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## Season's Greetings

2013 is drawing to a close and all of us in the Trade Group of FratiniVergano would like to wish you, your colleagues and families all the best for a peaceful holiday season and for a successful and healthy 2014. We hope that you have enjoyed Trade Perspectives© throughout this year and that you have always found it stimulating and timely. We have published again a total of 23 issues and invested a great deal of time and energy in this undertaking. You can find all previous issues of Trade Perspectives© on our website (http://www.fratinivergano.eu/TradePerspectives.html).

For the year to come, we plan on continuing our editorial efforts and to entertain a closer dialogue with our readers. Trade Perspectives© is now circulated to around 4,000 recipients worldwide and not a single week goes by without new readers asking to be added to our circulation list. This fills us with pride, but also with a deep sense of commitment and discipline towards our readers' expectations. Thank you for your interest in our publication and for helping us to make it a better and more useful tool of discussion. We look forward to hearing from you and to another year of exciting trade developments and discussions.

## The EU Commission decided on the third countries that are to be listed as non-cooperating under the EU's framework on IUU fishing

On 26 November 2013, the EU Commission adopted a number of instruments within the framework of the EU's policy to tackle illegal, unreported and unregulated (hereinafter, IUU) fishing. In particular, the EU Commission identified certain countries as '*non-cooperating countries*' (as per *Commission Implementing Decision of 26 November 2013 identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing,* hereinafter, the Identification Decision) and notified a number of countries of the risk that they be identified as '*non-cooperating countries*' in fighting IUU fishing (by virtue of *Commission Decision of 26 November 2013 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing,* hereinafter, the Notifying Decision).

The EU's framework to combat IUU fishing is based on two main instruments: (i) the EU's IUU Regulation (*i.e.*, *Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No. 2847/93, (EC) No. 1936/2001 and (EC) No. 601/2004 and repealing Regulations (EC) No. 1093/94 and (EC) No. 1447/1999*); and (ii) the EU's IUU Implementing Regulation (*i.e.*, *Commission Regulation (EC) No. 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council*

*Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing*). This framework puts in place a system to ensure that no products obtained from IUU fishing practices are placed on the EU market.

Notably, the EU's IUU Regulation requires that all marine fishery products (with some exceptions, which include aquaculture products and certain species) destined to the EU market be accompanied by a catch certificate signed by the master of the fishing vessel stating that the products have not been caught illegally and validated by the competent authority of the vessel's flag State. The catch certification scheme is thus designed to ensure full traceability of all marine fishery products traded with the EU. Fishery products that are not accompanied by a (duly signed and validated) catch certificate may not be exported to the EU. Third countries wishing to export their fishery products to the EU must notify the EU Commission of their relevant domestic legislation concerning the implementation, control and enforcement of conservation and management measures, as well as the relevant authorities that are competent for enforcement. In practical terms, the EU's framework requires countries wishing to export their products to the EU to have in place measures to prevent, deter and eliminate IUU fishing and authorities responsible to enforce them. The EU's IUU Regulation further provides for the establishment of an '*IUU vessels*' list and a list of non-cooperating third countries. Inclusion in this latter list entails the consequences envisaged in Article 38 of the EU's IUU Regulation, which notably include trade measures, such as a prohibition that fishery products caught by fishing vessels flying the flag of such countries be imported into the EU, as well as a denial of acceptance of catch certificates, *inter alia*.

