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**COLOMBIA – ANTI-DUMPING DUTIES ON FROZEN FRIES
FROM BELGIUM, GERMANY AND THE NETHERLANDS**

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE EUROPEAN UNION

REQUEST FOR THE ESTABLISHMENT OF A PANEL

The following communication, dated 14 November 2024, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 31 May 2024, the European Union (EU) requested consultations with the Republic of Colombia (Colombia) pursuant to Articles 1, 4 and 21.5 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), concerning the anti-dumping (AD) duties on certain imports of potatoes, prepared or preserved (otherwise than by vinegar or acetic acid), frozen (frozen fries) originating from Belgium, Germany and the Netherlands imposed by Colombia.

The consultations took place on 25 June 2024 and failed to resolve the dispute. Hence the EU is requesting the establishment of the panel pursuant to Article 21.5 DSU.

The European Union (EU) also refers to the "Agreed Procedures under Article 21 and 22 of the Dispute Settlement Understanding", dated 10 October 2023 (Sequencing Agreement), which apply "for the exclusive purposes of this dispute" and in particular paragraphs 1 and 2 thereof, which govern the procedures for the Parties to proceed with the establishment of a panel for purposes of compliance proceedings in this dispute¹.

This request for establishment of the panel is made with respect to a "disagreement", under Article 21.5 of the DSU, "as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" in the Award, and in the Panel Report as modified by the Award in DS591: Colombia — Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands (DS591 Colombia — Frozen Fries). Pursuant to Article 25.4 of the DSU, Article 21.5 of the DSU applies *mutatis mutandis* to the Arbitration Award in this dispute.

The Award of the Arbitrators in DS591 - Colombia — Anti-Dumping Duties on Frozen Fries (WT/DS591/ARB25 and WT/DS591/ARB25/Add.1) (Award of the Arbitrators) was issued and notified to the Dispute Settlement Body (DSB) on 21 December 2022. The Arbitrators recommended that Colombia bring into conformity with the Anti-Dumping Agreement those measures found in the Award, and in the Panel Report as modified by the Award, to be inconsistent with that Agreement.²

The measures that the EU would like to address in the proceeding (the "measures at issue" or "measures taken to comply") are the anti-dumping duties imposed by Colombia on imports of potatoes, prepared or preserved (otherwise than by vinegar or acetic acid), frozen (frozen fries),

¹ WT/DS591/11.

² The Panel, pursuant to Article 19.1 of the DSU, recommended that Colombia bring its measures into conformity with its obligations under the GATT 1994 and the Anti-Dumping Agreement.

originating in Belgium, the Netherlands and Germany. The measures at issue include, and are evidenced by, the following instruments/documents:

- Ministry of Trade, Industry and Tourism Resolution 065 of 10 April 2023³, published in Official Journal 52.362 of 11 April 2023⁴;
- Ministry of Trade, Industry and Tourism Technical Report, Public Version, of the Administrative Review to Comply with the Report Issued by the World Trade Organization – WTO Panel and the Final Arbitration Ruling Handed Down in Case DS-591, 2023, sent to the European Commission on 18 October 2023 for interested parties to comment on⁵;
- Ministerial Resolution 286 finalising the administrative review initiated by Resolution 065 of 10 April 2023⁶ published in the Official Journal 52.588 of 23 November 2023⁷;
- Ministry of Trade, Industry and Tourism Technical Report, Public Version, of the Administrative Review to Comply with the Report Issued by the World Trade Organization – WTO Panel and the Final Arbitration Ruling Handed Down in Case DS-591, 2023, placed on the public file on or after 23 November 2023⁸.

This request also covers any annexes thereto, notices, preliminary findings, reviews, amendments, supplements, replacements, renewals, extensions, implementing measures or any other related measures.

By using flawed methodologies for calculating dumping in its measures taken to comply, Colombia artificially created and/or inflated dumping margins for the exporting producers. On this basis, the measures at issue appear to be inconsistent with Colombia's obligations under the following provisions of the Anti-Dumping Agreement and the GATT 1994:

1. Article 2.4.2 of the Anti-Dumping Agreement because Colombia, in its implementation, has not established the existence of margins of dumping on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. Instead, Colombia has established the existence of margins of dumping on the basis of a comparison of a simple average normal value with a weighted average of prices of export transactions.
2. Articles 2.4 and 2.1, in particular in light of paragraph 3 of Annex II of the Anti-Dumping Agreement because, with respect to an exporting producer, Colombia did not perform a fair comparison between the export price and the normal value. In particular, for the comparison regarding transactions in certain product types, Colombia wrongly used arbitrarily selected domestic transactions within the product type, disregarding the complete and reliable data provided by the exporter for all other relevant domestic transactions in that same product type.
3. Articles 1 and 9.3 of the Anti-Dumping Agreement and Article VI of the GATT 1994 as a consequence of the breaches of the Anti-Dumping Agreement described in paragraphs 1. and 2. above.

³ <https://www.mincit.gov.co/getattachment/58b980c6-23f7-4e2b-8382-20a93c919304/Resolucion-065-del-10-de-abril-de-2023.aspx> , last accessed on 19 September 2024.

⁴ <https://svrpubindc.imprenta.gov.co/diario/index.xhtml> , pages 6 – 9, last accessed on 19 September 2024.

⁵ <http://srvcalidad.mincomercio.gov.co/Practicas-Comerciales/Mincomercio/rev-ad-papa-2023-T1.pdf> , pages 543 – 641, last accessed on 19 September 2024.

⁶ <https://www.mincit.gov.co/getattachment/7df676b8-c5ab-4792-a988-f77ca562db4f/Resolucion-286-del-21-de-noviembre-de-2023.aspx> , last accessed on 19 September 2024.

⁷ <https://svrpubindc.imprenta.gov.co/diario/index.xhtml;jsessionid=5d1a778f0169ddb2c8181e2ecf52> , pages 14 – 21, last accessed on 19 September 2024.

⁸ <http://srvcalidad.mincomercio.gov.co/Practicas-Comerciales/Mincomercio/rev-ad-papa-2023-T1.pdf> , pages 753 – 869, last accessed on 19 September 2024.

In light of the foregoing, it appears that the measures taken by Colombia to comply with the recommendations and rulings of the panel and the Arbitrators in DS591 Colombia — Frozen Fries are inconsistent with its obligations under the Anti-Dumping Agreement and the GATT 1994. The measures taken by Colombia adversely affect exports to Colombia of frozen fries from Belgium, Germany and the Netherlands and also nullify or impair the benefits accruing to the European Union and its Member States, directly or indirectly, under the covered agreements.

The European Union respectfully requests that the Panel be established at the next DSB meeting in accordance with Article 21.5 of the DSU and of the Sequencing Agreement. The European Union recalls that Article 21.5 of the DSU provides that this matter shall be decided through recourse to the DSU, including wherever possible resort to the original panel.
