UNITED STATES – CONTINUED SUSPENSION OF CONCESSIONS IN THE *EC – HORMONES* DISPUTE

CLOSING STATEMENT OF THE UNITED STATES AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL

October 3, 2006

1. Mr. Chairman, members of the Panel, we have had a very productive debate over the last week-and-a-half. In the course of our discussions, which included meetings with the panel of scientific experts, a few central issues have come to light.

2. First, as I noted yesterday, the task at hand is not one of conducting a risk assessment for the European Communities ("EC"). It is not one of conducting a review for the EC of the numerous materials it has put forward since completion of its Opinions. Rather, the relevant analysis is one of what the EC has actually accomplished in its Opinions.

3. Second, the Panel has consulted scientific experts to sift through the EC's Opinions and related materials in an attempt to determine whether any of these materials actually addressed the specific risk at issue in these proceedings – that from estradiol residues in meat from animals treated with growth-promoting hormones. The experts also looked at information put forward by the EC in support of its provisional bans on the other five hormones. The experts noted, as discussed in the U.S. statement yesterday, that the EC had not completed the necessary steps of a risk assessment for estradiol. Nor had the EC presented evidence that estradiol residues in meat from treated cattle are carcinogenic. The United States described how these major conclusions factor into an analysis of the EC's permanent ban on estradiol. They demonstrate that it is not based on a risk assessment for purposes of SPS Article 5.1.

4. As to the other five hormones, the experts indicated that there was sufficient scientific evidence to conduct a risk assessment for each and that the scientific evidence did not demonstrate a risk at levels found in residues in meat from treated cattle.

This means that the EC failed to demonstrate that scientific evidence was insufficient to conduct a risk assessment for these hormones or that it had based its ban on available pertinent information. Therefore, the EC's bans do not satisfy the conditions of Article 5.7 of the SPS Agreement.

5. Third, the EC has claimed a U.S. breach of Article 22.8 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). To demonstrate this breach, it must show that it has removed the WTO-inconsistencies of its measures or provided a solution to the nullification or impairment of benefits suffered by the United States. These conditions could theoretically be met if the EC's measures satisfy its obligations under the SPS Agreement. However, they do not. The experts' comments inform this analysis.

6. Fourth, and finally, the EC's various other DSU claims reflect the EC's hopes for how the DSU should be rewritten rather than finding a basis in the text of the DSU as it currently reads. Through a string of provisions read "in conjunction" with each other, it seeks very specific findings of specific provisions of the DSU. As the Appellate Body cautioned, "[d]etermining what the rules and procedures of the DSU ought to be is not our responsibility nor the responsibility of panels; it is clearly the responsibility solely of the Members of the WTO."[1] Disregarding this guidance, the EC seeks to insert new obligations into the text of the DSU through the vehicle of dispute settlement. It may not do this. The EC, like the rest of the

[1] Appellate Body Report, *EC – Certain Products*, para. 92. (Emphasis added).

Membership of the WTO, is left with the text of the DSU as it reads today, and the EC has failed to demonstrate any U.S. violations of the specific provisions of that text.

7. Mr. Chairman, members of the Panel and Secretariat staff, in closing, I would like to thank you for the professional manner in which you have conducted these proceedings.

Thank you very much.