



28 January 2025

(25-0659)

Page: 1/4

Original: English

**PANAMA – MEASURES CONCERNING THE IMPORTATION OF
CERTAIN PRODUCTS FROM COSTA RICA**

**NOTIFICATION OF AN APPEAL BY PANAMA UNDER ARTICLE 16.4 AND ARTICLE 17
OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE
SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 20(1) OF THE
WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 24 January 2025, from the delegation of Panama, is being circulated to Members.

-
1. Pursuant to Articles 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures for Appellate Review (WT/AB/WP/6) (Working Procedures), Panama notifies the Dispute Settlement Body (DSB) of its decision to appeal certain issues of law and legal interpretation in the report of the Panel in *Panama – Measures Concerning the Importation of Certain Products from Costa Rica* (WT/DS599) (Panel Report).
 2. In accordance with Rules 20(1) and 21(1) of the Working Procedures, Panama files this Notice of Appeal together with its Appellant's Submission.
 3. As there are no Appellate Body Members to compose a Division to hear Panama's appeal at this time, Panama awaits further instructions from the Division, once composed, on any further steps to be taken by Panama in this appeal. Panama reserves the right to re-file or amend this Notice of Appeal and its Appellant's Submission.
 4. The dispute concerns certain measures imposed by Panama on imports of (a) strawberries; (b) dairy and meat products; (c) pineapples; and (d) plantains and bananas from Costa Rica.
 5. The issues raised in this appeal pertain to the Panel's findings and conclusions regarding:
 - Panama's approval procedures for dairy and meat establishments;
 - Panama's temporary suspension of imports of Costa Rican bananas and plantains; and
 - Panama's temporary suspension of imports of Costa Rican strawberries.
 6. Panama's decision not to appeal any issue in the Panel Report does not imply agreement with it.
 7. Pursuant to Rule 20(2)(d)(iii) of the Working Procedures, this Notice of Appeal provides an indicative list of the paragraphs of the Panel Report containing the alleged errors of law and legal interpretation developed by the Panel, without prejudice to Panama's ability to rely on other paragraphs of the Panel Report in its appeal.

I. REVIEW OF THE PANEL'S FINDINGS REGARDING PANAMA'S APPROVAL PROCEDURES FOR DAIRY AND MEAT ESTABLISHMENTS

8. Regarding Panama's approval procedures for dairy and meat establishments, Panama seeks review by the Appellate Body of the Panel's conclusions that:

- Panama's approval procedures are inconsistent with the first sentence of Article 2.3 of the SPS Agreement because they arbitrarily and unjustifiably discriminate against 16 establishments in Costa Rica compared to establishments in Peru and New Zealand.¹
- Panama's approval procedures are inconsistent with Articles 5.6 and 2.2 of the SPS Agreement because they are more trade-restrictive than required to achieve Panama's appropriate level of protection (ALOP) and do not apply only to the extent necessary to protect human and animal life or health.²

9. The Panel's errors of law and legal interpretation in reaching the above conclusions are detailed below.

10. As regards the Panel's conclusion that Panama's approval procedures for dairy and meat establishments are inconsistent with Article 2.3 of the SPS Agreement, the Panel erred in finding as relevant for purposes of its analysis under Article 2.3 conditions that are unrelated to the regulatory objective of the measure at issue, namely, the risk of non-fulfilment of Panama's sanitary or zoo sanitary requirements.³

11. As regards the Panel's conclusion that Panama's approval procedures are inconsistent with Articles 5.6 and 2.2 of the SPS Agreement, the Panel's errors of law and legal interpretation include:

- The Panel erred in finding that the disciplines under Articles 5.6 and 2.2 of the SPS Agreement are *applicable* to the operation of Panama's establishment approval procedures.⁴
- Even if Articles 5.6 and 2.2 of the SPS Agreement are applicable to the operation of Panama's establishment approval procedures (*quod non*), the Panel erred in finding that Costa Rica's proposed alternative would achieve Panama's ALOP.⁵

12. Accordingly, Panama respectfully requests the Appellate Body to reverse these findings of the Panel and consequently reverse the Panel's ultimate conclusion that Panama's establishment approval procedures are inconsistent with Articles 2.2, 2.3 and 5.6 of the SPS Agreement.

II. REVIEW OF THE PANEL'S FINDINGS REGARDING COSTA RICAN BANANAS AND PLANTAINS

13. Regarding Panama's temporary suspension of imports of Costa Rican bananas and plantains, Panama seeks review by the Appellate Body of the Panel's conclusions that:

- The objective of the measure is not to protect against the risk of Foc TR4 entering Panama, but to protect against unspecified phytosanitary risks.⁶
- The measure at issue does not constitute a provisional measure covered by Article 5.7 of the SPS Agreement because it was not adopted in a situation of insufficient relevant scientific evidence.⁷

¹ Panel Report, paras. 7.797 and 8.1.c.vii

² Panel Report, paras. 7.856, 7.859, 8.1.c.x and 8.1.c.xi.