The instruments recently adopted by the EU Commission, which are directed at the creation of the list of non-cooperating countries, are framed within the EU's ability to engage in unilateral action where, according to the EU Commission's own evaluation, third countries concerned have failed to enforce relevant international instruments or regional conservation and management measures to prevent IUU fishing. In particular, the EU's IUU Regulation envisages that the EU Commission must identify and notify third countries that '*[fail] to discharge the duties incumbent upon...[them] under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing*'. In this light, the Notifying Decision stems from findings of the EU Commission that a number of countries (*i.e.*, Curaçao, Ghana and South Korea) failed to fulfil their international obligations to prevent IUU fishing practices and, therefore, that they be notified of the possibility of being, in the future, listed as non-cooperating countries. Notification to a third country initiates a formal procedure of bilateral dialogue and cooperation, whereby every third country concerned is required to rectify specific shortcomings found by the EU Commission. In particular, '*démarches*' carried out by the EU Commission in respect of every notified country include, *inter alia*, that the EU Commission provide reasons for its actions, that each country be granted the opportunity to respond and refute its identification, that (where appropriate) the EU Commission propose an action plan to remedy the shortcomings identified and that each country be awarded time to amend the situation. Should notified third countries fail to effectively address the problems within the specified timeframe, they will be included in the list of non-cooperating third countries. The inclusion is formally done through a decision of the EU Council acting by qualified majority upon a proposal from the EU Commission.

The Identification Decision comes after eight countries (*i.e.*, Belize, Cambodia, Fiji, Guinea, Panama, Sri Lanka, Togo and Vanuatu) were identified and notified of the possibility of being included in the list of non-cooperating countries on 15 November 2012. As a result of the bilateral processes of dialogue opened by the notifications, the Identification Decision lays down (the EU Commission's opinion) that Belize, Cambodia and Guinea failed to sufficiently address the areas of concern connected to IUU fishing found in their systems. On the contrary, the EU Commission decided to extend the dialogue with the five remaining countries until the end of February 2014, in light of the '*credible progress*' achieved.

The adoption of the Identification Decision was accompanied by the transmission to the EU Council of the EU Commission's *Proposal for a Council Implementing Decision establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing* (hereinafter, the EU Commission's Proposal). In relevant part, the EU Commission's Proposal suggests that Belize, Cambodia and Guinea be placed on the list of non-cooperating countries in fighting IUU fishing and, therefore, made subject to the consequences stated in Article 38 of the IUU Regulation. This is the first time that the EU Commission proposes that certain third countries be included in the list of non-cooperating third countries. On the other hand, the Notifying Decision targeted towards Curaçao, Ghana and South Korea constitutes the second round of formal warnings (or '*yellow cards*'), whereby third countries are identified and notified on the possibility of being eventually placed on the list of non-cooperating countries by the EU Commission, after eight other countries were notified on 15 November 2012.

Should it finally be adopted, the EU Commission's Proposal will have significant negative implications on the economies of the countries at stake. In particular, such countries will not be able to export directly or indirectly fisheries products to the EU, in great prejudice to their exporters, which will lose market share in the EU and competitiveness *vis-à-vis* suppliers from non-listed countries in third country markets sourcing raw materials for final exportation to the EU. Although the grave consequences foreseen in the EU's IUU Regulation for non-cooperating third countries are designed to address an important and legitimate environmental concern, the question remains as to whether applying trade measures against countries that fail to comply with international obligations may, in all instances, be considered compatible with international trade rules. The General Agreement on Tariffs and Trade (hereinafter, the GATT), prohibits WTO Members from imposing measures which discriminate among goods on the basis of their origin, or result in restrictions to trade. But what is arguably called into question here is the proportionality of the EU's measures eventually imposed against non-cooperating countries, and their compliance with the provisions of Article XX of the GATT. This provision allows WTO Members to adopt measures that would otherwise be inconsistent with the provisions of the GATT for environmental purposes (*e.g.*, in relation to the conservation of exhaustible natural resources), provided that they are not applied in a manner '*which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail*' and do not result in '*a disguised restriction on international trade*'. Another issue is whether, and to what extent, the relevant international conventions that the EU's framework is intended to enforce may be deemed as embodying international standards.

The size of the EU's market, the world's largest importer of fishery products, provides a great incentive for countries to comply. This is precisely what the EU's framework appears to be leveraging on. The importance of the environmental objective should also clearly not be undermined. However, it is equally important that any measure taken by the EU respects trade rules and does not impair the rights of other WTO Members.

