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# U.S. POULTRY EXPORTS: CHALLENGING EUROPEAN COMMUNITY AND BRAZILIAN POULTRY SUBSIDIES*

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## I. INTRODUCTION

The failure of U.S. poultry exporters to participate in the marked growth of the Middle East poultry import market in the 1970's led to an evaluation of the European Community's (EC) Common Agricultural Policy. The evaluation disclosed a system of export mechanisms that enabled EC producers to export their poultry meat at world market prices. The questionable legality of the EC subsidy under the General Agreement on Tariffs and Trade (GATT) led a coalition of U.S. producers to institute proceedings against the EC in an effort to abate the alleged unfair trade practices.[1] The proceedings were later amended to include Brazil's export program for poultry meat.

The objective of this paper is to relate the legal provisions of

*The 1979 Tokyo Round of Multilateral Trade Negotiations produced a Subsidies Code, adopted by most western nations, governing the permissible use of subsidies in international trade. Despite the adoption of this Code, the European Community has continued to subsidize its poultry exports thereby imparting to EC producers an unfair advantage over U.S. poultry producers. Economic data support a finding that the EC subsidies violate the Subsidies Code and that U.S. poultry producers should seek judicial redress under § 301 of the Trade Act of 1974.

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1. Petition Seeking Relief Under § 301 of the Trade Act of 1974, as amended, National Broiler Council, et al., before the Office of the United States Trade Representative, Washington, D.C., September 17, 1981 (hereafter cited as Petition).



 

GATT and the Tokyo Round of Multilateral Trade Negotiations (MTN)[2] with the poultry subsidies provided by the EC and Brazil to discern whether U.S. producers have grounds to challenge these subsidies. The paper commences with a discussion of applicable international trade agreements, U.S. law and the legal procedure for a cause of action against EC and Brazilian poultry export policies. The EC import protection devices and export restitutions are identified and the EC's export refunds are analyzed to show the alleged subsidy element and impact. The Brazilian poultry export subsidies are also identified.

## II. The International Agreements and U.S. Law

GATT is a multinational agreement opened for signature in 1947 which established a code for international trade. In 1979, GATT was further interpreted by the Tokyo Round of MTN and ten major agreements resulted from the negotiations. This included an "Agreement on Interpretation and Application of Articles VI, XVI, and XX-III of the General Agreement on Tariffs and Trade," which is known as the Subsidies Code.[3] The Subsidies Code addresses the use of export subsidies, countervailing and antidumping duties. It also provides additional guidelines for the settlement of disputes.

Article 8 of this Code contains provisions regarding the use of subsidies. Signatories agree that they will avoid causing "serious prejudice[4] (i.e., injury or loss of market shares) to the interests of another signatory."[5] Export subsidies on certain primary agricultural products are further restricted by the provisions of Article 10. These provisions govern unfair trade practices of other governments which adversely affect U.S. trade:

> Signatories agree not to grant directly or indirectly any export subsidy on certain primary products in a manner which re-

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2. *Agreement on Interpretation and Application of Article VI, XVI, XXIII of the General Agreement on Tariffs and Trade.* GATT Doc. MTN/NTM/W/236, reprinted in *Agreements Reached in the Tokyo Round of Multilateral Trade Negotiations*, H. R. Doc. No. 153 Part 1, 96th Cong., 1st Sess., 1979, p. 259 (hereafter cited as *Agreement*).

3. *Id.*

4. A footnote to Article 8 states that serious prejudice is used "in the same sense as it is used in Article XVI:1" of GATT and that the term includes the threat of serious prejudice. Article 8 also provides that "serious prejudice may arise through . . . the effects of the subsidized exports in displacing the imports of like products of another signatory from a third country market." *Id.* at 277-78 (footnotes omitted). A footnote indicates that Article 10 governs third country markets. *Id.* at 278.

5. *Agreement, supra* note 2, at 277.

