

CUSTOMS UPDATE

HOGAN &
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Measures To Go Into Effect on March 23, 2009, Will Impose 100% or More *Ad Valorem* Tariffs on Selected Food and Agricultural Products From Specified EU Countries

USTR Issues Final Revised Tariff Retaliation List in EC-U.S. Beef Hormone Dispute

Background

As a result of successful trade litigation commenced by the United States, the World Trade Organization (WTO) Dispute Settlement Body in August 1998 issued a ruling determining that a European Community (EC) ban on imports of beef from hormone-treated cattle nullifies and impairs U.S. benefits under the WTO Agreement, and in July 1999 authorized the United States to suspend tariff concessions to the EC covering trade in an amount of \$116.8 million annually. Pursuant to that authorization, the United States, commencing in July 1999, has imposed punitive 100% *ad valorem* duties on a selected list of food and agricultural products from certain EU countries. Subsequent WTO litigation has upheld the United States' retaliatory measures.

On November 6, 2008, the U.S. Trade Representative's Office (USTR) published notice of proposed revisions to the 1999 retaliation list and solicited public comments. On January 14, 2009, the USTR approved a final retaliation list with revised tariff requirements effective for entries or withdrawals for consumption on or after March 23, 2009.

Revised Retaliation List Issued – Products Added/Removed and Country Coverage Changed Effective March 23, 2008

The revised retaliation list was developed after interagency consideration of approximately 600 public comments and after lobbying efforts undertaken by various private interests potentially affected.

The revised retaliation list includes:

- (1) **Product removals** – entirely removes certain products from the list currently subject to 100% *ad valorem* duties (e.g., certain onions; dried carrots; rusks and toasted breads; chicory and coffee substitutes; prepared mustard; preserved tomatoes; animal guts, bladders, and stomachs; soups and broths; certain single yarn; and certain glues);
- (2) **Product additions** – imposes new 100% *ad valorem* duties on additional products (e.g., various types of meats (poultry meat, salted ham, beef, etc.), foliage branches, sausage, and



offal products, chewing gum, pears and peaches, chestnuts (from France only), certain oat products, grape and mixed juices, mineral waters, and others);

- (3) **Changes in country coverage** – (a) expands the country coverage for most products included on the revised list to include the more-recently added Eastern European EC member states (Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and Slovenia); and (b) limits country coverage for certain products previously on the list (e.g., tariffs on other single fruit juices, HTS 2008.80.60, is now limited to Austria, Cyprus, France, and Poland); and
- (4) **300% Duty on Roquefort Cheese** – raises the tariff level for one product, Roquefort cheese (HTS 0406.40.20 or 0406.40.40), to 300% *ad valorem* (see attached – Annex 2).

A copy of the revised annex is attached to this alert. Companies interested in determining whether particular products or member countries are affected by these revised measures are encouraged to contact Hogan & Hartson.

Retaliation List Subject to Further Revisions in Six Months

Under the relevant statutes, the USTR must normally reevaluate the retaliation target list every six months. Accordingly, should the United States and the EC fail to resolve the underlying EC Beef-Hormone dispute before then, the USTR's office may publish notice as early as June 2009 proposing a new round of modifications.

Hogan & Hartson's trade attorneys are prepared to consult with companies concerning such actions and to provide the required legal assistance.

By Craig A. Lewis

About the Customs Update

Hogan & Hartson periodically publishes *Customs Updates* to notify clients of substantial regulatory and legal changes that could affect global companies. If you have any questions concerning the above information, please contact one of the customs attorneys below.

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REVISED RETALIATION LIST - EFFECTIVE MARCH 23, 2009**Annex**

A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after March 23, 2009, 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 superior text and subheadings are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading," "Article Description," and "Rates of Duty 1--General," respectively:

Articles the product of Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain or Sweden:

Meat of bovine animals, fresh or chilled (provided for in heading 0201):

9903.02.48.....	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%

Meat of bovine animals, frozen (provided for in heading 0202):

9903.02.50.....	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 (provided for in 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 thereof, with bone in, of swine, frozen (provided for in 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 (provided for in 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 (provided for in 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 and 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 0709.59.10).	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%
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, not elsewhere specified or included (provided for in subheading 2008.40).	100%
9903.02.75.....	Peaches, excluding nectarines, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included (provided for in subheading 2008.70.20).	100%

Articles the product of Finland, France, Ireland, the Netherlands or Sweden:

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%
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Articles the product of France:

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%

Articles the product of Austria, Cyprus, France or Poland:

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.....	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%
9903.02.81.....	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%

Articles the product of Italy:

9903.02.82..... Mineral waters and aerated waters, not containing added sugar 100%
or other sweetening matter nor flavored (provided for in
subheading 2201.10).

B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after March 23, 2009, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is modified by deleting the following HTS subheadings:

9903.02.21, 9903.02.22, 9903.02.23, 9903.02.24, 9903.02.25, 9903.02.26, 9903.02.27, 9903.02.28, 9903.02.29, 9903.02.30, 9903.02.31, 9903.02.32, 9903.02.33, 9903.02.34, 9903.02.35, 9903.02.36, 9903.02.37, 9903.02.38, 9903.02.39, 9903.02.40, 9903.02.41, 9903.02.42, 9903.02.43, 9903.02.44, 9903.02.45, 9903.02.46 and 9903.02.47.