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The EC amends the list of US products on whose imports additional customs duties will be imposed

On 17 April 2009, the EC adopted Regulation No. 317/2009 removing certain products from the list of US imports subject to additional customs duties in the EC.

Since May 2005, through Regulation No. 673/2005, the EC has been imposing a 15% *ad valorem* additional customs duty on imports of certain products originating from the US. The adoption of this measure was the result of the US failure to comply with its WTO obligations in relation to the Continued Dumping and Subsidy Offset Act (CDSOA). The US Act was found to be incompatible with WTO obligations by the Dispute Settlement Body, which adopted the related panel and the Appellate Body reports in January 2003. As a consequence to the US failure to address the inconsistencies of its legislation, and pursuant to the WTO authorization to suspend the application of concessions to the US, the EC applied 'retaliatory' measures, consisting of a 15% *ad valorem* duty on a range of products corresponding, on a yearly basis, to a figure not exceeding the amount of nullification or impairment.

The EC Commission is annually adjusting the level of the suspension of concessions to the level of nullification or impairment caused by the CDSOA to the EC at that given time. The nullification or the impairment caused to the EC during the previous fiscal year (*i.e.*, from 1 October 2007 to 30 September 2008) amounted to USD 16,31 million, which is lower than the impairment caused in the previous years.

The EC Regulation will apply as of the 1 May 2009. The US products that will still be subject to additional duties include textile and clothing articles for men and women, certain paper products (such as diaries), sweet corn, frames and mountings of metal and truck-mounted cranes.

Germany imposes ban on the cultivation of Genetically Modified (GM) Maize

On 14 April 2009, Germany imposed a ban on the cultivation of a genetically modified (GM) strain of maize, namely MON810, becoming the sixth European state to adopt such a measure, after Austria, France, Greece, Hungary and Luxembourg and despite the EC Commission's different view on the matter.

In Germany, the cultivation of MON810 is permitted since 2005. It appears that the ban, which has immediate effect, was imposed invoking a safeguard clause under Directive 2001/18/EC of the European Parliament and the Council, and in particular Article 23 thereof, which allows EC Member States to provisionally restrict or prohibit the use and/or sale of a GM product on its territory when new or additional information provides grounds for considering that a GM product constitutes a risk to human health or the environment.

According to press sources, Monsanto, the manufacturer of the pest-resistant strains of maize, already challenged the legitimacy of the measure soon after it was imposed.

GM products were the object of a WTO dispute in 2003, when Argentina, Canada and the US complained about the EC's *de facto* ban on GM food products. The WTO DSB found that a *de facto moratorium* on the approval of biotech products is not an SPS measure by itself, but it affected approval procedures, which are on the other hand SPS measures. The requirement of a risk assessment is able to give reasonable support to state prohibitions on GM products. Therefore, in the process of a possible WTO legal dispute, a WTO Member imposing a ban will have to justify with scientific data the adoption of the measure. If the ban is based on environmental considerations, as it appears to be the case for Germany, other obligations may also come into play.

The crop, which is currently the only GM crop approved for cultivation in the EC, has been deemed safe also by the European Food Safety Authority (EFSA), the EC authority responsible to deliver scientific opinions and carry-out risk assessments, whose opinion on the matter was recently invoked by the EC Commission against similar safeguard measures applied in turn by Austria, France and Greece. The ban, however, appears to have the support of EC Member States which, for the fourth time last month, voted against forcing these countries to lift their bans, despite EFSA's view.

Canada requests WTO consultations about measures affecting the importation of bovine meat and meat products into Korea

On 9 April 2009, Canada has requested WTO consultations with Korea concerning measures affecting the importation of bovine meat and meat products. The two measures at stake (*i.e.*, the Administrative Act No. 51584-476, and the Korean Act No. 9130) were imposed by Korea to regulate the importation of bovine meat and meat products from Canada against risks arising from bovine spongiform encephalopathy (BSE). The Administrative Order, in force since 2003, imposed a ban on the importation into Korea of bovine meat and meat products from Canada. The Korean Act, which entered into force in 2008, set out the conditions for the lifting of the import ban and included health requirements for the importation of Canadian bovine meat and meat products.

Canada alleges that the Korean measures are inconsistent with the SPS Agreement and the GATT, inasmuch as, according to Canada, Korea's measures are, *inter alia*, discriminatory, not based on scientific principles, maintained without sufficient scientific evidence and non-proportionate. Canada also alleges that Korea has violated the rules of the SPS Agreement on approval and inspection procedures.

This dispute is likely going to reconfirm, *inter alia*, the standards of risk assessment and the application of the precautionary principle. If Canada and Korea fail to settle the controversy within sixty days from receipt of the request for consultations, Canada may request the establishment of a panel and start WTO litigation. Interested parties and traders should monitor the developments and liaise with their Governments' authorities in order for their commercial interests in Korea to be looked after, if need be by their countries joining in the consultations or requesting their own consultations with Korea.

GCC and EC resume discussions on signing an FTA

The Gulf Cooperation Council (the GCC, composed of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) and the EC are considering reviving FTA negotiations, suspended in December 2008 due to a deadlock over two issues.

Bilateral trade relations between the EC and the GCC were first established in 1988, when both parties signed a Cooperation Agreement which contained a commitment by both sides to enter into FTA negotiations. Negotiations for an FTA first began in 1990, were soon suspended and re-launched with a new mandate in 2002. On December 2008, negotiations were again suspended due to the insistence of the EC to include a chapter on human rights, as well as to the fact that some Gulf countries, notably Saudi Arabia, wanted to retain selective export duties. The ministerial meeting that will define whether there is agreement on the conclusion of an FTA between the GCC and the EC, is expected to take place on 29 April 2009.

If negotiations will be based on the 2002 mandate, the FTA is supposed to cover market access for goods and services, common rules and disciplines for intellectual property rights, competition, dispute settlement, rules of origin, human rights, illegal immigration and terrorism.

The GCC is currently the EC's fifth largest export market and the EC is the top trading partner for the GCC. EC exports to the GCC are mainly machinery and transport materials, such as power generation plants, railway locomotives and aircraft, as well as electrical machinery and mechanical appliances. The GCC exports to the EC mainly fuels and derivatives. Products from all six GCC countries already enjoy preferential tariff treatment in the EC market under the EC General System of Preferences.

Recently Adopted EC Legislation:

Commission Regulation (EC) No 330/2009 of 22 April 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards minimum standards for the treatment of seasonal products in the Harmonised Indices of Consumer Prices (HICP)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:103:0006:0009:EN:PDF>

Commission Regulation (EC) No 326/2009 of 21 April 2009 entering a name in the register of protected designations of origin and protected geographical indications (Andruty kaliskie (PGI))

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2009:102:SOM:EN:HTML>

Commission Regulation (EC) No 327/2009 of 21 April 2009 on the issuing of import licences for applications lodged during the first seven days of April 2009 under tariff quotas opened by Regulation (EC) No 616/2007 for poultry meat

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:102:0005:0006:EN:PDF>

Commission Regulation (EC) No 317/2009 of 17 April 2009 replacing Annex I to Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:100:0006:0007:EN:PDF>

Commission notice concerning the date of application of the protocols on rules of origin providing for diagonal cumulation between the Community, Algeria, Egypt, Faroe Islands, Iceland, Israel, Jordan, Lebanon, Morocco, Norway, Switzerland (including Liechtenstein), Syria, Tunisia, Turkey and West Bank and Gaza Strip

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:085:0025:0026:EN:PDF>

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