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The EU and Singapore initial their FTA

On 20 September 2013, the EU and Singapore initialled the EU-Singapore Free Trade Agreement (hereinafter, EUSFTA), after the two trading partners concluded bilateral negotiations in December 2012. Like the EU-Korea FTA, the EUSFTA constitutes one of the so-called EU's '*new generation FTAs*', inasmuch as it contains obligations in areas beyond those traditionally covered by the EU's previously concluded FTAs, such as intellectual property rights, government procurement, competition and investment (see Trade Perspectives, Issue No. 9 of 4 May 2012). However, the initialled text does not include the chapter on investment protection, which remains unfilled until negotiations in this respect are concluded and the relevant provisions can be inserted in the agreement.

Broadly, the EUSFTA foresees that virtually all import tariffs be eliminated within maximum five years of the entry into force of the agreement and provides for a significant liberalisation of trade in services, where the two trading partners have made commitments in key sectors including, *inter alia,* telecommunications, financial services, computer services and environmental services*.* The EUSFTA also lays down the framework for the removal of non-tariff measures (hereinafter, NTMs), *i.e.*, trade obstacles arising from measures other than customs duties. In this regard, two '*Sectoral Annexes*' envisage rules on the elimination of sector-specific NTMs. In particular, the two trading partners have agreed to achieve regulatory convergence concerning motor vehicles and parts thereof by recognising that the standards developed by the United Nations Economic Commission for Europe (UNECE) constitute the relevant international standards on which to base their domestic technical regulations. Regulatory cooperation is also foreseen with respect to pharmaceutical products and medical devices, where Parties also agree on international standards and on mechanisms to enhance transparency.

Of particular interest is that the EUSFTA accords such outstanding importance to sustainable development that it has been called the first EU's '*green FTA*' (see TradePerspectives, Issue No. 1 of 11 January 2013). The relevance of sustainable development throughout the EUSFTA is evidenced by the inclusion of two chapters devoted, respectively, to trade and sustainable development, and to the elimination of NTMs as applied to trade and investment in renewable energy generation. In the latter chapter, the two trading partners agree, *inter alia*, not to impose local-content requirements on products, service suppliers, investors or investments of the other Party. The adoption of local-content requirements appears to be a growing trend particularly in the area of renewable energies, although their compatibility with international trade rules raises serious doubts. In particular, the WTO Appellate Body confirmed, earlier this year, the panel's finding that the '*feed-in tariff*' scheme adopted by the Canadian province of Ontario, which envisaged payments to developers of renewable energy projects provided they sourced a certain amount of their goods and services from Ontario-based companies, violated, *inter alia*, the national treatment obligation (see Trade Perspectives, Issue No. 10 of 17 May 2013). In addition, measures incorporating local-content requirements by the EU and certain EU Member States (notably, Greece and Italy) as well as by India in connection with its solar energy policy, have also been challenged before the WTO in the last year (see Trade Perspectives, Issue No. 4 of 22 February 2013).

The initialled text of the EUSFTA will now be translated and signed, following authorisation from the EU Council, which will also adopt the final decision to conclude the EUSFTA after having obtained consent from the EU Parliament. It is noted that the EUSFTA is the first FTA concluded by the EU and a Southeast Asian country. It is framed within the wider strategy pursued by the EU, following the failure of regional negotiations with ASEAN in 2009, to conclude first FTAs with individual ASEAN countries, which would then eventually serve as '*stepping stones*' for an EU-ASEAN FTA. The provisions in the EUSFTA clearly lay the foundation for further cooperation between the EU and its Southeast Asian trading partners, and will certainly constitute a blueprint for ongoing negotiations between the EU and Malaysia, Thailand and Vietnam.

