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Malaysian fishery products have met EC food safety requirements

According to informed sources and the press, the EC Food and Veterinary Office (FVO) has recommended that imports of Malaysian fish and fishery products be resumed in due course. The measure still needs to be adopted by the European Commission.

Following an inspection mission carried-out in Malaysia in April 2008, the FVO had concluded that Malaysian fish and fishery products did not meet Community requirements. In particular, the FVO found that Malaysian authorities did not use standards (such as traceability, HACCP, microbiological requirements, etc.) at least equivalent to EC requirements in case of exports of fishery products to the EC. Furthermore, the official controls carried out by the competent authorities did not provide guarantees at least equivalent to EC requirements for importation of fish and fishery products. The outcome of this inspection resulted in a suspension of imports from Malaysia, in force as of 1 August 2008. A number of recommendations were addressed to the Malaysian authorities, which appear to have now complied with them.

Malaysia is listed in Annex II to Commission Decision 2006/766/EC (*i.e.*, a list of third countries from which imports of fishery products are permitted), in Annex I to Decision 2003/858/EC for the export of live fish intended for farming to the EC, and Annex I, Part II to Decision 2006/656/EC for import of fish for ornamental purpose.

The EC is Malaysia's third most important food export market after the US and Singapore. The issue of evaluating the public and animal health controls and conditions of production before the products are exported is part of a procedure designed by the EC for the purposes of consumer protection and food safety. For high-risk products, such as shellfish, inspection procedures are mandatory.

US import ban on Chinese poultry products may lead to a WTO dispute

China has raised concerns in both the Agriculture and SPS Committees at the WTO, expressing its discontent with the US legislation maintaining an import ban on poultry products originating from China. The measure has been in place since 2004 following outbreaks of avian flu and was extended by Section 727 of the US federal budget, which was signed into law on 11 March 2009. According to the provisions at stake, US Government's funds may not be used to establish or implement a rule allowing poultry products imported into the US from China.

The US claims that its measure is an SPS measure based on scientific evidence and related to the 2004 avian flu disease. The US argues that this is an issue of food safety that needs to be tackled in China. China considers the US measures to have little scientific justification and to be in violation of, *inter alia*, the provisions of the WTO Agreement on Agriculture.

In order to comply with WTO rules, the US ban on poultry must be based on scientific principles, it must be applied to the extent necessary for the protection of human, animal or plant life or health and, at the same time, it must not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. China argues that its poultry production meets the standards set by the EC, Japan and Switzerland, which are not adopting measures similar to those of the US. The EC, on its part, has recently adopted measures prohibiting certain poultry imports from the US, which has led to a US request for WTO consultations earlier this year (for more details, see Trade Perspectives, Issue No. 2 of 30 January 2009).

Diagonal cumulation of origin applies between the EC, Turkey and the Western Balkans

In the framework of the Stabilization and Association Agreements (SAAs) concluded with Western Balkans countries, on 17 March 2009, the EC published a Notice on the application of diagonal cumulation of origin between the EC, Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and, in relation to products covered by the EC-Turkey Customs Union, Turkey. The Notice extends the system of bilateral cumulation, in force between the EC and the above-mentioned Western Balkan countries, to one of diagonal cumulation.

In every preferential trade agreement there are rules of origin defining which products are to benefit from the preferences. Products that have obtained originating status from one country are allowed by cumulation to be further processed or added to products originating in another participating country as if they had originated in that latter country. The difference between the diagonal and the bilateral cumulation is that, in the latter case, countries parties to a preferential trade agreement with the EC would cumulate only with the EC and not amongst each other, whereas with a system of diagonal cumulation this is also allowed on a plurilateral basis. However, what is necessary in this case is that all parties be bound by preferential trade agreements having identical rules of origin providing for diagonal cumulation among each other, with all countries participating in the acquisition of the originating status.

The EC concluded SAAs with Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia. Currently, only the ones between the EC and Croatia and the EC and the Former Yugoslav Republic of Macedonia are in force. Pending the entry into force of the other SAAs, trade matters between the EC and Albania, Bosnia and Herzegovina, and Montenegro are regulated by Interim Agreements. Diagonal cumulation, however, does not apply to Croatia and Serbia. This is because the SAA with Croatia does not provide for diagonal cumulation and, in the case of Serbia, the Interim Agreement is not yet implemented.

The main benefit of diagonal cumulation is that it allows products that are manufactured in different countries (*i.e.*, those participating to the diagonal cumulation zone) to be considered as originating in the country where the last working or processing operation took place, provided that this was more than a minimal operation, thereby qualifying for preferential treatment. Diagonal cumulation currently operates between the Community and the countries of the 'pan-Euro-Mediterranean cumulation zone', which includes the EC, EFTA countries (*i.e.*, Iceland, Lichtenstein, Norway and Switzerland) and the Mediterranean countries that are part of the Barcelona process (*i.e.*, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey). The EC plans to integrate the Western Balkans into the Pan-Euro-Med zone of diagonal cumulation.

