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2013/0324 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of a Revised Memorandum of Understanding with the United States of America Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 13 May 2009 a "Memorandum of Understanding between the United States of America and the European Commission Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Communities" (the MoU) was signed in Geneva. The MoU was endorsed by Council by letter of 12 May 2009 as an international agreement of the EC.

The MoU sets out different steps concerning the importation of beef not treated with growth-promoting hormones into the EU, as well the imposition of trade sanctions by the United States against EU products as part of the WTO dispute on *EC – Measures Concerning Meat and Meat Products (Hormones)*. These steps are grouped in three phases.

Under Phase 1, from August 2009 to August 2012, the EU opened an autonomous *erga omnes* tariff quota for 20,000 tons of "High Quality Beef",[1] and the US reduced the level of sanctions applied to EU products.

Under Phase 2, from 1 August 2012 to 1 August 2013, the EU opened a larger quota for 45,000 tons of High Quality Beef,[2] and the US suspended all trade sanctions on EU products resulting from the *Hormones* dispute.

The MoU foresees that, should the Parties not reach agreement to enter into Phase 3 by the expiry of Phase 2, the MoU would be considered terminated; however, its core obligations of opening a quota for high quality beef and suspending all trade sanctions remain in place for six more months.

At this time there is no agreement to enter into Phase 3, but the termination of the MoU is not in the EU or US interest. The Parties could agree to extend Phase 2 until August 2015, while they continue discussions on Phase 3.

The amendment of the MoU also clarifies the elements of Phase 3, should the Parties agree to enter into it at the end of the extended Phase 2. The rules of the MoU concerning the management of licenses are also amended to reflect the system of "first come, first served", introduced in 2012[3].

The Revised MoU has been signed on [xxx]

2. LEGAL ELEMENTS OF THE PROPOSAL

The proposal consists of a Commission proposal for a Council decision concluding the Revised Memorandum of Understanding.

3. BUDGETARY IMPLICATION

None.

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1 Council Regulation (EC) No 617/2009 of 13 July 2009 opening an autonomous tariff quota for imports of high quality beef, OJ L 182, 15.7.2009, p. 1.

2 Regulation (EU) No 464/2012 of the European Parliament and of the Council of 22 May 2012, OJ L 149, 8.6.2012, p. 1.

3 Commission Implementing Regulation (EU) No 481/2012 of 7 June 2012 laying down rules for the management of a tariff quota for high-quality beef, OJ L 148, 8.6.2012, p. 9.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision [XXX] of [4], the Revised Memorandum of Understanding with the United States of America Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union was signed on , subject to its conclusion at a later date.

(2) The agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The Revised Memorandum of Understanding with the United States of America Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

This Decision shall enter into force on [5].

Done at Brussels,

For the Council
The President

[4] OJ L , , p. .

[5] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

ANNEX

Revised Memorandum of Understanding with the United States of America Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union

Article I
Purpose and Objectives

With this Understanding, the United States and the European Union intend to achieve the following objectives:

1. To provide, in a first phase ("Phase 1"), for temporary and partial:

   (a) Expansion by the EU of market access for High Quality Beef and

   (b) Reduction in the level of increased duties applied by the United States to certain EU products authorized by the WTO in 1999 (the "increased duties")

   in order for the Parties to gain experience in additional trade in High Quality Beef and facilitate a transition to long-term conditions;

2. To provide the opportunity to move to a second phase ("Phase 2"), for:

   (a) Further expansion by the EU of market access for High Quality Beef and

   (b) Reduction to zero of the increased duties

   in order for the Parties to gain experience in additional expanded trade in High Quality Beef and facilitate a transition to long-term conditions; and

3. To provide the further opportunity for entering into a third phase ("Phase 3") with regard to the WTO dispute between the Parties, *EC – Measures Concerning Meat and Meat Products (Hormones).*

Article II
Core Obligations

1. At the beginning of Phase 1, the EU will establish an autonomous tariff rate quota for High Quality Beef of an annual quantity of 20,000 Metric Tonnes product weight, and for which the in-quota tariff rate is zero (0) per cent.

2. The EU will open the autonomous tariff rate quota referred to in paragraph 1 by 3 August 2009.

3. With respect to the increased duties, the United States will not add to scope, change the origin of products subject to increased duties or increase the level of such duties as in force as of 23 March 2009.

4. Should the United States and the EU enter into Phase 2, as described in Article I.2, and negotiated under Article IV.2:

   (a) The EU will increase the quantity of the autonomous tariff rate quota referred to in paragraph 1 to 45,000 Metric Tonnes product weight and

   (b) The United States will suspend all increased duties imposed in connection with WTO dispute settlement proceedings in *EC – Measures Concerning Meat and Meat Products (Hormones).*

5. Should the United States and the EU enter into Phase 3, as described in Article I.3, and negotiated under Article IV.3:

(a) The EU will maintain the quantity of the autonomous tariff rate quota referred to in paragraph 1, at the level specified in paragraph 4(a) and

(b) The United States will cease the increased duties imposed in connection with WTO dispute settlement proceedings in *EC – Measures Concerning Meat and Meat Products (Hormones).*

Article III
Quota Management

1. The Parties agree that the tariff rate quota referred to in Article II will be administered by the Commission on a first-come, first-served basis**.**

2. The Commission will implement and administer the tariff rate quota set out in this Understanding in accordance with Article XIII of the General Agreement on Tariffs and Trade (GATT) 1994, including its interpretative notes. The Commission will make every effort to administer the tariff rate quota referred to in Article II in a manner that allows importers to fully utilize it.

