



## EUROPEAN UNION – MEASURES CONCERNING THE IMPORTATION OF CITRUS FRUIT FROM SOUTH AFRICA

### REQUEST FOR CONSULTATIONS BY SOUTH AFRICA

The following communication, received on 27 July 2022, from the delegation of South Africa to the delegation of the European Union, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the European Union (EU) pursuant to Article XXIII of the General Agreement on Tariffs and Trade of 1994 (GATT 1994), Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), and Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), concerning the EU's regime governing the importation of citrus fruit from South Africa.

As this request concerns perishable products, South Africa also makes this request pursuant to Article 4.8 of the DSU and reserves its rights thereunder.

Pursuant to Article 4.4 of the DSU, South Africa describes below the reasons for this request, including the identification of the measure at issue and an indication of the legal basis for the complaints.

#### **I IDENTIFICATION OF THE MEASURE AT ISSUE**

The measure at issue is the import restrictions imposed by the EU on citrus fruit from South Africa. In particular, the EU imposes phytosanitary requirements relating to *Thaumatotibia leucotreta* (false codling moth) on the importation of South African citrus fruit.

Until recently, South African citrus fruit was freely imported to the EU provided that it was subject to an effective systems approach or another effective post-harvest treatment to ensure freedom from false codling moth. Accordingly, South Africa developed an effective systems approach, the "Citrus Systems Approach". Oranges and other citrus products have been exported from South Africa to the EU without significant problems under this systems approach.

Recently, the EU has made abrupt and radical changes to the applicable phytosanitary requirements for the importation of oranges and other citrus products from South Africa. As of 14 July 2022, the EU now requires, for the first time, that imports of citrus fruit must undergo specified mandatory cold treatment processes and precooling steps for specific periods (up to 25 days of cold treatment) before importation. In cases, these processes must be conducted in the exporting country before the consignments are shipped. These phytosanitary requirements apply to all imports, irrespective of whether the importing Member has an effective systems approach like South Africa's "Citrus Systems Approach" or has another effective post-harvest treatment to ensure freedom from false codling moth.

The EU's new requirements impose significant changes on the importation of citrus fruit. The EU, however, only provided a 23-day period for implementation of these new requirements. Moreover, these changes are being introduced in the middle of the export season, making implementation even more difficult and time-sensitive.

In addition, there are numerous shipments of citrus fruit *en route* to the EU with phytosanitary certificates issued between the entry into force of the measure and its date of application, that is, from 24 June 2022 to 14 July 2022, which are based on the EU's then prevailing requirements and South Africa's existing systems approach. These shipments will reach the EU after 14 July 2022, by which time the EU's new phytosanitary requirements will apply. The extremely short 23-day period for implementation<sup>1</sup> did not allow sufficient time for producers in South Africa to adapt to the EU's new requirements and for South Africa's National Plant Protection Organization (Department of Agriculture, Land Reform and Rural Development) to have a certification procedure in place that would be adequate to certify compliance with the new requirements.

The EU's measure is contained in the following instruments:

- (i) Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC – which establishes rules to determine the phytosanitary risks posed by any species, strain or biotype of pathogenic agents, animals or parasitic plants injurious to plants or plant products ('pests') and measures to reduce those risks to an acceptable level;
- (ii) Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 – which lists the EU's quarantine pests, protected zone quarantine pests and the EU's regulated non-quarantine pests, and the measures on plants, plant products and other objects to reduce the risks of those pests to an acceptable level;
- (iii) Commission Implementing Regulation (EU) 2022/959 of 16 June 2022 amending Annex VII to Implementing Regulation (EU) 2019/2072 as regards requirements for the introduction into the Union of certain fruits of *Capsicum* (L.), *Citrus* L., *Citrus sinensis* Pers., *Prunus persica* (L.) Batsch and *Punica granatum* L. – which amends the measures on plants, plant products and other objects to reduce the risks of those pests to an acceptable level set out in Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 described in item (ii) above;
- (iv) EFSA Journal, Scientific Opinion, Commodity Risk assessment of Citrus L. fruits from South Africa for *Thaumatotibia leucotreta* under a systems approach, 8 July 2021 – which assesses the likelihood of pest freedom from false codling moth on South African citrus fruit at the point of entry in the EU considering South Africa's systems approach; and
- (v) European and Mediterranean Plant Protection Organization, Pest Risk Analysis for *Thaumatotibia leucotreta*, 21-26630, September 2013 – which assesses, among other things, the probability of entry, establishment, introduction, and spread of the pest, as well as the potential economic consequences and pest risk management options.

South Africa specifies that it is requesting these consultations concerning the EU's import regime on citrus fruit from South Africa as contained in the above instruments, as well as with respect to any other instrument, modifying, supplementing, complementing, developing, or in any manner in addition to or relating to those expressly referred to above.

