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The EU's Product Environmental Footprint initiative and the potential impacts on international trade

In recent years, the EU Commission has been conducting work to conceive a harmonised methodology for the calculation of the environmental footprint of products. This initiative, which has led to the development of the "*Product Environmental Footprint*" (hereinafter, PEF) and the Organisation Environmental Footprint (hereinafter, OEF) methods, is grounded *inter alia* on the need to provide reliable information to consumers on the environmental impact of the products that they intend to buy and to address the proliferation of different methods and initiatives conceived to assess and communicate the environmental performance of products and organisations. The overarching purpose of producing PEF information is that of seeking to reduce the environmental impacts of goods and services, taking into account supply chain. Although the use of the PEF (and OEF) method is currently voluntary, this initiative should arguably be viewed in the context of a wider regulatory process that has taken place in the EU in recent years, which has required, or is leading to, the classification of products based on their carbon footprints or production methods and which is not without consequences for international trade.

In relevant part, the PEF method is a general method to measure and communicate the potential life cycle environmental impact of a product. It is based on the life cycle assessment (LCA), which is defined by ISO as the "*compilation and evaluation of the inputs, outputs and the potential environmental impacts of a product system throughout its life cycle*", including extraction, transportation, processing, use and disposal (or reuse/recycling). As reported in the "*Questions & Answers*" document published on the EU Commission's website, this method includes both direct impacts (*e.g.*, impacts on the production site, transport vehicles controlled by the company) and indirect impacts (*e.g.*, those occurring in the supply chain, at extraction, if these activities are not controlled by the company; occurring in the use stage). The PEF method is based on a multi-criteria approach, which factors-in several environmental indicators, such as water footprint, carbon footprint and ecological footprint.

The PEF methodology was introduced by the Commission through the Communication on "*Building the Single Market for Green Products*" and the Commission's "*Recommendation on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations*", both issued on 9 April 2013. The first instrument

contains a set of principles for communicating the environmental performance of products (and organisations), such as transparency, availability and accessibility, reliability, completeness, comparability and clarity. It also introduced a testing phase during which stakeholders, together with the EU Commission, assess the effectiveness of the methods proposed and the feasibility of their use. The Recommendation establishes the PEF (and the OEF) method as a tool to measure environmental performance throughout the lifecycle of the product, recommending its use to EU Member States, companies, private organisations and the financial community in the context of voluntary policies involving the measurement or communication of the life cycle environmental performance of products. The objective of these actions, according to the Communication, is to "*allow and facilitate, in the medium term, a higher uptake of green products and of greener practices by companies in the EU market by contributing to the removal of potential barriers to the free circulation of green products*" in the EU.

In relevant part, the Commission's initiative intends to remedy to the following problems: (i) the lack of a common definition of '*green product*'; (ii) the unnecessary costs for businesses caused by the proliferation of footprint methods, as well as the impact on the free movement of products that such proliferation stands to have; and (iii) the lack of consumers' trust in '*green claims*' which, according to the Commission and the OECD's "*Environmental Claims – Findings and Conclusions of the OECD Committee on Consumer Policy*" are "*becoming more superficial and vague in their use of terminology*". The PEF has thus been conceived as a method to measure life cycle environmental impacts, based, according to the EU Commission, on existing LCA approaches and international standards. The PEF methodology requires that Product Environmental Footprint Category Rules (hereinafter, PEFCRs) be developed to allow comparison of environmental performances between similar products (*i.e.*, products within the same '*product category*', which is defined as group of products, including services, that can fulfil equivalent functions), and to ensure that environmental performance is quantified in the same way for similar products. The three-year pilot phase has been conceived, *inter alia* to set up and validate the process of development of PEFCRs, including the precise definition of the product group and the '*representative product*' for each product category, a concept which describes the features of a typical average product sold on the market. Pilots were selected on the basis of proposals submitted following a call for volunteers issued by the EU Commission. Pilots have been established in sectors such as information technology equipment, leather, photovoltaic electric generation and a range of food and drink products, such as pasta, olive oil, coffee, dairy, meat, fish and wine, *inter alia*. The PEFCRs resulting from the pilot phase will become the product rules valid under the PEF, to be used by all stakeholders in the sector in the EU or internationally who decide to measure the performance of their products based on PEF.

