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**Shirl Thomas,**

*Director, External Affairs.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-100a]

### Implementation of WTO Recommendations Concerning the European Communities' Regime for the Importation, Sale and Distribution of Bananas

**AGENCY:** Office of the United States  
Trade Representative.

**ACTION:** Notice of United States  
suspension of tariff concessions.

**SUMMARY:** The United States Trade Representative (USTR) has decided to suspend the application of tariff concessions and to impose a 100% *ad valorem* rate of duty on the 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 regime for the importation, sale and distribution of bananas (banana regime). This action constitutes the exercise of U.S. rights under Article 22.6 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:** The USTR has determined that, effective April 19, 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 Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom and that are entered, or withdrawn from warehouse, for consumption on or after March 3, 1999. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after April 19, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41.

**ADDRESSES:** 600 17th Street, NW,  
Washington, DC 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 banana regime; John Valentine, Acting Director, 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:** On September 27, 1995, the Office of the U.S. Trade Representative initiated an investigation pursuant to section 302(b)(1) of the Trade Act with respect to the EC banana regime and, in accordance with section 303(a) of the Trade Act, promptly requested consultations with the EC pursuant to the DSU and relevant provisions of several WTO agreements. [60 FR 52026]. The EC regime was designed, among other things, to take away a major part of the banana distribution business of U.S. companies. Subsequently the United States, Ecuador, Guatemala, Honduras, and Mexico jointly requested the establishment of a WTO dispute settlement panel to examine the regime. Both the panel and the WTO Appellate Body found the EC banana regime in violation of the General Agreement on Tariffs and Trade 1994 (GATT) and the General Agreement on Trade in Services (GATS). On September 25, 1997, the DSB adopted the report of the panel, as modified by the Appellate Body. The resulting DSB recommendations and rulings include, *inter alia*, the recommendation that the EC bring the measures found to be inconsistent with the GATT and the GATS into conformity with its obligations under those agreements. A WTO-appointed arbitrator subsequently determined that the "reasonable period of time" for the EC to implement the DSB recommendations and rulings would expire by January 1, 1999.

Based on the results of the WTO dispute settlement proceedings, the USTR on February 10, 1998, determined pursuant to section 304 of the Trade Act that the EC banana regime violates trade agreements. [63 FR 8248]. The USTR further determined that the EC's undertaking to implement all of the recommendations and rulings of the WTO reports by January 1, 1999 constituted for the purposes of section 301(a)(2)(B)(i) the taking of satisfactory measures to grant the rights of the

United States under the those trade agreements. Therefore, pursuant to section 301(a)(2), the USTR terminated the investigation without taking action under section 301 of the Trade Act. The USTR stated in the termination notice that it would monitor the EC's implementation of the DSB recommendations and rulings under section 306 of the Trade Act.

On January 1, 1999, modifications to the EC banana regime became effective (EC Regulations 1637/98 and 2362/98), and the EC claimed that these modifications brought its banana regime into conformity with its WTO obligations. However, these regulations perpetuate discriminatory aspects of the EC banana regime that were identified in the DSB's recommendations and rulings as inconsistent with WTO agreements. Therefore, on January 14, 1999, 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 US \$520 million. [www.ustr.org, Press Release 99-01]. On January 29, the EC objected to the level of suspension proposed by the United States and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. Under DSU procedures, the arbitration should have been completed by March 2, 1999. However, on March 2 the arbitrators issued only an initial decision and requested further information from the parties. On March 3, USTR announced that the U.S. Customs Service would begin withholding liquidation and reviewing the sufficiency of bonds on imports of selected European products. The purpose of this announcement was to ensure that, upon issuance of the arbitrators' final decision, the United States would be in the same position to take action as it would have been had the arbitrators issued their decision by the March 2 deadline.

On April 6, the arbitrators issued their final decision determining that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent banana regime is \$191.4 million per year and that the United States is entitled 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 was then scheduled for April 19, 1999, at which the DSB, pursuant to Article 22.7 of the DSU, shall grant

authorization for such suspension of concessions.

#### **Prior Notice and Comment**

On October 22, 1998, the USTR announced preparations for exercising its right to request authorization to suspend tariff concessions on European products if the EC failed to implement the DSB's recommendations and rulings concerning the banana regime by January 1, 1999. [63 FR 56687]. On November 10, the USTR sought public comment on a preliminary list of European products on which the United States was considering suspending tariff concessions. [63 FR 63099]. On December 9, USTR conducted a public hearing to receive testimony on the preliminary list. On December 21, the USTR announced a revised list of European products for which the United States intended to request authorization from the DSB to suspend tariff concessions. [[www.ustr.org](http://www.ustr.org), Press Release 98-113]. On December 29, the USTR sought public comment on the possible addition of two products to the list. [63 FR 71665; [www.ustr.org](http://www.ustr.org), Press Release 99-01].

Both the November 10 and December 21 **Federal Register** notices explained that the proposed imposition of a 100% *ad valorem* rate of duty would take effect on February 1, 1999, unless the

EC requested arbitration on the proposed suspension of tariff concessions, in which case the proposed rate of duty would take effect on March 3. [63 FR at 63099; 63 FR at 71666].

#### **Determination and Action**

As a result of the EC's failure to implement the recommendations and rulings of the DSB concerning the EC's banana regime and following the WTO arbitrators' decisions of March 2 and April 6, the USTR has decided to suspend tariff concessions and related obligations under the General Agreement on Tariffs and Trade 1994 and to impose 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. 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 October 22, November 10, and December 23 notices, and the testimony presented at the public hearing held on December 9, 1998.

Accordingly, effective April 19, 1999, with respect to articles that are the

products of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom and that are entered, or withdrawn from warehouse, for consumption on or after March 3, 1999, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting the provisions listed in the Annex to this notice in numerical sequence in subchapter III of chapter 99, with the content of the new subheadings and superior text set forth in the HTS columns designated "Heading/Subheading," "Article Description," and "Rate of Duty General," respectively. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after April 19, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41. The amount of trade affected by this action, as measured by 1998 import values, is equivalent to the level of nullification or impairment determined by the WTO arbitrators in their decision of April 6, 1999.

**Joanna K. McIntosh,**  
*Chairman, Section 301 Committee.*

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## 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, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom:	
9903.08.04	Bath preparations, other than bath salts (provided for in subheading 3307.30.50).....	100%
9903.08.07	Handbags, whether or not with shoulder strap, including those without handle, with outer surface of sheeting of plastic (provided for in subheading 4202.22.15).....	100%
9903.08.08	Articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, of reinforced or laminated plastics (provided for in subheading 4202.32.10).....	100%
9903.08.09	Uncoated felt paper and paperboard in rolls or sheets (provided for in subheading 4805.50).....	100%
9903.08.10	Folding cartons, boxes and cases, of noncorrugated paper or paperboard (provided for in subheading 4819.20).....	100%
9903.08.11	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation (provided for in subheading 4911.91.20).....	100%
9903.08.13	Bed linen, other than knit or crocheted, printed, of cotton, other than containing any embroidery, lace, braid, edging, trimming, piping or applique work, not napped (provided for in subheading 6302.21.90).....	100%
9903.08.14	Lead-acid storage batteries, other than of a kind used for starting piston engines or as the primary source of electrical power for electrically powered vehicles of subheading 8703.90 (provided for in subheading 8507.20.80).....	100%
	Articles the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom:	
9903.08.15	Electrothermic coffee or tea makers, of a kind used for domestic purposes (provided for in subheading 8516.71).....	100%"

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