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The EU, the US and Japan requests consultations with China related to the exportation of rare earths, tungsten and molybdenum

On 13 March 2012, the EU, the US and Japan formally requested consultations with China concerning the latter's export restrictions on rare earths, tungsten and molybdenum. Over the past few years, China has progressively cut its exports of rare earths, citing concerns over resource preservation and the environmental ramifications of rare earths mining. In the EU, the US and Japan's view, the restrictions being imposed violate WTO rules and are enforced in order to boost manufacturing in China. Pursuant to Article 4 of the WTO Dispute Settlement Understanding, a complaining party is entitled to request the establishment of a panel for the adjudication of the controversy if the dispute is not resolved through consultations within 60 days.

Since 2010, China has imposed export duties, quantitative restrictions, licensing requirements, restrictions on the right to export aimed at treating foreign-invested entities differently from domestic entities and minimum export pricing systems on various forms of rare earths. China has claimed that these measures are in place in order to protect its scarce resources and the environment. China has further stated that many of these rare earths are vital to their military sector and national security and, consequently, the restrictions on the exportation of these resources is legitimate and WTO consistent. The EU, the US and Japan conversely claim that China has no WTO-based justification for these export restrictions. In particular, China's curtailing of its rare earths shipments to Japan during a period of increased tension between the two countries in 2012 raised suspicions that political issues were the true reason behind its export restrictions, not China's fears of scarcity and environmental damage. It is further alleged that these export restrictions are aimed at forcing manufacturers to relocate operations to China in order to receive a stable supply of rare earths. After the WTO Appellate Body's ruling in *China – Measures Related to the Exportation of Various Raw Materials* (hereinafter, *China – Export Restrictions on Raw Materials*) issued on 30 January 2012, the EU and the US requested that export regimes placed on raw materials (and also on rare earths) be brought in line with WTO rules. The EU and the US have yet to receive an acceptable response to their requests. If formal WTO consultations do not resolve the dispute, the EU, the US and Japan look poised to request the establishment of a WTO panel.

Even though the WTO Dispute Settlement Body does not follow the principle of *stare decisis*, the Appellate Body ruling in *China – Export Restrictions on Raw Materials* provides a solid legal basis for examining the ongoing rare earths dispute (for additional background on the Appellate Body decision, see Trade Perspectives, Issue No. 3 of 10 February 2012). In *China – Export Restrictions on Raw Materials*, the Panel determined that Chinese measures were inconsistent with Article XI:1 of the General Agreement on Tariffs and Trade (hereinafter, the GATT). China's claim that its quantitative export restrictions on bauxite were justified under Article XI:2(a) was rejected by both the Panel and the Appellate Body. The

Appellate Body held that any claim brought by China that its quantitative restrictions are consistent with Article XI:2(a) of GATT 1994 as not being '*temporarily applied*', would require China to, in fact, prove that the true intention of the export restrictions is to either temporarily prevent or relieve a '*critical shortage*' on bauxite. China failed to provide such justification as its restrictions have been in place for at least a decade and there was no indication that these restrictions would be lifted should the reserves be replenished. Similar logic could apply for China's export restrictions on rare earths.

Further, the exceptions available under Article XX of the GATT were deemed invalid to justify China's export duties on raw materials, as the wording and context of Paragraph 11.3 of China's WTO Accession Protocol precludes the possibility for China to invoke Article XX of the GATT as an exception for its violations of Paragraph 11.3. Consequently, China could not rely on the provisions of Article XX(b) (*i.e.*, necessary to protect human, animal or plant life or health) and/or of Article XX(g) (*i.e.*, conservation of exhaustible natural resources) of GATT 1994 as exceptions for justifying its export restrictions on rare earths. The Appellate Body, examining the *arguendo* of the Panel, held that Article XX(g) of the GATT permits trade measures relating to the conservation of exhaustible natural resources if such measures work together with restrictions on domestic production or consumption, which operate so as to conserve exhaustible natural resources. While determining that the Panel's interpretation of the phrase '*made effective in conjunction with*' in Article XX(g) of the GATT requires a separate showing that the purpose of the challenged measure must be to make effective restrictions on domestic production or consumption, this reversal of the Panel's Article XX(g) interpretation did not overturn the Panel's conclusion that China's export quota on bauxite were not justified under Article XX(g) of the GATT.

