



The U.S.-EU Beef Hormone Dispute

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Summary

The United States and the European Union (EU) have engaged in a long-standing and acrimonious trade dispute over the EU's decision to ban hormone-treated meat. Despite an ongoing series of dispute settlement proceedings and decisions by the World Trade Organization (WTO), there is continued disagreement between the United States and the EU on a range of legal and procedural issues, as well as the scientific evidence and consensus concerning the safety of hormone-treated beef. To date, the EU continues to ban imports of hormone-treated meat and restricts most meat exports to the European Union to a limited quantity of beef imports that are certified as produced without the use of hormones.

Starting in 1981, the EU adopted restrictions on livestock production limiting the use of natural hormones to therapeutic purposes, banning the use of synthetic hormones, and prohibiting imports of animals and meat from animals that have been administered the hormones. In 1989, the EU fully implemented its ban on imports of meat and meat products from animals treated with growth promotants. Initially the ban covered six growth promotants that are approved for use and administered in the United States. The EU amended its ban in 2003, permanently banning one hormone—estradiol-17 β —while provisionally banning the use of the five other hormones.

The United States has suspended trade concessions with the European Union by imposing higher import tariffs on EU products. The first U.S. action in 1989 imposed retaliatory tariffs of 100% *ad valorem* duty on selected food products, and remained in effect until 1996. The second U.S. action in 1999 again imposed a 100% *ad valorem* duty on selected food products from EU countries, and remains in effect to this day.

Over the years, the United States and the EU have attempted to resolve this dispute through a series of WTO dispute consultations, settlement panels, arbitration proceedings, and formal appeals. One of the earlier WTO panel decisions in 1997 ruled against the EU on the grounds that the ban is inconsistent with the EU's WTO obligations under the Sanitary and Phytosanitary (SPS) Agreement because the EU had not conducted a risk assessment. In response, the EU commissioned studies and reviews to address the scientific basis of its ban on hormone-treated meat. Following each of these reviews, the EU reaffirmed its position that there are possible risks to human health associated with hormone-treated meat, given the available scientific data.

The EU claims it has complied with its WTO obligations and has challenged the United States for maintaining its prohibitive import tariffs on EU products. The United States disputes whether the EU has conducted an adequate risk assessment to support its position and maintains there is a clear worldwide scientific consensus supporting the safety to consumers of eating hormone-treated meat. In October 2008, the WTO issued a mixed ruling allowing the United States to continue its trade sanctions, but allowing the EU to maintain its ban.

In January 2009, the U.S. Trade Representative (USTR) for the outgoing Bush Administration announced changes to the list of EU products subject to increased tariffs under the dispute, including changes to the EU countries and products affected, and higher tariffs on some products. The EU claimed this action constituted an “escalation” of the dispute. In May 2009, following a series of negotiations, the United States and the EU agreed to a settlement that could resolve this longstanding trade dispute. The terms of this agreement will be phased in over the next few years.

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Background

The United States and the European Union (EU) have engaged in a long-standing and acrimonious trade dispute over the EU's decision to ban hormone-treated meat, dating back to the early 1980s. Despite an ongoing series of dispute settlement proceedings and decisions by the World Trade Organization (WTO), there is continued disagreement between the United States and the EU on a range of legal and procedural issues, as well as the scientific evidence and consensus concerning the safety of hormone-treated beef. Many in the United States perceive the EU's ban as an example of how sanitary and phytosanitary (SPS) measures and non-tariff barriers are used as disguised protectionism, primarily intended to restrict imports from other countries.

In January 2009, the U.S. Trade Representative (USTR) for the outgoing Bush Administration announced changes to the list of EU products subject to increased tariffs under the dispute. These changes were scheduled to go into effect on March 23, 2009. The EU claimed this action constituted an "escalation" of the dispute and was "more punitive" than current trade sanctions. The EU decided to hold off further action until the Obama Administration reviewed the decision. The Administration delayed implementing the changes, pending further negotiations with the EU.

In May 2009, following a series of negotiations, the United States and the EU agreed to a settlement that could resolve this longstanding trade dispute. The terms of this agreement will be phased in over the next few years

Use of Hormones in Meat Production

Growth-promoting hormones are used widely in beef production in the United States and in other meat-exporting countries. In the United States, hormones have been approved for use since the 1950s and are now believed to be used on approximately two-thirds of all cattle and about 90% of the cattle on feedlots. In large U.S. commercial feedlots, their use approaches 100%. Cattle producers use hormones because they allow animals to grow larger and more quickly on less feed and fewer other inputs, thus reducing production costs, but also because they produce a leaner carcass more in line with consumer preferences for diets with reduced fat and cholesterol.¹

Growth-promoting hormones include compounds that either naturally occur in an animal's body or mimic naturally occurring compounds. Estradiol, progesterone, and testosterone (three natural hormones), and zeranol and trenbolone acetate (two synthetic hormones), may be used as an implant on the animal's ear.² Melengestrol acetate, which can be used to improve weight gain and feed efficiency, is approved for use as a feed additive. Not all combinations of hormones are approved for use in all classes of cattle. The U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) cooperate in regulating growth promotants for livestock. Both of these agencies maintain that hormones in beef from an implanted animal have no physiological significance for humans. All animal drug products are approved for safety and

¹ National Cattlemen's Beef Association (NCBA), "Fact Sheet: Growth Promotant Use in Cattle Production," <http://www.beefusa.org/uDocs/factsheetgrowthpromotantuseincattleproduction811.pdf>.

² USDA, Food Safety and Inspection Service, "Beef ... from Farm to Table," http://www.fsis.usda.gov/Fact_Sheets/Beef_from_Farm_to_Table/index.asp. The implanted hormone is time-released and is effective for 90 to 120 days.

effectiveness under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).³ Currently, there are 30 animal growth-promoting products marketed in the United States.⁴

In addition to the United States, other countries that have approved the use of growth-promoting hormones in beef production are Canada, Australia, New Zealand, South Africa, Mexico, Chile, and Japan, among other countries. The use of hormones in beef production, however, is not allowed in the European Union, or in other European countries that assume many of the rights and obligations of the EU single market. To date, the EU continues to ban imports of hormone-treated meat and restricts most meat exports to the European Union to a limited quantity of beef imports that are certified as produced without the use of hormones.

The EU Beef Hormone Ban

The European Commission (EC) enacted its ban on both the production and importation of meat derived from animals treated with growth-promoting hormones in the early 1980s.⁵ This ban restricts the use of natural hormones to therapeutic purposes, bans the use of synthetic hormones, and prohibits imports of animals and meat from animals that have been administered the hormones. The ban, however, did not go into effect until January 1, 1989. Initially the ban covered meat and meat products from animals treated with six growth promotants that are approved for use and administered in the United States, including estradiol, testosterone, progesterone, zeranol, trenbolone acetate and melengestrol acetate. In 2003, the Commission amended its policy to permanently ban one hormone—estradiol-17 β —while provisionally banning the use of the five other hormones, as it continued to seek more complete scientific information.⁶ The ban reflects the EU's approach to food safety policy, known as the precautionary principle, which supports taking protective action before there is complete scientific proof of a risk.⁷ The ban also effectively restricts trade of meat and meat products from countries that regularly treat farm animals with these growth promotants.

The Commission has justified its ban as necessary to protect consumer health and safety. This position initially evolved, in part, as a reaction to reports in the 1970s over the illegal use of diethylstilboestrol (DES) in veal production in France, and consumer concerns that this was linked to reports of hormonal irregularities in Italian adolescents.⁸ This created concerns over the possible negative health effects of using hormones in livestock production, and contributed to a

³ Information on approved hormone products are at 21 CFR Parts 522, 556, and 558. FDA requirements for the review and approval of new animal drug applications is at <http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/ucm123821.htm>.

⁴ See FDA's online "Green Book," http://www.fda.gov/cvm/Green_Book/elegbook.html.

⁵ Council Directives 81/602 (July 1981), 88/146 (7 March 1988), 88/299 (17 May 1988).

⁶ Directive 2003/74 (Sept. 22, 2003), amending Council Directive 96/22 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists, http://eur-lex.europa.eu/pri/en/oj/dat/2003/l_262/l_26220031014en00170021.pdf. Directive 96/22 repealed the original regulations (81/602, 88/146 and 88/299).

⁷ See WTO, "SPS Agreement Training Module, Chapter 8: The Precautionary Principle," http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c8s2p1_e.htm.

⁸ T. Josling, D. Roberts, and A. Hassan, "The Beef-Hormone Dispute and its Implications for Trade Policy," Stanford University, 2000, <http://iis-db.stanford.edu/pubs/11379/HORMrev.pdf>. DES use in cattle production is also banned in the United States.

general climate in Europe that was suspicious of the use of hormones in livestock production and the potentially harmful health effects to consumers.

During the 1990s, EU consumer meat demand was again adversely affected by outbreaks in British cattle herds of bovine spongiform encephalopathy (BSE), a fatal brain disease, commonly known as “mad cow disease.”⁹ Scientifically established links between BSE and Creutzfeldt-Jakob disease (CJD), the human variant of BSE, added to consumer distrust about the safety of the meat supply. Continued discovery of BSE-infected cattle in a number of European countries has contributed further to an unfavorable political, economic, and social environment for resolving the meat hormone dispute. Although BSE has nothing to do with hormones, many European beef producers are fearful of doing anything, like using hormones, that would give consumers another disincentive to buy meat. Many of these same types of concerns have surfaced in consumer reactions to the introduction of transgenic plants and other forms of biotechnology into the food chain.¹⁰

Political and economic considerations also have likely contributed to the Commission’s decision to continue its policy to ban hormone-treated beef. Opposition to hormone-treated meat continues unabated, and both producer and consumer interest groups in the EU continue to exert pressure on EU trade policy officials to hold to their position banning hormone-treated beef. The EU’s beef sector benefits from both domestic producer support and trade policies under the EU’s Common Agricultural Policy (CAP), which is reported to have resulted in the accumulation of large, costly-to-store beef surpluses.¹¹ Many European cattle producers support the EU’s import ban in part because they are concerned about competition from possibly cheaper imported beef from the United States and other beef exporting countries. Along with responding to consumer concerns, EU agricultural policymakers have been resistant to policies that might accelerate the contraction of the agricultural sector and contribute to increased unemployment.

Hormone Dispute in the WTO

The United States has continued to challenge the EU’s beef hormone ban in the World Trade Organization (WTO) and to question whether the ban is consistent with the EU’s WTO obligations under the Sanitary and Phytosanitary (SPS) Agreement (see box). After a series of WTO consultations, panel decisions, and appeals in the case, both the United States and the European Union claim these formal proceedings have vindicated their respective positions in the dispute. This case has proven so intractable in part because it involves internal national regulation and domestic policy issues, and rules for dispute settlement and the use of SPS measures to restrict trade, rather than routine commercial disputes over trade or customs regulations.¹²

⁹ See CRS Report RL32199, *Bovine Spongiform Encephalopathy (BSE, or “Mad Cow Disease”): Current and Proposed Safeguards*, and CRS Report RS21709, *Mad Cow Disease and U.S. Beef Trade*.

¹⁰ See CRS Report RS21556, *Agricultural Biotechnology: The U.S.-EU Dispute*, and CRS Report RL33334, *Biotechnology in Animal Agriculture: Status and Current Issues*.

¹¹ In the late 1980s, observers suggested that EU beef surpluses were so large that policymakers were likely to be supportive of any measure that would limit beef imports likely to compete with domestic production and interfere with the operation of the CAP.

¹² See CRS Report RL31860, *U.S.-European Union Disputes in the World Trade Organization*.

The Sanitary and Phytosanitary (SPS) Agreement

The SPS Agreement prescribes rules requiring a scientific basis for measures that restrict imports on the basis of health or safety concerns. It was entered into force on January 1, 1995, as one of the agreements in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), the multilateral trade negotiations to be administered by the WTO.

The SPS Agreement has a twofold objective. It aims to both (1) recognize the sovereign right of WTO Members to provide the level of health protection they deem appropriate; and (2) ensure that SPS requirements do not represent unnecessary, arbitrary, scientifically unjustifiable, or disguised restrictions on international trade.

