

105TH CONGRESS  
2D SESSION

# H. R. 4761

To require the United States Trade Representative to take certain actions in response to the failure of the European Union to comply with the rulings of the World Trade Organization.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 1998

Mr. CRANE (for himself, Mr. SMITH of Oregon, Mr. THOMAS, Mr. STENHOLM, Mrs. JOHNSON of Connecticut, Mr. WATKINS, Mr. COMBEST, Mr. KOLBE, Mr. HERGER, Mr. HOUGHTON, Mr. TANNER, Mr. BARRETT of Nebraska, Mr. CAMP, Mr. EWING, Mr. SAM JOHNSON of Texas, Mr. NUSSLE, Mr. RAMSTAD, Mr. COLLINS, Ms. DUNN, Mr. LEWIS of Kentucky, Mr. POMBO, Mr. PORTMAN, Mr. CHRISTENSEN, Mr. ENGLISH of Pennsylvania, Mr. WELLER, and Mr. BERRY) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To require the United States Trade Representative to take certain actions in response to the failure of the European Union to comply with the rulings of the World Trade Organization.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Uruguay Round Agree-  
5       ments Compliance Act of 1998”.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

3 (1) The European Union unfairly restricts the  
4 importation of billions of dollars of agricultural  
5 products from the United States and other exporting  
6 nations.

7 (2) Opportunities for increased United States  
8 agricultural exports are undermined by unfair sub-  
9 sidies provided by the European Union to benefit its  
10 own production and by vexing tariff and nontariff  
11 trade barriers imposed on highly competitive United  
12 States agricultural exports.

13 (3) It is essential to the health of United States  
14 agriculture that the United States seek the contin-  
15 ued elimination of restrictions imposed on United  
16 States agricultural exports by the European Union.

17 (4) The United States must insist on competi-  
18 tive opportunities for United States exports of agri-  
19 cultural products in European markets substantially  
20 equivalent to the competitive opportunities afforded  
21 to European exports in United States markets, and  
22 on achieving progressively fairer and more open con-  
23 ditions of trade.

24 (5) The Uruguay Round Agreements, as imple-  
25 mented by the Uruguay Round Agreements Act,  
26 strengthened the multilateral rules for trade in agri-

1 cultural products and services. Reflecting a principal  
2 negotiating objective established by the Congress in  
3 the Omnibus Trade and Competitiveness Act of  
4 1988, the Uruguay Round Agreements obligate  
5 WTO member countries to reduce and eliminate pro-  
6 tection against imports, including discriminatory  
7 practices, and to observe the rules provided in the  
8 Agreements that are designed to prevent damaging  
9 and unacceptable delays in the implementation of  
10 dispute settlement panel reports.

11 (6) On May 22, 1997, a final report of a dis-  
12 pute settlement panel under the World Trade Orga-  
13 nization found that the banana import regime of the  
14 European Union, as well as its licensing procedures  
15 for the importation of bananas, are in violation of  
16 GATT 1994, the Agreement on Import Licensing  
17 Procedures, and the General Agreement on Trade in  
18 Services. On September 9, 1997, the Appellate Body  
19 affirmed these findings. The Appellate Body report  
20 and the panel report, as modified by the Appellate  
21 Body, were adopted by the WTO on September 25,  
22 1997.

23 (7) On January 7, 1998, the WTO determined  
24 through binding arbitration procedures that the  
25 compliance period for the European Union to bring

1 its banana regime into conformity with the Uruguay  
2 Round Agreements is 15 months from September  
3 25, 1997, a period which will end on January 1,  
4 1999.

5 (8) Instead of taking steps to implement  
6 promptly and completely its obligations, the Euro-  
7 pean Union has pursued a number of dilatory tactics  
8 and has announced a new series of measures to take  
9 effect on January 1, 1999, which will not bring the  
10 European Union into conformity with its obligations  
11 under the WTO but will make only cosmetic changes  
12 to its WTO-illegal scheme. Such measures under-  
13 mine the WTO dispute settlement process because  
14 they delay implementation, forcing the United States  
15 to pursue its rights under dispute settlement once  
16 again. This abuse of the dispute settlement process  
17 cannot be tolerated.

18 (9) A ban by the European Union on the use  
19 of hormones in livestock production, which took ef-  
20 fect on January 1, 1988, has eliminated about  
21 \$97,000,000 of United States red meat and meat  
22 product exports to the European Union annually.  
23 The United States has pursued its concerns regard-  
24 ing the hormone directive in the GATT and the  
25 WTO since January of 1987.

