

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

[Docket No. WTO/DS315]

**WTO Dispute Settlement Proceeding
Regarding European Communities-
Selected Customs Matters**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on March 21, 2005, in accordance with the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), a the WTO Dispute Settlement Body ("DSB") established a dispute settlement panel at the request of the United States regarding (a) the non-uniform administration by the European Communities of laws, regulations, judicial decisions, and administrative rulings pertaining to the classification and valuation of products for customs purposes, and to requirements, restrictions or prohibitions on imports, and (b) the failure of the European Communities to institute judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before May 2, 2005, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to FR0448@ustr.gov, Attn: "European Communities-Selected Customs Matters (DS315)" in the subject line, or (ii) by fax to Sandy McKinzy, at 202-395-3640, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: Theodore R. Posner, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)), USTR is providing notice that a dispute settlement panel was established at the March 21, 2005 meeting of the WTO Dispute Settlement Body to examine (1) the administration

of customs laws, regulations, decisions, and rulings in the European Communities ("EC"), and (2) the availability of EC tribunals or procedures for the prompt review and correction of administrative action relating to customs matters.

Major Issues Raised by the United States

On September 21, 2004, the United States requested consultations with the European Communities pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") regarding

(a) The non-uniform administration by the European Communities of laws, regulations, judicial decisions and administrative rulings pertaining to the classification and valuation of products for customs purposes, and to requirements, restrictions or prohibitions on imports, and

(b) the failure of the European Communities to institute judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters.

Consultations were held on November 16, 2004, but failed to resolve the dispute.

The principal law-making organs of the European Communities, the Council and the Commission, over time have adopted certain measures pertaining to the classification and valuation of imported goods for customs purposes, as well as procedures for the entry and release of goods into the European Communities. These measures include:

- Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, including all annexes thereto, as amended;
- Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, including all annexes thereto, as amended;
- Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended;
- The Integrated Tariff of the European Communities established by virtue of Article 2 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff,

including all annexes thereto, as amended; and

- For each of the above laws and regulations, all amendments, implementing measures and other related measures.

Administration of the foregoing measures generally is a matter for the national customs authorities in each EC member State. This has led to disparate administration in a number of important areas, including but not limited to:

- Differences in the classification and valuation of goods;
- Differences in procedures for the classification and valuation of goods, including the provision of binding classification and valuation information to importers;
- Differences in procedures for the entry and release of goods, including use of automation in some member States but not others, different certificate of origin requirements, different criteria among member States for the physical inspection of goods, different licensing requirements for importation of food products, and different procedures for processing express delivery shipments;
- Differences in procedures for auditing entry statements after goods are released into the stream of commerce in the European Communities;
- Differences in penalties and differences in procedures regarding the imposition of penalties for violation of customs rules; and
- Differences in record-keeping requirements.

USTR believes the lack of uniformity in administration of EC customs measures to be inconsistent with the obligations of the European Communities, as a member of the World Trade Organization, under Article X:3(a) of the GATT 1994. Article X:3(a) requires a WTO Member to "administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in [Article X:1]." Disparate administration from member State to member State appears to be inconsistent with the requirement of uniformity.

Furthermore, the Community Customs Code expressly provides that EC member States are responsible for appeals from administrative decisions on customs matters. Thus, an importer or other interested party seeking to challenge a decision by national customs authorities must bring its appeal to a national administrative tribunal or court. USTR understands that only after proceeding through administrative and/or judicial review is the interested party able to have the

matter considered by the European Court of Justice.

The lack of procedures for prompt review by a tribunal with EC-wide jurisdiction appears to be inconsistent with the European Communities' obligation under Article X:3(b) of the GATT 1994, which provides, in relevant part, "Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters."

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons may submit their comments either (i) electronically, to FR0448@ustr.gov, Attn: "European Communities-Selected Customs Matters (DS315)" in the subject line, or (ii) by fax to Sandy McKinzy, at 202-395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and "BUSINESS CONFIDENTIAL" must be marked at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS315, European Communities-Selected Customs Matters Dispute) may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST-2005-20331]

RIN 2105-AD48

Notice of Information Collection Approval

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of information collection approval.

SUMMARY: This notice announces the Office of Management and Budget (OMB) approval of the information collection request (ICR) OMB No. 2105-0552, "Reports by Carriers on Incidents Involving Animals During Air Transport" and provides a specific compliance date of Wednesday, June 15, 2005, for carriers to begin submitting monthly reports to the Department of Transportation's Aviation Consumer Protection Division (ACPD) on incidents involving the loss, injury, or death of an animal during air transport.

DATES: The expiration date for the ICR is March 31, 2008.

FOR FURTHER INFORMATION CONTACT:

Blane A. Workie, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington, DC 20590, (202) 366-9342 (voice), (202) 366-7152 (Fax) or blane.workie@dot.gov (e-mail). Arrangements to obtain the notice in an alternative format may be made by contacting the above-named individuals.

SUPPLEMENTARY INFORMATION: On

February 14, 2005, the Office of the Secretary (OST) published a final rule on "Reports by Carriers on Incidents Involving Animals During Air Transport." 70 FR 7392. This OST rule requires air carriers that provide scheduled passenger air transportation to submit a monthly report to DOT's ACPD on any incident involving the loss, injury or death of an animal during air transportation. It also clarifies that the report on incidents involving the loss, injury, or death of an animal during air transport shall be made in the form and manner set forth in reporting directives issued by the Deputy General Counsel.

On February 25, 2005, as promised in the OST rulemaking, a reporting directive issued by the Deputy General Counsel setting forth the form and manner in which carriers must submit the required data on loss, injury, or death of an animal during air transport was published in the **Federal Register**. 70 FR 9217. At the time of publication of both the final rule and the reporting directive, the Department had not as yet obtained an OMB control number for its information collection request and consequently had not established a specific compliance date on which carriers must begin to submit monthly reports on incidents involving the loss, injury, or death of an animal during air transport.

OMB regulations implementing provisions of the Paperwork Reduction Act of 1995 require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, OST has received OMB approval of the following ICR:

OMB Control Number: 2105-0552.

Title: Reports by Carriers on Incidents Involving Animals During Air Transport.