



December 8, 2008

*BY ELECTRONIC FILING*

Ms. Sandy McKinzy  
Office of the United States Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

**Re: Docket Number USTR-2008-0036**

Dear Ms. McKinzy:

The Food Marketing Institute (FMI)<sup>1</sup> is pleased to respond to the request for comments concerning the *Review of Action Taken in Connection With WTO Dispute Settlement Proceedings on the European Communities' Measures Concerning Meat and Meat Products*, 73 Fed. Reg. 66,066 (Nov. 6, 2008) (the "*Review of Action*"). On behalf of our members, and the nation's consumers, we strongly urge that mineral waters and aerated waters not be included in the list of products on which the United States will impose increased rates of duty.

Annex II to the *Review of Action* identifies those product categories being considered by the interagency section 301 Committee for inclusion on the revised list of products on which the United States will impose increased rates of duty (100-percent *ad valorem*) pursuant to the WTO's authorization. Among those is HTS (Harmonized Tariff Schedule of the United States) 22011000, Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored. FMI believes that inclusion of these products on the revised list would cause significant, disproportionate economic harm to U.S. businesses, and most importantly, to U.S. consumers. In

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<sup>1</sup> Food Marketing Institute (FMI) conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

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addition, recent history clearly demonstrates that inclusion of these products (and other non-related food and grocery products) will not result in the EC taking action to comply with the decision in the *Meat and Meat Products WTO Dispute*.

## **I. This Is No Time to Increase Tariffs on Consumer Products**

By all accounts we are now in the midst of the most serious global economic crisis since the great depression. The U.S economy is officially in recession and is expected to deepen and to continue to decline for an extended period. Four million Americans collected unemployment in the week ending November 22, the highest number since 1982. Total job losses in November reached the highest level since December 1974. Consumer spending is weakening across all sectors of the economy. Retailers have just reported the worst November sales in 30 years.

In this unprecedented environment, the last thing consumers and U.S. businesses need is an artificial increase in prices because of a trade war. The imposition of a 100-percent *ad valorem* tariff on these products will not only increase prices; it will also significantly reduce sales of these products and result in the elimination of jobs.<sup>2</sup> This impact would not be limited to suppliers and distributors. Supermarkets, grocery stores and mass merchants sold more than \$300 million of these products in 2007. An increase in price of the magnitude required by a 100- percent *ad valorem* tax would not be acceptable to most consumers and would likely result in the discontinued sale of these products in our members' stores. Retailers would lose important revenues further jeopardizing their own ability to survive in these difficult economic times. And consumers would be harmed by significantly increased prices and by a reduction in the choice of products available to them. Indeed, their ability to purchase these popular, healthful products *at any price* could be eliminated entirely.

## **II. Addition of These Products to the List Will Not Encourage a Favorable Resolution of the Dispute**

There is no reason to believe increasing tariffs on imported mineral and aerated waters (or any of the other listed food and grocery products) would lead the EC to comply with the decisions in the *Meat and Meat Products WTO Dispute*. Obviously the currently increased duties on the list of products in Annex I that have been in effect since 1999 have had no impact on the dispute. U.S. consumers have no idea that the increased prices they see for these products are a result of a trade dispute involving beef products and these increased tariffs have provided no incentive for the EC to revise its position on beef treated with hormones. Adding mineral and aerated waters to the list would lead the EC to take its own retaliatory action, but not to revise its policy on beef imports from the U.S.

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<sup>2</sup> See comment filed in this proceeding by Nestle Waters North America.

In view of the current financial crisis it makes little sense to take an action that could invite reciprocal action on the part of our trading partner, but would not have any realistic possibility of achieving the desired outcome of opening up the European market to meat products treated with hormones.

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In conclusion, increased duties on European mineral and aerated water would cause considerable harm to U.S. consumers and businesses and would not lead to a resolution of the meat products dispute. Especially in light of the current global economic situation we believe it makes no sense to take such action.

Thank you for your consideration of FMI's views on this important issue.

Respectfully submitted,



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