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Page: 1/8

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

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY SOUTH AFRICA

The following communication, dated 13 June 2024, from the delegation of South Africa to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 22 July 2022, South Africa requested consultations with the European Union (EU)¹ 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), with respect to certain aspects of the EU's regime for the importation of citrus fruit from South Africa. As the consultations request concerned perishable products, South Africa also requested consultations pursuant to Article 4.8 of the DSU and reserved its rights thereunder.

Consultations between South Africa and the EU, with a view to reaching a satisfactory settlement of the matter, were held on 15 and 16 September 2022. Unfortunately, consultations have failed to settle the dispute.

As a result, South Africa intends to request the establishment of a panel at the 24 June 2024 meeting of the Dispute Settlement Body (DSB) to examine the matter described below. South Africa, therefore, asks that this panel request, pursuant to Articles 4 and 6 of the DSU, Article 11.1 of the SPS Agreement, and Article XXIII of the GATT 1994, be placed on the agenda for that DSB meeting. As this panel request concerns perishable products, South Africa also makes this request pursuant to Article 4.8 of the DSU and reserves its rights thereunder.

I. THE MEASURES AT ISSUE

This panel request concerns certain aspects of the EU's regime for the importation of citrus fruit from South Africa, as described below. In particular, the EU imposes import restrictions on South African citrus fruit by reason of the pest *Thaumatotibia leucotreta* (Meyrick) (False Codling Moth or FCM). FCM is an insect from the *Tortricidae* family, whose larvae feed in fruits and flower buds.

For decades, and despite reported interceptions by EU Member States, citrus fruit originating in countries in which FCM was present were freely imported into the EU without any phytosanitary requirements specific to FCM.² However, the EU currently applies rigid phytosanitary requirements specific to FCM, including the mandatory application of specified cold treatment and precooling steps before the importation of fruit of *Citrus sinensis* Pers. (sweet oranges) from South Africa (or any other country in which FCM is present, except for Israel). The same rigid requirements, however, are not applied to other FCM hosts (for example, roses and peppers) on which this pest has been frequently intercepted.

¹ See WT/DS613/1; G/L/1430; G/SPS/GEN/2056 (29 July 2022).

² The previous EU's plant protection regime was reflected in Council Directive 2000/29/EC, which did not initially include FCM in the lists of harmful organisms.

The EU's restrictions were imposed as a result of the European and Mediterranean Plant Protection Organization Pest Risk Analysis for *Thaumatotibia leucotreta* (21-26630), which was published in September 2013 (2013 EPPO Risk Assessment).³ According to this risk assessment, FCM was listed as a pest recommended for regulation as a quarantine pest.

In 2017, the EU included FCM as a "harmful organism" under its then applicable plant protection regime and laid down special requirements for the importation of citrus fruit into the EU to ensure freedom from FCM.⁴ Furthermore, in 2019, the EU provided for additional special requirements in relation to FCM in Commission Implementing Directive (EU) 2019/523⁵, which were to remain in force until 13 December 2019. On 14 December 2019, the EU's new and current plant protection regime entered into force⁶ and FCM was included in the "List of priority pests" of Commission Delegated Regulation (EU) 2019/1702.⁷

This new plant protection regime was implemented through the adoption of EU Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 regarding the listing of Union quarantine pests, protected zone quarantine pests and Union 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. This Regulation also categorised FCM as a "Union quarantine pest".⁸ Furthermore, in its Annex VII, point 62, the Regulation replicated the special requirements for the introduction of citrus fruit in the EU's territory to ensure freedom from FCM that had previously been stipulated in Commission Implementing Directive (EU) 2019/523.⁹ In accordance with point 62 of Annex VII to Regulation (EU) 2019/2072, since January 2018, South Africa has applied a systems approach (i.e., the Citrus FCM Management System or FMS) to ensure the freedom of its citrus fruit exports from FCM.

After the adoption of Regulation (EU) 2019/2072, the EU Commission requested the European Food Safety Authority (EFSA) to provide a scientific opinion assessing the level of certainty to which South Africa's systems approach ensures freedom from FCM (the 2021 EFSA Opinion), allegedly because

³ See 2013 EPPO Risk Assessment, <https://pra.eppo.int/pra/9305d7ed-2788-46dc-882d-b4641fa24fff>. See also EPPO A2 List of pests recommended for regulation as quarantine pests, https://www.eppo.int/ACTIVITIES/plant_quarantine/A2_list.

