: Mr Mohammad Saeed

Members: Mr Sufyan Al-Irhayim
Ms Claudia Orozco

7. On 28 April 2016 and 23 May 2016, Oman and Qatar respectively requested to join as third parties. On 25 May 2016, the Panel consulted with the parties. Brazil took the view that neither request should be accepted. Indonesia had no objections to the requests. On 3 June 2016, the Panel informed Oman, Qatar, and the parties of its decision to accept the requests. On 6 June 2016, the Panel informed the other third parties of its decision to accept the requests. The Panel's ruling on the requests is set out in section 7.1.1 below.

1.3 Panel Proceedings

1.3.1 General

8. On 16 March 2016, after consulting with the parties, the Panel adopted its Working Procedures⁵ and timetable.

9. On 22 April 2016 and 10 June 2016, Brazil and Indonesia respectively submitted their first written submissions.

10. On 13 and 15 July 2016, the Panel held its first substantive meeting with the parties. A session with the third parties took place on 14 July 2016. Following the meeting, on 19 July 2016, the Panel sent written questions to the parties and third parties. On the same date, the parties sent written questions to each other. The Panel received the responses to questions on 2 August 2016.

11. On 2 September 2016, Brazil and Indonesia submitted their second written submissions.

12. On 11 and 12 October 2016, the Panel held a second substantive meeting with the parties. Following the meeting, on 21 October 2016, the Panel sent written questions to the parties. The Panel received the responses to those questions on 4 November 2016. The Panel gave the parties an opportunity to comment on each other's responses. The Panel received the comments on 18 November 2016.

13. On 15 December 2016, the Panel issued the descriptive part of its Report to the parties. The Panel issued its Interim Report to the parties on 15 March 2017. The Panel issued its Final Report to the parties on 10 May 2017.

⁵ See the Panel's Working Procedures in Annex A-1.

1.3.2 Preliminary ruling

14. On 10 June 2016, together with its first written submission, Indonesia presented a request for a preliminary ruling concerning certain alleged defects in the panel request and certain inconsistencies between the scope of the panel request and Brazil's first written submission.

15. On 13 June 2016, the Panel invited Brazil to comment on Indonesia's preliminary ruling request. On the same date, the Panel also invited the third parties to comment on Indonesia's preliminary ruling request and to file those comments together with their third-party submissions.

16. On 17 June 2016, the United States, as a third party, provided its views. No other third party provided comments. On 27 June 2016, the Panel received comments from Brazil.

17. On 13 and 15 July 2016, in the course of the first meeting with the parties, the Panel posed questions to both parties in connection with Indonesia's request for a preliminary ruling.

18. On 19 July 2016, the Panel informed the parties of its conclusions with respect to Indonesia's preliminary ruling request. On 27 July 2016, the Panel informed the third parties of its conclusions. The Panel's conclusions as well as the reasoning supporting those conclusions are set out in section 7.1.2 below.

2. FACTUAL ASPECTS

2.1 *The Measures at Issue*

19. This dispute concerns measures imposed by Indonesia on imports of certain chicken meat and chicken products from Brazil.⁶

20. Brazil makes claims against two categories of measures: (i) an alleged general prohibition on the importation of chicken meat and chicken products; and (ii) specific restrictions and prohibitions on the importation of chicken meat and chicken products.

2.1.1 Alleged general prohibition

21. In its panel request, Brazil describes the alleged general prohibition as follows:

Indonesia imposes several prohibitions or restrictions on the importation of chicken meat and chicken products which,

⁶ Brazil describes the products at issue in this dispute as meat and products from fowls of the species *Gallus domesticus*, corresponding to the following HS codes: (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). See Brazil's panel request, p. 1.