1           (10) On August 18, 1997, a final report of a  
2       dispute settlement panel under the WTO, upholding  
3       claims of the United States, found that the ban by  
4       the European Union on the use of hormones in live-  
5       stock production is in violation of the obligations of  
6       the European Union under the Agreement on the  
7       Application of Sanitary and Phytosanitary Measures.  
8       The panel affirmed that the ban is not based on  
9       science, risk assessment, or relevant international  
10      standards. This panel report and a report by the Ap-  
11      pellate Body affirming the finding was adopted by  
12      the WTO on February 13, 1998.

13           (11) On May 29, 1998, the WTO determined  
14      through binding arbitration procedures that the  
15      compliance period for the European Union to imple-  
16      ment the rulings and recommendations of the WTO  
17      on the beef hormone ban will end on May 13, 1999.

18           (12) As in the case of bananas, the European  
19      Union seeks to abuse the system of dispute settle-  
20      ment with endless delay, showing no signs of ever  
21      coming into compliance.

22           (13) Together, these two WTO dispute settle-  
23      ment cases represent important precedents for agri-  
24      cultural trade in the areas of tariffs, quotas, import  
25      licensing, services, and the use of sound science as

1       a basis for the application of sanitary and  
2       phytosanitary standards.

3           (14) Successful resolution of these cases will  
4       serve to indicate whether the new Uruguay Round  
5       Agreements that went into effect in 1995 will oper-  
6       ate as an effective means for the United States to  
7       resolve trade disputes.

8           (15) Serious consequences are necessary to  
9       counteract the European Union's deplorable tactics  
10      and threat to the dispute settlement system.

11          (16) Retaliation is a remedy of last resort. Nev-  
12      ertheless, because the European Union has delib-  
13      erately flaunted the internationally agreed rules of  
14      dispute settlement, thereby jeopardizing United  
15      States companies, workers, farmers, and ranchers,  
16      serious and immediate action is necessary.

17   **SEC. 3. ACTIONS IN RESPONSE TO EU BANANA REGIME.**

18          (a) IN GENERAL.—Notwithstanding the provisions of  
19      section 6, the Trade Representative shall, in accordance  
20      with this section, take action under section 301(c)(1)(A)  
21      and (B) of the Trade Act of 1974, as if a determination  
22      had been made under section 304(a)(1) of that Act that  
23      the practices of the European Union regarding the impor-  
24      tation of bananas violate, or are inconsistent with, or oth-  
25      erwise deny benefits to the United States under the Uru-

1 guay Round Agreements. Any such action to eliminate  
2 such practices shall be devised so as to affect goods or  
3 services of the European Union in an amount that is  
4 equivalent in value to the burden or restriction being im-  
5 posed by the European Union on United States commerce.

6 (b) PRELIMINARY LIST OF ARTICLES FOR IN-  
7 CREASED TARIFFS.—By not later than November 10,  
8 1998, the Trade Representative shall publish, and provide  
9 an opportunity for public comment on, a proposed list of  
10 actions to be taken under subsection (a).

11 (c) FINAL LIST.—By not later than December 15,  
12 1998, the Trade Representative, after taking into account  
13 comments submitted by the public on the proposed list,  
14 shall publish a final list of actions to be taken under sub-  
15 section (a). Prior to publishing the final list, the Trade  
16 Representative shall also consult with the Committee on  
17 Ways and Means and the Committee on Agriculture of the  
18 House of Representatives and the Committee on Finance  
19 and the Committee on Agriculture, Nutrition, and For-  
20 estry of the Senate with respect to the composition of the  
21 final list.

22 (d) IMPLEMENTATION OF FINAL ACTIONS.—The  
23 Trade Representative shall endeavor to take all action au-  
24 thorized under Article 22.2 of the Understanding on Rules  
25 and Procedures Governing the Settlement of Disputes,

1 and the Trade Representative shall proclaim the measures  
2 included on the list published under subsection (c) to go  
3 into effect on February 1, 1999, unless the Trade Rep-  
4 resentative determines and certifies to the Congress  
5 that—

6 (1) the Dispute Settlement Body has adopted a  
7 report that—

8 (A) the rights of the United States under  
9 the Uruguay Round Agreements are not being  
10 denied by the practices of the European Union  
11 regarding the importation of bananas; or

