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WTO consultations with the EC requested by the US concerning restrictions on its poultry exports

On 16 January 2009, the US requested WTO consultations concerning certain EC sanitary and phytosanitary measures (hereinafter, the EC SPS measures) blocking imports of US poultry into the EC market. In its request for consultations, the US argues that EC legislation prohibits the import of poultry treated with any substance other than water, unless that substance has been pre-approved by EC authorities. Given that the US processes its poultry with 'pathogen reduction treatments' or 'PRTs' (to reduce the amount of microbes on the meat), the EC SPS measures effectively prohibit the shipment of virtually all US poultry to the EC.

In 2002, the US requested EC approval for the use of four PRTs (*i.e.*, chlorine dioxide, acidified sodium chlorite, trisodium phosphate, and peroxyacids) in the production of poultry intended for export to the EC market. However, the US argues that, despite the fact that various EC agencies cumulatively recognised that the importation and consumption of poultry treated with such substances poses no risk to human health, after more than six years the EC finally rejected the approval of the use of these four PRTs. The approval of imports of poultry treated with such substances was, in fact, rejected by the EC Council, following the unanimous opinion (with the United Kingdom abstaining) of the EC Standing Committee on Food Chain and Animal Health, even if the EC Commission proposed that such imports be allowed. It should also be noted that the four above-mentioned PRTs were approved for use in poultry processing by the US Food and Drug Administration and the US Department of Agriculture in 2002.

The EC SPS measures are in force since 1997. The US states that, since it has unsuccessfully attempted to resolve this issue without resorting to litigation, its request for WTO consultations provides a last opportunity for settling this issue amicably. Should these WTO consultations not allow for a satisfactory adjustment of the matter within sixty days after the date of receipt of the request for consultations, the US will have the right to request the establishment of a panel and start WTO litigation. Traders from third countries affected by the EC SPS measures should monitor these developments and discuss with their Governments possible ways to participate in this dispute.

New EC rules requiring mandatory designation of origin labelling for extra virgin and virgin olive oils destined for sale to final consumers are to be adopted soon by the EC Commission

New rules requiring mandatory designation of origin on the label of extra virgin and virgin olive oils are to be adopted by the EC Commission. The draft text, which was notified to the WTO Committee on Technical Barriers to Trade (hereinafter, TBT Committee) on 22 October 2008, will amend existing rules on labelling requirements for retail-stage olive oils and replace the

voluntary designation of origin labelling for extra virgin and virgin olive oils with a mandatory labelling requirement.

The legal framework on labelling of olive oils for retail is provided by Commission Regulation No. 1019/2002, which currently allows only extra virgin and virgin olive oils to bear a designation of origin on the label, while it prohibits such designation to be included on labels of all other olive oils and olive pomace oils. Under the draft amendment, the designation of origin becomes mandatory for extra virgin and virgin olive oils, whereas it remains prohibited for olive oils obtained by blending refined olive oils and virgin olive oils and for olive pomace oils, and appears voluntary for all other descriptions of oils included in Annex XVI of the Council Regulation No. 1234/2007 establishing a common organisation of agricultural markets (*i.e.*, lampante olive, refined olive oil, crude olive-pomace oil, and refined olive pomace oil).

The new designation of origin for extra virgin and virgin olive oils originating in one EC Member State or a third country may only consist of a reference to the EC Member State or the EC, or to the third country in question, as the case may be. Where the extra virgin or virgin olive oil is produced through the use of blends of olive oils originating from more than one EC Member State or third country, the designation of origin must bear the indication of: a) 'blend of Community olive oils', or a reference to the EC; b) 'blend of non-Community olive oils', or a reference to the non-EC origin; or c) 'blend of Community and non-Community olive oils', or a reference to EC and non-EC origin. Designation of origin of extra virgin and virgin olive oils may also consist of a protected designation of origin or a geographical indication.

In addition, the new rules would also formally allow the EC Member States to maintain their regulations prohibiting the production in their territory of blends of olive oils and other vegetable oils for internal consumption. EC Member States' domestic rules prohibiting the marketing in their territory of such blends originating from other countries or banning the production of such blends for marketing in other EC Member States or for exportation are forbidden.

The EC notified the draft amendment to the WTO TBT Committee on 22 October 2008. According to the notification, the new rules should be adopted by the beginning of 2009 and enter into force in July 2009. The rationale of the amendment appears to be the prevention of deceptive practices and the avoidance of deceptive practices vis-Ã -vis consumers, as well as to preserve EC Member States' traditions in the production of olive oils. The WTO Agreement on Technical Barriers to Trade allows WTO Members to adopt and maintain technical regulations, such as labelling requirements, to the extent that such requirements do not result in discriminatory treatment and are not more trade restrictive than necessary for the fulfilment of the legitimate objective of, in this case, the prevention of deceptive practices. Currently, a significant share of extra virgin and virgin olive oils in the EC is composed of blends of oils originating from third countries that could potentially be affected by the measure.

