



9 June 2015

(15-3013)

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Original: English

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

**REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA**

The following communication, dated 8 June 2015, from the delegation of China to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On 8 April 2015 the People's Republic of China ("China") requested consultations with the European Union ("EU") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") with respect to the measures of the EU that affect imports of certain poultry meat products from China. Consultations were held on 26 May 2015 with a view to reaching a mutually satisfactory solution. Those consultations, unfortunately, did not resolve the dispute.

As a result, my authorities have instructed me to request the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU and Article XXIII of the GATT 1994 with respect to the measures of the EU identified below that affect imports of certain poultry meat products from China.

**I. MEASURES AT ISSUE**

The 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 and the refusal by the EU to modify the Tariff Rate Quotas ("TRQs") upon China's request. Specifically:

- (i) The first request was made 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 – that is, subheadings 0210 99 39, 1602 31 and 1602 32 19 (hereinafter the "2007 Modification Package"<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 products covered by these subheadings, while it refused to recognize China's claim of substantial interest. The EU subsequently reached an agreement with Brazil and Thailand on 23 November 2006 and 6 December 2006, respectively, on the basis of TRQs almost entirely reserved for Brazil and/or Thailand, and out-of-quota bound rates significantly in excess of the pre-modification bound rates. The modification was implemented in 2007.

On 27 May 2009, the EU notified 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/25/ADD.1).

- (ii) The second request was made by the EU on 11 June 2009 through a notification to WTO Members of its intention to modify its tariff concessions on eight tariff subheadings – that is, 1602 20 10, 1602 32 11, 1602 32 30, 1602 32 90, 1602 39 21, 1602 39 29,

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<sup>1</sup> The terms "2007 Modification Package" here and, subsequently, "2012 Modification Package" use the year of implementation to refer to the modifications.

1602 39 40 and 1602 39 80 (hereinafter the "2012 Modification Package").<sup>2</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, while it refused to recognize China's claim of principal supplying interest. The EU subsequently entered into an agreement with Thailand and Brazil on 18 June 2012 and 26 June 2012, respectively, on the basis of TRQs that again are almost entirely (or in some cases entirely) reserved for Brazil and/or Thailand, and out-of-quota tariff rates significantly in excess of the pre-modification bound rates.<sup>3</sup> This modification was implemented in 2012 and became effective from March 1, 2013.

On 17 December 2012, the EU notified 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).

On 19 December 2013, China further requested the EU to enter into consultation pursuant to Article XIII.4 of the GATT 1994 referring to China's substantial supplying interest in several of the tariff items as evidence by more recent statistics of imports from China. During consultations on 19 May 2014, the EU refused to consider the amendment of the TRQs.

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

**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 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>4</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>5</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>6</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>7</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

<sup>2</sup> Tariff subheadings 1602 39 40 and 1602 39 80 were combined in 2012 to create a new tariff subheading 1602 39 85.

<sup>3</sup> No change was made to the existing tariff rate for tariff subheading 1602 20 10.

<sup>4</sup> O.J. No L 138, 30 May 2007, p. 1.

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

<sup>6</sup> O.J. No L 337, 21 December 2007, p. 75.

<sup>7</sup> O.J. No L 351, 20 December 2012, p. 36.

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>8</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>9</sup>
- (iii) Commission Implementing Regulation (EU) 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>10</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>11</sup>

- (iv) Refusal by the EU in consultations held on 19 May 2014 under Article XIII of GATT 1994 to adjust the TRQs on the basis of recent import statistics establishing China's substantial supplying interests as had been requested by letter of Ambassador Yu of 19 December 2013.

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.

## II. LEGAL BASIS FOR THE COMPLAINT

The above measures appear to be 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 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 supplying interest or a substantial interest, or that could have had such an interest in the absence of a discriminatory quantitative restriction.
- (ii) The tariff rates and the TRQs negotiated and then implemented by the EU in the measures identified above are inconsistent with Article XXVIII:2, read in conjunction with the Understanding on the Interpretation of Article XXVIII and in particular Paragraph 6 thereof, 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 TRQs allocated by the EU to two of the WTO Members and then implemented by the EU in the measures identified above violate GATT 1994 Article XIII by diminishing for the other WTO Members the market access commitments that the EU undertook to maintain on a non-discriminatory basis.
- (iv) The allocation of all or the vast majority of the TRQs to two of the WTO Members

<sup>8</sup> O.J. No L 351, 20 December 2012, p. 47.

<sup>9</sup> O.J. No L 352, 21 December 2012, p. 16.

<sup>10</sup> O.J. No L 90, 28 March 2013, p. 86.

