China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States

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How the chickens came home to roost

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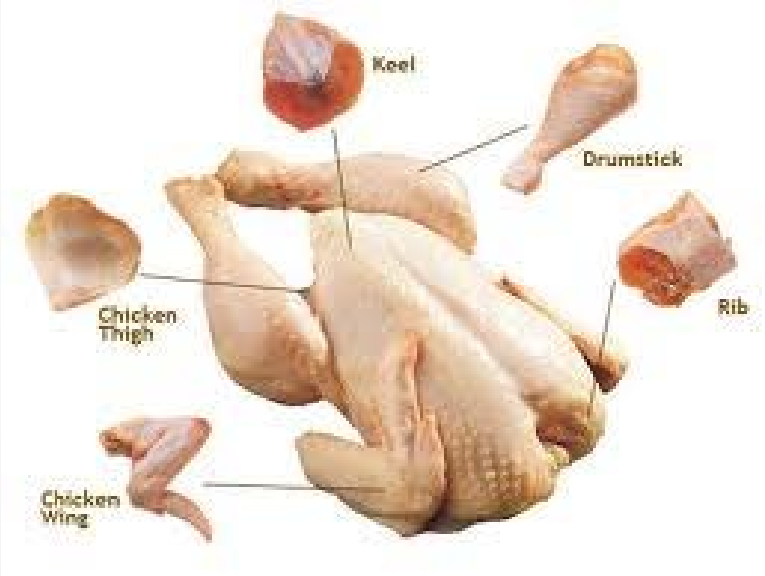
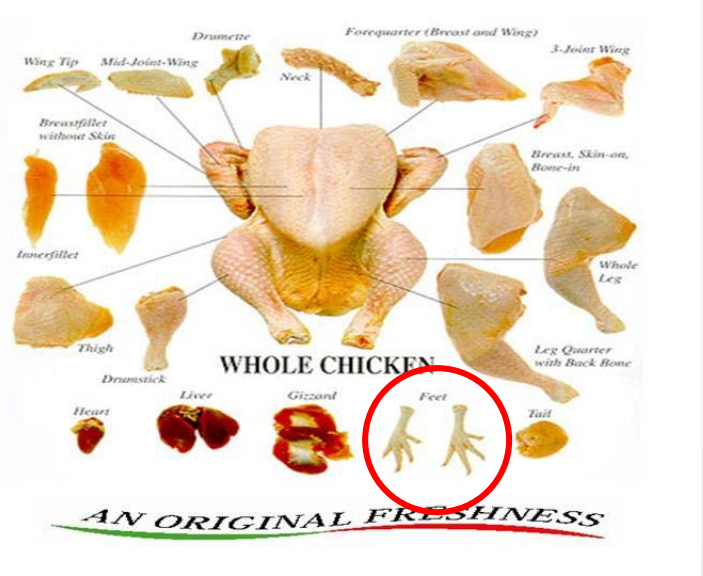
What is Chicken?… and how do you price it?!

- Google "chicken parts"… what do you see?



What's missing in this picture?



Paws!

Chicken Paws?

- **Not a product desired by US/EU consumers**
  - Sold as residual product; used in animal feed, fertilizer, hot dogs!
  - Historically, low value product

- **Light bulb moment!**
  - Consumers in other countries (most notably, China) like chicken paws
  - Paws now far more valuable than other by-products (gizzards, gristle, bones, beaks, etc.)

- **Trade benefits both US producers and Chinese consumers**

Maybe not…

- China initiates an antidumping/countervailing duty against U.S. chicken parts
- Investigation initiated on 27 September 2009
- Final Determinations
  - AD: 26 September 2010 (margins 50.3%-105.4%)
  - CVD: 30 August 2010 (margins 4.0%-30.3%)

WTO Appeal

- US requested WTO consultations on 20 Sept 2011
- WTO Panel
  - final report issued on 25 June 2013
  - report adopted by the DSB on 25 Sept 2013
- US requested WTO Compliance Proceeding on 2 June 2016
- Report due by end of 2017

Dumping Allegation

- **Price based**
  - Export Price < Home Price
  - Certainly not in this case

- **Cost based**
  - Export price < average total costs

Most Interesting Issue – Joint Production

- **Key complication: joint products**
  - Chickens can only be produced "whole"
    - Costs accrue to whole bird

