

## **Welcome to Trade Perspectives!**

FratiniVergano – European Lawyers is proud to send you the first Issue of Trade Perspectives. With this fortnightly publication, we intend to regularly provide readers with a set of recent international trade developments of particular commercial and regulatory interest. Our focus will be on those matters that are set to become contentious trade issues or which should be followed closely by traders, government officials, lawyers, consultants and all other concerned parties.

We have taken the liberty to add your contact details to our mailing list and we hope that you will find our new publication interesting and stimulating. We look forward to hearing from you with your comments, questions, arguments and/or conflicting views. FratiniVergano trusts that the debate that may result from Trade Perspectives will represent our modest contribution to enhancing the interpretation of international trade law and to creating greater awareness among businesses and civil society. Should you wish to stop receiving Trade Perspectives, please simply let us know.

## **New EC regulation on marketing standards for sardines**

On 23 December 2008, the European Commission issued Regulation No. 1345/2008, which amends the EC marketing standards for preserved sardines and sardine-type products. The stated objective of the amendment is to provide consumers with sufficient information on the identity and main characteristics of the product. It should be recalled that the EC rules on marketing standards for preserved sardines and sardine-type products were the result of the outcome of a WTO dispute between the EC and Peru (*i.e.*, *EC – Trade Description of Sardines*) and the subsequent achievement of a mutually agreed solution between the parties.

While the new regulation appears to comply with relevant international standards, the introduction of the new marketing rules raises a number of concerns in relation to their consistency with the WTO principle of non-discrimination. In particular, Regulation No. 1345/2008 contemplates different treatment for the so-called '*Sardina pilchardus*' (caught mainly by EC producers) and '*Sardinops sagax*' (caught by producers from other countries, including Chile and Peru). According to the EC marketing rules, whereas '*Sardina pilchardus*' can be marketed in the EC under the trade description 'sardines', '*Sardinops sagax*' may be marketed in the EC only if the name of the scientific species and the geographic area where the fishes were caught is added to the trade description 'sardines'. Such different treatment may provide advantages to EC producers over their foreign competitors. In particular, it may influence consumers' preferences in the EC by pushing consumers to buy a product the trade description of which is simpler and more familiar (*i.e.*, 'sardines'). In addition, it may affect the labelling and exporting costs of '*Sardinops sagax*' products, with the likely consequence of sharp differences between the market prices of '*Sardinops sagax*' and '*Sardina pilchardus*' products in the EC market, to the detriment of the former that would be at a comparative disadvantage. Additional costs and commercial

disadvantages may also result from 'separation' practices *de facto* required to producers dealing with both '*Sardinops sagax*' and '*Sardina pilchardus*'.

It should be noted that some elements of less-favourable treatment for the exporters of '*Sardinops sagax*' products existed also in the previous marketing rules of the EC. It appears that the new regulation may provide sufficient reasons to reopen a WTO discussion on sardines' trade. Producers and exporters to the EC of sardines-based products should assess the impact of this regulation on their trade and discuss options with their trade authorities.

### **New WTO consultations requested by the EC to terminate the US and Canadian trade sanctions on its products in the EC – Hormones dispute**

The EC – Hormones dispute between the EC, on the one hand, and the US and Canada, on the other hand, dates back to the early 1980s, when the EC banned the use of growth-promoting hormones, as well as imports of meat treated with such hormones.

In 1996, the US and Canada challenged the EC measure under WTO law. In 1998, the WTO ruled that the scientific risk assessment supporting the EC measure was not sufficiently specific and, therefore, the measure was found to be incompatible with the relevant provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The US and Canada were authorized to apply 'retaliatory' trade sanctions to the EC in the form of suspension of a number of trade concessions. In particular, these sanctions consisted in the imposition of 100% *ad valorem* import duties on selected EC exports for a total value of US\$116.8 million and Can\$11.3 million, respectively. The US has applied 'retaliatory' duties to a range of agricultural products, including animal meat, poultry, cheese, vegetables, cereals, spices, juices, chocolate, mineral water, mustard as well as to such manufactured goods as, *inter alia*, artificial staple fibres, hair clippers and motorcycles. Canada's sanctions targeted only EC's agricultural products, such as meat products, vegetables, pastry-cook products, fruits, and alcoholic beverages.

On 14 October 2003, the EC adopted a directive modifying the grounds for restriction of the use of hormones in raising cattle and for importation of meat treated with hormones. The new EC ban was based on a comprehensive scientific assessment of risks and reports of the EC Scientific Committee on Veterinary Matters relating to Public Health. The conclusions of this Committee provided significant evidence that, out of six hormones, one is deemed to cause cancer and, in five other cases, potential detrimental effects may occur.

On the basis of these new scientific grounds, the EC brought a separate WTO case in order to cease the continuous application by the US and Canada of their trade sanctions. However, after four years of WTO proceedings, the dispute has not yet been fully resolved. Even though in a recent WTO decision it was found that the current EC restrictions on hormones-treated beef do not contradict WTO rules, a definitive judgement on the legality of the US and Canadian retaliatory sanctions was not reached. As a way to break this legal deadlock, the WTO Appellate Body suggested that the EC, the US and Canada start so-called compliance proceedings in the original dispute, by asking the new panel to rule whether the current EC legislation has remedied the previously identified breaches of WTO law and, as a consequence, whether the US and Canada must stop their retaliatory sanctions. Until this compliance report is adopted by the WTO or parties reach a mutually satisfactory solution, the US and Canada will have legal grounds to maintain their trade sanctions on the above mentioned EC products. Traders affected by the EC beef hormones ban or by the 'retaliatory' sanctions maintained by the US and Canada should monitor these developments and be ready to take advantage of any changes.

