

## **The EC and the US prepare a WTO action against China on raw materials**

China's protracted practice of restricting exports of raw materials used in steel, semiconductors, aircraft and other products appears to be leading to a WTO action, likely to be launched by the EC and the US.

In particular, it appears that China is restricting exports of raw materials through a combination of export taxes and quotas, whose effects, according to representatives of the EC and US industries, are to lower prices of materials for domestic producers, granting Chinese manufacturers an unfair advantage over foreign competitors which have to buy raw materials on world markets. The EC and the US allege that China is breaching its WTO commitments, in particular, those in its Protocol on the Accession to the WTO, where it committed to eliminate all taxes and charges applied to exports, unless specifically provided for in Annex 6 of the Protocol (*i.e.*, Products Subject to Export Duty) as well as to eliminate and not to introduce, re-introduce, or apply, non-tariff measures (with some exceptions). China has argued that export taxes on high energy-consuming and pollutant goods are applied for environmental reasons.

An official request for WTO consultations has not been filed yet. However, informal consultations over China's export tariffs and quotas on raw materials, which have lasted for the past 12 months, so far appeared to have failed. The list of raw materials concerned by Chinese measures that could be covered by a WTO complaint will, most likely, include yellow phosphorous, antimony, bauxite, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten and zinc.

The dispute on raw materials between the EC/US and China appears to have a multi-faceted nature. Firstly, it concerns the consistency of export duties and export quotas with WTO rules. Secondly, it may address the issue of indirect subsidisation caused by export taxes, since China may be providing to its own companies (*inter alia*, steel companies) an unfair advantage vis-à-vis their foreign competitors by restricting exports of raw materials used in production. In addition, the dispute appears to cover the WTO exceptions pertaining to environment protection. At the current stage, however, it is unclear which arguments will be raised by the EC and the US during the WTO consultations.

## **The WTO allows Ecuador seven more months of its import restrictions**

At the last meeting devoted to Ecuador's trade restrictive measures, the members of the WTO Balance-of-Payments Committee agreed to allow Ecuador to continue imposing import restrictions for seven more months. At this meeting, Ecuador agreed to replace its non-tariff measures with price-based mechanisms by 1 September 2009, and pledged to eliminate its trade restrictive measures by no later than 22 January 2010. According to a statement of Ecuador's representatives, such a balance-of-payments exception was allowed by the WTO Balance-of-Payments Committee for the first time in a decade.

On 23 February 2009, Ecuador notified the WTO Committee on Balance of Payments that, given the severity of its balance of payments problem caused by the global financial crisis it introduced, with effect from 23 January 2009 and for the duration of one year, a combination of WTO-consistent restrictive import measures which did not exceed what was necessary to address Ecuador's balance of payments disequilibrium. The measures were supposed to apply to 630 subheadings at the ten-digit tariff level, which is approximately 8.7 per cent of a total of 7,230 subheadings, and cover on a non-discriminatory basis imports from all countries, including those that had previously signed free trade deals or preferential trade agreements with Ecuador.

According to Ecuador's notification, the restrictions were introduced under the provisions of Article XVIII.B of the GATT on governmental assistance to economic development. These provisions allow WTO developing-country Members, in presence of certain requirements, to deviate temporarily from the obligations of the GATT on quantitative restrictions when experiencing balance of payments difficulties. Consequently, it appears that Ecuador was successful in demonstrating to the WTO Balance-of-Payments Committee the existence of all the necessary prerequisites to invoke the balance-of-payments exception, and will temporarily benefit from it in order to rectify its current financial situation.

Traders affected by Ecuador's temporary measures should monitor the duration of their application and cooperate with their respective Governments to ensure that the measures be lifted within the established terms.

### **The result of the EC investigation into US remote gambling laws appears to demonstrate violations of WTO rules**

Following a complaint lodged by the Remote Gambling Association (RGA) on 11 March 2008, the EC Commission initiated an investigation into US measures affecting foreign suppliers of remote gambling services. The results of the investigations, recently published by the Commission, appear to indicate that US laws on remote gambling and their enforcement against EC companies constitute a trade barrier that the EC alleges to be inconsistent with WTO rules and which have adversely affected EC economic interests.

In particular, the Commission's report on the results of the investigation states that EC companies have been illegally discriminated vis-à-vis their US competitors. According to the report, whereas US companies have been allowed to freely operate online gambling in the US, EC companies and individuals cannot offer any type of online gambling and even face legal actions if they do so. According to the Commission's report, such treatment is inconsistent with the WTO commitments of the US on trade in services, and specifically with the provisions of the GATS on market access and national treatment, and cannot be justified under the provision on general exceptions thereof.

