World Trade Organization

Panel Proceedings

Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products

WT/DS484

Third Party Oral Statement

by

Norway

at the Third Party Session of the Panel

AS DELIVERED

Geneva, 14 July 2016

Mr Chair, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings. Norway did not present a written third party submission to the Panel. In this oral statement, I will therefore briefly set out Norway's view on two of the legal issues raised: the applicability of both the GATT 1994 Article XI:1 and Article 4.2 of the Agreement on Agriculture with regard to the same measure; whether limited (and short) application periods and validity periods of the Ministry of Agriculture's Import Recommendation and Ministry of Trade's Import Approval as well as fixed license terms constitute restrictions on imports.

2. In its first written submission, Indonesia claims that the same aspects of the same measure may not be challenged under both the GATT 1994 Article XI:1 and Article 4.2 of the Agreement on Agriculture, as these provisions have different legal standards.[1] According to Indonesia, "by virtue of Article 21.1 of the Agreement on Agriculture, Article 4.2 applies to measures challenged by Brazil to the exclusion of Article XI:1 of the GATT 1994".[2]

3. Norway is puzzled by this argument. Like Australia argues in its third party submission, Norway asserts that Indonesia's claim lacks support in WTO jurisprudence, as it is clear that a measure can constitute a violation of both Article XI:1 of the GATT 1994 as well as of Article 4.2 of the Agreement on Agriculture. [3]

4. Brazil argues in its first written submission that Indonesia's import licencing procedures constitute a "restriction" on importation in violation of the GATT 1994 Article XI:1 as well as the Agreement on Agriculture Article 4.2. According to Brazil, this is in particular due to; (i) the prohibition of applying for licences for the

[1] Indonesia's First Written Submission, paras. 65-74.
[2] Indonesia's First Written Submission, para. 74.
[3] Australia's Third Party Submission, para. 30, referring to Panel Report, *Korea – Various Measures on Beef*, para. 762 and Panel Report, *India – Quantitative Restrictions*, paras. 5.241-5.242.

importation of chicken cuts and other prepared or preserved chicken meat due to their exclusion from the "positive lists" of the products allowed to be imported; (ii) the requirements related to the intended uses of imported chicken meat and chicken products; (iii) the limited (and short) application periods and validity periods of the MoA Import Recommendation and MoT Import Approvals; and (iv) the fixed licence terms.[4] Norway wishes to offer its observations on the latter two elements.

5. Indonesia asserts that "[t]he mere fact that importers must reapply periodically for the new Import Recommendation and the Import Approval does not, in and of itself, mean that the measure at issue is a quantitative restriction".[5] Norway agrees that the covered agreements do not oblige Members to apply automatic import licencing. However, if the application windows and the validity periods are limited to the extent that they create obstacles which have a "limiting effect" on trade, they will also constitute a restriction which fall under the scope of both Article XI:1 of the GATT 1994 and Footnote 1 of Article 4.2 of the Agreement on Agriculture.

6. As regards the fixed licence terms, Indonesia holds that "importers determine their own terms of importation" according to this requirement, which in turn does not have any limiting effect on imports. Indonesia refers to the fact that "the terms of import licenses – including the type, quantity, country of origin, and port of entry – are at the complete discretion of the importers themselves". Hence, Indonesia argues that "[t]he terms of importation listed on import license applications are, therefore, not measures that are 'instituted or maintained' by Indonesia. They fall outside the scope of Article 4.2, as they are determined by private parties".[6] We assume that Indonesia would use the same argument with regard to scope of Article XI:1 of the GATT 1994.

7. Indonesia's argument appears to rely on the fact that the regime provides that importers initially define the terms by setting out in their import licence applications the specific type of products to be imported, quantity, the country of origin of the

[4] Brazil's First Written Submission, para. 200.
[5] Indonesia's First Written Submission, para. 257.
[6] Indonesia's First Written Submission, para. 262.

products, and the port of entry through which the products will enter Indonesia. However, Indonesia here fails to point to the *measure* at issue, as it is the fact that the licence term, once defined by the importers, are *fixed*, and *may not be altered* during a term that constitutes the restriction.

8. Previous panels have found that measures imposing the same kind of limits as those found in Indonesia's import regime violate GATT 1994 Article XI:1. For instance, the panel in *Colombia - Ports of Entry* concluded that restrictions limiting imports from Panama to two ports of entry in Colombia limit "competitive opportunities", and consequently had a limiting effect on imports arriving from Panama contrary to Article XI:1.[7] Furthermore, in *India – Autos*, the panel found that a measure which in reality has the consequence that an importer would not be "free to import [as much] as he otherwise might" constituted a restriction.[8] Hence, Norway agrees with Brazil that the fact that the importers are prevented from responding to changes in market conditions will have a limiting effect on trade. Moreover, Norway notes that importers may experience a need to respond to other factors that normally affect importation during the validity periods, as well as taking into consideration factors related to importation that they did not predict at the start of the validity period. Being prevented from doing this can restrict the volume of imports. The measure challenged is therefore not *the terms of importation as they are determined by private parties*, as put by Indonesia,[9] but rather the measure limiting what importers may import.

9. The importers being "free to alter their terms of importation from one license application to the next"[10] does not change the fact that this limitation has a limiting effect in a set term. Moreover, one must also bear in mind that import opportunities as regards availability of products etc. may change from one term to another. It is not

[7] Panel Report, *Colombia - Ports of Entry*, para. 7.274.
[8] Panel Report, *India – Autos*, para. 7.320.
[9] Indonesia's First Written Submission, para. 262.
[10] Indonesia's First Written Submission, para. 263.

given that what a company has the "desire and ability to export"[11] at one point in time would also be desired and available months later.

Mr Chair, Members of the Panel,

10. Norway respectfully requests the Panel to take account of the considerations set out above when evaluating the claims set forth in this dispute. Thank you.

[11] Panel Report, *India – Autos*, para. 7.268.