

WORLD TRADE ORGANIZATION

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Committee on Safeguards

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NOTIFICATION UNDER ARTICLE 12.5 OF THE AGREEMENT ON SAFEGUARDS OF THE RESULTS OF A MID-TERM REVIEW REFERRED TO IN ARTICLE 7.4

UNITED STATES

The following communication, dated 15 February 2000, has been received from the Permanent Mission of the United States.

Pursuant to Article 12.5 of the Agreement on Safeguards, and in light of the agreed format for notifications (G/SG/1, 1 July 1996), the United States provides the following notification to the Council for Trade in Goods.

- Specify the measure and the product subject to the measure for which the mid-term review was conducted, and provide reference to the WTO document that notified the safeguard measure subject to the review**

As notified in G/SG/N/10/USA/2, G/SG/N/11/USA/2 (8 June 1998), the measure is a temporary quantitative limitation on imports of wheat gluten -- provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States ("HTS") -- for a period of three years and one day. The amount of the limitation represents the average of total imports for crop years ending 30 June 1993, 30 June 1994, and 30 June 1995 (including imports from countries, listed below, that are excluded from the limitation). Shares of the quantitative limitation are allocated based on relative import shares during the same three-year period, and are as follows:

1 June 1998-31 May 1999:

Australia	28,315,000 kg (62.4 million pounds)
European Union	24,513,000 kg (54.0 million pounds)
Other countries	4,693,000 kg (10.3 million pounds)

1 June 1999-31 May 2000:

Australia	30,014,000 kg (66.2 million pounds)
European Union	25,983,000 kg (57.3 million pounds)
Other countries	4,975,000 kg (11.0 million pounds)

1 June 2000-31 May 2001:

Australia	31,814,000 kg (70.1 million pounds)
European Union	27,543,000 kg (60.7 million pounds)
Other countries	5,273,000 kg (11.6 million pounds)

2. Provide the dates of initiation and conclusion of the review

The US International Trade Commission initiated its review on 27 July 1999, and transmitted a confidential version of its report to the President and US Congress on 1 December 1999.

3. Describe the results of the review, providing some detail on the basis for reaching those results

With this notification the United States provides a copy of the USITC's report on the results of its mid-term review, excluding confidential business information, to the Committee. The report is hereby incorporated and made a part of this notification. We understand that the Committee will make a copy of the report available to Members upon request. The United States briefly excerpts portions of the USITC's report below:

“On 1 June 1998, following a unanimous affirmative injury determination by the Commission under Section 201 of the Trade Act of 1974, the President imposed quantitative restrictions on imports of wheat gluten. . . . The President applied the quota to wheat gluten imports from the European Union, Australia, and all other countries with the exception of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act, and developing countries that have accounted for a minor share of wheat gluten imports. . . .

* * *

Implementation of the quota in its first year was not smooth. Improper identification of some wheat gluten caused imports from the EU to surpass their total allotment for the first quota year by the sixth month. At the close of the first quota year the President, recognizing that imports from the EU had exceeded their allotment by 5,402,000 kg (11.9 million pounds), acted to remedy the quota overage by reducing the EU's second year (1999/2000) quota allotment by the amount of the overage in the first year. During the second quota year, the European Union exhausted its entire allotment in the first month of the year.

The Commission's monitoring investigation collected data for the years ending 30 June 1998 and 1999, a two-year continuation of the data series collected during the original section 201 investigation. The first year of the two-year period corresponds roughly to the year before the quota was implemented and the second year corresponds roughly to the first quota year. Despite the imposition of the quota, imports from the European Union, Australia, Canada, and other sources, whether or not subject to the quota, all increased in quantity and value during this period. Unit values from each of these sources also increased. The United States, Australia, and the European Union continued to account for the largest share of the US wheat gluten market in the years ending 30 June 1998 and 1999. However, during that period, shipments from the United States and the European Union lost market share in the United States, while imports from Australia and from other countries subject to the quota gained market share by quantity. Imports from Canada, not restricted by the quota, showed the biggest increase, and the market share of imports from Poland, a developing country that is exempt from the quota restriction, grew rapidly as well.

[The Wheat Gluten Industry] alleges that, in addition to the overage, several forms of quota circumvention limited the anticipated positive effects of the relief to the US industry in its first year. Specifically, there have been substantial imports of a blend of 90 per cent vital wheat gluten and 10 per cent of either soy protein or dried meat by-product for use in pet food applications. The US Customs Service recently classified this "pre-mix" product under HTS subheading 2309.90.10. Such blended product, which according to [the Wheat Gluten Industry] maintains the essential characteristics of vital wheat gluten, is entering the United States quota-free and is being sold to former customers in the pet food business who subsequently cancelled contracts with US wheat gluten producers.