## The new WTO Agreement on Trade Facilitation, adopted as part of the '*Bali Package*', has the potential to significantly increase worldwide trade in goods

On 7 December 2013, at the Ninth WTO Ministerial Conference in Bali, Indonesia, WTO Members agreed by consensus on a new package of trade agreements, which are being referred to as the '*Bali Package*'. In particular, the deal includes a draft Agreement on Trade Facilitation (hereinafter, the Draft Agreement on TF), which intends to decrease procedural obstacles that limit trade between WTO Members. Though the substance of the draft will not change, minor edits will still take place before its adoption, which is expected to occur by 31

July 2014. Some reports indicate that the Bali Package has the potential to increase worldwide trade by upwards of USD 1 trillion.

The Bali Package includes a portion of agreements that were being negotiated as part of the larger Doha Round negotiations. Negotiating rounds among WTO Members, most of which were previously Contracting Parties to the GATT, are named after the ministerial conference in which they were launched. The Doha Round was officially launched in November 2001 at the Fourth WTO Ministerial Conference. It was the first round since the Uruguay Round, where 128 GATT Contracting Parties formed the WTO and adopted numerous trade agreements. Since the 1960s, GATT negotiating rounds have increased in length, but prior to the Doha Round the longest negotiating period lasted 7 years. The Doha Round has been on-going for over 12 years, leading some commentators in the past to label it as moribund. However, with the adoption of the Bali Package, WTO Members have arguably made a significant step towards the conclusion of the Doha Round.

The Bali Package consists of four topics from the Doha Development Agenda (hereinafter, DDA), including agriculture, cotton, development and trade facilitation. Arguably the most significant addition from the Bali Package to the collection of WTO agreements is the Draft Agreement on TF. Formal multilateral negotiations on trade facilitation were launched in 2004 as part of a DDA work programme, which called for an agreement to improve and clarify Articles V, VIII and X of the GATT '*with a view to further expediting the movement, release and clearance of goods, including goods in transit*'. Article V of the GATT requires WTO Members to allow freedom of transit for goods, vessels and other means of transit. This article is meant to limit regulatory obstacles, costs and discrimination during passage across a country and requires Members to allow traders to use the most convenient routes for international transit. Article VIII of the GATT requires that any fees and charges associated to importation or exportation must be approximate to the services rendered. The article also concerns formalities relating to importation and exportation insomuch as it provides that WTO Members shall not impose harsh penalties for minor or easily rectifiable regulatory or procedural mistakes related to customs. Article X ensures the publication of trade-related documents, including judicial decisions, administrative decisions and trade agreements. As explained by the panel in *EC – Poultry*, Article X '*at least in part, is aimed at ensuring that due process is accorded to traders when they import or export*'. During the negotiating process, some proposed measures to improve and clarify these articles in the GATT included, *inter alia*, increased publication of trade regulations and penalty provisions, advance rulings (*i.e.*, written decisions made prior to the importation of a good regarding, *inter alia*, tariff classification and country of origin), and the use of a '*single window*' (*i.e.*, a single entry point for documentation relating to import, export or transit so as to limit the burden on traders) in each Member country. Additionally, many Members expressed the desire for better communication between customs agencies and recognised that non-developed countries may need substantial assistance to improve their infrastructure, legislation and competencies.

There are a number of ways in which the Draft Agreement on TF addresses the concerns articulated in Members' proposals. For example, Article 11 of the Draft Agreement on TF clarifies the freedom of transit obligations from Article V, while adding other provisions such as one that encourages Members to make available a physically separate infrastructure for traffic in transit and another that requires members to allow for advance filing of transit documentation. Articles 6 and 10 of the Draft Agreement on TF correlate to Article VIII of the GATT. In this regard, Article 6 clarifies limits on fees and charges imposed on traders, while Article 10 adds to the rules on formalities connected to importation, exportation and transit. Traders may be pleased with some of the more noticeable new provisions. For example, Article 10(4) requires Members to '*endeavour to establish or maintain a single window*'. Traders should benefit substantially once single windows are implemented in countries in which they trade because they will reduce the paperwork necessary to import goods and