China will likely invoke again these exceptions under Article XX of the GATT in a potential rare earths dispute. Importantly, the mining of rare earths contains several different elements, some of which are extremely scarce and cause greater environmental damage than the raw materials at issue in *China – Export Restrictions on Raw Materials*. Consequently, the environmental concerns appear to be more complex under a rare earths case, potentially allowing a determination that China's export restrictions on rare earths may be justified under Article XX(b) or XX(g) of the GATT. The Panel and Appellate Body's conclusion, however, that the wording and context of Paragraph 11.3 of China's Accession Protocol precludes the possibility for China to invoke Article XX of the GATT as an exception for its violations of Paragraph 11.3 would likely be the same in a new rare earths dispute. Consequently, provisions of Article XX(b) or XX(g) of the GATT would not be allowed as exceptions to Paragraph 11.3, unless it is determined that these exceptions are no longer precluded by the language in China's WTO Accession Protocol.

China is a monopoly supplier of rare earths with a 97% share of world production in these precious materials. Industries where rare earths materials, tungsten and molybdenum are necessary include hybrid and conventional vehicles, advanced electronics, wind turbines, energy-efficient lighting, steel, oil & gas, chemicals, and medical equipment. The commercial significance of EU, US and Japanese companies having access to these rare earths at prices and in quantities similar to their Chinese counterparts is of extreme importance. This is increasingly evident for the EU, as it is unable to produce any rare earths materials and, as a result, relies solely on importation. Contrastingly, the WTO should also allow its Members to take steps necessary to protect its environment and natural resources. It is this balance between upholding free trade and a country's right to protect its environment that could once again come to the forefront of the WTO dispute settlement system and interpretative authority if consultations fail to solve the access to rare earths dispute. Therefore, the evolution of the case should be carefully monitored by all businesses operating with rare earths across the world, as well as by the domestic competent authorities of all WTO Members attempting to gain access to these materials or take the necessary steps to protect their environment.

Concerns about the legal compatibility with EU internal market and WTO rules impede agreement on new GMO cultivation directive

At a meeting of the EU Council on 9 March 2012, the environmental ministers of the EU Member States have rejected a compromise text from the current Danish EU Presidency, in relation to the EU Commission's proposal for a regulation amending *Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms* as regards the possibility for EU Member States to restrict or prohibit the cultivation, in all or part of their territory, of genetically modified organisms (hereinafter, GMOs) that have been authorised at EU level. The objective of the EU Commission's proposal of 13 July 2010 was to provide a legal basis to allow EU Member States to restrict or prohibit the cultivation of GMOs in their territory on grounds other than health and environment considerations, which had already been addressed during the EU authorisation process for GMOs. The new rules are expected to allow breaking the deadlock over the authorisation and cultivation of GMOs (only a few GMOs have been authorised over the last years) in EU Member States willing to authorise new GMOs. Although a large number of EU Member States accepted the Danish Presidency proposal, a blocking minority (which reportedly included France, Germany and Belgium) prevented to reach an agreement in the EU Council.

The Danish compromise proposal allowed for two options: 1) '*during the GMO authorisation procedure (upon request of an EU Member State), the notifier/applicant has the possibility to adjust the geographical scope of the authorisation, thus excluding part or all of the territory of that EU Member State from cultivation*'; and 2) '*after the authorisation procedure, the EU Member State has the possibility to restrict or prohibit the cultivation of an authorised GMO, provided that the national measure does not conflict with the environmental risk assessment carried out at EU level'*. However, the EU Member States that blocked the compromise still had concerns regarding, in particular, the compatibility of some provisions in the proposal with WTO and EU internal market rules; and how to avoid possible overlaps and/or inconsistencies between the mandatory risk assessment at EU level and national environmental measures.

