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

REQUEST FOR CONSULTATIONS BY SOUTH AFRICA

The following communication, dated 15 April 2024 and received on 19 April 2024, from the delegation of South Africa to the delegation of the European Union, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the European Union 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), concerning certain aspects of the European Union's (EU) regime on the importation of citrus fruit from South Africa described below.

As this request concerns perishable products, South Africa also makes this request pursuant to Article 4.8 of the DSU and reserves its rights thereunder.

We note that South Africa has already requested and since engaged in consultations with the EU regarding the application of certain phytosanitary measures relating to *Thaumetotibia leucotreta* ("false codling moth") that affect the importation of citrus fruit from South Africa.¹ As explained below, this request addresses the application of those EU phytosanitary measures relating to *P. citricarpa* ("citrus black spot" or "CBS") that also affect the importation of citrus fruit from South Africa.

Pursuant to Article 4.4 of the DSU, South Africa describes below the reasons for this request, including the identification of the measure at issue and an indication of the legal basis for the complaints.

IDENTIFICATION OF THE MEASURE AT ISSUE

The measure at issue concerns certain aspects of the import regime imposed by the European Union (EU) on citrus fruit from South Africa, as described below. Since at least 1992, the EU has prohibited the importation of South African citrus fruit affected by *Phyllosticta citricarpa* (McAlpine) Van der Aa, despite the fact that citrus fruit is not a viable pathway for the transmission of this organism. Moreover, without sufficient scientific reasons, the EU has categorised this organism as a quarantine pest for citrus fruit without leaves and furthermore as a "priority pest".²

As a direct result of this erroneous categorisation, the EU establishes, *inter alia*, burdensome approval, verification, sampling, checking, inspection, testing, packaging, transportation,

¹ See Request for Consultations by South Africa, *EU — Citrus Fruit (South Africa)*, WT/DS613/1, G/L/1430, G/SPS/GEN/2056, 29 July 2022.

² See, *inter alia*, Part A of Annex III of Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019, as well as Commission Delegated Regulation (EU) 2019/1702 of 1 August 2019 read with Regulation (EU) 2016/2031.

certification, labelling and traceability requirements that must be met in order to import specified fruits³ into the EU.⁴

The EU's measure is contained in, and based on, the following instruments:

- (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 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 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 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;
- (vi) 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;
- (vii) 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
- (viii) Scientific Opinion on the risk of *Phyllosticta citricarpa* (*Guignardia citricarpa*) for the EU territory with identification and evaluation of risk reduction options, prepared by the European Food Safety Authority (EFSA), 2014, and supporting documentation including the draft Scientific Opinion on the risk of *Phyllosticta citricarpa* (*Guignardia citricarpa*) for the EU territory with identification and evaluation of risk reduction options, EFSA, 2013; Technical Report: Outcome of the public consultation on the draft Scientific

³ The requirements at issue apply to specified fruits defined in Article 2(2) of Commission Implementing Regulation (EU) 2022/632 of 13 April 2022. They are *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., and their hybrids, other than fruits of *Citrus aurantium* L. and *Citrus latifolia* Tanaka.

⁴ For specified fruits, other than fruits destined exclusively for industrial processing, see requirements listed in Chapter II, Articles 3 to 5, and Annex III of Commission Implementing Regulation (EU) 2022/632 of 13 April 2022. For specified fruits destined exclusively for industrial processing, see requirements listed in Chapter III, Articles 6 to 9, of Commission Implementing Regulation (EU) 2022/632 of 13 April 2022, and Article 49 of Regulation (EU) 2017/625.

Opinion on the risk of *Phyllosticta citricarpa* (*Guignardia citricarpa*) for the EU territory with identification and evaluation of risk reduction options, EFSA, 2014; as well as Pest survey card on *Phyllosticta citricarpa*, EFSA, 2020.

South Africa's request also covers any additional measures that may amend, supersede, supplement, add to, update, extend, replace, or implement the EU's measure at issue.

LEGAL BASIS FOR THE COMPLAINT

The EU's measure at issue appears to be inconsistent with the EU's obligations under the Agreement Establishing the World Trade Organization (WTO Agreement). In particular, the EU's measure appears to be inconsistent with:

- (i) Article 1.1 of the SPS Agreement, as it is a phytosanitary measure under the SPS Agreement that is not "applied in accordance with the provisions of this Agreement";
- (ii) Article 2.2 of the SPS Agreement, as it is not "based on scientific principles", it is "maintained without sufficient scientific evidence", and it is 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 a relevant international standard exists, and the EU has failed to base its measure on it or to provide scientific justification to deviate from it;
- (iv) Articles 5.1, 5.2 and 5.3 of the SPS Agreement, as it is not "based on an assessment, as appropriate to the circumstances, of the risks to ... plant life or health" and does not "take into account" the factors listed in Articles 5.2 and 5.3 of the SPS Agreement;
- (v) not covered by Article 5.7 of the SPS Agreement, as the EU is not in a situation "where 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";
- (vii) Article 5.6 of the SPS Agreement, as the EU's measure is "more trade-restrictive than required";
- (viii) Articles 6.1 and 6.2 of the SPS Agreement, as the EU fails to adapt its import regime for South African citrus fruit to the "phytosanitary characteristics of the area ... to which the product is destined" and has failed to "recognize the concepts of pest- or disease-free areas";
- (ix) Article 8 and 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, limitation of information requirements to what is necessary and reasonable, and a lack of proper procedures to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified and imposition of fees on imported products that are equitable in relation to any fees charged on like domestic products;
- (x) Article XI:1 of the GATT 1994, as the EU's measure constitutes a "restriction ... on the importation" of citrus fruit from South Africa;
- (xi) Articles I:1 and III:4 of the GATT 1994, to the extent that the EU discriminates between like products from different origins;
- (xii) Article X:3(a) of the GATT 1994, as the EU fails to apply it in a "uniform, impartial and reasonable manner".

These consultations might give rise to other matters having legal implications that are not expressly stated in this request but relate to other WTO obligations of the EU. With a view to facilitating a wide-ranging exchange of views, South Africa notes that, if such were to be the case, these matters would also be covered by the scope of this request for consultations.

I look forward to receiving your reply to this request. In order to ensure that the consultations take place within the 30-day deadline specified in Article 4.3 of the DSU, we propose that the consultations take place at the WTO in Geneva between 6 and 8 May 2024, or earlier if required.