generally streamline the importation process. Additionally, Article 1 of the Draft Agreement on TF specifies what information Members must publish, including a new modern requirement that mandates Members to make some procedures, forms and documents available on the internet. Article 2 of the Draft Agreement on TF requires Members to provide traders and other interested parties with an opportunity to comment on the proposed introduction or amendment of relevant domestic laws. Other new language is found in Article 3, which requires advance rulings. Article 12 of the Draft Agreement on TF was also added, which imposes increased obligations to Members in regard to the communication and exchange of information with other Members' customs agencies.

In terms of the steps required to comply at the national level, the agreements in the Bali Package will likely demand more action by developing and least-developed countries than by developed countries. In this regard, the Draft Agreement on TF provides a significant amount of flexibility through special and differential treatment (hereinafter S&D) provisions for non-developed countries to adjust to the new rules. The S&D provisions in the Draft Agreement on TF provide that each non-developed country must self-designate each provision of the agreement as one of three categories. The categories described in the Draft Agreement on TF allow for varying time periods for implementation of the selected provisions depending on the time each non-developed country believes it will need to acquire the necessary capacity to comply. The Draft Agreement on TF also calls on donor Members of the WTO to provide technical, financial and other forms of assistance to non-developed Members. Businesses should monitor the progress of countries in which they trade in or pass through during transit, and examine how they can best take advantage of the new regulations.

## The EU adopts rules on the country of origin labelling for fresh, chilled and frozen meat of swine, sheep, goats and poultry

On 5 December 2013, new EU rules introducing country of origin labelling (hereinafter, COOL) rules for fresh, chilled and frozen meat of pork, sheep, goat and poultry received a qualified majority vote of EU Member States in the Standing Committee on Food Chain and Animal Health (Section: General food law, hereinafter the SCoFCAH). The rules are set out in an EU Commission implementing regulation laying down rules for the application of Regulation (EU) No. 1169/2011 of the European Parliament and of the Council as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry (hereinafter, the implementing regulation). The number of the implementing regulation and its text will be published in the next days in the EU's Official Journal. After no agreement was found on a vote in the meeting of the SCoFCAH on 28 November 2013, EU Member States finally reached a compromise over the length of rearing time needed for pork. According to sources, Poland and Sweden rejected the final compromise, while Belgium and the Czech Republic and Romania abstained from voting.

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: (i) the Member State or third country of birth; (ii) all Member States or third countries where fattening took place; and (iii) the Member State or third country where

slaughter took place. *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), extends the scope of the mandatory COOL. Article 9(1)(i) of the FIR requires country of origin or place of provenance labelling, where provided for in Article 26 thereof. Article 26(2)(b) of the FIR, in particular, states that the indication of the country of origin or place of provenance is mandatory for meat falling within the CN codes listed in its 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). According to Article 26(9) of the FIR, by 13 December 2013, and following impact assessments, the EU Commission had to adopt implementing acts concerning the application of COOL on fresh pork, poultry, lamb and goat. This is the implementing regulation that has now been adopted. Article 28(9) of the FIR provides that, in the case of 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.

In the elaboration of the implementing regulation, the EU Commission argued that consumers consider it more important that labelling identify the '*country of rearing*' and '*country of slaughter*', rather than where an animal is born (which is mandatory for beef), and that the '*country of rearing*' has more relevance from a quality and economic perspective in the production process. Therefore, unlike for meat of bovine, which live longer, the requirement of labelling the place of birth was not included in the implementing regulation for the other meat products, as it was also deemed too complex and costly to implement. The COOL for pork was the major stumbling block in the meetings of the SCoFCAH. In the original proposal of September 2013, the EU Commission suggested a period of rearing of at least two months for swine, sheep and goats and one month for poultry. According to sources, a number of EU Member States required a more '*honest*' labelling (with a longer rearing period), while, according to sources, businesses in the major live-pig exporting and importing countries (*i.e.*, Denmark, Germany, and the Netherlands), that also use slaughterhouses in '*cheaper*' neighbouring countries, argued with their Governments for shorter rearing periods (of maximum three months), and France being in favour of four months. To strike a balance, the EU Commission introduced the idea of using the weight at the time of slaughter instead of a specific time-period for rearing an animal, which was finally agreed.