Each country may set its own food safety and animal and plant health standards based on risk assessment and its determination of an acceptable level of risk. Countries may use international standards, guidelines and recommendations where available. The SPS agreement recognizes the right of countries to maintain standards that are stricter than international standards. However, stricter standards should be justified by science or by a nondiscriminatory lower level of acceptable risk that does not selectively target imports. Still, some argue whether countries apply such measures to imports based on considerations of food safety or protection of the health of people, animals, and plants, or whether these actions are driven more by protectionist sentiments.

The SPS Agreement provides that dispute settlement procedures under the WTO apply also to disputes about food safety and health measures. As under the earlier General Agreement on Tariffs and Trade (GATT) system, the WTO dispute settlement process begins with consultations between the affected parties and then proceeds to a panel of experts for adjudication if consultations fail to resolve the dispute.

For more information, see the WTO's website, http://www.wto.org/english/tratop_e/sps_e/sps_e.htm, and CRS Report RL33472, *Sanitary and Phytosanitary (SPS) Concerns in Agricultural Trade*.

Although the WTO has issued decisions that have questioned the validity of the ban, the EU has repeatedly voted to maintain it, citing consumer worries, questions of animal welfare, meat quality, and effects of hormones on the EU's beef and milk sectors. The laws governing the EU's ban have been reissued and/or updated numerous times (in 1988, in 1996, and again in 2003).¹³ The EU claims that its position to maintain the ban is supported by studies on the potential human health risks associated with the consumption of hormone-treated beef.

The United States continues to question whether the EU has conducted an adequate risk assessment to support its position, and maintains there is a clear worldwide scientific consensus supporting the safety to consumers of eating hormone-treated meat. In retaliation, starting in the late 1980s, the United States imposed trade sanctions—as authorized by the WTO—in the form of high import tariffs on selected EU agricultural products.

To further complicate matters, in October 2008, the WTO issued a mixed ruling that allows the United States to continue its trade sanctions, but also allows the EU to maintain its ban. As a result, the United States has continued to impose its trade sanctions, while the EU has continued to maintain its ban.

A detailed timeline showing a chronology of major events is provided at the end of this report (**Appendix D**).

For a more detailed discussion of the dispute settlement process in the WTO, see CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

¹³ In 1999 the Commission also voted unanimously to continue its ban, with only the Agriculture Minister of the United Kingdom voting to end the ban.

Overview of WTO Proceedings

In response to the EU's initial ban on hormone-treated meat in the 1980s, the United States first invoked GATT dispute settlement in 1986-1987 under the Tokyo Round's Technical Barriers to Trade Agreement, and also threatened to implement retaliatory tariffs on selected EU imports. This action delayed full implementation of the EU ban until January 1, 1989. Once the ban was implemented, the United States instituted retaliatory tariffs (100% *ad valorem*) on EU imports valued at \$93 million, which stayed in effect until May 1996. Earlier in 1996, both the United States and the EU had requested WTO consultations in an attempt to resolve the dispute.

In April 1996, the United States requested a WTO dispute settlement panel case against the EU, claiming that the ban is inconsistent with the EU's WTO obligations under the SPS Agreement.¹⁴ Australia, Canada, and New Zealand joined the United States in the complaint. The EU maintained the ban, and issued updates to its law confirming and extending the prohibitions.

In August 1997, the WTO dispute settlement panel released its report agreeing with the United States that the ban violated several provisions of the SPS Agreement. Specifically, the EU ban was found to violate SPS requirements that such measures:

- be based on international standards, guidelines or recommendations (Article 3.1);
- be based on a risk assessment and take into account risk assessment techniques developed by the relevant international organizations (Article 5.1); and
- avoid arbitrary or unjustifiable distinctions that result in discrimination or a disguised restriction on international trade (Article 5.5).¹⁵

The EU appealed the ruling, and in February 1998, the WTO Appellate Body found that the EU ban did contravene the EU's obligations under the SPS Agreement, but left open the option for the EU to conduct a risk assessment of hormone-treated meat. A WTO arbitration panel ruled subsequently that 15 months from the date of the decision (i.e., May 13, 1999) would be a reasonable period of time for the EU to conduct its assessment. By the deadline, the EU did not complete its scientific review and decided it would not consider removing the ban before conducting additional review. This led the way for the United States to retaliate by imposing its current trade sanctions against U.S. imports of EU products starting in July 1999.

Following the 1997 WTO decision, the EU commissioned various research studies and conducted scientific reviews of the issue. In 1999, as justification for continuing the ban, the EU offered the first in its series of scientific reviews and opinions that estradiol-17 β may be carcinogenic. (Further opinions and studies followed in 2000, 2002, and 2007, as discussed in the section of this report titled "EU Reviews.") In 2003, the EU announced that its scientific review had concluded that estradiol-17 β was carcinogenic and that for the five other hormones the current state of knowledge did not make it possible to provide a quantitative assessment of their risks to consumers. An October 2003 EU press release claimed that EU's scientific reviews constitute "a thorough risk assessment based on current scientific knowledge"¹⁶ and thus fulfill the EU's WTO

¹⁴ WTO, "European Communities—Measures Concerning Meat and Meat Products (Hormones)," Dispute DS26, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm. Canada initiated a similar action (Dispute DS48).

¹⁵ WTO, "The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)," http://www.wto.int/english/tratop_e/sps_e/spsagr_e.htm.

¹⁶ Delegation of the European Commission to the USA, "EU complies with WTO ruling on Hormone beef, calls on US and Canada to lift trade sanctions," Press Release EU/NR 61/03, October 15, 2003, <http://www.eurunion.org/eu/> (continued...)

obligations. The United States continues to question whether the EU Commission's studies constitute risk assessments.

Accordingly, in 2003, the EU issued a new directive and revised its ban to permanently ban estradiol-17 β and provisionally ban the five other hormones. The EU claims the decision to provisionally ban the five other hormones is necessary, while the Commission seeks more complete scientific information. The EU claims that its actions replacing its original ban with a provisional ban comply with its WTO obligations under Article 5.7 of the SPS Agreement.¹⁷

U.S. trade and veterinary officials have repeatedly rejected the EU studies, claiming that the scientific evidence is not new information nor does it establish a risk to consumers from eating hormone-treated meat.¹⁸ The United States also claims that these findings ignore and contradict numerous scientific studies, including some by European scientists (as discussed in the section titled "U.S. Response to EU Reviews").

Claiming that its ban is justified and in compliance with its WTO obligations, the EU has continued to initiate counteractions against the United States (and Canada), stating that there is no longer a legal basis for the United States to impose trade sanctions against the European Union.¹⁹ In November 2004, the EU requested WTO consultations, claiming that the United States should remove its retaliatory measures since the EU has removed the measures found to be WTO-inconsistent in the original case.²⁰ In 2005, the EU initiated new WTO dispute settlement proceedings against the United States and Canada. A final panel report was delayed until 2008, owing, the panel said, to the complexity of the dispute and other administrative and procedural matters.

The March 2008 panel report cited fault with all three parties (EU, United States, and Canada) on various substantive and procedural aspects of the dispute. The panel found that the EU had not presented sufficient scientific evidence to justify the import ban, including the EU's 2003 risk assessment report. The panel faulted the United States and Canada for maintaining their imposed trade sanctions. The panels found that both parties had made procedural violations under the WTO Dispute Settlement Understanding (DSU) because of unilateral actions they had taken.²¹ Both parties filed appeals citing procedural errors and disagreements with the panel findings.

In October 2008, the WTO Appellate Body issued a mixed ruling that allows for continued imposition of trade sanctions on the EU by the United States and Canada, but also allows the EU to continue its ban on imports of hormone-treated beef. The Appellate Body report reversed the

(...continued)

[index.php?option=com_content&task=view&id=2077&Itemid=58](http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm).

¹⁷ Article 5.7 of the SPS Agreement provides that "Members shall seek to obtain the additional information necessary for a more objective assessment of the risk, and review the sanitary and phytosanitary measures accordingly within a reasonable period of time." See http://www.wto.int/english/tratop_e/sps_e/spsagr_e.htm.

¹⁸ See, e.g., "United States—Continued Suspension of Obligations in the EC-Hormones Dispute," WT/DS320, First Written Submission of the United States of America, August 8, 2005.

¹⁹ EC, "EU complies with WTO ruling on hormone beef and calls on USA and Canada to lift trade sanctions," October 15, 2003, http://trade.ec.europa.eu/doclib/docs/2004/april/tradoc_113909.pdf.

²⁰ WTO, "United States—Continued Suspension of Obligations in the EC-Hormones Dispute," Dispute DS320, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds320_e.htm. Canada requested to join the consultations, along with Australia and Mexico. The case against Canada is under Dispute DS321.

²¹ There were separate panel reports and separate Appellate Body reports for Canada and the United States.

dispute panel decision by stating that the EU's ban is not incompatible with WTO law, thus granting more deference to the EU in deciding the basis for food safety regulations.

The WTO Appellate Body also recommended that the parties initiate a compliance panel proceeding under Article 21.5 of the DSU to determine whether the EU is in compliance with its WTO obligations in the underlying beef hormone dispute. In late December, the EU requested consultations under Article 21.5, and may request a panel at a later date.²²

The WTO Appellate Body's reversal of the panel on this issue of scientific evidence has led some to argue that this is a potentially precedent-setting decision that might be perceived to instruct dispute settlement panels to be more deferential to national governments when the relevant scientific evidence is not available to make an objective risk assessment. Some claim that this could allow for more flexibility to countries in imposing SPS requirements in future WTO compliance panels, and might also change how panels operate on matters related to the burden of proof and in post-retaliation situations. Typically complainants initiating the compliance panel proceedings bear the burden of proof, because it is in their interest to prove that the respondent has not brought itself into compliance with WTO rules.²³

In November 2008, following the announcement by USTR that it was seeking comment on possible modification of the list of EU products subject to increased tariffs under the dispute, the EU filed a new WTO challenge against U.S. and Canadian sanctions imposed on imports of EU products in retaliation to the EU's ban on hormone-treated beef.

In January 2009, USTR announced changes to the list of EU products subject to increased tariffs under the dispute, adding countries and raising the tariff on select products. The EU claimed that USTR's action constitutes an "escalation" of the dispute and is "more punitive" than the current trade sanctions. Initially the EU prepared to challenge the United States in the WTO, but it held off on further action until the Obama Administration reviewed the decision.²⁴

Role of Scientific Reviews in the Dispute

One critical issue in this seemingly intractable debate is an underlying disagreement about the scientific consensus regarding the safety of hormone-treated beef for human consumption.

EU Reviews

The EU continues to maintain that "there is a lack of data on the type and amount of [growth-promoting hormone] residues in meat on which to make a quantitative exposure assessment" that would change the EU's understanding of the "possible risks to human health" associated with hormone-treated meat and meat products. It claims that this position is supported by a series of commissioned research studies and scientific reviews conducted by the EU, although there has been no conclusive testing on the issue.

²² For more information on Article 21.5, see CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

²³ "Burden of Proof in Compliance Cases Unclear in Hormone Ruling," *Inside US Trade*, October 31, 2008.

²⁴ "Obama Officials to Review Hormone Retaliation Change, Feed Ban Rule," *Inside U.S. Trade*, January 28, 2009.

A 1997 WTO decision found that the EU's ban on imports of hormone-treated meat was inconsistent with the EU's WTO obligations under the Sanitary and Phytosanitary (SPS) Agreement since the EU had not conducted a risk assessment. In response, the EU commissioned 17 studies to address the scientific basis of the import ban on meat and meat products and animals treated with hormones for growth promotion purposes. The studies addressed toxicological and carcinogenicity aspects, residue analysis, potential abuse and control problems, and environmental aspects of six growth promotants (estradiol-17 β , progesterone, testosterone, zeranol, trenbolone acetate, and melengestrol acetate) and their metabolites.

Between 1999 and 2002, the EC's Scientific Committee on Veterinary Measures relating to Public Health (SCVPH)²⁵ issued a series of opinions on the potential risks to human health from hormone residues in bovine meat and meat products. The first review's opinion, issued in April 1999, stated that there is evidence showing that the growth hormone estradiol-17 β , used in U.S. cattle production, is carcinogenic, among other potential health risks to consumers.²⁶ The second review, finalized in May 2000, concluded that new information questioning the findings of the SCVPH's first review did "not provide convincing data and arguments demanding revision of the conclusions drawn in the 1999 SCVPH opinion on the potential risks to human health from hormone residues in bovine meat and meat products."²⁷ The third opinion, issued in May 2002, concluded that the committee's review of the 17 studies initiated in 1998 again reconfirmed the previous findings of the 1999 and 2000 reviews.²⁸

The most recent review was conducted in 2007 by the European Food Safety Authority (EFSA).²⁹ The review covered new scientific evidence that emerged after the previous risk assessments (1999, 2000, and 2002) relating to the use of certain natural and synthetic growth-promoting hormones in cattle. EFSA's Scientific Panel on Contaminants in the Food Chain (CONTAM) concluded:

At present, epidemiological data provide convincing evidence for an association between the amount of red meat consumed and certain forms of hormone-dependent cancers. Whether hormone residues in meat contribute to this risk is currently unknown.