> sults in the signatory granting such subsidy having more than an equitable share of world export trade in such product. . . .Signatories further agree not to grant export subsidies on exports of certain primary products to a particular market in a manner which results in prices materially below those of other suppliers to the same market.[6]

The U.S. initialed but did not sign the Subsidies Code. As a non-self-executing congressionally authorized executive agreement, the Code does not constitute part of our federal law.[7] However, the U.S. Congress took steps to bring this country's laws into conformity with the provisions of the Subsidies Code by enacting the Trade Agreements Act of 1979.[8] The 1979 Act adopted most of the provisions of the Subsidies Code but was not a verbatim adoption of the Code due to existing U.S. international obligations, constitutional due process requirements and limitations included in response to special interest groups. Through the 1979 Act, provisions from the Subsidies Code govern, in part, our international trade. However, the 1979 Act provides that any conflict between U.S. law and the Subsidies Code is to be resolved in favor of U.S. law.[9]

The 1979 Act contains explicit provisions concerning countervailing duties that shall be imposed upon imports that are subsidized by another country and cause injury to a domestic industry.[10] There are also antidumping duties on foreign merchandise likely to be sold at less than its fair value in the U.S. which threatens to cause or causes material injury or materially retards development of an industry. Determination of injury in both types of cases are made by the International Trade Commission.[11] However, these provisions pertain to the importation or potential importation of products, including poultry, into the U.S. They do not apply to the unfair situation of a foreign nation subsidizing poultry and other primary products to third countries.

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6. *Id.* at 278.

7. Cohen, *The Trade Agreements Acts of 1979: Executive Agreements, Subsidies, and Countervailing Duties*, TEX. INT'L. L. J. 96 (1980).

8. 93 Stat. 144 (1979) (current version at 19 U.S.C. §2501 (1982)).

9. 19 U.S.C. §2504 (1982).

10. 19 U.S.C.A. §1671 (Supp. 1985).

11. 19 U.S.C.A. §1673a (Supp. 1985).

## III. Cause of Action Against EC Poultry Subsidies

Legal authority for a cause of action concerning EC export restitutions on poultry products not being imported into the U.S. rests under section 301 of the Trade Act of 1974.[12] The broad language of section 301(a) authorizes the President to determine whether action is necessary to respond to any acts, policies or practices of a foreign country which deny the U.S. benefits under any trade agreement or are unreasonable and burden or restrict U.S. commerce.[13] A positive determination requires the President to "take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice."[14] Actions include denial of the benefits of trade agreement concessions and imposition of duties or import restrictions on the product of the offending foreign country.

Any person with an interest in an international trade act, policy or practice may seek redress through the threat of filing a petition or by filing a petition with the U.S. Trade Representative requesting that the President take action.[15] A petition must set forth the allegations in support of the request and shall be reviewed by the U.S. Trade Representative within forty five days.[16] If the U.S. Trade Representative reaches a negative determination, he must inform the petitioner of the reasons.[17] If an affirmative determination is made, the U.S. Trade Representative shall institute an investigation regarding the issues raised.[18] An affirmative determination also requires the U.S. Trade Representative to request consultations with the foreign country regarding issues raised in the petition[19] and to make a recommendation to the President concerning the action, if any, to be taken.[20]

An affirmative determination of a petition alleging that EC poultry exports violate Articles 8 or 10 of the Subsidies Code would require consultations to be held in accordance with the formal dispute settlement procedures of this Code. This could include a request of a panel of experts to review the facts of the case and to report on their

12. 88 Stat. 1978 (1974) (current version at 19 U.S.C. §2101 (1982)).
13. 19 U.S.C.A. §2411(a) (Supp. 1985).
14. *Id.*
15. 19 U.S.C.A. §2412(a) (Supp. 1985).
16. *Id.*
17. 19 U.S.C.A. §2412(b) (Supp. 1985).
18. *Id.*
19. 19 U.S.C.A. §2413 (Supp. 1985).
20. 19 U.S.C.A. §2414 (Supp. 1985).

findings.[21]

U.S. poultry producers have alleged a sufficient cause of action in their section 301 petition as they showed that the actions of the EC are inconsistent with the provisions of the Subsidies Code and burden U.S. commerce. Under Articles 8 and 10 of the Subsidies Code, signatories agreed not to subsidize any primary product in a manner which would cause serious prejudice to the interest of another signatory, lead to more than an equitable share of world export trade in such product, or subsidize primary products so as to result in prices "materially below those of other suppliers" of the same market (i.e., price suppression).[22]

## IV. EC Protection Mechanisms for Poultry Meat

The EC's Common Agricultural Policy (CAP) consists of a system of variable import levies designed to insulate European producers from fluctuations on world markets and price supports on wheat, coarse grains, dairy and poultry products. This protectionist policy has resulted in surplus agricultural production in Europe. Much of the excess output is purchased by CAP intervention agencies which are similar to the Commodity Credit Corporation in the U.S. Disposal of the EC's overly abundant production requires the use of export refunds which presently account for 45-50 percent of the EC's farm budget.[23]

