



14 June 2024

(24-4537)

Page: 1/7

Original: English

**EUROPEAN UNION – ADDITIONAL 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 15 April 2024, 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 requested consultations also 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 14 May 2024. 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 request for a panel, 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. The EU imposes import restrictions on South African citrus fruit by reason of the pest *Phyllosticta citricarpa* (McAlpine) Van der Aa (*P. citricarpa*), despite the fact that citrus fruit is not a viable pathway for the transmission of this organism. *P. citricarpa* is a fungus affecting citrus fruit that may cause citrus black spot (CBS). CBS is a cosmetic disease that causes external blemishes on the rind of the citrus fruit, although the fruit itself remains safe for human consumption.

¹ See document "WT/DS624/1 G/L/1529 G/SPS/GEN/2222" (24 April 2024).

The EU has categorized *P. citricarpa* as a "Union quarantine pest", within the meaning of Articles 3 and 4 of Regulation (EU) 2016/2031.² Moreover, the EU has categorized *P. citricarpa* as a "priority pest", within the meaning of Article 6 of Regulation (EU) 2016/2031.³

The EU has adopted these decisions based on the Scientific Opinion conducted by the European Food Safety Authority (EFSA) in 2014. This 2014 EFSA Scientific Opinion —which is effectively a risk assessment— concluded, among other things, that citrus fruit (without leaves) can be a pathway for the introduction and spread of *P. citricarpa* into the EU territory. As explained in Section II below, South Africa considers, among other shortcomings, that the 2014 EFSA Scientific Opinion lacks a proper scientific basis.

As a result of the foregoing, the EU included citrus fruit in the list of plants, plant products, and other objects subject to "special requirements" for their introduction into the EU territory, pursuant to Article 41 of Regulation (EU) 2016/2031. Annex VII (point 60) of Commission Implementing Regulation (EU) 2019/2072 contains the "special requirements" for both citrus fruit, other than fruit destined exclusively for industrial processing (e.g. fruit for human consumption), and fruit destined exclusively for industrial processing. These "special requirements" include, inter alia, that imports of citrus fruit originate in a country, area, or place of production that is free from *P. citricarpa*; that fruits have been treated; that fruits are found to be free of symptoms of *P. citricarpa*; that inspections are carried out in sites of production; and that traceability information is included in the phytosanitary certificate.

Furthermore, on 13 April 2022, the EU adopted Commission Implementing Regulation (EU) 2022/632 setting out "temporary measures" with respect to *P. citricarpa* due to alleged non-compliance of several imports of citrus fruit from South Africa. These temporary measures —which operate by way of derogation from the special requirements referred to above— increased the severity of the phytosanitary import requirements imposed on South African citrus fruit. The temporary measures for citrus fruit, other than fruit destined exclusively for industrial processing (e.g. fruit for human consumption), are contained in Chapter II and Annex III of Commission Implementing Regulation (EU) 2022/632. The temporary measures for citrus fruit destined exclusively for industrial processing are contained in Chapter III of Commission Implementing Regulation (EU) 2022/632.

Pursuant to Article 3 and Annex III of Commission Implementing Regulation (EU) 2022/632, the introduction into the Union territory of citrus fruit originating in South Africa, other than fruit destined exclusively for industrial processing, is subject to the following conditions⁴:

1. The specified fruits must have been produced in a place of production consisting of one or more sites of production that have been identified as unique and physically distinct parts of a place of production; and both the place of production and its production sites have been approved by the NPPO of South Africa for the purpose of export to the Union.
2. The approved places of production and the sites of production thereof must have been registered by the NPPO of South Africa under their respective traceability codes.
3. The specified fruits must have been produced in an approved site of production, which has undergone treatments and cultural measures effective against the specified pest, at the appropriate time since the beginning of the last cycle of vegetation, and their application has been verified under the official supervision of the NPPO of South Africa.

² Article 3 of Regulation (EU) 2016/2031 defines "quarantine pest" and Article 4 of Regulation (EU) 2016/2031 defines "Union quarantine pest". Pursuant to Article 5(2) of Regulation (EU) 2016/2031, the Commission shall, by means of an implementing act, establish a list of Union quarantine pests. In this regard, *P. citricarpa* is included in the "List of Union quarantine pests" contained in Part A of Annex II to Commission Implementing Regulation (EU) 2019/2072.

³ Article 6 of Regulation (EU) 2016/2031 defines "priority pest" and empowers the Commission to establish a list of priority pests. In this regard, *P. citricarpa* is included in the "List of priority pests" contained in the Annex to Commission Delegated Regulation (EU) 2019/1702.

⁴ According to Article 3 of Commission Implementing Regulation (EU) 2022/632, these conditions operate by way of derogation from the special requirements stipulated in points 60(c) and 60(d) of Annex VII to Commission Implementing Regulation (EU) 2019/2072.