⁴ See Annex to the EU Commission Implementing Directive 2017/1279 of 14 July 2017 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (Directive No. 2017/1279). See also European Parliament Resolution of 15 December 2016 (D047308/01 – 2016/3010(RSP)).

⁵ See Annex to Commission Implementing Directive (EU) 2019/523, which amended, *inter alia*, Part A, Section I of Annex IV, point 16.6 (a) – (d) of Council Directive 2000/29/EC.

⁶ Regulation (EU) 2016/2031 of the European Parliament and 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. This regulation was to replace the existing EU's plant protection regime under Council Directive 2000/29/EC of 8 May 2000.

⁷ See Annex of Commission Delegated Regulation (EU) 2019/1702 of 1 August 2019 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by establishing the list of priority pests.

⁸ See Article 1 and Annex II (item 71) in the EU 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 (Regulation (EU) 2019/2072). As a result of the adoption of Commission Implementation Regulation (EU) 2021/2285 of 14 December 2021, Annex II, Part A of Regulation (EU) 2019/2072 was amended by listing FCM as Point 78 under Part A.3 of that Annex with effect from 11 April 2022.

⁹ See Annex to Commission Implementing Directive (EU) 2019/523, which introduced point 16.6 in Annex IV, Part A of Directive 2000/29/EC. Point 62.d of Annex VII to Regulation (EU) 2019/2072 allowed the importation of citrus fruit from South Africa into the EU to the extent that imports were accompanied by an official statement "that the fruits have been subjected to an effective cold treatment to ensure freedom from *Thaumatotibia leucotreta* (Meyrick) or an effective systems approach or another effective post-harvest treatment to ensure freedom from *Thaumatotibia leucotreta* (Meyrick) and the use of a systems approach or details of the treatment method are indicated on the phytosanitary certificate referred to in Article 71 of Regulation (EU) No 2016/2031, provided that the systems approach or the post-harvest treatment method together with documentary evidence of its effectiveness has been communicated in advance in writing to the Commission by the national plant protection organisation of the third country concerned".

the number of FCM interceptions of South African citrus fruit remained high.¹⁰ South Africa received the 2021 EFSA Opinion on 17 August 2021. South Africa shared with the EU authorities the technical comments on this Opinion of two anonymous reviewers. EFSA did not modify its 2021 Opinion on the basis of South Africa's comments.

South Africa made improvements to its systems approach in November 2021 to address the 2021 EFSA Opinion, to further strengthen the efficacy of South Africa's systems approach, and to adapt it to the EU's evolving FCM requirements. In particular, South Africa strengthened two of the three measures contained in the systems approach, namely by introducing a more stringent pre-harvest fruit infestation monitoring system, and by making amendments to the options available for postharvest handling of the fruit, including temperature management prior to and during shipping. As a result of these improvements, the FCM interceptions by EU authorities of South Africa's exports declined dramatically from 19 interceptions in 2021 to just three in each of 2022 and 2023. Moreover, the accuracy of even these few remaining interceptions is questionable as they apparently concerned dead larvae.

In 2022, the EU adopted Commission Implementing Regulation (EU) 2022/959 of 16 June 2022 (Regulation (EU) 2022/959), amending Annex VII to Regulation (EU) 2019/2072.¹¹ Regulation (EU)

¹⁰ EFSA PLH Panel (EFSA Panel on Plant Health), Bragard C. *et al*, 'Scientific Opinion on the commodity risk assessment of Citrus L. fruits from South Africa for *Thaumatotibia leucotreta* under a systems approach', EFSA Journal 19(8):6799 (2021 EFSA Opinion).