The use of three import protection devices and export refunds by the EC constitute basic mechanisms that have stimulated European poultry production and exports over the past two decades. Sluicegate prices and import levies protect EC producers from lower-priced poultry imports. Sluicegate prices are intended to reflect the cost of producing the marketing poultry products in the EC relative to other world poultry producers. Sluicegate prices for slaughtered poultry consist of two components: a feed grain component which reflects the cost on the world market for the quantity of grain required for the production of one kilogram of slaughtered poultry, and a standard amount representing other feeding, marketing and overhead costs of production.[24] In essence, the EC estimates the cost of poultry produc-

21. *Agreement, supra* note 2, at 283, 288-91.

22. *Id.*

23. Butler, *The Ploughshares War Between Europe and America*, 62 Foreign Affairs 105, 112 (1983).

24. *Official Journal of the European Communities*, Regulation (EC) No. 2778/75 of the Council of 29 October 1975, Laying Down Rules for Calculating the Levy and the Sluice-gate Price for Poultry Meat, No. L 282/84 to 89, November 1, 1975.

tion based on fixed feed grain conversion ratios, world feed grain prices and overhead costs. Variable levies may be added to sluicegate prices to determine the price at which poultry meat can be imported into the EC.

EC import levies on poultry imports are composed of two parts. Element A is a feed grain cost differential which accounts for differences in feed grain prices between the EC and imported feed grains. Element B is seven percent of the average sluicegate prices for the previous twelve months.[25] The two elements are added together to comprise the basic levy, the amount charged on poultry meat imports.

The third component of EC protection is the additional levy. The additional levy is used as needed to reflect the difference between world and sluicegate prices when the former drops to levels lower than what the basic levy can cover.[26] The additional levy is completely variable and is arbitrarily applied when market conditions are unfavorable to the EC. The additional levy is designed to counter the occasional dumping of poultry meat in the EC by nonmember countries.[27] The three components of the protection mechanism also explain why export restitutions are needed for EC sales in the international market.

On the export side, the EC uses export refunds or restitutions to reduce its export poultry prices to world market levels whereby they are competitive with lower cost producers. These restitutions are required because of lower feed prices in other countries. Export restitutions may also be used as a short-term measure to aid exports in periods of oversupply. Restitutions are determined at present in a fairly pragmatic way in view of existing market conditions, but there is a provision for the refunds to relate to Element A, the feed grain component of the basic levy.

## V. EC Calculation of Poultry Export Restitutions

The U.S. petitioners have alleged that EC poultry export refunds violate Articles 8 and 10 of the Subsidies Code in that the refunds have contributed to a loss of market shares and have resulted in prices materially below those of other suppliers to the same market.[28]

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25. *Id.* at 79.

26. *Id.* at 80.

27. *CAP Monitor Eggs and Poultry*, Brussels: Common Agricultural Policy, January 1981. *Eurostat-Nimexe*, Luxembourg: Statistical Office of the European Communities, 1973-82.

28. Petition, *supra* note 1, at 28-31.

The EC argues that it is entitled to export refunds or restitutions on poultry in an amount equivalent to the variable levy on imported grains. The Community's variable levy system results in higher feed grain prices and therefore the export refunds are needed if the EC is going to sell on the international poultry market.[29]

EC regulation 2779/75 of October 29, 1975 defines criteria for fixing the amount of the EC refund or restitution on poultry meat.[30] Article 2 of this regulation states that consideration is given to the:

(a) prices and availabilities of poultry meat on the Community market and prices for poultry meat on the world market;

(b) need to avoid disturbances which might lead to a prolonged imbalance between supply and demand on the Community market; and

(c) economic aspect of the proposed exports.[31]

Article 2 further states that when the refund is being calculated, "account shall also be taken of the difference between prices within the Community and prices on the world market for the quantity of feed grain" which is required for the production in the Community of one kilogram of slaughtered poultry.[32]

There may be more than a simple export refund of the higher feed costs in the EC if Element A is adjusted for what some analysts believe is an exceptionally high feed conversion ratio.[33] The EC uses a conversion rate of 2.189 kilograms of grain per kilogram of poultry meat for 70 percent chickens.[34] This ratio was established in August 1974, and it has not been changed despite increased efficiency in the

29. There are two distinct levies involved here. One is the levy on feed grains imported into the EC which results in higher feed ration costs for poultry and livestock while the other is a separate levy on imported poultry meat (broilers, chicken parts and turkey meat) which protects the Community from imports of lower priced poultry. The export refund or restitution is the main focus here since it is the basic source of disagreement between the U.S. and the EC in markets where the refund applies.

