



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.05.2005
COM(2005) 202 final

2005/0097 (ACC)

Proposal for a

COUNCIL DECISION

**on the conclusion of an Agreement in the form of an exchange of letters
between the European Community and the United States of America
relating to the method of calculation of applied duties for husked rice
and amending Decisions 2004/617/EC, 2004/618/EC and 2004/619/EC**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 26 June 2003, the Council authorised the Commission to notify the WTO that the European Community intended to modify concessions on products of HS codes 1006 20 (husked rice), 1006 30 (milled rice) included in Schedule CXL of the European Community annexed to GATT. Accordingly, the European Community has notified the WTO on 2 July 2003 of its intention to modify certain concessions in EC Schedule CXL.
2. Negotiations have been conducted by the Commission in consultation with the Committee established by Article 133 of the Treaty and within the framework of the negotiating directives issued by the Council.

The Commission has negotiated with the United States of America, having a principal supplying interest in products of HS code 1006 20 (husked rice) and substantial supplier interest in product of HS code 1006 30 (milled rice), Thailand, having a principal supplying interest in product of HS code 1006 30 (milled rice) and substantial supplier interest in product of HS code 1006 20 (husked rice) and India and Pakistan, each having a substantial supplier interest in product of HS code 1006 20 (husked rice).

3. The agreements with India and with Pakistan have been approved on behalf of the Community by Council Decision 2004/617/EC and Council Decision 2004/618/EC of 11 August 2004. A new tariff rate for husked and milled rice was fixed by Council Decision 2004/619/EC of 11 August 2004.

The Commission has negotiated an agreement in the form of an exchange of letters with the United States of America.

4. This proposal asks the Council to approve the agreement in the form of an exchange of letters between the European Community and the United States of America.

5. As the necessary modifications to Council Regulation (EC) No 1785/2003 require the European Parliament's opinion it is necessary to provide for the Commission to put in place the necessary transitional arrangements. Therefore, in order to ensure the application of this agreement from 1 March 2005, the decision enables the Commission to derogate from Regulation (EC) No 1785/2003 for a transitional period, i.e. until the modification has entered into force, but not later than 30 June 2006.

For the same reason the corresponding derogations in Decision 2004/617/EC, Decision 2004/618/EC and Decision 2004/619/EC are also extended until 30 June 2006.

The Commission will present a proposal for the necessary modification to the Council Regulation as soon as possible.

Proposal for a

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on the conclusion of an Agreement in the form of an exchange of letters between the European Community and the United States of America relating to the method of calculation of applied duties for husked rice and amending Decisions 2004/617/EC, 2004/618/EC and 2004/619/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 26 June 2003, the Council authorised the Commission to open negotiations under Article XXVIII of the GATT 1994 with a view to modify certain concessions for rice. Accordingly, the European Community notified the WTO on 2 July 2003 of its intention to modify certain concessions in EC Schedule CXL.
- (2) Negotiations have been conducted by the Commission in consultation with the Committee established by Article 133 of the Treaty and within the framework of the negotiating directives issued by the Council.
- (3) The Commission has negotiated with the United States of America, having a principal supplying interest in products of HS code 1006 20 (husked rice) and substantial supplier interest in products of HS code 1006 30 (milled rice), Thailand, having a principal supplying interest in products of HS code 1006 30 (milled rice) and substantial supplier interest in products of HS code 1006 20 (husked rice) and India and Pakistan, each having a substantial supplier interest in products of HS code 1006 20 (husked rice).
- (4) The agreements with India and with Pakistan have been approved on behalf of the Community by Council Decisions 2004/617/EC¹ and 2004/618/EC² respectively. A new tariff rate for husked rice (CN code 1006 20) and milled rice (CN code 1006 30) was fixed by Council Decision 2004/619/EC³.

¹ OJ L 279, 28.8.2004, p. 1.

² OJ L 279, 28.8.2004, p. 23.

³ OJ L 279, 28.8.2004, p. 29.