- **How to determine the costs to produce a chicken breast? Thigh? Paws?**

Cost of a chicken

- **Observe: TC, $C_{\text{pre-split}}$, $C_{\text{post-split}}$**

$$TC = C_{\text{pre-split}} + C_{\text{post-split}},$$

- **But, the cost of <u>individual parts</u> must be calculated**
  - **Approach: Calculate cost shares**

$$\alpha_{\text{breast}}, \alpha_{\text{thigh}}, \alpha_{\text{wing}}, \alpha_{\text{leg}}, \alpha_{\text{paw}}, \alpha_{\text{offal}}$$

- **How to calculate the shares (α_i)?**

Cost Allocation

- **Value-based**
  - US producers' historical method

$$\alpha_i = \frac{P_i}{P_{\text{whole}}},$$

- **Weight-based**
  - MOFCOM's approach
  - Each part has same value (per kg)

$$\alpha_i = \frac{WT_i}{WT_{\text{whole}}},$$

- China applied the same shares to pre-split and post-split
  - Clearly not correct

ADA Article 2.2.1.1

- Costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that
  1) such records are in accordance with the generally accepted accounting principles (GAAP) of the exporting country and
  2) reasonably reflect the costs associated with the production and sale of the product under consideration

- Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer

US Producers' Method

- Prices used are domestic (US) prices

- Paws assigned very low value
  - Some producers value paws as by-product: gizzards, beaks, bones, etc.
  - General issue: US preferences makes US price for paws very low

- Value-based allocation implies a very low cost of production for paws

Value-Based

(paws valued according to relative sales value)

	Export price per KG	US market price per KG	Share	Pre-split meat costs	Post-split costs	Total COP	COP + SG&A + profit	Dumping Margin
Breast	$4.90	$4.75	64.19%	$3.31	$1.02	$4.33	$4.67	No
Thigh	$2.00	$1.50	20.27%	$1.04	$0.30	$1.34	$1.45	No
Wings	$1.50	$1.00	13.51%	$0.70	$0.20	$0.90	$0.97	No
Paw	$0.90	$0.10	1.35%	$0.07	$0.02	$0.09	$0.10	No
Offal	---	$0.05	0.68%	$0.03	$0.01	$0.04	$0.05	No
TOTAL	$9.30	$7.40	100%	$5.15	$1.55	$6.70	$7.24	

Shares allocate pre-split costs only

MOFCOM

- **Rejects value-based method**

- **Instead: Weight-based approach**
  - **Similar to the <u>USDOC's</u> history of rejecting value-based accounting**
    - *"We recognize that a value-based cost allocation can be problematic in an anti-dumping context. The most obvious problem is the potential circularity of the analysis, whereby prices are used to determine the product-specific costs which in turn are either compared to those same product-specific prices or are used to determine prices (i.e., through the sales-below-cost test and constructed value)"* (US – Softwood Lumber V)

    - the key question is whether the cost allocation accurately reflects the "price to be paid for the act of production." [EC – Salmon (Norway)]

Weight-Based – I

	Export price per KG	Weight	Share	Pre-split meat costs	Post-split costs	Total COP	COP + SG&A + profit	Dumping Margin
Breast	$4.90	1.000	20%	$1.03	$1.02	$2.05	$2.21	No
Thigh	$2.00	1.000	20%	$1.03	$0.30	$1.33	$1.44	No
Wings	$1.50	1.000	20%	$1.03	$0.20	$1.23	$1.33	No
Paw	$0.90	1.000	20%	$1.03	$0.02	$1.05	$1.13	25.56%
Offal	--	1.000	20%	$1.03	$0.01	$1.04	$1.12	No

$$\frac{\$1.13-\$0.90}{\$0.90} = 0.2556 \ = 25.56\% \text{ dumping margin}$$

Shares allocate pre-split costs only

Weight-Based – II

	Export price per KG	Weight	Share	Pre-split meat costs	Post-split costs	Total COP	COP + SG&A + profit	Dumping Margin
Breast	$4.90	1.00	20%	$1.03	$0.31	$1.34	$1.45	No
Thigh	$2.00	1.00	20%	$1.03	$0.31	$1.34	$1.45	No
Wings	$1.50	1.00	20%	$1.03	$0.31	$1.34	$1.45	No
Paw	$0.90	1.00	20%	$1.03	$0.31	$1.34	$1.45	61.11%
Offal	--	1.00	20%	$1.03	$0.31	$1.34	$1.45	No

$$\frac{\$1.45-\$0.90}{\$0.90} = 0.6111 = 61.11\% \text{ dumping margin}$$

Shares allocate pre-split and post-split costs

Which Method is Correct?