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combined, have the effect of a general prohibition on the importation of these products, as follows:

- a. Indonesia does not allow the importation of animal and animal products not listed in the appendices of the relevant regulations⁷. With regard to chicken, the list only contemplates HS codes referred to as whole chicken, fresh or chilled and frozen⁸. The HS codes for chicken meat cut into pieces⁹ are not described in any of the "positive lists" which contain the products that can be imported into Indonesia's territory;¹⁰
- b. Domestic food production (including "staple food"¹¹, 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;¹²
- c. Imports of essential and strategic goods may be prohibited and/or restricted and prices may be controlled by the Indonesian government.¹³ 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 goods¹⁴, even if they were allowed to enter into Indonesia, their effective importation would be subject to the discretion of the Minister of Trade;
- d. 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";¹⁵

⁷ (footnote original) 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.

⁸ (footnote original) HS Codes 020711 and 020712.

⁹ (footnote original) HS Codes 020713 and 020714.

¹⁰ (footnote original) Furthermore, the HS code for processed chicken products is not described in the "positive list" of MoA Regulation 139/2014.

¹¹ (footnote original) 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".

¹² (footnote original) 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).

¹³ (footnote original) 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.

¹⁴ (footnote original) According to the Trade Law, strategic goods are defined as goods that have "a strategic role in the smooth running of national development".

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

- e. 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;
- f. Indonesia imposes prohibitions and/or restrictions to importation through its Import Licensing Regime.¹⁶ 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
- g. Indonesia establishes an import prohibition through different regulations regarding halal slaughtering and labelling requirements for imported chicken meat and chicken products.^{17, 18}

22. In its subsequent submissions, Brazil did not make reference to the last element, identified above, in its description of the alleged general prohibition. Reference to this last element was made, however, when discussing specific restrictions and prohibitions applied by Indonesia to its imports of chicken meat and chicken products. This is discussed in section 7.8 below.

2.1.2 Specific restrictions and prohibitions

23. In addition to the alleged general prohibition on the importation of chicken meat and chicken products, Brazil also challenges a number of individual measures. Four of those individual measures, albeit described in slightly different terms in their own section of the panel request, correspond to items (a), (d), (e), and (f) of the previous section. They pertain respectively to (i) the non-inclusion of certain chicken products in the list of products that may be imported; (ii) the limitation of imports of chicken meat and chicken products to certain intended uses; (iii) Indonesia's alleged undue delay in the approval of health certificates for chicken products; and (iv) Indonesia's import licensing regime.

24. In addition, Brazil challenges two more individual measures:

- a. Surveillance and implementation of halal slaughtering and labelling requirements for imported chicken meat and chicken products established by different Indonesian regulations, which are much stricter than the surveillance and the implementation of

¹⁶ (footnote original) 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.

¹⁷ (footnote original) See MoA Regulation 139/2014 and Law 33/2014.

¹⁸ Brazil's panel request, pp. 1-2. For ease of reference, bullet points in the original were replaced with letters.

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- halal requirements applied to the domestic production in Indonesia¹⁹; and
- b. Restrictions on the transportation of imported products by requiring direct transportation from the country of origin to the entry points in Indonesia.²⁰
25. Brazil's panel request identifies a further two individual measures. However, Brazil has not developed claims in its subsequent submissions in respect of these measures.²¹

2.2 *Other Factual Aspects*

26. During the proceedings, certain legal instruments underlying a number of the measures at issue were either revoked or revoked and replaced. Table 1 below indicates the two legal instruments that are central to this dispute, as identified by Brazil in its panel request, and the corresponding legal instruments that revoked and replaced them, as indicated by the parties in their respective submissions.²²

¹⁹ Brazil's panel request, part II, item No. iv, fourth bullet. See also Brazil's first written submission, paras. 136-139.

²⁰ Brazil's panel request, part II, item Nos. i, third bullet and ii, third bullet. See also Brazil's first written submission, paras. 132-135.

²¹ First, when challenging restrictions on the transportation of imported products, Brazil's panel request also indicates that such restrictions are in place by virtue of "limiting the ports of entry for chicken meat and chicken products". Second, Brazil's panel request refers to Indonesia's failure to notify the relevant laws and regulations constituting an inconsistency with Indonesia's WTO's "transparency requirements".

²² Other legal instruments have also been modified in the course of the proceedings. The changes to those other instruments will be identified, as relevant, in the examination of the different claims.

