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Argentina challenges the EU's renewable energy framework: will the sustainability requirements for biofuels be considered WTO consistent?

On 15 May 2013, Argentina requested consultations with the EU concerning certain EU and EU Member States' measures related to the importation and marketing of biofuels into the EU, as well as the incentives granted to the biofuel industry. Argentina's request for consultations targets the sustainability requirements for biofuels contained in the EU's '*Renewable Energy Directive*' (*i.e.*, *Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC*) and in Directive 2009/30 (*i.e.*, *Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC*), as well as the related EU implementing measures. In addition, it also concerns the incentives granted by the EU framework to '*sustainable*' biofuels.

The Renewable Energy Directive establishes a common framework for the promotion of energy from renewable sources in the EU by, *inter alia*, setting mandatory national overall targets and measures for the use of energy from renewable sources, in order to reduce emissions and to achieve the EU's climate change and energy policy objectives. In relevant part, it also introduces sustainability criteria for biofuels (and bioliquids), which are aimed at avoiding that an increase in demand for such energy sources, as well as the incentives provided for their use, will lead to counterproductive effects for the environment (such as the destruction of biodiversity). The criteria are based on two drivers: (i) the use of biofuels must lead to a 35% greenhouse gas emissions savings and (ii) the land used to produce biofuels must have certain characteristics (*i.e.*, must not have high biodiversity value and/or high carbon stock). Only '*sustainable*' biofuels will be taken into account for the purposes of compliance with the targets set by the '*Renewable Energy Directive*'. In addition, only '*sustainable*' biofuels are eligible for financial support under the EU and EU Member States' framework. Corresponding requirements have been introduced by Directive 2009/30, which amended Directive 98/70/EC (*i.e.*, the '*Fuel Quality Directive*'). In particular, EU Member States are required to reduce by 6% the greenhouse gas intensity of transportation fuels by 2020, but only '*sustainable*' biofuels will be taken into account for compliance with this target.

The first part of Argentina's complaint targets the 35% greenhouse gas emissions saving threshold foreseen in the two EU instruments and implemented in national measures. For the purposes of calculating compliance with this threshold, the EU framework allows the use of default values, which are established in the directives for several types of biofuels. In the case of soybean biodiesel, such value is set at 31%, which means that the default value attributed to biodiesel produced in Argentina is lower than the threshold required for it to be

'*sustainable*'. This implies that, in the case of Argentina's exports, verification of compliance needs to be done on a shipment-by-shipment basis, using the actual value, or by using a voluntary national or international scheme that demonstrates that the consignments of biofuel comply with the sustainability requirement and that the EU Commission has recognised for that purpose. Whereas the first alternative results in additional burdens for exporting producers, with respect to the second alternative Argentina notes that, in December 2010, its exporters presented, through their association (*i.e.*, CARBIO), a voluntary scheme to the Commission for recognition. However, the scheme has not yet been approved by the EU Commission.

On these grounds, Argentina claims that the 35% greenhouse gas savings threshold is arbitrary, not scientifically justified and not based on an international standard. It also claims that the EU framework and the EU Member States' implementing measures are inconsistent with a number of WTO obligations, including Articles I:1, III:1 and III:4 of the GATT and Articles 2.1, 2.2, 5.1 and 5.2 of the Agreement on Technical Barriers to Trade (hereinafter, TBT Agreement).

