

The EC prepares a new regulation on novel foods

On 15 January 2008, the EC Commission submitted to the EC Council and the European Parliament a draft regulation on novel foods, which, if adopted, will replace the current EC Regulation No. 258/97 on novel foods and novel food ingredients, which has been in force since 15 May 1997. The objective of the proposal is to encourage the development and placing on the EC market of safe innovative foods, as well as to ensure food safety, protection of human health and consumer interests.

In particular, the new regulation clarifies the definition of novel food. According to the proposed text, a food must be considered as novel when it has not been used for human consumption to a significant degree within the EC before 15 May 1997 (*i.e.*, the date when the current regulation on novel foods and novel food ingredients was introduced). Such a food includes: food of animal origin, when a non-traditional breeding technique is applied to the animals, as well as food from the offspring of such animals; food of plant origin, when a non-traditional breeding technique is applied to the plant; food to which a new production process is applied; food containing or consisting of engineered nanomaterials; and traditional food from a third country, not falling under the above-indicated categories, but derived from primary production with a history of food use in such country of at least 25 years in large part of the population of the country. Examples of authorised novel foods in the EC include 'rapeseed oil high in unsaponifiable matter', 'rye bread with added phytosterols/phytosterols', and 'milk type products and yoghurt type products with added phytosterol esters'.

The proposed regulation streamlines the authorisation procedure by switching from a national to a centralised EC level procedure. In addition, it introduces an accelerated authorisation for traditional food from third countries. The regulation also covers food produced from animals obtained by means of cloning techniques, and food from the offspring of cloned animals. In this respect, it is provided that the EC Commission will report to the EC Council on all aspects of food derived from cloning within one year after the entry into force of the regulation and, if appropriate, prepare a proposal for specific legislation on this topic. It should be noted that novel foods are subject to the EC general and nutritional labelling requirements, which are established by separate legislative acts.

The legislative process of the new regulation is still ongoing. On 16 June 2009, the EC Council reached political agreement on the proposal. The Council's common position will be adopted at a forthcoming meeting once the text is finalised. The proposal will then be sent to the European Parliament for a second reading. All businesses involved in trade in foods, which may be considered as novel foods in the EC, should closely follow the legislative process and ensure that their interests are taken into account in the final text of the regulation, before it enters into force. In particular, the inclusion of food containing or consisting of engineered nanomaterials extends the scope of the new rules significantly.

The EC-US deal to end the *EC – Hormones* dispute attracts the attention of major beef exporting countries

On 13 May 2009, the EC and the US signed a deal on the long-standing trade dispute over imports of US beef produced with growth-promoting hormones into the EC. Under the terms of the deal, the EC would provide the US with greater market access for US 'high quality beef' produced without growth-promoting hormones. In exchange, the US agreed to reduce its retaliatory duties levied on certain EC exports (for more details on the EC-US agreement, see Trade Perspectives, Issue No. 10 of 22 May 2009).

The EC-US deal to end the *EC – Hormones* dispute has attracted the attention of major beef exporting countries, including Argentina, Australia, Brazil and Uruguay, which raised their concern over possible discrimination among WTO Members. At a 19 June 2009 meeting of the WTO Dispute Settlement Body (hereinafter, the DSB), seeking confirmation that the EC's new tariff rate quota (hereinafter, TRQ) would provide equal access for all beef exporters, these countries voiced their concern that the EC-US agreement defines 'high-quality' beef in such a way that, while the grain-fed beef produced in the US would qualify for the new import quota, the grass-fed beef, produced in a range of other WTO Members, would not. Consequently, such a situation would negatively affect the market share of a range of beef exporters in the EC vis-à-vis the US. At that DSB meeting, the representatives of the EC assured the other participants that the new TRQ for high-quality hormone-free beef will be applied in a non-discriminatory manner and will be open to any country that can meet the requirements. They stated that the EC legislation providing for the TRQ is still being prepared and will not be adopted before August 2009.