4. Official inspections, including testing in the case of doubts, must have been carried out in the approved sites of production since the beginning of the last cycle of vegetation by inspectors accredited by the NPPO for the detection of the specified pest, and the specified pest must have not been detected in the specified fruits.
5. A sample must have been taken:
 - (a) upon arrival to the packing facilities, prior to processing, of at least 200-400 fruits per lot of specified fruits;
 - (b) along the line between arrival and packing in the packing facilities, of at least 1 % of specified fruits;
 - (c) before departure from the packing facility, as part of the final official inspection to issue the phytosanitary certificate, of at least 2 % of specified fruits.
6. All of the specified fruits referred to in point 5 have been found free from the specified pest on the basis of inspections carried out by accredited inspectors and in the case of doubts of the presence of the specified pest, by testing.
7. In the case of *Citrus sinensis* (L.) Osbeck 'Valencia', in addition to the samples referred to in points 5 and 6, a representative sample per batch of 30 tonnes, or part thereof, has been tested for latent infection and found free from the specified pest.
8. The specified fruits have been transported in packages, with each package bearing a label with the traceability code of the site of production from which they originate.
9. Before the start of the export season of the specified fruits, the NPPO of South Africa has communicated to the relevant professional operators and to the Commission the list of traceability codes of all approved sites of production per place of production, and any updates to that list, have been immediately communicated to the Commission and to the relevant professional operators.
10. The specified fruits are accompanied by a phytosanitary certificate, which includes the date of the last inspection and the number of packages from each site of production, the relevant traceability codes, and under the heading 'Additional Declaration', the following statement: 'The consignment complies with Annex III of Commission Implementing Regulation (EU) 2022/632'.
11. The specified fruits must be produced in an approved site of production:
 - (a) where, during the official inspections referred to in point 4, the specified pest has not been found on the specified fruits;
 - (b) which is the origin of the specified fruits as referred to in point 5, on which the specified pest has not been found;
 - (c) which is the origin of consignments of the specified fruits on which the specified pest has not been found during the official checks carried out when entering the Union during the same growing and export season; and
 - (d) which is the origin of the specified fruits on which the specified pest has not been found, during the preceding growing and export season, in official inspections in South Africa or the checks carried out on consignments entering the Union.⁵

⁵ Articles 4 and 5 of Commission Implementing Regulation (EU) 2022/632 establish additional conditions, including that the Common Health Entry Document can be submitted only for consignments with the required traceability codes of the sites of production; or that physical checks shall be carried out on samples of at least 200 fruits of each species by batches of 30 tonnes, or part thereof, selected on the basis of any possible symptom of the specified pest.

In addition, pursuant to Article 6 of Commission Implementing Regulation (EU) 2022/632, the introduction into and movement within the Union territory of citrus fruit originating in South Africa destined exclusively for industrial processing is subject to the following conditions⁶:

- (a) the specified fruits must have been produced in an approved site of production, which has undergone treatments and cultural measures effective against the specified pest at the appropriate time since the beginning of the last cycle of vegetation, and their application must have been verified under the official supervision of the NPPO of South Africa;
- (b) the specified fruits must have been harvested in approved sites of production and no symptoms of the specified pest must have been detected throughout an appropriate physical check carried out during packaging;
- (c) the specified fruits must be accompanied by a phytosanitary certificate, which includes all of the following elements:
 - (i) the number of packages from each site of production;
 - (ii) the identification numbers of the containers;
 - (iii) the relevant traceability codes of the sites of production indicated on the individual packages, and under the heading 'Additional Declaration' the following statements: 'The consignment complies with Article 6 of Commission Implementing Regulation (EU) 2022/632' and 'Fruits destined exclusively for industrial processing';
- (d) they must be transported in individual packages in a container;
- (e) a label must be attached to each individual package, bearing the following information:
 - (i) the traceability code of the site of production on each individual package;
 - (ii) the declared net weight of the specified fruit;
 - (iii) the statement: 'Fruit destined exclusively for industrial processing'.⁷

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 *P. citricarpa* (including both the "special requirements", pursuant to Article 41 of Regulation (EU) 2016/2031, and the "temporary measures", pursuant to Regulation (EU) 2022/632). The measures at issue include the alleged scientific basis for the phytosanitary requirements, as well as any justifications based on allegedly existing or increased interceptions of the pest. They also include the process followed by the EU to implement the phytosanitary requirements and any exclusions or exemptions therefrom that the EU may grant to citrus fruit originating 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

⁶ According to Article 6 of Commission Implementing Regulation (EU) 2022/632, these conditions operate by way of derogation from the special requirements stipulated in point 60(e) of Annex VII to Commission Implementing Regulation (EU) 2019/2072.

