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[FR Doc. E8-26464 Filed 11-5-08; 8:45 am]

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2008 Annual Review

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

**ACTION:** Notice.

**SUMMARY:** With respect to the Annual Review under the ATPA, the Office of the United States Trade Representative (USTR) received no new petitions in August-September 2008 to review certain practices in a beneficiary developing country to determine whether such country is in compliance with the ATPA eligibility criteria. USTR received updates to two petitions that are currently under review and a request to withdraw a petition that was under review. This notice specifies the status of the petitions filed in prior years that have remained under review. This notice does not relate to the Bolivia-specific review initiated on October 1, 2008 (73 FR 57158).

**FOR FURTHER INFORMATION CONTACT:** Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395-9446.

**SUPPLEMENTARY INFORMATION:** The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107-210) and the Act to Extend the Andean Trade Preference Act (Pub. L. 110-436), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended. The 2008 Annual ATPA Review is the fifth such review to be conducted pursuant to the ATPA regulations.

In a **Federal Register** notice dated August 14, 2008, USTR initiated the 2008 ATPA Annual Review and announced a deadline of September 15, 2008 for the filing of petitions (73 FR 47633). Chevron submitted information updating the petition it originally filed in 2004, which remains under review. USTR also received updated information from the U.S./Labor Education in the Americas Project (US/

LEAP) concerning its petition related to worker rights in Ecuador, which has been under consideration since the 2003 ATPA review. The AFL-CIO filed a submission which indicated that it is no longer seeking a removal of ATPA benefits from Ecuador over worker rights issues. The Trade Policy Staff Committee (TPSC) is therefore terminating its review of the AFL-CIO petition filed in 2003.

Following is the list of all petitions from prior years that will remain under review through December 31, 2009, which is the period that the ATPA is in effect:

*Ecuador* Human Rights Watch.  
*Ecuador* U.S./Labor Education in the Americas Project.  
*Ecuador* Chevron Texaco.  
*Peru* Princeton Dover.  
*Peru* Duke Energy.

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. E8-26546 Filed 11-5-08; 8:45 am]

BILLING CODE 3190-W9-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2008-0036]

### Review of Action Taken in Connection With WTO Dispute Settlement Proceedings on the European Communities' Measures Concerning Meat and Meat Products

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

**ACTION:** Request for comments.

**SUMMARY:** The interagency section 301 Committee is soliciting written comments on possible modifications to the action taken by the United States Trade Representative ("Trade Representative") in connection with the World Trade Organization ("WTO") authorization in the *EC-Beef Hormones* dispute to the United States to suspend concessions and related obligations with respect to the European Communities ("EC"). The *EC-Beef Hormones* dispute concerned the EC's ban on the import of U.S. meat and meat products produced from animals treated with any of six hormones for growth promotion purposes. Annex I to this notice contains a list of EC products with respect to which the United States is currently imposing increased rates of duty (100 percent *ad valorem*) pursuant to the WTO's authorization. Annex II to this notice contains a list of potential alternative products under consideration for the imposition of increased duties. Comments are

requested with respect to (i) whether products listed in Annex I should be removed from the list or remain on the list (and if a product remains on the list, whether the currently applied rate of duty should be increased), (ii) whether products listed in Annex II should be included on a revised list and be subjected to increased rates of duty, and (iii) the products of which member States of the EC should be subjected to increased rates of duty.

**DATES:** To be assured of consideration, comments should be submitted by 5 p.m. on December 8, 2008.

**ADDRESSES:** Comments should be submitted (i) electronically via the Internet at <http://www.regulations.gov>, 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 <http://www.regulations.gov>.

### FOR FURTHER INFORMATION CONTACT:

Gwendolyn Diggs, Staff Assistant to the section 301 Committee, (202) 395-5830, for questions concerning procedures for filing submissions in response to this notice; Roger Wentzel, Director, Agricultural Affairs, (202) 395-6127 or David Weiner, Director for the European Union, (202) 395-4620 for questions concerning the *EC-Beef Hormones* dispute; or William Busis, Associate General Counsel (202) 395-3150 and Chair of the Section 301 Committee, for questions concerning procedures under Section 301. For further information on using the <http://www.regulations.gov> Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.

### SUPPLEMENTARY INFORMATION:

#### A. The EC-Beef Hormones Case

The EC bans the import of beef and beef products produced from animals to which any of six hormones<sup>1</sup> have been administered for growth promotion purposes. The effect of the EC ban is to prohibit the import of substantially all U.S.-produced beef and beef products. In February 1998, the WTO Dispute Settlement Body ("DSB") found that the EC ban was inconsistent with EC obligations under the WTO Agreement. In July 1999, a WTO arbitrator determined that the EC import ban on U.S. beef and beef products has nullified or impaired U.S. benefits under the WTO Agreement in the amount of \$116.8 million each year. On July 26, 1999, the DSB authorized the

<sup>1</sup> The six hormones at issue are estradiol 17-β, testosterone, progesterone, zeranol, trenbolone acetate ("TBA") and melengestrol acetate ("MGA").

