

November 1, 2009

Ukraine



Hearing on anti-dumping investigation held in Ukraine *Overview, comments and pictures*

On October 30, 2009 the major lawsuit against the US poultry industry in the history of US-Ukraine trade relationships took place in Kyiv, Ukraine. The hearings were held within the anti-dumping investigation related to imports to Ukraine of halves and quarters of chicken, including legs and parts thereof originating in the United States of America and the Federative Republic of Brazil.

Along with USAPEEC legal representatives - lawyers of VK&P and USAPEEC Ukraine Regional Consultant - US Team has also been represented by the US Embassy in Ukraine, including FAS office and Commercial Department.



Participants of the hearing

From left to right: Eugene Shkarban of GAI group - Petitioners legal representative; Oleg Malskii of "Astapov Lawyers" - Perdue Farms Inc. legal council, Alexander Tarashevych - Ag Specialist, FAS Kiev, US Embassy in Ukraine; Ivan Trofimov of "Magesters" Law Firm - Tyson legal council; Ann Murphy - Ag Attache, FAS Kiev, US Embassy in Ukraine; Oksana Ilchenko head lawyer of "Magesters" Tyson legal council, Anna Gladstein of VK&P associate; Bella Ablaeva of USAPEEC Ukraine, Moldova, Central Asia; Olena Gladuk of VK&P associate; Sergii Koziakov of VK&P, Head partner of VK&P - USAPEEC legal council, Viktoriia Kotsiubaska of VK&P - USAPEEC legal council.

The following issues have been considered during the hearings:

1. Whether the petitioner is a proper national producer.
2. Likeness of the product under investigation and the product produced by the petitioner.
3. Existence of dumped imports.
4. Existence of injury to the petitioner.
5. Existence of causal link between dumped imports and the fact of injury to the petitioner.
6. National interests factor was added to the agenda based on the request by USAPEEC's legal representative - Volkov Koziakov & Partners (VK&P) Law Firm.

According to the AD Committee of the WTO the period of investigation should be limited to 12 months ending as close to the date of initiation as is practicable for dumping margin calculation. Thus, for the purposes of dumping investigation - it has been decided by the Ukrainian Ministry of Economy that an investigation period covers only the year 2008.

While for calculated injury to domestic producer the period of data collection should be at least 3 years. In our case it is 2006-2008.



USAPEEC observed that the petitioner has been grounding its position during the hearing by referring to the import prices declared by importers during customs clearance while according to the WTO requirements only export price should be used for dumping margin calculation.

Our lawyers have also raised an issue that petitioners are complaining about the injury caused by US exports while at the same time Myronivsky Hliboproduct (MHP) is reporting to the London Stock Exchange their financial success and growth.

Even if the major petitioner of the Complaint suffers a decline with respects to certain factors it was caused mainly by Ukrainian Government policy rather than by US exports.

Some evidence in support of the petition is very questionable. Such as for an example the expert opinion regarding likeness of the product exported from the US vs domestically produced poultry meats. Dates on the expert opinion provided by the Ukrainian Ministry of Health and used by petitioners as a ground for likeness show that it was prepared within just one day. As per VK&P has raised this issue petitioners did not try to contest and even agreed.

Towards the end of the hearing audience was “cheered up” by the statement presented by VK&P regarding the major co-founder of GAI group - the major petitioner’s legal representative.

Apparently that major participant of GAI group is a Deputy Head of the Secretariat of the President of Ukraine. The causal link between petitioners and President’s office is now evident.

At the end of the hearing MHP lawyers approached us and said: “See you at the DSB”. (Note: Dispute Settlement Body of WTO).

During the hearing a speech prepared by the US Department of Commerce has been presented in English by Ag Attache of the US Embassy in Kiyv, Ann Murphy. Her speech on each issue of the agenda has been translated by Alexander Tarassevych - Ag Specialist, FAS Kyiv.

US Embassy has expressed USDA, US Department of State and US Department of Commerce joint position as to the course of investigation. According to Ann Murphy “the US case has been presented very well.”

Alexander Tarashevych believes that it is important to have a fair representation in the course of investigation. US Embassy urged the Ministry to follow WTO rules as to margin calculation, individual dumping margins and following procedural issues.

