

**UNITED STATES – CERTAIN MEASURES AFFECTING IMPORTS
OF POULTRY FROM CHINA**

Request for Consultations by China

The following communication, dated 17 April 2009, from the delegation of China to the delegation of the United States 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 Government of the United States ("US") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade* ("GATT 1994"), and Article 19 of the *Agreement on Agriculture* ("Agriculture Agreement") with regard to certain measures taken by the US affecting the import from the People's Republic of China ("China") of poultry products.

1. Pursuant to Section 727 of the Omnibus Appropriations Act of 2009 ("Section 727"), which was signed into law as Public Law 111-8, the US effectively prohibits the establishment or implementation of any US measures that would allow poultry products to be imported from China into the US. Specifically, Section 727 prohibits the US Department of Agriculture ("USDA") from taking action, including expending funds, to: (1) establish or implement measures allowing for the importation from China of poultry products that the USDA has already determined are eligible to be so imported under existing US measures, and (2) establish or implement measures expanding the scope of poultry products that may be imported from China. China is concerned that Section 727, in conjunction with the overall US regime for regulating imports of poultry products, places restrictions on the import from China of poultry products that are inconsistent with the United States' WTO obligations.

2. By way of example, Part 381 of Title 9 of the US Code of Federal Regulations ("9 CFR"), including Section 381.196, identifies countries eligible to import poultry products into the United States. Following inspection in China by the USDA, the United States determined that China is eligible to import certain poultry products into the United States. However, the USDA has not yet taken the necessary action to allow for such importation, pursuant to this determination of eligibility. Section 727 now prohibits the USDA from taking action to establish or implement measures allowing for the importation into the United States of poultry products that the United States has already determined are eligible for importation, pursuant to the explicit terms of 9 CFR § 381.196. 9 CFR § 381.196 is, therefore, one of several US regulations that cannot be implemented with respect to products imported from China as a consequence of Section 727.

3. Moreover, China is concerned that Section 727 effectively prohibits the USDA from taking action to expand the class of poultry products eligible for import into the United States from China.

4. China considers that the US, through Section 727, any closely-related measures, as well as any amendments or replacement measures, or other subsequent closely-related measures,¹ is in breach of its obligations under the GATT 1994 and the *Agriculture Agreement*, including but not limited to the following provisions thereof: Articles I:1 and XI:1 of the GATT 1994; and, Article 4.2 of the *Agriculture Agreement*.

5. Generally, by precluding the use of funds to enable imports from China of poultry products, it appears that the US institutes and/or maintains a quantitative restriction, contrary to Article XI:1 of the GATT 1994 and Article 4.2 of the *Agriculture Agreement*. Moreover, by imposing these restrictions with respect to imports from China, but not similarly prohibiting the import from other Members of like products, China is concerned that the US fails to accord immediately and unconditionally to China an advantage, favour, privilege or immunity granted to other Members with respect to rules and formalities in connection with importation.

6. In addition, although China does not believe that the US measures at issue restricting imports of poultry products from China constitute sanitary and phytosanitary measures ("SPS measure") within the meaning of the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("*SPS Agreement*"), if it were demonstrated that any such measure is an SPS measure, China also requests consultations with the US pursuant to Article 11 of the *SPS Agreement*. In particular, to the extent any such measure is demonstrated to be an SPS measure, China considers that the measure is in breach of the US obligations under the *SPS Agreement*, including but not limited to Articles 2.1-2.3, 3.1, 3.3, 5.1-5.7, and 8 thereof.

7. Generally, to the extent it is demonstrated that any such measure is an SPS measure, China is concerned that the US measure may violate Articles 2.1, 2.2, 5.1-5.4, and 5.6 of the *SPS Agreement*, because any SPS measure is not based on a proper assessment of the particular risks presented and is not supported by sufficient scientific evidence. China is also concerned that any such measure, to the extent not applied with respect to similarly situated imports from other Members, may violate Articles 2.3 and 5.5 of the *SPS Agreement*. Moreover, China is concerned that any SPS measure fails to observe the provisions of Annex C of the *SPS Agreement* with respect to the operation of control, inspection and approval procedures, and may therefore violate Article 8 of the *SPS Agreement*. Additionally, China is unaware of any basis on which any such US measure is justified under international standards, guidelines or recommendations, or otherwise, consistently with Articles 3.1 and 3.3 of the *SPS Agreement*. Finally, China is unaware of any basis on which such US measure is justified by Article 5.7 of the *SPS Agreement*, if applicable.

8. China reserves its right to raise further factual and legal issues and arguments during the course of the consultations, and in any future request for the establishment of a panel.

I look forward to receiving the reaction of your authorities to this request so that we can arrange a mutually acceptable date for consultations.

¹ China understands that Section 727 is included in an annual appropriations measure, and is closely-related, in terms of nature and effects, to similar provisions included in previous appropriations measures.