12 (B) the practices of the European Union  
13 regarding the importation of bananas—

14 (i) are not a violation of, or inconsis-  
15 tent with, the rights of the United States;  
16 or

17 (ii) do not deny, nullify, or impair  
18 benefits to the United States under the  
19 Uruguay Round Agreements; or

20 (2) the European Union is taking satisfactory  
21 measures to grant the rights of the United States  
22 under the Uruguay Round Agreements;

23 (3) the European Union has—

24 (A) agreed to eliminate or phase out the  
25 practices referred to in subsection (a); or



1 (B) agreed to an imminent solution to the  
2 burden or restriction on United States com-  
3 merce that is satisfactory to the Trade Rep-  
4 resentative;

5 (4) it is impossible for the European Union to  
6 achieve the results described in paragraph (2) or (3),  
7 as appropriate, but the European Union agrees to  
8 provide to the United States compensatory trade  
9 benefits that are satisfactory to the Trade Rep-  
10 resentative;

11 (5) in extraordinary cases, where the taking of  
12 action under this section would have an adverse im-  
13 pact on the United States economy substantially out  
14 of proportion to the benefits of such action, taking  
15 into account the impact of not taking such action on  
16 the credibility of title III of the Trade Act of 1974  
17 and the findings and provisions of this Act; or

18 (6) the taking of action under this section  
19 would cause serious harm to the national security of  
20 the United States.

21 (e) ARBITRATION.—In the event that the European  
22 Union seeks arbitration under Article 22.6 of the Under-  
23 standing on Rules and Procedures Governing the Settle-  
24 ment of Disputes, the Trade Representative shall, notwith-  
25 standing the requirements of subsection (d), proclaim the

1 measures included on the list published under subsection  
2 (c) to go into effect on the date that the arbitration is  
3 concluded, but in no event later than March 3, 1999. If,  
4 as a result of such arbitration, the arbitrator concludes  
5 that the measures are not consistent with Articles 22.3  
6 or 22.4, the measures shall be adjusted to be in compli-  
7 ance with Articles 22.3 and 22.4.

8 (f) SUSPENSION OF LIQUIDATION.—In applying sub-  
9 section (d), the Trade Representative shall order the sus-  
10 pension of liquidation of all entries of merchandise in-  
11 cluded on the list published under subsection (c) which  
12 are entered, or withdrawn from warehouse for consump-  
13 tion, on or after January 2, 1999, through January 31,  
14 1999, or, in the case of arbitration under subsection (e),  
15 until the date that the arbitration is concluded but in no  
16 event later than March 2, 1999. On the date that the  
17 Trade Representative proclaims the measures included on  
18 the list published under subsection (c), the Trade Rep-  
19 resentative shall also proclaim the measures to apply to  
20 merchandise for which liquidation had been suspended and  
21 shall order terminated the suspension.

22 (g) CONSULTATION WITH CONGRESS AND DOMESTIC  
23 INDUSTRY.—In determining whether any of the conditions  
24 described in paragraphs (1) through (6) of subsection (d)  
25 exist, the Trade Representative shall consult with the

1 Committee on Ways and Means of the House of Rep-  
2 resentatives and the Committee on Finance of the Senate,  
3 and with representatives of the domestic industry con-  
4 cerned, and shall provide an opportunity for the presen-  
5 tation of views by other interested persons affected by the  
6 proposed determination concerning the effects of the de-  
7 termination and whether such a determination is appro-  
8 priate.

9       (h) NOTICE; REPORT TO CONGRESS.—The Trade  
10 Representative shall promptly publish in the Federal Reg-  
11 ister notice of, and report in writing to the Congress with  
12 respect to, any determination made under paragraphs (1)  
13 through (6) of subsection (d), together with the reasons  
14 therefor.

15 **SEC. 4. ACTIONS IN RESPONSE TO EU BEEF HORMONE BAN.**

16       (a) IN GENERAL.—Notwithstanding the provisions of  
17 section 6, the Trade Representative shall, in accordance  
18 with this section, take action under section 301(c)(1)(A)  
19 and (B) of the Trade Act of 1974, as if a determination  
20 had been made under section 304(a)(1) of that Act that  
21 the practices of the European Union regarding the use  
22 of hormones in livestock production violate, or are incon-  
23 sistent with, or otherwise deny benefits to the United  
24 States under the Uruguay Round Agreements. Any such  
25 action to eliminate such practices shall be devised so as

1 to affect goods or services of the European Union in an  
2 amount that is equivalent in value to the burden or restric-  
3 tion being imposed by the European Union on United  
4 States commerce.