Sergii Koziakov with VK&P has commented that “there are no winners and losers identified during this stage of investigation - today’s hearing per say. It was important to hear the opponent’s opinions”. He said that one of the goals was to understand what is in the confidential version of the response to the questionnaire submitted by national producers and as it has appeared nothing unexpected was raised.

Viktoriia Kotsiubaska said after the hearing that “while the national producers have submitted all the basic information required by law they did not provide any comments to the USAPEEC statements made in the course of the investigation. The hearing might be a starting point towards getting any feedback from national producers.”

All measures are taken for US industry to be well presented by US Embassy, USAPEEC and its legal representatives.

The Cabinet of Ministers has simplified the procedure of customs clearance of imported products

The Cabinet of Ministers has adopted a resolution which simplifies the procedure of customs clearance of imported products. In accordance with changes made in the Decree of the Cabinet of Ministers No. 767 “On Amendments to several decisions of the Cabinet of Ministers of Ukraine” export declaration is no longer a compulsory document to submit at the Ukrainian customs.

The press service of the Cabinet of Ministers defined more exactly that export declaration would be subject to file only in case of its availability. In other cases customs bodies have no right to demand it.

Earlier there were a lot of problems with the electronic declarations. The mentioned declarations are issued only in the original language, therefore, in order to present them to the customs they needed to be translated and accordingly the additional expenses of entrepreneurs increased.

Moreover, there are a number of countries where such declarations do not contain information on customs value of the goods; some other countries do not issue such declarations at all or declarations exist in a form that can not be presented in the importing country. They are, for example, such powerful exporters of goods to Ukraine as China, the USA, Italy and Australia.

As a result, having excluded the electronic declaration from the list of documents, mandatory for the filing at the customs, the Government of Ukraine has provided almost unfettered access to legal imports of goods, works and services.

*Source: MD Office Information Agency
(www.mdoffice.com.ua)*

Translated by: usapec.kz

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Cabinet of Ministers has cancelled obligatory submission of an export declaration

Cabinet of Ministers of Ukraine (CMU) with Resolution No. 1071 dated September 30, 2009 has cancelled paragraphs 1 and 2 of the CMU Resolution No.767 dated July 24, 2009 “On Amendments to Some Resolutions of the CMU Regarding Submitting of the Customs declaration from the Country of Export”, which cancels export declarations as an obligatory document.

According to CMU Resolution No.767 Customs was to request export declarations for checking the value of goods.

In many cases the requirement put forward by CMU Resolution No.767 was impossible to execute as in many countries legislation does not envisage, or sometimes even forbids, submission of export declarations to third parties.

According to CMU Resolution No.1071 the mentioned export declaration can be submitted to customs during the clearance procedures only if the importer could receive it from the country of export.

The Resolution came into force on October 27, 2009.

As a reminder, submitting a customs declaration from the country of export (original) was to be obligatory starting October 27, 2009. This was stipulated by the Resolution of the Cabinet of Ministers “On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine” dated July 24, 2009.

Sources: Customs and International Trade Newsletter of American Chamber of Commerce in Ukraine; MDOffice Information Agency (www.chamber.ua; www.mdoffice.com.ua)
Edited by: usapeec.kz

Verkhovna Rada postponed imposition of a ban on sales of meat and dairy products produced in the private households in agricultural open markets

The Verkhovna Rada of Ukraine passed a Bill No. 5053-1 “On Amendments to point 1 of chapter XI “Final provisions” of the Law “On safety and quality of food products” (concerning sales of foods produced in the private households and household slaughtered food products in the markets).

A legislative act introduces amendments to the effective law on postponement of the imposition of a ban on raw milk and domestically produced cheese, carcasses or their parts and other artiodactyls of household slaughtering in agricultural open markets for five years - until January 1, 2015.

Source: Apk-Inform Information Agency (www.apk-inform.com)

Translated by: usapeec.kz

European Commission alarmed with Ukraine’s plans to introduce obligatory inspection of importers of animal products

The introduction of mandatory inspections by Ukrainian Veterinary Medicine Agencies of foreign companies that import meat, milk and other animal products and foods made from them beginning January 14, 2010 will lead to a restriction of trade with Ukraine, according to the Head of the European Commission (EC) Representation in Ukraine, Jose Manuel Pintu Teisheira.

