

[BILLING CODE 3190-W8]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS-291]

WTO Dispute Settlement Proceedings Regarding Measures of the European Communities
Affecting the Approval and Marketing of Biotech Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that on January 17, 2008, the United States submitted to the World Trade Organization (“WTO”) a request for authorization to suspend WTO concessions and other obligations with respect to the European Communities (“EC”) in an amount equal to the level of nullification and impairment resulting from EC non-compliance with the WTO recommendations and rulings. Under a sequencing agreement with the EC, that request will be referred to arbitration and the arbitration will be suspended while the United States and EC continue to try to resolve this dispute and related matters. To prepare for the possibility that the arbitration is resumed and the WTO Dispute Settlement Body (“DSB”) authorizes the United States to suspend WTO concessions with respect to the EC, USTR is inviting written comments on action that USTR

should take to exercise such an authorization. In particular, USTR seeks written comments with respect to the specific products of the EC or EC member States, and/or with respect to the specific member States of the EC, that should be subject to a suspension of WTO concessions, such as through increases of rates of duty above current rates.

DATES: Comments are requested to be submitted on or before March 21, 2008.

ADDRESSES: Comments should be submitted either (i) electronically, to FR0805@ustr.eop.gov, with “EC-Biotech Dispute” in the subject line, or (ii) by fax, to Sandy McKinzy at 202-395-3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Melissa Clarkson, Director, Agricultural Affairs, (202) 395-6127, or William Busis, Associate General Counsel and Chair, Section 301 Committee, (202) 395-3150.

SUPPLEMENTARY INFORMATION:

EC-Biotech Dispute

USTR has previously provided notice and requested public comment regarding the establishment on August 29, 2003 of a WTO panel at the request of the United States to examine EC measures

affecting the approval and marketing of biotech products. See 69 FR 11,927.

The WTO Panel issued its report on September 29, 2006. The Panel agreed with the United States that the disputed measures of the EC, Austria, France, Germany, Greece, Italy, and Luxembourg are inconsistent with the obligations set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (“SPS Agreement”). In particular:

- The Panel found that the EC adopted a de facto, across-the-board moratorium on the final approval of biotech products, starting in 1999 up through the time the panel was established in August 2003.
- The Panel found that the EC had presented no scientific or regulatory justification for the moratorium, and thus that the moratorium resulted in "undue delays" in violation of the EC's obligations under the SPS Agreement.
- The Panel also identified specific, WTO-inconsistent "undue delays" with regard to 24 of the 27 pending product applications that were listed in the U.S. panel request.
- The Panel found that the bans adopted by six EC member States on biotech products approved in the EC prior to the moratorium were not supported by scientific evidence and were thus inconsistent with obligations under the SPS Agreement.

The DSB adopted the panel report on November 21, 2006. At the meeting of the DSB held on December 19, 2006, the EC notified the DSB that the EC intended to implement the recommendations and rulings of the DSB in the dispute, and stated that it would need a reasonable period of time for implementation. On June 21, 2007, the United States notified the DSB that it had agreed with the EC on a one-year period of time for implementation, to end on November 21, 2007. The United States subsequently notified the DSB that it had agreed with the EC to extend the implementation period to January 11, 2008.

On January 17, 2008, the United States submitted to the DSB a request for authorization to suspend WTO concessions and other obligations with respect to the EC on an annual basis in an amount equal to the annual level of nullification and impairment resulting from EC non-compliance with DSB recommendations and rulings. Under a sequencing agreement with the EC, that request will be referred to arbitration and the arbitration will be suspended while the United States and EC continue to try to resolve this dispute and related matters. The United States will periodically evaluate EC progress toward normalizing biotech trade against a set of benchmarks and timelines. If the United States decides to pursue WTO proceedings on the EC's compliance, then pursuant to that agreement the United States will file a formal consultation request with the EC, followed by a request for the establishment of a WTO compliance panel. Should the compliance panel find that the EC has not complied with DSB recommendations and rulings, upon request of the United States the arbitration will proceed. Once the arbitrator has issued its award, the United States will be entitled to receive from the DSB the authorization to suspend concessions in accordance with the award.

Procedures for Exercising WTO Authorization to Suspend Trade Concessions

The practice of USTR, in pursuing WTO authorization to suspend trade concessions on particular products, is to publish a broad preliminary product list and ask for public comments on the products to be included on a final retaliation list. This current notice is not intended to replace a notice publishing and seeking comments on a preliminary product list. Rather, the public comments received in response to this current notice will be used as input in the development of a preliminary list of specific products and of specific EC member States. The preliminary list will not necessarily include all products or EC member States suggested in response to this notice, nor will the preliminary list be limited to such products or EC member States.

Public Comment: Requirements for Submissions

To prepare for the possibility that the WTO arbitration is resumed and the DSB authorizes the United States to suspend WTO concessions with respect to the EC, USTR is seeking written comments on action that USTR should take to exercise such an authorization. In particular, USTR seeks written comments with respect to the specific products of the EC or of one or more EC member States, and/or with respect to specific member States of the EC, that should be subject to a suspension of WTO concessions and related obligations, such as through increases of rates of duty above current rates. If commenters suggest suspension of WTO concessions or related obligations with respect to specific products, the comments should identify the specific

headings or subheadings of the Harmonized Tariff Schedule of the United States in which such products are classified. Commenters are requested to explain why the suspension with respect to particular products or with respect to particular EC member States would be effective in terms of encouraging a favorable resolution of the EC-Biotech dispute.

Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202-395-3640, or transmit a copy electronically to FR0805@ustr.eop.gov, with "EC-Biotech Dispute" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "Business Confidential" at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter --

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "Submitted in Confidence" at the top and bottom of the cover page and each succeeding page; and
- (3) Is encouraged to provide a non-confidential summary of the information or advice.

USTR will maintain a file of non-confidential comments received in response to this notice, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, N.W., Washington, D.C. 20508. An appointment to review the public file (Docket No. WTO/DS-291) may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.



William Busis

Chair, Section 301 Committee