- Panel: neither method in principle inherently unreasonable
- Article 2.2 reference to 'cost of production in the country of origin'
- Deference must be given to the producers' historical approach as long as this approach <u>reasonably</u> reflects the costs
  - Questionable whether all aspects of US producers' method "reasonable"

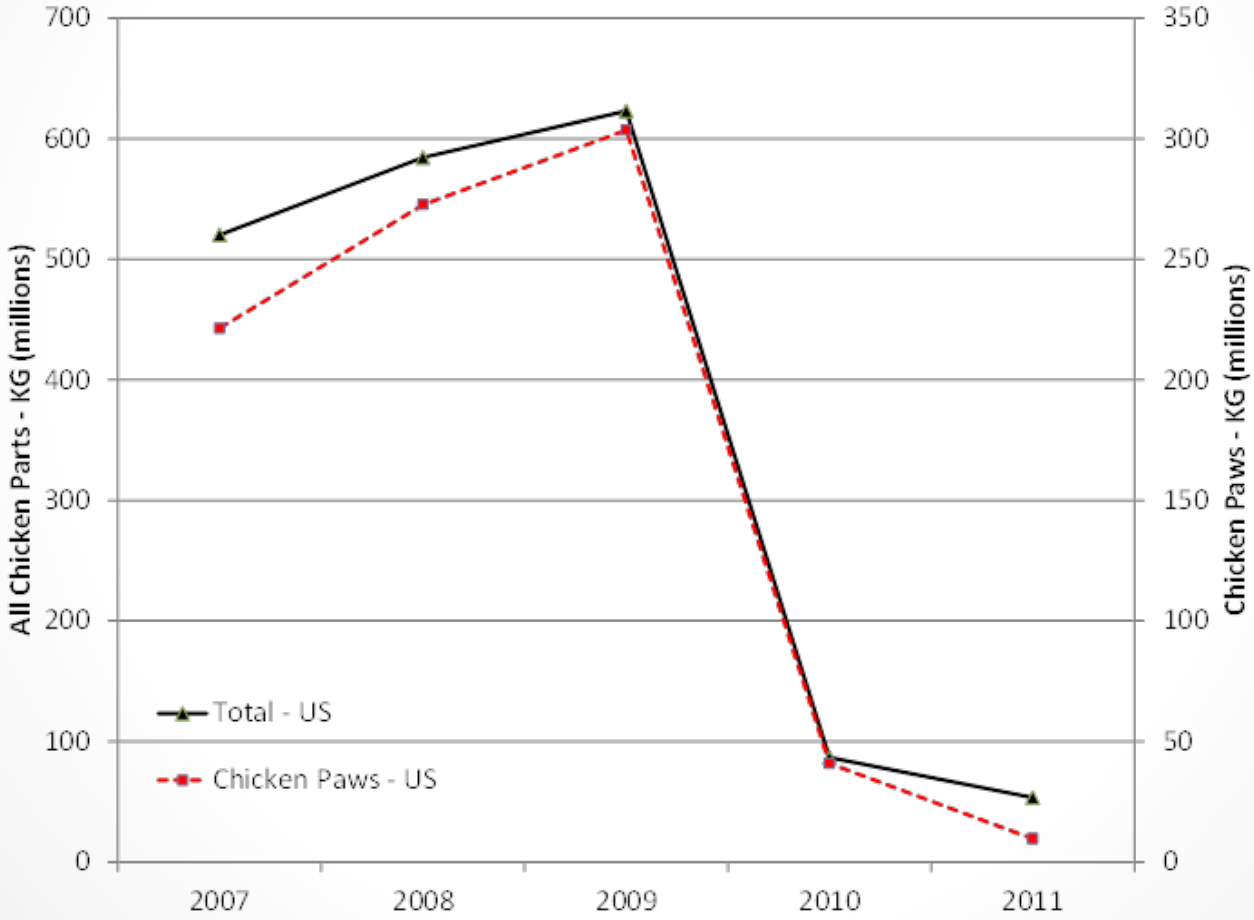
Tit-for-tat

- **China safeguard on tires → AD/CVD on chicken parts**
  - US imposed duties on truck tires from China on 17 September 2009
  - China initiated this investigation on 27 September 2009