The CONTAM Panel concluded that the new data that are publicly available do not provide quantitative information that would be informative for risk characterisation and therefore do not call for a revision of the previous assessments of the Scientific Committee on Veterinary Measures relating to Public Health (SCVPH) (EC, 1999, 2000, 2002).³⁰

²⁵ SCVPH is one of the scientific committees providing the EC with scientific advice on food safety on issues transferred to the European Food Safety Authority (EFSA).

²⁶ EC, *Opinion of the Scientific Committee on Veterinary Measures Relating to Public Health Assessment of Potential Risks to Human Health from Hormone Residues in Bovine Meat and Meat Products*, April 30, 1999, http://ec.europa.eu/food/fs/sc/scv/out21_en.pdf. Also see EC summary, "Hormones In Bovine Meat," http://ec.europa.eu/dgs/health_consumer/library/press/press57_en.pdf.

²⁷ EC, *Review of Specific Documents Relating to the SCVPH Opinion of 30 April 99 on the Potential Risks to Human Health from Hormone Residues in Bovine Meat and Meat Products*, May 3, 2000, http://ec.europa.eu/food/fs/sc/scv/out33_en.pdf.

²⁸ EC, *Opinion of the Scientific Committee on Veterinary Measures Relating to Public Health On Review of Previous SCVPH Opinions of 30 April 1999 and 3 May 2000 on the Potential Risks to Human Health from Hormone Residues in Bovine Meat and Meat Products*, April 10, 2002, http://ec.europa.eu/food/fs/sc/scv/out50_en.pdf.

²⁹ EFSA was created in January 2002 as part of a comprehensive program to improve EU food safety and ensure consumer protection and confidence, providing scientific advice and communication on food-borne risks.

³⁰ EFSA, *Opinion of the Scientific Panel on Contaminants in the Food Chain On a Request from the European* (continued...)

Among the stated concerns is that excess intake of hormone residues from all six hormones and their metabolites could pose a risk to the consumer. The review cites evidence supporting that estradiol-17 β be considered as a carcinogen, and states that all six hormones may pose endocrine, developmental, immunological, neurobiological, immunotoxic, genotoxic, and carcinogenic effects, particularly for susceptible risk groups (such as prepubertal children). The toxicological and epidemiological data reviewed by the Commission panels do not allow a quantitative estimate of the risk, leading to the panel's conclusions that no threshold levels can be defined for any of the six hormones.³¹

Based on this series of reviews, the Commission maintains that these reviews "reaffirmed public health concerns about the large scale use of hormones administered to cattle for growth promoting purposes," and therefore "provided the scientific basis for community legislation not allowing the use of hormones for growth promoting purposes in the EU."³² Accordingly, the EU claims that the retaliatory tariffs imposed on EU export to the United States are not in compliance with its WTO obligations and should be discontinued.

U.S. Response to EU Reviews

The United States continues to maintain that U.S. beef from cattle treated with certain approved growth hormones pose no public health risk. Overall, the official U.S. position is that "there is a clear world-wide scientific consensus supporting the safety of these approved and licensed hormones when used according to good veterinary practice."³³ The United States claims that this position is supported by "scientific reviews of the six hormones, international standards pertaining to their use, and a longstanding history of administering the six hormones to cattle for growth promotion purposes."³⁴ Accordingly, the United States claims that the use of these hormones as growth promoters in beef production is safe, when applied in accordance with good veterinary practices.

The United States claims that numerous U.S. and international scientific studies of the six hormones support its position, including safety assessments by the U.S. FDA and comparable food safety institutions in other countries; the reports of the EC-commissioned 1984 and 1987 Scientific Group on Anabolic Agents in Animal Production (the so-called "Lamming Committee"); the 1983 World Organization for Animal Health Symposium; the Joint Expert Committee on Food Additives (JECFA) reports;³⁵ the Codex Alimentarius Commission reports;³⁶

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Commission Related to Hormone Residues in Bovine Meat and Meat Products, EFSA-Q-2005-048, June 12, 2007, http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_1178622336805.htm.

³¹ Ibid.

³² EFSA, "EFSA Concludes Review of New Scientific Data on Potential Risks to Human Health from Certain Hormone Residues in Beef," Press Release dated July 18, 2007, http://www.efsa.europa.eu/EFSA/efsa_locale-1178620753812_1178622723847.htm.

³³ USDA, Foreign Agriculture Service, *Historic Overview and Chronology of EU's Hormone Ban*, GAIN Report E23206, Nov. 7, 2003, <http://www.fas.usda.gov/gainfiles/200311/145986773.pdf>.

³⁴ "United States – Continued Suspension of Obligations in the EC-Hormones Dispute," WT/DS320, First Written Submission of the United States of America, August 8, 2005.

³⁵ World Health Organization (WHO), *Evaluation of certain veterinary drug residues in food* (32nd JECFA report), WHO Technical Report Series, No. 763, 1988 (et seq.), http://whqlibdoc.who.int/trs/WHO_TRS_763.pdf. JECFA is an international scientific expert committee that is administered jointly by the United Nations Food and Agriculture Organization (FAO) and WHO. Its mission is to evaluate the safety of food additives, contaminants, naturally occurring (continued...)

the EC-commissioned 1995 Scientific Conference on Growth Promotion in Meat Production;³⁷ the EC-commissioned Committee for Veterinary Medicinal Products on the Safety Evaluation of Steroidal Sex Hormones reports;³⁸ the United Kingdom's 1999 and 2006 Veterinary Products Committee reports;³⁹ and the 2003 Australian review.⁴⁰ In general, these studies report that the three natural hormones—estradiol, progesterone, and testosterone—and their derivatives, when used as growth-promoting agents and according to good veterinary practice, are “safe,” are “not hazardous,” or “do not pose a risk to consumers.” Some reports determined that it was unnecessary to specify maximum residue levels (MRLs) for natural hormones administered according to good veterinary practices, and recommended MRLs or acceptable daily intake levels for two of the three synthetic hormones in dispute.

The United States also points out that the EU's own 1995 Scientific Conference on Growth Promoting Substances in Meat Production concluded that “at present there is no evidence for possible health risks to the consumer due to the use of natural sex hormones for growth promotion.”⁴¹ The United States also cites as support the findings of the 1996-1997 WTO panel in the dispute. The panel report states that “[n]one of the scientific evidence referred to by the European Communities which specifically addresses the safety of some or all of the hormones in dispute when used for growth promotion, indicates that an identifiable risk arises for human health from use of these hormones if good practice is followed.” The panel noted “that this conclusion has also been confirmed by the scientific experts advising the Panel.”⁴²

The United States has criticized the EU's scientific opinions for focusing on only one growth promotant—estradiol-17 β —and on its potential genotoxicity, while directing relatively little attention toward the other natural and synthetic hormones. The United States also claims that the “EU failed to use solid evaluative methods in their studies and completely disregarded the large body of evidence from epidemiological studies that indicate that estradiol does not contribute to

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toxicants, and residues of veterinary drugs in food.

³⁶ Codex Alimentarius Commission (CAC), *Report of the 8th Session of the Codex Committee on Residues of Veterinary Drugs in Foods*, July 1995 (et seq.), http://www.codexalimentarius.net/download/report/213/AL95_31e.pdf. CAC develops food standards, guidelines and codes of practice under the Joint FAO/WHO Food Standards Programme.

³⁷ European Commission, *Proceedings of the Scientific Conference on Growth Promotion in Meat Production*, November 29, 1995 (Office for Official Publications for the European Communities, Brussels).

³⁸ A subcommittee of the European Medicines Agency (EMA), which coordinates the evaluation and supervision of medicinal products throughout the European Union.

³⁹ UK's Veterinary Products Committee, “VPC Report - Risk Associated with the Use of Hormonal Substances in Food Producing Animals,” July 2006, and “Sub Group on Hormonal Growth Promoters” October 1999, available at <http://www.vpc.gov.uk/Public/reportsWG.html>. Also see USDA, *UK scientific report questions EU position on beef hormones*, GAIN Report UK6022, July 7, 2006, <http://www.fas.usda.gov/gainfiles/200607/146208214.pdf>.

⁴⁰ Australian Pesticides and Veterinary Medicines Authority, “A Review to Update Australia's Position on the Human Safety of Residues of Hormone Growth Promotants (HGP) Used in Cattle,” July 2003.

⁴¹ As reported in “United States – Continued Suspension of Obligations in the EC-Hormones Dispute,” WT/DS320, First Written Submission of the United States of America, August 8, 2005. The EU-commissioned group also concluded that that limitations on the use of such hormones “are a reasonable safeguard of public health.”

⁴² WTO, “EC Measures Concerning Meat and Meat Products (Hormones) - Complaint by the United States - Report of the Panel,” August 18, 1997, WT/DS26/R/USA, paragraph 8, available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm.

any increased cancer risk and that meat from animals tested with estradiol is safe for consumers.”⁴³

Regarding the EU’s more recent reviews, the United States claims they fail to provide any new evidence that would call into question the findings and conclusions of other authoritative reviews. More broadly, the United States also disputes whether the EU’s scientific reviews serve as a risk assessment. The United States claims: “There has been no new risk assessment based on scientific information and reasoning presented by the EU,” further claiming that the “17 studies” funded by the Commission beginning in 1998 were “not intended as a to serve as a risk assessment, but instead were to fill in the gaps.”⁴⁴ Accordingly, the United States claims, the EU’s 2003 update to its hormone ban is not in compliance with its WTO obligations and should be discontinued.

Industry groups in the United States voice these same criticisms. The National Cattlemen’s Beef Association (NCBA), the largest national group of cattle producers, has long opposed the EU’s ban on imports of U.S. hormone-treated beef, claiming that the ban is scientifically unjustified and fails to satisfy the EU’s WTO requirements under the SPS.⁴⁵ Similar concerns have been expressed by other U.S. farm groups, including American Farm Bureau Federation (AFBF), the Animal Health Institute (AHI), and the American Meat Institute (AMI).⁴⁶ Many trade analysts believe that the United States has a strong case against the hormone ban under WTO rules that require SPS restrictions to be based on risk assessment and to have a scientific justification. These various interest groups have continued to exert pressure on U.S. trade policy officials to hold to their position regarding the EU’s meat hormone ban.

U.S. Trade Sanctions and Retaliation

Existing (1999) Retaliatory Action

Insisting that the scientific evidence demonstrates that hormone-treated beef is safe to consumers, the United States began to consider retaliatory tariffs on EU imports starting in the 1980s. In 1987, the United States announced but then suspended retaliatory tariffs (100% *ad valorem*) on about \$100 million worth of EU imports. On January 1, 1989, the United States instituted 100% tariffs on EU imports valued at about \$93 million per year. These higher tariffs remained in effect until May 1996, when the EU sought a WTO panel against the U.S action.⁴⁷

Again, in 1999, following the EU’s failure to implement the WTO’s recommendations related to its obligations under the SPS Agreement, the United States and Canada formally sought and obtained WTO authorization to suspend tariff concessions and retaliate against trade from the European Union. Initially, the United States requested authorization to impose import duties in

⁴³ USDA’s Foreign Agricultural Service, U.S. Mission To The European Union, “WTO Hormone Case,” last updated August 2007, <http://www.useu.be/agri/ban.html>.

⁴⁴ USDA, FAS, *EU Presentation on Hormone Ban Directive (2003/74/EC)*, GAIN Report E23217, Nov. 13, 2003, <http://www.fas.usda.gov/gainfiles/200311/145986807.pdf>.

⁴⁵ NCBA, NCBA Statement On WTO Report On EU Ban of Hormone-Treated Beef, October 16, 2008.

⁴⁶ See, e.g., “Coalition Statement on EU’s Latest Pronouncement on Hormones,” May 14, 2002 by AFBF, AHI, AMI, and NCBA, <http://www.meatami.com/ht/d/sp/i/1482/pid/1482>.