“The European Union believes that the measures introduced threaten the unjustified restriction of trade, especially taking into account the fact that Ukraine did not submit any scientific grounds for the imposing of such broad and overly strict measures”, he said.

He also said that the European Union noted that obligatory inspection of foreign companies that import meat by Ukraine will not only restrict trade, but also will cause large expenses.

He said that the European Union does not understand how Ukraine is going to check by January 14, 2010 all companies that want to import products to Ukraine.

The Head of the State Committee of Veterinary Medicine in Ukraine, Peter Verbitsky, said that the introduction of the mandatory inspections would not lead to the interruption of trade with other countries.

“There will not be any interruption. As for the inspections, we can check within one week all companies that want to work with us”, he said.

He said that a separate mechanism for the inspection of companies would be applied to the European Union, which is similar to that used by the EU itself.

P.Verbitsky said that European specialists check systems of the State Veterinary Service, Ukrainian law and some companies in order to give the right to supply products to the European markets.

Also, according to him, companies which have European trade numbers are not subject to inspection. He said that most of them are not located in the European Union and there is no same control over the quality of their products as in the European Union.

Source: KyivPost Information Agency (www.kyivpost.com)

Myronivsky Hliboproduct has completed the construction of poultry farm in Cherkasy region

Myronivsky Hliboproduct Company has completed construction of a second line of CJSC Myronivskaya Ptitsefabrika (Myronivsky poultry plant) in Kanevsky district of Cherkasy region, according to the Deputy Head of Chief Directorate of Economy of Cherkasy Regional State Administration, Viktor Gorobets.

According to him USD 600 millions were spent on construction of the poultry farm. Annual production capacity of the plant is 220,000 MT of poultry meat in live weight.

During recent years Myronivsky Hliboproduct has been building its main production facilities in Kanevsky district of Cherkasy region.

Note: CJSC Myronivskaya Ptitsefabrika produces and sells its products under the trademark “Nasha Ryaba”. For the first half of 2009 volumes of production of poultry farm amounted to 56,518 MT (that is an increase of 30% compared to the same period in 2008).

Source: Apk-Inform Information Agency (www.apk-inform.com); Translated by: usapeec.kz

Sales of poultry meat in Ukraine have increased by more than 15% in January-September 2009

In Ukraine sales of cattle and poultry meat (in live weight) in January-September 2009 increased by 6.1% to 1 million MT, compared to the same period of 2008.

In particular, sales of poultry meat have increased by 15.2% to 672,100 MT. At the same time sales of cattle have decreased by 12.9% to 156,000 MT and sales of pigs have decreased by 2.8% to 197,400 MT.

Domestic processing enterprises have purchased 263,000 MT of cattle and poultry meat (in live weight), including cattle – 91,600 MT, pigs – 117,100 MT and poultry – 54,000 MT. Average purchase price of cattle meat, that was offered by processing enterprises in the reporting period amounted to 8,824 UAH/MT (USD 1,101/MT), pork – 14,584 UAH/MT (USD 1,813/MT), poultry – 8,097 UAH/MT (USD 1,010/MT) (in live weight).

At the same time, trade turnover of eggs through all channels of sales has grown by 8.4% nearly to 6.1 billion eggs compared to January-September 2008. Milk and dairy products trade turnover has increased by 9.3% to 1.6 million MT, vegetable oil trade turnover has seen a growth by 2.6 times to 13,500 MT, while sales of sugar have declined by 4% to 304,100 MT.

Processing enterprises bought eggs at average price of 350.9 UAH (USD 43.8) per thousand eggs and milk and dairy products at UAH 1,773.9/MT (USD 221.46/MT).

Source: ProAgro Information Agency (www.proagro.com.ua); Translated by: usapeec.kz

Moldova



Former authorities of Moldova have monopolized import of meat and fish

The Ministry of Economy of Moldova has revealed schemes on monopolization of the import of meat, fish and other products implemented by the previous authorities.

As the Vice-Prime Minister, the Minister of Economy, Valerie Lazar, has noted some of the schemes based on the decisions of the government and line Ministries, can be quickly eliminated. The annulations of other schemes will require more time because it would be necessary to change many laws.

