

USDA Foreign Agricultural Service

GAIN Report

Global Agricultural Information Network

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POLICY

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Poland

Post: Warsaw

Amendment of EU Certification for Whey Protein Concentrate

Report Categories:

Trade Policy Incident Report

Export Accomplishments - Events

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Report Highlights:

In May and June 2011, FAS Warsaw supported entry of a shipment of U.S. whey protein concentrate questioned over a certificate issue. In the process, with support from the U.S. Dairy Export Council and FAS Brussels, the European Union was nudged to amend its import regulation for such product.

General Information:

In May the Polish Customs Office, Port of Gdynia, questioned certification of a shipment of U.S. origin whey protein concentrate (WPC) with a protein content of 90 percent for use of the Heat Treatment B (HTB) certificate in lieu of the Heat Treatment Certificate (HTC). The Port officials deemed the latter certificate should be used with the declared HS 3502 classification of the product.

Whey protein concentrate is made from pasteurized milk. European Commission (EC) guidance is for the HTB certificate to be used for heat-treated products from countries free of foot and mouth disease (FMD), and the HTC certificate to be used for countries infected with FMD. The U.S. is free of FMD and only issues the HTB certificate. The Agricultural Marketing Service (AMS) is the issuing agency.

FAS Warsaw brought to the CVO's attention the inconsistency in Polish and EU regulations and provided examples of HTB certificates accepted by other EU countries for whey protein concentrate with HS 3502 classification. After consulting EU veterinary border authorities and after receiving a recommendation from the European Commission the CVO responded that when the appropriate HS/CN code is not listed on the health certificate for a dairy product **use of the HTB certificate is permissible.**

Further, the CVO informed that Poland requested guidance for address of problems stemming from maladjustment of the catalog of HS/CN codes on health certificate and the current tariff regulation during the June session of the Permanent Committee of Food Chain and Animal Health. The European Commission's Legal Department analyzed the issue and on September 14, 2011, guided that dairy certificates be updated to include the relevant HS code(s) (Commission Implementing regulation (EU) No 914/2011). As a result the HTB certificate was confirmed as appropriate to use for WPC (HS 3502).

In 2010, Poland directly imported from the United States WPC products holding the HS 3502 classification valued at US\$624,000. The Polish importer noted inconsistencies in Port interpretations of EU WPC certification requirements forced that company to shift product sourcing to Belgian and French middlemen. In 2010, Poland's indirect imports of U.S. WPC via Belgium and France were valued at an estimated U.S. \$1 million. The container FAS Warsaw assisted in June held an estimated value of US\$120,000.

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