



17 April 2015

(15-2070)

Page: 1/6

Original: English

**EUROPEAN UNION – MEASURES AFFECTING TARIFF CONCESSIONS  
ON CERTAIN POULTRY MEAT PRODUCTS**

**REQUEST FOR CONSULTATIONS BY CHINA**

The following communication, dated 8 April 2015, from the delegation of China to the delegation of the European Union and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

---

My authorities have instructed me to request consultations with the European Union (the "EU") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), and Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994") with respect to the EU measures identified below that affect imports of certain poultry meat products from China. The Government of the People's Republic of China considers these measures to be inconsistent with the obligations of the EU under the relevant provisions of the WTO Agreements.

These measures are the result of two EU requests to modify the EU tariff concessions on certain poultry meat products under Article XXVIII of the GATT 1994 in 2006 and in 2009, i.e.:

- (i) The first negotiation was requested by the EU on 7 June 2006 through a notification to the WTO Members of its intention to modify its tariff concessions for three tariff subheadings, i.e., subheadings 0210 99 39, 1602 31 and 1602 32 19 (the "2007 Modification Package" hereinafter). The EU undertook modification negotiations under GATT 1994 Article XXVIII with Thailand and Brazil, which it considered to have a principal or substantial supplying interest in products covered by these subheadings. The EU subsequently reached an agreement with Brazil and Thailand on 23 November 2006 and 6 December 2006, respectively, on the basis of tariff rate quotas almost entirely reserved for Brazil and / or Thailand and out-of-quota bound rates significantly in excess of the pre-modification bound rates.
- (ii) The second negotiation was requested by the EU on 11 June 2009 through a notification to the WTO Members of its intention to modify its tariff concessions on eight tariff subheadings, i.e., 1602 20 10, 1602 32 11, 1602 32 30, 1602 32 90, 1602 39 21, 1602 39 29, 1602 39 40 and 1602 39 80 (the "2012 Modification Package" hereinafter).<sup>1</sup> The EU undertook modification negotiations under GATT 1994 Article XXVIII with Thailand and Brazil, which it considered to have a principal or substantial supplying interest in the products covered by these subheadings. The EU subsequently entered into an agreement with Thailand and Brazil on 18 June 2012 with Thailand and on 26 June 2012, respectively, on the basis of tariff rate quotas that again are almost entirely or even entirely reserved for Brazil and / or Thailand and out-of-quota rates significantly in excess of the pre-modification bound rates.<sup>2</sup>

---

<sup>1</sup> Tariff subheadings 1602 39 40 and 1602 39 80 were combined in 2012 to create a new tariff subheading 1602 39 85.

<sup>2</sup> No change was made to the existing tariff rate for tariff subheading 1602 20 10.

On 17 December 2012 the EU notified the WTO Members that it had concluded its negotiations under GATT 1994 Article XXVIII in relation to the products at issue, and attached the results of its negotiations with this communication (G/SECRET/32/ADD 1).

Annex 1 is a chart that summarizes the tariff rate changes pursuant to the 2007 and the 2012 Modification packages.

The reference period for the determination of the tariff rate quotas was a period (i.e., from 2003 to 2005 for the 2007 Modification Package and from 2006 to 2008 for the 2012 Modification Package) when the importation of poultry meat from China was restricted in the EU. The EU concluded that China did not have a principal or substantial supplying interest during the reference period on any of the subheadings involved, and did not negotiate or consult with China.

The above referenced modifications of the EU's tariff concessions and the institution of the tariff rate quotas as part of the modification packages are implemented through the following instruments:

A. For the 2007 Modification Package

- (i) Council Regulation (EC) No 580/2007 of 29 May 2007 concerning the implementation of Agreements in the form of Agreed Minutes between the European Community and Brazil, and between the European Community and Thailand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), amending and supplementing Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.<sup>3</sup>
- (ii) Commission Regulation (EC) No 616/2007 of 4 June 2007 opening and providing for the administration of Community tariff quotas in the sector of poultry meat originating in Brazil, Thailand and other third countries.<sup>4</sup>
- (iii) Commission Regulation (EC) No 1549/2007 of 20 December 2007 amending Regulation (EC) No 616/2007 opening and providing for the administration of certain Community tariff quotas in the sector of poultry meat originating in Brazil, Thailand and other third countries.<sup>5</sup>