¹¹ As explained in footnote 12, *Citrus sinensis* Pers. is subject to the detailed requirements in item 62.1 of Regulation (EU) 2022/959. Item 62 of this Regulation applies to other types of citrus fruits from South Africa and requires that the imports of these products be accompanied by an official statement that:

"(a) the fruits originate in a country recognised as being free from *Thaumatotibia leucotreta* (Meyrick) in accordance with the relevant International Standards for Phytosanitary Measures, provided that this freedom status has been communicated in advance in writing to the Commission by the national plant protection organisation of the country of origin,

or

(b) the fruits originate in an area established by the national plant protection organisation in the country of origin as being free from *Thaumatotibia leucotreta* (Meyrick), in accordance with the International Standard for Phytosanitary Measures ISPM 4(*). The pest free area is mentioned on the phytosanitary certificate, provided that this freedom status has been communicated in advance in writing to the Commission by the national plant protection organisation of the country of origin,

or

(c) the fruits:

(i) originate in a place of production established by the national plant protection organisation in the country of origin as being free from *Thaumatotibia leucotreta* (Meyrick) in accordance with the International Standard for Phytosanitary Measures ISPM 10(**), and which is included in the list of place of production codes that has been communicated in advance in writing to the Commission by the national plant protection organisation of the country of origin,

and

(ii) have been subjected to official inspections carried out in the place of production at appropriate times during the growing season and prior to export, including a visual examination with an intensity to enable at least the detection of a 2 % level of infestation, with a level of confidence of 95 % in accordance with the International Standard for Phytosanitary Measures ISPM 31 (***) and including destructive sampling in case of symptoms, and have been found to be free from *Thaumatotibia leucotreta* (Meyrick),

and

(iii) are accompanied by a phytosanitary certificate that indicates the place of production codes, or

(d) the fruits

(i) have been produced in an approved site of production, which is included in the list of production site codes that has been communicated in advance in writing to the Commission by the national plant protection organisation of the country of origin,

and

(ii) have been subjected to an effective systems approach to ensure freedom from *Thaumatotibia leucotreta* (Meyrick), in accordance with the International Standards for Phytosanitary Measures ISPM 14(*****), or an effective stand-alone post-harvest treatment to ensure freedom from *Thaumatotibia leucotreta* (Meyrick), provided that the respective systems approach used or the post-harvest treatment, together with documentary evidence of its effectiveness, have been communicated in advance in writing to the Commission by the national plant protection organisation of the country of origin and that post-harvest treatment has been assessed by the European Food Safety Authority,

and

(iii) prior to export, have been subjected to official inspections for the presence of *Thaumatotibia leucotreta* (Meyrick), with an intensity to enable at least the detection of 2 % level of infestation, with a level of confidence of 95 % in accordance with the International Standard for Phytosanitary Measures ISPM 31 (***) and including destructive sampling in case of symptoms,

2022/959 currently sets out the EU's phytosanitary requirements relating to FCM, in particular, the mandatory requirements to apply specified cold treatment and precooling steps before the importation of fruits of *Citrus sinensis* Pers. from South Africa (or any other country in which FCM is present). These phytosanitary requirements apply to all imports, including imports using a systems approach, irrespective of whether the exporting Member already has an effective systems approach, such as South Africa's FMS.¹²

Regulation (EU) 2022/959 was published in the EU's Official Journal on 21 June 2022, entered into force on the third day following its publication, i.e., on 24 June 2022, and applied since 14 July 2022, except for a transitional measure (see option 4 in footnote 12) that expired on 31 December 2022.¹³ This Regulation was notified to the SPS Committee on 21 June 2022.¹⁴

Although the EU recognises that waste disposal in the proximity of susceptible crops or other wild hosts poses the main risk for the introduction of FCM in its territory,¹⁵ the EU does not appear to have detailed procedures for waste management relating to FCM, and, in any event, does not appear to have followed the existing waste management procedures. In particular, the EU has established waste management rules only in relation to interceptions (Article 66(4) of Regulation (EU) 2017/625 on official controls¹⁶) and industrial processing of certain specified fruit, including citrus fruit (Article 4 of Decision (EU) 2017/2374).¹⁷ In addition, the EU has established a general prohibition of introduction into, movement within, holding, multiplication, or release in the EU territory of regulated pests, such as FCM (Article 5(1) of Regulation (EU) 2016/2031).