[The Wheat Gluten Industry] also cites increased imports of wheat gluten from Poland as evidence that a European producer is transshipping wheat gluten from the European Union through a subsidiary in Poland to the United States. Official US Department of Commerce import statistics report no imports of wheat gluten from Poland during calendar years 1994-97 and only 440,000 pounds in the 12 months prior to the imposition of the quota. During the first quota year, however, imports from Poland grew to 5,004,000 pounds. In the first five months of 1999, imports from Poland accounted for 6.9 per cent of total imports of wheat gluten into the United States.

The domestic industry saw improvement in its financial condition following the imposition of the quota. The quantity of domestic shipments in the year ending 30 June 1999, exceeded the levels of the previous six years and the value of those shipments reached a high not seen since 1994. The quantity and value of export shipments were the highest they had been in six years. Unit values of both domestic and export shipments also showed favorable increases. Each of the producers had increased sales and increased operating income between the two years examined; two firms rebounded from operating losses experienced in 1998. Increased prices were the primary factor in the increase in profitability.

US prices rebounded from a seven-year low established in September 1997 and generally rose through June 1999. Quarterly sales quantities rebounded after January-March 1996 and finished in April-June 1999 at a seven-year peak. The majority of quarterly delivered selling price comparisons between the domestic and imported vital wheat gluten showed underselling by the products from the European Union and from all other countries; the majority of comparisons for products from Australia and Canada showed overselling.

The [Wheat Gluten Industry] believes that quota circumvention in the first year limited the increase in US selling prices and quantities. The [Wheat Gluten Industry] expected US producers' vital wheat gluten selling prices to average about \$0.10 more per pound and domestic sales quantities to total about 30 million pounds more than actually occurred. As a result, the US industry's revenue from its domestic sales of vital wheat gluten during this period fell short of its expectations, and, in its view, negatively affected its efforts to implement its adjustment plan.

In January 1998, as part of the section 201 injury investigation of wheat gluten, the US wheat gluten industry submitted to the Commission its proposal for competitive adjustment under import relief. Noting that US producers were already using the most modern equipment available to produce wheat gluten in the most cost effective manner possible, the adjustment plan, while committing the industry to continue to improve efficiency and productivity, focused on the continuing development and marketing of new products made from modified wheat gluten and modified wheat starch which sell for higher prices and yield more profit than the unmodified products. US producers expected relief to bring sustained profitability which would enable the necessary investment to develop and market modified products. Greater diversification, in turn, would provide the industry with the ability to withstand an increase in imports that could occur at the end of the relief period.

As early as the late 1980s, the domestic industry invested in the research and development of new products based on the physical, chemical, and enzymatic modification of wheat gluten and its co-product, wheat starch. As wheat gluten imports increased during the 1990s, however, US firms dedicated even more time, and millions of dollars, to getting their new modified products to the market more quickly. This process accelerated during the relief period, as small- and full-scale plants were planned and constructed to produce modified products. An entire research division was added at one firm headed by food chemists and other scientists devoted to developing applications for new wheat technology for products already on the market. Promotional campaigns were launched and additional salespeople were hired with the technical expertise to show potential customers how these modified products could improve the quality of their goods.

Bolstered by consumer interest in natural-based cosmetics, products made from non-genetically modified organisms, and environmentally friendly biodegradable products, the US wheat gluten industry is on the leading edge of world-wide research on new functional applications of wheat gluten and wheat starch. Industry-wide, US firms continue their goals of building long-term relationships with customers while shifting from product-driven to market-driven strategies in order to supply product needs to customers. Many of the industry's decisions to dedicate funds to the construction of full-scale plants, as opposed to the small-scale plants that are currently in operation, are scheduled to be made in the next several months and reportedly depend significantly on the profitability of their wheat gluten operations as a whole."

4. Indicate whether:

- (i) *the measure has been, or will be, withdrawn as a result of the review. If yes, then indicate the date of withdrawal; and,*

Under US law the President may take action to reduce, modify or terminate a safeguard measure after, among other things, receiving a report from the USITC. The President currently has made no decision with respect to this measure.

- (ii) *the pace of liberalization has been, or will be, increased as a result of the review. If yes, then indicate the revised time-table for progressive liberalization.*

Same response as (i).