⁴⁷ USDA, Foreign Agriculture Service, *Historic Overview and Chronology of EU’s Hormone Ban*, GAIN Report E23206, Nov. 7, 2003, <http://www.fas.usda.gov/gainfiles/200311/145986773.pdf>.

excess of bound rates on a list of products equivalent, on an annual basis, to \$202 million. The WTO arbitrators set the level at \$116.8 million for the United States (and C\$11.3 million for Canada).⁴⁸

On July 27, 1999, USTR announced its decision to impose a 100% *ad valorem* rate of duty on a specified list of products from certain EU member states.⁴⁹ The list of products includes beef and pork products, goose pâté, Roquefort cheese, truffles, onions, carrots, preserved tomatoes, soups, yarn, Dijon mustard, juices, chicory, toasted breads, French chocolate, and jams, as well as agricultural-based byproducts, such as glue and wool grease. The list targeted France, Germany, Italy, and Denmark, as well as Austria, Belgium, Finland, Greece, Ireland, Luxembourg, the Netherlands, Portugal, Spain, and Sweden. The list did not include products of the United Kingdom because it has indicated support for lifting the ban. **Appendix A** provides a listing of the product imports currently affected by the U.S. trade sanctions.

According to USTR, the imposition of these higher duties is “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.”⁵⁰ However, some point out that these retaliatory duties have been mostly ineffective since they do not provide any direct benefit to the U.S. beef industry, and claim that it is U.S. and EU consumers who lose by paying higher prices for a wide variety of imported foods.⁵¹ The U.S. beef industry has long maintained that the EU ban is merely a disguised trade barrier, intended to protect EU domestic beef producers.⁵² Some in Congress have questioned whether the EU’s ban is motivated more by politics than by sound science.⁵³ Yet the EU continues to claim that the United States is not justified in maintaining its trade sanctions, given its belief that there is a scientific basis for banning hormone-treated beef and given updates to their laws governing the ban in 2003.⁵⁴

Revised (2009) Retaliatory Action

In October 2008, USTR initiated action to modify the retaliation list of EU products subject to 100% tariffs in connection with the U.S.-EU beef hormones dispute. Such an action is consistent with legislation enacted by Congress in 2000, under the Trade and Development Act (P.L. 106-200), which amended the 1974 Trade Act. The law included a so-called “carousel retaliation” provision requiring the Administration periodically to rotate, or change, the types of products targeted for trade retaliation.⁵⁵ Prior to this, the provision had not been implemented per the legislation. USTR did consider modifying the retaliation list in 2006, but ultimately decided not

⁴⁸WTO, “European Communities - Measures Concerning Meat And Meat Products (Hormones),” WT/DS26/21, July 15, 1999, <http://www.wto.org.tw/SmartKMS/fileviewer?id=65564>.

⁴⁹ 64 *Federal Register* 40638, July 27, 1999. Canada’s level was set at C\$11.3 million.

⁵⁰ USTR, “WTO’s Appellate Body Vindicates Continued U.S. Imposition of Sanctions after the EU Claimed Compliance in the EU-Hormones Dispute,” October 16, 2008.

⁵¹ See, e.g., Clemens, Roxanne, “The EU-U.S. Hormone Dispute: The Negotiations Continue,” *Iowa Ag Review*, Center for Agricultural And Rural Development, Spring 2002, http://card.iastate.edu/iowa_ag_review/spring_02/IAR.pdf.

⁵² *Cattlenetwork*, “Cattlemen’s Capitol Concerns,” September 2005.

⁵³ One such example is a letter from Senator Grassley to Pascal Lamy of the European Commission, Nov. 18, 2004.

⁵⁴ The 2003 law permanently banned one hormone and provisionally banned the other five hormones, pending more detailed scientific assessments.

⁵⁵ It is aimed primarily at maintaining pressure on the EU to resolve the meat hormone dispute (and another U.S.-EU dispute over banana trade) by penalizing a wider range of foreign products and countries.

to do so, as was recommended by the U.S. beef industry.⁵⁶ Public comments sent to USTR in late 2008 reflected support by agricultural industry groups for maintaining higher tariffs on a range of current and expanded products, while some importers recommend removing some products.⁵⁷

In January 2009, the USTR under the outgoing Bush Administration announced changes to the list of EU products subject to increased tariffs under the dispute (**Appendix B**).⁵⁸ The modified list added products from many of the newly acceded countries under EU expansion (such as Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, and Malta). The modified list added additional products (such as pork products, cut flowers and plants, processed fruits, nuts, fruit juices, drinking waters, confectionary and chewing gum, and oats), but deleted some products currently on the list (such as onions, carrots, processed tomatoes, toasted breads, coffee, mustard, fish products, soups, yarns, and glue). The modified list did not include some of the initially proposed products, such as yarns, hair clippers, and motorcycles.⁵⁹ The modified list also raised the tariff on Roquefort cheese to 300% from 100% under the current retaliation. These changes were scheduled to go into effect on March 23, 2009.

The EU claimed that USTR's January 2008 action constituted an "escalation" of the dispute, and was "more punitive" than the current trade sanctions.⁶⁰ Initially the EU had prepared to challenge the United States in the WTO, but it decided to hold off further action until the Obama Administration reviewed the decision.⁶¹

In February 2009, further consultations between the United States and the EU on the dispute were not successful, and the EU was expected to seek a dispute settlement panel on whether its ban was consistent with the SPS Agreement. In March, USTR announced that it would delay the imposition of additional duties on a modified list of EU products by one month; in April, USTR announced it would further extend this delay until May 2009 in order to provide "more time to negotiate a settlement with the EU."⁶² Press reports indicated that among the issues to be resolved were the U.S. demand for increased market access of U.S. non-hormone-treated beef for export to the EU, and the U.S. demand that the EU refrain from seeking a new WTO ruling that its revised ban in 2003 now complies with the SPS Agreement.⁶³

⁵⁶ USTR, *President's 2008 Policy Agenda*, Trade Enforcement Activities, March 2008. Section 306(b)(2) of the Trade Act provides that the USTR is not required to revise a retaliation list if the USTR, together with the affected United States industry, agrees that it is unnecessary to revise the retaliation list.

⁵⁷ Based on responses from food and textile groups, and some non-agricultural stakeholders.

⁵⁸ 74 *Federal Register* 4264, January 23, 2009.

⁵⁹ 73 *Federal Register* 66066, November 6, 2008, Annex I and Annex II list of products; and USTR, "USTR Seeks Public Comments on Possible Changes to Product List in EU-Beef Hormones Dispute," Oct. 31, 2008.

⁶⁰ European Commission, "WTO Dispute Settlement: EU Prepares WTO Action over Trade Sanction Law," *Trade Issues*, January 15, 2009.

⁶¹ *Inside U.S. Trade*, "Ashton Holding Off on Escalating Fight over Hormone Ban Retaliation," February 6, 2009; "Obama Officials to Review Hormone Retaliation Change, Feed Ban Rule," *Inside U.S. Trade*, January 28, 2009.

⁶² U.S. Mission to the EU, "U.S. Announces Delay of Trade Action in Beef Hormones Dispute," March 13, 2009; USTR, "USTR Ron Kirk Announces Delay of Trade Action in Beef Hormones Dispute," April 22, 2009.

⁶³ "Two Major Hurdles Remain For U.S.-EU Beef Hormones Deal," *World Trade Online*, April 24, 2009.

On March 23, 2009, the United States drafted a “reduced list” of EU import products subject to 100% *ad valorem* duties (**Appendix C**).⁶⁴ The products and duties on this list remain in effect under the May 2009 agreement between the United States and the EU.

May 2009 Agreement

On May 13, 2009, following a series of negotiations, the United States and the EU signed a memorandum of understanding (MOU) implementing an agreement that could resolve this longstanding dispute. This agreement sets up three phases, as follows:⁶⁵

1. **Phase 1:** (a) Expanded market access for U.S. beef to the EU under an annual tariff-rate quota (TRQ) of 20,000 metric tons at zero duty for beef produced without growth-promoting hormones (“High Quality Beef”); and (b) agreement by the United States that it will delay implementation of the January 2009 modifications (“increased duties,” **Appendix B**) for certain EU imports. The new quota is in addition to the existing 11,500 metric tons of hormone-free beef. The United States will continue to impose U.S. import duties on the “reduced list” of products (**Appendix C**). Phase 1 of the MOU concludes August 3, 2012.
2. **Phase 2:** (a) Further expansion of EU market access for U.S. High Quality Beef to 45,000 metric tons; and (2) agreement by the United States to reduce “increased duties” to zero (**Appendix B**). A decision on whether to move to Phase 2 would depend on conditions at the end of Phase 1 and the U.S. beef industry’s ability to make full use of the additional quota. Phase 2 would last one year.
3. **Phase 3:** (a) EU maintains the TRQ for U.S. High Quality Beef at 45,000 metric tons; and (b) the United States removes import duties on selected EU products under the dispute, leading to the possible longer-term resolution of the dispute. Before the end of the fourth year, a decision on whether to move to Phase 3 would be made following negotiations between the United States and the EU on selected issues (such as duration, withdrawal, and status of WTO litigation, etc.).

The MOU further defines “High Quality Beef” as follows:⁶⁶

Beef cuts obtained from carcasses of heifers and steers less than 30 months of age which have only been fed a diet, for at least the last 100 days before slaughter, containing not less than 62 percent of concentrates and/or feed grain co-products on a dietary dry matter basis that meet or exceed a metabolisable energy (ME) content greater than 12.26 megajoules (MJ) per one kilogram of dry matter. The heifers and steers fed this diet shall be fed, on average, not less than 1.4 percent of live body weight per day on a dry matter basis.

⁶⁴ 74 *Federal Register* 40864, August 13, 2009.

⁶⁵ WTO, European Communities – Measures Concerning Meat And Meat Products (Hormones), Joint Communication from the European Communities and the United States, WT/DS26/28, September 30, 2009; 74 *Federal Register* 40864, August 13, 2009; 74 *Federal Register* 48808, September 24, 2009; and USTR press releases.

⁶⁶ WTO, European Communities – Measures Concerning Meat And Meat Products (Hormones), Joint Communication from the European Communities and the United States, WT/DS26/28, September 30, 2009.

The carcass from which beef cuts are derived shall be evaluated by an evaluator employed by the national government who bases the evaluation, and a resulting classification of the carcass, on a method approved by the national government. The national government evaluation method, and its classifications, must evaluate expected carcass quality using a combination of carcass maturity and palatability traits of the beef cuts. Such an evaluation method of the carcass shall include, but not be limited to, an evaluation of the maturity characteristics of color and texture of the longissimus dorsi muscle and bone and cartilage ossification, as well as an evaluation of expected palatability traits including a combination of the discrete specifications of intramuscular fat and firmness of the longissimus dorsi muscle.

The cuts shall be labeled in accordance with Article 13 of Regulation (EC) No. 1760/2000. The indication 'High Quality Beef' may be added to the information on the label.

On July 13, 2009, the EC adopted regulations opening a tariff quota for imports of High Quality Beef, effective August 1, 2009.⁶⁷ U.S. beef products under this quota must originate from animals that have never been treated with growth hormones; eligibility requirements may be met by participating in USDA's Non-Hormone Treated Cattle (NHTC) Program (for more information, see the section of this report titled "USDA's Non-Hormone Treated Cattle (NHTC) Program"). The United States is projected to ship about 12,000 metric tons in the first year of the new quota, which is more than double that shipped in 2008 under the existing quota.⁶⁸

The United States, in Phase 1, agreed not to implement its January 2009 revised ("carousel") sanctions, which would have resulted in higher retaliatory duties on selected EU exports to the United States (see **Appendix B**). In September, USTR announced it was officially terminating its plan to rotate the list of products.⁶⁹ Trade sanctions will remain in effect on certain EU exports (listed in **Appendix C**) until the final phase of the agreement. Also, during the first 18 months of the agreement, both the United States or the EU will refrain from further WTO litigation regarding the dispute.

However, some issues have yet to be resolved under the agreement. First, according to press reports, the U.S. government will consider implementation of Phase 2 following resolution of an outstanding issue regarding the EU's disapproval of the common U.S. practice in the beef industry of using antimicrobial treatments to ensure that meat is not contaminated with pathogens.⁷⁰ The EU has claimed that the use of such washes is cover for unsanitary production methods.⁷¹ EU representatives have stated that they would be unwilling to accept U.S. beef products treated with antimicrobial washes; currently, U.S. beef exporters reportedly do not use these washes when shipping to the EU.