On 8 February 2011, in a staff working document, the EU Commission provided the following indicative list of grounds for EU Member States to restrict or prohibit GMO cultivation relating to the public interest which, according to the EU Commission, are either already foreseen in the Treaty on the Functioning of the EU (hereinafter, TFEU) or in the existing case-law of the Court of Justice of the EU or that could be inferred from the terms of the existing secondary legislation, and which could be invoked, alone or where relevant in combination: 1) public morals (including religious, philosophical and ethical concerns); 2) public order; 3) avoiding GMO presence in other products (*i.e.*, contributing to the preservation of organic and conventional farming systems; and avoiding the presence of GMOs in other products such as particular food products under GM-free schemes); 4) social policy objectives (*e.g.*, keeping certain type of rural development in given areas to maintain current levels of occupation, such as specific policies for mountain regions); 5) town zoning and country planning/land use; 6) cultural policy (*e.g.*, preservation of societal traditions in terms of traditional farming methods; preservation of cultural heritage linked to territorial production processes with particular characteristics); and 7) general environmental policy objectives, other than assessment of the adverse effects of GMOs on environment (*e.g.*, maintenance of certain type of natural and landscape features; maintenance of certain habitats and ecosystems (*i.e.*, preservation of the conservation *status quo*); maintenance of specific ecosystem functions and services (*e.g.*, preservation of nature-oriented regions of particular natural and recreational value to citizens).

A hypothetical measure of an EU Member State, which restricts or prohibits GMO cultivation justifying it invoking one of these grounds, could violate the EU's internal market rules, which basically state that a product that is legal in one EU Member State can be legally marketed in another EU Member State. In particular, restricting or prohibiting GMO cultivation in part or all of the territory of an EU Member State may have an indirect effect on free circulation of GM seed that may be considered as an obstacle to free circulation of goods in the sense of Article 34 of the TFEU. There are, however, limits to the free movement of goods, established under Article 36 of the TFEU, in that free movement of goods rules (the provisions of Articles 34 and 35 of the TFEU) *'shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States'.* The question is whether the concerned EU Member State will pass this test and be able to justify its measure by one of the exceptions stated above (see in this regard, Trade Perspectives Issues No. 7 of 9 April 2010 and No. 12 of 18 June 2010).

The Danish compromise proposal included a novelty in that it suggested to include the possibility that during the GMO authorisation procedure (upon request of an EU Member State), the notifier/applicant (*i.e.*, the biotech company) has the possibility to adjust the geographical scope of the authorisation, thus excluding part or all of the territory of that EU Member State from cultivation. The reason behind this appears to be the fact that, if the notifier/applicant already abstains from including a *'non-willing'* part of the EU in the request for authorisation of a GMO, it may later be difficult to invoke that there should be free movement of goods. This approach appears to be very intelligent, as it implies that there would be no measure '*banning*' a GMO as there is already no request for authorisation in that EU Member State. It needs to be seen whether biotech companies would accept this '*trick*' in order to have, perhaps, more straightforward authorisations in the '*willing*' EU Member States, while authorisations in the *'non-willing'* EU Member States are excluded beforehand.