⁷ Articles 7, 8 and 9 of Regulation 2022/632 establish additional conditions, including that the fruits shall not be moved to a Member State, other than the Member State through which they have been introduced into the Union territory, unless the competent authorities of the Member States concerned agree to such movement; that after the physical checks, the fruits shall directly and without delay be transported into the processing premises or to a storage facility; that the fruits shall be processed at premises situated in an area where no citrus fruit is produced; that waste and by-products of the fruits shall be used or destroyed in the territory of the Member State where those fruits have been processed, in an area where no citrus fruit is produced; and that where the fruits are not processed immediately, they shall be stored at a facility registered and approved for that purpose by the competent authority of the Member State where the facility is situated.

phytosanitary requirements regarding *P. citricarpa*. In particular, the EU's requirements concerning *P. citricarpa* have been imposed by, are reflected in, or are based on, the following instruments⁸:

- i. Council Directive 2000/29/EC, of 8 May 2000, on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, as amended;
- ii. Commission Implementing Decision (EU) 2016/715, of 11 May 2016, setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa;
- iii. Regulation (EU) 2016/2031, 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 came into effect on 14 December 2019;
- iv. Regulation (EU) 2017/625, of 15 March 2017, 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 (Official Controls Regulation);
- 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 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;
- vii. 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;
- viii. Commission Implementing Regulation (EU) 2022/632, of 13 April 2022, setting out temporary measures in respect of specified fruits originating in Argentina, Brazil, South Africa, Uruguay and Zimbabwe to prevent the introduction into, and the spread within, the Union territory of the pest *Phyllosticta citricarpa* (McAlpine) Van der Aa; and
- ix. Scientific Opinion on the risk of *Phyllosticta citricarpa* (*Guignardia citricarpa*) for the EU territory with identification and evaluation of risk reduction options, prepared by EFSA in 2014, and supporting documentation, including: the 2013 EFSA draft Scientific Opinion on the risk of *Phyllosticta citricarpa* (*Guignardia citricarpa*) for the EU territory with identification and evaluation of risk reduction options; the 2014 EFSA Technical Report: Outcome of the public consultation on the draft Scientific Opinion on the risk of *Phyllosticta citricarpa* (*Guignardia citricarpa*) for the EU territory with identification and evaluation of risk reduction

⁸ 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 measure at issue for the sake of completeness.

options; the 2016 EFSA Evaluation of new scientific information on *Phyllosticta citricarpa* in relation to the EFSA PLH Panel (2014) Scientific Opinion on the plant health risk to the EU; the 2018 EFSA Evaluation of a paper by Guarnaccia et al. (2017) on the first report of *Phyllosticta citricarpa* in Europe; and the 2020 EFSA Pest survey card on *Phyllosticta citricarpa*; as well as any other scientific updates or revisions.

This request also covers any additional measures that may amend, supersede, supplement, add to, update, extend, replace or implement the measures 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 *P. citricarpa* 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; in particular, the EU's phytosanitary import requirements are based, inter alia, on the premise that citrus fruit (without leaves) can be a viable pathway for the introduction and spread of *P. citricarpa* into the EU territory, although this conclusion lacks a proper scientific basis;
- (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 on a proper assessment, as appropriate to the circumstances, of the risks to plant life or health; including, but not limited to, in that the risk assessment conducted by EFSA erroneously concluded, inter alia, that citrus fruit (without leaves) is a realistic pathway for the introduction and spread of *P. citricarpa* in the EU, and it failed to properly take into account risk assessment techniques developed by the relevant international organizations and 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, 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" regarding *P. citricarpa*, including in that the EU fails to establish and apply regionalization measures and proper waste management procedures in the EU;
- (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 that would allow the importation of citrus fruit from

South Africa into the regions of the EU territory that do not have citrus production, and proper establishment and application of waste management procedures in the EU;

- (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 imported citrus fruits are destined, for example, the areas where there is no citrus production and hence no available hosts for *P. citricarpa*;
- (ix) Article 8 and paragraphs (1)(a), (c), (e), (h) and (i) of 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; limiting information requirements to what is necessary for appropriate control, inspection and approval procedures; 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;
- (x) Articles 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;
- (xi) 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;
- (xii) Articles I:1 and III:4 of the GATT 1994, to the extent that the EU discriminates between like products from different origins by, for example, exempting citrus fruit of certain origins from compliance with the measures at issue, or by failing to impose risk-mitigation measures, including regionalization and proper establishment and application of waste management procedures in the EU; and
- (xiii) 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.

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 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 Article 7.1 of the DSU.

South Africa notes that it is simultaneously requesting the establishment of a panel in *EU – Citrus Fruit (South Africa)* (DS613). 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.