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

Request for Consultations by the United States

The following communication, dated 16 January 2009, from the delegation of the United States to the delegation of the European Communities and to the Chairman 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 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 14 of the *Agreement on Technical Barriers to Trade* ("TBT Agreement"), and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") regarding certain measures of the EC affecting poultry meat and poultry meat products ("poultry") from the United States.

The EC prohibits the import of poultry treated with any substance other than water unless that substance has been approved by the EC. 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: chlorine dioxide, acidified sodium chlorite, trisodium phosphate, and peroxyacids. 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 the use of these four PRTs.

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

¹ Of those reports, the EU Scientific Committee on Veterinary Measures Relating to Public Health (SCVPH) adopted Opinions on 30 October 1998, entitled "Benefits and Limitations of Antimicrobial

In particular, in May 2008, the Commission submitted a proposal to the EC Standing Committee on 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 had.

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)(2);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 the EC's WTO obligations, including, but not limited to, the following:

- (i) SPS Agreement Articles 2.2, 5, and 8, and Annex C(1);
- (ii) GATT 1994 Articles X:1 and XI:1;
- (iii) Agriculture Agreement Article 4.2; and
- (iv) TBT Agreement Article 2.

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

We look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.

Treatments for Poultry Carcasses," and on 14-15 April 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 (25 June 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.").