As to international trade implications, another question is whether this approach would result in the EU system of GMO authorisations being again challenged at the WTO, as in the *EU - Biotech Products* dispute, where the WTO had ultimately condemned an EU *de facto moratorium* on the approval of GM products. In fact, setting-up a system based on science and leaving, at the same time, EU Member States with the freedom to respect it or to *'opt out'*, appears to be a difficult balance to strike, particularly in light of the EU commitments and obligations under the WTO system. It appears that the *'opting out'* system envisaged under the proposed system would permit EU Member States to establish barriers to trade as the cultivation of certain GMOs might not be *de facto* authorised in certain jurisdictions. This could even lead, once more, to a *de facto moratorium*, as certain markets within the EU would be closed, in violation of the EU's obligations under Article XI of the GATT on the general elimination of quantitative restrictions. In addition, such system could hardly be justified under the WTO Agreement on Sanitary and Phytosanitary Measures (*i.e.*, Articles 2.2, 5.1 and 5.2 thereof) since a ban on GMOs could only be justified on the basis of scientific evidence, whereas it appears that, under the EU proposal discussed, EU Member States would have the authority to ban the cultivation of GMOs the abovementioned *'other'* reasons (beyond health and environmental ones). In a potential dispute, the EU could invoke Article XX of the GATT as a justification, in particular, Article XX(a) of the GATT, arguing that the measure is necessary to protect public morals. Moreover, an attempt to defend a GM crop cultivation ban could be based on Article XX(b) of the GATT. This provision justifies measures necessary to protect human, animal, plant life or health. Finally, the justification under Article XX(g) could also be invoked: the wording of the provision on '*exhaustible*

natural resources' could be read in light of contemporary concerns about the protection and conservation of the environment and interpreted in the '*evolutionary*' manner, following the approach taken by the Appellate Body in the *US – Shrimp* case (for detailed argumentation on Article XX justifications, see Trade Perspectives, Issue No. 8 of 21 April 2011). In view of the wide array of justifications the EU Commission mentions in its open list, the analysis of the compatibility with WTO law in any particular case depends necessarily on the surrounding facts of each individual EU Member State measure that could be adopted in the future and which are not yet known.

It has been reported that the Danish EU presidency is considering this legislative dossier as a priority and will now engage in bilateral talks with a number of EU Member States in order to achieve a breakthrough over the cultivation of GM crops before the next EU Council meeting in June 2012.

The European Parliament seals the trade deal on beef between the EU, the US and Canada

On 14 March 2012, the European Parliament put an end to a two-decade beef trade war between the EU, on the one side, and the US and Canada on the other. The EU Parliament voted for the adoption of the amendments to *Council Regulation (EC) No. 617/2009 of 13 July 2009 opening an autonomous tariff quota for imports of high-quality beef* from the US and Canada. This Regulation was developed as a consequence of a long-standing WTO dispute between the three countries, which was triggered by the 1988 EU's ban on the importation of beef and beef products treated with certain growth-promoting hormones. The Appellate Body determined the EU import prohibition to be in breach of Articles 3.3 and 5.1 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, and requested the EU to withdraw the ban. As far as the measure was not brought in compliance with the WTO rules, in 1999 the WTO Dispute Settlement Body authorised both the US and Canada to suspend concessions to the EU equivalent to the level of nullification suffered (which stood at 117 million USD for the US and 11,3 CAD for Canada, yearly). The authorised suspension of tariff duties concerned first and foremost products originating from France, Germany, Denmark and Italy, such as, *inter alia*, Roquefort cheese, truffles, mustards, jams, chocolate, soups and toasted breads.