EC Parliamentary Committee voted in favour of a trade ban on seal products

On 2 March 2009, the Committee on Internal Market and Consumer Protection of the European Parliament voted in favour of an EC ban on seal products, a matter that could escalate to a new 'trade and environment' case at the WTO (for more details, see Trade Perspectives, Issue No. 3 of 13 February 2009). The Committee is holding another meeting on 30 March 2009, in which the subject is likely to be discussed again. The matter will then be subject to the EC Parliament's vote in its next plenary session, scheduled to take place on 1 April 2009. If the Parliament supports the ban, the EC Council of Ministers is to decide on the issue by qualified majority.

It appears that, in order to prevent the adoption of an EC ban on seal products, Canada's legislators are now proposing a worldwide '*Seal Hunting Ethics Code*' that would include strict standards on slaughtering of seals, on seal products and on the protection of the species. This issue requires further monitoring as far as future EC parliamentary discussions are concerned, particularly since all previous labelling proposals have so far been rejected by the European Parliament.

Canada appears to stand as one of the trading partners that would be most affected by the adoption of such measure, even though the Canadian seal industry relies mainly on exports to Russia and China. The issue is likely going to result in a new trade dispute at the WTO, and requests for consultations against individual EC Member States were already filed by Canada in 2007 (for more details, see Trade Perspectives, Issue No. 3 of 13 February 2009).

The EC and Korea stand to conclude FTA negotiations soon

On 23 and 24 March 2009, EC Commission officials and Korean negotiators met for their eighth round of Free Trade Area (FTA) negotiations. In the intention of the negotiators, this round was meant to be the last one. However, parties need to settle a number of outstanding differences in relation to the two remaining issues of rules of origin and duty draw-back, whereas a deal on automotive trade appears to have been reached.

The two sides agreed on eliminating or phasing-out tariffs on 96% of EC products and 99% of South Korean products within three years from entry into force of the FTA. In relation to the sensitive issue of tariff reduction on cars, it appears that the two delegations agreed to phase-out tariffs on cars with an engine size of more than 2,5 litres within three years and, for cars with engines size lower than 2,5 litres, within five years.

One of the remaining issues upon which negotiators need to reach an agreement is on the possibility for Korea of applying duty draw-back schemes. Duty draw-back schemes allow manufactures to be refunded of customs duties and VAT paid on goods imported for processing and subsequent re-export. South Korea wants to be able to continue refunding its manufacturing companies of the import tariffs paid for materials and components used to manufacture products which are then exported from its territory. The EC does not want to include duty draw-back schemes in the context of FTAs. None of the EC FTAs currently in force grants such possibility.

In the context of an FTA, where import tariffs are reduced and eliminated, the possibility of obtaining duty refunds stands as an even greater significant advantage for the industry of the country where manufacturing is taking place. Through duty draw-back schemes, Korean manufacturers would benefit of reduced costs of production in the amount correspondent to the refund of the duties paid on imported parts and materials used for processing of products that will be exported, as Korean products, to the EC at zero rate. Closely related to this, is the other thorny issue of rules of origin. Parties still need to agree on which percentage of

transformation must be carried-out on a product for it to acquire originating status in the EC or Korea. This appears of key importance for Korea considering that it imports components from China and other trading partners. The two issues are connected to each other. If duty draw-back schemes will be allowed, as South Korea proposes, higher thresholds might be agreed upon for considering products of Korean or Community origin.

An agreement between the EC Commission and Korean negotiators is expected to be reached during the forthcoming weeks. At the same time, EC Member States also need to approve the outcome of the negotiations. Affected industries and traders still have time to assess the possible effects of this FTA on their products and competitive edge, eventually contacting the competent authorities at national or European level in order for their interests to be taken into account. However, time is of the essence and it is running out.

Recently Adopted EC Legislation:

Notice concerning preferential agreements providing for diagonal cumulation of origin between the Community, Western Balkan countries and Turkey
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:062:0020:0021:EN:PDF

Commission Regulation (EC) No 241/2009 of 20 March 2009 initiating a 'new exporter' review of Council Regulation (EC) No 1911/2006 imposing a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate originating, inter alia, in Russia, repealing the duty with regard to imports from one exporter in this country and making these imports subject to registration
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:075:0005:0007:EN:PDF

Commission Regulation (EC) No 240/2009 of 20 March 2009 amending Regulation (EC) No 1282/2006 as regards export licences and export refunds for milk and milk products
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:075:0003:0004:EN:PDF

Commission Decision of 20 March 2009 concerning the draft Regulations from Ireland on the labelling of country of origin of poultrymeat, pigmeat and sheepmeat (notified under document number C(2009) 1931)
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:079:0042:0043:EN:PDF

Commission Regulation (EC) No 248/2009 of 19 March 2009 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards notifications concerning recognition of producer organisations, the fixing of prices and intervention within the scope of the common organisation of the market in fishery and aquaculture products
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:079:0007:0033:EN:PDF

Commission Regulation (EC) No 205/2009 of 16 March 2009 approving minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Riso Nano Vialone Veronese (PGI))
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:071:0015:0019:EN:PDF