B. For the 2012 Modification Package

- (i) Regulation (EU) No 1218/2012 of the European Parliament and of the Council of 12 December 2012 amending and supplementing Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>6</sup> which was adopted after the adoption of Council Decision 2012/792/EU of 6 December 2012 approving the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and Brazil pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions with respect to processed poultry meat provided for in the EU Schedule annexed to GATT 1994, and of the Agreement in the form of an Exchange of Letters between the European Union and Thailand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions with respect to processed poultry meat provided for in the EU Schedule annexed to GATT 1994.<sup>7</sup>
- (ii) Commission Regulation (EU) No 1246/2012 of 19 December 2012 amending Regulation (EC) No 616/2007 opening and providing for the administration of Community tariff quotas in the sector of poultry meat originating in Brazil, Thailand and other third countries and derogating from that Regulation for 2012-2013.<sup>8</sup>

<sup>3</sup> O.J. No L 138, 30 May 2007, p. 1.

<sup>4</sup> O.J. No L 142, 5 June 2007, p. 3.

<sup>5</sup> O.J. No L 337, 21 December 2007, p. 75.

<sup>6</sup> O.J. No L 351, 20 December 2012, p. 36.

<sup>7</sup> O.J. No L 351, 20 December 2012, p. 47.

<sup>8</sup> O.J. No L 352, 21 December 2012, p. 16.

- (iii) Commission Implementing Regulation (E8) No 302/2013 of 27 March 2013 amending Regulation (EC) No 616/2007 opening and providing for the administration of Community tariff quota in the sector of poultry meat originating in Brazil, Thailand and other countries.<sup>9</sup>

Whilst this Commission Regulation entered into force on 31 March 2013, a Notice published on 28 February 2013 indicated that the agreements between the EU and Brazil on the one hand and the EU and Thailand on the other hand entered into force on 1 March 2013.<sup>10</sup>

In addition to the measures cited in the above paragraphs, this request also covers any amendments, supplements, extensions, replacement measures, renewal measures, related measures, or implementing measures.

The above measures appear inconsistent with the EU's obligations under Articles I, II, XIII and XXVIII of the GATT 1994:

A. Claims with Respect to the 2007 Modification Package

- (i) The modification negotiation initiated by the EU in 2006 is inconsistent with Article XXVIII:1 of the GATT 1994, read in conjunction with Ad Article XXVIII, paragraph 4, and with the Understanding on the Interpretation of Article XXVIII, as the EU failed to negotiate or consult with all the WTO Members having a principal or substantial supplying interest or that could have had such an interest in the absence of a discriminatory quantitative restriction.
- (ii) The tariff rates and the tariff rate quotas negotiated and then implemented by the EU in the measures identified above are inconsistent with Article XXVIII:2 because they failed to maintain a general level of reciprocal and mutually advantageous concessions not less favorable to trade than that existing prior to the modification.
- (iii) The country-specific tariff rate quotas allocated by the EU to two of the WTO Members violate GATT 1994 Article XIII by diminishing for the other WTO Members the market access commitments which the EU undertook to maintain on a non-discriminatory basis.
- (iv) The allocation of all or the vast majority of the tariff rate quotas to two of the WTO Members is inconsistent with GATT 1994 Article XIII:1 because the importation of the like product from the WTO Members is not similarly prohibited or restricted as a result.
- (v) The allocation of all or the vast majority of the tariff rate quotas to two of the WTO Members is inconsistent with the chapeau of GATT 1994 Article XIII:2, which requires the allocation of a tariff rate quota to approach as closely as possible the shares that the WTO Members might be expected to obtain.
- (vi) The allocation of all or the vast majority of the tariff rate quotas to two of the WTO Members is inconsistent with GATT 1994 Article XIII:2, including its chapeau, and Article XIII:4, which require the allocation of a significant share to the "others" category.
- (vii) The allocation of all or the vast majority of tariff rate quotas to two of the WTO Members is inconsistent with GATT 1994 Article XIII:2(d) which requires a Member instituting country-specific TRQs to either seek agreement with all WTO Members having a substantial interest in supplying the product concerned, or allot to such Members shares based upon the proportions supplied by them during a previous representative period, due account being taken of any special factors which may have affected or may be affecting the trade in the product.
- (viii) The tariff rates and the tariff rates quotas the EU negotiated and then implemented under Article XXVIII and paragraph 7 of the Procedures for Negotiations under Article

<sup>9</sup> O.J. No L 90, 28 March 2013, p. 86.