Table 1. Amendments and revisions in the relevant legal instruments

Panel request ²³ ("first set of legal instruments")	First written submission ²⁴ ("second set of legal instruments")	Second ²⁵ written submission ("third set of legal instruments")
<ul style="list-style-type: none"> MoA 139/2014 of 23 December 2014²⁶ MoT 46/2013 of 30 August 2013²⁷ 	<ul style="list-style-type: none"> MoA 58/2015 of 25 November 2015²⁸ MoT 05/2016 of 28 January 2016²⁹ 	<ul style="list-style-type: none"> MoA 34/2016 of 15 July 2016³⁰ MoT 59/2016 of 15 August 2016³¹

27. The Panel discusses its approach with regard to the changes in the different sets of legal instruments in section 7.2.4 below.

3. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

28. Brazil requests the Panel to find that:

- Indonesia's general prohibition on the importation of chicken meat and chicken products is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture;
- Indonesia's prohibition on the importation of chicken cuts and other prepared or preserved chicken meat is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture;
- Indonesia's restrictions on the use of imported chicken meat and chicken products is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture;

²³ The panel request was filed by Brazil on 15 October 2015. The Panel was established on 3 December 2015.

²⁴ Brazil's first written submission was received by the Panel on 22 April 2016. Indonesia's first written submission was received by the Panel on 10 June 2016.

²⁵ The parties' second written submissions were received on 2 September 2016.

²⁶ See Brazil's first written submission, para. 58. See also Indonesia's second written submission, para. 6.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ See Indonesia's second written submission, para. 32. See also Indonesia's second written submission, para. 6.

³¹ MoT 37/2016, which was enacted on 23 May 2016 amended MoT 05/2016. On 15 August 2016, MoT 5/2016, as amended by MoT 37/2016, was replaced by MoT 59/2016. See Indonesia's second written submission, para. 6.

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- d. Indonesia's restrictive import licensing procedures is inconsistent with Article XI:1 of the GATT 1994, Article 4.2 of the Agreement on Agriculture, and Article 3.2 of the Agreement on Import Licensing Procedures;
- e. Indonesia's restrictive transportation requirements for imported chicken meat and chicken products is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture;
- f. Indonesia's restrictions on the use of imported chicken meat and chicken products is inconsistent with Article III:4 of the GATT 1994;
- g. Indonesia's surveillance and implementation of halal labelling requirements is inconsistent with Article III:4 of the GATT 1994; and
- h. Indonesia's undue delay with regard to the approval of sanitary requirements is inconsistent with Article 8 and Annex C of the SPS Agreement.³²

29. Indonesia requests that the Panel reject Brazil's claims in this dispute in their entirety.³³

4. ARGUMENTS OF THE PARTIES

30. The arguments of the parties are reflected in their executive summaries, provided to the Panel in accordance with paragraph 21 of the Working Procedures adopted by the Panel (see Annexes B-1 and B-2).

5. ARGUMENTS OF THE THIRD PARTIES

31. The arguments of Argentina, Australia, Canada, the European Union, Japan, New Zealand, Norway, Paraguay, Qatar, and the United States are reflected in their executive summaries, provided in accordance with paragraph 22 of the Working Procedures adopted by the Panel (see Annexes C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, and C-10). Chile, China, India, the Republic of Korea, Oman, the Russian Federation, Chinese Taipei, Thailand, and Viet Nam did not submit written or oral arguments to the Panel.

³² Brazil's first written submission, para. 316. See also Brazil's second written submission, para. 225.

³³ Indonesia's first written submission, para. 373. See also Indonesia's second written submission, para. 178.

6. INTERIM REVIEW

6.1 Introduction

32. On 15 March 2017, the Panel issued its Interim Report to the parties. On 29 March 2017, Brazil and Indonesia submitted written requests for the Panel to review aspects of the Interim Report. On 12 April 2017, the parties submitted comments on each other's request for review. Neither party requested an interim review meeting.