The WTO General Agreement on Tariffs and Trade (hereinafter, the GATT) sets out detailed rules on a non-discriminatory allocation and administration of TRQs. In particular, it establishes that, in applying an import restriction to any product, WTO Members must aim at distributing trade in such product approaching as closely as possible the shares which the WTO Members would be expected to obtain in the absence of such a restriction. In addition, the allocation of a TRQ must be in line with the principle of Most-Favoured-Nation Treatment, established by the GATT, and cannot discriminate among WTO Members having a substantial interest in supplying the product.

Traders involved in the exportation of beef to the EC should closely monitor the preparation of the new EC regulation that will establish the TRQ and take all necessary steps to ensure that the EC will draft it and implement it in accordance with its obligations under the WTO.

The new EC feed regulation promises to strengthen food safety in the EC

With the aim of strengthening food safety in the EC, the EC Council adopted a new regulation replacing a range of current legislative acts on marketing and the use of animal and pet feed. The new regulation emphasises that marketing conditions for feed have a crucial impact on the competitiveness of the livestock sector. Feed is an essential cost factor for the 5 million livestock farmers in the EC.

While preserving the high level of feed and food safety achieved in the in the EC, the objective of the new regulation is to consolidate, revise and modernise the existing legislation on the circulation and labelling of feed materials and compound feed. The regulation aims also at achieving legal clarity, ensuring harmonised implementation, and facilitating the smooth functioning of the internal market. With the view of increasing the competitiveness of the EC feed and farming sector, technical requirements will be simplified and unnecessary administrative burdens abolished.

In particular, the regulation provides for the following: responsibility of the feed business operators is extended to those dealing with pet food; new rules provide a list with prohibited substances for feed use; pre-market authorisation procedure for 'bio-proteins' is abolished; improved labelling rules; claims attached to a feed must be properly substantiated; development of a guide to good

labelling for farm animal feed and for pet food; and the initiative for updating the Community Catalogue of feed materials, specifying the most relevant compounds used in feed, is transferred from the legislator to feed operators.

The new EC regulation on marketing and the use of animal and pet feed is expected to enter into force later this year after being signed by the Presidents of the European Parliament and the EC Council. The regulation envisages a transition period of one year for the application of the new rules. As of then, animal and pet feed producers and importers will certainly have to adhere to the new requirements.

WTO Members discussed trade restrictive measures imposed in response to H1N1 flu

On 23 June 2009, at a meeting of the WTO's Sanitary and Phytosanitary Measures Committee (hereinafter, the SPS Committee), which deals with food safety and animal and plant health, WTO Members discussed the existing trade bans on the import of pork applied in response to the H1N1 influenza pandemic, as well as failures to notify the WTO about such measures.

The issue was raised by a range of countries (*i.e.*, pork exporters and opponents of the existing trade restrictive measures, including Australia, Brazil, Canada, Japan, the Dominican Republic, Mexico, New Zealand, Paraguay, the EC, and the US). These countries argued that import bans on live pigs and pork products were scientifically unjustified. Some of the above-indicated countries referred to a joint statement of 7 May 2009 from the Food and Agriculture Organization, the World Organization for Animal Health, the World Health Organization and the WTO, which stated that influenza viruses were not proved to be transmissible to people through eating processed pork or other food products derived from pigs. Mexico also noted that a range of WTO Members imposing trade restrictive measures on the importation of pork did not notify them to the WTO Secretariat. So far, only five WTO Members have formally notified their H1N1-related SPS measures to the WTO (*i.e.*, Albania, China, Ecuador, Jordan and Ukraine). In response, the representatives of countries applying H1N1-related restrictions argued that their measures had only temporary nature and had been (or will) be lifted as soon as scientific evidence has been properly examined.

It should be noted that the current H1N1-related SPS measures, applied by a range of the above-indicated WTO Members, are covered by the provision of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter, the SPS Agreement) on the application of provisional SPS measures (*i.e.*, Article 5.7 thereof on the so-called 'precautionary principle'). This provision allows WTO Members to provisionally adopt SPS measures when relevant scientific evidence is insufficient. Such measures, however, must be based on available pertinent information, including that from the relevant international organisations, as well as from SPS measures applied by other Members. As it was mentioned earlier, a range of international organisations found no evidence that influenza viruses can be transmissible to people through eating food products derived from pigs. It should be also noted that Annex B to the SPS Agreement requires WTO Members to notify their SPS measures to the WTO Secretariat and sets out the detailed rules of notification.