<sup>11</sup> O.J. No 56, 28 February 2013, p. 2.

implemented by the EU in the measures identified above, 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 TRQs to two of the WTO Members as implemented by the EU in the measures identified above is inconsistent with the chapeau of GATT 1994 Article XIII:2 read in conjunction with the Understanding on the Interpretation of Article XXVIII and in particular Paragraph 6 thereof, which requires the allocation of a TRQ to approach as closely as possible the shares that the WTO Members might be expected to obtain in the absence of the TRQs.
- (vi) The allocation of all or the vast majority of the TRQs to two of the WTO Members as implemented by the EU in the measures identified above is inconsistent with GATT 1994 Article XIII:2(d) because the EU failed to seek agreement with all WTO Members having a substantial interest in supplying the product concerned, nor did it 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 affected the trade in the product.
- (vii) The allocation of all or the vast majority of the TRQs to two of the WTO Members as implemented by the EU in the measures identified above is inconsistent with GATT 1994 Article XIII:2, including its chapeau, read in conjunction with Article XIII:4, which confirms that the base period must be selected and special factors must be taken into account such as to allot to Members a TRQ that approaches as closely as possible the shares that they might be expected to obtain in the absence of the TRQs.
- (viii) The EU violated GATT 1994 Article II:1 by adopting tariff rates that exceeded the bound tariff rates in its Schedule for the three tariff subheadings at issue, as the tariff rates and the TRQs which the EU negotiated and then implemented under Article XXVIII in 2007 are inconsistent with GATT 1994 Articles XIII and XXVIII:2, and are, therefore, ineffectual to replace the bound rates in its Schedules preceding its implementation of the 2007 Modification Package.
- (ix) 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 its 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. The absence of a 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 Schedule.
- (x) The tariff rates and the TRQs 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, 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 supplying interest or a

substantial interest or that could have had such an interest in the absence of a discriminatory quantitative restriction.<sup>12</sup>

- (ii) The tariff rates and the TRQs negotiated and then implemented by the EU in the measures identified above are inconsistent with Article XXVIII:2, read in conjunction with the Understanding on the Interpretation of Article XXVIII and in particular Paragraph 6 thereof, 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 TRQs allocated by the EU to two of the WTO Members as implemented in the measures and decision mentioned above<sup>13</sup> violate GATT 1994 Article XIII by diminishing for the other WTO Members the market access commitments that the EU undertook to maintain on a non-discriminatory basis.
- (iv) The allocation of all or the vast majority of the TRQs to two of the WTO Members as implemented in the measures and decision mentioned above<sup>14</sup> 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 the TRQs to two of the WTO Members as implemented in the measures and decision mentioned above<sup>15</sup> is inconsistent with the chapeau of GATT 1994 Article XIII:2 read in conjunction with the Understanding on the Interpretation of Article XXVIII and in particular Paragraph 6 thereof, because the allocation of the TRQs do not approach as closely as possible the shares that the WTO Members might be expected to obtain in the absence of the TRQs.
- (vi) The allocation of all or the vast majority of the TRQs to two of the WTO Members as implemented by the EU in the measures and decisions identified above is inconsistent with GATT 1994 Article XIII:2(d) because the EU failed to seek agreement with all WTO Members having a substantial interest in supplying the product concerned, nor did it 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.
- (vii) The allocation of all or the vast majority of the TRQs to two of the WTO Members as implemented by the EU in the measures identified above is inconsistent with GATT 1994 Article XIII:2, including its chapeau, read in conjunction with Article XIII:4, which confirms that the base period for the determination of the TRQs must be selected and special factors must be taken into account so as to allot to Members a TRQ that approaches as closely as possible the shares that they might be expected to obtain in the absence of the TRQs.
- (viii) The EU's refusal in consultations with China on 19 May 2014 to consider an adjustment of the allocation of the TRQs based on a change in the base period or a reappraisal of the special factors involved is inconsistent with GATT 1994 Article XIII:4.
- (ix) The EU violated GATT 1994 Article II:1 by adopting tariff rates that exceeded the bound tariff rates in its Schedule for the tariff subheadings at issue, as the tariff rates and the TRQs which the EU negotiated and then implemented under Article XXVIII in 2013 are inconsistent with GATT 1994 Articles XIII and XXVIII:2, and are, therefore,

<sup>12</sup> The EU refused to change the TRQs and its allocation mentioned in (ii) above so as to reflect China's recent shares of importation into the EU. In letters dated 1 June 2012 and 12 October 2012 addressed by EU Ambassador Pangratis to Ambassador Yi of China in response to letters from Ambassador Yi dated 9 May 2012 and 2 October 2012, respectively, the EU refused China's request to enter into consultations under Article XXVIII of the GATT 1994 on the grounds that China had become the biggest supplier in a certain number of poultry products based on EU statistical data for the period from 2009 – 2011

<sup>13</sup> See Section I.B(iv) for the referred decision.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

ineffectual to replace the EU's bound rates in its Schedules preceding its implementation of the 2012 Modification Package.

- (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 its 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. The absence of a 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 Schedule.
- (xi) The tariff rates and the TRQs 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.

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

### **III. REQUEST FOR ESTABLISHMENT OF PANEL**

In the light of the above China requests pursuant to Articles 4.7 and 6 of the DSU, and Article XXIII of the GATT 1994, that the Dispute Settlement Body ("DSB") establish a panel to examine the matter, with the standard terms of reference, as set forth in Article 7.1 of the DSU.

China requests that this request be placed on the agenda of the DSB meeting to be held on 19

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