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Guatemala

Post: Guatemala

Customs Enforcement, or Non-tariff Trade Barrier?

Report Categories:

Trade Policy Monitoring

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Report Highlights:

Guatemalan Customs (SAT) is detaining agricultural products in its newest wave of revaluation investigations. SAT detains these shipments for up to 25 days to perform its investigations, and companies must pay thousands of dollars in demurrage charges. If an importer accepts the SAT price, that price is added to the SAT price database, inflating the three-month average that is used as a reference price for future shipments.

General Information:

Guatemalan Customs (SAT) is disrupting trading flows of select agricultural products by detaining shipments at ports of entry to conduct investigations on “suspected” under invoicing. Detentions can last for up to 25 days while the investigation is being conducted. Under current SAT regulations, a company placed under price revaluation investigation, has ten days to present additional information and supporting documents justifying the original invoice price. Meanwhile, the impacted company must pay thousands of dollars in demurrage costs and port fees. If an importer accepts SAT’s revalued price, that price is added to the SAT reference price database, which in turn inflates the three-month average price for that product, which impacts future shipments creating a self-sustaining over-valuation cycle.

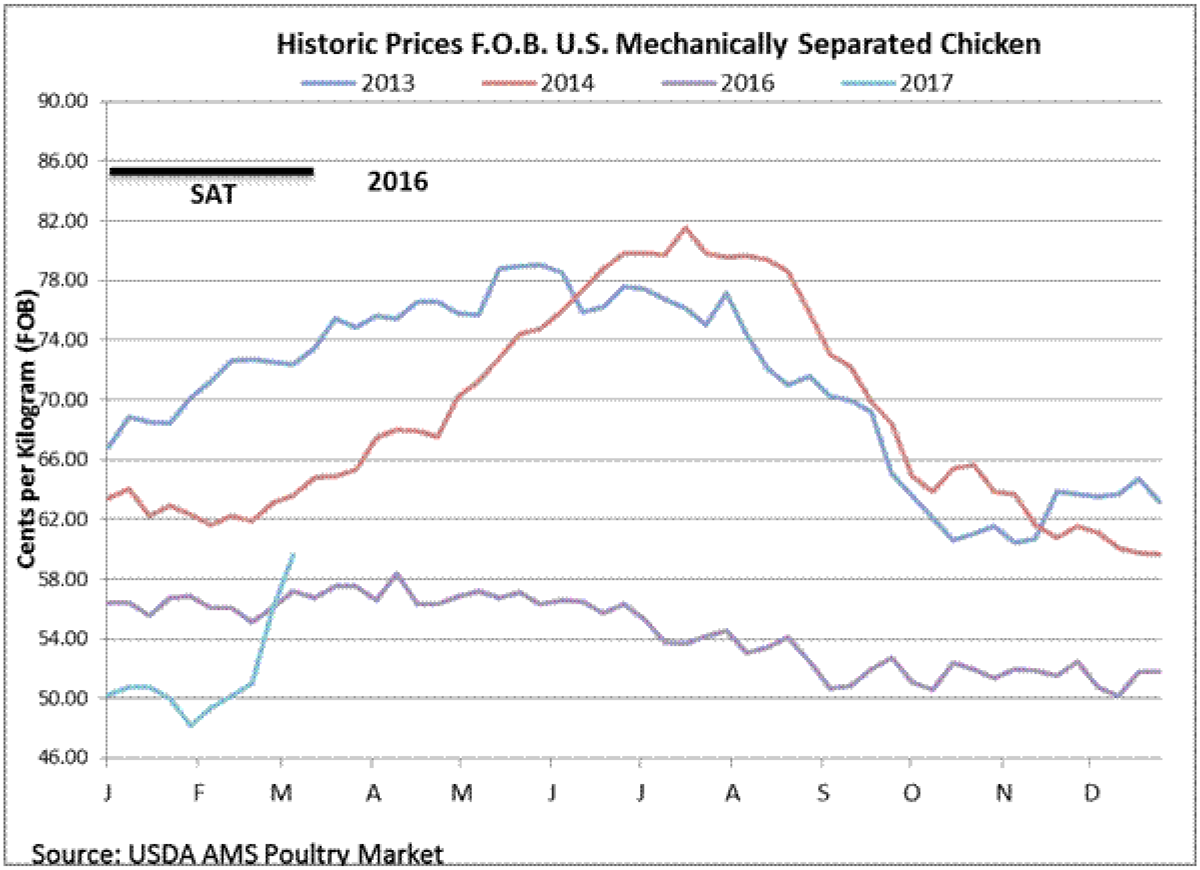
Over the past several months U.S. Mechanical Deboned Chicken (MDC) has been the latest victim of SAT revaluation investigations. In 2015, SAT conducted such investigations on U.S. apples and grapes and U.S. poultry leg quarters. In each of these cases importers succumbed to accept higher per unit prices to avoid paying excessive demurrage costs. In 2017, one importer of U.S. MDC decided to fight the revaluation policy and notified FAS/Guatemala of the trade-impeding import policy. For the past several months, SAT has been imposing an $0.85/kilo reference price on MDC imports from the United States. After researching historical U.S. MDC prices, Ag. Counselor met with SAT to present a price database of MDC published by USDA/Agricultural Marketing Service (see graph below). It is clear from the graphic, that U.S. MDC prices never came close to reaching $0.85/kilo over the past four and half years.

