EUROPEAN UNION
Permanent Mission
to the World Trade Organization

The Ambassador

Geneva, 15 November 2019

Subject: **Colombia – Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands**
Request for Consultations by the European Union

Dear Ambassador,

My authorities have instructed me to request consultations with the government of the Republic of Colombia (Colombia) pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), Article 19 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) concerning the imposition of anti-dumping (AD) duties on certain imports of potatoes, prepared or preserved (otherwise than by vinegar or acetic acid), frozen (frozen fries), originating in Belgium, the Netherlands and Germany (the countries concerned).

The measures that the EU would like to address in the consultations ("measures at issue") are the anti-dumping duties imposed by Colombia on imports of potatoes, prepared or preserved (otherwise than by vinegar or acetic acid), frozen, classified under tariff sub-heading 2004.10.00.00 originating in Belgium, the Netherlands and Germany ("products under investigation"). The measures at issue include, and are evidenced by, the following instruments/documents:

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- Ministry of Trade, Industry and Tourism Resolution Number 191 of 1 November 2017[1] adopting the preliminary determination on the administrative investigation initiated by means of Decision 121 of 2 August 2017, published in the Official Journal No 50.406 of 9 November 2018, page 4[2];
- Ministry of Trade, Industry and Tourism Resolution Number 257 of 9 November 2018[3] adopting the final determination on the administrative investigation initiated by Decision 121 of 2 August 2017, published in the Official Journal No 50.772 of 9 November 2018, page 9[4];
- Responses to the Comments on the Essential Facts in the Investigation of Dumping of Imports of Potatoes, Prepared or Preserved, Classified under Tariff Subheading 2004.10.00.00 Originating in Belgium, the Netherlands and Germany[5];
- Final Technical Report, Public Version, Investigation of Alleged Dumping of Imports of Potatoes, Prepared or Preserved (otherwise than by vinegar or acetic acid), Classified under Tariff Subheading 2004.10.00.00 Originating in Belgium, the Netherlands (Holland) and Germany, 2018[6];
- Ministry of Trade, Industry and Tourism Resolution Number 093 of 13 May 2019 addressing some requests for administrative review[7], published in the Official Journal No 50.956, page 18[8].

This request also covers any annexes thereto, notices, preliminary findings, reviews, amendments, supplements, replacements, renewals, extensions, implementing measures or any other related measures.

The measures at issue described above appear to be inconsistent with Colombia's obligations under the following provisions of the Anti-Dumping Agreement and the GATT 1994:

1. Article 2.1 of the Anti-Dumping Agreement, because Colombia, in its determination on dumping, did not rely on correct export prices from Belgium, Germany and the Netherlands and did not exclude a sample transaction from the calculation of the dumping margin, thereby erroneously arriving at inflated dumping margins, in excess of *de minimis*.

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[1] http://www.mincit.gov.co/mincomercioexterior/defensa-comercial/dumping/derechos-antidumping-vigentes/papa-congelada/resolucion-191-del-1º-de-noviembre-de-2017.aspx, last accessed on 21 October 2019.
[2] http://svrpubindc.imprenta.gov.co/diario/view/diarioficial/consultarDiarios.xhtml, last accessed on 21 October 2019.
[3] http://www.mincit.gov.co/mincomercioexterior/defensa-comercial/dumping/derechos-antidumping-vigentes/papa-congelada/resolucion-no-257-del-9-de-noviembre-de-2018.aspx , last accessed on 21 October 2019.
[4] http://svrpubindc.imprenta.gov.co/diario/index.xhtml;jsessionid=f3a676a718bd19151d80b155f949 , last accessed on 21 October 2019.
[5] http://srvcalidad.mincomercio.gov.co/Practicas-Comerciales/Mincomercio/D-087-03-573-02-023-01-95-PAPA-PUBLICA-T18.PDF , document stamped with numbers 6055 to 6070, last accessed on 21 October 2019.
[6] http://srvcalidad.mincomercio.gov.co/Practicas-Comerciales/Mincomercio/D-087-03-573-02-023-01-95-PAPA-PUBLICA-T18.PDF , document stamped with numbers 6071 to 6130, last accessed on 21 October 2019.
[7] http://www.mincit.gov.co/mincomercioexterior/defensa-comercial/dumping/derechos-antidumping-vigentes/papa-congelada/resolucion-093-rd.aspx , last accessed on 21 October 2019.
[8] http://svrpubindc.imprenta.gov.co/diario/view/diarioficial/consultarDiarios.xhtml , last accessed on 21 October 2019.

