

***EUROPEAN UNION – MEASURES AFFECTING TARIFF CONCESSIONS
ON CERTAIN POULTRY MEAT PRODUCTS***

(DS492)

**RESPONSE OF THE UNITED STATES OF AMERICA
TO CHINA'S QUESTION TO THIRD PARTIES**

April 12, 2016

1. In its Third Party Oral Statement delivered during the first substantive meeting with the Panel, the United States sought to highlight differences it perceives between Articles XIII and XXVIII of the GATT 1994. In particular, at paragraphs 16 - 18 the United States asserts that Article XIII is not concerned with the "concessions in a Member's Schedule but to the application of restrictions to imports, including tariff-rate quotas". According to the United States, "the obligations in Article XIII apply to the application or administration of restrictions on imports ... [not] the existence of a tariff concession in the form of a tariff-rate quota in a Schedule".

Is it, therefore, the position of the United States that the European Union ("EU") did not and could not violate Article XIII unless and until the EU actually enforced the TRQs resulting from its tariff modifications on China's poultry at "the border"? If the answer of the United States is "no," please clarify the meaning of the United States' oral statement at paragraphs 16 – 18 on this point. If the answer of the United States is "yes," would the answer of the United States be different if, for example, the quota amounts assigned to "all others" were 1 ton and the over-quota tariff rates were 15,000 percent on an ad valorem basis?

1. Article XXVIII, by its terms, governs situations in which a Member seeks to modify or withdraw a concession in its Schedule annexed to the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”). Article XIII, on the other hand, by its terms, is applicable to situations in which a Member *applies* quantitative import restrictions,¹ including tariff-rate quotas, whether or not those restrictions are reflected in the Member’s Schedule (*e.g.*, in the form of a tariff-rate quota concession inscribed in the Schedule). The applicability of Article XIII would not change based on the particular tariff bindings inscribed in the Member’s Schedule.

2. However, it would not be the case that Article XIII would only apply if a tariff-rate quota is “actually enforced” at the border. A Member may be found to apply a prohibition or restriction on importation that breaches Article XIII (or Article XI or another provision of the covered agreements) through a domestic legal instrument that necessarily will result in certain treatment of imports, without that measure having been “actually enforced” at the border. Similarly, a Member may be found to apply a tariff-rate quota through a domestic legal instrument, and that measure may breach Article XIII without having been “actually enforced” at the border, if the instrument necessarily results in treatment of imports contrary to Article XIII.²

¹ Article XIII:1 provides that “[n]o prohibition or restriction *shall be applied* by any Member....”

² Cf. *US – Shrimp II (Viet Nam) (AB)*, para. 4.39; *US – Carbon Steel (India) (AB)*, para. 4.477, 4.481-483; *EC – IT Products (Panel)*, para. 7.116; *China – Auto Parts (Panel)*, para. 7.540; *Argentina – Textiles and Apparel (AB)*, para. 62.