Under the final compromise, three types of mentions are possible on the label of fresh, chilled and frozen meat of swine, sheep, goats and poultry: (i) '*Reared in: name of the EU Member State or third country of rearing A*' and '*Slaughtered in: name of the Member State or third country of slaughter B*', meaning that the animal has spent a substantial part of its life in country A and has been slaughtered in country B (the countries of rearing and of slaughtering can be the same or different. When the meat is imported from third countries or derived from imported animals and the information on the place of rearing is not provided by the exporter, the place of rearing is indicated as '*Reared in: non-EU*'); (ii) '*Reared in several Member States*' or '*Reared in several non-EU countries*' or '*Reared in: list of the Member States or third countries of rearing*' and '*Slaughtered in: name of the EU Member State or third country of slaughter*', meaning that none of the countries in which the animal was reared has covered a substantial part of its life and, as a consequence, the rearing place is indicated as '*several countries*' (except if the meat producer wishes to indicate the complete list of different places of rearing and can demonstrate it); and (iii) '*Origin: name of the Member State or third country in which the meat was wholly obtained*' may be used when the meat is obtained from animals born, reared and slaughtered in one single country (in this case the indication of the '*origin*' substitutes the separate indication of the place of rearing

and the place of slaughter. This option is indicated when the producer of the meat so wishes and if he can demonstrate it).

The requirements regarding the identification of the country of rearing depend on the individual species. For pigs that are more than six months old at slaughter, it is the EU Member State or third country in which the latest period of four months of rearing took place. For pigs that are less than six months old with more than 80kg live weight, it is the EU Member State or third country in which the pig was reared from a live weight of 30kg until slaughter. Finally, for pigs that are less than six months old at slaughter with less than 80kg live weight the country of rearing is the EU Member State or third country in which the whole rearing period since birth took place. For sheep and goats that are more than six months old at slaughter, the country of rearing is the EU Member State or third country in which the latest period of six months of rearing took place. For sheep and goats that are less than six months old at slaughter, the country of rearing is the EU Member State or third country in which the whole rearing period since birth took place. For poultry that is more than one month old at slaughter, the country of rearing is the EU Member State or third country in which the latest period of one month of rearing took place. For poultry that is less than one month old at slaughter, the country of rearing is the EU Member State or third country in which the whole rearing period took place. As an example, for pork, the '*substantial*' part of life will be of four month for animals of at least six months. For younger animals, the area where they were fattened from 30kg to more than 80kg can be used as the place of farming. In case of the new EU COOL measure, it is also important to define what '*rearing*' of an animal means. It appears to be different for each type of animal and is not defined in the implementing regulation. 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*'. The implementing regulation will apply from 1 April 2015, so as to allow for the agro-food sector to adapt. Therefore, as of 1 April 2015, in addition to beef, origin labelling will become mandatory on fresh, frozen and chilled meat of pig, poultry, sheep and goat. COOL for fresh pork, poultry, lamb and goat will not be the end of the legislative developments in the EU on COOL. By 13 December 2013, as provided by Article 26(6) of the FIR, the EU Commission had to submit a report to the EU Parliament and the EU 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 EU 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.

On 7 October 2013, the EU Commission notified the WTO Committee on Technical Barriers to Trade of the draft implementing regulation on COOL for fresh, chilled and frozen meat of swine, sheep, goats and poultry. It contains a derogation for meat from third countries, whereby the label of meat of swine, sheep, goats and poultry imported for placing on the EU market, and for which more detailed information required in the implementing regulation is not available, must contain the indication '*Reared in: non-EU*' and '*Slaughtered in: (Name of the third country where the animals were slaughtered)*'. It cannot be excluded that in consumers' minds a '*non-EU*' label will have a negative or (*de facto*) '*discriminatory*' effect.