Mexico and the US take China to the WTO, challenging its 'Famous Brands' programme

On 19 December 2008, the US and Mexico lodged their requests for WTO consultations in relation to the Chinese 'Famous Brands' programme. The US and Mexico claim that numerous Chinese measures, covered by the 'Famous Brands' programme, offer grants, loans and other incentives to a wide range of Chinese exports, including household electronic appliances, textiles and apparel, products of light manufacturing industries, agricultural and food products, metal and chemical products, medicines and health products.

In the requests for consultations, both the US and Mexico stated that the Chinese 'Famous Brands' programme is inconsistent with WTO law on subsidies, to the extent that the financial

contributions appear contingent upon compliance with certain export performance criteria. In particular, the US and Mexico claimed that the Chinese measures contradict the relevant provisions of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter, the WTO ASCM), the Agreement on Agriculture, the GATT 1994, and violate China's commitments included in its WTO Accession Protocol.

Chinese officials contend that the 'Famous Brands' programme does not violate WTO law. Chinese officials also indicated China's intention to cooperate with the complainants in this case.

According to the WTO dispute settlement rules, if within sixty days after the date of receipt of the request for consultations parties fail to settle the dispute, the US and Mexico may request the establishment of a WTO panel. In order to prove that the alleged Chinese subsidies provided by the 'Famous Brands' programme are *de jure* or *de facto* contingent upon export performance and, therefore, are inconsistent with WTO law, the US and Mexico will have to demonstrate that the Chinese measures are tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to exporting enterprises does not automatically qualify it as a prohibited export subsidy within the meaning of the WTO ASCM. The outcome of this dispute may have implications for other WTO Members, many of which are currently devising support programs and rescue packages to help local industries overcome the impacts of the global financial crisis.

Canada suspends its WTO complaint over US meat labels requiring country of origin labelling

On 13 January 2008, Canada announced that it will suspend its complaint with the WTO regarding US regulations that require meat to be labelled with its country of origin, after negotiations resulted in relaxed country-of-origin labelling (COOL) rules. Technically, the Canadian complaint at the WTO will not be withdrawn in case it needs to be revived as the government monitors how the revised rules are applied.

The US is expected to soon publish the final version of COOL meat labelling rules which will take effect on 16 March 2009. The interim measure requiring COOL on meat (beef, pork, chicken and lamb) sold in US grocery stores, which was challenged by Canada and Mexico as a violation of trade rules, became mandatory on 30 September 2008. The law also covered perishable items, such as fruits and vegetables and a variety of nuts. The final rule announced on 12 January appears to have been watered-down as it allows US meat produced in a domestic facility that also is processing imported animals to carry a mixed origin designation, for example saying beef is of US and Canadian origin. This means meat packers and producers will not have to incur the extra cost of segregating Canadian animals. However, that blurs the distinction between US and foreign meat. Consumer groups have called for COOL as a necessary step towards broader consumer education and buying choices. They now complain that the US Department of Agriculture has defined it too narrowly. For example, they say, the agency has defined many foods as 'processed', such as mixed frozen vegetables, which exempts them from the new law.

WTO rules require that imported products be provided national treatment (*i.e.*, treatment no less favourable than that accorded to like domestic products in respect of laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use) and that the labelling does not result in, *inter alia*, an unnecessary obstacle to trade. NAFTA allows COOL, but requires that any labelling requirements be applied in a manner that would minimise difficulties, costs, and inconvenience. As a technical regulation, COOL is falling under the scope of the WTO Agreement on Technical Barriers to Trade.

Labels and labelling requirements are increasingly becoming controversial in trade policy. The US and other countries are already in disagreement with the EC over geographical indications. Labelling of products produced through biotechnology is another ongoing issue and was the object of a WTO dispute brought by Argentina, Canada and the US. COOL may become the next one. In the EC, COOL is required, for example, on certain meat products and on fruit and vegetables. On pre-packaged foodstuffs, COOL is currently mandatory only where failure to indicate the origin might mislead the consumer as to the true provenance of the foodstuff. However, in reviewing the current EC labelling rules, there are proposals to make COOL mandatory for all foods. As seen above, the EC is passing legislation requiring mandatory designation of origin for extra virgin and virgin olive oils.

Comments on the new WTO Rules texts

The ongoing Doha negotiations on Rules are bringing into focus the major disagreements between WTO Members on the existing WTO anti-dumping and anti-subsidies instruments. On 19 December 2008, the Chair of the WTO's negotiating group on Rules, Ambassador Guillermo Valles GalmÃ©s of Uruguay, released the new draft text, 13 months after the previous text was circulated. As the Chair stated in the introduction to the document, the purpose of the circulation is to provide a platform for further discussions. The new draft text, although it reflects some progress in the negotiations, still contains many unresolved issues.

In particular, on the application of anti-dumping measures, WTO Members are still divided on the use of 'zeroing' in dumping calculations, which was the subject of a range of WTO disputes and has been constantly condemned by WTO panels and the Appellate Body.