5 (b) PRELIMINARY LIST OF ARTICLES FOR IN-  
6 CREASED TARIFFS.—By not later than April 1, 1999, the  
7 Trade Representative shall publish, and provide an oppor-  
8 tunity for public comment on, a proposed list of actions  
9 to be taken under subsection (a).

10 (c) FINAL LIST.—By not later than May 3, 1999,  
11 the Trade Representative, after taking into account com-  
12 ments submitted by the public on the proposed list, shall  
13 publish a final list of actions to be taken under subsection  
14 (a). Prior to publishing the final list, the Trade Represent-  
15 ative shall also consult with the Committee on Ways and  
16 Means and the Committee on Agriculture of the House  
17 of Representatives and the Committee on Finance and the  
18 Committee on Agriculture, Nutrition, and Forestry of the  
19 Senate with respect to the composition of the final list.

20 (d) IMPLEMENTATION OF FINAL ACTIONS.—The  
21 Trade Representative shall endeavor to take all action au-  
22 thorized under Article 22.2 of the Understanding on Rules  
23 and Procedures Governing the Settlement of Disputes,  
24 and the Trade Representative shall proclaim the measures  
25 included on the list published under subsection (c) to go

1 into effect on June 13, 1999, unless the Trade Represent-  
2 ative determines and certifies to the Congress that—

3 (1) the Dispute Settlement Body has adopted a  
4 report that—

5 (A) the rights of the United States under  
6 the Uruguay Round Agreements are not being  
7 denied by the practices of the European Union  
8 regarding the use of hormones in livestock pro-  
9 duction; or

10 (B) the practices of the European Union  
11 regarding the use of hormones in livestock pro-  
12 duction—

13 (i) are not a violation of, or inconsis-  
14 tent with, the rights of the United States;  
15 or

16 (ii) do not deny, nullify, or impair  
17 benefits to the United States under the  
18 Uruguay Round Agreements; or

19 (2) the European Union is taking satisfactory  
20 measures to grant the rights of the United States  
21 under the Uruguay Round Agreements;

22 (3) the European Union has—

23 (A) agreed to eliminate or phase out the  
24 practices referred to in subsection (a); or

1 (B) agreed to an imminent solution to the  
2 burden or restriction on United States com-  
3 merce that is satisfactory to the Trade Rep-  
4 resentative;

5 (4) it is impossible for the European Union to  
6 achieve the results described in paragraph (2) or (3),  
7 as appropriate, but the European Union agrees to  
8 provide to the United States compensatory trade  
9 benefits that are satisfactory to the Trade Rep-  
10 resentative;

11 (5) in extraordinary cases, where the taking of  
12 action under this section would have an adverse im-  
13 pact on the United States economy substantially out  
14 of proportion to the benefits of such action, taking  
15 into account the impact of not taking such action on  
16 the credibility of title III of the Trade Act of 1974  
17 and the findings and provisions of this Act; or

18 (6) the taking of action under this section  
19 would cause serious harm to the national security of  
20 the United States.

21 (e) ARBITRATION.—In the event that the European  
22 Union seeks arbitration under Article 22.6 of the Under-  
23 standing on Rules and Procedures Governing the Settle-  
24 ment of Disputes, the Trade Representative shall, notwith-  
25 standing the requirements of subsection (d), proclaim the

1 measures included on the list published under subsection  
2 (c) to go into effect on the date that the arbitration is  
3 concluded, but in no event later than July 13, 1999. If,  
4 as a result of such arbitration, the arbitrator concludes  
5 that the measures are not consistent with Articles 22.3  
6 or 22.4, the measures shall be adjusted to be in compli-  
7 ance with Articles 22.3 and 22.4.

8 (f) SUSPENSION OF LIQUIDATION.—In applying sub-  
9 section (d), the Trade Representative shall order the sus-  
10 pension of liquidation of all entries of merchandise in-  
11 cluded on the list published under subsection (c) which  
12 are entered, or withdrawn from warehouse for consump-  
13 tion, on or after May 14, 1999, through June 12, 1999,  
14 or, in the case of arbitration under subsection (e), until  
15 the date that the arbitration is concluded but in no event  
16 later than July 12, 1999. On the date that the Trade Rep-  
17 resentative proclaims the measures included on the list  
18 published under subsection (c), the Trade Representative  
19 shall also proclaim the measures to apply to merchandise  
20 for which liquidation had been suspended and shall order  
21 terminated the suspension.

