

EC MEASURES CONCERNING MEAT AND MEAT PRODUCTS (HORMONES)

Notification of an Appeal by the European Communities under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 24 September 1997, sent by the European Communities to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Article 16:4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures for Appellate Review, the European Communities hereby notifies its decision to appeal to the Appellate Body certain findings and the conclusions of the Panel on *European Communities - Measures concerning meat and meat products (hormones)* - Complaint by the United States (WT/DS26/R/USA).

The European Communities request that the Appellate Body review the following errors of issues of law covered in the panel report and legal interpretations developed by the Panel:

1. The Panel erred in law in finding that the European Communities has acted inconsistently with the requirements contained in Article 3:1 of the SPS Agreement, in particular in its legal interpretation of the concepts of "based on", burden of proof, appropriate level of sanitary protection chosen by the European Communities, the justifications required of the European Communities to show that it has fulfilled the conditions of Article 3:3 of the SPS Agreement, and the role assigned to the recommendations of Codex Alimentarius as international standards for the five hormones in dispute, when used for growth promotion in accordance with good practice.
2. The Panel erred in law in finding that the European Communities has acted inconsistently with the requirements contained in Article 5:1 of the SPS Agreement for the six hormones in dispute, in particular in its legal interpretation of the techniques and the factors to be taken into account for the assessment of risk, the concepts of "identifiable" risk and weight of evidence in case of scientific uncertainty, and the legal reasons for which the scientific and other evidence which was invoked by the European Communities could not meet the requirements of Articles 5.1-5.2 of the SPS Agreement.

3. The Panel erred in law in finding that the European Communities has acted inconsistently with the requirements contained in Article 5:5 of the SPS Agreement, in particular in its legal interpretation of the provisions of Article 5:5 and the reasons for which it found "arbitrary or unjustifiable distinctions" in the levels of sanitary protection applied by the European Communities in "different situations" for both the natural and synthetic hormones (including the hormone MGA) used as growth promoters, as opposed to those occurring endogenously in meat and other natural products and for Carbadox, and of its interpretation and application of the phrase "discrimination or a disguised restriction on international trade".
4. The Panel erred in law in its findings that the European Communities violated Articles 3:1, 3:3, 5:1 and 5:5 of the SPS Agreement because these findings are based on legal reasoning which failed to interpret these provisions in their proper context, in particular the sovereign right of States to determine their appropriate level of sanitary protection; and its failure to exercise proper judicial self-restraint. The panel also failed to apply the appropriate standards of review and the appropriate burden of proof, to show deference to the scientific and factual determinations made by the authorities of the European Communities, thus substituting its scientific judgment for that of the EC; and it failed to examine the applicability of the precautionary principle to all hormones in dispute, it distorted and interpreted erroneously the scientific and factual evidence submitted or referred to it by the European Communities, and it failed to make an objective assessment (as required by the DSU) of the scientific evidence presented to it by some of the scientific experts it has chosen.
5. The Panel erred in law in the procedural and organizational decisions it has taken as regards the selection of the scientific and technical experts, the mandate and questions submitted to those experts, the extended third-party rights it granted to Canada in the proceeding and its refusal to request the United States to provide copies of the scientific evidence on which it granted the authorizations for the use of the six hormones in dispute for animal growth promotion.