- (5) The Commission has successfully negotiated an Agreement in the form of an Exchange of Letters between the European Community and the United States of America which should therefore be approved.
- (6) In order to ensure that the agreement may be fully applied as from 1 March 2005 and pending the amendment of Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice⁴, the Commission should be authorised to adopt temporary derogations from that Regulation, and to adopt implementing measures.
- (7) For the same reason the corresponding derogations Decisions 2004/617/EC, 2004/618/EC and 2004/619/EC should also be extended until 30 June 2006.
- (8) For the sake of legal certainty, it is also appropriate to clarify in Decisions 2004/617/EC and 2004/618/EC that the authorisation given to the Commission to adopt temporary derogations from Regulation (EC) No 1785/2003 for implementing the agreements concerned also includes the authorisation to adopt detailed implementing measures.
- (9) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁵,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an exchange of letters between the European Community and the United States of America relating to the method of calculation of applied duties for husked rice is hereby approved on behalf of the Community.

The text of the agreement is attached to this Decision.

Article 2

1. To the extent necessary to permit the full application of this agreement as from 1 March 2005, the Commission may derogate from Regulation (EC) No 1785/2003, in accordance with the procedure referred to in Article 6(2) of this Decision, until that Regulation is amended but at the latest until 30 June 2006.
2. The Commission shall adopt the detailed rules for implementing the agreement in accordance with the procedure laid down in Article 6(2) of this Decision.

⁴ OJ L 270, 21.10.2003, p. 96.

⁵ OJ L 184, 17.7.1999, p. 23.

Article 3

Article 2 of Decision 2004/617/EC is replaced by the following:

“Article 2

1. To the extent necessary to permit the full application of this Agreement by 1 September 2004 , the Commission may derogate from Regulation (EC) No 1785/2003, in accordance with the procedure referred to in Article 3(2) of this Decision, until that Regulation is amended but at the latest until 30 June 2006.
2. The Commission shall adopt the detailed rules for implementing the agreement in accordance with the procedure referred to in Article 3(2) of this Decision.”

Article 4

Article 2 of Decision 2004/618/EC is replaced by the following:

“Article 2

1. To the extent necessary to permit the full application of this Agreement by 1 September 2004 , the Commission may derogate from Regulation (EC) No 1785/2003, in accordance with the procedure referred to in Article 3(2) of this Decision, until that Regulation is amended but at the latest until 30 June 2006 .
2. The Commission shall adopt the detailed rules for implementing the agreement in accordance with the procedure referred to in Article 3(2) of this Decision.”

Article 5

In Article 2 of Decision 2004/619/EC, the date ‘30 June 2005’ is replaced by the date ‘30 June 2006’.

Article 6

1. The Commission shall be assisted by the Management Committee for Cereals instituted by Article 25 of Regulation (EC) No 1784/2003.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.

Article 7

The President of the Council is hereby authorised to designate the person empowered to sign the agreement in order to express the consent of the Community to be bound thereby⁶.

Done at Brussels,

*For the Council
The President*

⁶ The date of entry into force of the agreement will be published in the *Official Journal of the European Union*.

ANNEX

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

between the European Community and the European Community and the United States of America relating to the method of calculation of applied duties for husked rice

Letter No 1

A. Letter from the European Community

Brussels, 2005

Sir,

Following negotiations between the European Community (EC) and the United States of America, the EC agrees to the conclusions as outlined below.

Applied rate of duty for certain husked rice (CN code 1006 20)

1. The EC shall apply a rate of duty for certain husked rice in accordance with paragraphs 2 to 7.
2. Annual reference import level
 - (a) *First marketing year*: in the first marketing year within the scope of this agreement (1 September 2004 to 31 August 2005), the annual reference import level shall be calculated as the average volume of total husked rice imports entering the EC-25 from all origins in the marketing years 1 September 1999 – 31 August 2000, 1 September 2000 – 31 August 2001, and 1 September 2001 – 31 August 2002, less imports of Basmati husked rice into the EC-25, plus 10% (i.e. 431,678 MT).
 - (b) *Increase in subsequent marketing years*: for each marketing year 2005/06, 2006/07 and 2007/08, the annual reference import level shall be increased by 6 000 MT/year from the level of the previous marketing year. No later than 90 days before the end of the marketing year 1 September 2007, to 31 August 2008, both parties shall enter into consultations on the annual increase for subsequent marketing years, taking into account the developments in the EC's rice market notably as regards the evolution of consumption, and shall agree on the annual increase no later than 31 August 2008.
3. Six-month reference import level: in each marketing year, a six-month reference import level shall be calculated as 50 percent of the annual reference import level calculated in paragraph 2 above, which in the first marketing year would be 215,839 MT.
4. Mid-year adjustment to applied tariff rate: within 10 days after the end of the first six months of each marketing year, the EC shall review and, if necessary, adjust the applied tariff rate as follows:
 - (a) if actual husked rice imports for the just-completed six-month period are more than 15 percent *below* the six-month reference import level for that period, as

calculated under paragraph 3 above (i.e., for the first marketing year less than 183,463 MT), the EC shall apply a tariff rate of EUR 30/MT;