Finally, on 27 September 2022, the EU recognised Israel's (a member country of the European Plant Protection Organisation (EPPO)) systems approach as equivalent to the special requirements set out in item 62.1(d) of Annex VII to Regulation (EU) 2019/2072, as amended by Regulation (EU) 2022/959.¹⁸ Accordingly, Israel is no longer required to apply the cold-treatment requirements set out in Regulation (EU) 2022/959 to import fruit of *Citrus sinensis* Pers. to the EU. Before granting this recognition of equivalence to Israel, the EFSA performed a commodity risk assessment for citrus

and

(iv) are accompanied by a phytosanitary certificate that indicates the production site codes and mentions the details of the post-harvest treatment used, or the use of the systems approach".

¹² Pursuant to item 62.1(d) of Regulation (EU) 2022/959, fruits of *Citrus sinensis* Pers. can be imported to the EU provided that the imported products are subject to an effective systems approach, which includes a cold treatment of 0 °C to – 1 °C for at least 16 days (option 1); or an effective systems approach that includes a precooling step of the pulp of the fruit to the temperature of the cold treatment applied, followed by that cold treatment for at least 20 days at a set temperature between – 1 °C and +2 °C (option 2); or an effective stand-alone post-harvest treatment to ensure FCM-freedom, provided that that post-harvest treatment, together with documentary evidence of its effectiveness has been communicated in advance in writing to the EU Commission by the NPPO (option 3); or an effective systems approach that includes a precooling step of the pulp of the fruit to 5 °C, followed by a cold treatment for at least 25 days at a set temperature between – 1 °C and +2 °C (option 4, which was a transitional temporary measure valid until 31 December 2022). In other words, except for the stand-alone post-harvest treatment (option 3), all of the options under item 62.1 (d) of Regulation (EU) 2022/959 require an effective systems approach, *including a mandatory component of cold treatment with different levels of intensity*. See Commission Implementing Regulation (EU) 2022/959 of 16 June 2022 amending Annex VII to 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 (Regulation (EU) 2022/959).

¹³ See Article 2 and item 62.1 in the Annex to Regulation (EU) 2022/959.

¹⁴ SPS Committee, EU's Notification, G/SPS/N/EU/545/Add.1, 22 June 2022.

¹⁵ 2013 EPPO Risk Assessment, p. 22.

¹⁶ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC.

¹⁷ Commission Implementing Decision (EU) 2017/2374 of 15 December 2017 setting out conditions for movement, storage and processing of certain fruits and their hybrids originating in third countries to prevent the introduction into the Union of certain harmful organisms.

¹⁸ See Commission Implementing Regulation (EU) 2022/1659 of 27 September 2022 on equivalent requirements for the introduction into the Union of fruits of *Citrus sinensis* Pers., originating from Israel in view of the risks posed by *Thaumatotibia leucotreta* (Regulation (EU) 2022/1659).

fruit imported from Israel and provided recommendations to Israel to improve its systems approach.¹⁹ Unlike in the case of South Africa, the EU authorities assessed the improvements made by Israel to its systems approach, and exempted *Citrus sinensis* Pers. originated in Israel from the measures at issue.

The measures at issue are, therefore, the phytosanitary requirements imposed by the EU on citrus fruit originating from South Africa by reason of the pest *Thaumatotibia leucotreta* (including their alleged scientific bases, as well as any justifications based on allegedly existing or increased interceptions). The measures at issue include the process followed by the EU to implement the aforementioned phytosanitary requirements and any exclusions or exemptions therefrom that the EU has granted, or may grant in the future, to FCM-host products, including citrus fruit originated in WTO Members other than South Africa.

Accordingly, this panel request covers all of the EU's laws, regulations, risk assessments, scientific opinions, SPS controls and inspections, acts and omissions, policies and practices related to the EU's phytosanitary requirements regarding *Thaumatotibia leucotreta*. In particular, the EU's requirements concerning *Thaumatotibia leucotreta* have been imposed by, are reflected in, or are based on, the following instruments²⁰:

- i. Council Directive 2000/29/EC of 8 May 2000 on measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community;
- ii. Regulation (EU) 2016/2031 of the European Parliament and 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;
- iii. Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC;
- iv. Commission Implementing Directive (EU) 2017/1279 of 14 July 2017 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (Directive (EU) 2017/1279);
- v. Commission Implementing Decision (EU) 2017/2374 of 15 December 2017 setting out conditions for movement, storage and processing of certain fruits and their hybrids originating in third countries to prevent the introduction into the Union of certain harmful organisms;
- vi. Commission Implementing Directive (EU) 2019/523 of 21 March 2019 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into

¹⁹ See Scientific Opinion on the commodity risk assessment of Citrus L. fruits from Israel for *Thaumatotibia leucotreta* under a systems approach. EFSA Journal 2021; 19(3):6427, pp. 36 (EFSA Opinion for Israel).