30. *Official Journal of the European Communities*, Regulation (EC) No. 2779/75 of the Council of 29 October 1975, Laying Down General Rules for Granting Export Refunds on Poultry Meat and Criteria for Fixing the Amount of Such Refunds, No. L 282/90 to 93, November 1, 1975.

31. *Id.*

32. *Id. See also* U.S. Dept. of Agric., Foreign Agric. Serv., Dairy, Livestock and Poultry Div., "EC Calculation of Poultry Export Subsidy," Unpublished Report, Feb. 1, 1983. The EC takes into account the difference between prices within the Community and prices on the world market for the quantity of feed grain required for the production of one kilogram of slaughtered poultry and for the feed grain required for the production of one broiler chick. *Official Journal of the European Communities*, *supra* note 30, No. L 282/91.

33. Magiera, "Export Refunds on Poultry—Refunds or Subsidies?" Unpublished paper, U.S. Dept. Agric., Econ. Research Serv., Int'l. Econ. Div., January 11, 1982.

34. The EC classification of 70 percent whole chickens includes dressed birds with liver, gizzards and hearts but without the head and feet. This classification is similar to U.S. whole broilers.

EC poultry industry.[35]

Calculations by the U.S. Department of Agriculture indicate that the differential between EC and world feed grain cost for poultry may be overestimated by approximately 17 percent.[36] Therefore, the EC's export refunds may contain a subsidy element in some market periods and not just a repayment of higher feed grain costs.

Although the export refund is valid throughout the EC, the most efficient producers, France and the Netherlands, benefit more from the export refund than the other Community members. Indeed, the more modern facilities for producing poultry meat found in Brittany are designed exclusively for exports and the broilers produced are lighter than preferred by French consumers.[37] Since this poultry meat would also qualify for the export refund, it does not really satisfy the EC's own criteria that the refunds are needed to adjust prolonged imbalances in supply and demand for poultry meat by the EC market.

Nevertheless, the EC has a long and well documented history of providing export restitutions for poultry exported to the Middle East. Export restitutions ranged from a low of $3.74 per 100 kilograms in the first quarter of 1974 to a high of $36.99 per 100 kilograms from June to October 1979.[38] Between 1967 and December 1983, there were only two brief periods, July to August 14, 1974 and November 1974 to May 1975, when export restitutions were not utilized by the European Community.[39] The EC has exercised flexibility in the use of export restitutions, applying them to selected markets and during selected time periods as market conditions warrant. Thus the EC restitutions provide a competitive edge in responding to market situations.

35. Magiera, *supra* note 33, at 4.

36. *Id.* at 6.

37. "Brittany: It Pours a Million Broilers a Day Into Ships," *Broiler Industry*, August 1981, p. 20-24.

38. Magiera, *supra* note 33.

39. U.S. Dept. of Agric., Foreign Agric. Serv., "Unpublished Data on European Community Export Subsidies," Aug. 1982 and Nov. 1983. Prior to January 21, 1980, subsidies were paid only on shipments to Non-EC Europe, the USSR, the Middle East, Africa, Canary Islands, and Cuba. Since January 21, 1980, the subsidies have been paid on a worldwide basis except to the U.S. That means the Far East markets (especially Hong Kong, Singapore, Japan) and the Caribbean area are now included as well. U.S. Dept. of Agric., Foreign Agric. Serv., February 1981 (unpublished data). Data from September 1982 to November 1983 were taken from weekly issues of *FAS Report*.

## VI. EC Export Refunds and Market Prices

The EC's export refunds constitute an unfair trade practice that adversely affects U.S. trade in poultry meat since the EC's prices have been materially below other suppliers. France, as the major European poultry producer and exporter, has long been accused of price suppressive activities in the world export market for poultry meat that arguably constitute a violation of Article 10 of the Subsidies Code. Several aspects of this alleged behavior are apparent when the average unit export values (Column 2, Table 1) are compared with the range of export refunds available to the French from 1967 through 1983. It is apparent that the price differentials between French and U.S. poultry were partially made up by the export refund (Table 1).