In order to resolve the dispute, the EU signed Memoranda of Understanding (hereinafter, the MoU) with both North-American trading partners with the aim of minimising the destructive damage of the imposed sanctions. The agreed solution comprised of separate implementation stages. From August 2009, as part of '*Phase 1*' of the MoU implementation, the EU provided the US with a tariff-rate quota for hormone-free beef at zero duty for 20,000 tonnes annually. In response, the US reduced its retaliation by 68%, limiting it to 38 million USD per year. Similarly, a tariff-rate quota for Canada of 1,500 tonnes hormone-free beef at zero duty was agreed in exchange for the withdrawal of all sanctions by Canada. Moreover, as one of the terms of the MoU, the US agreed to refrain from the so-called '*carousel duty suspension*', the system of retaliation in which the concessions and other obligations subject to suspension would periodically change, specifically in terms of product coverage. There is nothing in the text of the WTO Dispute Settlement Understanding that explicitly prohibits such methods of retaliation, though such suspension appears to go contrary to the underlying principles of stability and predictability of the multilateral trading system. The recent decision by the European Parliament represents the completion of the agreed settlement of the dispute and the switch to the so-called '*Phase 2*'. As part of this '*Phase 2*', the EU expands the quota on hormone-free beef at zero duty to 45,000 tonnes for the US and 3,200 tonnes for Canada. In response, both US and Canada committed to suspend the application of all increased duties. '*Phase 2*' was scheduled to start in August 2012.

Therefore, the adoption of the relevant Regulation by the EU Parliament was crucial for the EU to comply with the MoU. The US and Canada have already complied with the MoU themselves, having unilaterally withdrawn all sanctions in May and August 2011, respectively.

The extended tariff-rate quota (hereinafter, the TRQ) has caused debate on its compatibility with the WTO rules already when imposed in 2009 (see Trade Perspectives, Issue 18 of 2 October 2009). According to Article XIII of the GATT, allocation of tariff-rate quotas among trading partners should be non-discriminatory. Though the EU beef TRQ is stated to be available to all other WTO Members without any restriction, it has been argued that the definition of '*hormone-free beef*' in the *Council Regulation (EC) No. 617/2009* is excessively specific and detailed. The definition requires certain cattle feeding methods to be used, what could effectively exclude other trading partners not using those methods as non-eligible for in-quota imports. Some commentators even suggested that the definition was specifically crafted to favour beef from the US and Canada only, while excluding beef from Latin America, and therefore creating a *de facto* discriminatory regime of the TRQ administration. As confirmed by the Appellate Body in *EC – Bananas*, Article XIII of the GATT must be read as a general non-discrimination obligation to all quantitative restrictions and TRQs. Moreover, the imposition of a TRQ *de facto* crafted for the benefit of a particular trading partner only could be found in breach of Article 4.2 of the Agreement on Agriculture, which prohibits discriminatory measures of such kind. However, the 2009 TRQ has not resulted in any WTO complaints by the other major beef exporters to the EU. The new increase of a zero-tariff quota could, however, cause WTO action, as the in-quota volume is now twice bigger, and that will significantly increase the competitive position of the US and Canada beef in the EU market.

The decision of the European Parliaments is putting an end to a long row over hormone-treated beef imports in the EU and vindicates the US and Canadian position. Though the EU remains in violation of its WTO obligations, the complainants in the *EC – Hormones* case have agreed to pursue no further retaliatory actions in connection to the ban. This case demonstrates the perception of the '*effective breach*' model, developed mainly in contract law, in the WTO legal system. In order to maintain its food safety policies without detrimental effects for some of its domestic industries, the EU has to provide additional access to beef from Canada and the US. Still, the major commercial implications of the measure are likely to fall on other exporters of beef to the EU, which will not qualify for the new TRQ. The increased quantities of beef from the US and Canada, exempt from any tariff duties, will likely cause adverse effects on the competitive standing of other suppliers of beef to the EU. Therefore, it remains to be seen whether these third countries, that may consider to be the ones actually bearing the actual cost of the EU's compensation offered to the US and Canada, will decide to challenge the deal (and its consequences) or let it stand.

Mexico agrees to cut future car exports to Brazil

Last week, Mexico and Brazil have announced the terms of their new bilateral agreement on auto exports to Brazil, under which Mexico committed to fix its car trade with Brazil for the next three years at the amounts lower than the actual trade volume of 2011. Mexico agreed to undertake such restrictions in response to Brazil's threats to terminate prior bilateral arrangements and slap import tariffs on Mexican cars. In February, Brazil notified Mexico of its intention to withdraw from the 2003 bilateral Economic Complementation Accord between the two countries, which provides for a free trade regime for motor vehicles and car parts, unless the terms of the deal were reviewed.