- (b) if actual husked rice imports for the just-completed six-month period are more than 15 percent *above* the six-month reference import level for that period, as calculated under paragraph 3 above (i.e., for the first marketing year more than 248,215 MT), the EC shall apply a tariff rate of EUR 65/MT;
- (c) if actual husked rice imports for the just-completed six-month period are within 15 percent (inclusive) of the six-month reference import level for that period, as calculated under paragraph 3 above (i.e., for the first marketing year between 183,463 and 248,215 MT), the applied rate shall be EUR 42,5/MT.

For purposes of (a) through (c) above, actual husked rice imports are all imports entering the EC-25 from all origins under the CN codes 1006 20 less imports of Basmati husked rice into the EC-25.

5. End-of-year adjustment to applied tariff rate: within 10 days after the end of the marketing year, the EC shall review and, if necessary, adjust the applied tariff rate as follows:

- (a) if actual husked rice imports for the just-completed marketing year are more than 15 percent *below* the annual reference import level for that twelve-month period, as calculated under paragraph 2 above (i.e., for the first marketing year less than 366,926 MT), the EC shall apply a tariff rate of EUR 30/MT;
- (b) if actual husked rice imports for the just-completed marketing year are more than 15 percent *above* the annual reference import level for that twelve-month period, as calculated under paragraph 2 above (i.e., for the first marketing year more than 496,430 MT), the EC shall apply a tariff rate of EUR 65/MT;
- (c) if actual husked rice imports for the just-completed marketing year are within 15 percent (inclusive) of the annual reference import level for that twelve-month period, as calculated under paragraph 2 above (i.e., for the first marketing year between 366,926 and 496,430 MT), the EC shall apply a tariff rate of EUR 42,5/MT.

For purposes of (a) through (c) above, actual husked rice imports are all imports entering the EC-25 from all origins under the CN codes 1006 20 less imports of Basmati husked rice into the EC-25.

6. Data: The calculation of the annual and six-month actual import levels under paragraphs 4 and 5 above shall be determined using EC rice imports license data. The EC shall publish these data on the internet on a weekly basis.

7. Transparency: The EC shall promptly provide public notice of any adjustment in the applied tariff rate.

8. Consultation: At the request of either party, the parties shall, within 30 days of the receipt of such a request, enter into consultations on matters covered by this agreement.

9. If the parties are unable to resolve the issues subject to consultation within 30 days after receipt of the request, the United States may submit written notification to the EC that it intends to exercise any rights under Article XXVIII:3(a) of the GATT 1994

as provided in paragraph 10 below and the EC may submit written notification to the United States that it intends to withdraw from the present agreement as provided in paragraph 11 below.

10. Extension of deadline for exercise of any rights under Article XXVIII of the GATT 1994:
 - (a) The parties agree that the deadline for withdrawal of substantially equivalent concessions pursuant to Article XXVIII:3(a) shall be considered to be extended. Accordingly, the United States may exercise any right to withdraw substantially equivalent concessions under Article XXVIII:3(a) at any time after the expiration of 30 days written notice to the EC of the U.S. intent to exercise such rights, and the EC shall not assert that the United States is precluded from taking action pursuant to Article XXVIII:3(a) on the ground that the action was untimely.
 - (b) Notwithstanding (a) above, the United States shall not exercise any right to withdraw substantially equivalent concessions unless it has requested consultations and provided notification pursuant to paragraph 9 above. Should the EC withdraw from the agreement, the US shall be entitled to exercise any applicable rights under Article XXVIII:3(a) with immediate effect.
11. The EC shall not withdraw from the present agreement unless it has requested consultations and provided notification pursuant to paragraph 9 above. The EC may withdraw from the agreement at any time after the expiration of 30 days from the notification referred to in paragraph 9. Should the United States withdraw concessions pursuant to paragraph 10 above, the EC shall be entitled to withdraw from the present agreement with immediate effect.
12. Subject to the provisions of paragraph 10, this agreement is without prejudice to any right of the EC to challenge any withdrawal of concessions by the United States if it considers the withdrawal to be incompatible with Article XXVIII of the GATT 1994 or other relevant provisions of the WTO Agreement.
13. The EC shall consult and cooperate with the United States to obtain the approval by the WTO General Council of the extension of the deadline for withdrawal of substantially equivalent concessions pursuant to Article XXVIII:3(a).
14. This agreement shall be approved by the parties in accordance with their own procedures. The EC considers that this agreement shall not serve as a precedent for future Article XXVIII negotiations.
15. The provisions of this agreement shall be applicable as from 1 March 2005. To this purpose, the EC shall put in place the necessary internal procedures in order to ensure the implementation of paragraph 4 for husked rice imports entering in the period 1 March 2005 to 31 August 2005.

