



EUROPEAN COMMISSION

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 617/2009 opening an autonomous tariff quota for imports of high-quality beef

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- General context

The Panel and Appellate Body reports in *European Communities — Measures Concerning Meat and Meat Products (Hormones)*¹, adopted by the World Trade Organization (WTO) Dispute Settlement Body (DSB) on 13 February 1998, found that the Community ban on imports of meat and meat products from cattle treated with certain hormones for growth promotion purposes was inconsistent with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The United States of America and Canada requested and obtained authorization from the DSB for the suspension of concessions to the Community in the annual amounts of US\$116.8 million and CDN\$ 11.3 million, respectively.

Following the amendment of Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists by Directive 2003/74/EC of the European Parliament and of the Council of 22 September 2003 the Community brought itself into compliance with the DSB rulings and recommendations. However, the United States and Canada considered that the Union was still in breach of its WTO obligations and that therefore they could continue to apply sanctions. The Community challenged the continued imposition of sanctions in new WTO cases.

On 31 March 2008, the Panel in *United States — Continued Suspension of Obligations in the EC — Hormones Dispute* and *Canada — Continued Suspension of Obligations in the EC — Hormones Dispute* concluded that the United States and Canada had made certain procedural violations. However, it also concluded that the measure found to be inconsistent with the SPS Agreement in the *EC — Hormones* dispute has not been entirely removed by the European Communities.

On 16 October 2008 the Appellate Body partly reversed the Panels findings on procedural violations and found that certain findings on the alleged failure to remove the measure found to be inconsistent with the SPS Agreement could not be upheld. The Appellate Body recommended the DSB to request the United States, Canada and the European Communities to initiate proceedings under Article 21.5 of the *WTO Dispute Settlement Understanding* (DSU) without delay in order to resolve their disagreement as to whether the European Communities has removed the measure found to be inconsistent in *EC — Hormones* and whether the application of the suspension of concessions by the United States and Canada remains legally valid.

On 22 December 2008 the Community requested and subsequently held consultations in the original *Hormones* cases with United States and Canada under Article 21.5 of the DSU.

In parallel, the Commission and the United States explored the possibility of finding a solution in this dispute without prejudice to their respective views on the WTO-consistency of

¹ WT/DS26 and 48.

the Union measures in order to bring this long-lasting transatlantic trade dispute to an end. A parallel solution was also sought with Canada.

In May 2009, it was found that a practical solution by which the Union would open an additional autonomous tariff rate quota for high-quality beef on a most-favoured-nation basis and the United States would reduce the amount of sanctions would be an expedient way of improving trading relations and avoiding further escalation of the dispute.

The relevant 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 was endorsed by the Council by letter of 12 May 2009 and signed in Geneva on 13 May 2009.² It foresees a three-phased arrangement which progressively reduces the level of sanctions imposed by the United States on products from the Union, while the Union progressively increases the tariff-rate quota for high-quality beef that is not treated with growth hormones. The first-phase tariff-rate quota for high-quality beef of 20,000 tonnes was established by Council Regulation (EC) No 617/2009. In a second phase, the United States would suspend all remaining sanctions and the Union would expand this tariff rate quota by additional 25,000 tonnes.

On 17 March 2011, the Commission also signed a Memorandum of Understanding between the Government of Canada and the European Commission Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by Canada to Certain Products of the European Union.³ This Memorandum of Understanding brings about the suspension of all sanctions imposed by Canada and stipulates the further expansion of the Union autonomous tariff rate quota for high-quality beef by 1,500 tonnes (first phase) and additional 1,700 tonnes (second phase). The timing foreseen for the first and second phases in the US and Canada Memoranda is the same. It is envisaged in particular that the second phase would normally begin on 1 August 2012 under both Memoranda.

- Grounds for and objectives of the proposal

In order to be in a position to establish the above-mentioned increases of the existing tariff rate quota for high-quality beef, to a total of 21,500 tonnes (first phase) and subsequently, 48,200 tonnes foreseen in the second phase of both Memoranda of Understanding starting on 1 August 2012, the legislative procedure needs to be started in a timely manner.

