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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-62a]

Implementation of WTO Recommendations Concerning EC--Measures
Concerning Meat and Meat Products (Hormones)

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comment; notice of public hearing.

SUMMARY: May 13, 1999 is the deadline for the European Communities' (EC) implementation of the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC's ban on imports of U.S. meat from animals treated with hormones. EC representatives have indicated that the EC is unlikely to meet this deadline. The United States Trade Representative (USTR) is seeking written comments on the action that the USTR should take to exercise U.S. rights under Article 22 of the WTO Dispute Settlement Understanding (DSU) if the EC fails to implement the DSB recommendations by May 13, 1999.

DATES: Requests to testify at the public hearing and written testimony for the public hearing are due by noon on Wednesday, April 14, 1999; the public hearing will be held beginning at 8:00 a.m. on Monday, April 19, 1999; written comments, in lieu of written and oral testimony, are due by noon on Friday, April 23, 1999; and rebuttal briefs, if needed, are due by 5:00 p.m. on Monday, April 26, 1999.

ADDRESSES: Room 100, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395-3419, for questions concerning Section 301 procedures and submissions filed in response to this notice; Demetrios Marantis, Assistant General Counsel, (202) 395-2581, or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395-4620, for

questions concerning the EC hormone ban or WTO procedures; or Joanna McIntosh, Associate General Counsel (202) 395-7203, for questions concerning Section 301, this notice, or WTO procedures.

SUPPLEMENTARY INFORMATION: In December 1985, the EC adopted a directive on livestock production restricting the use of natural hormones to therapeutic purposes, banning the use of synthetic hormones, and prohibiting imports of animals, and meat from animals, to which hormones had been administered. That directive was later declared invalid by the European Court of Justice on procedural grounds and had to be re-adopted by the Council, unchanged, in 1988 ("the Hormone Directive"). These measures became effective January 1, 1989, notwithstanding U.S. attempts to resolve this issue bilaterally and multilaterally, including through dispute settlement under the General Agreement on Tariffs and Trade (GATT).

On December 24, 1987, the President of the United States announced an increase in duties on selected European products in response to the Hormone Directive and related measures, but immediately suspended this action to promote a negotiated solution of the issue. [52 Fed. Reg. 49139]. The USTR terminated the suspension of the increase in duties in January 1989 when the EC began implementing the hormone ban against imports from the United States. [53 Fed. Reg. 53115]. The USTR subsequently modified the application of increased duties on a number of occasions.

Following entry into force of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement") on January 1, 1995, the United States and, later, Canada, proceeded with formal WTO dispute settlement procedures against the hormone ban. Prior to the establishment of the WTO panel, the EC replaced the Hormone Directive with another directive that re-codified and expanded the hormone ban. On May 20, 1996, the DSB established a dispute settlement panel ("the WTO panel") to examine the consistency of the hormone ban with the EC's WTO obligations. The members of the WTO Panel were selected as of July 2, 1996. On July 15, 1996, the USTR terminated the increase in duties on certain products of the EC that had been imposed in response to the hormone ban. [61 Fed. Reg. 37309].

On August 18, 1997, the WTO panel issued its report finding that the hormone ban is not based on scientific evidence, a risk assessment, or relevant international standards in contradiction of the EC's obligations under the SPS Agreement. The Appellate Body issued its report on January 16, 1998 affirming that the hormone ban is not consistent with the EC's obligations under the SPS Agreement. Specifically, the Appellate Body concluded that the EC's hormone ban failed to satisfy the requirements of Articles 3.3 and 5.1 of the SPS Agreement because the risk assessments that had been performed did not support the ban on imports. In addition, the Appellate Body found that there was no risk assessment, as required by Article 5.1 of the SPS Agreement, for one of the hormones. At its February 13, 1998 meeting,

the DSB adopted the Panel and Appellate Body reports on hormones.

The EC subsequently requested four years to implement the DSB recommendations, two years to conduct additional risk assessments and two years to revise its measures to reflect the results of those risk assessments. A WTO Arbitrator appointed to determine the reasonable period of time observed that the reasonable period should not be provided to "demonstrate the consistency of a measure already judged to be inconsistent," in response to the EC's arguments that it would need a substantial period to conduct additional risk assessments. [Para. 39 of the Award of the Arbitrator, WT/DS26/15]. The Arbitrator determined that the reasonable period of time for implementation was fifteen months and would expire on May 13, 1999.

To date, the EC has taken no action to implement the DSB recommendations and rulings. The EC has made no modifications to the hormone ban, but rather has initiated seventeen new risk assessments. In its status report for the March meeting of the DSB, the EC indicated that it does not expect to be in compliance by the May 13, 1999 WTO-mandated deadline.

On March 3-4, 1999, U.S. and EC officials held discussions in Washington to explore options to resolve this dispute. The United States presented a proposal for labeling U.S. beef as a way to address European consumers' concerns. However, the EC indicated that a resolution of this matter would be conditional on the completion of the additional risk assessments, which may not be completed until sometime in late 1999 or 2000, and other regulatory procedures.