The US may expose itself to WTO complaints or retaliation depending on the outcome of its current farm bill legislation

Last month, major US business groups sent a letter to leaders of the US House of Representatives (hereinafter, House) and US Senate (hereinafter, Senate) Agriculture Committees concerning the likely WTO-inconsistency of agriculture reforms currently being negotiated in each chamber. Then, this week, amidst the US government shutdown, Congress allowed H.R. 2419, titled the *Food, Conservation, and Energy Act of 2008* (hereinafter, the 2008 Farm Bill) to expire when it failed to pass a new farm bill by 30 September 2013. The significant direct effects of letting the 2008 Farm Bill expire will not occur until 2014, so it may be months before legislators pass an updated farm bill or extend the 2008 Farm Bill. In the interim, the expiration of the 2008 Farm Bill could indirectly expose the US to USD 829 million worth of WTO-sanctioned trade retaliation by Brazil stemming from the *United States – Subsidies on Upland Cotton* (hereinafter, *US – Upland Cotton*) dispute.

The concerned business groups include the US Chamber of Commerce, the National Association of Manufacturers, and the National Foreign Trade Council. In part, the groups are concerned with two counter-cyclical programmes created to replace the current Counter-Cyclical Payment (hereinafter, CCP) programme, which was at issue in the *US – Upland Cotton* dispute. House bill H.R. 1947, titled the *Federal Agriculture Reform and Risk Management Act of 2013*, creates the Price Loss Coverage (hereinafter, PLC) programme. Under the PLC programme, American farmers would receive payments when market prices fell below a guaranteed target price. Notably, the payments would be coupled to the actual number of acres a farmer planted. Alternatively, Senate bill S. 954, titled the *Agriculture Reform, Food and Jobs Act of 2013*, would replace the CCP with the Adverse Market Payments (hereinafter, AMP) programme. Though the AMP programme is similar to the PLC programme, one distinction is that payments to farmers would be based on each farmer's historical number of acres planted, as opposed to actual acres planted. It is uncertain which programme, if either, will be included in the final farm bill, but both present potential issues for the US.

In *US – Upland Cotton*, Brazil successfully challenged numerous American domestic support measures similar to the PLC and AMP programmes, including the CCP programme. In part, the WTO Appellate Body found that the CCP programme was a specific subsidy under Article 1 and 2 of the Agreement on Subsidies and Countervailing Measures (hereinafter, SCM Agreement), and that the subsidy caused serious prejudice by suppressing prices in the upland cotton market, under Articles 5(c) and 6.3(c) of the SCM Agreement. Likewise, if the PLC or AMP programmes were challenged, a WTO panel could follow the analysis in *US – Upland Cotton*. The programmes' payments would likely be deemed '*grants*' (*i.e.*, '*financial* *contributions*') that '*conferred a benefit*' to American farmers because, by definition, the programmes would pay farmers more than the market price. In addition, the programmes would be '*specific*' because they would be available only for certain crops, including, *inter alia*, wheat, maize and soybeans. Regarding the adverse effects of the programmes, the AMP programme operates in the same way as the CCP programme, and would likely suppress market prices by tying payments to acreage. Impact studies show that the PLC programme could cause worse adverse effects than the AMP and CCP programmes. The historical acreage calculation in the AMP programme provides relatively less incentive for already large farms to increase acreage or overplant. Conversely, the PLC programme is coupled to actual acres planted each season. Therefore, all farmers would be incentivised to expand and plant as much crop as possible regardless of market demand, resulting in excess supply, lower market prices and higher PLC programme payments.

Some potential WTO Member complainants can be predicted by considering part of the *US – Upland Cotton* '*significant price suppression*' analysis under Article 6.3(c) of the SCM Agreement. There, the Appellate Body accepted that one factor to consider regarding significant price suppression was the '*substantial proportionate influence*' by the US on the world market for upland cotton. Later, the compliance panel found said influence was present because of the global extent of US trade in upland cotton. Though upland cotton is excluded from the PLC and AMP programmes, countries who export other crops in which the US arguably has a '*substantial proportionate influence*' could still bring claims. The most likely claims may come from countries who export crops of which the US is currently the largest exporter (*e.g.*, wheat, maize and soybeans). In that regard, potential complainants include, *inter alia*, Argentina, Brazil, and Ukraine.