Inasmuch as the operation of the greenhouse gas saving threshold requirement results in unfavourable treatment of Argentina's biodiesel products in the EU's market, *vis-à-vis* those of third countries exporters and EU producers (whose exports are attributed default values meeting the threshold), a violation of Articles I and III of the GATT may certainly be argued. Articles I and III of the GATT prevent WTO Members from applying discriminatory treatment to third countries' imported products *vis-à-vis like* foreign and domestic products in respect of internal regulations affecting (*inter alia*) their internal sale, offering for sale and use. The operation of the sustainability requirement will oblige EU purchasers to opt for biodiesel that supposedly complies with the threshold. Biodiesel products whose default values are set at a threshold which is below the 35% have to face more cumbersome procedures to show compliance, or may be excluded from the EU market. In this respect it is noted that, before the TBT Committee, where the matter has been previously discussed, Argentina claimed that both the 35% threshold and the default values attributed to each biofuel had been arbitrarily established and lacked scientific basis. Argentina also noted that soya-derived biodiesel was among the few biofuels that had been assigned a default value below the 35% threshold. Yet, a WTO panel is likely to conclude that Argentina's biodiesel products and EU and third countries' biodiesel products meeting the criterion are '*like*' products (the '*likeness*' not being affected by variations in processes and production methods – such as the environmental impact – that are not reflected in the physical characteristics of the products) and, therefore, to find any discrimination inconsistent with WTO provisions. This discrimination would have to be removed, unless expressly justified under Article XX of the GATT.

Argentina also claims a violation of the provisions of the TBT Agreement. In particular, Argentina alleges that the EU measures at stake are inconsistent with Article 2.1 and 2.2 thereof. The first provision requires WTO Members to ensure that technical regulations do not result in discriminatory treatment *vis-à-vis* the *like* product of national origin or originating in any other country, therefore reflecting the most-favoured-nation and national treatment obligations under Articles I and III of the GATT. Article 2.2 requires WTO Members to ensure that technical regulations are not prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade and that are based on a risk assessment that factors-in (*inter alia*) available scientific information.

The TBT Agreement applies to technical regulations, which are defined as documents that '*lay down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory*'. As interpreted by the Appellate Body, this definition requires that technical regulations: (i) apply to an identifiable product or group of products; (ii) lay down one or more product

characteristics, which may be intrinsic (such as composition and size) or related to the product (such as identification, presentation, and appearance), positive or negative; and (iii) be mandatory. The sustainability requirement is likely to fall within this definition, inasmuch as it can be argued that it is contained in a document (*i.e.*, Article 17 of the '*Renewable Energy Directive*'; Article 1 of Directive 2009/30, introducing Article 7b in the '*Fuel Quality Directive*'); it relates to an identified group of products (*i.e.*, biofuels); and its application is mandatory (as further clarified in the *US-Tuna II* dispute, see Trade Perspectives, Issue No. 10, 18 May 2012). A different perspective, which will likely be supported by the EU is that, inasmuch as the requirements at hand consist in non-product-related processes and production methods, they would not fall within the definition of technical regulation. The sustainability requirements have been raised a number of times in the TBT Committee meetings, with the EU maintaining that such concerns fell outside of the TBT Agreement. This dispute could finally provide a chance for the WTO to definitively clarify the scope of the definition of technical regulation and, therefore, of the TBT Agreement. The application of the TBT Agreement may be decisive for Argentina's challenge: whereas the GATT does allow for exceptions to the most-favoured-nation and national treatment obligations in Article XX, including on the basis of environmental considerations, there is arguably no exception to the principle of non-discrimination under the TBT Agreement, so that a measure found to be in violation of Article 2.1 thereof may not be justifiable on environmental grounds.

As of 1 April 2013, all installations, including those operating before 23 January 2008 that were exempted until such date, need to provide the greenhouse gas emissions calculations. This, together with the failure of the EU Commission to recognise the voluntary scheme presented by CARBIO in December 2010, might have triggered Argentina's request. It is clear, however, that this sustainability criterion has implications for many other foreign and EU-sourced biofuels. Concerns on the EU's approach for assessing conformity were also raised by the US with Indonesia's support, which also questioned the possibility that the greenhouse gas emission savings threshold be further tightened. Other WTO Members could follow suit. This is particularly the case inasmuch as, by 2017, the 35% target will raise to 50% for existing installations and, as of 1 January 2018, the threshold will be raised to at least 60% for biofuels produced in installations where production started on or after 1 January 2017. In addition, with the ILUC Proposal (*i.e.*, *Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources*), the Commission suggested further tightening of the requirement to improve the greenhouse gas performance of the biofuel production process. A finding of WTO inconsistency of the 35% threshold may prevent the EU from proceeding in this direction.