Article IV
Monitoring and Consultations

1. 1. The United States and the EU will:

(a) Monitor and review the operation of this Understanding and,

(b) Upon the request of either Party, conduct additional bilateral consultations regarding the operation of this Understanding, including issues of quota management, not later than thirty (30) days following the receipt of the request in writing for consultations.

2. The United States and the EU will, beginning not later than eighteen (18) months from the date specified in Article II.2, meet to review the operation of Phase 1 with a view to entering into Phase 2.

3. Should the United States and the EU enter into Phase 2, the United States and the EU will, beginning not later than six (6) months from the date on which the EU implements the obligation set out in Article II.4(a), meet to review the operation of Phase 2 with a view to entering into Phase 3. This review will notably cover, *inter alia*, the following issues:

(a) The duration of Phase 3,

(b) The status and effects of the Understanding relative to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU),

(c) The consequences of non-compliance with the terms of the Understanding by either Party, and

(d) The status and disposition of any dispute settlement proceeding in *EC – Measures Concerning Meat and Meat Products (Hormones)*.

4. After concluding the review referred to in paragraph 3, if the Parties agree on conditions for entering into Phase 3, the Parties may, by applying the procedure set out in Article V.5, amend the Understanding in order to reflect the agreed

conclusions of that review. Such an amendment will not alter the core obligations as referred to in Article II.5.

5. As part of this review, the Parties have agreed to modify this Understanding on [date of signature].

Article V
Duration, Withdrawal and Amendment

1. Phase 1 will have a duration of three (3) years from the date specified in Article II.2.

2. Phase 2 will have a duration of three (3) years from the date the Parties entered into Phase 2.

3. Phase 3 shall begin upon a notification to the WTO Dispute Settlement Body to this effect.

4. Either the United States or the EU may withdraw from this Understanding by providing written notice to the other Party. Should either Party provide such written notice, this Understanding shall expire six (6) months from the date such notice was provided. Should both Parties provide such written notice, this Agreement shall expire six (6) months from the earliest of the dates on which such notice was provided. During this six (6) month period, the core obligations, as defined in Article II, applicable at the time of the provision of the withdrawal notice, will be maintained by both Parties.

5. The United States and the EU may amend this Understanding by mutual agreement in writing.

Article VI
Definitions

For the purposes of this Understanding, "High Quality Beef" means:

"Beef cuts obtained from carcasses of heifers and steers less than 30 months of age which have only been fed a diet, for at least the last 100 days before slaughter, containing not less than 62 percent of concentrates and/or feed grain co-products on a dietary dry matter basis that meet or exceed a metabolisable energy (ME) content greater than 12.26 megajoules (MJ) per one kilogram of dry matter. The heifers and steers fed this diet shall be fed, on average, not less than 1.4 percent of live body weight per day on a dry matter basis.

The carcass from which beef cuts are derived shall be evaluated by an evaluator employed by the national government who bases the evaluation, and a resulting classification of the carcass, on a method approved by the national government. The national government evaluation method, and its classifications, must evaluate expected carcass quality using a combination of carcass maturity and palatability traits of the beef cuts. Such an evaluation method of the carcass shall include, but not be limited to, an evaluation of the maturity characteristics of color and texture of the longissimus dorsi muscle and bone and cartilage ossification, as well as an evaluation of expected palatability traits including a combination of the discrete specifications of intramuscular fat and firmness of the longissimus dorsi muscle.

The cuts shall be labeled in accordance with Article 13 of Regulation (EC) No. 1760/2000.

The indication 'High Quality Beef' may be added to the information on the label."

Article VII
Reservation of Rights

1. Neither Party will request the establishment of a panel under Article 21.5 of the DSU in *EC – Measures Concerning Meat and Meat Products (Hormones)* during Phase 2 or Phase 3 of this Understanding.

2. Neither this Understanding nor the Parties' taking of any of the steps contemplated by this Understanding prejudices the disagreement between the Parties regarding whether the DSB recommendations and rulings in *EC – Measures Concerning Meat and Meat Products (Hormones)* have been implemented.

3. Other than as specifically set forth herein, this Understanding is without prejudice to the rights and obligations of the United States and the EU under the WTO agreements.

Article VIII
Relation with WTO Rights

1. The Parties envisage that Phase 3 would involve termination of the authorization under Article 22.7 of the DSU, made by the DSB at its meeting of July 26, 1999, and that no further action under the DSU with respect to DS26 would be taken.

2. This Understanding and the step under the DSU referred to in paragraph 1 are without prejudice to any Party's right to initiate a new dispute under the DSU.