The ratio of annual French export unit values to the annual U.S. poultry meat export unit values was greater than one in every year except for 1970 (Column 5, Table 1). However, when the annual average EC export subsidy was subtracted from the French unit export value, the ratio of French to U.S. poultry export unit values was less than one in eight of the eighteen years under study (Column 6, Table 1).

Table 1. Annual French and U.S. Poultry Exports Unit Values, EEC Export Restitutions and Price Ratios, 1965 to 1982.

| Year (1) | Unit Export Value (2) | Annual Average EC Export Refund[a] (3) | U.S. Unit Export Value (4) | Ratio of French Export Unit Values to U.S. Unit Export Value (5) | Ratio of French Export Unit Values With EC Subsidy[b] U.S. Value (6) |
|---|---|---|---|---|---|
| | Dols/Kilo | Dols/Kilo | Dols/Kilo | | |
| 1965 | 0.75 | N.A. | 0.61 | 1.23 | — |
| 1966 | 0.725 | N.A. | 0.64 | 1.13 | — |
| 1967 | 0.64 | 0.1631 | 0.625 | 1.02 | 0.76 |
| 1968 | 0.642 | 0.1631 | 0.61 | 1.05 | 0.79 |
| 1969 | 0.69 | 0.1631 | 0.68 | 1.01 | 0.77 |
| 1970 | 0.635 | 0.1631 | 0.65 | 0.98 | 0.73 |
| 1971 | 0.647 | 0.1631 | 0.63 | 1.03 | 0.77 |
| 1972 | 0.81 | 0.1389 | 0.67 | 1.21 | 1.00 |
| 1973 | 1.31 | 0.1212 | 0.94 | 1.39 | 1.26 |
| 1974 | 1.12 | 0.1168 | 0.97 | 1.15 | 1.03 |
| 1975 | 1.29 | 0.0320 | 0.99 | 1.30 | 1.27 |
| 1976 | 1.34 | 0.0640 | 0.98 | 1.37 | 1.30 |
| 1977 | 1.33 | 0.1185 | 0.98 | 1.36 | 1.24 |
| 1978 | 1.32 | 0.2459 | 1.08 | 1.22 | 0.99 |
| 1979 | 1.42 | 0.3379 | 1.14 | 1.26 | 0.95 |
| 1980 | 1.60 | 0.2717 | 1.17 | 1.36 | 1.13 |
| 1981 | 1.44 | 0.1595 | 1.22 | 1.18 | 1.05 |
| 1982 | 1.13 | 0.1833 | 1.07 | 1.05 | 0.88 |

[a]Prior to January 21, 1980, subsidies were paid only on shipments to Non-EC Europe, the USSR, the Middle East, Africa, Canary Islands and Cuba. Since January 21, 1980, the subsidies have been paid on a worldwide basis except to the U.S.

[b]A simple average of the poultry export subsidy in effect for the calendar year was used in column 3. Since EC export data were not available on a quarterly basis, the simple average of the export subsidy understates the real ratio between EC export prices including the subsidy and U.S. export prices. If the weighted average export subsidy could have been calculated, the ratio of EC to U.S. export unit values would have been less than one in all years.

Sources: *FAO, Computer Tape of Trade Yearbook Data 1965 to 1978*. Rome: FAO, 1979: FAO, *1982 FAO Tradebook Yearbook*. Vol. 35, Rome: FAO, 1982, pp. 61-62; and U.S. Department of Agriculture, Foreign Agricultural Service, Feb. 1981 (unpublished data on EC Export Subsidies); French data for 1982 came from the USDA, FAS, "Attache Report" No. FR-3068, July 22, 1983; U.S. data for 1982 came from USDA, *U.S. Foreign Agricultural Trade Statistical Report, Fiscal Year 1982.*

The total impact of the export subsidy is not reflected in the ratio of annual EC to U.S. export unit values since poultry export subsidies were adjusted on a quarterly basis. For example, export subsidies from February to May 1978 were $0.1109 per kilo from June to December. The extra $0.1109 per kilo certainly would have made French poultry more competitive in Middle Eastern markets during the latter half of the marketing year. Since the export restitutions are consistently available in the Middle Eastern markets, they can be interpreted as creating significant price differentials between EC and U.S. poultry suppliers.