This dispute stands to have also systemic implications that go beyond the 35% greenhouse gas saving threshold. In particular, a finding of inconsistency of this requirement will most certainly cast more doubts on the compatibility of the other sustainability requirement, related to the land used for the production of biofuels, which raises comparable concerns of inconsistency with WTO rules (see Trade Perspectives Issue No. 10 of 21 May 2010). As the trade impact of the EU's environmental policies and sustainability criteria under the '*Renewable Energy Directive*' and the '*Fuel Quality Directive*' keeps growing and inevitably resulting in trade distortions or restrictions, it was highly probable that the WTO would have soon been called to decide whether or not the controversial EU sustainability criteria are arbitrary in nature, unnecessarily cumbersome, scientifically unjustified and, ultimately, disguised restrictions to trade. Environmental protection and the pursuit of sustainable production practices are legitimate and sacrosanct objectives, which should be pursued through multilateral instruments, but they must not become intentional or unintentional forms of protection or trade distortion and should always be based on the least trade restrictive measures available.

The EU Commission may initiate *ex-officio* anti-dumping and anti-subsidy investigations on telecom products from China

On 15 May 2013, the EU Commission announced its backing to the initiation of *ex-officio* anti-dumping and anti-subsidy investigations on mobile telecommunication network products and their essential elements imported from China. The EU Commission stated to have taken '*a decision in principle*', that would be put on hold to allow for negotiations to achieve an amicable solution with the Chinese authorities. The Chinese companies allegedly engaging in unfair trading practices are Huawei Technologies and ZTE Corp. The two Chinese companies are believed to benefit from illegal subsidies in the form of cheap export credits from state-owned banks, which could reportedly qualify as export subsidies, and therefore be prohibited under the disciplines of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter, SCM Agreement).

WTO rules cater for the possibility of opening *ex-officio* investigations, in Article 5.6 of the WTO Anti-dumping Agreement and Article 11.6 of the WTO SCM Agreement. In particular, such rules foresee that the investigating authorities initiate anti-dumping or anti-subsidy investigations on their own initiative, provided that there are special circumstances, and they have sufficient evidence of: (i) dumping or subsidy, (ii) injury to the domestic industry, and (iii) a causal link between them.

The EU reflected these WTO provisions in its legislation. In particular, the possibility of initiating *ex-officio* anti-dumping and anti-subsidy investigations in the EU is currently foreseen in Article 5(6) of *Council Regulation No. 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community* (*i.e*., the Basic Anti-dumping Regulation) and Article 10(8) of *Council Regulation No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community* (*i.e*., the Basic Anti-subsidy Regulation), respectively. The relevant provisions require that this be done in '*special circumstances'* and on the basis of sufficient evidence of injurious dumping or subsidisation, meeting the test that is normally applicable to complainants. The lack of clarity *vis-à-vis* the application of the requirement of '*special circumstances*' and of clear guidance on how to conduct such proceedings, the scarcity of available precedents (only two cases in 1998 and 1999), together with the high evidentiary requirements, may have contributed to the little use of this tool so far.

The '*Evaluation of the European Union's trade defence instruments*' (hereinafter, the Evaluation Report), commissioned in the context of the EU's initiative to modernise its Trade Defence Instrument ((see Trade Perspectives, Issue No. 8 of 19 April 2013), indicated that the '*special circumstances*' warranting the use of *ex-officio* investigations may include instances in which the concerned EU businesses risk facing retaliatory action in the exporting country, which compromises their ability and willingness to file a complaint. This matter is addressed in the EU Commission's '*Communication from the Commission to the Council and the European Parliament on modernisation of Trade Defence Instruments Adapting trade defence instruments to the current needs of the European economy*' (hereinafter, the Communication), which accompanied the EU Commission's '*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 1125/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No. 597/2009 on protection against subsidised imports from countries not members of the European Community*'.