Brazil's domestic production of cars (as well as other manufacturing sectors in the country) has been significantly hit by the strong appreciation of the Brazilian Real. The Mexican subsidiaries of major car-manufacturing giants, such as General Motors, Nissan and Volkswagen, on the contrary, demonstrated prosperous export results in 2011 due to a weaker Peso. The increased imports of cars from Mexico have been all the more salient if compared to the other trading partners of Brazil. In 2011, Mexico's car imports accounted for almost 20% of all the 850,000 cars and light commercial vehicles imported into Brazil: this amounted to a 66% surge when compared to 2010 results of Mexico. To compare, auto imports from South Korea to Brazil in 2011 increased only by 14%, while shipments from Argentina increased by just 7.6%. Due to a remarkable import surge of cars and auto parts from Mexico, Brazil suffered a USD 1.7 billion trade deficit with Mexico, following a seven-year period of trade surplus. All that provoked the wish of the Government of Brazil to terminate the effect of the bilateral Accord and increase import tariffs on Mexico's cars unless the terms of the deal were reviewed. Among other requirements, Brazil wanted to raise the 30% domestic content threshold for vehicles eligible for duty-free importation to Brazil. In the view of Brazil, Mexico's cars have an excessive amount of components manufactured outside its territory. Following negotiations, Mexico agreed to raise the minimum domestic content to 40% within 5 years. Moreover, Mexico will limit its auto exports to Brazil to USD 1.45 billion in 2012, USD 1.56 billion in 2013 and USD 1.64 billion in 2014. The cap on duty-free car imports from Mexico to Brazil will expire after three years.

The agreement reached between Brazil and Mexico is a classical example of a voluntary export restraint in the form of a governmental arrangement. The WTO compatibility of such instruments is highly questionable. Article XI of the GATT contains the general prohibition of any quantitative restrictions on exports or sale for export of any product destined for the territory of a different WTO Member. Voluntary export restraints remain the so-called '*grey measures*', which at first sight appear to be not regulated by the WTO as dealing with the behaviour of private businesses only, and not the State. Still, voluntary export restraints may be found to violate Article XI of the GATT depending on the way in which they are implemented. The classical approach towards such measures was developed by the GATT Panel in *Japan – Semiconductors* case. In that case, the Government of Japan requested private parties to export semiconductors at prices not below company-specific costs. However, as far as the requests of the Government was coupled with the statutory requirement to submit information on export prices, the systematic monitoring of product-related costs by the local authorities and a system of disadvantages and penalties levied on non-cooperating parties by the Government of Japan, the restraint was found a '*coherent system*' (*i.e.*, an export restriction developed by Japan in violation of Article XI of the GATT). Similar logic would likely apply to measures by Brazil. As long as the Brazilian Government develops sophisticated surveillance mechanisms or implements a system of liabilities for exports above the requested thresholds, such measures will likely be deemed contrary to Article XI of the GATT as *de facto* quantitative restriction on exports.

Mexico's sales of vehicles and auto parts to Brazil in 2011 totaled USD 2.1 billion, thus the proposed reduction to USD 1.45 billion in 2012 could be a very noticeable restriction for the car manufacturers in Mexico. The cap will benefit the Brazilian domestic producers, who will have to adjust to the currency fluctuations and guarantee the competitiveness of their production after the expiry of the three-year arrangement. In addition, the agreement may be beneficial to other exporters of cars to Brazil, which enjoy tariff preferences or reductions, as they may compete for the demand not captured by the cheap exports from Mexico. In any case, all companies involved in auto exports to Brazil should grant specific attention to Brazil's trade policy in relation to cars imports, as the country has demonstrated in recent months its willingness to lean towards protectionism of domestic car producers. In October 2011, Japan and South Korea raised concerns regarding Brazil's treatment of foreign cars, which were made subject to a much higher excise tax, levied on the sales of passenger vehicles (see Trade Perspectives, Issue No. 19 of 21 October 2011). To obtain a tax