It is recalled that few years ago the US lost a WTO dispute against Antigua and Barbuda, based on similar claims (*i.e.*, US – Gambling Services). On 20 April 2005, the WTO Dispute Settlement Body adopted the Appellate Body Report that recognised the US measures to restrict Internet gambling businesses conducted by Antigua and Barbuda's operators to be inconsistent with the US WTO commitments on services. On 8 May 2007, pursuant to the provision of GATS on modification of schedules of commitments, the US notified to the WTO the intention to modify its WTO commitments on trade in services by excluding commitments on gambling and betting services from its Schedule of Specific Commitments. However, at the time of concluding the drafting of the Commission's report, the US commitments on gambling and betting services were still in place.

The companies operating in the online segment of the EC market are important players of the gambling and betting sector. According to their annual reports, three EC companies members of the RGA (*i.e.*, 888.com, PartyGaming, and Sportingbet) that used to provide gambling and betting services remotely into the US, incurred into direct losses in revenue of over 3 billion US dollars in 2006 alone due to the loss of the US market.

## EC signs interim EPA with three members of the Southern African Development Community

The EC signed an interim Economic Partnership Agreement (hereinafter, the EPA) with three members of the Southern African Development Community (hereinafter, the SADC), *i.e.*, Botswana, Lesotho and Swaziland. Mozambique – another Member of the SADC – has informed the EC about its intention to join this agreement in the near future. The interim EPA provides Botswana, Lesotho and Swaziland with access to the EC market, while countries keep on negotiating for a final EPA. The final deal is expected to address all outstanding issues pertinent to trade in goods, and will also include chapters on services and trade-related aspects, such as investment, government procurement and competition.

The EC – SADC EPA has been negotiated since 2004 between the EC and eight members of the SADC (*i.e.*, Angola, Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland and Tanzania). However, it appears that at the current stage the EC and the SADC failed to reach consensus on a number of contentious issues, such as the EC 'Most Favoured Nation' status. Consequently, Angola, Namibia, and South Africa decided to postpone signing the *interim* deal. In addition, according to the statement of the South African representatives, the EC – SADC EPA may undermine the Southern African Customs Union (hereinafter, the SACU). By signing the agreement with the EC, the SACU members Swaziland and Lesotho would infringe the rules that prevent the bloc's members from entering into individual trade deals with third countries. It should be noted that both Lesotho and Swaziland earn more than 60 per cent of their national revenues through the SACU revenue-sharing scheme.

The negotiations of the EPAs between the EC and the ACP countries (*i.e.*, Africa, Caribbean, Pacific) were fostered in 2007 when a WTO waiver providing former colonies with preferential access to the EC market, expired. The conclusion of the EPA with SADC would secure for its members a WTO-consistent preferential access to the EC market. Among the SADC members, this access, however, is of the least importance to Angola and South Africa. Whereas Angola, as a Least Developed Country, maintains its duty-free quota-free access to the EC market under the 'Everything But Arms' programme, South Africa benefits from the Trade, Development and Co-operation Agreement with the EC, signed in 1999. This agreement, among other issues, aims at establishing a free trade area between South Africa and the EC over a 12-year period.

The EC is the largest trading partner of the SADC group. In 2008 alone, total trade flows with the EC for Botswana, Lesotho, Swaziland and Mozambique accounted for almost 2.1 billion Euros. Whereas in 2008 the main exports of these countries to the EC were aluminium, diamonds, sugar, beef and fish, the EC exported to SADC mechanical machinery, electrical machinery, fertilisers and vehicles.

### Recently adopted EC legal instruments:

- Council Decision of 28 May 2009 concerning the conclusion of an Agreement in the form of an Exchange of Letters on the provisional application of the Fisheries Partnership Agreement between the European Community and the Republic of Guinea
- Fisheries Partnership Agreement between the Republic of Guinea and the European Community
- Commission Decision of 15 June 2009 amending Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC as regards extension of the temporary derogations from the rules of origin laid

down in Annex II to Council Regulation (EC) No 1528/2007 to take account of the special situation of Mauritius, Seychelles and Madagascar with regard to tuna and tuna loins

- Commission Regulation (EC) No 512/2009 of 16 June 2009 initiating a 'new exporter' review of Council Regulation (EC) No 1905/2003 imposing a definitive anti-dumping duty on imports of furfuryl alcohol 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
- Council Regulation (EC) No 499/2009 of 11 June 2009 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1174/2005 on imports of hand pallet trucks and their essential parts originating in the People's Republic of China to imports of the same product consigned from Thailand, whether declared as originating in Thailand or not
- Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council
- Commission Regulation (EC) No 503/2009 of 15 June 2009 fixing the import duties in the cereals sector applicable from 16 June 2009
- Commission Regulation (EC) No 508/2009 of 15 June 2009 amending Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat

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