It appears that, currently, WTO Members tend to deal with the issue of H1N1-related SPS measures in the framework of the SPS Committee consultations. The next formal meeting of the SPS Committee is scheduled for 28-29 October 2009.

The EC-West Africa Economic Partnership Agreement is due to be signed in October 2009

At a 17 June 2009 meeting between the EC Trade Commissioner, West African commerce ministers, and leaders of West African regional organisations (*i.e.*, the Economic Community of West African States, and the Economic and Monetary Union of West Africa), the parties

announced their intention to sign an economic partnership agreement (hereinafter, the EPA) in October 2009. The EPA was due to be signed by 30 June 2009.

The negotiations for the EPA between the EC and West Africa (*i.e.*, Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo) were launched at ministerial level on 6 October 2003. The EPA intends to cover a wide range of trade-related issues, including customs duties on imported goods, the standards governing market access, trade in services, intellectual property rights, competition policy and investment policy. However, because of parties' disagreement over some critical issues, it appears that the October deal will not cover services, competition and sustainable development, which appear to be subject to a separate phase of negotiations. This second phase of the negotiations is due to be concluded by January 2010.

It should be noted that two West African countries (*i.e.*, Ivory Coast and Ghana) initialled their own interim EPAs with the EC in December 2007 to prevent disruption of their exports to the EC after the trade preferences of the Cotonou Agreement expired. The EPA, covering the entire West African region, will replace these agreements. Out of 16 West African countries, 13 are least developed countries that benefit from the 'Everything but Arms' trade preferences of the EC.

In 2008, the EC-West Africa bilateral trade was worth 43.6 billion Euros, with more than half of this represented by EC-Nigeria trade alone. Whereas the EC exports to West Africa mainly industrial goods, such as electrical machinery (23% of EC exports) and vehicles (7%), the West African countries export to the EC oil from Nigeria (55% of West African exports), cocoa (11%), iron (8%) and rubber (6%). The conclusion of the EPA is expected to expand the inter-regional trade, as well as to boost the development of the West African region.

With the purpose of extending the preferences provided by the Cotonou Agreement, the EC is negotiating EPAs with six regional groupings of ACP countries. These groupings include Caribbean countries, Central Africa, Eastern Africa (EAC), Eastern and Southern Africa (ESA), Pacific, Southern Africa (SADC) and West Africa. To date, a full-fledged EPA was concluded only with Caribbean countries (*i.e.*, the EC - CARIFORUM EPA), whereas three interim EPAs were signed with the Ivory Coast, Cameroon and the SADC group (*i.e.*, Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa).

Recently adopted EC legislation:

[Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters](#)

[Commission Regulation \(EC\) No 542/2009 of 23 June 2009 opening the tendering procedure for aid for private storage of olive oil](#)

[Commission Regulation \(EC\) No 539/2009 of 18 June 2009 amending Regulation \(EC\) No 810/2008 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat and Regulation \(EC\) No 748/2008 on the opening and administration of an import tariff quota for frozen thin skirt of bovine animals falling within CN code 02062991](#)

[Council Decision of 6 April 2009 concerning the conclusion of consultations with the Islamic Republic of Mauritania under Article 96 of the ACP-EC Partnership Agreement](#)

[Decision No 2/2008 of 16 May 2008 of the Committee updating the legal references in the Agreement between the European Community and the Swiss Confederation on Mutual Recognition in relation to conformity assessment](#)

[Commission Regulation \(EC\) No 523/2009 of 18 June 2009 fixing the export refunds on milk and milk products](#)

[Commission Regulation \(EC\) No 524/2009 of 18 June 2009 fixing the maximum export refund for butter in the framework of the standing invitation to tender provided for in Regulation \(EC\) No 619/2008](#)

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