

AUSTRALIA'S QUARANTINE STANDARDS FOR COOKED CHICKEN MEAT FROM THAILAND

International Trade Negotiations

INTRODUCTION

The purpose of this exercise is to simulate an international trade negotiation designed to reduce trade restrictions between two nations.

While the factual scenario is based upon real issues, this case is hypothetical in terms of specific stakeholders identified and certain facts presented.

This case will include country teams, government teams, industry association teams, and various forums including a WTO Dispute Resolution Panel.

The goals of this exercise include:

- 1.) Development of research and investigation skills;
- 2.) Development of analytical, planning, and negotiation strategy skills;
- 3.) Development of negotiation, mediation and conflict resolution skills;
- 4.) Development of durable written agreements; and,
- 5.) Development of planning and presentations skills to various governmental and WTO panels and bodies.

Australian Quarantine Case

BACKGROUND, FACTS AND ISSUES COMMON TO ALL PARTIES

Parties:

Country Representatives:

Australia

Thailand

Government Agencies:

Australian Department of Foreign Affairs and Trade (DFAT)

Australian Quarantine Inspection Service (AQIS)

Australian Ministry of Commerce

Thai Ministry of Foreign Affairs (MOFA)

Thai Ministry of Agriculture and Cooperatives

Thai Ministry of Commerce

Industry Associations:

Australian Chicken Growers Council (ACGC)

Australian Veterinary Association (AVA)

Australian Chicken Meat Federation (ACMF)

Australian Dairy Industry Council (ADIC)

Australian Restaurant and Grocers Association (ARGA)

Thai Broiler Processing Exporters

Thai Chicken Growers Association

Thai Feed Producers Association

US Poultry and Egg Export Council (USPEEC)

Danish Poultry Exporters Association (DPEA)

General Information

Background

Since mid-1980, Thailand, Denmark and the United States have made a number of requests to export both cooked and uncooked chicken meat to Australia. The Australian Quarantine and Inspection Service (AQIS) began considering the proposal to import chicken meat in 1990. However, the Australian Veterinary Association (AVA) and domestic poultry producers voiced concern over the introduction of Newcastle Disease and Infectious Bursal Disease Virus (IBDV) through the imported meat. Either could pose a great threat to Australia's poultry industry and native bird populations. In response to these concerns, AQIS began an assessment of the risk of importing cooked chicken meat. It deferred assessment of uncooked meat pending completion of the cooked meat assessment.

In mid-1995, the Australian government decided "in-principle" to allow imports of cooked chicken that had been processed under specified temperature/time parameters proven to inactivate the disease viruses. To determine these specific parameters, AQIS considered a range of studies and then adopted a 1988 study of IBDV conducted by Dr. Dennis Alexander of the Central Veterinary Laboratory in the UK. This study, commissioned by General Foods poultry, New Zealand, recommended 70°C for 90 minutes and 80°C for 14.4 minutes for the inactivation of IBDV.

In 1996, AQIS published a draft protocol that set out core temperature/time levels for processing chicken meat:

- 70°C for 95 minutes or
- 72°C for 65 minutes or
- 74°C for 44 minutes or
- 76°C for 30 minutes or
- 78°C for 21 minutes or
- 80°C for 15 minutes

In reaction to AQIS's draft protocol, the Australian Chicken Growers Council (ACGC) argued that AQIS's risk assessment underestimated the risks associated with commercial cooking processes. For their part, Thai chicken exporters complained that the cooking regime proposed by the Australian government was commercially impracticable. The specified temperature/time parameters would not only unnecessarily raise production costs, but also would affect the quality of the cooked meat, thereby reducing the competitiveness of their products in the Australian market.

The issue was brought up for discussion in the Thai-Australian Joint Commission. Subsequently, in early 1997, the Australian government commissioned its own test by the Central Veterinary Laboratory.

In April 1997, a delegation from AQIS and the Australian poultry industry was sent to inspect four Thai processing facilities that had applied for the sanitary certification required for exporting to Australia. None of the facilities met the Australian sanitary requirements; all were told that they needed to improve their slaughter and processing facilities.

In July 1997, amid mounting protest from domestic poultry producers, the Australian government delayed a decision to open its poultry market to foreign imports until the Central Veterinary Laboratory completed its second trial and submitted the results to AQIS.

In September 1997, Thailand threatened to boycott US\$ 1.2 billion dairy and meat exports from Australia in retaliation for a continued ban on cooked chicken meat imports. The Australian Dairy Industry Council called on the Australian government to abide by the WTO's rules on non-tariff barriers and to lift quarantine barriers on imports of cooked chicken meat to escape the boycott. National Party leader Tim Fischer suggested the Australian government place a tariff on imported cooked chicken meat as a transitional arrangement, which WTO provisions allow.

On 7 November 1997, the Australian government announced a decision to allow imports of cooked chicken meat from Denmark, the United States and Thailand processed under the following core temperature/time parameters:

- 70°C for 143 minutes or
- 72°C for 137 minutes or
- 74°C for 131 minutes or
- 76°C for 125 minutes or
- 78°C for 119.5 minutes or
- 80°C for 114 minutes

The parameters were based on the Central Veterinary Laboratory's new test results, which confirmed that the existing temperature/time parameters readily inactivated Newcastle Disease Virus but would not totally inactivate the strain of IBDV used in the tests.

