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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 CONSULTATIONS

The following communication, dated 31 May 2024, from the delegation of the European Union to the delegation of Colombia, is circulated to the Dispute Settlement Body in accordance with Article 21.5 of the DSU.

My authorities have instructed me to request 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 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 paragraph 1 thereof, which governs the procedures for the Parties to consult for purposes of compliance proceedings in this dispute.

This request for consultations 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.¹

On 10 March 2023, Colombia and the European Union informed the DSB that they had agreed that the reasonable period of time (RPT) for Colombia to implement the recommendations of the Award of the Arbitrators would expire on 5 November 2023 (WT/DS591/10).

¹ 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.

By Resolution 065 of 10 April 2023², published in Official Journal 52.362 of 11 April 2023³, the Foreign Trade Directorate of the Ministry of Trade, Industry and Tourism (MINCIT) ordered 'the launch of an administrative procedure for the purpose of complying with the World Trade Organization (WTO) Panel ruling and the arbitration award in the appeal in case DS-591'. On 21 November 2023, Colombia published Ministerial Resolution 286 finalising the administrative review initiated by Resolution 065 of 10 April 2023⁴ published in the Official Journal 52.588 of 23 November 2023⁵.

On 7 December 2023 Colombia circulated its Status Report under Article 21.6 of the DSU regarding the implementation of the Award of the Arbitrators in this dispute (WT/DS591/12) and claimed that "it has now fully implemented all of the relevant panel and arbitral findings and has complied with its WTO obligations". According to the Status Report "Colombia revised several aspects of the original determination in order to comply with the adverse findings concerning the dumping margin calculation, the injury and causation analyses, as well as confidentiality" and "concluded that the anti-dumping duties at issue should be continued, on the basis of the modifications made".

The European Union disagrees with Colombia as to the consistency with the covered agreements of the measures Colombia has taken to comply with the rulings of the panel and the Arbitrators in DS591 - Colombia — Frozen Fries, as detailed below.

The measures that the EU would like to address in the consultations (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), 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 2023⁶, published in Official Journal 52.362 of 11 April 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, 2023⁸;
- Ministerial Resolution 286 finalising the administrative review initiated by Resolution 065 of 10 April 2023⁹ published in the Official Journal 52.588 of 23 November 2023¹⁰.

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

² <https://www.mincit.gov.co/getattachment/58b980c6-23f7-4e2b-8382-20a93c919304/Resolucion-065-del-10-de-abril-de-2023.aspx> , last accessed on 22 April 2024

³ <https://svrpubindc.imprenta.gov.co/diario/index.xhtml> , pages 6 – 9, last accessed on 22 April 2024.

⁴ <https://www.mincit.gov.co/getattachment/7df676b8-c5ab-4792-a988-f77ca562db4f/Resolucion-286-del-21-de-noviembre-de-2023.aspx> , last accessed on 22 April 2024.

⁵ <https://svrpubindc.imprenta.gov.co/diario/index.xhtml?jsessionid=5d1a778f0169ddb2c8181e2ecf52> , pages 14 – 21, last accessed on 22 April 2024.

⁶ <https://www.mincit.gov.co/getattachment/58b980c6-23f7-4e2b-8382-20a93c919304/Resolucion-065-del-10-de-abril-de-2023.aspx> , last accessed on 22 April 2024.

⁷ <https://svrpubindc.imprenta.gov.co/diario/index.xhtml> , pages 6 – 9, last accessed on 22 April 2024.

⁸ <http://svrcalidad.mincomercio.gov.co/Practicas-Comerciales/Mincomercio/rev-ad-papa-2023-T1.pdf> , pages 543 – 641, last accessed on 22 April 2024.

⁹ <https://www.mincit.gov.co/getattachment/7df676b8-c5ab-4792-a988-f77ca562db4f/Resolucion-286-del-21-de-noviembre-de-2023.aspx> , last accessed on 22 April 2024.

¹⁰ <https://svrpubindc.imprenta.gov.co/diario/index.xhtml?jsessionid=5d1a778f0169ddb2c8181e2ecf52> , pages 14 – 21, last accessed on 22 April 2024.

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 Article 2.2, footnote 2, Article 2.4.2, Article 2.6 and paragraph 3 of Annex II of the Anti-Dumping Agreement because, with respect to certain exporting producers, Colombia did not perform a fair comparison between the export price and the normal value. In particular, for the comparison regarding certain transactions in certain product types Colombia wrongly used a normal value based on arbitrarily selected transactions within the product type, disregarding all other relevant transactions.
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.

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 reserves the right to address additional measures and claims under other provisions of the covered agreements regarding the above matters during the course of consultations.

The European Union looks forward to receiving Colombia's reply to this request and to finding a mutually convenient date for the consultations in line with the principles included in the Sequencing Agreement.