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 final report upholding, for the most part, the Panel's finding that a series of US statutory provisions pertaining to certain mandatory COOL measures, which required 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 WTO Dispute Settlement Body accepted the Canadian and Mexican requests for the establishment of a compliance panel to review the matter.

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, liaise with their national authorities in order to ensure that their business interests are duly represented at all instances, inasmuch as the new rules on COOL for fresh pork, poultry, lamb and goat stand to bring substantive changes to EU trade in meat.

## The EU Commission takes steps to remove China, Ecuador, the Maldives and Thailand from the EU's GSP '*general arrangement*' scheme

On 30 October 2013, the EU Commission adopted a draft delegated regulation to amend Annexes I, II and IV of *Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences* (hereinafter, the GSP Regulation). In relevant part, the amendments would remove China, Ecuador, the Maldives and Thailand from the list of beneficiary countries under the '*general arrangement*' foreseen by the EU's Generalised Scheme of Preferences (hereinafter GSP). The amendments would also allow Myanmar to benefit from GSP preferences, following the repeal of the temporary withdrawal of Myanmar's access to the GSP, as well as to introduce South Sudan in the list of beneficiary countries.

The EU's GSP, in place since 1971, is a system of unilateral trade concessions, which reduces or eliminates tariffs on a range of exports from developing countries and least-developed countries. It was recently reviewed to ensure a better focus on developing and least-developed countries in need and to further promote core principles of sustainable development and good governance (see Trade Perspectives, Issue No. 9 of 6 May 2011). In its current form, the EU's GSP foresees three types of preferential arrangements: (i) the general arrangement (for developing countries matching certain eligibility criteria); (ii) the special incentive arrangement for sustainable development and good governance or '*GSP+*'; and (iii) the special arrangement for least-developed countries (*i.e.*, the '*Everything But Arms*' arrangement or EBA). The tariff preferences provided under the preferential arrangements of the EU's reformed GSP scheme apply from 1 January 2014. The list of countries eligible for GSP preferences is included in Annex I of the GSP Regulation. Annex II contains the list of countries that are beneficiaries of the general arrangement. Annex III contains the list of countries that benefit from the '*GSP+*' scheme.

The conditions for the eligibility under the general arrangement are provided in Article 4 of the GSP Regulation. Under this provision, the general arrangement is not available to countries that: (i) have been classified by the World Bank as a '*high-income or upper-middle income countries*' for the past three years, based on gross national income *per capita*; or (ii) benefit from a preferential market access to the EU, which provides substantially equivalent coverage as compared to the EU's GSP scheme (*e.g.*, a Free Trade Agreement, hereinafter, FTA); or (iii) have their own market access regulation and do not use the EU's GSP scheme (*e.g.*, overseas countries and territories of the EU), (see Trade Perspectives, Issue No. 21 of 16 November 2012).

Pursuant to these provisions, in its draft delegated act, the EU Commission acknowledged that China, Ecuador, the Maldives and Thailand were classified by the World Bank as upper-middle income countries for the last three consecutive years (*i.e.*, in 2011, 2012 and 2013). Accordingly, it proposed removing them from the list of beneficiary countries of the general GSP arrangement. Due to the significant level of economic development in recent years, the Maldives were also excluded from the EBA arrangement. The amendment will be effected through an EU Commission Delegated Regulation, which should be published in the EU's Official Journal before 1 January 2014. In this respect, it is noted that, on 12 December 2013, the EU Parliament's Committee on International Trade voted not to object to the EU Commission's draft delegated regulation, thus paving the way for its adoption prior to the end of the year. Provided that the adoption process is completed in time, China, Ecuador, the Maldives and Thailand will lose their status of beneficiary countries of the general arrangement under the GSP scheme one year after the date of entry into force of the Delegated Regulation (*i.e.*, on 1 January 2015).