Second, some meat-exporting countries, including Argentina, Brazil, India, New Zealand, Nicaragua, Paraguay, and Uruguay, have argued that the TRQ should be available to all MFN ("most favored nation") countries.⁷² Some of these countries are arguing that the U.S.-EU

⁶⁷ Council Regulations No 617/2009 of 13 July 2009 opening an autonomous tariff quota for imports of high-quality beef, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:182:0001:0001:EN:PDF>. For other information, see USDA, Foreign Agricultural Service, U.S. Mission to European Union, "High Quality Beef Quota," <http://www.fas.usda.gov/posthome/useu/hqb.html>.

⁶⁸ USMEF, "New EU Quota Has Positive Impact," *Cattle Buyers Weekly*, September 21, 2009.

⁶⁹ 74 *Federal Register* 48808, September 24, 2009.

⁷⁰ "EU Agriculture Council Approves TRQ for Hormone Beef Deal," *World Trade Online*, July 14, 2009; "EU-U.S. Beef Dispute: Talks Inching Towards Deal?" *AgraFacts*, March 18, 2009.

⁷¹ "U.S., EU Explore Basis of Possible Beef Hormone Settlement," *Inside U.S. Trade*, February 27, 2009.

⁷² Invoking MFN status implies that level treatment or equal trade advantages should be accorded to all "most favored (continued...)"

agreement is “discriminatory” and inconsistent with WTO rules since it allows for an increase in the U.S. quota but does not make similar concessions to other countries.⁷³ By invoking MFN status, these countries are arguing that equal treatment and trade advantages should be accorded to all MFN trading partners, and that all should have access to export products under the quota. This, however, could derail the agreement between the United States and the EU seeking to resolve this trade dispute.

Some U.S. farm organizations were unhappy with the agreement because it did not lift the EU’s ban on beef from hormone-treated cattle and because the EU did not concede to the terms of the science regarding the safety of hormone-treated beef.⁷⁴

Opposition by U.S. Importers

Some U.S. importers have actively contested higher tariffs on U.S. imports on the retaliation list. For example, Gilda Industries, an importer of Spanish toasted breads, filed a series of protests with U.S. Customs against higher tariffs on toasted breads.⁷⁵ Gilda Industries later brought a lawsuit against the United States in the U.S. Court of International Trade (CIT), seeking to force USTR to remove toasted breads from its retaliation list. For years, the United States and Canada have refused to remove their trade sanctions on grounds that the scientific evidence claimed by the EU does not provide new information and does not establish a risk to consumers from eating hormone-treated meat. In the original case, the CIT ordered a refund of all punitive duties paid on affected goods imported after July 29, 2007. However, the United States has appealed the decision and the matter will now be reviewed by the U.S. Court of Appeals for the Federal Circuit.⁷⁶ Toasted breads were subsequently removed from the United States’ “revised” retaliation list (**Appendix C**).

Following proposed changes in January 2009 adding imported waters to the list of EU products subject to higher U.S. tariffs, Nestle Waters of North America, Inc., also filed a preliminary injunction order in the CIT against the action.⁷⁷ The suit claims that retaliation is not authorized because there was no request for changes in the product mix within the most recent deadline for such a request.⁷⁸ In addition, Gilda Industries, along with several other importing companies, now seeks a partial refund of retaliatory duties that the United States has imposed under the dispute.⁷⁹

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nation” trading partners.

⁷³ “A Challenge Over EU-US Beef Accord,” *Washington Trade Daily*, June 22, 2009; and ICTSD, “New Issues Arise in EU-US Beef Trade Dispute,” June 24, 2009. Also see comments by Uruguay at a WTO meeting: see WTO, “Minutes of Meeting” (meeting held June 19, 2009), WT/DSB/M/270, August 28, 2009.

⁷⁴ ICTSD, “EU, U.S. Strike Provisional Deal to End 13-Year-Old Beef Dispute,” May 13, 2009; and AFBF, statement by Bob Stallman, American Farm Bureau Federation, regarding the EU beef hormone agreement, May 7, 2009.

⁷⁵ See CIT, *Gilda Industries Inc., v. the United States*, Slip Op 08-51, May 14, 2008, and other related case reports since 2004 at CIT’s website (<http://www.cit.uscourts.gov/>). Toasted breads are imported to the U.S. under U.S. Harmonized Tariff Schedule (HTS) code 1905.40.

⁷⁶ “U.S. Appeals CIT Decision Ordering Refund of Duties Paid in Hormone Dispute,” *International Trade Daily*, August 19, 2009.

⁷⁷ “U.S., EU Explore Basis of Possible Beef Hormone Settlement,” *Inside U.S. Trade*, February 27, 2009.

⁷⁸ See CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

⁷⁹ “U.S. Appeal Brief in Hormone Retaliation Case Due Next Month,” *Inside U.S. Trade*, September 11, 2009; and “Importers File Suits Refund of Retaliatory Duties Paid Under Beef Hormone Dispute,” *World Trade Online*, August 14, 2009. See also U.S. CIT, *Cheeseworks v. United States*, Court No. 09-00298, Case 1:09-cv-00298-N/A.

In October 2010, the U.S. Court of Appeals for the Federal Circuit issued a decision in the Gilda Industries case, which could make importers of certain foods from the EU eligible for refunds for retaliatory duties paid since July 29, 2007.⁸⁰

Trade Effects for Selected Products

U.S. Exports to the EU

Recent Trends

Initially, lost U.S. beef exports because of the EU's ban were estimated at about \$100 million annually, and valued approximately equal to retaliatory trade sanctions against selected EU food product exports. Currently, U.S. exports do not account for a sizable share of the EU beef import market. Under the ban, eligible U.S. beef exports to the EU must be certified as not having been treated with hormones and are further subject to quotas that limit the total amount of beef imported under preferential tariffs. The U.S. beef industry claims that, absent the ban, U.S. beef exports to the European Union would be much greater.

Evaluating actual trade trends is complicated by large discrepancies between the U.S.-reported export data and the EU-reported import data for beef. Because of concerns that the U.S. beef export data may not reflect actual trade conditions, in part due to possible transshipments via certain EU port destinations and/or trade data inaccuracies, this report examines available EU import data.⁸¹ These data are available only back to 1999 and do not allow for a full evaluation of how the ban has affected U.S. beef exports over the time period. These data indicate that EU beef imports from the United States were lower during the 2000-2006 period, compared to 1999, and averaged between \$5 million and \$6 million per year (**Figure 1**). During this period, U.S. beef accounted for less than 1% of the EU beef import market. The majority (more than 90%) of EU beef imports were supplied by Brazil, Argentina, and Uruguay, among other countries. Available U.S. export data for the 10-year period from 1989 to 1998 indicate that U.S. exports to the EU of fresh/chilled and frozen beef averaged between \$11 million and \$13 million annually.⁸²

The EU import data also indicate that in the past couple of years, U.S. beef exports have risen, particularly for fresh and chilled beef products, which reached more than \$50 million in 2008. In fact, as a share of the EU import market, U.S. beef accounted for nearly 4% of EU fresh/chilled beef imports. U.S. exports still accounted for less than 1% of EU imports of frozen beef and offal products.⁸³ For fresh/chilled beef (HTS 0201), these same upward trends are reflected in the U.S.-reported export data; however, the U.S. export data also indicate large increases in U.S. frozen beef (HTS 0202) exports to the European Union, which are not substantiated by the EU-reported data. Despite questions surrounding the available trade data, the U.S. Meat Export Federation

⁸⁰ Federal Circuit Court Strikes Down "Beef Hormone Dispute" Retaliatory Tariffs," *Global Trade Alert*, October 2010, <http://www.npwtradelaw.com/trade/pdf/10-19-2010.pdf>.

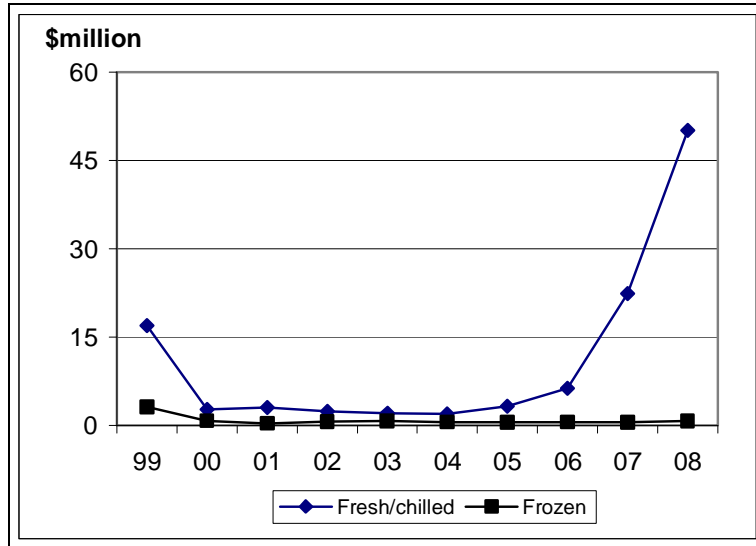
⁸¹ This is consistent with the approach recommended by the U.S. Meat Export Federation. See, e.g., "USMEF: U.S. Pork, Beef Exports Defy Expectations," *High Plain Midwest Ag Journal*, December 16, 2008.

⁸² Based on trade data reported by the U.S. International Trade Commission, <http://dataweb.usitc.gov>. U.S.-reported product exports to EU-27 countries, U.S. Harmonized Tariff Schedule (HTS) 0201 (fresh/chilled beef) and HTS 0202 (frozen beef).

⁸³ Global Trade Atlas data for HTS 0201, HTS 0202, and HTS 0206.

acknowledges that U.S. beef exports to the European Union have risen in the past couple of years,⁸⁴ and that the rise may be attributable to the approval of additional, larger U.S. beef plants to export to the EU under USDA’s Non-Hormone Treated Cattle (NHTC) Program (see discussion in next section).

Figure 1. EU-Reported Beef Imports from the United States, 1999-2008
(beef imports reported under trade categories HTS 0201 and 0202)



Source: Compiled by CRS using Global Trade Atlas data. EU-reported product imports to EU-27 countries, HTS 0201 (fresh/chilled beef) and HTS 0202 (frozen beef), nominal U.S. dollars.

Notes: There are considerable differences in the reported trade statistics between U.S.-reported beef exports to the European Union and EU-reported beef imports from the United States for HTS 0201 and 0202.

USDA’s Non-Hormone Treated Cattle (NHTC) Program

Only U.S. beef from cattle raised under control measures specified in USDA’s NHTC Program is eligible for export to the EU. (See box, below, for information on this program.) The program was initiated in 1989 when the United States and the EU agreed to control measures to facilitate the trade of non-hormone treated bovine meat, including veal. As of October 2010, 13 farms, ranches, feedlots, and cattle management groups have been audited and approved as sources of non-hormone treated cattle and are eligible for further evaluation by USDA’s Food Safety and Inspection Service (FSIS).⁸⁵ In 2008, a reported 4,900 metric tons of U.S. beef was shipped to the European Union under the current quota, more than double the amount from 2007.⁸⁶

Volume shipments for most beef products are further limited by the EU’s so-called “Hilton quota” for high-quality beef (HQB), a tariff rate quota that has been in effect since 1997 and allows only a fixed amount of fresh/chilled beef to be imported from selected countries before being subject

⁸⁴ “USMEF: U.S. Pork, Beef Exports Defy Expectations,” *High Plain Midwest Ag Journal*, December 16, 2008.

⁸⁵ USDA, Agricultural Marketing Service, “Official Listing of Approved Sources of Non-Hormone Treated Cattle,” <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRD3107503>. A listing of the eligible U.S. plants is at https://sanco.ec.europa.eu/traces/output/RM_US_en.pdf (last updated September 28, 2009). Cattle management groups may include approved farms, ranches, and feedlots.

⁸⁶ “U.S., EU reach provisional deal in beef dispute,” *Meatingplace Online*, May 6, 2009.

to higher tariffs.⁸⁷ This quota allows for North American beef exports (which also covers Canadian beef exports) to the EU of 11,500 metric tons at a 20% tariff. The quota covers exports of fresh/chilled beef (HTS 0201); however, the EU also imports accredited frozen meat (HTS 0202) and offal products (HTS 0206), which are outside the quota.

