



# U.S.-EU Poultry Dispute

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## Summary

In January 2009, the outgoing Bush Administration escalated a long-running dispute with the European Union (EU) over its refusal to accept U.S. imports of poultry treated with antimicrobial rinses. Bush officials requested World Trade Organization (WTO) consultations with the EU on the matter, a prerequisite first step toward the establishment of a formal WTO dispute settlement panel.

Because most U.S. poultry processors use such “pathogen reduction treatments” (PRTs), U.S. poultry meat has effectively been prohibited from entering the EU countries, where the practice is not acceptable. Prior to 1997, when the prohibition took effect, U.S. exports of broiler and turkey meat to the 15 countries that then constituted the EU were reported to total nearly 32,000 MT with a value of \$44.4 million. In 2007, U.S. exports to the same 15 countries were reported to be nearly 16,000 MT with a value of \$16.5 million, but U.S. Department of Agriculture poultry analysts believe that almost all of these represent “transshipments,” meaning that Europe was not their final destination. In reality, virtually no U.S. poultry meat is being purchased by the EU, they say. Now that the EU consists of 27 countries, one estimate values the lost U.S. market at between \$200 million and \$300 million annually. (Nonetheless, other foreign buyers continue to make the United States the second-largest exporter of poultry meat in the world, after Brazil.)

The Europeans assert that their poultry producers must follow much stricter production and processing rules that are more successful in reducing microbiological contamination than simply washing products at the end of the process. The outgoing Bush Administration expressed its frustration with the EU’s position, noting that even several favorable European scientific opinions indicate that PRTs pose no risk to human health.

Whether the Obama Administration will pursue the WTO case remains to be seen, although some U.S. poultry interests want it to do so. Even if the case advances to a dispute resolution panel, a solution appears to be elusive. The two sides maintain widely divergent views not only on the poultry issue but on some aspects of their basic approach to food safety regulation.

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## Overview

In January 2009, the outgoing Bush Administration escalated a long-running dispute with the European Union (EU) over its refusal to accept U.S. imports of poultry treated with antimicrobial rinses. Bush officials requested World Trade Organization (WTO) consultations with the EU on the matter, a prerequisite first step toward the establishment of a formal WTO dispute settlement panel.

The dispute dates to 1997, when the EU first banned the use of pathogen reduction treatments (PRTs) on poultry, effectively shutting out virtually all U.S. imports since then. Such treatments are approved by the federal government and routinely used in U.S. chicken and turkey plants. The United States views the EU ban as a trade barrier that is not based on scientific findings that such treatments are harmful. EU interests believe that stronger sanitary practices during production and processing are more appropriate for pathogen control than what they view as U.S. overreliance on PRTs.

The U.S. poultry industry supports the WTO filing by the U.S. Trade Representative (USTR) and has expressed hope that the Obama Administration will continue to pursue the case. The new Administration's perceived commitment to, and success in, reopening the EU to U.S. poultry may be followed closely by some Members of the 111<sup>th</sup> Congress, particularly those from chicken- and turkey-producing areas. However, the poultry dispute also is illustrative of some fundamental differences between each market's approach to food safety, a topic of much broader interest to Congress.

## U.S. and EU Poultry Trade

Trailing only Brazil, the United States is the second leading exporter of poultry meat (broiler and turkey) in the world. In 2008, the United States exported an estimated 3.027 million metric tons (MMT) of broiler (young chicken) meat and 285,000 MT of turkey meat, amounting to a combined 38% of total world shipments. Brazil had 41% of the world market share, according to the U.S. Department of Agriculture's (USDA's) Foreign Agricultural Service (FAS).<sup>1</sup>

However, virtually none of these U.S. exports go to countries of the European Union (EU), a major world importer of poultry meat. The 27 countries of the EU imported an estimated 785,000 MT of poultry meat from outside the EU-27 in 2008; Brazil, Thailand, Argentina, and Chile are the leading suppliers of broiler meat, for example. (Current major markets for U.S. poultry meat include Russia, China, Mexico, Canada, and even Cuba.)

Prior to 1997, when the EU began to prohibit U.S. poultry because of the PRT rule, U.S. exports of broiler and turkey meat to the 15 countries that then constituted the EU were reported to total nearly 32,000 MT with a value of \$44.4 million. In 2007, U.S. exports to the same 15 countries were reported to be nearly 16,000 MT with a value of \$16.5 million. These annual export figures, from the FAS Trade Internet System database, appear to be misleading, because they likely

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<sup>1</sup> Unless noted otherwise, data sources for this section are USDA, FAS, *Livestock and Poultry: World Markets and Trade*, October 2008; USDA, FAS, *EU-27 Poultry and Products Annual Report*, July 31, 2008 (GAIN Report E48090); and aggregated data from FAS's U.S. Trade Internet System at <http://www.fas.usda.gov/ustrade/>.

include “transshipments,” meaning that Europe was not their final destination. In reality, virtually no poultry meat is being purchased in the EU, according to USDA.<sup>2</sup>

