

the preceding section we have found that Brazil has not demonstrated that there is no genuine possibility to amend licence terms. In light of that finding, we do not see the need to explore the alternatives put forward by Indonesia.

### 7.6.5 Conclusion

7.237. We conclude that Brazil has not demonstrated that the fixed licence terms as enacted both at panel establishment and in their current version constitute a restriction on the importation of poultry in violation of Article XI:1 of the GATT 1994.

## 8 CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, we conclude as follows:

- a. In respect of Indonesia's request for a preliminary ruling:
  - i. the Panel finds that Brazil's claims under Article 4.2 of the Agreement on Agriculture regarding the positive list requirement and under Article XI:1 of the GATT 1994 concerning enforcement provisions of the intended use requirement are within the Panel's terms of reference;
  - ii. the Panel finds that Brazil is not barred from challenging the positive list requirement under Article 4.2 of the Agreement of Agriculture and the intended use requirement under Article XI:1 of the GATT 1994 in this compliance proceeding.<sup>399</sup>
- b. In respect of the delay in the approval of the veterinary health certificate:
  - i. the Panel finds that Indonesia has caused further undue delay in the approval of the veterinary health certificate, inconsistent with Article 8 and Annex C(1)(a) of the SPS Agreement.
- c. In respect of the positive list requirement:
  - i. the Panel finds that Brazil has not demonstrated that the positive list requirement as enacted through MoA 42/2019 and MoT 29/2019 as amended is a prohibition or a restriction on the importation of chicken products inconsistent with Article XI:1 of the GATT 1994;
  - ii. the Panel finds that Brazil has not demonstrated that the positive list requirement as enacted through MoA 42/2019 and MoT 29/2019 as amended is a quantitative import restriction on agricultural products prohibited in Article 4.2 of the Agreement on Agriculture;
  - iii. the Panel finds that the positive list requirement as enacted through MoA 34/2016 and MoT 29/2019 constituted a prohibition on the importation of other prepared or preserved chicken meat, chicken offal or blood inconsistent with Article XI:1 of the GATT 1994;
  - iv. having found the version of the positive list requirement enacted through MoA 34/2016 and MoT 29/2019 to be inconsistent with Article XI:1 of the GATT 1994, the Panel does not find it necessary to rule on Brazil's claim under Article 4.2 of the Agreement on Agriculture with respect to this version of the measure to secure a positive solution to this dispute.

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<sup>399</sup> Indonesia requested that the Panel also exercise judicial economy on the claims pertaining to Article 4.2 of the Agreement on Agriculture regarding the positive list requirement and Article XI:1 of the GATT 1994 regarding the enforcement provisions of the intended use requirement, as was done in the original proceeding. The Panel rejected this request, stating it was premature, at that stage in the proceedings, to decide on whether to exercise judicial economy with regard to these claims; see para. 1.15 above. The Panel's decision on this point is contained in paras. 8.(c)(iv), as well as 8.(d)(ii) and (iv) below.

- d. In respect of the intended use requirement and its enforcement provisions:
- i. the Panel finds that the enforcement provisions of the intended use requirement as enacted through MoA 42/2019 and MoT 29/2019 as amended are inconsistent with Article III:4 of the GATT 1994 insofar as they apply to a breach of the cold storage requirement;
  - ii. having found these enforcement provisions to be inconsistent with Article III:4 of the GATT 1994, the Panel does not find it necessary to rule on Brazil's claim under Article XI:1 of the GATT 1994 with respect to this version of the measure to secure a positive solution to this dispute;
  - iii. the Panel finds that the enforcement provisions of the intended use requirement as enacted through MoA 34/2016 as amended and MoT 29/2019 were inconsistent with Article III:4 of the GATT 1994 insofar as they resulted in the impossibility to switch uses and in an increased administrative burden on the importer; and
  - iv. having found these enforcement provisions to be inconsistent with Article III:4 of the GATT 1994, the Panel does not find it necessary to address Brazil's claim under Article XI:1 of the GATT 1994 with respect to this version of the measure to secure a positive solution to this dispute.
- e. In respect of the fixed licence terms:
- i. the Panel finds that Brazil has not demonstrated that the fixed licence terms constitute a restriction on the importation of chicken products inconsistent with Article XI:1 of the GATT 1994.

8.2. We therefore conclude that, to the extent that the Panel has found the measures at issue to be inconsistent with the relevant provisions of these agreements, Indonesia has failed to implement the recommendations and rulings of the DSB and to bring its measures into conformity with its obligations under the SPS Agreement and the GATT 1994.

8.3. 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 the benefits accruing to Brazil under those agreements.

8.4. To the extent that Indonesia has failed to comply with the recommendations and rulings of the DSB in the original dispute, those recommendations and rulings remain operative.

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