22 (g) CONSULTATION WITH CONGRESS AND DOMESTIC  
23 INDUSTRY.—In determining whether any of the conditions  
24 described in paragraphs (1) through (6) of subsection (d)  
25 exist, the Trade Representative shall consult with the

1 Committee on Ways and Means of the House of Rep-  
2 resentatives and the Committee on Finance of the Senate,  
3 and with representatives of the domestic industry con-  
4 cerned, and shall provide an opportunity for the presen-  
5 tation of views by other interested persons affected by the  
6 proposed determination concerning the effects of the de-  
7 termination and whether such a determination is appro-  
8 priate.

9 (h) NOTICE; REPORT TO CONGRESS.—The Trade  
10 Representative shall promptly publish in the Federal Reg-  
11 ister notice of, and report in writing to the Congress with  
12 respect to, any determination made under paragraphs (1)  
13 through (6) of subsection (d), together with the reasons  
14 therefor.

15 **SEC. 5. MODIFICATION AND TERMINATION OF ACTIONS.**

16 (a) IN GENERAL.—The Trade Representative may  
17 modify or terminate any action, subject to the specific di-  
18 rection, if any, of the President with respect to such ac-  
19 tion, that is being taken under section 4 or section 5 if—

20 (1) any of the conditions described in para-  
21 graphs (1) through (6) of section 4(d) (in the case  
22 of an action under section 4), or any of the condi-  
23 tions described in paragraphs (1) through (6) of sec-  
24 tion 5(d) (in the case of an action under section 5),  
25 exist; or



1           (2) the burden or restriction on United States  
2       commerce of the denial of rights, or of the practices,  
3       that are the subject of such action has increased or  
4       decreased.

5       (b) CONSULTATION WITH DOMESTIC INDUSTRY.—  
6       Before taking any action under subsection (a) to modify  
7       or terminate any action taken under section 4 or section  
8       5, the Trade Representative shall consult with representa-  
9       tives of the domestic industry concerned, and shall provide  
10      an opportunity for the presentation of views by other in-  
11      terested persons affected by the proposed modification or  
12      termination concerning the effects of the modification or  
13      termination and whether any modification or termination  
14      of the action is appropriate.

15      (c) NOTICE; REPORT TO CONGRESS.—The Trade  
16      Representative shall promptly publish in the Federal Reg-  
17      ister notice of, and report in writing to the Congress with  
18      respect to, any modification or termination of any action  
19      taken under section 4 or section 5 and the reasons there-  
20      for.

21      **SEC. 6. ACTION WITH WTO.**

22      The United States Trade Representative shall con-  
23      tinue to make efforts to preserve the rights of the United  
24      States under Article 21.5 of the Understanding on Rules  
25      and Procedures Governing the Settlement of Disputes con-

cerning the measures of the European Union on the im-  
portation of bananas and concerning the ban by the Euro-  
pean Union on the use of hormones in livestock produc-  
tion.

**SEC. 7. DEFINITIONS**

As used in this Act:

(1) the term “Trade Representative” means the  
United States Trade Representative;

(2) the term “HTS” means the Harmonized  
Tariff Schedule of the United States;

(3) the terms “GATT 1994”, “Uruguay Round  
Agreements”, “WTO”, “World Trade Organiza-  
tion”, and “WTO member country” have the mean-  
ing given those terms in section 2 of the Uruguay  
Round Agreements Act (19 U.S.C. 3501);

(4) the terms “Agreement on the Application of  
Sanitary and Phytosanitary Measures”, “Agreement  
on Import Licensing Procedures”, “General Agree-  
ment on Trade in Services”, and “Understanding on  
Rules and Procedures Governing the Settlement of  
Disputes” refer to the agreements with those names  
referred to in section 101(d) of the Uruguay Round  
Agreements Act (19 U.S.C. 3511(d)); and

(4) the terms “Appellate Body”, “dispute set-  
tlement panel”, “Dispute Settlement Body”, and

1       “General Council” have the meanings given those  
2       terms in section 121 of the Uruguay Round Agree-  
3       ments Act (19 U.S.C. 3531).

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