United States to suspend the application to the EC, and member States thereof, of WTO tariff concessions and related obligations covering trade in an amount of \$116.8 million per year. Pursuant to that authorization, the Office of the United States Trade Representative ("USTR") announced a list of EC products, reprinted in Annex I to this notice, that would be subject to a 100 percent rate of duty effective with respect to products entered, or withdrawn from warehouse, for consumption on or after July 29, 1999. (See 64 FR 40638.)

Since that time, the United States and the EC have continued to consult in an effort to resolve this dispute.

The EC argues that EC legislation of 2003 implementing the import ban on beef and beef products produced from animals treated with certain hormones brought the EC into compliance with its WTO obligations. In January 2005, the EC requested the establishment of a WTO dispute settlement panel to consider the EC claim that the United States was no longer authorized to suspend concessions as a result of the EC's adoption of the new legislation implementing the import ban. (See 70 FR 8655 for a description of this dispute brought by the EC.)

On October 16, 2008, the WTO Appellate Body issued a report rejecting the EC claim and confirming that the July 1999 DSB authorization to suspend concessions remains in effect unless and until the DSB adopts a report finding that the EC has brought its measures into compliance with WTO obligations.

#### **B. Section 306 of the Trade Act of 1974, as Amended**

Section 306(b)(2)(B) of the Trade Act provides for the periodic review and revision of section 301 actions taken in the course of a WTO dispute settlement proceeding. Section 306(b)(2)(B)(ii) provides exceptions in the event that (1) the USTR and the section 301 petitioner (or, if USTR self-initiated the section 301 investigation, the affected U.S. industry) agree that changing the action under section 301 is unnecessary, or (2) resolution of the case is imminent. Section 306 provides that the standard for revising actions is to select changes that are most likely to result in implementation of the DSB recommendations, or in achieving some other satisfactory resolution of the dispute. The provision also requires that lists of products subject to increased duties—both initially and after each of the periodic changes—include reciprocal goods of the U.S. industries affected by the measure at issue in the WTO dispute.

The USTR and the affected U.S. industry have agreed that changes in the action taken under section 301 in connection with the *EC-Beef Hormones* dispute have been unnecessary; accordingly, the exception under section 306(b)(2)(B) is currently in effect.

As noted, on October 16, 2008, the WTO Appellate Body issued a report confirming that DSB authorization to suspend concessions remains in effect. No further WTO findings in this dispute are expected in the immediate future. In these circumstances, and as reflected in this notice, the Trade Representative is now considering revisions to the action taken in connection with the *EC-Beef Hormones* dispute and is revisiting the increased duties to ascertain whether any modifications are necessary or appropriate. Neither the publication of this notice, nor a possible decision by the Trade Representative to revise the prior action, should be construed as a determination with respect to whether or not the EC legislation of 2003 implementing the import ban on beef and beef products is consistent with WTO rules.

#### **C. Section 307 of the Trade Act of 1974, as Amended**

Section 307 of the Trade Act of 1974, as amended, provides for a review of actions taken under section 301, including actions taken in connection with a WTO dispute settlement proceeding. In particular, section 307 provides for the Trade Representative to conduct a review of—

(A) The effectiveness in achieving the objectives of section 301 of—

(i) Such action, and  
(ii) Other actions that could be taken (including actions against other products or services), and

(B) The effects of such actions on the U.S. economy, including consumers.

#### **D. Request for Public Comments**

In order to assist in a possible revision to the action in accordance with section 306 of the Trade Act, and to provide information in connection with a review under section 307 of the Trade Act, the section 301 Committee seeks public comments with respect to the specific products on the lists in the Annexes to this notice. Annex I consists of products, which were drawn from the list in Annex II, currently subject to 100 percent duties in connection with the *EC-Beef Hormones* dispute. Annex II contains a list of alternative products under consideration for the possible imposition of increased duties.

Concerning the products listed in Annex I, the section 301 Committee

invites comments with respect to whether particular products should be removed from the list or should remain on the list, and if a product remains on the list, whether the current 100 percent rate of duty is sufficiently high to achieve the objectives of encouraging a satisfactory resolution of the dispute. Concerning products listed in Annex II that are not currently subject to 100 percent duties, the section 301 Committee invites comments with respect to whether particular products should be included on a revised list and thus be subject to increased duties, and with respect to the rate of duty that would be best suited to the objective of encouraging a satisfactory resolution of the dispute.