The United States has been losing markets in Europe as additional countries join the EU. After Bulgaria and Romania joined the EU under the 2007 enlargement (to 27 countries), total U.S. poultry meat exports to the two countries dropped to zero, compared with 54,479 MT, valued at \$33.5 million, during the prior year. By one estimate, combined effects of the ban and of the growth of the EU market to 27 countries may have led to \$200 million to \$300 million in lost U.S. sales annually.<sup>3</sup>

## The WTO Filing

Multilateral trade rules allow governments to adopt measures to protect human, animal, or plant life or health, provided that they do not discriminate or use them as disguised protectionism. This principle was clarified in 1994 by WTO members’ approval, along with the other so-called Uruguay Round Agreements, of the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures. This accord (the “SPS Agreement”) sets out the basic rules for ensuring that each country’s food safety and animal and plant health laws and regulations are transparent, scientifically defensible, and fair. A separate accord, the Agreement on Technical Barriers to Trade (TBTs, the “TBT Agreement”) covers other government measures (including but not limited to food and agriculture) to regulate markets and protect consumers and the environment, such as ingredient or labeling requirements, nutrition claims, quality attributes, animal welfare rules, and so forth. Like most major trading nations, both the United States and the EU are parties to these WTO agreements.<sup>4</sup>

The U.S. request for WTO consultations on the poultry matter was filed on January 16, 2009.<sup>5</sup> The U.S. filing states that the ban by the EU (i.e., the European Communities, or EC) on PRTs for poultry appears to violate Article 2.2 of the SPS agreement, which permits only those measures necessary to protect human, animal, and plant life or health and that are based on scientific principles. Also cited are SPS Article 5, which governs risk assessment and determination of the appropriate level of SPS protection, with the objective of minimizing trade impacts, and SPS Article 8, on control, inspection, and approval procedures aimed at treating imports no less favorably than domestic products, as well as Article 2 of the TBT Agreement, which also is intended to assure that TBT measures do not discriminate against imports or create unjustified barriers to trade.

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<sup>2</sup> E-mail communications from FAS poultry analyst, February 2, 2009, and USDA Economic Research Service (ERS) poultry analyst, February 4, 2009.

<sup>3</sup> “USTR Requests Formal WTO Consultations in EU Poultry Dispute,” *Inside U.S. Trade*, January 23, 2009.

<sup>4</sup> See CRS Report RL33472, *Sanitary and Phytosanitary (SPS) Concerns in Agricultural Trade*, by Geoffrey S. Becker

<sup>5</sup> WTO, *European Communities - Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States - Request for Consultations by the United States* (WT/DS389/1, January 20, 2009). The document and current status of the dispute can be found at [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds389\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds389_e.htm).

## Historical Background

The EU began to prohibit the use of PRTs for both domestic and imported poultry in 1997. Key language in the regulations reads, in part, “[f]ood business operators shall not use any substance other than potable water”—or, when otherwise permitted, “clean water—to remove surface contamination from products of animal origin,” unless use of another substance has specifically been approved.<sup>6</sup>

In 2002, the United States asked the EU to approve the use of four PRTs on poultry destined for export there: chlorine dioxide, acidified sodium chlorate, trisodium phosphate, and peroxyacids. Each is approved for use in poultry processing by both USDA and the U.S. Food and Drug Administration (FDA). More specifically, after birds are slaughtered and the carcasses eviscerated, a USDA inspector examines them for fecal contamination or other problems. They then enter a final washing procedure, where the PRTs may be applied, either as a spray or wash on the processing line, or as an addition to the water used to lower the carcass temperature (the chiller tank). Federal regulations further specify PRT concentration levels and other usage requirements.

Subsequently, several key European opinions on PRT use were issued, which helped form the basis for the U.S. request to allow them. For example, the European Food Safety Authority (EFSA), in December 2005, adopted an opinion that use of the four PRTs under described conditions “does not present any risk to public health” but that “the use of antimicrobial solutions does not replace the need for good hygienic practices during processing of poultry carcasses, particularly during handling.” A second EFSA opinion that month also pointed out that information on one of the substances, peroxyacids, indicated limited effectiveness, requiring that specific conditions of use should be defined.<sup>7</sup>

On April 2, 2008, EFSA published another scientific opinion which found that “there are currently no published data to conclude in whatever way” that these substances, when applied on poultry carcasses, cause “acquired reduced susceptibility” (a buildup in resistance to the PRTs), or cause resistance to therapeutic antimicrobials.<sup>8</sup> Around the same time, two other scientific committees under the auspices of the EC’s Health and Consumer Protection Directorate-General issued a joint opinion which essentially found that there appeared to be low environmental risk associated with residues on carcasses, but that there was a lack of enough data for it to make a comprehensive assessment, particularly with regard to post-processing environmental risk.<sup>9</sup>

After a U.S.-EU economic summit in May 2008, the EC committed to proposed EU regulatory changes that would permit PRT-treated poultry meat to be imported or produced in EU member

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<sup>6</sup> This is the language in the current EC Regulation No. 853/2004, Article 3 (part).