In particular, the Communication confirms that, where EU producers are exposed to threats of retaliation, and if there is sufficient *prima facie* evidence of injurious dumping or subsidisation, the EU Commission may open, where possible, an *ex-officio* investigation.

The Communication also clarifies that the decision on whether or not to open an investigation will be based on the merits of the evidence available, as well as on whether any measures would have disproportionate economic consequences for the EU as a whole. The EU Commission is likely to follow these principles should it decide to proceed against Chinese exporters of telecom network products. In its Communication, the EU Commission also suggests that an explicit obligation for EU producers to cooperate be introduced in the case of *ex-officio* investigations. Cooperation appears necessary, *e.g.*, for the calculation of the injury and for the final determination of anti-dumping and/or countervailing duties to be levied. In the absence of the complaint from the domestic industry, the necessary data would need to be gathered from other sources, including other industries, which could not be expected to systematically cooperate. In this regard, a specific amendment to the current legislation has been proposed by the EU Commission in this respect.

The issue of cooperation may be relevant in the case at stake. The EU Commission's announcement has triggered mixed reactions in the EU, with two large EU companies reportedly opposing the initiation of an investigation. Another key factor for the success of this investigation is the support of EU Member States. The relevant procedure requires that they be consulted on whether or not to initiate proceedings. Consultations take place within the framework of the Trade Defence advisory committees (*i.e.*, the Anti-dumping Committee and the Anti-subsidy Committee). Their opinion is not binding, but a majority should be achieved given that the EU Council will then be called to approve the final determinations proposed by the Commission.

The EU Commission's move sounds like a final warning to Chinese companies that, if no negotiated solution is found, the EU Commission will proceed with the investigation and, possibly, with the imposition of duties. It is noted that the market value of exported Chinese telecom products amounts to over EUR 1bn per year and that the EU accounts for around 15% of its overseas market. If duties are imposed, they would likely be in force for a minimum of five years and severely affect the presence of Chinese companies in the EU market. Another factor, which is often linked to this potential dispute, is the potential threat to security that may be caused by the increasing dominance of Chinese telecoms equipment makers in mobile networks. Whereas such considerations would have no impact on the decision on whether to initiate TDI proceedings, which are triggered by *prima facie* evidence of injurious unfair trading practices, issues of security could arguably be managed through other instruments, such as licensing requirements.

The EU Commission withdraws a planned ban of un-labelled and refillable olive oil jugs in food serving outlets

On 23 May 2013, the EU Commission withdrew a planned ban on hotels, restaurants, bars and pubs serving olive oil in un-labelled and refillable jugs, which would have entered into force as of 1 January 2014. The measure proposed in a draft *Commission Implementing Regulation amending Implementing Regulation (EU) No. 29/2012 on marketing standards for olive oil* had received a favourable vote in the Management Committee for the Common Organisation of Agricultural Markets' meeting on 14 May 2013. However, a qualified majority of 255 weighted votes out of the total of 345, expressed by a majority of the Member States (at least 14 delegations), which would have obliged the EU Commission to adopt the measure, was not reached in the committee. The measure received 195 weighted votes in favour (those of 15 EU Member States, including France, Greece, Italy, Portugal and Spain), 94 weighted votes against (including those of Austria, Belgium, Denmark, Germany, the Netherlands and Sweden) and 53 abstentions (including those of the UK), but not a qualified majority.

After the vote, the EU Commission was heavily criticised by some political leaders, considering the proposed measure as '*exactly the sort of thing that Europe shouldn't even be discussing'.* Some media compared it to the curved banana matter (*i.e.*, EU Quality standards for bananas that require that bananas should be '*free from malformation or abnormal curvature of the fingers*'). The EU Agriculture Commissioner Dacian Cioloş reportedly stated that the ban was '*not formulated in such a way as to assemble widespread support*' and withdrew the proposition under the rules for the examination procedure set out in *Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers,* as no qualified majority was reached.

