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MEMORANDUM

June 18, 2009

To: Clients and Friends of the Firm

From: George Thompson
Neville Peterson LLP

Re: Court of International Trade Decision in *Gilda Industries v. United States* Authorizes Refund of Improperly Collected “Beef Hormone Retaliatory Duties

The U.S. Court of International Trade (CIT) has ruled that the additional import tariffs imposed under Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411 *et seq.*) in the United States-European Union “beef hormones” trade dispute expired effective July 29, 2007. The court further found that the collection of those duties after the expiration date is illegal, and that the collected duties should be repaid to the plaintiff-importer. Accordingly, the court ordered a refund of the duties that the plaintiff in the action had paid to U.S. Customs after the retaliatory tariffs’ expiration. The CIT’s decision was issued in *Gilda Industries, Inc. v. United States*, Slip Op. 09-58 (June 16, 2009).

The CIT’s decision is based on a straightforward application of the statutory language. The statute directs that retaliatory tariffs are to expire after four years, unless the domestic industry that had sought the Section 301 remedy files a timely request for their continuation. Such a request was not filed for the “beef hormone” retaliatory tariffs. Accordingly, the court found that the tariffs had automatically expired at the end of the four year implementation period.

The court’s decision applies to payment of the retaliatory duties on entries made from July 29, 2007 to the present. Although the usual process for claiming refunds is through filing of protests with U.S. Customs, the court heard the case under 28 U.S.C. 1581(i) “residual” jurisdiction and did not require the importer to exhaust its administrative protest remedy. This choice is significant. The statute of limitations on protests is six months after liquidation of an entry. Because entries from the latter half of 2007 and first quarter of 2008 probably liquidated more than six months ago, the protest

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remedy would be unavailable for them. However, the residual jurisdiction provision has a two year limitations period. Therefore, importers would be in a position to seek duty refunds for the entire period from July 29, 2007 to the present.

Importers of goods covered by the retaliation list should take steps to claim refunds. A copy of the current list is attached. Please contact us with any questions about the court's decision or the process for seeking a refund of the retaliatory tariffs.

Although the Commission is approving the amended proposal because on balance the proposed changes represent a significant improvement over existing Rule 500, the Commission believes that the Exchange should continue to assess the rule's operation in order to determine whether it is appropriate to further eliminate impediments to voluntary delistings. We note that, even as amended, the NYSE's voluntary delisting rules continue to be more onerous than those of most other domestic markets.⁸⁴ Therefore, the Commission expects the NYSE to review the rule's restrictions on an ongoing basis to determine if they are necessary to protect investors, or whether they unnecessarily impede an issuer in changing marketplaces.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸⁵ that the proposed rule change (SR-NYSE-97-31), including Amendment Nos. 1 and 2, is approved.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 99-19102 Filed 7-26-99; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 3098]

United States—Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants to Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

August 1, 1999.

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION, CONTACT:

Vickie Alexander, Program Administrator, U.S.—Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839-4900; phone: 011-(20-2) 357-2925; fax: 011-(20-2) 354-8091; E-mail: alexanderva@state.gov

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

⁸⁴ See note 10, *supra*.

⁸⁵ 15 U.S.C. 78s(b)(2).

A solicitation for this program will begin August 1, 1999. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2000 must be postmarked by October 31, 1999. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board.

These include priorities in the areas of information technology, environmental technologies, biotechnology, standards and metrology, and manufacturing technologies. More information on these priorities and copies of the Program Announcement/Application may be obtained by request.

Brooke Holmes,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs and, Chair, U.S.—Egypt S&T Joint Board.

[FR Doc. 99-19151 Filed 7-26-99; 8:45 am]

BILLING CODE 4710-09-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-62a]

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

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the imposition of 100 percent *ad valorem* duties on certain articles.

SUMMARY: The United States Trade Representative (USTR) has decided to suspend the application of tariff concessions and related obligations by imposing a 100% *ad valorem* rate of duty on three articles described in the Annex to this notice that are the products of certain member States of the European Communities (EC) as a result of the EC's failure to implement the recommendations and rulings of the World Trade Organization (WTO)

Dispute Settlement Body (DSB) concerning the EC's ban on imports of U.S. meat from animals treated with certain hormones. This action constitutes the exercise of U.S. rights under Article 22 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act of 1974, as amended.