Non-Hormone-Treated Cattle (NHTC) Program

The NHTC program is a Quality Systems Assessment (QSA) program, whereby the USDA certifies the processes and procedures in place for a specific marketing claim. The program has three principal components:

- Cattle are to be grown in approved farms/feedlots and delivered to the slaughter establishment with a copy of a signed producer affidavit certifying that the animals have never been treated with hormonal growth promoters.
- Non-treated cattle and beef are segregated at the slaughter establishment and handled in a fashion that ensures that they are not commingled with other animals or meat.
- Tissue samples from non-hormone treated cattle are collected at slaughter and analyzed by accredited independent laboratories for residual levels of restricted compounds.

Each phase of the production, from birth through slaughter, must receive third-party verification prior to FSIS certifying NHTC to the EU. All cattle must be slaughtered and processed in a federally inspected establishment approved for production of products destined for the EU.

The NHTC program allows for treatment with antibiotics and ionophores, but prohibits the use of implants, growth promotants, and oral steroids. Individual animal identification and traceability are key components of the program. Certification and annual on-site audits function as verification steps for each facility's protocols.

Shipments must be accompanied by both a health certificate and a certificate of authenticity issued by USDA's Food Safety and Inspection Service (FSIS).

All export shipments must also be accompanied by a health certificate issued by FSIS under the non-hormone treated cattle program, certifying that all meat must originate from animals that have never been treated with growth hormones. Import licenses are issued by authorities in the EU member states, and the quantity available is published every month by the European Union.⁸⁸

Initially, few U.S. plants were approved for export to the EU, and U.S. volume exports were low and often well below the allowable quota limit.⁸⁹ Because, historically, the U.S. quota had not been filled, this caused some to conclude that increasing the quota would not likely offer any benefit to U.S. beef exporters, particularly given additional costs of raising and shipping untreated beef.⁹⁰ In the past, negotiations between the United States and the EU to increase the quota have not been successful. However, recently some larger facilities have been approved and volume exports have been higher, approaching or possibly exceeding the quota limit, and there is renewed interest in increasing U.S. market access under the quota.⁹¹

⁸⁷ EC, Commission Regulation (EC) No 936/97 of 27 May 1997, opening and providing for the administration of tariff quotas for high-quality fresh, chilled, and frozen beef and for frozen buffalo meat, Official Journal L 137, May 28, 1997, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997R0936:EN:HTML>. Other affected country suppliers are Argentina, Australia, Brazil, Canada, New Zealand, Paraguay, and Uruguay.

⁸⁸ USDA, Foreign Agricultural Service, U.S. Mission to European Union, "High Quality Beef Quota," <http://useu.usmission.gov/agri/hqb.html>.

⁸⁹ USDA, FAS, EU-25 Livestock and Products, U.S. beef faces strong competition on the European market, *GAIN Report* E35178, Sept. 8, 2005, <http://www.fas.usda.gov/gainfiles/200509/146130828.pdf>.

⁹⁰ See, e.g., Clemens, Roxanne, "The EU-U.S. Hormone Dispute: The Negotiations Continue," *Iowa Ag Review*, Center for Agricultural And Rural Development, Spring 2002, http://card.iastate.edu/iowa_ag_review/spring_02/IAR.pdf.

⁹¹ "U.S., EU Look to Resolve Beef Fight by Increasing Hormone-free TRQ," *Inside U.S. Trade*, October 13, 2006.

Other Compensation Efforts

Prior to 2009, EU offers of compensation or trade concessions for lost U.S. meat exports have been rejected by the United States. In lieu of lifting the ban, the EU has considered offering the United States compensation in the form of an expanded quota for hormone-free beef and reducing the 20% in-quota tariff. In January 2009, the EU offered to expand access for U.S. beef by 58,000 metric tons—well below what the United States initially requested.⁹² However, there were unresolved issues in these negotiations, including the timing of the United States' lifting of its current trade sanctions against the European Union. The United States also has asked for changes to the program, including simplifying the current system and requirements for plants, and reducing the number of chemical residues U.S. inspectors must test for before clearing shipments.⁹³ In addition, the United States wants its beef exports to be allowed to be treated with antimicrobial washes to ensure cleanliness. The EU objects to such washes unless accompanied by adequate labeling, which the United States has resisted.⁹⁴ The U.S. beef industry claims its beef exporters do not use antimicrobial washes on beef destined to the EU, but that it is often difficult to set-aside or segment production within individual plants.⁹⁵ Previously, negotiations had been slowed by related disputes over detection of the presence of EU-listed hormones in U.S. shipments of presumably non-hormone treated beef.

Other previous attempts by the United States and the EU to resolve the dispute have not been successful. In the late 1990s, the EU and the United States also discussed other options to resolve the dispute, including compensation for not lifting the ban; removal of the ban coupled with a labeling system, and conversion of the ban to a temporary measure.⁹⁶ These options were ultimately rejected by the United States—backed by most of the U.S. beef industry—preferring instead full removal of the ban and arguing that other forms of compensation would not be large enough to compensate for losses of hormone-treated exports.

U.S. Imports from the EU

The 1999 imposition of retaliatory (100%) tariffs on selected U.S. agricultural imports from EU member countries has significantly reduced imports of these products since these tariffs went into effect (**Figure 2, Table 1**). Overall, U.S. imports of these products have dropped from about \$130 million in 1997-1998 to under \$15 million in 2008.⁹⁷ Products with the most significant decline in imports include meat and fish products, fruit juices, other fruit and vegetable products, processed foods, chocolate products, yarns and other agriculture-based byproducts. Imports of some products, such as Roquefort cheese, mustard, and coffee products, also are lower, but less so. These products are still being imported and presumably are being sold at a higher price, given the need to cover higher importing costs due to tariffs.

⁹² “U.S., EU Moved Closer to Beef Market Access Deal Last Year,” *Inside U.S. Trade*, January 23, 2009.

⁹³ “U.S., EU Explore Basis of Possible Beef Hormone Settlement,” *Inside U.S. Trade*, February 27, 2009; and “U.S., EU Look to Resolve Beef Fight by Increasing Hormone-free TRQ,” *Inside U.S. Trade*, October 13, 2006.

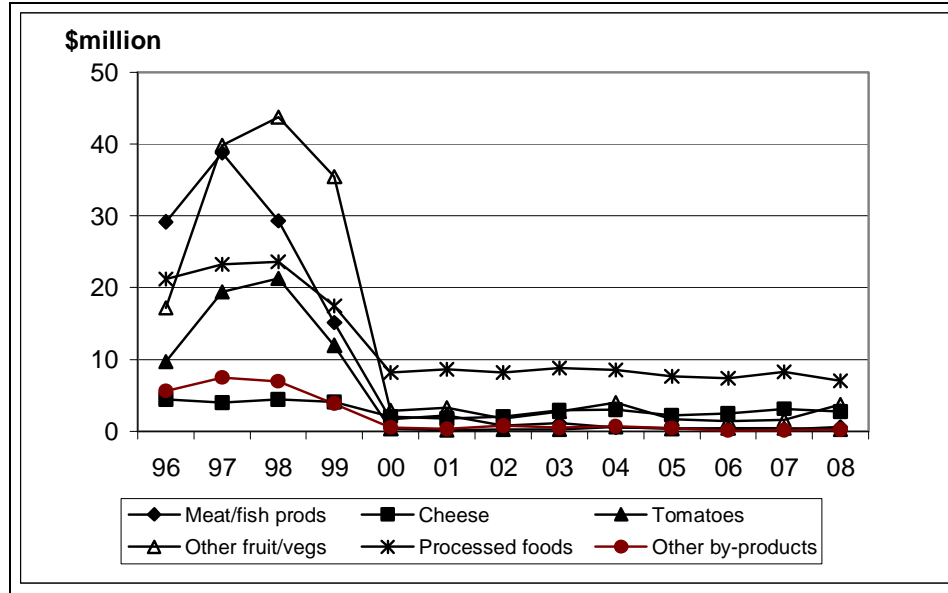
⁹⁴ *Ibid.* In a different but related case, the U.S. also has a longstanding dispute with the EU over its refusal to accept U.S. imports of poultry treated with antimicrobial rinses (see CRS Report R40199, *U.S.-EU Poultry Dispute*).

⁹⁵ “U.S., EU Explore Basis of Possible Beef Hormone Settlement,” *Inside U.S. Trade*, February 27, 2009.

⁹⁶ “EU Outlines Three Options for Compliance in WTO Hormone Dispute,” *Inside U.S. Trade*, February 12, 1999.

⁹⁷ CRS calculations from USITC trade data for U.S. imports for selected products and countries subject to retaliatory tariffs due to U.S.-EU beef hormone dispute (**Appendix B**).

Figure 2. U.S. Imports, Selected Products and Countries, 1996-2008
(products subject to higher U.S. tariffs under the U.S.-EU beef hormone dispute)



Source: Compiled by CRS using data from the U.S. International Trade Commission <http://dataweb.usitc.gov>. Imports for consumption (U.S. dollars). Nominal U.S. dollars. Selected products and countries (**Appendix A**).

Table I. U.S. Imports, Selected Products and Countries, 1996-2008
(\$ millions; products subject to higher U.S. tariffs under the U.S.-EU beef hormone dispute)

Products	1996	1998	2000	2002	2004	2006	2008
Meat products	16.7	20.9	1.1	0.6	0.5	0.1	0.3
Fish products	12.5	8.5	0.6	0.2	0.0	0.2	0.3
Cheese	4.4	4.4	2.1	2.0	3.0	2.4	2.7
Proc. Tomatoes	9.6	21.3	0.3	0.3	0.6	0.4	0.3
Fruit juice	10.0	25.4	0.7	0.7	3.3	0.8	3.5
Other fruit/veg.	7.2	18.3	2.2	0.9	0.7	0.6	0.2
Coffee prods.	4.4	3.8	1.1	1.1	1.2	1.2	1.0
Mustard	5.5	5.3	3.5	3.7	4.5	3.9	3.9
Soups/broths	2.3	5.2	1.3	1.3	0.5	0.1	0.0
Toasted breads	8.7	7.9	2.1	2.0	2.2	2.1	2.0
Cocoa prods.	0.4	1.5	0.1	0.2	0.1	0.1	0.1
Non-food	5.6	7.0	0.5	0.7	0.7	0.1	0.2
Total	87.3	129.5	15.5	13.7	17.3	12.0	14.5

Source: Compiled by CRS using data from the U.S. International Trade Commission <http://dataweb.usitc.gov>. Imports for consumption (U.S. dollars). Selected products and countries (**Appendix A**).

Notes: "Other fruit/veg." includes onions, dried carrots, berry jams, and truffles.

Congressional Interest

Many in Congress have long maintained an interest in the U.S.-EU hormone dispute in support of the U.S. beef industry and its concern that the EU ban may be a disguised trade barrier, intended to protect EU domestic beef producers by restricting imports. As discussed, Congress enacted the carousel retaliation provision as part of the Trade and Development Act of 2000 (P.L. 106-200), largely in response to the dispute. In addition, over the years, the dispute has been invoked at various Congressional hearings and has been a subject of introduced legislation, mostly as a means to illustrate how sanitary and phytosanitary (SPS) measures and non-tariff barriers are often used to unjustifiably restrict trade.⁹⁸ Also, in 2000, Senator Baucus introduced the Trade Injury Compensation Act (S. 2709), intended to establish a Beef Industry Compensation Trust Fund with the duties imposed on products of countries that do not comply with certain WTO dispute resolution decisions; a Senate Agriculture subcommittee hearing was held on this matter.⁹⁹

There also have been resolutions intended to express the sense of Congress that the Administration should continue to take action against the European Union under the dispute.¹⁰⁰ The dispute is regularly noted in USTR's annual trade policy reports as an example of the EU's continued use of non-tariff trade barriers to limit or prevent U.S. beef exports, despite the United States' scientifically supported measures to ensure the safety of the food supply.

