

15 November 2019

Subject: Elements for EU Member States on the EU's launch of a WTO dispute settlement case against Colombia on frozen fries

Context: The EU is requesting WTO consultations with Colombia over the anti-dumping duties imposed on frozen fries imported from Belgium, the Netherlands and Germany.

Key points:

- The EU is requesting WTO consultations with Colombia over anti-dumping duties imposed on frozen fries from Belgium, the Netherlands and Germany.
- These duties go against WTO rules and unfairly restrict access to the Colombian market for European producers.
- The EU has intervened on multiple occasions with the Colombian authorities to get the duties lifted, but to no avail.
- This is why the EU is bringing the matter to the WTO to resolve the issue as soon as possible, preferably still in the consultation phase, the first stage of the dispute procedure .

Q&A:

What exactly is the EU challenging?

We consider that the investigation of dumping, injury and causality links that led to the imposition of duties were not in line with the WTO rules. For example, the Colombian authorities disregarded the export information provided by the cooperating companies and replaced it with information from a database. Moreover, we also have certain concerns with regard to respect of procedural rights.

What happens if the WTO consultations do not resolve the matter?

Consultations are a necessary first step in any WTO dispute procedure. If the consultations do not resolve the matter, the EU can ask for the establishment of a panel. This can be done 60 days after the request for consultations has been made, i.e. 2 months from today.

What is the economic impact of the duties and how long will they apply?

Exports of frozen fries from the three Member States to Colombia amounted to €23 million in 2016. The duties imposed in November 2018 for a 2-year period, target almost all (85% or €19.3 million) of EU exports of frozen fries to Colombia.

The anti-dumping duties range from ~3% to ~8%, and up to 44.52 % [Mydibel S.A. (anti-dumping duty rate 8.01%) from Belgium, Aviko B.V.(3.64%) and other companies (44.52% with the exception of Farm Frites B.V.) from the Netherlands, and Agrarfrost GmbH & Co. KG (3.21%) from Germany]

The duties seem quite low. How detrimental has the effect been on the exports and market share of EU frozen fries on the Colombian market?

The level of the duties may seem low but this is in a context where Brazil and South Africa have also imposed anti-dumping duties on the same products. Crucially, the EU has some systemic concerns in relation to how these measures were imposed, in particular the fact that the Colombian authorities disregarded the export information provided by the cooperating companies and replaced it with information from a database.

Why only in force 2 years? Are anti-dumping measures not normally 5 years?

Indeed, anti-dumping measures are usually imposed for 5 years but can also be imposed for shorter periods of time.

What is the rationale for bringing a WTO case if the measures by Colombia are set to expire in 1 year already?

The EU cannot accept harmful trade restrictive measures contrary to WTO rules that hurt EU exporters no matter their duration. Secondly, it is possible that Colombia may extend the duration of the measures through an expiry review, so a legal action in the WTO is important to prevent this potential scenario.

How long does a WTO dispute last and what is the impact if there is no appeal possibility?

Disputes last usually slightly more than two years, and over three years in case on an appeal.

The current situation with regards to the WTO Appellate Body will not stop us from bringing new WTO cases to defend EU companies against WTO inconsistent measures applied by other WTO members, as in the present case on our exports of frozen fries to Colombia. We are looking into contingency measures. We have already entered into two interim dispute settlement arrangements with Canada and with Norway and this remains as possibility also with other WTO members.

What is the latest regarding trade defence measures by Brazil and by South Africa imposed on European frozen fries?

In **Brazil**, anti-dumping measures have been in force since 2017. The European industry affected by the measures has challenged the measures at the Supreme Court of Brazil to get the measures annulled but the court decision is still pending. We will assess the situation and next steps together with EU industry once there is a Court's decision.

South Africa has recently opened a review investigation to determine whether the existing anti-dumping measures in place on imports of frozen fries from Belgium and the Netherlands should stop or be extended for another five years. The investigation is still in the early phase. The Commission is following the case very closely in cooperation with the EU industry concerned. We have submitted written comments and will continue to intervene as appropriate with the South African authorities.

What will the EU do if South Africa continues with the anti-dumping measures?

Further steps will depend on the outcome of the review investigation.

Background

- Almost the totality (84.24%) of EU exports to Colombia of frozen fries is impacted = (EUR 19.3 million). Exports from the three Member States to Colombia amounted to €23 million in 2016 and represented the 2.3% of the total EU exports of frozen fries to the world.
- There are currently three measures in place on frozen fries from EU member States (South Africa, Brazil and Colombia) which affect a **total of €140¹ million of** EU exports per year and concern around 20 companies from France, Belgium, Germany and the Netherlands. The EU has also intervening vis-a-vis the South African government which has started an expiry review of the anti-dumping measures
- In 2016, the EU total exports of processed product (frozen, flakes, flour and dehydrated – including chips) were worth €1.344 billion and the **frozen fries and potato specialties alone represented 73% of the total (€980 million)**. The sector is a fast growing export industry. The **frozen fries industry is now a larger exporter than other sectors such as pasta or olives**. The EU's main destinations are Saudi Arabia, Brazil and Russia. The Netherlands and Belgium account for almost 64% of the EU's exports, followed by Germany (12.8%), Poland (7.4%) and the UK (6.2%). Currently, the processed potato sector's overall EU production is worth more than €10 billion annually and employs over 23.000 people. The frozen fries and frozen potato specialties represent approximately 42% of the total EU production (€4.2 billion).

¹ Brazil: EUR 96 million (2014), South Africa: EUR 18 million (2012), Colombia EUR 23 million (2016).