2. Articles 6.8 and paragraphs 3 and 6 of Annex II, in conjunction with Article 2.1 of the Anti-Dumping Agreement because Colombia determined dumping of the products under investigation on the basis of the facts available, even though no interested party refused access to, or otherwise did not provide, necessary information within a reasonable period or significantly impeded the investigation. In particular, Colombia determined the export price of the products under investigation based on the Dirección de Impuestos y Aduanas Nacionales (DIAN) database for all exporting producers rather than based on the export price data provided by those producers. Moreover, Colombia failed to take into account when its determinations were made, all information which was verifiable, which was appropriately submitted so that it could be used in the investigation without undue difficulties and which was supplied in a timely fashion. Colombia also failed to inform the supplying parties forthwith of the reasons for not accepting the evidence or information provided and failed to give the supplying an opportunity to provide further explanations within a reasonable period.

3. Articles 5.8 in conjunction with Articles 2.1 and 3 of the Anti-Dumping Agreement, because Colombia did not reject the application for initiating an anti-dumping investigation of the products under investigation, or did not terminate that investigation promptly, even though there was not sufficient evidence of either dumping or of injury to justify proceeding with the case. In particular, a proper dumping analysis concerning the products under investigation in keeping with the requirements of Article 2.1 of the Anti-Dumping Agreement would not have led to any margins of dumping in excess of *de minimis*.

4. Articles 2.1 and 2.6 of the Anti-Dumping Agreement because the product which Colombia considered as being dumped is not "like" the product when destined for consumption in the exporting country. Colombia wrongly included, in the scope of the product under consideration, both traditional frozen fries and frozen specialities and failed to apply the terms "like product" as meaning identical, i.e. alike in all respect to the product under consideration, or although it is not alike in all respects, having characteristics closely resembling those of the products under consideration.

5. Article 2.4 of the Anti-Dumping Agreement because Colombia did not make a fair comparison between the export price and the normal value. In particular, Colombia did not make due allowances for differences which affect price comparability, including for differences in physical characteristics and/or any other differences between the products sold on the domestic markets in Belgium, Germany and the Netherlands, and the products under investigation sold on the export market, which were demonstrated to affect price comparability. Inter alia, Colombia disregarded the different proportions of high and low value products exported to Colombia as compared to domestic sales in Belgium, Germany and the Netherlands as well as differences in packaging and differences resulting from the use of different types of oils.

6. Article 2.4 of the Anti-Dumping Agreement because Colombia did not make a fair comparison between the export price and the normal value by deducting certain sea

freight and insurance costs twice from the export price of a company, thereby unduly lowering the export price.

7. Article 2.4 of the Anti-Dumping Agreement because Colombia failed to indicate to the parties in question what information was necessary to ensure a fair comparison and imposed an unreasonable burden of proof on those parties.

8. Articles 2.4.1 of the Anti-Dumping Agreement because Colombia converted the currency of the normal value and export price, the euro, into US dollars even though the comparison under Article 2.4 of the Anti-Dumping Agreement did not require such a conversion of currencies.

9. Each of Articles 3.1, 3.2, 3.4, 3.6, 3.7 and 3.8 of the Anti-Dumping Agreement because Colombia, in its injury determination, wrongly included non-dumped imports.

10. Article 3.1 in conjunction with Article 3.2 of the Anti-Dumping Agreement because Colombia did not carry out an objective examination of the effect of the dumped imports on prices in the domestic market for the like product. Notably, Colombia's injury determination did not include data with respect to domestic prices and, in particular, whether there had been a significant price undercutting, price depression or price suppression by the dumped imports.

11. Article 3.1 in conjunction with Article 3.4 of the Anti-Dumping Agreement because Colombia did not carry out an objective examination of the impact of the dumped imports on the domestic industry concerned. Rather than making the required overall evaluation of all relevant economic factors and indices having a bearing on the state of the industry, Colombia unduly limited its analysis to examining seven economic factors, and by evaluating those factors in isolation. Moreover, Colombia wrongly compared an average of five semesters for the injury period with an average of two semesters for the dumping period.

12. Article 3.5 of the Anti-Dumping Agreement because Colombia did not demonstrate that the dumped imports of the product under investigation are, through the effects of dumping, causing injury within the meaning of that agreement. In particular, Colombia looked into causation by examining dumped and non-dumped imports together and did not consider the increase in price of the raw material as a known factor other than the products under investigation which at the same time was injuring the domestic industry.