According to SAT, in 2016, 74 percent of U.S. MDC was flagged for revaluation, and 42 percent of U.S. MDC was accused of undervaluing invoices. The SAT investigation stated that the average price used in its investigation was $0.68 per kilogram (kg). The investigation also reported that the minimum acceptable price for SAT was $0.53 per kg. However, Customs agents at the ports were using $0.85/kg as a reference price. A clear indication of a flawed revaluation investigative policy.

A System Designed to Increase Revenue

Following a massive Customs scandal (La Linea) that led to the arrest of many Guatemalan officials including the President and Vice President in 2015, there was an effort to restructure and improve SAT. One priority was to improve tax and duty collection. One outcome of this effort has been to revalue products with the goal of increasing sales tax revenue.

According to SAT, reference prices are determined using a three-month average of declared prices. When SAT determines that an import is undervalued, the importer can accept the value claimed by SAT or present proof to refute the claim. According to SAT, importers need to show electronic payments (oftentimes not possible when the importer buys on credit), accounting or financial records, or other proof of price. The importer supposedly can arrange to have the shipment released on bond once a first appeal has been presented, but this policy is not always permitted.



If there is no appeal, the importer must accept SAT's findings in order to release the shipment. Once that happens, the SAT revaluated price becomes part of the database, and therefore part of the declared value for the product. This increases the three-month average. This system is self-reinforcing, because each time an importer accepts SAT's findings, the SAT price enters the database and the average increases. Thus, importers are faced with a decision: either continue to dispute SAT's findings while paying demurrage costs, or accept them and have their shipment released. Furthermore, if the importer accepts the new value imposed by SAT, the importer is placed on the automatic detention list for undervaluing and could face additional fraud charges.

Consequences of SAT Policy

Importers report that the primary issue resulting from SAT's revaluation policy is delays at port. Product has been held at port for up to 25 days, resulting in nearly $25,000 in demurrage charges for the importer. These costs can reach ten times the actual costs associated with accepting the revalued price. Another issue is the cost incurred following the administrative process. There are significant legal fees trying to demonstrate to SAT that the original invoice price/value is legitimate. If through the administrative process SAT was not satisfied and convinced, the importers complaint moves to a specialized judicial court. In no case to date, has an importer won an appeal.

Comments

FAS/Guatemala has met with select poultry importers and producers to discuss the issue and work on steps to resolve the problem. Everyone understands that SAT has the right and even obligation to investigate Customs fraud and violations of import regulations. However, the methodology and process used by SAT is not consistent, nor transparent, nor based on realistic pricing standards. As such, the policy appears to be one to simply increase tax revenues vs. one to fight illegal trading practices. If that is the case, the policy is clearly resulting in a trade barrier that if perused will ultimately force importers to reduce or even eliminate imports of select food and agricultural products. In addition, the impact of this policy goes beyond the current focus on MDM. An importer of apples (currently Chilean) also reported that in the past month SAT has imposed revaluation investigations on imported shipments. The concern is that if SAT is allowed to continue with its current revaluation policy, it will expand its focus and include more products including commercial items.

Ag counselor received a letter from SAT requesting assistance in training SAT agents about valuation and to convene a technical committee to discuss SAT's valuation policy and investigation procedures. Last year Post conducted a workshop on product quality and valuation for SAT agents, but since then many of those agents have been removed. Nevertheless, Post will continue working with SAT and importers to find a solution to this trade-disrupting policy.