But protests continued from both Thai chicken exporters and the Australian chicken industry, and AQIS asked the Central Veterinary Laboratory to carry out yet another round of tests. The test results, submitted to AQIS in mid 1998, indicated that IBDV was unexpectedly resistant to heat inactivation at temperatures lower than 74°C. These test results differed from the previous study because it used different virus strains and a different medium for suspending the virus. Based on these new test results, Australia

announced in June 1998 a revision of the minimum core temperatures/time parameters as follows:

- 74°C for 165 minutes or
- 75°C for 158 minutes or
- 76°C for 152 minutes or
- 77°C for 145 minutes or
- 78°C for 138 minutes or
- 79°C for 132 minutes or
- 80°C for 125 minutes

At a meeting in September 1998, the Thai National Sanitary and Phytosanitary Committee instructed the Livestock Department of the Ministry of Agriculture and Cooperatives to conduct its own risk assessment of possible IBDV-contamination in the production of cooked chicken. The assessment is now underway and is expected to be completed in the near future. It is designed to account for IBDV prevention programs at the farm level; incidence of IBDV infection in Thailand; risk management for transporting chickens from poultry farms to slaughter houses; and quality assurance programs used by Thai chicken processing plants, including heat treatment, packaging, and shipment methods for cooked products.

Analysis of Commercial and Substantive Policy Issues and International Legal Aspects of the Issue

Commercial Issues

Australia's very stringent requirements for the heat treatment of cooked chicken meat put Thai cooked chicken producers at an unfair disadvantage in the Australian market. Although Australia is not now a principal market for Thai chicken products, Thai suppliers could potentially capture 10 percent of the Australian cooked chicken market, worth about 920 million baht (A\$ 40 million), during just the first few years of exports. The Australian poultry market is estimated at 46 billion baht (A\$ 2 billion) annually. Annual consumption of chicken meat is now 27 kg per person compared with the consumption of beef and veal (40.0 kg per person), sheep meat (16.8 kg per person) and pork meat (18.4 kg per person). Based on the present trend, poultry meat could overtake beef and veal as the Australians' most preferred meat within the next ten years. Cooked chicken meat accounts for 20 percent of the market and sales are growing 10 to 20 percent per year.

Substantive Policy Issues

Infectious Bursal Disease is important from an economic viewpoint because it could cause huge losses for chicken producers. IBDV is highly contagious and remains infectious for several months in the poultry house environment. To eradicate the virus, a poultry house requires effective cleansing and disinfecting.

Nonetheless, Australia's imposition of stringent quarantine standards is protectionist in nature. The proposed cooking regime does not apply to domestically processed chicken products on the grounds that the country is free from IBDV. Although IBDV is most prevalent in Southeast Asia, Europe and North America, the Office International des Epizooties (OIE) 1997 yearbook reported cases of the disease in Australia. Thus, there is no scientific basis for granting preferential treatment to Australian producers.

Moreover, to achieve the level of protection it considers appropriate, AQIS has not adequately explored safety measures that are less trade restricting than heat inactivation measures. According to Professor Daral Jackwood, an Ohio State University expert on IBDV, the disease control used most often is vaccination of breeder flocks. Using this method, maternal antibodies are transferred to chicks and thereby protect the chicks for the first two critical weeks of life, a time when infection by IBDV causes the most immune suppression. Another study conducted by the University of Florida's Institute of Food and Agricultural Science also confirms that protection of chickens from IBDV can be achieved through a breeder vaccination program, supplemented by effective biosecurity measures (control of people, equipment and vehicles on the farm) and an effective broiler vaccination program. Moreover, regular ante-mortem and post-mortem inspection at the farm level can ensure that each batch of source birds is in good health before being transported to slaughterhouses.

At the processing stage, a one week quarantine is sufficient to ensure that the birds are IBDV-free because chickens infected with IBDV will normally die within 4-5 days. Cooked chicken meat destined for Australia may even be separately processed and stored. Quality assurance programs such as HACCP introduced by Thai processing plants should also prevent exposure of cooked products to possible recontamination.

International Legal Aspects of the Issue

Australia's quarantine policy regarding imports of cooked chicken violates the WTO Agreement on the Application of Sanitary and Phytosanitary measures in many respects. First, it is inconsistent with Article 2.2 of the Agreement, which requires SPS measures to be based on scientific principles. The risk assessment undertaken by AQIS was not based on a sound scientific approach. Even though the time and heat levels recommended for the inactivation of IBDV were derived from a scientific trial, the use of IBDV strain CS 88 in the test was not justified by objective evidence. AQIS and the Central Veterinary Laboratory arbitrarily assumed that this very virulent strain of IBDV is prevalent in Thailand. So far, no research has been done to identify which IBDV strains exist in Thailand.

Second, Article 2.3 requires that SPS measures do not arbitrarily or unjustifiably discriminate between products from WTO member countries where identical or similar conditions prevail. Despite the fact that IBDV cases have been reported in Australia, Australian domestic producers are not subject to the same temperature/time parameters as Thai producers.