The comments sought by the section 301 Committee with respect to particular products should address: (i) Whether maintaining or imposing increased duties on a particular product would be practicable or effective in terms of encouraging a favorable resolution of the dispute, and (ii) whether maintaining or imposing increased duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers. In addition, the section 301 Committee requests comments on whether actions with respect to particular products should be taken with respect to products of all member States of the European Communities, or whether action should be taken with respect to products of one or more particular member States of the European Communities. The European Communities currently has 27 member States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

In the annexed product lists, the items with respect to which comments are requested are (1) classified in the indicated headings or subheadings of the Harmonized Tariff Schedule of the United States ("HTS"); and (2) the product of the indicated member States of the European Communities. The product descriptions in the annexes are for information purposes only; the product descriptions are not intended to delimit in any way the scope of products that are the subject of this notice. Rather, the numerical headings and subheadings of the HTS listed in the annexes govern the scope of this notice. In the instances where a 4-digit HTS heading appears in the left column

of the lists, comments are requested with respect to any of the products classified in any of the 8-digit subheadings appearing in the HTS indented under those 4-digit headings.

To be assured of consideration, written comments should be submitted by 5 p.m. on December 8, 2008.

To submit comments via <http://www.regulations.gov>, enter docket number USTR-2008-0036 on the home page and click "go". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Send a Comment or Submission." (For further information on using the <http://www.regulations.gov> Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The <http://www.regulations.gov> site provides the option of providing comments by filling in a "General Comments" field, or by attaching a document. Given the detailed nature of the comments sought by the section 301 Committee, it is expected that most comments will be provided in an

attached document. If a document is attached, it is sufficient to type "See attached" in the "General Comments" field.

Submissions must include on the first page a clear reference in bold and/or underlining to the HTS number(s) and product(s) which are the subject of the submission. Submissions must state clearly the position taken and describe with specificity the supporting rationale and must be written in English.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments may be viewed on the <http://www.regulations.gov> Web site by entering docket number USTR-2008-0036 in the search field on the home page.

Persons wishing to submit business confidential information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom

of the cover page and each succeeding page. Any comment containing business confidential information must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket and open to public inspection.

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) Must provide a non-confidential summary of the information or advice.

The non-confidential summary will be placed in the docket and open to public inspection.

**William L. Busis,**

*Chair, Section 301 Committee.*

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## ANNEX I

***EC-Beef Hormones - List of Products Currently Subject to Increased Duties***

The products listed below are currently subject to 100 percent *ad valorem* duties in accordance with the WTO DSB authorization in the *EC-Beef Hormones* dispute. Each of the products listed below is under consideration for continued inclusion on a revised product list, and for the imposition of duties above the current 100 percent *ad valorem* rate. In particular, increased tariffs may continue to be applied to, or may be raised with respect to, articles that are (i) classified in the numerical headings and subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below and (ii) products of one or more of the indicated member States of the European Communities. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings appearing in the HTS under those 4-digit headings are currently subject to increased duties. In all cases, the tariff nomenclatures in the HTS for the headings and subheadings listed below are definitive; the product descriptions in this list are for **information purposes only**. The descriptions below are not intended to delimit in any way the scope of the products that would be subject to increased duties.

Products of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden:

HTS	Description
0201	Meat of bovine animals, fresh or chilled
0202	Meat of bovine animals, frozen
02031100	Pork carcasses and half-carcasses, fresh or chilled
02031210	Pork hams and shoulders and cuts thereof, fresh or chilled, with bone in, processed
02031290	Pork hams and shoulders and cuts thereof, fresh or chilled, with bone in, not processed
02031920	Meat of swine (pork), fresh or chilled, other, processed
02031940	Meat of swine (pork), fresh or chilled, other
02032100	Pork carcasses and half-carcasses, frozen
02032210	Pork hams and shoulders and cuts thereof, frozen, with bone in, processed
02032290	Pork hams and shoulders and cuts thereof, frozen, with bone in, not processed
02061000	Bovine tongues, fresh or chilled
02062100	Bovine tongues, frozen
02062200	Bovine livers, frozen
02062900	Edible offal of bovine animals, frozen, other than tongues or livers
04064020	Roquefort cheese in original loaves