Some in Congress, however, have maintained an interest in the U.S.-EU hormone dispute because of the concerns raised by some U.S. importers that have been affected by the United States' active and ongoing trade sanctions against the European Union, which have effectively restricted U.S. imports of selected EU products. Previously, in 1999 and 2000, then-Representative Menendez introduced two bills that would exempt certain small importing businesses from higher tariffs imposed against EU products under the U.S.-EU beef hormone dispute.¹⁰¹

Final resolution of the hormone dispute could remove a critical irritant to the overall U.S.-EU trade relationship.¹⁰² In addition, the way in which this dispute is ultimately resolved could have important implications for future WTO disputes involving the use of SPS measures to restrict trade. The 1997 WTO meat hormone decision was the first to deal with SPS measures and, along with subsequent decisions, it provided an affirmation of the SPS Agreement and its requirements that countries base SPS measures on scientific justification and risk assessment. Beyond that, the case is a critical test of the durability of internationally agreed-upon rules and procedures for resolving disputes that are in conflict with popular concerns and national political decisions.

⁹⁸ See, for example, hearing of the House Committee on Ways and Means on the Implementation of the United States-Australia Free Trade Agreement, June 16, 2004, Statement of Leo McDonnell, Ranchers-Cattlemen Action Legal Fund-United Stockgrowers of America. Also see related bills S. 2328 and H.R. 4288 (Agriculture Export Enhancement Act of 1998, 105th Congress), H.R. 4761 (Uruguay Round Agreements Compliance Act of 1998, 105th Congress), and H.R. 3050 (To prohibit imports into the United States of meat products from the European Union until certain unfair trade barriers are removed, 104th Congress).

⁹⁹ Subcommittee on Forestry, Conservation and Rural Revitalization, U.S. Senate Committee on Agriculture, Nutrition and Forestry, hearing on S. 2709, Trade Injury Compensation Act of 2000, September 25, 2000, http://agriculture.senate.gov/Hearings/Hearings_2000/September_21__2000/september_21__2000.html.

¹⁰⁰ For example, see H.J.Res. 80 and H.Con.Res. 26 (101st Congress) and S.Res. 277 (104th Congress).

¹⁰¹ Two 106th Congress bills were H.R. 2106 and H.R. 4478 (as part of the Small Business Trade Protection Act).

¹⁰² See CRS Report RL30732, *Trade Conflict and the U.S.-European Union Economic Relationship*, and CRS Report RL34381, *European Union-U.S. Trade and Investment Relations: Key Issues*, *European Union-U.S. Trade and Investment Relations: Key Issues*.

Appendix A. Current Tariff Schedule Subheadings in Subchapter III, Chapter 99 (in Effect Since July 1999)

HTS	Articles the product of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden	Duty
9903.02.21	Meat of bovine animals, fresh or chilled (provided for in heading 0201); Articles of subheading 0201.10.05, 0201.10.10, 0201.20.02, 0201.20.04, 0201.20.06, 0201.20.10, 0201.20.30, 0201.20.50, 0201.30.02, 0201.30.04, 0201.30.06, 0201.30.10, 0201.30.30 or 0201.30.50	100%
9903.02.22	Articles of subheading 0201.10.50, 0201.20.80 or 0201.30.80	100%
9903.02.23	Meat of bovine animals, frozen (provided for in heading 0202); Articles of subheading 0202.10.05, 0202.10.10, 0202.20.02, 0202.20.04, 0202.20.06, 0202.20.10, 0202.20.30, 0202.20.50, 0202.30.02, 0202.30.04, 0202.30.06, 0202.30.10, 0202.30.30 or 0202.30.50	100%
9903.02.24	Articles of subheading 0202.10.50, 0202.20.80 or 0202.30.80.	100%
9903.02.25	Meat of swine, fresh or chilled (provided for in subheading 0203.11, 0203.12, or 0203.19)	100%
9903.02.26	Carcasses and half-carcasses of swine, frozen (provided for in subheading 0203.21)	100%
9903.02.27	Hams, shoulders and cuts with bone in, of swine, frozen (provided in subheading 0203.22)	100%
9903.02.28	Edible offal of bovine animals, fresh or chilled (provided for in subheading 0206.10)	100%
9903.02.29	Edible offal of bovine animals, frozen (provided for in subheading 0206.21, 0206.22 or 0206.29)	100%
9903.02.30	Roquefort cheese (provided for in subheading 0406.40.20 or 0406.40.40)	100%
9903.02.31	Onions (other than onion sets or pearl onions not over 16 mm in diameter) and shallots, fresh or chilled (provided for in subheading 0703.10.40)	100%
9903.02.32	Truffles, fresh or chilled (provided for in subheading 0709.52)	100%
9903.02.33	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared (provided for in subheading 0712.90.10)	100%
9903.02.34	Other prepared or preserved meat, meat offal or blood, of liver of any animal (provided for in subheading 1602.20)	100%
9903.02.35	Rusks, toasted bread and similar toasted products (provided for in subheading 1905.40)	100%
9903.02.36	Juices of any other single fruit, not elsewhere specified or included, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.80.60)	100%
9903.02.37	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof (provided for in subheading 2101.30)	100%
9903.02.38	Prepared mustard (provided for in subheading 2103.30.40)	100%

HTS	Articles the product of France, Germany, or Italy	Duty
9903.02.39	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid, whole or in pieces (provided for in subheading 2002.10)	100%
HTS	Articles the product of France and Germany	Duty
9903.02.40	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked (provided for in heading 0504)	100%
9903.02.41	Soups and broths and preparations (provided for in subheading 2104.10)	100%
9903.02.42	Single yarn (other than sewing thread), not put up for retail sale, containing 85 percent or more by weight of artificial staple fibers (provided for in subheading 5510.11)	100%
HTS	Articles the product of France	Duty
9903.02.43	Hams, shoulders and cuts of meat with of swine, with bone in, salted, in brine, dried or smoked (provided for in subheading 0210.11)	100%
9903.02.44	Wool grease (other than crude wool grease) and fatty substances derived from wool grease (including lanolin) (provided for in subheading 1505.90)	100%
9903.02.45	Chocolate and other food preparations containing cocoa, in blocks, slabs or bars, filled, weighing 2 kg or less each (provided for in subheading 1806.31)	100%
9903.02.46	Lingonberry and raspberry jams (provided for in subheading 2007.99.05)	100%
9903.02.47	Products suitable for use as glues or adhesives (other than animal glue, including casein glue, but not including fish glue) put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg (provided for in subheading 3506.10.50)	100%

Source: 64 *Federal Register* 40638, July 27, 1999. Does not include the United Kingdom.

Appendix B. Proposed Changes to Retaliation Lists (January 2009)

HTS	Articles the product of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden (added: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia)	Duty
9903.02.48	Meat of bovine animals, fresh or chilled (provided for in heading 0201); Articles of subheading 0201.10.05, 0201.10.10, 0201.20.02, 0201.20.04, 0201.20.06, 0201.20.10, 0201.20.30, 0201.20.50, 0201.30.02, 0201.30.04, 0201.30.06, 0201.30.10, 0201.30.30 or 0201.30.50	100%
9903.02.49	Articles of subheading 0201.10.50, 0201.20.80 or 0201.30.80	100%
9903.02.50	Meat of bovine animals, frozen (provided for in heading 0202); Articles of subheading 0202.10.05, 0202.10.10, 0202.20.02, 0202.20.04, 0202.20.06, 0202.20.10, 0202.20.30, 0202.20.50, 0202.30.02, 0202.30.04, 0202.30.06, 0202.30.10, 0202.30.30 or 0202.30.50	100%
9903.02.51	Articles of subheading 0202.10.50, 0202.20.80 or 0202.30.80.	100%
9903.02.52	Meat of swine, fresh or chilled (subheading 0203.11, 0203.12, or 0203.19)	100%
9903.02.53	Carcasses and half-carcasses of swine, frozen (provided for in subheading 0203.21)	100%
9903.02.54	Hams, shoulders and cuts with bone in, of swine, frozen (subheading 0203.22)	100%
9903.02.55	Processed meat of swine, frozen, other than carcasses and half-carcasses of swine and other than hams, shoulders, and cuts thereof, with bone in (provided for in subheading 0203.29.20).	100%
9903.02.56	Edible offal of bovine animals, fresh or chilled (provided for in subheading 0206.10)	100%
9903.02.57	Edible offal of bovine animals, frozen (subheading 0206.21, 0206.22 or 0206.29)	100%
9903.02.58	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen (provided for in heading 0207)	100%
9903.02.59	Hams, shoulders, and cuts thereof, with bone in, of swine, salted, in brine, dried or smoked (provided for in subheading 0210.11)	100%
9903.02.60	Meat of bovine animals, salted, in brine, dried or smoked (subheading 0210.20)	100%
9903.02.61	Meat of poultry of heading 0105, salted, in brine, dried or smoked (provided for in subheading 0210.99.20).	100%
9903.02.62	Roquefort cheese (provided for in subheading 0406.40.20 or 0406.40.40)	300%
9903.02.63	Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried or bleached (provided for in subheading 0604.91 or 0604.99.30).	100%
9903.02.64	Truffles, fresh or chilled (provided for in subheading 0709.52)	100%
9903.02.65	Rolled or flaked grains of oats (provided for in subheading 1104.12)	100%
9903.02.66	Grains of oats, hulled, pearled, sliced, kibbled or otherwise worked, not elsewhere specified or included (provided for in subheading 1104.22)	100%
9903.02.67	Sausages and similar products of beef, and food preparations based on these products, in airtight containers (provided for in subheading 1601.00.40)	100%
9903.02.68	Other prepared or preserved meat, meat offal or blood, of liver of any animal (provided for in subheading 1602.20)	100%

Articles the product of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden (added: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia)		
HTS		Duty
9903.02.69	Other prepared or preserved meat, meat offal or blood, of poultry of heading 0105 (provided for in subheading 1602.31, 1602.32, 1602.39)	100%
9903.02.70	Other prepared or preserved meat, meat offal or blood, of bovine animals (provided for in subheading 1602.50)	100%
9903.02.71	Chewing gum, whether or not sugar-coated, not containing cocoa (provided for in subheading 1704.10)	100%
9903.02.72	Chocolate and other food preparations containing cocoa, in blocks, slabs or bars, filled, weighing 2 kg or less each (provided for in subheading 1806.31)	100%
9903.02.73	Lingonberry and raspberry jams (provided for in subheading 2007.99.05)	100%
9903.02.74	Pears, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, nesi (provided for in subheading 2008.40)	100%
9903.02.75	Peaches, excl. nectarines, otherwise prepared/preserved, whether or not containing added sugar or other sweetening matter or spirit, nesi (subheading 2008.70.20)	100%
HTS	Articles the product of Finland, France, Ireland, the Netherlands, Sweden	Duty
9903.02.76	Meat of swine, frozen, not processed, other than carcasses and half-carcasses of swine and other than hams, shoulders, and cuts thereof, with bone in (provided for in subheading 0203.29.40)	100%
HTS	Articles the product of France	Duty
9903.02.77	Chestnuts (<i>Castanea</i> spp.), fresh or dried, whether or not shelled or peeled (provided for in subheading 0802.40)	100%
9903.02.78	Wool grease (other than crude wool grease) and fatty substances derived from wool grease (including lanolin) (provided for in subheading 1505.00.90)	100%
HTS	Articles the product of Austria, Cyprus, France or Poland	Duty
9903.02.79	Grape juice (including grape must), not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.61 or 2009.69)	100%
9903.02.80	Juices of any other single fruit, nesi, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.80.60)	100%
9903.02.81	Mixtures of juices, other than mixtures of vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.90.40)	100%
HTS	Articles the product of Italy	Duty
9903.02.81	Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored (provided for in subheading 2201.10).	100%

Source: 74 Federal Register 4264, January 23, 2009.