<sup>10</sup> O.J. No 56, 28 February 2013, p. 2.

XXVIII are ineffectual to replace the EU's obligations under the unmodified Schedule because they are inconsistent with GATT 1994 Articles XIII and XXVIII:2.

- (ix) The tariff rates and the tariff rate quotas negotiated and then implemented by the EU in the measures identified above are inconsistent with GATT 1994 Article I:1 which requires that any advantage, favor, privilege or immunity granted by any WTO Member to any product originating in any other country shall be accorded immediately and unconditionally to the like product originating in the territories of all other WTO Members.

B. Claims with Respect to the 2012 Modification Package

- (i) The modification negotiation initiated by the EU in 2009 is inconsistent with Article XXVIII:1 of the GATT 1994, read in conjunction with Ad Article XXVIII, paragraph 4, and with the Understanding on the Interpretation of Article XXVIII, as the EU failed to negotiate or consult with all the WTO Members having a principal or substantial supplying interest or that could have had such an interest in the absence of a discriminatory quantitative restriction.
- (ii) The tariff rates and the tariff rate quotas negotiated and then implemented by the EU in the measures identified above are inconsistent with Article XXVIII:2 because they fail to maintain a general level of reciprocal and mutually advantageous concessions not less favorable to trade than that existing prior to the modification.
- (iii) The country-specific tariff rate quotas allocated by the EU to two of the WTO Members violate GATT 1994 Article XIII by diminishing for the other WTO Members the market access commitments which the EU undertook to maintain on a non-discriminatory basis.
- (iv) The allocation of all or the vast majority of tariff rate quotas to two of the WTO Members is inconsistent with GATT 1994 Article XIII:1 as the importation of the like product of all the WTO Members is not similarly prohibited or restricted as a result.
- (v) The allocation of all or the vast majority of tariff rate quotas to two of the WTO Members is inconsistent with the chapeau of GATT 1994 Article XIII:2, because the allocation of the tariff rate quotas do not approach as closely as possible the shares which the WTO Members might be expected to obtain.
- (vi) The allocation of all or the vast majority of the tariff rate quotas to two of the WTO Members is inconsistent with GATT 1994 Article XIII:2, including its chapeau, and Article XIII:4, which require the allocation of a significant share to the "others" category.
- (vii) The allocation of all or the vast majority of tariff rate quotas to two of the WTO Members is inconsistent with GATT 1994 Article XIII:2(d) which requires a Member instituting country-specific TRQs to either seek agreement with all WTO Members having a substantial interest in supplying the product concerned, or allot to such Members shares based upon the proportions supplied by them during a previous representative period, due account being taken of any special factors which may have affected or may be affecting the trade in the product.
- (viii) The EU's refusal to enter into consultation with China is inconsistent with GATT 1994 Article XIII:4, which requires a Member instituting a country-specific tariff rate quota to consult promptly, upon the request of any other Member having a substantial interest in supplying the product concerned, regarding the need for an adjustment of the allocation of the tariff rate quotas or the base period selected, or for a reappraisal of the special factors involved.
- (ix) The tariff rates and the tariff rates quotas the EU negotiated and then implemented under Article XXVIII and paragraph 7 of the Procedures for Negotiations under Article XXVIII are ineffectual to replace the EU's obligations under the unmodified Schedule because they are inconsistent with GATT 1994 Articles XIII, and XXVIII:2.

- (x) In the absence of notification for certification, notification of the date on which the changes to the goods Schedule come into force to the WTO Secretariat, and notification of the draft modification to the goods Schedule, the EU acted inconsistently with the procedures set forth in paragraph 7 of the Procedures for negotiations under Article XXVIII and paragraph 1 of the Procedures for Modification and Rectification of Schedules and Tariff Concessions.
- (xi) The absence of a proper notification for certification of the modified Schedule and of the certification following notification and the other violations mentioned herein, results in the EU having acted inconsistently with GATT 1994 Articles II:1 and II:2 by affording imports of poultry meat from China less favorable treatment than that provided for in its goods Schedule.
- (xii) The EU acted inconsistently with GATT 1994 Article I:1, which requires that any advantage, favor, privilege or immunity granted by any WTO Member to any product originating in any other country shall be accorded immediately and unconditionally to the like product originating in the territories of all other WTO Members.