The head of the Ministry of Economy said that the monopoly on import of meat and fish products has been made possible through the adoption of subjective and groundless decisions on issuing permits for import of these products only by the limited number of economic agents close to the authorities. The permits were issued to approximately 30% of the total required output. As the result, insufficient amounts of fish and meat products were imported to the country and, as the result, the prices have doubled. So, this fact has damaged both: consumers who buy products at the inflated prices, and the country's budget, which sustained significant losses from import.

Valerie Lazar also noted that introduced requirements for mandatory labeling of mineral water, medicines and alcohol have led to the additional producers' costs and high prices for the goods. The increased cost of production has led to the growth of prices.

Big problems were also created by the requirement for mandatory certification of the each batch of the imported goods. Trucks with goods were forced to stand at the customs before receiving necessary certificates.

This situation has stimulated the sharp corruption growth.

According to Valerie Lazar, a double certification of wine for export and mandatory labeling of the wine production have also increased the production costs by 10-15%. The Prime Minister, Vladimir Filat, has charged the Ministry of Economy to take measures in order to accelerate elimination of all identified schemes monopolizing the market.

Source: Infomarket Information Agency (www.infomarket.md)

The Ministry of Economy and Trade of Moldova held a meeting devoted to the issues of meat imports

Establishment of a new system of animal products imports was discussed during a meeting held at the Ministry of Economy and Trade, according to the Vice-Prime Minister, the Minister of Economy, Valerie Lazar.

“A new system must protect the consumers' interests, so that people were not forced to pay double price for these products,” – Valerie Lazar said.

According to him, in a short time all procedures of import and production of meat and meat products will be reviewed.

The meeting was attended by over 50 representatives of producers, processors and meat importers. They have discussed abolition of the government's decision, providing establishment of quotas on imports of meat and development of the new mechanism of the animal products import, acceptable to all interested parties.

The Vice-Prime Minister, the Minister of Economy, Valerie Lazar noted that the new mechanism should ensure the real cost, high quality of the products and payment of all taxes and customs fees.

The necessity to change the mechanism of meat and meat products imports was proved by the positive results obtained after lifting of the government's regulations on the import of fish and fish products.

It was noted that only within the first week after lifting of the government's regulations in this field, the prices for fish and fish products have fallen by about 30% - 50%.

However, the participants of the meeting had expressed contradictory views with regards to the abolition of quotas on meat and meat products import. At the same time, all parties agreed that the domestic market can be protected through other mechanisms, such as customs tariffs and subsidizing of domestic producers.

As it was noted, although about 350 million leis (USD 31.6 million) of annual subsidies to agriculture are presupposed, the meat producers have not received any money yet. "With abolition of quotas on imports it is necessary to ensure payments of subsidies to producers for each kilogram of meat sold. Otherwise, the local meat producers will disappear. That would deprive hundreds of people in the rural areas of the working places", - the representative of the Association of the Meat Producers of Moldova said.

In their turn, some importers strongly stand for liberalization of the market and changes in the existing legislation regulating imports of the animal products.

*Source: Infomarket Information Agency
(www.infomarket.md)*

Liberalization of Moldova meat market can lead to disappearance of local production

Moldovan meat producers believe that liberalization of meat market will set back the livestock industry because of inability to compete with global producers and many Moldovan companies will be forced to shut down their business. That was the reaction of Moldovan meat producers to the Declaration of the representatives of the Ministry of Economy to liberalize meat market by removing restrictions on meat imports.

"That will be a serious blow both to meat producers and farmers who grow feed crops including wheat. The growth of the livestock industry has been the salvation of the Moldovan farmers, because Moldovan grain can not compete with imported one. We sell 1 MT of wheat for USD 110, while 1 MT of imported wheat costs USD 65", the Vice Chairman of the Association of Pork Producers, Valery Cojocar, said.

The Chairman of the Association of Poultry Farmers, Valeriy Lukyanov, noted that most of the Moldovan poultry farms operate only at one-third capacity.

"In order to operate at full capacity, poultry farms need state support in the form of direct subsidies and protection of the domestic market from the uncontrolled meat imports", the Chairman of Poultry Farmers Association said.