According to the proposed measure, the following should have been added to *Implementing Regulation (EU) No. 29/2012*: '*Oils made available to the final consumer in hotels, restaurants and pubs and bars shall be packed in containers equipped with an opening system which cannot be resealed after it has first been opened, together with a protection system preventing them from being reused once the contents indicated on the label have been finished'.* The proposal also foresaw that the olive oil must state on their containers or on labels attached to them information on the category of oil (*i.e.*, extra virgin olive oil, virgin olive oil, olive oil composed of refined olive oils and virgin olive oils; or olive-pomace oil), the expiry date, the origin and that the oil must be stored away from light and heat. In essence, what the EU Commission wanted to introduce was the requirement that olive oil be served from a non-refillable (even if it partly empty) and appropriately labelled container. Single servings (like those used for ketchup) would also likely meet the requirements of the proposed marketing standard for olive oil.

The proposed obligation to use olive oil bottles equipped with an opening system, which cannot be resealed after the first time it is opened, together with a protection system preventing them from being reused once the contents indicated on the label have been finished, was backed by a number of reasons in order to ensure the quality and authenticity of oils provided to the final consumer in food serving establishments: the promotion of quality olive oil, the protection of consumers from fraud, food hygiene and the protection of consumers' health (*i.e.*, the refill of jugs may be carried out in an unhygienic way and several scientific studies have demonstrated that light and heat have a negative impact on the evolution of the quality of olive oils). In addition, although not explicitly mentioned, the EU Commission proposal was also seen by many as a scheme to promote the EU's olive oil industry.

The fact that the proposed ban on restaurants serving olive oil in un-labelled and refillable jugs has not been adopted has an effect also on the internal market. At least Portugal and Italy have already established similar measures. In Portugal, already since 2005, '*Ordinance n.º 24/2005 of 11 January 2005*' ('*Portaria n.º 24/2005 de 11 de Janeiro 2005*') establishes that '*[t]he olive oil made available to the final consumer in hotels, restaurants and bars shall be packed in containers fitted with an opening system that loses its integrity after first use and which are not reusable, or have a protection system that does not allow its reuse after exhaustion of the original content referenced on the label'.*

More recently, Italy adopted *Law No. 9 of 14 January 2013* on '*Regulations on the quality and transparency of the supply chain of virgin olive oils*' (*Legge del 14 gennaio 2013, n. 9* '*Norme sulla qualità e la trasparenza della filiera degli oli di oliva vergini*'), which entered into force on 1 February 2013 and which provides in Article 7(2) that '*[v]irgin olive oils offered in containers in public premises, without prejudice of the use for cooking and preparing meals, must have suitable closures so that the contents cannot be modified without the package being opened or altered, and must be labelled to indicate at least the origin of the product and the production batch to which it belongs'.*

Other EU Member States like Spain may also legislate in a similar way and this would ultimately lead to a fragmentation of the rules applicable in the EU Single Market. The provisions established in Portugal and Italy, banning in food serving outlets the offering of olive oil in un-labelled and refillable jugs, are arguably justifiable on grounds of consumer protection and protection of health of humans, and would therefore likely not violate the provisions on the free movement of goods set out in Articles 34 - 36 of the Treaty on the Functioning of the European Union (TFEU). However, in view of these national initiatives on the marketing of olive oil, which also provide for additional rules (*inter alia*, in Italy for the labelling of a maximum use-by-date of 18 months after bottling) a harmonised approach in the EU would be welcomed.