## VII. Brazilian Poultry Meat Export Subsidies

On September 21, 1982, the U.S. amended its original 301(a) petition before the GATT to include actions of the Brazilian government which were alleged to violate provisions of the Subsidies Code.[40] The amended petition claimed that the Brazilian governmental incentives violated the Subsidies Code based on market displacement or preemption and material price undercutting.

Brazilian incentives for broiler exports include a credit program to finance products destined for foreign markets, income tax exemptions and operating loans with reduced interest rates. The major increase in Brazil's exports came after mid-1980 when the income tax exemption and Resolution 674 went into effect. The main sources of promotion for the export broiler market are the Union of Chicken Exporters and a government-backed credit program called Resolution 674.[41]

Under Resolution 674, poultry processors and exporters are eligible for loans up to 40 percent of the f.o.b. value of the product to be exported (based on the previous year's exports) minus deductions for marketing expenses. The effective interest rate is 44 percent annually, with the repayment period from three to twelve months at the option of the borrower. The borrower must export the agreed upon dollar value of poultry. If export commitments are not met, the interest rate increases to approximately 60 percent. Therefore, a strong incentive exists to produce for the export market. As a result of these policies, there has been a significant growth in Brazilian poultry exports, from 3 percent of total production in 1976 to an estimated 20 percent of production or 302,000 metric tons in 1982.[42]

Brazilian poultry producers and exporters are also exempt from income taxes on export sales. A formula is used to arbitrarily allocate a percentage of total profits to export sales. The ratio between export sales and total sales for a year is applied to taxable profits. This amount is then subtracted from total profits, thus reducing the amount of taxable income.

Rural credit loans, which cover operating and input costs depend-

40. Petition, *supra* note 1.

41. Roberson, "Trip Report on the Brazilian Poultry Industry," U.S. Dept. Agric., Foreign Agric. Serv., May 14, 1982.

42. *Id.*

ing upon the size of the operation, constitute another incentive for expanded poultry production. These short-term loans can cover 70 to 80 percent of operating and input costs for larger and medium-sized producers, respectively. The interest rate is generally 45 percent, which is lower than other loans which often have interest rates of 60 percent or higher. The loans generally must be repaid in six months. These governmental incentives enable Brazilian producers to export their poultry meat at prices materially below other suppliers.[43] Thus, Brazilian poultry exports to the Middle East have dramatically increased in recent years.

Brazil's poultry meat exports to the Middle East increased sevenfold from 1976 to 1980 and fourteen-fold by 1982. No other supplier of the Middle Eastern market was able to compete with this sustained growth. European Community exports only doubled between 1976 and 1982. U.S. poultry meat exports declined 72 percent from 1976. Hungarian poultry meat exports declined 80 percent from 1976 to 1982.[44]

Brazilian exporters have expanded their market share from 4 percent in 1975 to 45 percent in 1982 while the U.S. failed to establish a significant market position (Table 2). The EC's market share of the Middle Eastern poultry meat import market averaged 55 percent during the 1976-82 period. The U.S.'s market share fluctuated sporadically during the same years, declining to only 1.8 percent. At the same time, the Middle Eastern market for poultry meat increased more than 220 percent.

The Brazilian and EC export subsidies appear to explain why the U.S. failed to establish an equitable market share after 1974 when the market was expanding rapidly. In years when the ratio of French export unit values with the export refund included was less than one, 1978, 1979 and 1982 for example, the resulting U.S. market share in the Middle East was 0.3, 1.8 and 1.8 percent respectively. When the ratio was greater than one, which indicates that French poultry would be more expensive than U.S. poultry, other factors being equal, the U.S. market share was much larger.

43. The Brazilians have argued that the real reason for their success in the Middle Eastern market was their willingness to adapt to the requirements of the market with smaller birds. U.S. Trade Representative, *Unpublished Report*, August 30, 1982. U.S. suppliers would have had to incur additional costs to meet market preferences. However, Brazilian growers and processors in the export market had financial incentives to satisfy preferences in the export market which U.S. firms did not have available. Hence, the Brazilian market share expanded rapidly since 1976 while the U.S. was unable to establish a significant market share.

44. U.S. Dept. Agric., Foreign Agric. Serv., Dairy, Livestock and Poultry Division, "Unpublished Data on U.S., EC-10, Brazilian and Hungarian Poultry Meat Exports," 1984.