04064040	Roquefort cheese, other than in original loaves, not grated or powdered, not processed
07031040	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled
07095910	Truffles, fresh or chilled
07129010	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared
16022020	Prepared or preserved liver of goose
16022040	Prepared or preserved liver of any animal other than of goose
19054000	Rusks, toasted bread and similar toasted products
20098060	Juice of any single fruit, (including cherries and berries), concentrated or not concentrated, other than citrus, pineapple, tomato, grape, apple, pear, or prune juices
21013000	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof
21033040	Prepared mustard

Products of France, the Federal Republic of Germany, or Italy:

20021000	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid
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Products of France or the Federal Republic of Germany:

05040000	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked.
21041000	Soups and broths and preparations therefor
55101100	Yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, singles, not put up for retail sale

Products of France:

02101100	Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked
15050090	Fatty substances derived from wool grease (including lanolin)
18063100	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, weighing not more than 2 kg
20079905	Lingonberry and raspberry jams obtained by cooking
35061050	Products suitable for use as glues or adhesives, put up for retail sale, not exceeding 1 kg, including fish glue, but not other animal glue

## ANNEX II

***EC-Beef Hormones - List of Products under Consideration for the Imposition of Increased Duties***

The product list below **includes** the products, listed in Annex I, which are currently subject to increased duties in accordance with the WTO DSB authorization in the *EC-Beef Hormones* dispute. All of the remaining products listed below are under consideration for the new imposition of increased duties. In particular, increased tariffs may be applied to articles that are (i) classified in the numerical headings and subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below and (ii) products of one or more of the member States of European Communities. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings appearing in the HTS under those 4-digit headings may be subject to increased duties. In all cases, the tariff nomenclatures in the HTS for the headings and subheadings listed below are definitive; the product descriptions in this list are for **information purposes only**. The descriptions below are not intended to delimit in any way the scope of the products that would be subject to increased duties.

HTS	Description
0201	Meat of bovine animals, fresh or chilled
0202	Meat of bovine animals, frozen
0203	Meat of swine (pork), fresh, chilled or frozen
0206	Edible offal of bovine animals, swine, sheep, goats, horses, or mules, fresh, chilled or frozen
0207	Meat and edible offal of poultry (chickens, ducks, geese, turkeys and guineas), fresh, chilled or frozen
02101100	Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked
02101200	Bellies (streaky) and cuts thereof of swine, salted, in brine, dried or smoked
02102000	Meat of bovine animals, salted, in brine, dried or smoked
02109920	Meat and edible offal of poultry (chickens, ducks, geese, turkeys and guineas), salted, in brine, dried or smoked; flour and meal of these animals
02109990	Meat and edible offal nesoi, salted, in brine, dried or smoked; flour and meal thereof
04064020	Roquefort cheese in original loaves
04064040	Roquefort cheese, other than in original loaves, not grated or powdered, not processed
05040000	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked
06039000	Cut flowers and flower buds, suitable for bouquets or ornamental purposes, dried, dyed, bleached, impregnated or otherwise prepared
06049100	Foliage, branches and other parts of plants without flowers or flower buds, and grasses, suitable for bouquets or ornamental purposes, fresh
06049930	Foliage, branches, parts of plants without flowers or buds, and grasses, suitable for bouquets or ornamental purposes, dried or bleached

HTS	Description
07020020	Tomatoes, fresh or chilled, entered during March 1 to July 14, inclusive, or during September 1 to November 14, inclusive, in any year
07020040	Tomatoes, fresh or chilled, entered from July 15 through August 31 in any year
07020060	Tomatoes, fresh or chilled, entered from November 15 to the last day of February, inclusive, of the following year
07031040	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled
07095910	Truffles, fresh or chilled
07129010	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared
07129074	Dried tomatoes, in powder
07129078	Dried tomatoes, whole, cut, sliced or broken, but not further prepared
08024000	Chestnuts, fresh or dried, whether or not shelled or peeled
09042020	Paprika, dried or crushed or ground
10040000	Oats
11041200	Rolled or flaked grains of oats
11042200	Grains of oats, hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked
15050090	Fatty substances derived from wool grease (including lanolin)
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products
16021000	Homogenized preparations of meat, meat offal or blood, other than sausages and similar products
16022020	Prepared or preserved liver of goose
16022040	Prepared or preserved liver of any animal other than of goose
16023100	Prepared or preserved meat or meat offal of turkeys, other than sausages and similar products
16023200	Prepared or preserved meat or meat offal of chickens, other than sausages and similar products
16023900	Prepared or preserved meat or meat offal of ducks, geese or guineas, other than sausages and similar products
16024110	Prepared or preserved pork ham and cuts thereof, containing cereals or vegetables
16024120	Pork hams and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers
16024190	Prepared or preserved pork hams and cuts thereof, not containing cereals or vegetables, other than boned and cooked and packed in airtight containers
16024220	Pork shoulders and cuts thereof, boned and cooked and packed in airtight containers
16024240	Prepared or preserved pork shoulders and cuts thereof, other than boned and cooked and packed in airtight containers
16024910	Prepared or preserved pork offal, including mixtures