It should be noted that the EU Commission had already notified on 19 February 2013 the proposed regulation to the WTO Committee on Technical Barriers to Trade, in order to inform other WTO Members of the technical regulation, which the EU Commission finally withdrew. When no qualified majority for or against a proposal is reached under the examination procedure of *Regulation (EU) No. 182/2011*, the EU Commission can choose either to carry out the proposed implementing measure or to submit a new version of it to the Management Committee for the Common Organisation of Agricultural Markets. In this case, the EU Commission seems to have chosen to drop the proposal altogether instead of submitting a new version of the proposal to the Management Committee for the Common Organisation of Agricultural Markets. As an initial view, in view of the good arguments for adopting the proposal (*i.e.*, consumer protection against fraud, protection of human health, fragmentation of the internal market and, although not explicitly stated, support of the olive oil sector), it should be analysed whether the EU Commission should adopt a new proposal *'formulated in such a way as to assemble widespread support'*. Interested parties should analyse and work on a possible second attempt to ban un-labelled and refillable olive oil jugs in food serving outlets.

Opportunities for businesses within the framework of trade negotiations in the upcoming EU-Japan FTA

The first round of negotiations for a free trade agreement (hereinafter, FTA) between the EU and Japan took place from 15 to 19 April 2013 in Brussels. Currently, Japan is the EU's seventh major trading partner and the second in Asia. Japan is also a major investor in the EU, as well as one of the largest exporters to the EU market. Together, the two economies account for more than one third of the world's total GDP. Indeed, reliable statistics indicate that trade between the EU and Japan amounts to almost EUR 32 billion *per annum* (2012 figures). With a view to boost trade relations and harness trade opportunities between the two economies, the FTA is expected to increase the EU's GDP by 0.8%, as well as expand EU exports to Japan by 32.7%; while Japanese exports to the EU could grow by 23.5%.

Trade in agricultural products, which amounted to EUR 4.5 billion in 2011, is an area in which the FTA stands to provide increased market access and enhanced opportunities for businesses. The EU and Japan are called to agree on ambitious tariff reductions. In addition, through these negotiations, the EU aims at eliminating significant Non-Tariff Measures (hereinafter, NTMs) maintained by Japan that negatively affect trade in a number of goods and services. Particularly affected are the goods of the chemical, automotive, processed foods and transport equipment industries; as well as the medical, telecommunications and financial services sectors.

NTMs may be addressed and solved in a number of manners. In the EU-Korea FTA, parties agreed on an overarching facilitation mechanism on all issues related to TBTs, providing for

a platform of information exchange and enhanced cooperation. In particular, the TBT Coordination Mechanism monitors the implementation of the FTA's TBT chapter, establishes regulatory dialogues and sets up *ad hoc* working groups for reaching mutually agreed solutions on all issues arising from technical regulations, standards and conformity assessment procedures.

In addition, tools for the resolution of NTMs in the FTA may also gather inspiration from instruments being debated in other international *fora*, such as the WTO. In the context of the Doha Development Agenda Round, the negotiating group on non-agricultural market access (*i.e.*, NAMA) has been discussing Non-Tariff Barriers Textual Proposals, which include horizontal mechanisms for the solution of trade barriers and vertical instruments (in the form of understandings, negotiating proposals, agreements) containing principles that should guide the interpretation of the WTO's TBT Agreement as it applies to products of a particular sector. In this regard, of particular interest for the EU-Japan negotiations might be the EU's proposal for an *Understanding on the Interpretation of the Agreement on Technical Barriers to Trade as Applied to Trade in Electronics*, where it clarified which bodies should be considered relevant for the issuance of standards on electronic products. The paper also indicated a number of criteria to make conformity assessment procedures less burdensome, essentially by encouraging WTO Members to accept a declaration of conformity from the supplier or an authorised body. Of interest may also be the *Agreement on Non-Tariff Barriers pertaining to Standards, Technical Regulations and Conformity Assessment Procedures for Automotive Products*, proposed by the US and calling, *inter alia*, for WTO Members to harmonise their technical regulations and conformity assessment procedures on automotives, as well as to carefully examine all alternative policy options prior to the adoption of any such instruments.

NTMs hindering trade between the EU and Japan in particular sectors could also be addressed by concluding Mutual Recognition Agreements (hereinafter, MRAs), which effectively facilitate market access by providing for easier access to conformity assessment procedures. In effect, the two trading partners have in place, since 2001, a MRA on electrical products and radio and telecommunications technical equipment, laying down the specific conditions under which parties accept test reports, certificates and marks of conformity issued by conformity assessment bodies of the other party. The conclusion of other MRAs covering key issues of concern for the EU and Japan, such as marketing approval tests for new medicines, would significantly contribute to the reduction of NTMs hindering trade in those areas.