However, the most immediate effect may come from the potential for the US to be in breach of the '*framework agreement*' it signed with Brazil in 2010. In order to avoid USD 829 million in WTO-sanctioned retaliation, the US agreed to pay Brazil USD 147 million per year until a new, WTO-consistent, farm bill was passed. Last year, the House and Senate were unable to agree on a new version of the bill, so the US passed a one-year extension of the 2008 Farm Bill. The extension delayed full resolution of the *US – Upland Cotton* dispute, and Brazil still has the right to impose trade retaliation if the US is in breach of the '*framework agreement*'. While visiting Brazil on 7 August 2013, US Secretary of Agriculture Tom Vilsack warned that if a new farm bill was not passed by 30 September 2013, the US Department of Agriculture would lack the funding to pay Brazil its USD 147 million, potentially voiding the '*framework agreement*'. The next day, Brazil's foreign minister, Antonio Patriota, said Brazil would have to consider retaliation if the US stopped the payments. If the US is unable to fund the payments, retaliation would likely include: 1) hundreds of millions of USD in import tariffs; 2) the suspension of US patents on biotechnology, chemicals and pharmaceuticals; and 3) the restriction of audiovisual and music copyrights. The outcome of the farm bill legislation remains to be seen, but if the US is unable to pass a new farm bill in the coming months that adheres to its WTO-related obligations, the effect on businesses will be substantial. Interested governments and businesses should closely monitor the situation, as new developments should emerge in the coming months.

The EU discusses details of country of origin labelling for fresh meat of pig, poultry, sheep and goat

According to reports, the EU Commission is about to publish proposals on country of origin labelling (hereinafter, COOL) for fresh pork, poultry, lamb and goat, which will create similar requirements to those already applicable to beef. Draft proposals, which the Commission appears to have disclosed to EU Member States at a meeting of the Standing Committee on the food chain and animal health (SCFCAH) in September 2013, would require labels on fresh meat of pig, poultry, sheep and goat to state the country or countries in which the animal was reared and where it was slaughtered, if they are not the same. However, the proposals appear not to require labels to state where the animal was born, different from what is currently required for beef.

Under current EU food labelling rules, COOL is mandatory where a failure to provide such information could mislead consumers and for a limited range of commodities (such as fruits and vegetables, beef, fish, olive oil and honey). Under *Regulation (EC) No. 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products* (hereinafter, Regulation (EC) No. 1760/2000), established following the bovine spongiform encephalopathy (BSE) crisis, the indication of origin is mandatory for beef and beef products. Article 13(5)a) of Regulation (EC) No. 1760/2000 states that operators must indicate on the labels the (i) Member State or third country of birth; (ii) all Member States or third countries where fattening took place; (iii) Member State or third country where slaughter took place.

Under *Regulation (EU) No. 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers* (hereinafter, the FIR), which repeals, *inter alia,* Directive 2000/13/EC on food labelling (see Trade Perspectives, Issue No. 14 of 15 July 2011), the scope of mandatory COOL has been extended. Article 9(1)(i) of the FIR requires country of origin or place of provenance labelling, where provided for in Article 26. Article 26(2)b) of the FIR states that the indication of the country of origin or place of provenance shall be mandatory for meat falling within the CN codes listed in Annex XI (*i.e.,* 0203: meat of swine, fresh, chilled or frozen; 0204: meat of sheep or goats, fresh, chilled or frozen and ex 0207: meat of the poultry of heading 0105, fresh, chilled or frozen). Therefore, as of 14 December 2014 (*i.e.,* the date where most provisions of the FIR apply according to Article 55 of the FIR), in addition to beef, origin labelling will become mandatory on fresh, frozen and chilled meat of pig, poultry, sheep and goat. The FIR left open the exact content of the information (*i.e.,* place of the animal's birth and/or rearing and/or slaughter) to appear on the label. According to Article 26(9) of the FIR, by 13 December 2013, and following impact assessments, the EU Commission must adopt implementing acts concerning the application of COOL on fresh pork, poultry, lamb and goat. Those implementing acts must be adopted in accordance with the examination procedure referred to in Article 48(2) of the FIR and Article 5 of *Regulation (EU) No. 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers*. Article 28(9) of the FIR provides that, in the case of on fresh pork, poultry, lamb and goat, the reports and the impact assessments must consider, *inter alia*, the options for the modalities of expressing the country of origin or place of provenance of those foods, in particular with respect to each of the following determining points in the life of the animal: (a) place of birth; (b) place of rearing; and (c) place of slaughter.