HTS	Description
16024920	Pork other than hams, shoulders or cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers
16024940	Prepared or preserved pork, not containing cereals or vegetables, nesoi
16024960	Prepared or preserved pork mixed with beef
16024990	Prepared or preserved pork, nesoi
16025005	Prepared or preserved offal of bovine animals
16025009	Prepared or preserved meat of bovine animals, cured or pickled, not containing cereals or vegetables
16025010	Corned beef in airtight containers
16025020	Prepared or preserved beef in airtight containers, other than corned beef, not containing cereals or vegetables, not cured or pickled
16025060	Prepared or preserved meat of bovine animals, not containing cereals or vegetables, not in airtight containers
16025090	Prepared or preserved meat of bovine animals, containing cereals or vegetables
17041000	Chewing gum, whether or not sugar-coated
17049025	Sugar confectionary cough drops
18063100	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, weighing not more than 2 kg
19054000	Rusks, toasted bread and similar toasted products
20021000	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid
20029040	Tomatoes, in powder
20029080	Tomatoes, other than whole or in pieces and other than in powder (including paste and puree), prepared or preserved otherwise than by vinegar or acetic acid
20079905	Lingonberry and raspberry jams obtained by cooking
20083042	Satsumas, prepared or preserved, in airtight containers, aggregate quantity not over 40,000 metric tons/calendar year
20083046	Satsumas, prepared or preserved, in airtight containers, aggregate quantity over 40,000 metric tons/calendar year
20084000	Pears, otherwise prepared or preserved, nesoi
20087020	Peaches (excluding nectarines), otherwise prepared or preserved, nesoi
20096100	Grape juice (including grape must), of a Brix value not exceeding 30
20096900	Grape juice (including grape must), of a Brix value exceeding 30
20098060	Juice of any single fruit, (including cherries and berries), concentrated or not concentrated, other than citrus, pineapple, tomato, grape, apple, pear or prune juices
20099040	Mixtures of fruit juices, or mixtures of vegetable and fruit juices
21013000	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof

HTS	Description
21033040	Prepared mustard
21041000	Soups and broths and preparations therefor
22011000	Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored
23099010	Mixed feed or mixed feed ingredients of a kind used in animal feeding
35061050	Products suitable for use as glues or adhesives, put up for retail sale, not exceeding 1 kg, including fish glue but not other animal glue
55041000	Viscose rayon staple fibers, not carded, combed or otherwise processed for spinning
55101100	Single yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, not put up for retail sale
85102010	Hair clippers, with self-contained electric motor, to be used for agricultural or horticultural purposes
85102090	Hair clippers, with self-contained electric motor, other than those to be used for agricultural or horticultural purposes
87112000	Motorcycles (incl. mopeds) and cycles, fitted with reciprocating internal-combustion piston engine with cylinder capacity of over 50 cc but not over 250 cc
87113000	Motorcycles (incl. mopeds) and cycles, fitted with reciprocating internal-combustion piston engine with cylinder capacity of over 250 cc but not over 500 cc

[FR Doc. E8-26545 Filed 11-5-08; 8:45 am]

BILLING CODE 3190-W9-C

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009-6 and CP2009-7;  
Order No. 125]

### Express Mail & Priority Mail Contract

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add Express Mail & Priority Mail Contract 1 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

**DATES:** Comments are due November 10, 2008.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

On October 27, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30

*et seq.* to add Express Mail & Priority Mail Contract 1 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Express Mail & Priority Mail Contract 1 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009-6.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-7. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

**Request.** The Request incorporates (1) a redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the MCS product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).<sup>2</sup>

<sup>1</sup> Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008 (Request).

<sup>2</sup> Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Priority Mail & Express Mail Services (Governors' Decision No. 08-17). The Governors' Decision includes an attachment which provides an analysis of the

Substantively, the Request seeks to add Express Mail & Priority Mail Contract 1 to the Competitive Product List. *Id.* at 1-2.

In the statement of supporting justification, Kim Parks, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Parks contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

**Related contract.** A redacted version of the specific Express Mail & Priority Mail Contract 1 is included with the Request. The contract is for 3 years and is to be effective 1 day after the Commission provides all necessary regulatory approvals. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.*, Attachment A and Attachment E. It notes that actual performance under this contract could

proposed Express Mail & Priority Mail Contract 1. Attachment B is the redacted version of the contract. Attachment C shows the requested changes to the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).