WORLD TRADE ORGANIZATION

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EUROPEAN COMMUNITIES – MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS

Recourse to Article 22.2 of the DSU by the United States

The following communication, dated 17 January 2008, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), the United States requests authorization from the Dispute Settlement Body ("DSB") to suspend concessions and other obligations with respect to the European Communities under the covered agreements at an annual level equivalent to the annual level of nullification or impairment of benefits accruing to the United States resulting from the European Communities' failure to bring measures of the European Communities and its member States concerning the approval and marketing of biotech products into compliance with the recommendations and rulings of the DSB in *European Communities – Measures Affecting the Approval and Marketing of Biotech Products* (WT/DS291).

On 29 August 2003, the DSB established a panel at the request of the United States to examine measures of the European Communities and its member States concerning the approval and marketing of biotech products. The panel found certain of these measures of the European Communities and its member States to be inconsistent with the European Communities' obligations under the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("SPS Agreement"). On 21 November 2006, the DSB adopted the report of the panel. The DSB recommendations and rulings include, *inter alia*, the recommendation that the European Communities bring the measures of the European Communities and its member States into conformity with the European Communities' obligations under the SPS Agreement (WT/DS291/33, WT/DS291/R, paras. 8.16, 8.20, 8.32).

Pursuant to Article 21.3(b) of the DSU, the United States and the European Communities agreed that the reasonable period of time ("RPT") for the European Communities to implement the DSB's recommendations and rulings would expire on 21 November 2007 (WT/DS291/35). The United States and the European Communities subsequently agreed to extend the RPT to 11 January 2008 (WT/DS291/36). In the view of the United States, the European Communities failed to comply with the recommendations and rulings of the DSB by the end of the RPT, and therefore the United States is entitled to redress under Article 22 of the DSU.

In considering what concessions to suspend, the United States followed the principles and procedures set forth in Article 22.3 of the DSU. As required by Article 22.4 of the DSU, the level of suspension proposed is equivalent on an annual basis to the level of nullification or impairment of benefits accruing to the United States resulting from the European Communities' failure to bring the

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measures of the European Communities and its member States into compliance with the DSB's recommendations and rulings.

The suspension of concessions and other obligations would occur in one or more of the following:

1. tariff concessions and related obligations (including most-favored-nation obligations) under the *General Agreement on Tariffs and Trade 1994* on a list of products of the European Communities and/or EC member States to be drawn from the Harmonized Tariff Schedule of the United States;

2. concessions and other obligations under the SPS Agreement; and

3. concessions and other obligations under the *Agreement on Agriculture*.

The United States intends to suspend benefits at an annual level equal to the annual nullification or impairment of benefits accruing to the United States with respect to biotech products (as that term is defined in the panel report) and products produced from or containing biotech products.

In particular, for each category of affected biotech product, except biotech products used for cultivation, and for each category of products produced from or containing biotech products, the annual level of nullification or impairment will be the lost value of US shipments to the European Communities (including any newly admitted EC member States) of that category due to the failure of the European Communities to bring the measures of the European Communities and its member States into compliance.

For biotech products used for cultivation within the European Communities, the annual level of nullification or impairment will be the lost value of US exports and US royalties and licensing fees for each category of biotech crop due to the failure of the European Communities to bring the measures of the European Communities and its member States into compliance.