This is also necessary in order to follow the Resolution adopted by the European Parliament on 8 March 2011 calling on the Commission to ensure that the settlement of the 'beef hormones' dispute will allow for the suspension of the sanctions on EU products, while guaranteeing that beef imports to the EU will be in line with EU requirements.⁴

² Document WT/DS26/28 of 30 September 2009.

³ Document WT/DS48/26 of 22 March 2011.

⁴ European Parliament resolution of 8 March 2011 on EU Agriculture and international trade, 2010/2110(INI).

2. LEGAL ELEMENTS OF THE PROPOSAL

- Summary of the proposed action

The purpose of this proposal is to request the European Parliament and the Council to amend the existing Regulation opening an autonomous tariff quota for imports of high-quality beef, in order to implement the steps set out in the Memoranda of Understanding signed with the United States of America and Canada, respectively.

Moreover, the amendment introduces necessary alignment of Commission implementing powers with the Treaty of Lisbon.

- Legal basis

Article 207 of the Treaty on the Functioning of the European Union.

- Subsidiarity Principle

The proposal falls under exclusive competence of the Union, Article 3(1)(e) of the Treaty on the Functioning of the European Union. The subsidiarity principle therefore does not apply.

- Proportionality Principle

The proposal complies with the proportionality principle.

- Choice of instruments

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: a Regulation must be amended by a Regulation.

3. BUDGETARY IMPLICATIONS

The customs duty of this tariff-rate quota would remain fixed at zero. Depending on the future beef market situation, imports of high-quality beef may therefore no longer be shipped using the existing quota set up by Regulation (EC) No 810/2008 or out-of-quota. This may imply a loss of own resources of the Union (*see* Financial Statement).

Proposal for a

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amending Council Regulation (EC) No 617/2009 opening an autonomous tariff quota for imports of high-quality beef

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) 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 was endorsed by the Council by letter of 12 May 2009 and signed in Geneva on 13 May 2009. The aim of that Memorandum of Understanding is to settle the long-standing WTO dispute between the European Union and the United States of America on Beef Hormones, *European Communities — Measures Concerning Meat and Meat Products (Hormones)* (DS 26).
- (2) The Government of Canada and the European Commission have reached an understanding, as documented in a Memorandum of Understanding signed in Geneva on 17 March 2011 on a roadmap of steps to take regarding imports of High Quality Beef into the European Union and the level of increased duties applied by Canada to certain Union products in connection with the WTO dispute *European Communities — Measures Concerning Meat and Meat Products (Hormones)* (DS 48).
- (3) Both Memoranda provide for three-phased arrangements which reduce the level of sanctions imposed by the United States and Canada on products from the Union. The Union progressively increases the tariff-rate quota for high-quality beef that is not treated with growth hormones and fully complies with other EU import requirements.

- (4) Following the signature of the Memorandum of Understanding with the United States, Council Regulation (EC) No 617/2009⁵ opened an annual Community import tariff quota of 20 000 tonnes (first phase), expressed in product weight for high-quality fresh, chilled or frozen beef covered by CN codes 0201, 0202, 0206 10 95 and 0206 29 91.
- (5) The Memorandum of Understanding with the Government of Canada envisages an increase of the initial quantity of 20 000 tonnes by 1 500 tonnes. It also envisages that Canada lifts all remaining sanctions immediately after the signature of the Memorandum of Understanding.
- (6) The timetable set by the Memorandum of Understanding with the United States plans to increase the quantity of that tariff quota by 25 000 tonnes, once both Parties enter the second phase of the Memorandum of Understanding, which entails lifting the remaining sanctions currently imposed by the United States.
- (7) The timetable set by the Memorandum of Understanding with the Government of Canada envisages an increase of the quantity of that tariff quota by 3 200 tonnes, once both Parties enter the second phase of the Memorandum of Understanding.
- (8) In order to ensure uniform conditions for the implementation of Regulation (EC) No 617/2009, implementing powers should be conferred on the Commission. In particular, the Commission should be empowered to suspend the tariff quota, in whole or in part, if the steps planned in either Memorandum are not taken or maintained by the United States or Canada. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁶.
- (9) Regulation (EC) No 617/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 617/2009 is amended as follows:

- (1) Article 1 is amended as follows:
 - (a) Paragraph 1 is replaced by the following:
 - '1. An annual Union import tariff quota of 21 500 tonnes, expressed in product weight, with order No 09.4449, is hereby opened for high-quality fresh, chilled or frozen beef covered by CN codes 0201, 0202, 0206 10 95 and 0206 29 91.'
 - (b) The following paragraph 1a is inserted:

⁵ OJ L 182, 15.7.2009, p. 1.