EFFECTIVE DATE: In accordance with U.S. rights under the DSU, effective July 29, 1999, a 100% *ad valorem* rate of duty shall be applied to the articles described in the Annex to this notice that are the products of one or more of the following EC member States—Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden—and that are entered, or withdrawn from warehouse, for consumption on or after July 29, 1999. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after July 29, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41. This action will follow authorization on July 26, 1999, by the DSB to suspend the application to the EC, and member States thereof, of concessions and related obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994).

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

FOR FURTHER INFORMATION CONTACT:

Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395-3419, for questions concerning documents and USTR procedures; William Busis, Associate General Counsel, (202) 395-3150 or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395-3320, for questions concerning WTO developments regarding the EC's hormone ban; John Valentine, Attorney, International Agreements Staff, U.S. Customs Service, (202) 927-1219, for questions concerning classification; and Yvonne Tomenga, Program Officer, Office of Trade Compliance, U.S. Customs Service, (202) 927-0133, for questions concerning entries.

SUPPLEMENTARY INFORMATION: In December 1985, the EC adopted a directive on livestock production restricting the use of natural hormones to therapeutic purposes, banning the use of synthetic hormones, and prohibiting imports of animals, and meat from animals, to which hormones had been administered. That directive was later declared invalid by the European Court of Justice on procedural grounds and

had to be re-adopted by the Council, unchanged, in 1988 ("the Hormone Directive"). These measures, including the ban on the import of meat and meat products produced from animals to which certain hormones had been administered (the "hormone ban"), became effective January 1, 1989.

Following entry into force on January 1, 1995, of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), the United States and, later, Canada, invoked formal WTO dispute settlement proceedings against the hormone ban. Prior to the establishment of the WTO panel, the EC replaced the Hormone Directive with another directive that re-codified and expanded the hormone ban. On May 20, 1996, the DSB established a dispute settlement panel ("the WTO panel") to examine the consistency of the hormone ban with the EC's WTO obligations.

On August 18, 1997, the WTO panel issued its report finding that the hormone ban is not based on scientific evidence, a risk assessment, or relevant international standards, in contravention of the EC's obligations under the SPS Agreement. Upon an appeal to the WTO Appellate Body, on January 16, 1998, the Appellate Body affirmed that the hormone ban is not consistent with the EC's obligations under the SPS Agreement. At a meeting held on February 13, 1998, the DSB adopted the Panel and Appellate Body reports regarding the EC's hormone ban.

The EC subsequently requested four years to implement the DSB recommendations. The United States could not agree to this proposed implementation period, and the matter was referred to a WTO arbitrator. The arbitrator determined that the reasonable period of time for implementation was fifteen months, and would expire on May 13, 1999.

The EC did not implement the DSB recommendations and rulings regarding its hormone ban by May 13, 1999. Accordingly, on May 17, 1999, and in accordance with U.S. rights under

Article 22 of the DSU, the United States requested authorization from the DSB to suspend the application to the EC, and member States thereof, of tariff concessions and related obligations under the GATT covering trade in an amount of \$202 million. The EC objected to the level of suspension proposed by the United States, and claimed that the trade damage suffered by the United States was only \$53 million. Pursuant to Article 22.6 of the DSU, the matter was referred to arbitration. The DSU provides that such arbitrations must be completed within 60 days of the end of the reasonable period of time for implementation, or in this case, by July 12, 1999.

The arbitrators issued their final decision on July 12, 1999, and determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was \$116.8 million per year. Accordingly, upon DSB authorization, the United States is entitled under the DSU to suspend the application to the European Communities and its member States of tariff concessions and related obligations under the GATT covering trade up to that amount. A meeting of the DSB is scheduled for July 26, 1999, at which time the DSB, pursuant to Article 22.7 of the DSU, will grant authorization for such suspension of concessions.

Prior Notice and Comment

On March 25, 1999, the USTR announced preparations for exercising its right to request authorization to suspend tariff concessions on EC products if the EC failed to implement the DSB's recommendations and rulings concerning the EC's hormone ban by May 13, 1999. (64 FR 14,486). The March 25 notice sought public comment on a preliminary list of EC products with respect to which the United States was considering the suspension of tariff concessions. On April 19, 1999, USTR conducted a public hearing to receive testimony on the preliminary list.