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<sup>1</sup> Commission Implementing Regulation (EU) 2022/959 of 16 June 2022 amending Annex VII to Implementing Regulation (EU) 2019/2072 as regards requirements for the introduction into the Union of certain fruits of *Capsicum* (L.), *Citrus* L., *Citrus sinensis* Pers., *Prunus persica* (L.) Batsch and *Punica granatum* L. was published in the Official Journal of the European Union on 21 June 2022 (L165, Volume 65, see also G/SPS/N/EU/545/Add.1). Pursuant to Article 2 of this regulation, it entered into force only three days later, on 24 June 2022, and it started to apply 20 days afterwards, as of 14 July 2022.

In addition, this request for consultations is intended to address current EU laws, regulations, policies and practices, as well as any changes or amendments to those laws, regulations, policies or practices that may be in process or may be implemented in the future.

## II LEGAL BASIS FOR THE COMPLAINT

South Africa has significant concerns as to whether the overall changes to this regime are justified. As explained in more detail below, the new EU's requirements are not based on science, lack technical justification, are discriminatory, and are more trade-restrictive than necessary to achieve their objective, among other things.

The EU's import regime on South African citrus fruit as described above appears to be inconsistent with the EU's obligations under the Agreement Establishing the World Trade Organization (WTO Agreement). In particular, the EU's measure would appear to be:

- (i) inconsistent with Article 1.1 of the SPS Agreement, as it is a phytosanitary measure under the SPS Agreement that is not "applied in accordance with the provisions of this Agreement";
- (ii) inconsistent with Article 2.2 of the SPS Agreement, as it is not "based on scientific principles", it is "maintained without sufficient scientific evidence", and it is not "applied only to the extent necessary to protect ... plant life or health";
- (iii) inconsistent with Articles 3.1, 3.2, and 3.3 of the SPS Agreement, to the extent that a relevant international standard exists and the EU has failed to base its measure on it or to provide scientific justification to deviate from it;
- (iv) inconsistent with Articles 5.1, 5.2 and 5.3 of the SPS Agreement, as it is not "based on an assessment, as appropriate to the circumstances, of the risks to ... plant life or health" and does not "take into account" the factors listed in Articles 5.2 and 5.3 of the SPS Agreement;
- (v) inconsistent with Articles 5.5 and 2.3 of the SPS Agreement, to the extent that the EU makes "arbitrary or unjustifiable distinctions in the levels it considers appropriate in different situations" and "discriminate[s] between Members where identical or similar conditions prevail";
- (vi) inconsistent with Article 5.6 of the SPS Agreement, as the EU's measure is "more trade-restrictive than required";
- (vii) not covered by Article 5.7 of the SPS Agreement, as the EU is not in a situation "where relevant scientific evidence is insufficient"; and, in any event, the EU does not comply with any of the requirements set forth in this provision;
- (viii) inconsistent with Articles 6.1 and 6.2 of the SPS Agreement, as the EU fails to adapt its import regime for South African citrus fruit to the "phytosanitary characteristics of the area ... to which the product is destined";
- (ix) inconsistent with Article 7, and paragraph 2 of Annex B to the SPS Agreement, because, in a situation in which no "urgent circumstances" apply, the EU does not allow a reasonable interval between the publication of a phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, like South Africa, to adapt their products and methods of production to the requirements of the importing Member;
- (x) inconsistent with Article 8 and Annex C of the SPS Agreement, to the extent that the EU does not comply with its obligations regarding control, inspection and approval procedures, including, but not limited to, completion of procedures without undue delay, limitation of information requirements to what is necessary and reasonable, and that, whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product

is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned;

- (xi) inconsistent with Article 10.1 and 10.2 of the SPS Agreement, because the EU did not take account of the special needs of South Africa, a developing country Member, in the preparation and application of the measure. In addition, in a situation in which the appropriate level of phytosanitary protection allows the scope for the phased introduction of new phytosanitary measures, the EU did not provide longer time-frames for compliance on products of interest to South Africa so as to maintain opportunities for its exports of citrus fruit.
- (xii) inconsistent with Article XI:1 of the GATT 1994, as the EU's measure constitutes a "restriction ... on the importation" of citrus fruit from South Africa;
- (xiii) inconsistent with Articles I:1 and III:4 of the GATT 1994, to the extent that the EU discriminates between like products from different origins;
- (xiv) inconsistent with Article X:3(a) of the GATT 1994, as the EU fails to apply it in a "uniform, impartial and reasonable manner".

South Africa notes that these consultations might give rise to other matters having legal implications that are not expressly stated in this request but relate to other WTO obligations of the EU. With a view to facilitating a wide-ranging exchange of views, South Africa notes that, if such were to be the case, these matters would also be covered by the scope of this request for consultations.

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I look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations.

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