⁶ OJ L 55, 28.2.2011, p. 13.

‘1a. As of 1 August 2012, the annual Union import tariff quota referred to in paragraph 1 shall be increased to 48 200 tonnes, expressed in product weight.’

(2) Article 2 is replaced by the following:

‘Article 2

1. The tariff rate quota referred to in Article 1 shall be managed by the Commission in accordance with the procedure referred to in Article 2a(2).
2. The application of the tariff quota referred to in Article 1 may be suspended by the Commission, in whole or in part, in the event that either the United States or Canada do not take the steps planned in the Memorandum of Understanding between the United States and the European Commission* or in the Memorandum of Understanding between the Government of Canada and the European Commission**, respectively. The Commission shall act in accordance with the procedure referred to in Article 2a(2).

* 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, endorsed by the Council by letter of 12 May 2009 and signed in Geneva on 13 May 2009.

** Memorandum of Understanding between the Government of Canada and the European Commission Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by Canada to Certain Products of the European Union, signed in Geneva on 17 March 2011.’

(3) The following Article 2a is inserted:

‘Article 2a

1. The Commission shall be assisted by the Management Committee for the Common Organisation of Agricultural Markets set up by Article [195(1)] of [Regulation (EC) No 1234/2007].[1234R2007 is currently being recast]
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.’

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States.

Done at [...],

For the European Parliament
The President

For the Council
The President

FINANCIAL STATEMENT					
		DATE: 23/05/2011			
1.	BUDGET HEADING: Chapter 12 – Custom duties and other duties	APPROPRIATIONS: DB2012 : 19 171.2			
2.	TITLE: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 617/2009 opening an autonomous tariff quota for imports of high-quality beef				
3.	LEGAL BASIS: Article 207 of the Treaty on the Functioning of the European Union				
4.	AIMS: Opening and modifying the autonomous import tariff quota for high-quality fresh, chilled or frozen beef				
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2011 (EUR million)	FOLLOWING FINANCIAL YEAR 2012 (EUR million)	
5.0	EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	-	-	-	
5.1	REVENUE - OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES)	-	-	- 4.6	
		2013	2014	2015	2016
5.0.1	ESTIMATED EXPENDITURE	-	-	-	-
5.1.1	ESTIMATED REVENUE	-	-	-	-
5.2	METHOD OF CALCULATION:				
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?				YES NO
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?				YES NO
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?				YES NO
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?				YES NO
OBSERVATIONS: The measure aims to modify the annual autonomous tariff quota for imports of high-quality beef in the context of the EU-US and the EU-Canada Memoranda of Understanding on "beef hormones". This quota was initially established by Council Regulation (EC) No 617/2009. It increases the tariff quota by 1.500 tonnes in the first phase following the EU-Canada MoU. In the second phase (from August 2012) an increase of the tariff quota by 26.700 tonnes is foreseen, as envisaged by the EU-US MoU and the EU-Canada MoU. The custom duty is fixed at 0. The increase in the quota from 20.000 tonnes to 48.200 tonnes would at a very high degree consist of quantities that would not have been imported without this tariff quota. However, it could, for a potential limited marginal quantity, replace existing quantities imported with full import duty. The exact quantities are difficult to quantify at this stage. Under the assumption that up to a maximum of 5% of the new supplementary quota should replace existing quantities imported, assuming prices for boneless meat at 10.000€/t and using MFN duty rates, the maximum loss of impact would be approximately 4.6 M € net amount after deduction of collection costs for MS*. *(5% x 28.200) x (10.000€/t x 12.8%+3.034€/t)= 6.08 M € Net after collection cost 25%: 6.08 M € x (1 -25%)= 4.6 M €					