

China requests a WTO panel to rule on the US measures affecting imports of poultry from China

At the WTO Dispute Settlement Body (hereinafter, the DSB) meeting of 20 July 2009, China put on the agenda its request for the establishment of a WTO panel in a new dispute concerning certain US measures affecting imports of poultry from China to the US. The request was submitted by China to the DSB on 23 June 2009 and covered a range of allegedly trade-restrictive US measures, affecting China's exports of poultry. China stated that, since at least 2007, the US has effectively banned China's poultry products through a number of annual omnibus appropriation acts and a series of related measures. China also noted that the US Congress is currently in the process of preparing similar new measures for adoption. The US and China attempted to settle this dispute during their official WTO consultations after China had submitted its request for consultations to the DSB on 17 April 2009, but failed to reach a mutually agreed solution.

In its requests for consultations and for the establishment of a WTO panel, China is challenging a number of US measures. First, China pointed out that Section 727 of the US Omnibus Appropriations Act of 2009, signed into law on 11 March 2009, prohibits the expenditure of any US Government funds necessary to allow for the importation of poultry products from China. In particular, China alleges that Section 727 prohibits the United States Department of Agriculture (hereinafter, the USDA) from, *inter alia*, using funds to implement measures allowing for the importation of poultry products from China, including those that were declared eligible by the USDA, and for the expansion of such imports into the US. As a result, according to China, the measure is limiting the ability of the USDA to take those actions that are necessary to allow importation of poultry products from China to take place. Second, in its requests China stated that there is an ongoing US *moratorium* in the form of a suspension of (i) the consideration of applications for the approval, (ii) the granting of approval, and (iii) the implementation of approvals of the importation of poultry products from China, which ultimately results in a *de facto* ban on the importation of Chinese poultry products into the US. According to China, the above-mentioned US measures, as well as their amendments or replacement measures, are inconsistent with the US obligations under a range of WTO agreements, including the WTO General Agreement on Tariffs and Trade (hereinafter, the GATT) and the WTO Agreement on Agriculture. In particular, China argues that these measures are incompatible with the GATT provisions on most-favoured-nation treatment and general elimination of quantitative restrictions, as well as with the provision of the Agreement on Agriculture preventing WTO Members from maintaining, resorting to, or reverting to trade restrictive measures other than ordinary customs duties.

In addition, considering that the US measures at issue constitute sanitary and phytosanitary measures (hereinafter, SPS measures) within the meaning of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter, the SPS Agreement), in its requests China states that the US measures are inconsistent with the provisions of the SPS Agreement. In particular, China alleges that, contrary to the requirements of the SPS Agreement, the US SPS measures are not based on a proper risk assessment and are not supported by sufficient scientific evidence. China alleges that the US has failed to observe the rules of the SPS Agreement concerning the operation of control, inspection, and approval procedures. Finally, according to China, the US SPS measures are not based on international standards, guidelines, or recommendations, thereby violating the SPS Agreement.

The poultry dispute between China and the US dates back to 2004, when both countries banned each others' poultry products in response to an outbreak of bird flu. Later the same year, China and the US agreed to lift their bans, but ultimately the US decided to leave its measure in force due to safety concerns about Chinese poultry. The ongoing dispute between China and the US should be followed closely by businesses involved in trade in poultry with the US, regardless of whether their products are similarly affected by the US trade measures or not. In 2008, China imported 580,000 tons of chicken products from the US, accounting for about 75% of total its chicken imports. Currently, the US imports almost no poultry, except for a small amount of Canadian chicken. According to the WTO dispute settlement rules, if China decides to proceed with its complaint, the panel in this dispute may be established at the next DSB meeting, which will most likely take place on 31 July 2009.

Canada initiates a WTO action against Korean beef measures

At the WTO DSB meeting held on 20 July 2009, WTO Members discussed Canada's request for the establishment of a WTO panel to consider South Korean measures banning the importation of beef from Canada. Canada submitted its request for the establishment of a Panel to the DSB on 9 July 2009.

South Korea, together with other countries, banned imports of Canadian beef after bovine spongiform encephalopathy (hereinafter, BSE), also known as mad-cow disease, was discovered in a Canadian cow in 2003. Before the ban, South Korea was Canada's fourth-largest beef export market, accounting for CAD 50 million (*i.e.*, USD 43 million) of exports in 2002 and with the potential to reach USD 400 million if the ban were to be lifted. In 2003, after Canada implemented measures to eliminate the consequences of BSE, the World Organisation for Animal Health (hereinafter, the OIE) concluded that Canadian beef and cattle were safe for international trade. The OIE reconfirmed the safety of Canadian beef in 2008 and 2009. It should be noted that, in 2008, South Korea lifted a similar ban on US beef. On 7 May 2009, Canada and South Korea conducted WTO consultations on this issue, but failed to resolve the dispute.