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Process for Suspending Concessions

If the EC fails to implement the DSB recommendations concerning the hormone ban by May 13, 1999, Article 22 of the WTO Dispute Settlement Understanding (DSU) permits the United States to suspend the application of concessions or other obligations accruing to the EC under the WTO Agreement. Article 22.2 of the DSU provides that the United States must seek authorization from the DSB prior to suspending concessions. Article 22.6 of the DSU provides that the DSB shall grant the requested authorization not later than thirty days after the expiration of the reasonable period, or by June 12 in this dispute, unless the EC objects to the level of suspension proposed.

If the EC objects to the level of suspension proposed, it may request that the assessment of that level be referred to arbitration. The DSU requires that such arbitration proceedings be completed within sixty days after the expiration of the reasonable period of time, or by July 12 in this dispute.

Following the completion of arbitration proceedings and upon request, the DSB must grant authorization to suspend concessions or other obligations consistent with the Arbitrator's decision. The United

States may not suspend concessions or other obligations during the course of the arbitration proceedings.

Given the likelihood that the EC will not implement the DSB recommendations concerning the hormone ban by May 13, the USTR is taking steps, under the authority of Section 306 of the Trade Act, to prepare for the exercise of the United States's right to suspend concessions under Article 22 of the DSU. These steps include: (1) this request for comments on the concessions that the United States intends to suspend if the EC does not implement the DSB recommendations; and (2) the subsequent U.S. request to the DSB for suspension of concessions.

The U.S. request to the DSB will be submitted some time after May 13, when the EC's reasonable period of time for implementation expires, but before June 12, the latest date by which either the DSB must grant the requested authorization or the EC must request arbitration to review the level of the requested suspension. The U.S. request to the DSB will include the concessions which the U.S. intends to suspend (e.g., a list of products of the EC on which the United States intends to suspend tariff concessions). The United States would begin suspending these concessions in accordance with the time frames provided in Article 22 of the DSU and Section 306 of the Trade Act.

Request for Comments

The USTR requests comments on the types of concessions that may be appropriate for suspension pursuant to Article 22 of the DSU if the EC does not implement the DSB recommendations concerning the hormone ban within the prescribed reasonable period of time. The USTR proposes that the imposition of 100 percent ad valorem duties on selected products of the EC is an appropriate action and that the products to be affected by the duty increase will be drawn from the list of products set forth in the Annex to this notice. The imposition of increased duties may be applied to imported articles that are both: (1) classified in the headings and the subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed in the Annex to this notice; and (2) the product of a member State of the European Union. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings appearing in the HTS indented under those 4-digit headings may be subject to increased duties.

Public Comment on Proposed Suspension of Concessions; Hearing Participation

Section 306(c) of the Trade Act provides that the USTR shall allow an opportunity for the presentation of views by interested persons prior to the issuance of a determination pursuant to section 306(b). The USTR invites interested persons to: (1) provide written comments on

the proposed suspension of concessions; and (2) to present written and oral testimony and rebuttal briefs in the context of a public hearing. Written comments and written and oral testimony may address: the appropriateness of imposing increased duties on the products listed in the Annex to this notice; the levels at which U.S. customs duties should be set for particular items; the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex; and any other matter relating to the EC hormone ban and the proposed increase in duties.

Written comments: Interested persons wishing to submit written comments must do so by noon on Friday, April 23, 1999. Persons submitting written comments may, but do not need to, present written and oral testimony as well.

Requests to Testify and Written Testimony: Interested persons wishing to present testimony at the hearing must submit a written request to do so by noon on Wednesday, April 14, 1999, together with twenty copies of their complete written testimony. Requests to testify must conform to the requirements of 15 CFR Sec. 2006.9 and include the following information: (1) name, address, telephone number, fax number, firm or affiliation of the applicant, and interest of the applicant; and (2) a brief summary of the comments to be presented. After considering the request to present oral testimony, the Staff Assistant to the Section 301 Committee will notify the applicant of the time of his or her testimony.

Public Hearing: The public hearing will be held beginning at 8:00 a.m. on Monday, April 19, 1999 in the Main Hearing Room at the U. S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436. Testimony at the public hearing should be limited to no more than five minutes.

Rebuttal Briefs: To assure interested persons an opportunity to contest the information provided by other persons, the USTR will entertain rebuttal briefs filed by any party by 5:00 p.m. on Monday, April 26, 1999. In accordance with 15 CFR Sec. 2006.8(c), rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in written or oral testimony and should be as concise as possible.

Requirements for Submissions: Written comments on the proposed determination, written testimony, and rebuttal briefs must be filed in accordance with the requirements set forth in 15 CFR Sec. 2006.8(b). Submission must include on the first page a clear reference in bold and/or underlining to the HTS number(s) and product(s) which are the subject of the submission. Submissions must state clearly the position taken and describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Attn: EC--Hormone Ban, Implementation of WTO Recommendations, Room 100.

Written comments, written testimony, and rebuttal briefs will be placed in a file (Docket 301-62a) open to public inspection pursuant to

15 CFR Sec. 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR Sec. 2006.15. Persons wishing to submit business confidential information must certify in writing that such information is confidential in accordance with 15 CFR Sec. 2006.15(b), and such information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color

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ink at the top of each page on each of twenty copies and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket that is open to public inspection.

An appointment to review Docket No. 301-62a may be made by calling Brenda Webb at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101 of the Office of the United States Trade Representative.

Joanna K. McIntosh,
Chairman, Section 301 Committee.

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