13. Articles 5.1 in conjunction with Article 5.4 of the Anti-Dumping Agreement because Colombia initiated the investigation without ensuring that the written application for an investigation was "made by or on behalf" of the relevant "domestic industry", as defined in Article 4.1 of that agreement. In particular, Colombia initiated the investigation without determining, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application had been made by or on behalf of the domestic

industry. In particular, Colombia did not provide evidence of the legal capacity of the applicant to represent and lodge the complaint on behalf of the domestic industry.

14. Article 5.3 of the Anti-Dumping Agreement because Colombia failed to examine the accuracy and adequacy of the evidence provided in the application on dumping, injury and causation to determine whether there is sufficient evidence to justify the initiation of an investigation.

15. Article 5.8, first sentence of the Anti-Dumping Agreement because Colombia initiated an investigation without the required sufficient evidence.

16. Articles 6.1.2 and 6.2 in conjunction with Article 6.4 of the Anti-Dumping Agreement because Colombia failed to make available promptly to other interested parties participating in the investigation, evidence presented in writing. Colombia also failed to provide all interested parties a full opportunity for the defence of their interests as well as timely opportunities to see all non-confidential information relevant to the defence of their interests with regard to, *inter alia*, the methodology used to calculate the dumping margin, including the adjustments made and the material injury analysis.

17. Article 6.5 of the Anti-Dumping Agreement because Colombia failed to treat confidential information or information provided on a confidential basis as such and disclosed it without specific permission of the parties submitting it.

18. Article 6.5 of the Anti-Dumping Agreement because Colombia treated as confidential, without showing good cause, information supplied by the applicant. In particular, although Colombia required the applicant to justify the confidential treatment of the information submitted, Colombia provided confidential treatment on its own initiative, in the absence of an indication by the applicant asserting the confidential nature of the information supplied, i.e. without good cause having been shown by the applicant.

19. Both Article 6.5 of the Anti-Dumping Agreement and Article 10 of the Customs Valuation Agreement because Colombia has not treated information that is by nature confidential or information which was provided on a confidential basis by a party for the purposes of customs valuation, as such and because Colombia disclosed such information without specific permission of the party submitting it. In particular, Colombia published information of clients, price and volume per transaction for the exports made during the investigation period by one party, which is by nature confidential and whose confidentiality has not been waived.

20. Article 6.5.1 of the Anti-Dumping Agreement because Colombia did not require the applicant to furnish non-confidential summaries of confidential information provided by it and which provide sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. If the applicant claimed that the information was not susceptible of summary, Colombia failed to require that a statement of reasons in support of that claim be provided.

21. Article 6.9 of the Anti-Dumping Agreement because Colombia did not sufficiently inform all interested parties of the essential facts under consideration which form the basis of the decision to impose definitive anti-dumping measures, including the essential facts underlying the determinations of the existence of dumping and the calculation of the margins of dumping and the determination of injury. This precluded the possibility of interested parties to defend their interests, in particular to assess whether Colombia's conclusions were supported by evidence and whether they reflected an objective examination of evidence.

22. Articles 12.2 in conjunction with 12.2.2 of the Anti-Dumping Agreement because Colombia did not disclose, in a public notice, essential information on dumping and injury and failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authority, as well as all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures. Colombia also failed to provide a public notice or a separate report with the relevant information on the matters of fact and law and the reasons which have led to the imposition of final measures, in particular the reasons for the rejection of relevant arguments or claims in relation to this sample transaction during the investigation.

23. Colombia's anti-dumping measures on the products under investigation also appear to be inconsistent with Articles 1, 9.1, 9.2, 9.3, 11.1 and 18.1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 as a consequence of the breaches of the Anti-Dumping Agreement described above.

As a result of these inconsistencies, Colombia's measures, also appear to nullify or impair the benefits accruing to the European Union, directly or indirectly, under the covered agreements.

The European Union reserves the right to address additional measures and claims under other provisions of the covered agreements regarding the above matters during the course of the consultations.

The European Union looks forward to receiving Colombia's reply to this request and to finding a mutually convenient date for the consultations.

Yours sincerely,

João Aguiar Machado
Ambassador
Permanent Representative to the WTO

cc.: H.E. David WALKER, Chairperson of the Dispute Settlement Body
H.E. Jose Luis CANCELA GOMEZ, Chairperson of the Council for Trade in Goods
Ms Lenka ŠUSTROVÁ, Chairperson of the Committee on Anti-Dumping Practices
Mr. John ADANK, Director, Legal Affairs Division
Ms. Clarisse MORGAN, Director, Rules Division