Meat producers said that after introduction in the year 2006 of a mechanism of authorization and meat import quotas, pork production has increased by 40% reaching up to 100,000 MT per year.

Poultry farms increased production up to 32,000 MT per year (16,000 MT were produced in the year 2000 and 24,000 MT in the year 2004).

Today Moldovan poultry farms cover 60% of the demand of the Moldovan market.

Minister of Agriculture and Food Industry, Valeriu Kosarchuk, also spoke out for limiting imports in order to protect local producers.

Representatives of the importers of meat and meat products consider that the existing government instruments regulating imports have to be improved.

However, those tools have proven to be effective. According to importers, in the year 2006 80-85% of imported meat was smuggled, and only 15-20% of meat was imported legally. While in the year 2009 legal imports into Moldova made up about 80-90%.

The sharp decline in smuggling was achieved due to the introduction at the expense of importers of the system of electronic tagging of each box of imported meat.

Thus, the Government agencies are able to trace every batch of meat from the border to retail outlets.

These systems of state control led to stabilization of the market, stable growth of government revenues, made it possible to balance the market with reasonable prices and to provide local producers with favorable conditions for the development.

*Source: Infotag Information agency
(www.infotag.md)
Translated by: usapeec.kz*

During 9 months of 2009 the gross production in Moldova has decreased by 10.2%

According to the National Bureau of Statistics, the decrease in agricultural production was due to the reduction of plant-growing output by 17%.

The negative impact on the dynamics of volume of plant-growing production was due to the low grain yield of the crops of the first group. According to the preliminary data, the total yield of wheat in all categories of farms made about 700,000 MT, decreasing by 45% as compared to the previous year. The way of the harvesting process indicates the low average yields of the main crops, except for grapes, the average yield of which has increased as compared to the previous year.

At the same time, the livestock production in the country has increased by 8.6%.

In January-September, 2009, as compared to the same period of 2008, the livestock and poultry production (in live weight) has increased by 13.6% - up to 93,800 MT, cow milk production - by 0.7% - up to 432,000 MT, eggs - by 12.6% - up to 462.4 million.

Source: Infomarket Information Agency (www.infomarket.md)

Agricultural sector of Moldova is affected by crisis and drought

The situation in the agricultural sector is difficult and this is not just due to the effects of the financial crisis and the economic recession, but also because of the drought, according to the newly appointed Minister of Agriculture and Food Industry, Valeriu Kosarchuk.

Valeriu Kosarchuk estimated that the gross agricultural output this year will drop by 25% to 12 million lei (USD 1.08 million) from 16 million (USD 1.44 million) lei in the year 2008.

The worst affected is plant production, especially sugar beet, as some autumn agricultural works are delayed by the long period of low rainfall.

The animal production sector is still greatly damaged following the drought in the year 2007, but there are some positive signals that it will recover.

The food processing industry is not thriving either. A big problem is the overfilled stockpiles and the impossibility to refresh them with this year's production because of financial problems.

Other problems concern the agricultural subsidies. The Minister said that about 60 million lei (USD 5.42 million) of the total 313 million lei (USD 28.25 million) intended to be disbursed for subsidies haven't reached the recipients, as the Government still has obligations valued at 96 million lei (USD 8.66 million) in VAT refund. The Minister says that many farmers' accounts are arrested by the Tax Inspectorate, while producers get fined for underpricing their products.

Source: Moldova Azi Information Agency (www.azi.md)

U.S. is preparing large aid package for Moldovan farmers

According to the U.S. Ambassador to Moldova Asif J. Chaudhry, the agricultural sector in Moldova could receive as much as USD 260 million in aid from the U.S. Government. The money would be used primarily to improve the country's farming infrastructure.

He said that the U.S. assistance still must be approved by Congress and would be administered by the Millennium Challenge Corporation, a U.S. Government agency that assists poor countries that pledge to carry out democratic and market-oriented reforms.

The United States and European Union countries have been looking to increase support to Moldova since July 29, 2009 elections brought four pro-Western parties to power, replacing the Government of communist President Vladimir Voronin.

Source: Interlic Information Agency (www.interlic.md)