

8 CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- a. In respect of Indonesia's request for a preliminary ruling:
 - i. the Panel finds that the alleged general prohibition/overarching measure is properly within the terms of reference of the Panel, and in particular, that (a) Brazil's panel request provides a brief summary of the complaint sufficient to present the problem clearly, (b) the measure described in Brazil's first written submission is not altered to the point of falling outside the terms of reference of the Panel, and (c) the alleged general prohibition is properly identified in Brazil's panel request;
 - ii. the Panel finds that the panel request does not contain a challenge to the import licensing regime "as a whole", and such measure is therefore not within the terms of reference of the Panel;
 - iii. the Panel finds that Brazil's claims with regard to other prepared or preserved chicken meat are identified in Brazil's panel request and are therefore within the terms of reference of the Panel;
 - iv. the Panel takes note of Brazil's statement that it is not making any claims under Article 1 of the Agreement on Import Licensing Procedures and therefore sees no need to rule that Brazil is precluded from making such claims.
- b. In respect of the positive list requirement:
 - i. the Panel finds that the positive list requirement as enacted through MoA 58/2015 and MoT 05/2016 is inconsistent with Article XI of the GATT 1994;
 - ii. the Panel finds that the positive list requirement as enacted through MoA 58/2015 and MoT 05/2016 is not justified under Article XX(d) of the GATT 1994;
 - iii. the Panel considers that having found that the positive list requirement as enacted through MoA 58/2015 and MoT 05/2016 is inconsistent with Article XI of the GATT 1994 and is not justified under the general exception in Article XX(d) of the GATT 1994, it is not necessary to address Brazil's claim under Article 4.2 of the Agreement on Agriculture in order to secure a positive solution to this dispute;
 - iv. the Panel finds that the positive list requirement has not ceased to exist by virtue of the relevant provisions in MoA 34/2016 and MoT 59/2016;
 - v. the Panel finds that since the positive list requirement, as enacted through MoA 34/2016 and MoT 59/2016, continues to apply in the same manner as enacted through MoA 58/2015 and MoT 05/2016, the Panel's findings on Article XI and XX(d) of the GATT 1994, in respect of the measure as enacted through MoA 58/2015 and MoT 05/2016, also apply to this measure as enacted through MoA 34/2016 and MoT 59/2016.
- c. In respect of the intended use requirement:
 - i. in respect of the intended use requirement as enacted through the relevant provisions in MoA 58/2015, the Panel finds that:
 - 1) Article III:4 of the GATT 1994 is not applicable because of the absence of an equivalent domestic measure;
 - 2) the intended use requirement is inconsistent with Article XI of the GATT 1994;

- 3) the intended use requirement is not justified under Article XX(b) or Article XX(d) of the GATT 1994;
 - 4) having found that the intended use requirement is inconsistent with Article XI of the GATT 1994, it is not necessary to address Brazil's claim under Article 4.2 of the Agreement on Agriculture in order to secure a positive solution to this dispute;
- ii. the intended use requirement has not ceased to exist by virtue of the amendments made to through the relevant provisions in MoA 34/2016;
 - iii. in respect of the intended use requirement as enacted through the relevant provisions in MoA 34/2016, the Panel finds that:
 - 1) Article III:4 of the GATT 1994 is applicable, because there is an equivalent measure applied to like domestic products;
 - 2) the intended use requirement with respect to its cold storage requirement is not inconsistent with Article III:4 of the GATT 1994,
 - 3) the intended use requirement with respect to its enforcement provisions is inconsistent with Article III:4 of the GATT 1994;
 - 4) the intended use requirement with respect to its enforcement provisions is not justified under the general exceptions in Article XX(b) or Article XX(d) of the GATT 1994.
 - 5) having found that the intended use requirement with respect to its enforcement provisions is inconsistent with Article III:4 of the GATT 1994, it is not necessary to address Brazil's claim under Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture in order to secure a positive solution to this dispute.
- d. In respect of Indonesia's import licensing procedures:
 - i. the Panel finds that the positive list requirement is in the nature of an import licensing rule and is therefore not subject to the Import Licensing Agreement;
 - ii. the Panel finds that the intended use requirement is in the nature of an import licensing rule and is therefore not subject to the Import Licensing Agreement;
 - iii. the Panel finds that the application windows, the validity periods and the fixed licence terms, as enacted through MoA 58/2015 and MoT 05/2016, are inconsistent with Article XI:1 of the GATT 1994;
 - iv. the Panel finds that the application windows, the validity periods and the fixed licence terms, as enacted through MoA 58/2015 and MoT 05/2016, are not justified under Article XX(d) of the GATT 1994;
 - v. the Panel considers that having found that the application windows, the validity periods and the fixed licence terms, as enacted through MoA 58/2015 and MoT 05/2016, are inconsistent with Article XI of the GATT 1994, it is not necessary to address Brazil's claim under Article 4.2 of the Agreement on Agriculture and Article 3.2 of the Import Licensing Agreement in order to secure a positive solution to this dispute;
 - vi. the Panel finds that the application windows and the validity periods, as a single measure, have ceased to exist; the Panel thus refrains from making a recommendation in respect of this measure;
 - vii. regarding the new validity period, as enacted through MoA 34/2016, the Panel finds that Brazil failed to demonstrate that this measure is inconsistent with Article XI:1 of

the GATT 1994, Article 4.2 of the Agreement on Agriculture and Article 3.2 of the Import Licensing Agreement;

- viii. the Panel finds that because of the almost identical language in the relevant provisions governing the fixed licence terms, the Panel's findings on Article XI and XX(d) of the GATT 1994, in respect of this measure as enacted through MoA 58/2015 and MoT 05/2016, also apply to this measure as enacted through MoA 34/2016 and MoT 59/2016;
 - ix. the Panel finds that Brazil failed to make a *prima facie* case that the following aspects of Indonesia's import licensing regime are WTO-inconsistent: (1) MoT's power to determine the amount of imported goods in the MoA Import Recommendation, as enacted through MoA 58/2015; and (2) the denial of import licences to secure price stabilization.
- e. In respect of the undue delay in the approval of the veterinary health certificate:
- i. the Panel finds that Indonesia has caused an undue delay in the approval of the veterinary health certificate inconsistent with Article 8 and Annex C (1)(a) of the SPS Agreement.
- f. In respect of the halal labelling requirements:
- i. the Panel finds that Brazil failed to demonstrate that Indonesia's implementation of its halal labelling requirements is inconsistent with Indonesia's obligations under Article III:4 of the GATT 1994.
- g. In respect of the transportation requirement:
- i. the Panel finds that Brazil failed to demonstrate that the direct transportation requirement, as enacted through Article 19(a) of MoA 34/2016, is inconsistent with Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture.
- h. In respect of the general prohibition:
- i. the Panel finds that Brazil failed to make a *prima facie* case, because it did not demonstrate the existence of the alleged unwritten measure.

8.2. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are inconsistent with certain provisions of the GATT 1994 and the SPS Agreement, they have nullified or impaired benefits accruing to Brazil under those agreements.

8.3. Pursuant to Article 19.1 of the DSU, the Panel, with the exception of the measure referred to in 8.1.d(vi) above, recommends that Indonesia bring its measures into conformity with its obligations under Articles III:4 and XI:1 of the GATT 1994 and Article 8 and Annex C(1)(a) of the SPS Agreement.