The EU Commission's initiative, aimed at the legitimate objectives of proving information on environmental performance of products and promoting the use of green products in the EU, could arguably lead to a classification of products based on their environmental performance in a manner that may affect competition among products and, according to how the criteria are eventually conceived and implemented, in a way that may result in instances of *de facto* (if not *de jure*) discrimination. This consideration is without prejudice to the complexity of the exercise in which the EU Commission has actually embarked, and the multitude of factors and stages that will need to be taken into consideration with respect to each product category. In any event, the obligations of non-discrimination and minimisation of trade restrictions stemming from the WTO agreements, particularly under the General Agreement on Tariffs and Trade (hereinafter, GATT) and the Agreement on Technical Barriers to Trade (hereinafter, TBT Agreement), need to be taken into account by the EU when determining any future policy based on the application of the PEF and PEFCRs. In relevant part, the GATT prevents WTO Members from according discriminatory treatment to imported products, *vis-à-vis* '*like*' products of foreign or domestic origin. The TBT Agreement allows WTO Members to adopt measures that result in technical barriers to trade directed (*inter alia*) at the protection of the

environment. However, it also requires that such technical regulations be non-discriminatory, be based on science and be not more trade-restrictive than necessary to achieve the legitimate objective sought.

The EU has already applied or proposed comparable classification and grading systems in sectors such as biofuels, with the establishment of default values for purposes of the calculation of greenhouse gas emissions savings under the *Fuel Quality Directive* and the *Renewable Energy Directive* and the *Indirect Land Use Change* factors (see, for further background, Trade Perspectives, Issue No. 10 of 21 May 2010, Issue No. 20 of 2 November 2012 and Issue No. 1 of 9 January 2015), and fossil fuels, with respect to the determination of their life cycle greenhouse gas intensity (for further background, see Trade Perspective, Issue No. 19 of 17 October 2014). These policies have raised concerns among WTO Members inasmuch as the relevant criteria applied were not based on science and not proportionate and their implementation resulted in, or could have led to, instances of *de facto* discrimination and barriers to trade (see Trade Perspectives, Issue No. 10 of 21 May 2010, Issue No. 7 of 8 April 2011 and Issue No. 11 of 31 May 2013).

The use of the PEF method is intended to be, at least initially, voluntary. Its introduction is certainly useful if, as the EU Commission believes, its use would help to ensure that existing schemes and labels be based on solid science and be non-discriminatory. As part of this framework, the Commission intends also to provide further guidance to promote the use of clear, accurate and relevant environmental claims in marketing and advertising and ensure adequate and uniform enforcement across the EU. For example, in the context of the controversial '*palm oil free*' claims, it is often argued that sunflower oil has a better impact on the environment than palm oil. There is no specific EU legislation on such '*self-declared environmental claims*' or on '*green claims*' made on foodstuffs. As a result, claims such as those regarding the environmental impact of particular vegetable oils do not need to be based on scientific evidence and often are deceptive, intentionally crafted in misleading terms and unsubstantiated generalisations and denigrate specific products in order to promote others.

However, it appears that the EU Commission might be considering that the PEF and the PEFCRs be used in the future for the definition of minimum environmental performance requirements or as bases for the application of economic instruments. According to the Communication, once the pilot phase is terminated, the Commission will assess whether the methods, product and sector benchmarks and incentives were successful and whether they can be further integrated into a wider range of already existing or new instruments to improve the environmental performance of products on the EU market.

In this context, it remains to be seen which factors will be considered for the determination of the PEFCRs, what will be the recommended or required use of the PEF and the PEFCRs (*e.g.*, labelling, incentives, premiums), and whether any such future framework would result in better conditions of competition for certain products of domestic or foreign origin. Trade Perspectives© will continue to monitor this initiative.

The WTO Dispute Settlement Body establishes a panel in *Korea – Radionuclides*

On 31 August 2015, the WTO Dispute Settlement Body (hereinafter, DSB) established a panel in *Korea – Import Bans, and Testing and Certification Requirements for Radionuclides* (hereinafter, *Korea – Radionuclides*). The dispute provides an opportunity for the DSB to clarify questions regarding, *inter alia*, the '*appropriate level of protection*' to be applied under WTO rules.

