

**EUROPEAN COMMUNITIES – CERTAIN MEASURES AFFECTING POULTRY MEAT
AND POULTRY MEAT PRODUCTS FROM THE UNITED STATES**

Request for the Establishment of a Panel by the United States

The following communication, dated 8 October 2009, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On January 16, 2009, the United States requested consultations with the European Communities ("EC") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article 11 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("SPS Agreement"), Article 19 of the *Agreement on Agriculture* ("Agriculture Agreement"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article 14 of the *Agreement on Technical Barriers to Trade* ("TBT Agreement") with regard to certain EC measures affecting poultry meat and poultry meat products from the United States (WT/DS389/1). Consultations were held on 11 February 2009, but have failed to settle the dispute.

The EC prohibits the import of poultry treated with any substance other than water unless that substance has been approved by the EC. The EC has not approved any other substance. Consequently, the EC prohibits the import of poultry that has been processed with chemical treatments ("pathogen reduction treatments" or "PRTs") designed to reduce the amount of microbes on the meat, effectively prohibiting the shipment of virtually all US poultry to the EC. The EC has not published or otherwise made available the process for approving a substance. The EC also maintains a measure regarding the marketing standards for poultry meat, which defines "poultrymeat" as only "poultrymeat suitable for human consumption, which has not undergone any treatment other than cold treatment."

In 2002, the United States requested the European Commission ("Commission") to approve the use of four PRTs in the production of poultry intended for export to the EC: acidified sodium chlorite, trisodium phosphate, peroxyacids, and chlorine dioxide. However, after more than six years, including unexplained delays, the EC has not approved any of these four PRTs and instead has rejected the approval of their use.

The EC's failure to approve is despite the fact that various EC agencies have issued scientific reports regarding a number of different aspects related to the processing of poultry with these four PRTs. Those reports did not find any scientific basis for banning the use of these PRTs. To the

contrary, the conclusion of these reports is that the importation and consumption of poultry processed with these four PRTs does not pose a risk to human health.¹

In May 2008, the Commission submitted a proposal to the EC Standing Committee on the Food Chain and Animal Health ("SCoFCAH") that purported to approve the import into the EC of poultry treated with these four PRTs. On 2 June 2008, SCoFCAH rejected the Commission's proposal unanimously, with the United Kingdom abstaining. On 18 December 2008, the EC Agricultural and Fisheries Council rejected the same Commission proposal by the same tally as SCoFCAH.

The United States understands that these EC measures are reflected in, among others:

- (1) Regulation (EC) No 853/2004, including Articles 3 and 6;²
- (2) Council Regulation (EC) No 1234/2007, including Annex XIV(B)(II);³
- (3) SCoFCAH's rejection of the Commission's proposal regarding the removal of surface contamination from poultry carcasses on 2 June 2008;⁴
- (4) the EU Agricultural and Fisheries Council's rejection of the Commission's proposal regarding the removal of surface contamination from poultry carcasses on 18 December 2008;⁵ and
- (5) any amendments, related measures, or implementing measures.

The EC measures appear to be inconsistent with:

- (i) SPS Agreement Articles 2.2, 5.1, 5.2, 7, and 8, and Annexes B(1), B(5), and C(1);
- (ii) Agriculture Agreement Article 4.2;
- (iii) GATT 1994 Articles III:4, X:1, and XI:1; and
- (iv) TBT Agreement Article 2.1.

The EC measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

Accordingly, the United States respectfully requests, pursuant to Article 6 of the DSU, that the Dispute Settlement Body establish a panel, with standard terms of reference as set out in Article 7.1 of the DSU, to examine the matter described above.

¹ Of those reports, the EU Scientific Committee on Veterinary Measures Relating to Public Health ("SCVPH") adopted Opinions on October 30, 1998, entitled "Benefits and Limitations of Antimicrobial Treatments for Poultry Carcasses," and on April 14-15, 2003, entitled "The Evaluation of Antimicrobial Treatments for Poultry Carcasses," both of which purport, in part, to be risk assessments.

² Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004, O.J. L. 226 (June 25, 2004), pp. 26-27.

³ Council Regulation (EC) No 1234/2007 of 22 October 2007, O.J. L 299 (16 Nov. 2007), p. 110.

⁴ See Summary Record of the Standing Committee on the Food Chain and Animal Health Held in Brussels on 2 & 3 June 2008, SANCO D1 – D(08) 411209, para. 18A.

⁵ See, e.g., Press Release 16916/08, 2917th Meeting of the Agricultural and Fisheries Council (18-19 Dec. 2008), p. 8 ("The Council unanimously rejected a proposal for a Decision regarding the possibility of using antimicrobial substances to remove surface contamination from poultry carcasses.").