Table 2. Market Shares of Middle Eastern Whole Chicken and Broiler Imports, 1969 to 1982.

| Year | European Community | United States | Brazil | Hungary | Quantity Imported |
|---|---|---|---|---|---|
| | ----------------------percent---------------------- | | | | Metric tons |
| 1969 | 34.0 | 5.3 | 0 | 60.7 | 1,977 |
| 1970 | 90.5 | 9.5 | 0 | 0 | 1,909 |
| 1971 | 97.0 | 3.0 | 0 | 0 | 3,777 |
| 1972 | 82.6 | 0.7 | 0 | 16.7 | 10,170 |
| 1973 | 90.0 | 1.1 | 0 | 8.9 | 17,947 |
| 1974 | 89.7 | 3.0 | 0 | 7.3 | 53,737 |
| 1975 | 75.1 | 0.7 | 4.4 | 19.8 | 78,644 |
| 1976 | 54.2 | 18.2[a] | 11.6 | 16.0 | 156,444 |
| 1977 | 57.7 | 8.1 | 16.3 | 17.9 | 189,304 |
| 1978 | 62.6 | 0.3 | 21.5 | 15.6 | 226,086 |
| 1979 | 56.3 | 1.8 | 29.2 | 12.7 | 241,352 |
| 1980 | 49.5 | 11.1[b] | 35.1 | 4.3 | 396,315 |
| 1981 | 52.5 | 6.5[c] | 39.1 | 1.9 | 532,844 |
| 1982 Preliminary | 52.2 | 1.8 | 44.9 | 1.1 | 504,674 |

[a]The larger U.S. share of the Middle Eastern market in 1976 can be explained by one large sale to Iraq of 28,134 metric tons of poultry meat in that year. Iraq is not a regular market for U.S. poultry meat.

[b]Middle Eastern demand increased 64.2 percent in 1980 over the previous year. This strong demand may account for the U.S.'s larger share of the market in 1980.

[c]The larger U.S. share of the Middle Eastern market in 1981 can be explained by a sale of 31,933 metric tons to Iraq.

Source: U.S. Department of Agriculture, Foreign Agricultural Service, March 1982 and November 1983 (unpublished data on EC Exports to the Middle East).

In addition, several large one-time sales caused aberrations in the annual market share. The Brazilian domination of the growth in market share, the only country to do so, indicates that its long-term policies were giving its exporters a competitive edge in the market. The combined actions of the two competitors appear to constitute "serious prejudice" regarding the U.S. market position.

## VIII. Conclusion

The EC and Brazil appear to be in violation of the MTN Subsidies Code based on the evidence of market displacement and price suppression resulting from export subsidies on poultry sold in the Middle Eastern market.

The EC maintained an average 90 percent market share in Middle Eastern poultry from 1970 to 1974 while the U.S. share during the same period averaged about 3.5 percent. The Middle Eastern market for poultry meat increased 291 percent from 1974 to 1976 and continued to expand at a steady pace until 1982. However, U.S. suppliers only participated in this market expansion on a sporadic basis. While the EC's annual market share averaged 55 percent from 1976 to 1982, Brazilian suppliers expanded their share from 4.4 percent in 1975 to almost 45 percent in 1982. The EC's maintenance of its market share and Brazil's expansion of its share of the Middle Eastern poultry market should be found to constitute market displacement and preemption.

This market displacement and preemption occurred because the EC and Brazil granted their producers export subsidies. These subsidies have effectively lowered the price of EC and Brazilian poultry exports and have enabled these countries to obtain more than their equitable share of the Middle Eastern poultry market. Thus, the subsidies have acted to displace U.S. poultry exports from the Middle Eastern market.

U.S. poultry producers may argue in a section 301 petition under the Trade Act of 1974 that the EC's subsidy of poultry exports to third countries is unreasonable and burdens and restricts U.S. commerce. It is unreasonable because it is contrary to the thrust of the Subsidies Code which is to "ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory. . . ."[45] It burdens and restricts U.S. commerce since, in the absence of EC export refunds or Brazilian tax and loan policies, the U.S. would presumably acquire a larger share of the poultry export market because of nonsubsidized cost advantages.

Although the resulting displacement of U.S. poultry exports and the failure of U.S. producers to acquire their expected share of the Middle East poultry import market may violate the Subsidies Code, various political considerations dictate what is feasible in terms of enforcement under the Trade Act of 1974. Therefore, it is unclear what relief, if any, is available or will be forthcoming to U.S. poultry producers under U.S. law.

45. *Agreement*, *supra* note 2, at 260.