²⁰ South Africa understands that some of these instruments may have been superseded by others. As it is unclear to what extent these instruments continue to form part of the legal basis for the EU's current restrictions on imports of South African citrus fruit, South Africa continues to list them as part of the measures at issue for the sake of completeness.

the Community of organisms harmful to plants or plant products and against their spread within the Community;

- vii. Commission Delegated Regulation (EU) 2019/1702 of 1 August 2019 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by establishing the list of priority pests;
- viii. 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;
- ix. Commission Implementing Regulation (EU) 2021/2285 of 14 December 2021 amending Implementing Regulation (EU) 2019/2072 as regards the listing of pests, prohibitions and requirements for the introduction into, and movement within, the Union of plants, plant products and other objects, and repealing Decisions 98/109/EC and 2002/757/EC and Implementing Regulations (EU) 2020/885 and (EU) 2020/1292;
- x. Commission Implementing Regulation (EU) 2022/1659 of 27 September 2022 on equivalent requirements for the introduction into the Union of fruits of *Citrus sinensis* Pers., originating from Israel in view of the risks posed by *Thaumatotibia leucotreta*;
- xi. 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.;
- xii. EFSA Journal, Scientific Opinion, Commodity Risk Assessment of Citrus L. fruits from South Africa for *Thaumatotibia leucotreta* under a systems approach, 8 July 2021;
- xiii. EFSA Journal, Scientific Opinion, Commodity Risk Assessment of Citrus L. fruits from Israel for *Thaumatotibia leucotreta* under a systems approach. 2021; 19(3):6427; and
- xiv. European and Mediterranean Plant Protection Organization, Pest Risk Analysis for *Thaumatotibia leucotreta*, 21-26630, September 2013.

This request also covers any additional measures that may amend, supersede, supplement, add to, update, extend, replace or implement the measures as explained above, on their own or in any combination, as well as any exclusions or exemptions from those measures.

II. BRIEF SUMMARY OF THE LEGAL BASIS OF THE COMPLAINT

As explained in Section I above, this request for the establishment of a panel concerns the EU's phytosanitary requirements relating to *Thaumatotibia leucotreta* and applying to imports of citrus fruit from South Africa. South Africa considers that the EU's phytosanitary requirements described above (collectively referred to as "the measures at issue") are inconsistent with the following EU's obligations under the SPS Agreement and the GATT 1994:

- (i) Article 1.1 of the SPS Agreement, because the measures at issue are applied in a manner that is not in accordance with the provisions of the SPS Agreement;
- (ii) Article 2.2 of the SPS Agreement, because the measures at issue are not based on scientific principles, are maintained without sufficient scientific evidence, and are not applied only to the extent necessary to protect plant life or health;
- (iii) Articles 3.1, 3.2, and 3.3 of the SPS Agreement, to the extent that relevant international standards exist (for instance, with respect to conducting the risk assessment of the pest at issue, the management of pest risks, or the conduct of control and inspection procedures, including the assessment of the pest's ability to enter, establish itself, and spread in the territory of the importing Member), and the EU has failed to base the

measures at issue on these standards or to provide scientific justification to deviate from them;