During the negotiations, the EU and Japan will need to agree on the precise rules of origin applicable to many products, particularly automotive products. After the initial reluctance of the EU's automotive industry towards the conclusion of the FTA was overcome (for further background on the implications and aftermath of the EU-Korea FTA, see Trade Perspectives, Issue No. 18 of 5 October 2012), the EU and Japan are called to settle the rules that determine which goods can be considered to have been produced within the free trade area, and therefore benefit from the agreed tariff reductions (see Trade Perspectives, Issue No. 9 of 3 May 2013). Offensive interests concerning the automotive industry on the EU side would also embrace NTM considerations. In particular, such industry is reportedly bidding for the inclusion in the FTA of a mechanism that allows EU type-approved vehicles to be sold in Japan without any further certification. In addition, fiscal and other incentives granted to Japanese '*kei-cars*' (*i.e.*, super-mini cars, which are a creation of the Japanese regulatory system) stand to constitute a contentious topic throughout the talks, inasmuch as it appears that EU sub-compact cars would not qualify for equivalent benefits in Japan.

The two latter issues illustrate the huge potential of business participation in the ongoing trade negotiations. As primary beneficiaries of the lowering of tariffs and elimination of NTMs, companies also bear the responsibility of guiding negotiators towards specific key

areas and pointing at the concrete issues that need to be addressed in the discussions. Active participation in the negotiating process is essential to prevent that concrete interests be left out of the discussions. In this respect, private entities should not underestimate the opportunities arising from carefully designed strategic lobbying exercises and are indeed urged to liaise with their governments in order to ensure that the negotiating positions are aligned with the precise positions and interests of the industry.

Representatives of the two trading partners reported a satisfactory outcome of the initial talks, which should be read as a positive and encouraging sign for businesses. The timeframe for the upcoming negotiations should also be kept in mind, insofar as the second round of negotiations is scheduled to take place from 24 to 28 June 2013 in Tokyo, and the third one is envisaged later this year. The outcome of these initial rounds will surely be assessed against the provision in the EU negotiating directives, which allows the EU Commission to suspend negotiations after one year, if it deems that they are not delivering effective results and meaningful progress. Moreover, the political momentum should be seized in light of the free trade negotiations that are currently starting in East Asia and in the Asia-Pacific region, including the US-led Trans-Pacific Partnership negotiations, which Japan is expected to join in July this year. For these reasons, it is important that all entities take full advantage of all instruments and *fora* at their disposal and promptly take any appropriate steps to ensure that their particular interests are duly factored-in the negotiations.

Recently Adopted EU Legislation

Customs Law

- *Commission Implementing Regulation (EU) No 437/2013 of 8 May 2013 amending Regulation (EC) No 798/2008 as regards the entry for Mexico in the list of third countries, territories, zones or compartments from which certain commodities may be imported into or transit through the Union*

Trade Remedies

- *Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China*

- *Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia*

- *Commission Regulation (EU) No 418/2013 of 3 May 2013 imposing a provisional anti-dumping duty on imports of certain stainless steel wires originating in India*

- *Council Implementing Regulation (EU) No 465/2013 of 16 May 2013 amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan*

- *Commission Decision of 24 April 2013 amending Decision 2000/745/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand*

- *Commission Regulation (EU) No 490/2013 of 27 May 2013 imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) No 457/2013 of 16 May 2013 derogating from Regulations (EC) No 412/2008 and (EC) No 431/2008 as regards beef import quotas for the period running from 1 July 2013 to 30 June 2014*

- *Commission Implementing Regulation (EU) No 470/2013 of 22 May 2013 opening a tariff quota for certain quantities of industrial sugar for the 2013/14 marketing year*

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