The dispute was formally initiated on 21 May 2015, when Japan requested WTO consultations with Korea relating to numerous measures that it believes are inconsistent with the GATT and

the Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter, SPS Agreement). The circumstances surrounding the dispute actually stem from the highly-publicised March 2011 accident at the Fukushima Daiichi nuclear power plant in Japan (hereinafter, Fukushima Accident), which occurred after a major earthquake in eastern Japan. Reports indicate that, at a recent meeting of the WTO DSB, Korea commented that the Fukushima Accident caused extensive environmental contamination and that the leakage of contaminated water is still ongoing. After consultations between the two countries on 24-25 June 2015 failed to reach a mutually agreed solution, Japan requested, on 20 August 2015, the establishment of a WTO Panel. Japan's request describes the measures implemented by Korea, in on after March 2011, as: (i) prohibitions of the import of certain food products from 13 prefectures in Japan, and (ii) in the event that specific radionuclides (*i.e.*, *cesium 134*, *cesium 137* or *iodine 131*) are detected in certain food products imported from Japan, additional testing and certification requirements regarding the presence of '*other radionuclides*'. Japan added that, in September 2013, Korea extended the scope of its import prohibitions to all fishery products caught or landed in 8 Japanese prefectures. It also extended the additional testing and certification requirements regarding the presence of '*other radionuclides*' to all food products imported from Japan that are not subject to specific import bans, where the specific radionuclides are detected in other food products. Radionuclides are atoms that are unstable due to an excess nuclear energy and that, at certain levels of exposure, can damage tissues and organs due to radiation poisoning. As such, Korea reportedly contends that its measures are justifiable and consistent with its obligations under the GATT and the SPS Agreement, due to the potential risks from radioactive contamination to human, animal, and plant life and health.

Japan's request for the establishment of a WTO panel also provides information on evidence that has been gathered since it first contacted Korea about its concerns. Japan states that Korea failed to respond to its initial requests to hold bilateral meetings on the issue for many months, but that eventually Korea agreed to dispatch a group of technical experts and consumer association representatives to Japan. Japan indicates that visits from Korea's representatives took place throughout Japan in December 2014 and January 2015, and that Japan provided the representatives with additional information and opportunities to visit various relevant locations to assist Korea in developing a correct understanding of the situation. Japan added that Japan and Korea conducted a joint sampling of fishery products and ocean water for comparison, the results of which indicated that levels of radionuclides in fishery products are significantly below applicable Japanese and Korean thresholds, and that there are no more than trace amounts of radionuclides in ocean water. Japan also dispatched its own technical experts to Korea on 2 April 2015 to address questions raised by Korea's technical experts in relation to the results of the joint sampling.

The dispute provides an opportunity for the DSB to add to the jurisprudence under the SPS Agreement. According to Article 2.3 of the SPS Agreement, WTO Members must ensure that their SPS measures "*do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail*", and that SPS measures "*shall not be applied in a manner which would constitute a disguised restriction on international trade*". Article 5 of the SPS Agreement addresses the assessment of risk and determination of the appropriate level of SPS protection. Article 5.1 and 5.2 of the SPS Agreement specify that measures must be based on an appropriate assessment of the risks to human, animal or plant life or health, and that risks assessments should take into account techniques development by relevant international organizations and available scientific evidence. Article 5.3 of the SPS Agreement adds economic factors that should be considered when assessing risks, while Article 5.4 of the SPS Agreement states that WTO Members should also take into account the objective of minimising negative trade effects. Articles 5.5 of the SPS Agreement goes on to require that, when seeking the "*objective of achieving consistency in the application of the concept of appropriate level of [SPS] protection against risks to human life or health, or to animal and plant life or health, each [WTO] Member shall avoid arbitrary or unjustifiable distinctions in the*

levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade". Importantly, Article 5.6 of the SPS Agreement states that, with respect to the '*appropriate level of protection*' of SPS measures, WTO Members must "*ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of [SPS] protection, taking into account technical and economic feasibility*". Article 8 of the SPS Agreement requires WTO Members to observe provisions in Annex C of the SPS Agreement, which addresses the "*operation of control, inspection and approval procedures, including national systems […] for establishing tolerances for contaminants in foods, beverages or feedstuffs*".