³ Panel Report, paras. 7.730, 7.741, 7.742, 7.748 and fn. 1627, 7.750, 7.752, 7.756, 7.757, 7.758, 7.764.

⁴ Panel Report, para. 7.551.

⁵ Panel Report, paras. 7.844-7.850.

⁶ Panel Report, paras. 7.1211 and 7.1234.

⁷ Panel Report, paras. 7.1291 and 8.1.e.ii. Panama also appeals the Panel's conclusions that the measure at issue is inconsistent with Articles 5.1, 5.2, 5.3 and 2.2 of the SPS Agreement. These conclusions

- The measure at issue is inconsistent with Article 5.6 of the SPS Agreement because it is more trade-restrictive than required to achieve Panama's ALOP.⁸

14. The Panel's errors of law and legal interpretation in reaching the above conclusions are detailed below.

15. As regards the Panel's conclusion that the objective of the measure at issue is not to protect against the risk of Foc TR4 entering Panama, but to address unspecified phytosanitary risks, the Panel's errors of law include:

- The Panel erred in finding that the notes through which Panama identified Costa Rica of the measure explicitly identifies its objective.⁹
- The Panel erred in finding that neither the events leading up to the measure's adoption nor Panama's communications to Costa Rica thereafter demonstrate that the measure's objective is to protect against the risk of Foc TR4 entering Panama.¹⁰

16. As regards the Panel's conclusion under Article 5.7 of the SPS Agreement, the Panel erred by applying Article 5.7 to a measure with a different phytosanitary objective than the one actually pursued and subsequently finding that there was no situation of insufficient relevant scientific evidence concerning the unspecified risks that Panama was seeking to address.¹¹

17. As regards the Panel's conclusion under Article 5.6 of the SPS Agreement, the Panel erred by applying Article 5.6 to a measure with a different phytosanitary objective than the one actually pursued and subsequently finding that the measure at issue is more-trade restrictive than required to achieve Panama's ALOP.¹²

18. Accordingly, Panama respectfully requests the Appellate Body to reverse the findings of the Panel referred to in paragraph 13 above, and consequently declare moot and of no legal effect the Panel's conclusion that Panama's temporary suspension of imports of Costa Rican bananas and plantains is not covered by Article 5.7 and inconsistent with Articles 2.2, 5.1, 5.2, 5.3, and 5.6 of the SPS Agreement.

III. REVIEW OF THE PANEL'S FINDINGS REGARDING COSTA RICAN STRAWBERRIES

19. Regarding Panama's temporary restriction of imports of Costa Rican strawberries, Panama seeks review by the Appellate Body of the Panel's conclusion that this measure does not constitute a provisional measure covered by Article 5.7 of the SPS Agreement because it was not adopted on the basis of available pertinent information.¹³

20. The Panel's errors of law and legal interpretation include:

- The Panel erred in its interpretation of the term "pertinent information" within the meaning of Article 5.7 to include information of a general nature that does not address the specific risk in question.¹⁴

are consequential upon the Panel's finding that the measure does not constitute a provisional measure covered by Article 5.7 of the SPS Agreement. The Panel's conclusions under Articles 5.1, 5.2, 5.3 and 2.2 of the SPS Agreement are found in paras. 7.1309, 8.1.e.iii - 8.1.e.v, and 8.1.e.vii of the Panel Report.

⁸ Panel Report, paras. 7.1355 and 8.1.e.vi. Panama also appeals the Panel's conclusion that the measure at issue is inconsistent with Article 2.2 of the SPS Agreement because it is not applied only to the extent necessary to protect plant life or health. This conclusion is consequential upon the Panel's finding that the measure is inconsistent with Article 5.6 of the SPS Agreement. The Panel's conclusion under Article 2.2 of the SPS Agreement is found in paras. 7.1358 and 8.1.e.vii of the Panel Report.

⁹ Panel Report, para. 7.1214.

¹⁰ Panel Report, para. 7.1234.

¹¹ Panel Report, para. 7.1291.

¹² Panel Report, para. 7.1355.

¹³ Panel Report, paras. 7.300 and 8.1.b.ii.

¹⁴ Panel Report, para. 7.225.

- Consequently, the Panel erred in finding that the two Codex Guidelines in question, i.e., Guidelines CAC/GL 26-1997 and CAC/GL 47-2003, constitute "pertinent information" within the meaning of Article 5.7 of the SPS Agreement.¹⁵
- Even if the Codex Guidelines CAC/GL 26-1997 and CAC/GL 47-2003 constitute "pertinent information" within the meaning of Article 5.7 of the SPS Agreement (*quod non*), the Panel erred in its application of Article 5.7 in finding that the measure at issue is not "based on" these Guidelines.¹⁶

21. Accordingly, Panama respectfully requests the Appellate Body to reverse the findings of the Panel referred to in paragraph 19 above.

¹⁵ Panel Report, para. 7.231.

¹⁶ Panel Report, paras. 7.238, 7.247, 7.249, 7.263, and 7.299.