The EU's measures also nullify or impair the benefits accruing to China directly or indirectly under the cited agreements.

China reserves its right to raise additional factual and legal claims and matters during the course of these consultations and in any future request for panel proceedings.

China looks forward to receiving a reply from the EU to the present request and to fixing a mutually convenient date and venue for consultations.

---

# Annex1: Summary Chart of the EU's Modification of its Tariff Concessions on Certain Poultry Meat Products

A	B	C	D	E	F	G	H	I	J	L	M	N	O	P	Q
	HTS Code	Description	Post Modification Bound Rate/ Applicable Rate (EUR/MT)	Average EU Import Price 2013 (Euro/MT)	2013 EU Imports (Euro)	2013 EU Imports (MT)	Ad Valorem Equivalent of the Post Modification Bound Rate Based on 2013 Average Import Unit Price	Pre- Modification Bound Rate % (ad valorem)	% Change of Bound Rate (H-I)/I	TRQ (MT)	In Quota Tariff Rate	TRQ Allocated to Brazil (MT)	TRQ Allocated to Thailand (MT)	Effective Date	Implementing Instruments
2007 Modification	0210 99 39	Salted poultrymeat	1,300	2,323	527,429,237	227,067	55.97%	15.40%	263.42%	264,245	15.40%	1708	92610	31/05/2007	Council Regulation (EC) No 580/2007
	1602 31	Prepared turkeymeat	1,024	3,093	212,362,477	68,665	33.11%	8.50%	289.53%	103,896	8.50%	923	-	31/05/2007	Council Regulation (EC) No 580/2007
	1602 32 19	Cooked chickenmeat	1,024	3,415	792,641,385	232,133	29.99%	10.90%	175.13%	250,953	8.00%	79477	160033	31/05/2007	Council Regulation (EC) No 580/2007
2012 Modification	1602 3211	Processed chicken meat, uncooked, containing 57 % or more by weight of poultry meat or offal more by weight of poultry meat or offal	2,765	2,770	30,889,107	11,150	99.81%	10.90%	815.70%	16,140	630 EUR/tonne (equivalent to an ad valorem rate of 22.74%)	15800	-	01/03/2013	REGULATION (EU) No 1218/2012
	1602 3230	Processed chicken meat, containing 25 % or more but less than 57 % by weight of poultry meat or offal	2,765	1,931	128,111,812	66,344	143.19%	10.90%	1213.66%	79,705	10.90%	62905	14000	01/03/2013	REGULATION (EU) No 1218/2012
	1602 3290	Processed chicken meat, containing less than 25 % by weight of poultry meat or offal	2,765	3,350	6,223,264	1,858	82.54%	10.90%	657.27%	2,865	10.90%	295	2100	01/03/2013	REGULATION (EU) No 1218/2012
	1602 3921	Processed duck, geese, guinea fowl meat, uncooked, containing 57 % or more by weight of poultry meat or offal	2,765	957	1,914	2	288.92%	10.90%	2550.68%	10	630 EUR/tonne (equivalent to an ad valorem rate of 32.91%)	-	10	01/03/2013	REGULATION (EU) No 1218/2012
	1602 3929	Processed duck, geese, guinea fowl meat, cooked, containing 57 % or more by weight of poultry meat or offal	2,765	5,413	84,320,371	15,578	51.08%	10.90%	368.65%	13,720	10,9 %	-	13500	01/03/2013	REGULATION (EU) No 1218/2012
	1602 3985	Processed duck, geese, guinea fowl meat, containing 25 % or more but less than 57 % by weight of poultry meat or offal	2,765	4,524	4,877,255	1,078	61.13%	10.90%	460.78%	748	10,9 %	-	600	01/03/2013	REGULATION (EU) No 1218/2012
	1602 3985	Processed duck, geese, guinea fowl meat, containing less than 25 % by weight of poultry meat or offal							460.78%	725	10,9 %	-	600	01/03/2013	REGULATION (EU) No 1218/2012