<sup>7</sup> Explanatory Memorandum to accompany the EC “Proposal for a Council Regulation implementing Regulation (EC) No 853/2004 of the European Parliament and of the Council as regards the use of antimicrobial substances to remove surface contamination from poultry carcasses,” Brussels, October 29, 2008.

<sup>8</sup> Scientific Opinion of the Panel on Biological Hazards on a Request from DG SANCO on the assessment of the possible effect of the four antimicrobial treatment substances on the emergence of antimicrobial resistance, *EFSA Journal* (2008) 659, 1-26.

<sup>9</sup> Scientific Committee on Health and Environmental Risks and Scientific Committee on Emerging and Newly Identified Health Risks, scientific opinion on the environmental impact and effect on antimicrobial resistance of four substances used for the removal of microbial surface contamination of poultry carcasses, April 2008.

states. Changes to the EU's Food Hygiene Regulation were offered on June 2, 2008, to the Standing Committee on the Food Chain and Animal Health; the committee rejected the changes by a vote of 316-0, with 29 abstentions. Following EC procedures, the same proposal was considered on December 18, 2008, by the EU Agricultural and Fisheries Council, representing the agricultural ministers of the EU member states. They too rejected it by the same vote margin. Earlier, on June 19, 2008, the European Parliament, which has a more limited role in this phase of the process, nonetheless approved, by a vote of 526-27 with 11 abstentions, a resolution urging the Commission to reject the food hygiene changes.<sup>10</sup>

## Concluding Observations

The outgoing Bush Administration expressed its frustration with the EU's response, despite what it characterized as several favorable European scientific opinions that there is no risk to human health. The Bush Administration expressed concern that even the rejected changes represented a "heavily conditioned" proposal, including requirements for labeling, a limitation on PRT use to carcasses, not parts, and a limitation to use of a single PRT (not a combination of them) to be followed by potable water rinses. "Based on these votes, as well as discussions with EU officials, the United States has concluded that this issue cannot be resolved through further negotiation at this time. If WTO consultations cannot resolve the dispute within 60 days of the U.S. filing, the United States will be entitled to request that a WTO panel be established to determine whether the EU is acting consistently with its WTO obligations."<sup>11</sup>

A widely held European view appears to be that the U.S. treatments are necessary to compensate for poor sanitary standards earlier in the production process. European poultry producers assert that they must follow much stricter production and processing rules that are more successful in reducing microbiological contamination than simply washing products at the end of the process. In its own resolution, the European Parliament agreed and added that the European industry had made "considerable investments ... in accordance with Community legislation, with a view to reducing pathogen contamination by implementing a total food chain approach." The resolution also argued, among other things, that there was not enough evidence concerning the safety of PRTs, that to allow them "is out of step with both the European public's food safety and hygiene expectations and the demand for production models—both within and outside Europe—which ensure that high hygiene standards are maintained throughout the production and distribution process," and "that it would be likely to undermine European consumer confidence in foodstuffs sold within the European Union, which remains fragile following the food safety problems that have arisen within the Union over recent years."<sup>12</sup>

Whether the Obama Administration will pursue the WTO case remains to be seen, although some U.S. poultry interests want it to do so. Even if the case advances to a dispute resolution panel, a

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<sup>10</sup> See "Parliament opposes sale of chlorinated chicken in EU," June 19, 2008, at <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20080618IPR32120>. The cite for the proposed changes is in footnote 7, above.

<sup>11</sup> "U.S. Files WTO Case Challenging EU Restrictions on U.S. Poultry Exports," January 16, 2009 USTR press release. Also, "EU proposal for lifting U.S. poultry ban includes strict conditions," *Meatingplace.com*, May 29, 2008.

<sup>12</sup> "European Parliament resolution of 19 June 2008 on imports of poultry carcasses," accessed at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0307+0+DOC+XML+V0//EN&language=EN>.

solution appears to be elusive. The two sides maintain widely divergent views not only on the poultry issue but on some aspects of their approach to food safety regulation. Moreover, formal WTO cases can take many years to resolve to the satisfaction of either party. Even an ultimate WTO ruling favorable to the United States might not result in greater access to the EU market for U.S. poultry products.

A case in point is the long-running U.S.-EU dispute over the use of hormones in beef, which the EU prohibits and which has kept beef from the United States, where they are used, out of the EU market for many years. Several WTO dispute panel rulings have concluded that the EU ban is scientifically unjustified and not consistent with WTO rules. The United States has been imposing WTO-approved retaliatory tariffs on some EU imports, but the EU continues to enforce the ban.<sup>13</sup> Meanwhile, as EU officials have pointed out, the United States is permitted to, and does, export hormone-free beef to the EU; likewise, U.S. poultry meat not treated with PRTs likely would be accepted.

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<sup>13</sup> See also the U.S. Mission to the EU's web page on beef hormones at [http://useu.usmission.gov/Dossiers/Beef\\_Hormones/default.asp](http://useu.usmission.gov/Dossiers/Beef_Hormones/default.asp).