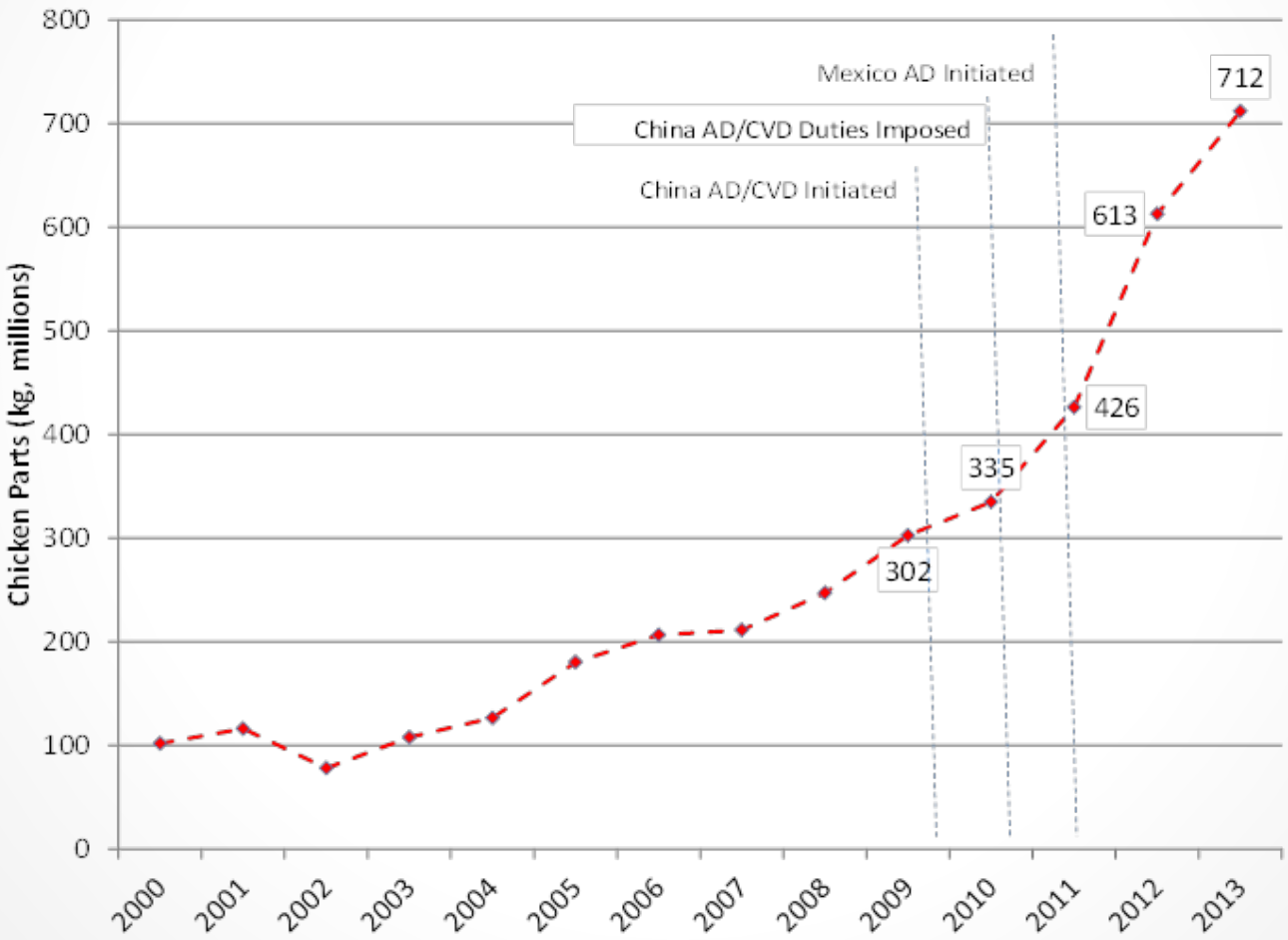
- **Tariff on tires – ill-fated policy**
  - Ineffective (trade diversion):
    - *"The tariffs did ultimately lead to a 30% reduction in made in China tire imports from 2009 to 2011, but that didn't mean 30% more tires were produced in the U.S. It just meant that 30% more tires were imported from Canada; 110% more from South Korea; 44% more from Japan; 152% more from Indonesia; 154% more from Thailand; 117% more from Mexico and 285% more from low volume provider Taiwan."* (Rapoza, 2012)
  - Tires tariff appears to have provoked this dispute
    - Costly for US chicken producers

Cost #1:

Exports - US Chicken Products to China



Cost #2:
Triggers AD case by Mexico against US



US Exports of of Chicken Parts to Mexico (millions kg)