In its request for the establishment of a panel, Canada argues that the South Korean ban, as well as other existing trade restrictive measures relating to the importation of bovine meat from Canada, violate the SPS Agreement and the GATT. In particular, Canada submits that South Korean measures are inconsistent with a range of provisions of the SPS Agreement, since, *inter alia*: 1) they are not applied only to the extent necessary to protect human or animal life or health, they are not based on scientific principles and they are maintained without sufficient scientific evidence; 2) they arbitrarily or unjustifiably discriminate between WTO Members where identical or similar conditions prevail and they are applied in a manner that constitutes a disguised restriction on international trade; 3) they are not based on international standards, guidelines or recommendations; 4) they result in a higher level of sanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations; 5) they are not based on an assessment of the risks to human or animal life or health, taking into account risk assessment techniques developed by relevant international organisations; 6) they are more trade-restrictive than required to achieve South Korea's appropriate level of sanitary protection; and 7) they do not qualify as provisional SPS measures in light of the requirements of the SPS Agreement. In addition, Canada alleges that South Korean measures violate GATT provisions on most-favoured-nation treatment, national treatment and general elimination of quantitative restrictions.

South Korea rejected Canada's arguments and noted that, whereas it had never detected BSE in its territory, 16 outbreaks of this disease had been reported in Canada, including two in November 2008 and May 2009.

A WTO panel will be established at the next meeting of the DSB, unless parties will settle this dispute before such a meeting. The developments of this dispute should be of particular interest to

businesses from Canada, as well as from other countries, involved in trade in bovine meat with Korea, since the outcome of the WTO dispute may increase their export potential in the South Korean market.

The EC is planning measures to stabilise its dairy market

Amidst economic recession and a global fall in prices for dairy products, the EC is devising measures to stabilise its dairy market. On 22 July 2009, the European Commission submitted to the EC Council a communication on the EC dairy market situation with proposals on how to stabilise it. This communication is the result of a process of in-depth market analysis mandated by the EC Council and conducted by the Commission during the last two months.

In its Communication, the Commission ensured that it would continue do all it can to support the EC dairy farmers and stabilise the dairy market. For these purposes, the Commission opened private storage aid for butter, reactivated export refunds for dairy products and started intervention buying on 1 March for butter and skimmed milk powder. It will also allow EC Member States to pay up to 70% of direct payments to farmers from 16 October, instead of 1 December 2009, and it will allow EC Member States to grant *de minimis* state aid or loans to help milk producers with liquidity problems. *De minimis* state aid is a small subsidy, exempted by the EC from the obligation to notify it in advance for clearance by the Commission under the EC Treaty state aid rules. The Commission also proposed a range of dairy sector promotion and restructuring programmes. Finally, the Commission is examining anti-competitive practices in the dairy sector's food supply chain, as it seeks to explain the comparatively small fall in consumer dairy prices in EC shops compared to the significantly lower prices dairy farmers are receiving.

The measures proposed by the Commission faced strong criticism in the EC, *inter alia*, among Agriculture Committee Members of the European Parliament and producer representatives. This criticism is largely caused by the Commission's refusal to include in the list of support measures the reduction of milk quotas. According to dairy producers, such a measure would boost dairy prices in the EC and help alleviate the current market situation.

On the issue of quota, the Commission took the position that quota system changes would not respect the outcome of the EC Health Check of the Common Agricultural Policy (hereinafter, CAP), which it is obliged to respect according to the mandate provided by the EC Council. On 20 November 2008, EC agriculture ministers reached a political agreement on the CAP, which, *inter alia*, envisages the gradual increases of milk quotas, leading up to their abolition in 2015. Such policy aims at removing restrictions on farmers, thus helping them to respond better to market signals. In the current situation of low demand for dairy products, one of possible ways to boost prices, in line with the CAP, would be a decrease of production.

