Latest Developments in the Implementation of *EC-Hormones II*

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I. Introduction

On 26 April 2012, the Council of the European Union (hereinafter, EU Council) approved an increase of the autonomous tariff rate quota (hereinafter, TRQ) for imports of "*high-quality fresh, chilled or frozen beef*" into the European Union (hereinafter, the EU). This TRQ was established in 2009 through Council Regulation (EC) No 617/2009,[1] as a result of the arrangement reached by the EU and the United States (hereinafter, the US) to solve the *EC – Hormones* WTO dispute.[2] Initially set at 20,000 tonnes, the TRQ grants favourable market access conditions to 48,200 tonnes of "*high-quality beef*". This increase reflects the EU's intention to implement Phase 2 of the EU-US deal, as well as the arrangement reached between the EU and Canada.

II. The Tariff Rate Quota for imports of "*high-quality fresh, chilled or frozen beef*"

To end the longstanding WTO dispute over EU restrictions on imports of meat products treated with growth-promoting hormones, the EU and the US concluded in May 2009 the *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 US to Certain Products of the European Communities* (hereinafter, MoU).[3] The MoU reflects the arrangement reached by the two trading partners, which is to be implemented in three phases. Under Phase 1, the EU committed to establish an autonomous annual TRQ of 20,000 tonnes for "*high-quality beef*" with an in-quota *ad valorem* tariff rate set at 0%. The US, in turn, undertook to refrain from increasing the level of additional ("*retaliatory*") import duties that it applies on certain EU products, and from imposing the "*carousel sanctions*" that it had threatened to impose by reason of the EU's non-compliance with the WTO rulings.

Phase 2 of the arrangement requires the EU to increase the annual quantity of imports allowed under the "*high-quality beef*" quota to 45,000 tonnes and the US to suspend all "*retaliatory*" measures it imposes on EU products in connection with the outcome of the WTO *EC – Hormones* dispute. Under Phase 3, the EU will maintain the TRQ at the level of 45,000 tonnes and the US will cease to impose "*retaliatory*" measures on EU products.

Phase 1 commenced on 3 August 2009, with the opening of the TRQ by the EU. Phase 2, with the EU's increase of the annual quantity of imports allowed under the "*high-quality beef*" quota to 45,000 tonnes, is implemented as of August 2012. In addition, the quantity allowed under the "*high-quality beef*" quota has also been increased to reflect the commitments undertaken by the EU pursuant to a similar arrangement signed with Canada in March 2011.[4] This latter arrangement requires the EU to increase the autonomous TRQ for imports of "*high-quality beef*" first by 1,500 tonnes (Phase 1 of the EU-Canada arrangement) and then by a further 1,700 tonnes, once both parties enter Phase 2 of the arrangement. Therefore, Council Regulation (EC) No 617/2009 has been amended to provide for an increase in the quantity of "*high-quality beef*" allowed under the TRQ to an initial amount of 21,500 tonnes and, as of August 2012, to 48,200 tonnes.

The TRQ is open to the benefit of all exporting countries on a most-favoured-nation basis (*i.e.*, *erga omnes*) and is administered through an import licensing system based on the "*simultaneous examination method*" (*i.e.*, licences are allocated in proportion to

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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 2009, L 182/1.

2 *European Communities – Measures Concerning Meat and Meat Products (Hormones)*, WT/DS/28, documents available on the Inernet at <http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm> (last accessed on 16 July 2012).

3 *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 US to Certain Products of the European Communities*, signed on 13 May 2009, notified to the WTO and circulated as WTO document WT/DS26/28.

4 *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 the US to Certain Products of the European Union*, signed on 11 March 2011, notified to the WTO and circulated as WTO document WT/DS48/26.

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the overall quantities requested, through the application of reduction coefficients, if necessary). Access to the TRQ is, however, subject to compliance with certain requirements provided for in Annex I to Commission Regulation No (EC) 620/2009 (hereinafter, the Implementing Regulation).[5] In particular, on the basis of the definition agreed by the parties to the deal, the Implementing Regulation defines "*high-quality beef*" as "*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 100 days before slaughter, containing not less than 62 % of concentrates and/or feed grain co-products on a dietary dry matter basis*" and meeting or exceeding certain indicated parameters. In addition, Annex I to the Implementing Regulation requires that the carcass, from which beef cuts are derived, be subject to a quality evaluation based on the carcass maturity and palatability traits of the beef cuts according to certain specified criteria. Compliance with these requirements must be certified by third-countries' authorities recognised for this purpose, which will issue certificates of authenticity that must accompany the shipments to the EU. Traders must exhibit the certificates of authenticity and the import licences at EU customs in order to import under the TRQ.

III. Comments

Although the TRQ is open to all supplying countries, the definition of "*high-quality beef*" set in the Implementing Regulation appears to have been constructed so as to favour US and Canadian exports, *de facto* excluding from the TRQ beef supplied by a number of WTO Members where different production methods are in place (*e.g.*, grass-feeding, followed in certain Latin American countries) and/or where quality evaluation procedures have not been established. The criteria set within the definition of "*high-quality beef*", implemented through the system of issuance of certificates of authenticity, allows the EU to "*allocate*" the quantities of beef under the TRQ to cuts that have been produced and marketed according to specific procedures (in particular, those practiced by US and Canadian producers), whereas products not obtained in the ways prescribed by the Implementing Regulation may not access under the 0 % rate of duty. Currently, together with US and Canadian beef, products from Australia, New Zealand and Uruguay have been recognised as meeting the definition of "*high-quality beef*" and are allowed access under the TRQ. However, it appears that the quantities currently exported by these countries under the TRQ are significantly lower than those exported by the US. In addition, products from the two major beef exporters to the EU (*i.e.*, Argentina and Brazil) and from other beef exporting countries (*i.e.*, Namibia) are *de facto* not granted access to the EU under the TRQ. Producers must undertake significant investments in order to adjust to the production methods and other requirements provided in the Implementing Regulation, so these criteria discourage or *de facto* prevent many operators (and countries) from benefitting of this favourable TRQ.

IV. Conclusions

The definition of "*high-quality beef*" set in the Implementing Regulation appears to favour US and Canadian beef exports, *de facto* preventing or limiting beef supplied by a number of WTO Members from entering the EU's market under the TRQ's preferential terms. The potentially *de facto* discriminatory character of the TRQ is not surprising given that the measure was conceived as a form of "*compensation*" to the US and Canada for the nullification and impairment of their rights, as sanctioned by the WTO Dispute Settlement Body and in order to halt "*retaliatory*" measures on a range of EU products. However, inasmuch as the meat products are certified to match the characteristics embedded in the definition of "*high quality beef*" provided in the Implementing Regulation, exporters from any country are entitled to the preferential access under the TRQ. Beef producers and operators from all countries wishing to export under the TRQ should carefully assess the requirements and criteria of the TRQ, in order to determine whether favourable access to the lucrative EU beef market justifies the investments necessary to be able to produce "*high-quality beef*" as defined under the Implementing Regulation.

5 Commission Regulation (EC) No 620/2009 of 13 July 2009 providing for the administration of an import tariff quota for high-quality beef, OJ 2009, L 182/25, last amended by Commission Implementing Regulation (EU) No 521/2011 of 26 May 2011 amending Regulation (EC) No 620/2009 providing for the administration of an import tariff quota for high-quality beef, OJ 2011, L 140/48.

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