Determination and Action

As a result of the EC's failure to implement the recommendations and rulings of the DSB concerning the EC's hormone ban, and pursuant to the WTO arbitrators' decision of July 12, 1999 and the authorization of the DSB on July 26, 1999, the USTR will suspend tariff concessions and related obligations under the GATT 1994 by imposing a 100% *ad valorem* rate of duty on the articles described in the Annex to this notice that are the products of certain EC member States. The amount of trade affected by this action, as measured by an average of 1996-1998 import values, is equivalent to the level of nullification or impairment (\$116.8 million) determined by the WTO arbitrators in their decision of July 12, 1999.

This action exercises the rights of the United States under Article 22 of the DSU and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act. The articles affected by this determination were selected in light of the comments submitted to the Section 301 Committee in response to the March 25, 1999 notice and the testimony presented at the public hearing held on April 19, 1999.

Accordingly, effective July 29, 1999, with respect to articles that are the products of one or more of the following EC member States—Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden—and that are entered, or withdrawn from warehouse, for consumption on or after July 29, 1999, the Harmonized Tariff Schedule of the United States is hereby modified in accordance with the Annex to this notice. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after July 29, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41.

William L. Busis,
Chairman, Section 301 Committee.

BILLING CODE 3190-01-M

Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheadings to subchapter III of chapter 99 to the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", respectively.

	"Articles the product of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden:	
	Meat of bovine animals, fresh or chilled (provided for in heading 0201):	
9903.02.21	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%
	Meat of bovine animals, frozen (provided for in heading 0202):	
9903.02.23	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 thereof, with bone in, of swine, frozen (provided for 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	Juice 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%

9903.02.39	Articles the product of France, the Federal Republic of Germany, or Italy: Tomatoes prepared or preserved otherwise than by vinegar or acetic acid, whole or in pieces (provided for in subheading 2002.10).....	100%
9903.02.40	Articles the product of France or the Federal Republic of Germany: 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 therefor (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%
9903.02.43	Articles the product of France: Hams, shoulders and cuts of meat 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% ^a

[FR Doc. 99-19174 Filed 6-26-99; 8:45 am]

BILLING CODE 3190-01-C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 16, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-99-5950.

Date Filed: July 13, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 ME 0070 dated July 13, 1999

Mail Vote 019—Resolution 010u

TC2 Within Middle East Special Passenger Amending Resolution

Intended effective date: August 15, 1999.

Docket Number: OST-99-5963.

Date Filed: July 14, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC12 USA-EUR 0079 dated July 2, 1999

TC12 North Atlantic USA-Europe

Resolution r1-r29

PTC12 USA-Europe 0083 dated July 9,

1999—Minutes

PTC12 USA-Europe Fares 0036 dated July

13, 1999—Tables

Intended effective date: November 1, 1999.

Docket Number: OST-99-5988.

Date Filed: July 15, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC12 USA-EUR Fares 0033 dated July

16, 1999

USA-UK Add-on Amounts

Intended effective date: October 1, 1999.

Docket Number: OST-99-5994.

Date Filed: July 15, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PAC/Reso/406A dated June 18, 1999

22nd PAC—Resolution 822

(Minutes, contained in PAC/Meet/160 dated June 18, 1999, are being filed this date with the non-U.S. portion of the agreement.)

Intended effective date: December 1, 1999.

Docket Number: OST-99-5995.

Date Filed: July 15, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PAC/Reso/406 dated June 18, 1999

22nd PAC—Finally Adopted Resolutions

r1-22

PAC/Meet/160 dated June 18, 1999—

Minutes

Intended effective date: December 1, 1999.

Andrea M. Jenkins,

Supervisory Dockets Officer.

[FR Doc. 99-19144 Filed 7-26-99; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 16, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-99-5948.

Date Filed: July 12, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 9, 1999.

Description: Application of Steven Wilson d/b/a Air Excursions, d/b/a Chilkat Aviation pursuant to 49 U.S.C. Section 41101 and Subpart Q, applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled, interstate transportation of persons, property and mail.