- (iv) Articles 5.1, 5.2 and 5.3 of the SPS Agreement, because the EU failed to base the measures at issue, in particular, the mandatory requirements to apply cold treatment and precooling steps before importation, on an assessment, as appropriate to the circumstances, of the risks to plant life or health, and it did not take into account risk assessment techniques developed by the relevant international organizations, as well as the factors listed in Articles 5.2 and 5.3 of the SPS Agreement;
- (v) The measures at issue are not covered by Article 5.7 of the SPS Agreement, as the EU is not in a situation "where the relevant scientific evidence is insufficient"; and, in any event, the EU does not comply with any of the requirements set forth in this provision;
- (vi) Articles 5.5 and 2.3 of the SPS Agreement, as the EU makes arbitrary or unjustifiable distinctions in the levels of protection the EU considers to be appropriate in different situations resulting in discrimination or a disguised restriction on trade. In particular, the EU treats differently Members in which identical or similar conditions prevail by exempting fruit of *Citrus sinensis* Pers. originating in certain Members, such as Israel, from the mandatory cold treatment and precooling requirements applied to South Africa and other Members. In addition, the EU treats differently the risks posed by fruit of *Citrus sinensis* Pers. and other FCM-related hosts, including peppers (that are not subject to the same cold-treatment requirements) and roses (that are not subject to any FCM-related requirement). Finally, the EU fails to apply appropriate internal risk-mitigation measures, such as regionalization and the establishment and application of proper waste management procedures;
- (vii) Article 5.6 of the SPS Agreement, as the measures at issue are more trade-restrictive than required to achieve the EU's appropriate level of protection, and there are reasonably available alternatives, which are technically and economically feasible, that would achieve the EU's level of protection in a significantly less trade-restrictive manner, including regionalization measures in the EU territory and the establishment and application of proper waste management procedures;
- (viii) Articles 6.1 and 6.2 of the SPS Agreement, as the EU fails to adapt its phytosanitary requirements to the phytosanitary characteristics of the different areas in the EU territory to which the citrus fruit are destined, for example, the areas that are not suitable for the establishment of FCM;
- (ix) Article 7 and paragraphs 1, 2, and 5 of Annex B to the SPS Agreement, because, the EU, *inter alia*, did not publish promptly its FCM-related requirements in such a manner as to enable interested Members to become acquainted with them; in a situation in which no urgent circumstances apply, the EU did not allow a reasonable interval between the publication of Regulation (EU) 2022/959 and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, including South Africa, to adapt their products and methods of production to the requirements of the EU; and, in the absence of the relevant international standard, the EU failed to: (a) notify Regulation (EU) 2022/959, which has a significant effect on trade of other Members, as well as to publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation; (b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation, and to provide notifications at an early stage, when amendments can still be introduced and comments taken into account; as well as, (c) allow reasonable time without discrimination for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account;
- (x) Article 8 and paragraphs (1)(a), (c), (e), (h) and (i) of Annex C to 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; limiting information requirements to what is necessary for appropriate control, inspection and approval procedures; and ensuring that requirements for control, inspection and approval of individual specimens of a product are limited to what is necessary and reasonable. In addition, whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the EU fails to limit the procedure for the modified product to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned. Finally, the EU fails to ensure that a procedure exists to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified;

- (xi) 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 phytosanitary requirements. 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) Article XI:1 of the GATT 1994, as the phytosanitary requirements constitute a prohibition or restriction on the importation of citrus fruit from South Africa that severely impacts South Africa's ability to export citrus fruit to the EU;
- (xiii) Articles I:1 and III:4 of the GATT 1994, as the EU discriminates between like products from different origins by, for example, exempting products of certain origins from compliance with the measures at issue, as well as failing to impose internal risk-mitigation measures, including regionalization in the EU, and the establishment and application of proper waste management procedures; and
- (xiv) Article X:3(a) of the GATT 1994, as the EU fails to apply the measures at issue in a uniform, impartial and reasonable manner, for example, by failing to apply the phytosanitary requirements to *Citrus sinensis* Pers. imported from Israel, cold treatment requirements to peppers, or any FCM-related requirement to roses, and by treating dead larvae as an interception for purposes of its SPS control and inspection procedures as well as risk assessment.

Given the inconsistencies described above, pursuant to Article 3.8 of the DSU, South Africa considers that the measures at issue nullify or impair the advantages accruing to South Africa under the various provisions of the covered agreements mentioned in this request.

South Africa, therefore, requests that, pursuant to Articles 4, including 4.8, and 6 of the DSU, the DSB establish a panel to examine this matter. South Africa further requests that the panel be given the standard terms of reference provided for in Articles 7.1 of the DSU.

South Africa notes that it is simultaneously requesting the establishment of a panel in *EU – Citrus Fruit II (South Africa)* (DS624). Upon the establishment of these panels, South Africa intends to request that the same three individuals serve on the panels for DS613 and DS624, as both disputes concern measures adopted by the EU affecting the importation of citrus fruit from South Africa.