Third, Australia's quarantine policy is inconsistent with the provisions of Article 6 because AQIS's risk assessment failed to assess the possible existence of disease-free areas and areas of low-disease prevalence in Thailand. IBDV or some strains of the disease may be limited only to one or more specific geographical areas in Thailand. Therefore, chicken products coming from IBDV-free areas within Thailand should be considered on the basis of their disease status, not that of the rest of the country.

BACKGROUND ON CONDUCT AND ORGANIZATION OF SIMULATION

THE NEGOTIATION PROCESS

The parties to these negotiations will be provided with individual team instructions and facts common to each country team's interests.

Individual interest groups (e.g., associations, government agencies, etc.) will meet first to review facts, develop team negotiating goals and strategies, assign research and negotiating roles, and to document all negotiating sessions.

All interest groups will then meet with their country team members. (Country team members may or may not share common interests, goals, etc.) Lead government agencies will seek to reconcile differences and to advance a unified voice in the bilateral or multilateral sessions.

All teams will seek to advance specific negotiating goals and interests. For example, it can be assumed that China seeks acceptance in the international trading community, that it would like to avoid a dispute in the WTO, and that it is committed to an increased level of enforcement in the area of intellectual property rights. Similarly, it can be assumed that the US, EU, and Swiss governments and constituent manufacturing groups seek enforcement of IPR laws in China and greater access to the Chinese market. Interest groups may differ, however, on appropriate timetables, implementation mechanisms, and enforcement.

All parties will want to consider some or all of the following:

- Documentation of the scope of the problem;
- Specific agreements to implement reforms including, but not limited to rules, regulations, monitoring devices, enforcement mechanisms, legal remedies, etc;
- Timetables for implementation of agreements reached;
- Criteria in the field of IPR for Chinese accession to the WTO.

It will also be important to determine the interests of your counterparts including adversaries and allies. You will want to try to build alliances within your country and with other country governments or individual interest groups.

CONFIDENTIAL PARTY INSTRUCTIONS

Each individual team (interest group) will be provided with further confidential instructions issued from the perspective of a superior corporate, governmental, or military officer. You are to design your negotiating strategy in accord with the instructions. Questions regarding instructions or the terms of agreements reached can be reviewed with one of the instructors.

NEGOTIATING SKILLS AND TECHNIQUES

- 1) Teams should engage in "brainstorming" sessions to identify and articulate your interests and those of your counterparts including the listing of potential **OPTIONS** for an agreement and the use of **OBJECTIVE CRITERIA** for the structuring and implementation of agreements;
- 2) Teams should elect a **LEAD NEGOTIATOR** for each negotiating session. It is important for team members to defer to a lead negotiator and to **SPEAK WITH ONE VOICE**. Lead negotiators may invite the participation of team members on specific issues, areas of expertise, etc.
- 3) Teams should use **CAUCUSES** (private team meetings) to review proposals, formulate counter-proposals, or to review the status of the negotiations; Remember to **LISTEN** to your counterparts and **ASK QUESTIONS** to learn what their needs are. What do they want? Can you fashion an agreement or the provision of an agreement that will meet some if not all of their needs? Are your sessions **CONFIDENTIAL** or open to the press and public? Craft and utilize **SINGLE TEXT DOCUMENTS** to introduce proposed language on agreements, to capture agreements on procedure and/or substance that can be added to the text of a final agreement; Obtain **SIGNATURES** of counterparts on documents reflecting interim or final agreements; Consider future meetings, working groups, investigative teams, etc as means to keep the process moving forward and to avoid stalemates. Remember you are dealing with people. What are their needs within their organization, bureaucracy, company, etc. Can you help them to meet their needs? Establish a personal rapport. Be hard on the problem, be soft on the people. Consider a **JOINT MEDIA RELEASE OR CONFERENCE** to announce progress or a final agreement. Use the media to help solidify the parties' public commitment to the agreement.

RULES TO ENHANCE THE LEARNING GOALS OF THE SIMULATION

Because time is extremely limited, the instructors request that students abide by the following rules which have proven effective in other negotiation simulations:

- Limit caucus sessions and breaks during negotiations to no more than five (5) minutes;
- Country teams will have to negotiate an internal consensus among all interest groups **BEFORE** the commencement of official bilateral negotiations with national counterparts.
- The parties will not be authorized to "walk-out" or otherwise boycott a negotiation session;
- If negotiating teams reach an "impasse" (stalemate, dead-end, end point) they should work on another issue and/or seek the instructors' intervention;
- No name calling, personal attacks, or insults will be permitted. (This is not good style in real world negotiations and is usually the result of ego, loss of emotional control, etc.)
- Make use of charts, note-taking, printed exhibits, and printed documents to facilitate the recording of interim and/or final agreements.

LOCATION OF THE NEGOTIATIONS

As negotiating sessions are established, a home country will be identified. The home country should serve as the host of the negotiations. Hosts should welcome guests to their country and to the negotiation session. Introductions should be made before the parties proceed to substantive matters