I would be grateful if you could confirm the agreement of your Government to the above.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the European Community

Letter No 2

B. Letter from the United States of America

Washington D.C., 2005

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

“Following negotiations between the European Community (EC) and the United States of America, the EC agrees to the conclusions as outlined below.

Applied rate of duty for certain husked rice (CN code 1006 20)

1. *The EC shall apply a rate of duty for certain husked rice in accordance with paragraphs 2 to 7.*
2. *Annual reference import level:*
 - (a) *First marketing year: in the first marketing year within the scope of this agreement (1 September 2004 to 31 August 2005), the annual reference import level shall be calculated as the average volume of total husked rice imports entering the EC-25 from all origins in the marketing years 1 September 1999 – 31 August 2000, 1 September 2000 – 31 August 2001, and 1 September 2001 – 31 August 2002, less imports of Basmati husked rice into the EC-25, plus 10% (i.e. 431,678 MT).*
 - (b) *Increase in subsequent marketing years: for each marketing year 2005/06, 2006/07 and 2007/08, the annual reference import level shall be increased by 6000 MT/year from the level of the previous marketing year. No later than 90 days before the end of the marketing year 1 September 2007, to 31 August 2008, both parties shall enter into consultations on the annual increase for subsequent marketing years, taking into account the developments in the EC's rice market notably as regards the evolution of consumption, and shall agree on the annual increase no later than 31 August 2008.*
3. *Six-month reference import level:* *in each marketing year, a six-month reference import level shall be calculated as 50 percent of the annual reference import level calculated in paragraph 2 above, which in the first marketing year would be 215,839 MT.*
4. *Mid-year adjustment to applied tariff rate:* *within 10 days after the end of the first six months of each marketing year, the EC shall review and, if necessary, adjust the applied tariff rate as follows:*
 - (a) *if actual husked rice imports for the just-completed six-month period are more than 15 percent below the six-month reference import level for that period, as calculated under paragraph 3 above (i.e., for the first marketing year less than 183,463 MT), the EC shall apply a tariff rate of EUR 30/MT;*
 - (b) *if actual husked rice imports for the just-completed six-month period are more than 15 percent above the six-month reference import level for that period, as*

calculated under paragraph 3 above (i.e., for the first marketing year more than 248,215 MT), the EC shall apply a tariff rate of EUR 65/MT;

- (c) if actual husked rice imports for the just-completed six-month period are within 15 percent (inclusive) of the six-month reference import level for that period, as calculated under paragraph 3 above (i.e., for the first marketing year between 183,463 and 248,215 MT), the applied rate shall be EUR 42,5/MT.*

For purposes of (a) through (c) above, actual husked rice imports are all imports entering the EC-25 from all origins under the CN codes 1006 20 less imports of Basmati husked rice into the EC-25.

5. *End-of-year adjustment to applied tariff rate:* *within 10 days after the end of the marketing year, the EC shall review and, if necessary, adjust the applied tariff rate as follows:*

- (a) if actual husked rice imports for the just-completed marketing year are more than 15 percent below the annual reference import level for that twelve-month period, as calculated under paragraph 2 above (i.e., for the first marketing year less than 366,926 MT), the EC shall apply a tariff rate of EUR 30/MT;*
- (b) if actual husked rice imports for the just-completed marketing year are more than 15 percent above the annual reference import level for that twelve-month period, as calculated under paragraph 2 above (i.e., for the first marketing year more than 496,430 MT), the EC shall apply a tariff rate of EUR 65/MT;*
- (c) if actual husked rice imports for the just-completed marketing year are within 15 percent (inclusive) of the annual reference import level for that twelve-month period, as calculated under paragraph 2 above (i.e., for the first marketing year between 366,926 and 496,430 MT), the EC shall apply a tariff rate of EUR 42,5/MT.*

For purposes of (a) through (c) above, actual husked rice imports are all imports entering the EC-25 from all origins under the CN codes 1006 20 less imports of Basmati husked rice into the EC-25.