COOL for fresh pork, poultry, lamb and goat will not be the end of the story. By 13 December 2013, as provided by Article 26(6) of the FIR, the EU Commission must submit a report to the EU Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for meat used as an ingredient. Under Article 26(5)a) of the FIR, by 13 December 2014, the EU Commission must also submit a report to the EU Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for types of meat other than beef, pork, poultry, lamb and goat. Recent press reports further state that the EU Commission argues that consumers consider it more important that the '*country of rearing*' and '*country of slaughter*' be identified on labelling, rather than where an animal is born, and that the '*country of rearing*' has more relevance from a quality and economic perspective in the production process. The EU Commission stated that the proposals are still being discussed and that a lot of incomplete theories are being proposed and circulated.

In establishing new legislation on COOL, the EU must also consider the parameters set by the WTO. On 29 June 2012, the WTO Appellate Body issued its report upholding, for the most part, the Panel's finding that a series of US statutory provisions pertaining to certain mandatory COOL measures, which require consumers to be informed at the retail level of the country of origin of certain covered agricultural commodities, including beef and pork, were in contravention of the national treatment obligation established in Article 2.1 of the WTO Agreement on Technical Barriers to Trade (for more background and analysis on the *US/COOL* dispute, see TradePerspectives Issues No. 22 of 2 December 2011 and No. 14 of 13 July 2012). In May 2013, in attempts to comply with the DSB ruling, the US amended its COOL regulations to require information on each step of production (*i.e.*, where the animal was born, raised, and slaughtered) and to no longer allow for the commingling of muscle cuts. However, Canada and Mexico claim that the revisions actually increased the discrimination against imported cattle and hogs. On 23 September 2013, the DSB established a compliance panel following the Canadian and Mexican requests to review the matter.

In case of the COOL measures that the EU is proposing, it is important to define what '*rearing*' of an animal means. It appears to be different for each type of animal. The glossary to the Terrestrial Animal Health Code of the World Organisation for Animal Health (OIE) defines that animal for breeding or rearing means a domesticated or confined animal, which is not intended for slaughter within a short time. In this context, an industry source is reported to have said, in relation to the '*floated*' EU Commission proposals, that '*reared*' only covers the last two months of the animal's life, so it could be that the meat of a pig which was born in the Netherlands and brought to the UK for the last two months of life and then slaughtered could legally be labelled as British.

It is recommended that all companies involved in trade in fresh pork, poultry, lamb and goat and products derived of these types of meat closely monitor all regulatory developments in the EU, urgently secure the appropriate legal representation and advice, and liaise with their national authorities in order to ensure that their business interests are duly represented at all instances, inasmuch as the proposals on COOL for fresh pork, poultry, lamb and goat stand to bring substantive changes to the EU trade in meat and possibly result in disruptive and costly consequences for many operators' business models.

Potential benefits arising from an FTA between the EU and New Zealand

Negotiations for an FTA between the EU and New Zealand could become a reality in the long term, according to a statement of the Ambassador and Head of the Delegation of the EU to New Zealand. In any case, New Zealand's outstanding interest to further increase its exports of agricultural products, especially vegetables and animal products, to the EU, should serve as sufficient incentive to speed up the process of bilateral trade liberalisation.