reduction, manufacturers were required to meet a 65% regional content requirement and extensively invest in innovation and R&D activities in Brazil. All that demonstrates that the protection of domestic manufacturers constitutes one of the top priorities of Brazil's trade policy. This is an understandable and legitimate objective to all WTO Members. How it is pursued will determine whether it is also WTO consistent.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Regulation (EU) No. 211/2012 of 12 March 2012 concerning the classification of certain goods in the Combined Nomenclature.*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) No. 250/2012 of 21 March 2012 amending Implementing Regulation (EU) No. 961/2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station.*

- *Commission Regulation (EU) No. 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council.*

- *Directive 2012/5/EU of the European Parliament and of the Council of 14 March 2012 amending Council Directive 2000/75/EC as regards vaccination against bluetongue.*

- *Commission Implementing Regulation (EU) No. 245/2012 of 20 March 2012 amending Regulation (EC) No. 1187/2009 as regards exports of milk and milk products to the Dominican Republic.*

- *Commission Implementing Regulation (EU) No. 237/2012 of 19 March 2012 concerning the authorisation of alpha-galactosidase (EC 3.2.1.22) produced by Saccharomyces cerevisiae (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by Aspergillus niger (CBS 120604) as a feed additive for chickens for fattening (holder of authorisation Kerry Ingredients and Flavours).*

- *Commission Regulation (EU) No. 232/2012 of 16 March 2012 amending Annex II to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council as regards the conditions of use and the use levels for Quinoline Yellow (E 104), Sunset Yellow FCF/Orange Yellow S (E 110) and Ponceau 4R, Cochineal Red A (E 124).*

- *Commission Regulation (EU) No. 225/2012 of 15 March 2012 amending Annex II to Regulation (EC) No 183/2005 of the European Parliament and of the Council as regards the approval of establishments placing on the market, for feed use, products derived from vegetable oils and blended fats and as regards the specific requirements for production, storage, transport and dioxin testing of oils, fats and products derived thereof.*

- *Commission Implementing Regulation (EU) No. 227/2012 of 15 March 2012 concerning the authorisation of Lactococcus lactis (NCIMB 30117) as a feed additive for all animal species.*

- *Commission Implementing Decision of 9 March 2012 approving certain amended programmes for the eradication and monitoring of animal diseases and zoonoses for the year 2012 and amending Implementing Decision 2011/807/EU as regards the measures eligible for Union financial contribution in programmes for the eradication of scrapie and the advance payment by the Union in programmes for the eradication of rabies for the year 2012 (notified under document C(2012) 1406).*

- *Commission Implementing Regulation (EU) No. 220/2012 of 14 March 2012 derogating from Regulation (EC) No. 967/2006 as regards the deadlines for communicating sugar quantities carried forward from the marketing year 2011/2012.*

- *Commission Implementing Regulation (EU) No. 221/2012 of 14 March 2012 amending the Annex to Regulation (EU) No. 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin, as regards the substance closantel.*

- *Commission Implementing Regulation (EU) No. 222/2012 of 14 March 2012 amending the Annex to Regulation (EU) No. 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin, as regards the substance triclabendazole.*

Other

- *Commission Decision of 1 March 2012 concerning the national provisions notified by the German Federal Government maintaining the limit values for lead, barium, arsenic, antimony, mercury and nitrosamines and nitrosatable substances in toys beyond the entry into application of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys.*

- *Commission Directive 2012/9/EU of 7 March 2012 amending Annex I to Directive 2001/37/EC of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products.*

- *Council Decision of 28 February 2012 on the conclusion of the Protocol agreed between the European Union and the Republic of Guinea-Bissau setting out fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force.*

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