DRAFT OPINION

of the Committee on International Trade

for the Committee on the Environment, Public Health and Food Safety and the Committee on Agriculture and Rural Development


Rapporteur: Jude Kirton-Darling
SHORT JUSTIFICATION

Background

Animal cloning ("genetic copying") for farming purposes raises animal health and welfare, consumer choice and ethical issues and poses a long-term regulatory challenge. At present cloning is mostly used to produce breeding animals and the food potentially marketed in the EU would be derived from offspring of clones.

Currently in the EU the marketing of food from clones requires a pre-market approval based on a scientific food safety assessment by the European Food Safety Authority (EFSA), as governed under the "Novel Food Regulation" (EC) No 258/1997. Its current review excludes regulation of cloning from its scope and is dealt with in two separate Commission proposals of 18 December 2013. Until this legislation on food derived from cloned animals and their descendants enters into force, cloning remains under the existing "Novel Food Regulation" (EC) No 258/1997. So far, no business operator has applied for an authorisation to market food produced using the cloning technique in the EU.

Although animals are not cloned for food production in the EU, commercial agricultural cloning takes place in several countries, including Argentina, Australia, Brazil, Canada, and the US and may also be undertaken in Chile, China, New Zealand and Uruguay, where cloning companies operate.

As meat and milk from clone descendants and clones themselves start entering the food supply chain, it is imperative to ensure forward-looking regulation and a level-playing field in this domain. It is important to note that none of the third countries have established viable traceability and labelling systems or systems of identification and registration for imports of the offspring of clones or food derived from them.

Conclusions and recommendations of the European Food Safety Authority contained in its 2008 opinion and reconfirmed in its statements in 2009 and 2010 recognised animal health and welfare concerns due to mortality rates associated with the cloning technology. The proposed package on animal cloning takes into account animal welfare and ethical concerns, aiming to bring more legal certainty in the field by around 2016.

WTO compatibility

Your rapporteur deems it essential to ensure regulatory consistency with the WTO framework – the General Agreement on Tariffs and Trade (GATT), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) – and a level-playing field within the rules-based system.

Cloning technique currently does not stand up to the animal welfare standards, and concerns of EU citizens regarding cloning and animal welfare must be taken into account. There are no international SPS standards on cloning and no science-based evidence proving risks on food safety. As there are no direct food safety concerns related to the cloning technology, but rather
animal health and welfare ones, current proposals must pass the test of the GATT and TBT Agreements.

Articles I and III of the GATT prohibit measures resulting in discrimination between the “like products”. If food derived from the clones and their offspring would be "likened" to conventional food, the consistency of the proposed measures with the WTO rules would be justifiable under Article XX GATT exceptions.

The proposals were notified by the EU under the Technical Barriers to Trade Agreement only as a precautionary measure, as prohibitions on placing on the market would not constitute "a technical regulation", in contrast to introduction of any labelling requirements.

As demonstrated by the Seals products dispute (DS400 and DS401), Article XX of GATT covers animal welfare protection and is justified for moral concerns, if it does not constitute “arbitrary and unjustifiable discrimination”.

Your rapporteur is convinced that provisional prohibition of marketing of animal clones, embryo clones and food for human consumption derived from animal clones and their offspring is a proportionate measure addressing justified concerns. Alternative measures such as prior authorisation and labelling would not entirely resolve ethical and animal welfare concerns in this case.

**AMENDMENTS**

The Committee on International Trade calls on the Committee on the Environment, Public Health and Food Safety and the Committee on Agriculture and Rural Development, as the committees responsible, to take into account the following amendments:

**Amendment 1**

Proposal for a directive
Recital 5

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<th>Text proposed by the Commission</th>
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<td>(5) It is expected that the knowledge on the impact of the cloning technique on the welfare of the animals used will increase. The cloning technique is likely to improve over time. Consequently prohibitions should only apply provisionally. This Directive should therefore be reviewed within a reasonable time taking into account the experience gained by the Member States in its implementation, scientific and technical progress and international developments, in particular</td>
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international developments.

trade flows and the Union's trade relations.

Or. en

Amendment 2

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Embryo clones, animal clones, food from animal clones, their descendants and reproductive material and food derived therefrom cannot be likened to embryos, animals, food from animals, their descendants and reproductive material and food derived therefrom respectively, within the meaning of Article III of the GATT.

Or. en

Amendment 3

Proposal for a directive
Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) The provisional prohibition of the cloning of animals, of the placing on the market of animal clones and embryo clones, and of the placing on the market of food from animal clones, their descendants and reproductive material and food derived therefrom is a measure that is necessary in order to protect public morals and animal health, within the meaning of article XX of the GATT.

Or. en
Amendment 4

Proposal for a directive  
Article 3 – paragraph 1a (new)

Text proposed by the Commission

1a. Member States shall ensure that food of animal origin imported from third countries where food from clones, their descendants and reproductive material and food derived therefrom can be legally placed on the market or exported is only placed on the market of the Union in accordance with any specific import conditions adopted under Articles 48 and 49 of Regulation (EC) No 882/2004 of the European Parliament and of the Council*, ensuring that no food from animal clones, their descendants and reproductive material and food derived therefrom will be exported to the Union from those third countries.


Amendment 5

Proposal for a directive  
Article 5 – paragraph 2 – point c

Text proposed by the Commission

(c) international developments.

Amendment

(c) international developments, and in particular the impact of this Directive on trade flows and on the Union’s trade.
relations.

Or. en