6. *Data:* *the calculation of the annual and six-month actual import levels under paragraphs 4 and 5 above shall be determined using EC rice imports license data. The EC shall publish these data on the internet on a weekly basis.*
7. *Transparency:* *the EC shall promptly provide public notice of any adjustment in the applied tariff rate.*
8. *Consultation:* *at the request of either party, the parties shall, within 30 days of the receipt of such a request, enter into consultations on matters covered by this agreement.*
9. *If the parties are unable to resolve the issues subject to consultation within 30 days after receipt of the request, the United States may submit written notification to the EC that it intends to exercise any rights under Article XXVIII:3(a) of the GATT 1994 as provided in paragraph 10 below and the EC may submit written notification to the United States that it intends to withdraw from the present agreement as provided in paragraph 11 below.*

10. Extension of deadline for exercise of any rights under Article XXVIII of the GATT 1994:

- (a) *The parties agree that the deadline for withdrawal of substantially equivalent concessions pursuant to Article XXVIII:3(a) shall be considered to be extended. Accordingly, the United States may exercise any right to withdraw substantially equivalent concessions under Article XXVIII:3(a) at any time after the expiration of 30 days written notice to the EC of the U.S. intent to exercise such rights, and the EC shall not assert that the United States is precluded from taking action pursuant to Article XXVIII:3(a) on the ground that the action was untimely.*
- (b) *Notwithstanding (a) above, the United States shall not exercise any right to withdraw substantially equivalent concessions unless it has requested consultations and provided notification pursuant to paragraph 9 above. Should the EC withdraw from the agreement, the US shall be entitled to exercise any applicable rights under Article XXVIII:3(a) with immediate effect.*

11. *The EC shall not withdraw from the present agreement unless it has requested consultations and provided notification pursuant to paragraph 9 above. The EC may withdraw from the agreement at any time after the expiration of 30 days from the notification referred to in paragraph 9. Should the United States withdraw concessions pursuant to paragraph 10 above, the EC shall be entitled to withdraw from the present agreement with immediate effect.*

12. *Subject to the provisions of paragraph 10, this agreement is without prejudice to any right of the EC to challenge any withdrawal of concessions by the United States if it considers the withdrawal to be incompatible with Article XXVIII of the GATT 1994 or other relevant provisions of the WTO Agreement.*

13. *The EC shall consult and cooperate with the United States to obtain the approval by the WTO General Council of the extension of the deadline for withdrawal of substantially equivalent concessions pursuant to Article XXVIII:3(a).*

14. *This agreement shall be approved by the parties in accordance with their own procedures. The EC considers that this agreement shall not serve as a precedent for future Article XXVIII negotiations.*

15. *The provisions of this agreement shall be applicable as from 1 March 2005. To this purpose, the EC shall put in place the necessary internal procedures in order to ensure the implementation of paragraph 4 for husked rice imports entering in the period 1 March 2005 to 31 August 2005.*

The United States of America has the honour of confirming its agreement with the content of this letter.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the United States of America

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE
SIDE**

1. NAME OF THE PROPOSAL

Proposal for a Council Decision on the conclusion of an Agreement in the form of an exchange of letters between the European Community and the United States of America relating to the method of calculation of applied duties for husked rice.

2. BUDGET LINES

Chapter 10 - Article 1000: Agricultural duties established by the institutions of the European Communities in respect of trade with non-member countries under the common agricultural policy (Article 2(1)(a) of Decision 2000/597/EC, Euratom)

Amount budgeted for the year concerned: EUR 819,45 million– B 2005.

3. FINANCIAL IMPACT

Proposal has no financial implications

Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€ million to one decimal place)

Budget line	Revenue ⁷	12 month period, starting dd/mm/yyyy	Year 2005
Article ...	<i>Impact on own resources</i>	–	–45,3

Situation following action					
	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
Article ...					
Article ...					

4. ANTI-FRAUD MEASURES

5. OTHER REMARKS

It is estimated that the measure will have a downward impact on the provisions for own resources for budget year 2005 amounting to EUR –45,3 million (before deduction of 25% of expense incurred in collection). Taking into account its ratio with the quantity of husked rice imported during the year, it appears difficult to calculate the effect on the provisions for own resources in 2006.

⁷ Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% of collection costs.