The term 'zeroing' refers to the practice, applied in the calculation of dumping margins, of assigning a zero value to those transactions where negative dumping margins were reported (*i.e.*, where the export price was higher than the normal value). The consequence of the use of such practice is to avoid that negative dumping margins for certain transactions could offset positive dumping margins. Thus, this practice has the effect of inflating the overall dumping margin. As indicated in the draft text, WTO Members' opinions on this issue range from the prohibition of the use of 'zeroing' *tout court*, irrespectively of the 'zeroing' technique used, to a proposition that 'zeroing' be specifically authorised in all contexts. With regard to the determination of injury, suggestions were made that such form of injury as 'material retardation' be clarified. There are also still ongoing debates concerning, *inter alia*, the need to include anti-circumvention rules in the Anti-Dumping Agreement, the possible automatic termination of anti-dumping measures at the expiry of a set timeframe and possible actions in case of third country dumping.

Negotiations concerning subsidies focused on the possible elimination of subsidies in the fisheries sector. The main task for the negotiating group in this context was to address the need to protect the world's fish stocks from overfishing and to afford a just amount of 'special and differential treatment' to the world's poorer countries, heavily relying on this sector. The 2007 draft text on rules contained the proposal to ban several types of fisheries subsidies, especially those that increase fishing capacity or provide incentives to fish. However, following controversy between WTO Members, instead of an outright prohibition, the new text merely offers a 'roadmap' for future work on the matter.

New discussions of the Rules draft text are expected to begin the first week of February 2009.

European Parliament adopts pesticides package

On 13 January 2009, the European Parliament approved the new 'EC pesticides package'. The package consists of a Regulation on placing plant protection products on the market and a Directive on the sustainable use of pesticides. After the Parliament's vote, the package needs to be approved by the EC Council of Ministers. The Council's decision is expected within the next few weeks and it is believed that it will be a mere formality. The EC Member States will then have 2 years (until 2011) to transpose the new rules into national legislation.

Under the Regulation, which deals with the production and licensing of pesticides, a positive list of approved 'active substances' (*i.e.*, the chemical ingredients of pesticides) is to be drawn-up at EC level. Pesticides will then be licensed at national level on the basis of this list. Certain highly toxic chemicals will be banned unless exposure to them would in practice be negligible. The EC will be divided into three zones with compulsory mutual recognition within each zone as the basic rule. This will make it easier for manufacturers to gain approval for their products across borders within a given zone and thus make pesticides more quickly available to users. The Regulation also introduces new rules concerning data protection to safeguard the intellectual property rights of chemical manufacturers. The Directive on the sustainable use of pesticides introduces the principle of Integrated Pest Management (*i.e.*, the promotion of non-chemical pest control methods such as crop rotation to be used wherever possible as alternatives to pesticides).

The European Parliament's vote to tighten the approval process for new pesticides and restrict the use of existing ones caused intensive debates. Supporters of the new legislation claim that new rules will improve human health and result in ecological benefits. Opponents believe that the existing rules on pesticides are sufficiently tough and already require years' worth of data from laboratory tests and field trials together with ecological information before an approval can be considered by the licensing authorities. Moreover, they argue that the proposals contain many uncertainties, lack proper impact assessments, and may have negative commercial consequences in the EC and abroad. In particular, the tighter legislation may result in 15 to 20 per cent of pesticides disappearing from the market; increase of food prices; emerging unpredictable pests, diseases and weeds with significant damages to crops; and considerable reduction of food production in the EC. In relation to the negative consequences of the new legislation, firstly it appears difficult to determine whether producers and exporters from developing countries would be able to comply with the proposed rules. Secondly, there are warnings that the agrochemical companies will have fewer resources and less incentive to fund the ongoing research and development programmes.

It is generally acknowledged that organic production measures certainly have their place on the market. Whether organic farming is reliable enough to be granted the leading role in the production of food or not still remains to be unclear. All businesses involved in the production of pesticides and trading in agricultural products with the Community should follow these developments closely and should be ready to discuss with their Governments the possibility of transmitting their comments on the proposed new EC legislation to the competent WTO committees, *inter alia*, the Committee on the Application of Sanitary and Phytosanitary Measures.

Recently adopted EC legal instruments:

Commission Decision of 22 January 2009 granting certain parties an exemption from the extension to certain bicycle parts of the anti-dumping duty on bicycles originating in the People's Republic of China imposed by Council Regulation (EEC) No. 2474/93, last maintained and amended by Regulation (EC) No. 1095/2005, and lifting the suspension of the payment of the anti-dumping duty extended to certain bicycle parts originating in the People's Republic of China granted to certain parties pursuant to Commission Regulation (EC) No. 88/97:

http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2009:019:SOM:EN:HTML

Commission Regulation (EC) No. 52/2009 of 21 January 2009 initiating a 'new exporter' review of Council Regulation (EC) No. 1174/2005 imposing a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China, 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:2009:017:0019:0022:EN:PDF

Commission Regulation (EC) No. 41/2009 of 20 January 2009 concerning the composition and labelling of foodstuffs suitable for people intolerant to gluten:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:016:0003:0005:EN:PDF

Commission Regulation (EC) No. 42/2009 of 20 January 2009 amending Regulation (EC) No. 555/2008 laying down detailed rules for implementing Council Regulation (EC) No. 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:016:0006:0010:EN:PDF