## **India and the EC accuse Indonesia of violating WTO rules**

The current global economic downturn has prompted many countries to introduce various rescue packages, which aim at preventing the collapse of strategic national industries. These measures often raise the issue of their consistency with WTO law.

In order to stimulate its economy, Indonesia's Ministry of Industry appears to have decided to cut value-added tax (VAT) on local content products. According to preliminary information, ten industrial sectors will benefit from the cuts, including food and beverages, electronics and electronic components, automotive and auto parts, telecommunications and information technology products, ship-building, chemicals, heavy equipment, and components for small-scale steam-generated power plants.

This initiative, however, has attracted the criticism of several countries. In particular, India and the EC have already claimed that such policy, if implemented, might be incompatible with WTO rules. India and the EC argue that Indonesia would be treating local and imported products differently, thus breaching the WTO principle of 'non-discrimination'. A request for clarification was already sent to Indonesia's Ministry of Industry.

The Indonesian Government considers that the cuts' scheme would promote Indonesia's national interests and save domestic industry from the impact of the global economic recession. The Indonesian Government has also indicated that it would study the request and respond promptly to the EC and Indian concerns. EC exporters to Indonesia should follow such developments closely and actively coordinate with their trade associations, EC Member States' authorities and the European Commission.

## **Is there a need for clearer food labelling of ready meal ingredients and their origin?**

Amid the preparation of the new EC food labelling rules, proposed by the European Commission at the beginning of 2008, there are ongoing discussions in relation to food labels indicating the country of origin for meat ingredients.

Meat in ready meals is often labelled as, for example, 'Made in the UK' or 'Made in the EC', even though it may have another origin. The reason of such 'misleading' information is that the current legislation of some EC Member States allows for processed meat to be classified on the basis of the place of final processing. It is argued that, in order to enable consumers to make a more informed choice, food labels should provide them with information on the country of origin for the main ingredients instead of indicating where products were last processed.

On the other hand, the food industry argues that there is no need to provide consumers with the information on the provenance of ready meal ingredients. When buying products, such as pies, pizzas or lasagnes, consumers usually do not expect country of origin labelling, unless its absence would mislead them. The food industry argues that, in this case, mandatory origin labelling of ingredients would only add further, unnecessary costs to the food sector at a difficult economic time for all producers.

Under current general EC food labelling rules, country of origin labelling is only mandatory if its absence could ultimately mislead the consumer. On the other hand, fresh meat is already subject to mandatory country of origin labelling requirements. Food producers and distributors should take an active stand with respect to this issue and contribute to the discussions surrounding this important EC regulatory initiative.

## The EC gives 16 developing countries duty-free access under its GSP+ scheme

Starting from this year, and until the end of 2011, sixteen developing countries that meet the EC criteria for sustainable development and good governance are eligible to benefit of its GSP+ trade scheme. These countries (i.e., Armenia, Azerbaijan, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Honduras, Mongolia, Nicaragua, Paraguay, Peru, Sri Lanka and Venezuela) are now being granted duty-free access to the EC market for products falling under 6,400 tariff lines, in addition to the benefits enjoyed under the EC standard Generalized System of Preferences (GSP).

The GSP+ duty-free access represents a significant tariff reduction over the rates applied under the regular GSP scheme and will cover such products as, *inter alia*, tobacco (cut by up to 52%), fruit juices (up to 30%), fruits (up to 20%), vegetables (up to 14%), fish (up to 20%) and honey (up to 17%). The GSP+ scheme opens new opportunities for businesses involved in trade between the EC and countries-beneficiaries of the policy. Statistics indicate that, in 2007, there was EURO 4.7 billion worth of trade under the GSP+ scheme between the EC and beneficiary countries.

### Recently adopted EC legal instruments:

*Commission Regulation (EC) No. 1345/2008 of 23 December 2008 amending Council Regulation (EEC) No. 2136/89 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products:*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0076:0078:EN:PDF>

*Commission Decision of 18 December 2008 amending Annex II to Council Decision 79/542/EEC as regards the entry for Botswana and Brazil in the list of third countries or parts thereof from which imports into the Community of certain fresh meat are authorized (notified under document number C(2008) 8516):*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:002:0011:0017:EN:PDF>

*Council Regulation (EC) No. 1353/2008 of 18 December 2008 amending Regulation (EC) No. 74/2004 imposing a definitive countervailing duty on imports of cotton-type bed linen originating in India:*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:350:0001:0023:EN:PDF>

*Council Regulation (EC) No. 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China:*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:350:0035:0045:EN:PDF>

FratiniVergano specializes in European and international law, notably WTO and EU trade law, EU agricultural and food law, EU competition and internal market law, EU regulation and public affairs. For more information, please contact us at:

**FRATINI VERGANO**

EUROPEAN LAWYERS

Rue de Haerne 42, B-1040 Brussels, Belgium Tel.: +32 2 648 21 61 - Fax: +32 2 646 02 70  
[www.FratiniVergano.eu](http://www.FratiniVergano.eu)

Trade Perspectives® is issued with the purpose of informing on new developments in international trade and stimulating reflections on the legal and commercial issues involved. Trade Perspectives® does not constitute legal advice and is not, therefore, intended to be relied on or create any client/lawyer relationship.

To stop receiving Trade Perspectives® or for new recipients to be added to our circulation list, please contact us at:

[TradePerspectives@FratiniVergano.eu](mailto:TradePerspectives@FratiniVergano.eu)