33. In accordance with Article 15.3 of the DSU, this section of the Report sets out our response to the parties' requests for review of precise aspects of the Report made at the interim review stage. We discuss the parties' requests for substantive modifications below, in sequential order. In addition to the substantive requests discussed below, we have made editorial and drafting improvements to the Report, including, where relevant, those suggested by the parties.

34. The numbering of some of the paragraphs and the footnotes in the Report has changed from that in the Interim Report. The discussion below refers to the numbering in the Interim Report, and where it differs, the corresponding numbering in the Report is included.

6.2 Preliminary Ruling: Whether the Alleged General Prohibition is Within the Panel's Terms of Reference

35. Regarding **paragraph 7.33**, Indonesia notes that Brazil's panel request does not mention the word "unwritten" and thus requests the Panel to reconcile its description of the measure at issue with that provided in Brazil's panel request. Brazil disagrees with Indonesia and considers that the wording of paragraph 7.33 is adequate. Brazil suggests an alternative wording should the Panel decide to amend this paragraph.

36. We see no need to amend this paragraph as suggested by Indonesia. We are cognizant of the fact that Brazil's panel request does not include the term "unwritten" in its description of the alleged general prohibition. However, we read that description to be referring to an unwritten measure and find confirmation for this in Brazil's submissions. This paragraph of the Interim Report reflects our conclusion, which is based on our understanding of Brazil's panel request.

6.3 Order of Analysis: Whether Article XI of the GATT 1994 and Article 4.2 of the Agreement on Agriculture Are Mutually Exclusive

37. Regarding **paragraph 7.73**, Indonesia requests the Panel to delete its reference to "the exceptions set out" when referring to Article XI:2 of the GATT 1994, because Indonesia considers that this reference could lead to confusion

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about the nature of that provision. Brazil does not comment on Indonesia's request.

38. We accept Indonesia's suggestion, because we agree with Indonesia that the expression "the exceptions set out" may lead to confusion.

6.4 Individual Measure 1: Positive List Requirement

39. Brazil requests the Panel to complement the first sentence of **paragraph 7.149** to reflect more accurately Brazil's suggestion of an alternative less-trade restrictive measure. Indonesia does not comment on Brazil's request.

40. We see no need to amend this paragraph as suggested by Brazil. The language that Brazil requests us to add is not included in the relevant sections of Brazil's submissions referred to in the relevant footnote to this paragraph of the Interim Report. Moreover, in our view, the context provided by the preceding paragraphs makes this addition unnecessary.

41. Regarding **paragraph 7.152**, Brazil requests the Panel to complement this paragraph to clarify that certification does not apply to products whose importation is prohibited by virtue of the positive list requirement. Indonesia does not comment on Brazil's request.

42. We see no need to amend this paragraph as suggested by Brazil. Brazil is requesting us to complement this sentence with an argument developed in the subsequent paragraph of the Interim Report.³⁴ In our view, this addition would disrupt the manner in which we present the question before us.

6.5 Individual Measure 2: Intended Use Requirement

43. Regarding **paragraph 7.207**, Brazil considers that the Interim Report mischaracterizes its argument and requests the Panel to quote directly Brazil's submissions stating that "from a public health perspective, frozen chicken is much safer than fresh chicken because freezing is considered to be a preservation method that inhibits microbial growth and delays metabolic activities". Indonesia requests the Panel not to accept Brazil's proposed change. Indonesia considers that Brazil's argument does not address Indonesia's primary concern, and that it is therefore irrelevant.

44. We made changes to paragraph 7.207 to better summarize Brazil's argument. However, we did not include the requested quote as we consider that Brazil's argument is described in more detail in paragraph 7.211 which also reflects the above statement made by Brazil.³⁵ Furthermore, we slightly

³⁴ See para. 7.153 below, where we explain that "[a]s noted above, chicken cuts that cannot be imported into Indonesia, neither require certification nor need to be traced. A product cannot be certified and banned at the same time. Thus, in respect of the banned products subject to the measure at issue, certification is a new measure, not one that already exists as part of a comprehensive policy."

³⁵ See para. 7.211 below, where we state that "[i]t points to the food safety benefits of freezing meat and submits that □the freezing process the imported chicken undergoes [...] is capable of