Amidst political heat over the situation in the EC dairy sector, it remains uncertain whether the EC will ultimately reduce dairy quotas to help local farmers or not. Considering the numerous commitments of the WTO Members to protect free trade and avoid protectionist measures, the EC position in regard to its dairy sector may have serious implications for other WTO Members' strategies to support their local industries. In its efforts to support the sector, the EC must also respect its WTO reduction commitments on agricultural domestic support and export competition. Under the WTO Agreement on Agriculture, domestic support measures for agricultural products are subject to limits. 34 WTO Members, including the EC, have committed to specific reduction levels. In addition, *de minimis* levels of domestic support are allowed, regardless whether the WTO Member has undertaken reduction commitments. Export subsidies are also subject to reduction commitments, which, differently from domestic support measures, must be indicated in terms of maximum levels of expenditure and volume of subsidised exports for each agricultural product or group of products. According to its WTO Schedule, the EC has committed to cap its level of domestic support to ECU 61.204 billion (to be converted in EUR), and is allowed a *de minimis* level of support amounting to 5% of its agricultural production. In addition, the EC has undertaken

reduction commitments on export subsidies that it grants to butter, skim milk powder, cheese and other milk products. Should the EC exceed, through the support measures that it is granting and intends to grant, its committed levels, it would be in violation of its WTO obligations. Associations, traders from other countries, as well as EC importers, and other WTO Members that could potentially be affected by such measures, should ensure that these measures comply with the EC WTO commitments and should monitor the issue within the framework of the current WTO round of trade negotiations (*i.e.*, the Doha Development Agenda), which involve also a reform of agricultural trade rules, ongoing bilateral negotiations with the EC and the WTO dispute settlement.

Brazil and Argentina clash over Argentinean import licensing scheme

Brazil indicated that it may start a WTO action against Argentina because of Argentina's delays in issuing import licenses for Brazilian goods. Brazil asserts that their Argentinean counterparts are taking too long to issue non-automatic licenses to import goods from Brazil, which negatively affects the demand for Brazilian products in Argentina. Brazil links Argentinean measures to a 43% annual drop in exports of Brazilian textiles, shoes, furniture, home appliances and some car parts to Argentina in the first half of 2009 alone.

Argentina was Brazil's second-biggest trading partner from the 1980s until 2008, when China took Argentina's place. Nevertheless, in 2008, Brazilian exports to Argentina amounted to USD 17.6 billion.

WTO law establishes strict rules on the application of import licensing procedures. In particular, the WTO Agreement on Import Licensing Procedures and the GATT provide that non-automatic import licensing must not have trade-restrictive or distortive effects on imports additional to those caused by the restriction that the licensing system intends to administrate. Non-automatic licensing schemes are used to implement WTO-consistent restrictions and quotas (such as, for example, tariff-rate quotas) and must not constitute restrictions *per se*. To avoid that licensing systems operate as an additional barrier to trade, the WTO Agreement on Import Licensing Procedures regulates in detail a number of aspects of licensing regimes, with the aim of simplifying licensing procedures and enhancing transparency. *Inter alia*, the WTO Agreement on Import Licensing Procedures establishes the period for processing applications, which must not be longer than 30 days if applications are considered on a first-come-first-served basis, and no longer than 60 days if all applications are considered simultaneously.

Although the dispute over Argentinean import licensing measures appears not to be resolved, so far Brazil has not yet brought this issue to the WTO. The ongoing discussions concerning Argentinean measures should be followed by businesses from other countries, exporting commodities to Argentina and affected by Argentinean similar measures. They should discuss with their governments possible ways to address these measures with Argentina on a bilateral level, within the framework of the MERCOSUR or in the WTO.

Recently adopted EC legislation:

[Commission Regulation \(EC\) No 610/2009 of 10 July 2009 laying down detailed rules for the application of the tariff quota for beef and veal originating in Chile](#)

[Council Regulation \(EC\) No 617/2009 of 13 July 2009 opening an autonomous tariff quota for imports of high-quality beef](#)

[Commission Regulation \(EC\) No 612/2009 of 7 July 2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products](#)

[Council Regulation \(EC\) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries](#)

[Council Regulation \(EC\) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community](#)

[Council Regulation \(EC\) No 626/2009 of 13 July 2009 concluding the partial interim review pursuant to Article 11\(3\) of Regulation \(EC\) No 384/96 of the anti-dumping duty on imports of certain graphite electrode systems originating in India](#)

[Commission Regulation \(EC\) No 635/2009 of 14 July 2009 amending Regulation \(EC\) No 1580/2007 as regards the trigger levels for additional duties on apples](#)

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