TRADE

Meat Products

Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and the EUROPEAN COMMUNITIES

Signed May 13, 2009

with

Annex

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

EUROPEAN COMMUNITIES

Trade: Meat Products

Memorandum of understanding signed
May 13, 2009;
Entered into force May 13, 2009.
With annex.

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 United States of America ("United States") and the European Commission ("the Commission") have reached an understanding, as documented in this Memorandum of Understanding ("Understanding"), regarding the importation of High Quality Beef into the European Communities ("EC") and the level of increased duties applied by the United States to certain EC products in connection with the World Trade Organization ("WTO") dispute *EC – Measures Concerning Meat and Meat Products (Hormones)* (DS 26).

The United States and the Commission commit to the terms and obligations set forth in the attached Annex. Following implementation of the obligations set forth in Article II.1 and Article II.3 of the Annex, the United States and the EC will notify this Understanding to the Dispute Settlement Body ("DSB").

Peter F. Allgeier
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR THE EUROPEAN COMMISSION

13 May 2009

ANNEX

ARTICLE I

PURPOSE AND OBJECTIVES

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

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

   a. Expansion by the EC of market access for High Quality Beef and

   b. Reduction in the level of increased duties applied by the United States to certain EC 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 EC 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 EC 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) percent.

2. The EC 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 EC enter into Phase 2, as described in Article I.2, and negotiated under Article IV.2:

a. The EC 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 EC enter into Phase 3, as described in Article I.3, and negotiated under Article IV.3:

a. The EC 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 in accordance with the rules applied for similar import tariff rate quotas for agricultural products managed by a system of import licenses.

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, and the Import Licensing Agreement. 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. The United States and the EC 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 EC 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 EC enter into Phase 2, the United States and the EC will, beginning not later than six (6) months from the date on which the EC 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)*, including the continuing non-disclosure of any interim report as referred to in Article VII.2.

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.

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. Should the Parties enter into Phase 2, Phase 2 will have a duration of one (1) year from the date the Parties enter into Phase 2.

3. If no agreement as referred to in Article IV.4 can be reached by the end of Phase 2, the Understanding will be considered terminated, unless the Parties agree otherwise. During a period of six (6) months following such termination of the Understanding, the core obligations as defined in Article II.4 will be maintained by both Parties.

4. Either the United States or the EC 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 EC 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)* before expiry of eighteen (18) months following the date referred to in Article II.2 or the opening of the tariff rate quota referred to in Article II.1, whichever occurs later.

2. If a panel is established under Article 21.5 of the DSU in *EC – Measures Concerning Meat and Meat Products (Hormones),* the Parties will work together to ensure that:

   a. The interim report is not issued and

   b. The authority of the panel does not lapse due to the expiry of the period referred to in Article 12.12 of the DSU

   before the end of Phase 1 if the Parties do not withdraw from Phase 1 before its conclusion, or Phase 2, if the Parties should enter into Phase 2 and do not withdraw from Phase 2 before its conclusion. The Parties agree to take the steps that may be necessary to achieve those objectives. Without limiting the foregoing, the Parties agree to jointly request the panel to include in its Working Procedures that the panel will provide notice to the Parties five (5) weeks before issuing the interim report; and the Parties agree that if the date of issuance of the interim report is during Phase 1 or Phase 2, the Parties will request the panel to suspend its proceeding.

3. 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.

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