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POLICY

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China Withdraws AD CVD Measures on U.S. Poultry

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Report Highlights:

On February 27, 2018, China withdrew anti-dumping and countervailing (AD/CVD) duties on U.S.-origin poultry following a World Trade Organization (WTO) compliance panel finding that these measures violated WTO rules. However, China's 2015 ban on U.S. poultry and poultry products due to Highly Pathogenic Avian Influenza (HPAI) detections remains in place, continuing to block U.S. access to this key market.

Executive Summary:

On February 27, 2018, China's Ministry of Commerce (MOFCOM) withdrew AD/CVD duties on U.S. origin broiler chicken that had been in place since 2010, stating that it "did not consider it necessary" to maintain the measures. This announcement was in response to a January 18, 2018 WTO panel determination that the measures were not WTO-compliant. However, China continues to maintain a ban

against U.S. origin poultry and poultry products, despite the U.S. being cleared of HPAI since August 2017. USDA continues to request China follow guidelines set by the World Organization for Animal Health (OIE) and lift the ban to allow resumption of trade.

Background on the Anti-Dumping and Countervailing Duties

In 2009, the United States captured 84 percent of China's imports of chicken products by value, with trade amounting to over \$800 million annually. In 2010, China implemented AD/CVD measures against U.S.-origin poultry, claiming that the United States was "dumping" subsidized poultry at below market rates. After the imposition of AD/CVD duties, China's reported imports of U.S. products declined from over \$800 million in 2009 to \$131 million in 2010.

The United States challenged China's claim—and won—in a WTO dispute forum. In 2013, China conducted a reinvestigation and, in July 2014, claimed that new evidence and findings justified continuing imposition of AD/CVD measures. The revised determination had many of the same WTO inconsistencies as those in the original determination. Further, in 2015, China undertook expiration reviews of the application of the original 2009 AD and CVD duty determination. China decided to maintain both the AD and CVD duties at the 2014 re-determination rate for an additional 5 years, failing to use a vehicle open to it to terminate the duties without additional WTO claims of inconsistency. Accordingly, in May 2017, the United States filed a subsequent compliance challenge in connection with China's continued imposition of additional duties.

On January 18, 2018, a WTO panel again determined that China's AD/CVD measures were not compliant with WTO rules. In response, on February 27, 2018, China's Ministry of Commerce announced Public Notice [2018] No. 5, stating that it "did not consider it necessary" to maintain the measures, as the original petitioner (the Chinese domestic industry) had withdrawn the request for relief. The full English translation of MOFCOM's public announcement is below.

Background on China's HPAI-related Ban on U.S. Poultry and Poultry Products

Before China's HPAI-related ban on U.S. poultry in 2015, China was the fourth largest market for U.S. poultry and products with annual sales of around \$400 million (\$200 million of that was chicken parts alone)—even despite the contested AD/CVD measures. In December 2014, HPAI was discovered in commercial turkey flocks in the United States. In January 2015, China's Ministry of Agriculture (MOA) implemented a nation-wide ban on all U.S.-origin poultry and poultry products. Up until June 2015, the United States put into place effective quarantine and control measures to address these outbreaks, culling millions of birds, mostly egg-laying hens. By November 2015, the United States was again declared free from HPAI by OIE.

Due to its robust surveillance and emergency response measures, the United States successfully contained and eradicated a few subsequent detections of HPAI. As of August 2017, the United States has been recognized as HPAI free by OIE. USDA continues to work with Chinese regulators to lift this ban and allow full resumption of trade for U.S. poultry and poultry products.

(Official MOFCOM translation of Public Notice [2018] No. 5. Original Chinese announcement on MOFCOM's website here: <http://trb.mofcom.gov.cn/article/cs/201802/20180202715401.shtml>.)

Ministry of Commerce

Public Notice [2018] No. 5

On August 29 and September 26, 2010, the Ministry of Commerce issued Public Notice No. 52 and No. 51 respectively, deciding to impose countervailing and anti-dumping duties on imported white-feathered broiler products originating in the United States. In August 2013, MOFCOM issued Public Notice No. 56, in which it determined the change of name of the relevant company. In 2014, MOFCOM issued Public Notice [2014] No. 44, adjusting the anti-dumping and countervailing duty rates. On August 22, 2016 and September 26, 2016, MOFCOM issued Public Notice No. 41 and No. 40, and decided to extend the countervailing measures and anti-dumping measures to 2021.

On December 26, 2017, the original petitioner of the anti-dumping and countervailing duty investigations filed an application with MOFCOM for the withdrawal of anti-dumping and countervailing measures on behalf of the domestic industry. After examination, the investigating authorities did not consider it necessary to maintain the anti-dumping and countervailing measures. With the approval of the Tariff Commission of the State Council, in accordance with Article 57 of the "Anti-dumping Regulations of the People's Republic of China" and Article 56 of the "Regulations of the People's Republic of China on Countervailing Measures", it has been decided that from February 27, 2018, the anti-dumping and countervailing duties shall be no longer imposed on imported white-feathered broilers products from the United States. The subject merchandise is classified under Chinese HTS code of: 02071100, 02071200, 02071311, 02071319, 02071321, 02071329, 02071411, 02071419, 02071421, 02071422, 02071429 and 050400210.

Those who are not satisfied with this decision may apply for administrative reconsideration in accordance with the relevant provisions of Article 53 of the "Anti-dumping Regulations of the People's Republic of China" and Article 52 of the "Regulations of the People's Republic of China on Countervailing Measures", or may institute legal proceedings in the people's courts.

This Notice shall come into force on Feb. 27, 2018.

The Ministry of Commerce
February 27, 2018