It is noted that, as of 1 January 2014, China, Ecuador and Thailand will already be deprived of certain tariff preferences due to sector '*graduation*', pursuant to *Commission Implementing Regulation (EU) No. 1213/2012 of 17 December 2012 suspending the tariff preferences for certain GSP beneficiary countries in respect of certain GSP sections in accordance with Regulation (EU) No. 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences*. In particular, this instrument will limit the applicability of tariff preferences on certain products such as, *inter alia*: fish, vegetables, plastics, rubber, textiles, wood, and ceramics exported from China; live plants and floricultural products from Ecuador; and preparations of meat and fish, other prepared foodstuffs and precious metals from Thailand. Once approved, the EU Commission Delegated Regulation will result in a complete loss of all remaining preferences.

The framework established by the new EU's GSP may encourage, if not urge, certain trading partners to accelerate FTA negotiations with the EU in order to maintain trade preferences. In this respect, it is noted that Thailand launched FTA negotiations with the EU this year (see Trade Perspectives, Issue No. 22 of 30 November 2012). With respect to Ecuador, a draft Delegated Regulation included it, along with nine other countries, in a list of '*GSP+*' beneficiaries. This draft was rejected by the EU Parliament on 12 December 2013, on the grounds that the procedural approach chosen by the EU Commission (*i.e.*, that of including a list of ten beneficiary countries in a single delegated act), limited the EU Parliament's scrutiny powers. To the extent that the grounds for rejection were mainly procedural, the EU Commission will likely soon re-submit a proposal that Ecuador benefit from the '*GSP+*' scheme, although the approval procedure of the necessary related instrument may arguably be far from immediate. The revised GSP scheme will deprive several other developing countries, including Latin American countries such as Argentina, Brazil, Uruguay and Venezuela, of the market access benefits that they have enjoyed for a long period of time under the EU's GSP. However, once the new EU's GSP scheme enters into force, the status of countries will be revised continuously. De-listed countries, which ceased to be beneficiaries, will continue to be '*eligible*', which means that they may become beneficiaries of the EU's GSP scheme again in case their situation changes and they are no longer classified as '*high-income or upper-middle income countries*'.

## Recently Adopted EU Legislation

### Market Access

- *Commission Implementing Regulation (EU) No. 1281/2013 of 10 December 2013 laying down rules for the management and distribution of textile quotas established for the year 2014 under Council Regulation (EC) No. 517/94*

- *Regulation (EU) No. 1202/2013 of the European Parliament and of the Council of 20 November 2013 amending Council Regulation (EC) No. 1215/2009 in relation to tariff quotas for wine*

## Trade Remedies

- *Commission Implementing Decision of 4 December 2013 confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures*

- *Council Implementing Regulation (EU) No. 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China*

- *Council Implementing Regulation (EU) No. 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China*

## Food and Agricultural Law

- *Commission Implementing Regulation (EU) No. 1277/2013 of 9 December 2013 authorising an increase of the limits for the enrichment of wine produced using the grapes harvested in 2013 in certain wine-growing regions or a part thereof*

- *Commission Implementing Decision of 29 November 2013 approving annual and multiannual programmes and the financial contribution from the Union for the eradication, control and monitoring of certain animal diseases and zoonoses presented by the Member States for 2014 and the following years*

## Other

- *Council Decision of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation*

- *Council Decision of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation*

- *Council Decision of 2 December 2013 establishing the position to be taken by the European Union within the Ministerial Conference of the World Trade Organization as regards an extension of the moratorium on customs duties on electronic transmissions and the moratorium on non-violation and situation complaints*

- *Council Decision of 15 November 2013 on the signing, on behalf of the European Union, of the Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco*

- *Council Regulation (EU) No. 1270/2013 of 15 November 2013 on the allocation of fishing opportunities under the Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco*

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