Appendix C. “Reduced List” of Products (Effective March 23, 2009)

Articles the product of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden	Duty
Meat of bovine animals, fresh or chilled (provided for in heading 0201); Articles of subheading 0201.10.05, 0201.10.10, 0201.20.02, 0201.20.04, 0201.20.06, 0201.20.10, 0201.20.30, 0201.20.50, 0201.30.02, 0201.30.04, 0201.30.06, 0201.30.10, 0201.30.30 or 0201.30.50	100%
Articles of subheading 0201.10.50, 0201.20.80 or 0201.30.80	100%
Meat of bovine animals, frozen (provided for in heading 0202); Articles of subheading 0202.10.05, 0202.10.10, 0202.20.02, 0202.20.04, 0202.20.06, 0202.20.10, 0202.20.30, 0202.20.50, 0202.30.02, 0202.30.04, 0202.30.06, 0202.30.10, 0202.30.30 or 0202.30.50	100%
Articles of subheading 0202.10.50, 0202.20.80 or 0202.30.80.	100%
Meat of swine, fresh or chilled (provided for in subheading 0203.11, 0203.12, or 0203.19)	100%
Carcasses and half-carcasses of swine, frozen (provided for in subheading 0203.21)	100%
Hams, shoulders and cuts with bone in, of swine, frozen (provided in subheading 0203.22)	100%
Edible offal of bovine animals, fresh or chilled (provided for in subheading 0206.10)	100%
Edible offal of bovine animals, frozen (provided for in subheading 0206.21, 0206.22 or 0206.29)	100%
Roquefort cheese (provided for in subheading 0406.40.20 or 0406.40.40)	100%
Truffles, fresh or chilled (provided for in subheading 0709.52)	100%
Other prepared or preserved meat, meat offal or blood, of liver of any animal (provided for in subheading 1602.20)	100%
Articles the product of Austria and France	Duty
Juices of any other single fruit, not elsewhere specified or included, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.80.60)	100%
Articles the product of France	Duty
Hams, shoulders and cuts of meat with of swine, with bone in, salted, in brine, dried or smoked (provided for in subheading 0210.11)	100%
Wool grease (other than crude wool grease) and fatty substances derived from wool grease (including lanolin) (provided for in subheading 1505.90)	100%
Chocolate and other food preparations containing cocoa, in blocks, slabs or bars, filled, weighing 2 kg or less each (provided for in subheading 1806.31)	100%
Lingonberry and raspberry jams (provided for in subheading 2007.99.05)	100%

Source: 74 *Federal Register* 40864, August 13, 2009; and 74 *Federal Register* 48808, September 24, 2009.

Appendix D. Chronology of the U.S.-EU Beef Hormone Dispute

1981-1988—The European Commission institutes a series of restrictions on livestock production (Directives 81/602, 88/146, and 88/299) limiting the use of natural hormones to therapeutic purposes, banning the use of synthetic hormones, and prohibiting imports of animals and meat from animals that have been administered with hormones.

Between 1986-1987, the United States raises the EU hormone ban in the Committee on Technical Barriers to Trade ("Standards Code"), and invokes dispute settlement under the Tokyo Round Agreement on Technical Barriers to Trade in the General Agreement on Tariffs and Trade (GATT). The EU delays implementing its ban until January 1, 1989. In late 1987, President Reagan announces, and suspends, retaliatory tariffs (100% *ad valorem*) on about \$100 million worth of EU imports.

Also during this time, various scientific reviews are initiated, including studies by the Commission, the Joint Expert Committee on Food Additives (JECFA) of the World Health Organization and the United Nations Food and Agriculture Organization, the Committee on Veterinary Drugs of the Codex Alimentarius Commission ("Codex"), and the U.S. Food and Drug Administration and comparable institutions in other countries.

1989—The EU fully implements its ban on meat and meat product imports from animals treated with six growth promotants, three which are naturally occurring—estradiol-17 β , progesterone and testosterone—and three which are synthetic—zeranol, trenbolone, and melengestrol. These six hormones are approved for use in the United States. The EU's ban effectively cuts off U.S. beef exports to the European Union. The United States institutes retaliatory tariffs (100% *ad valorem*) on EU imports valued at \$93 million, which remain in effect until May 1996, when the EU seeks a WTO panel against the U.S. action.

1995—The GATT Uruguay Round Agreement, including the Sanitary and Phytosanitary (SPS) Agreement, enters into force. Codex decides Maximum Residue Limits (MRLs) are not necessary for the three natural hormones and adopts MRLs for the two synthetics. The EU concludes that there is no evidence of health risk from the five hormones approved for use in the United States.

1996—The EU votes to maintain the ban. The United States requests a WTO dispute settlement panel case against the EU, claiming the ban is inconsistent with the EU's WTO obligations. Australia, Canada, and New Zealand join the United States in the complaint. The Commission issues a new Directive 96/22, which repeals the 1981 and 1988 directives, and confirms and extends the prohibitions. The law becomes effective July 1, 1997.

1997—A WTO dispute settlement panel releases its report, ruling that the EU ban on the use of hormones to promote the growth of cattle is inconsistent with its obligations under the SPS Agreement (specifically, Articles 3.1, 5.1, and 5.5), in that the ban is not based on science, i.e., on an adequate risk assessment or according to relevant international standards. The EU appeals the dispute panel's decision and also initiates a series of scientific studies on these six hormones.

1998—The WTO Appellate Body (AB) upholds the dispute panel's decision but overrules some panel findings. The AB decides the EU had not scientifically proven that the hormones in question posed a cancer risk to consumers; the AB also acknowledges that countries may adopt

stricter standards, if supported by an adequate risk assessment. The AB rules the EU ban does not constitute a hidden barrier to international trade. The WTO Dispute Settlement Body (DSB) adopts the panel decision and the AB rulings on the ban. The EU says it will implement the WTO ruling in “as short a time as possible.” Neither party is able to agree on a “reasonable period of time” for implementation; the arbitrator decides the EU needs 15 months (until May 13, 1999).

1999—In February, the EU outlines three options to resolve the dispute: (1) compensation, (2) removal of the ban coupled with a suitable labeling system, and (3) the conversion of the ban to a temporary measure. The United States sends a letter to EC Commissioners of Agriculture and of Trade outlining a possible labeling system. The United States backed by most of the U.S. beef industry, decides against various compensation measures, preferring instead removal of the ban. The EU decides it wants to conduct additional risk reviews before considering removing the ban. In March, the U.S. announces it will consider trade sanctions against the EU and publishes a preliminary list of products that could be subject to increased tariffs if the dispute is not resolved.

In April, the EU issues its first review and opinion based on studies by the EU’s Scientific Committee on Veterinary Measures relating to Public Health (SCVPH) on the potential human health risks associated with consumption of hormone-treated beef. The SCVPH opinion states that it has evidence to show that a growth hormone (estradiol-17 β) used in U.S. cattle production is carcinogenic, among other potential health risks to consumers. The report draws criticism from the United Kingdom’s Veterinary Products Committee, as outlined in a report.

The EU deadline for implementing the AB ruling expires on May 13. In July, the United States and Canada seek WTO authorization to suspend tariff concessions and retaliate against the European Union. The WTO sets the levels at \$116.8 million (United States) and C\$11.3 million (Canada). The Office of the U.S. Trade Representative (USTR) announces its decision to impose a 100% *ad valorem* rate of duty on a specified list of products from certain EU member states, effective July 29. The product list includes beef, pork, goose livers, cheese, truffles, onions, carrots, preserved tomatoes, sausage casings, soups, yarn, mustard, juice, chicory, toasted breads, chocolate, jams, glue, and wool grease. The U.S. list targets France, Germany, Italy, and Denmark, but excludes the United Kingdom.

2000—In May, the EU issues its second review and opinion based on studies by the EU’s SCVPH on the potential human health risks associated with consumption of hormone-treated beef. The review concludes that the new information does “not provide convincing data and arguments demanding revision of the conclusions” of the SCVPH April 1999 opinion on the “potential risks to human health from hormone residues in bovine meat and meat products.”

Congress passes legislation as part of the Trade and Development Act of 2000 (P.L. 106-200), requiring the USTR to review and periodically revise the list of products subject to retaliation when another country fails to implement a WTO dispute decision. This periodic revision of the product list has become known as “carousel retaliation.”

2001—The Commission provides documentation of studies and journals for publications. The United States and European Union initiate compensation discussions.

2002—In April, the EU issues its third review and opinion based on studies by the EU’s SCVPH on the potential human health risks associated with consumption of hormone-treated beef. The review concludes its review of the 17 studies initiated in 1998, and again confirms the previous findings of the two earlier reviews (1999 and 2000).

2003—In September, the Commission issues Directive 2003/74, amending 96/22. The new law permanently bans the use of estradiol in farm animals and provisionally bans use of the five other hormones, while it seeks more complete scientific information. The EU declares its effort to replace its original ban with a provisional ban is in compliance with its WTO obligations, citing Article 5.7 of the SPS Agreement (allows for provisional measures when there is insufficient scientific evidence, provided that a risk assessment is conducted within a reasonable time).

In October, the EU issues a press release claiming its ban is supported by the 1999 and 2002 SCVPH reviews, which constitute “a thorough risk assessment based on current scientific knowledge” and thus fulfill its WTO obligations. The United States questions whether the SCVPH studies constitute a risk assessment. The EU claims the United States and Canada have no legal basis for continuing trade sanctions against the EU. In December, the EU refers the dispute to the WTO for a multilateral decision.

2004-2005—The EU initiates a new dispute claiming that because it has modified its ban, the United States (and Canada) should remove its trade sanctions against the EU, as the continued retaliation by the United States and Canada is no longer consistent with WTO rules. The United States and Canada cases are effectively merged under the one panel cases, given largely identical substance, even though they are technically separate. Australia and Mexico join the consultations. The EU requests that a new WTO panel be established and the substantive panel meeting takes place in September 2005. It is the first WTP panel open for observation by the public.

2006—The WTO panel announces that due to the complexity of the dispute, and the administrative and procedural matters involved, the panel will not complete its work until October 2006.

The United Kingdom’s Veterinary Products Committee issues a second report criticizing the SCVPH findings.

In October, USTR decides against revising the list of EU products subject to higher U.S. import tariffs under the dispute. This decision is supported by the National Cattlemen’s Beef Association and the U.S. Meat Export Federation. The U.S. Court of International Trade determines this action meets requirements under “carousel retaliation.”

2007—The WTO panel again announces that due to the complexity of the scientific issues involved and scheduling difficulties, the panel’s final report is delayed until June 2007.

In June, the European Food Safety Authority (EFSA) adopts an opinion related to hormone residues in bovine meat and meat products based on its review of the scientific data. EFSA concludes that the new publicly available data do not provide quantitative information for a risk assessment and therefore do not call for a revision of previous risk assessments.

In July, the WTO panel issues its interim report, including findings and conclusions. The expected final report date is delayed until October 2007, and eventually is issued in December.

2008—In March, the WTO panel report is circulated to members. The panel announces that it found fault with all three parties (EU, United States, and Canada) on various substantive and procedural aspects of the dispute. The panel report claims the EU had not presented sufficient scientific evidence to justify the import ban, including the EU’s 2003 risk assessment report. The panel report faults the United States and Canada for maintaining its trade sanctions. Both parties file appeals citing procedural errors and disagreements with the panel findings.

In October, the WTO's AB issues a mixed ruling that allows for continued imposition of trade sanctions on the EU by the United States and Canada, but also grants that the EU can continue to ban imports of hormone-treated beef from the United States and Canada. The AB reverses the dispute panel decision by stating that the EU's ban is not incompatible with WTO law, thus granting the EU more deference in deciding the basis for its food safety regulations.

The USTR announces in October that it is seeking comment on possible modification of the list of EU products subject to increased tariffs under the dispute. In December 2008, the EU requests consultations under Article 21.5 of the DSU to determine whether it is in compliance with its WTO obligations in the underlying beef hormone dispute.

2009—In January, USTR announces changes to the list of EU products subject to increased tariffs under the dispute, adding countries and raising the tariff on select products, effective March 23, 2009. The EU claims USTR's action constitutes an "escalation" of the dispute, and is "more punitive" than the current trade sanctions. Initially the EU is prepared to challenge the United States in the WTO, but it subsequently decides to hold off on further action until the Obama Administration reviews the decision.

In February, further consultations between the United States and EU on the dispute are not successful, and the EU is expected to seek a dispute settlement panel on whether the ban is consistent with the SPS Agreement. In March, USTR announces that it is delaying the imposition of additional duties on a modified list of EU products until April 23, 2009. In April, this delay is further extended until May 9, 2009, pending ongoing efforts to negotiate a settlement between the United States and the EU.

On May 13, 2009, following a series of negotiations, the United States and the EU sign a memorandum of understanding (MOU) implementing an agreement that could resolve this longstanding dispute by further opening up the EU market to non-hormone treated beef. The terms of this agreement are to be phased in over the next few years.

2010—In October 2010, a U.S. Court of Appeals issued a decision in a case regarding duties paid by importers from the EU under the dispute, which could make them eligible for refunds.

Sources: Compiled by CRS from various USDA and WTO documents, as well as information from other organizations, such as the International Centre for Trade and Sustainable Development (ICTSD) periodic "Bridges" reports, and other news and press releases.

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