

USTR NEWS

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For Immediate Release:

October 16, 2008

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WTO's Appellate Body Vindicates Continued U.S. Imposition of Sanctions after the EU Claimed Compliance in the *EU – Hormones* Dispute

WASHINGTON – U.S. Trade Representative Susan C. Schwab announced today that the World Trade Organization (WTO) Appellate Body has concluded that the United States did not violate its WTO obligations by maintaining additional duties on certain EU products after the EU claimed it had come into compliance by amending its ban on beef from animals treated with growth-promoting hormones.

“Today’s Appellate Body report is significant for the WTO dispute settlement system as a whole,” Ambassador Schwab said. “The Appellate Body’s report confirms that WTO Members that are subject to additional duties for failing to bring themselves into compliance with the WTO’s rulings and recommendations must do more than simply claim compliance in order to obtain relief from such duties. We very much welcome these conclusions by the Appellate Body,” Ambassador Schwab said.

The dispute over the EU ban on beef from animals administered certain growth promoting hormones dates back to 1996 and is one of the longest-standing disputes in the history of the WTO. In 1999, after the United States had successfully challenged the ban in front of a WTO panel and the Appellate Body, the United States obtained authorization from the WTO to suspend concessions and impose additional duties on certain EU products. Those duties are intended to restore the balance of trade concessions under the WTO and to induce compliance by the EU with the WTO’s rulings and recommendations in the original *EC – Hormones* dispute. The EU amended its ban in 2003, claiming that the ban now complied with WTO requirements, and challenged the continued application of additional duties by the United States. In light of today’s report, there is no need to remove those duties.

Background

The hormones at issue have long been recognized as safe, both in the United States, other countries, and the international organization charged with reviewing them for safety. Scientific reviews of these hormones, established international standards pertaining to their use, and a longstanding history of more than 30 years of their administration for growth promotion purposes all support the conclusion that the proper use of these hormones as growth promoters in

animals for human consumption is safe. In fact, the human body is continually making the natural hormones that are subject to the EU's ban, and these hormones also occur naturally in foods such as eggs and butter, often in concentrations substantially greater than in meat from cattle treated with these hormones.

In 1996 the United States filed what became its successful challenge to the EU's prohibition on the importation of meat from cattle that had been administered certain growth promoting hormones. In 1999, after an unsuccessful appeal by the EU, the WTO Dispute Settlement Body authorized the United States to impose sanctions against the EU in the amount of \$116.8 million per year. As a result, in 1999, the United States raised tariffs on a number of European products.

In late 2003, the EU amended – but did not lift – its ban on hormone-treated beef. The EU's original ban prohibited, among other things, the importation of meat from animals to which any of six growth promotion hormones had been administered. The 2003 amendments to the ban maintained a permanent prohibition on one of those hormones and provisionally applied the prohibition to the five other hormones, pending the availability of sufficient scientific evidence, even though the EU had claimed in the original dispute that it already had sufficient scientific evidence for these five hormones. The EU claimed that the amended ban complied with the WTO's recommendations and rulings in the original *EC-Hormones* dispute.

The EU brought the current dispute against the United States in November 2004, claiming that, after the EU notified its amended ban to the WTO in 2003, the United States should have initiated a compliance proceeding under the Dispute Settlement Understanding and terminated its sanctions against the EU. A WTO panel found in March 2008 that the EU had failed to show that it had removed the inconsistent measure because the amended ban still failed to satisfy the requirements of the SPS Agreement. The panel also found that the United States was not required to initiate an Article 21.5 proceeding, but that the United States should have had recourse to some form of dispute settlement after the notification of the EU's amended ban. That panel was the first ever under the WTO to open its hearings to the public.

The EU filed an appeal in this case on May 29, 2008, and the United States filed a cross appeal on certain, limited procedural findings on June 10, 2008. A hearing before the WTO's Appellate Body took place on July 28 and 29, 2008. The hearing was the first Appellate Body hearing ever to be open to the public. In its report, the Appellate Body reversed the panel's findings concerning the United States and concluded that the United States did not violate WTO dispute settlement rules after the notification of the EU's amended ban. The Appellate Body also concluded that because the Panel made certain legal errors in its analysis of the scientific basis for the EU's amended ban, the question of whether the EU's amended ban is WTO-consistent remains open.

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