New Zealand's agricultural sector would particularly benefit from a potential FTA with the EU, especially in key sectors such as trade in meat and dairy products, inasmuch as over 70% of New Zealand's exports to the EU relate to the agricultural sector. Free trade negotiations would arguably accord New Zealand the opportunity to liberalise the various tariff-rate quotas (hereinafter, TRQs) maintained by the EU and affecting products originating from New Zealand. In addition, negotiations would also provide for an occasion to address New Zealand's privileged market access to the EU's beef market, thanks to the '*high quality beef*' quota, regulated by *Commission Implementing Regulation (EU) No. 481/2012 of June 2012 laying down rules for the management of a tariff quota for high-quality beef* (see Trade Perspectives Issue No. 13 of 28 June 2013). In this respect, it is noted that New Zealand is one of the few countries currently authorised by the EU Commission to issue certificates of authenticity under the '*high quality beef*' quota, a privilege which may be hampered (*i.e.*, '*eroded*') by ongoing FTA negotiations between the EU and other countries presently benefiting from the quota, notably Canada and the US. To the extent that preferential access enjoyed by these countries appears likely to be settled under their future FTAs with the EU, and therefore the '*high quality beef*' quota risks to be cancelled, a potential EU-New Zealand FTA would constitute a good venue for New Zealand to maintain the privileges that it currently enjoys, even in the event that the '*high quality beef*' quota, as it currently stands, be terminated.

Further benefits for New Zealand's agricultural sector potentially stem from significant tariff reductions in the dairy sector, which accounts for almost 30% of overall New Zealand's exports. In addition, FTA negotiations may provide the momentum to modify New Zealand's framework on state trading enterprises (hereinafter, STEs). It is recalled that, although in the past New Zealand maintained STEs involving trade in apples, dairy products, hop and horticultural goods, it currently maintains a single STE that effectively disciplines and manages all trade in kiwifruit (but for that which is destined to Australia).

Benefits for the EU agricultural sector may root in the increased regulation of geographical indications (hereinafter, GIs) in New Zealand, resulting in the enhanced protection of a wide variety of products, including wines, different types of cheese, spirits and other products, as well as in mechanisms to prevent potential violations, such as the usage of the French GI '*champagne*' for sparkling wine produced in New Zealand in the past. Substantial benefits for the EU would also arguably stem from liberalisations undertaken in the manufacturing sector. In this regard, the EU may wish to negotiate provisions addressing technical barriers to trade on specific goods, such as electrical equipment, vehicles, aircraft, vessels and associated transport equipment that is regularly exported to New Zealand. In particular, it might be in the EU's interest to address, along the lines of previous EU's FTAs (*e.g.*, EU-Korea FTA and EUSFTA), key issues such as the harmonisation of technical standards and mechanisms for the mutual recognition of certifications and for bringing technical regulations into conformity with mutually agreed requirements.

Talks on bilateral trade arrangements between the two trading partners were activated in October 2011. The EU and New Zealand acknowledged their common views in respect of international obstacles to trade and agreed to launch bilateral negotiations aimed at concluding a '*Partnership Agreement on Relations and Cooperation*', or '*PARC*'. Although negotiations in this regard were formally launched in 2012, progress appears not to have been achieved as quickly as it was initially expected. However, the conclusion of such framework agreement looks poised to be the first step of further negotiations aiming at a full FTA. For this reason, and taking into account that the EU is New Zealand's third largest trading partner, businesses operating in the key sectors are advised to closely follow the negotiations and to promptly liaise with the relevant authorities and stakeholders, so that their interests are duly taken into account throughout the trade talks.

Recently Adopted EU Legislation

Trade Remedies

Council Implementing Regulation (EU) No. 917/2013 of 23 September 2013 amending Implementing Regulation (EU) No. 857/2010 imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

Food and Agricultural Law

[Commission Implementing Regulation (EU) No. 934/2013 of 27 September 2013 amending Implementing Regulation (EU) No. 914/2013 establishing budgetary ceilings for 2013 applicable to certain direct support schemes provided for in Council Regulation (EC) No. 73/2009]

[Commission Implementing Regulation (EU) No. 929/2013 of 26 September 2013 amending Annex VIII to Council Regulation (EC) No. 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy]

[Commission Implementing Regulation (EU) No. 925/2013 of 25 September 2013 amending Annex I to Regulation (EC) No. 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin]

[Commission Implementing Regulation (EU) No. 924/2013 of 25 September 2013 opening and providing for the management of Union tariff quotas for agricultural products originating in Central America]

Other

[Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters]

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