For the most part, Japan's request for the establishment of a WTO panel brings claims under the SPS Agreement. Japan first alleges numerous violations by Korea of its transparency obligations under the SPS Agreement (*e.g.*, Articles 4, 5.8 and 7), due to its alleged failure to publish the disputed measures, and its alleged lack of response or action when contacted by relevant Japanese authorities about the dispute measures. However, the substantive aspects of Japan's claims focus on Articles 2.3, 5.5, 5.6 and 8 of the SPS Agreement. In this regard, Japan claims that, under Articles 2.3 and 5.5 of the SPS Agreement, Korea's measures arbitrarily or unjustifiably discriminate against Japan, or are applied in a manner that constitutes or results in a disguised restriction on the importation of food products from Japan. Japan also claims that, under Article 5.6 of the SPS Agreement, Korea's measures are more trade-restrictive than required to achieve Korea's appropriate level of protection. With respect to the claims under Article 8 of the SPS Agreement, Japan claims that Korea's measures are inconsistent with paragraphs 1(a), 1(c), 1(e) and 1(g) of Annex C of the SPS Agreement because: (i) the relevant procedures are not undertaken and completed in no less favourable manner for imported products than for like domestic products; (ii) the information requirements for control, inspection and approval procedures are not limited to what is necessary; (iii) the requirements for control, inspection and approval of individual specimens are not limited to what is reasonable and necessary; and (iv) the criteria used in the siting of facilities are not the same and do not minimize the inconvenience to applicants, importers, exporters or their agents. Japan also considers that, under Article XXIII:1 of the GATT, the disputed measures nullify or impair benefits accruing to Japan directly or indirectly under the SPS Agreement.

Interestingly, Japan's request for WTO consultations cited Articles 5.1 and 5.2 of the SPS Agreement, claiming that Korea's measures were not based on an appropriate risk assessment. Said claims appear to have been dropped in Japan's request for the establishment of a WTO panel, which may suggest that Japan's written submission and oral arguments will focus, in part, on Korea's '*appropriate level of protection*'. One issue that has emerged in previous WTO disputes is whether the '*appropriate level of protection*' of the respondent is based on the disputed SPS measure, as opposed to the relevant domestic legal framework of said respondent. In the Appellate Body Report of 16 January 1998 in *European Communities – Measures Concerning Meat and Meat Products (Hormones)* (hereinafter, *EC – Hormones*), the Appellate Body upheld a panel finding that the '*appropriate level of protection*' can be inferred directly from the SPS measure at issue in the responding WTO Member. However, the Appellate Body has also addressed the issue more recently, in its 4 June 2015 Report in *India – Measures Concerning the Importation of Certain Agricultural Products* (hereinafter, *India – Agriculture Products*). In *India – Agriculture Products*, the Appellate Body upheld a panel ruling that India's prohibition of agriculture products imported from the US due to concerns relating to Avian Influenza was inconsistent with the SPS Agreement (see Trade Perspectives, Issue No. 12 of June 2015). In *India – Agriculture Products*, the panel appeared to follow the Appellate Body's decision in *EC – Hormones*, finding that identification of the '*appropriate level of protection*' should be done on the basis of the measures at issue. The Appellate Body, however, indicated that the '*appropriate level of protection*' of the respondent should be based on the totality of the arguments and evidence. When applied to Japan's current claims in *Korea – Radionuclides*, this may result in a panel finding that Korea's

'*appropriate level of protection*' be based on Korea's general SPS framework, rather than the specific measure at issue.

Interested parties should continue to monitor the dispute, in part because its outcome will have a significant impact on Japan's food exporting industry, but also because of the potential systemic effects on the interpretation of WTO law.

Collective redress or '*Class actions*' for misleading labelling and advertising of food in the US and in the EU

On 20 October 2015, the US District Court for the Southern District of Florida settled a class action lawsuit in which three plaintiffs (on behalf of a nationwide unjust enrichment class and three state subclasses for Florida, New York, and California for consumer protection claims) sued Anheuser-Busch Companies, LLC (hereinafter AB) for misleading labelling of pilsener beer. Specifically, the plaintiffs claimed that AB's marketing of Beck's pilsener beer with statements such as '*German quality*' constituted unfair and deceptive practices.

On 9 October 2013, a plaintiff filed an action before the US District Court for the Southern District of Florida seeking damages, injunctive relief and declaratory relief, alleging that *Beck's* pilsener beer had been falsely or misleadingly labelled or marketed. The action asserted a claim for unjust enrichment on behalf of a nationwide class and a claim for violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*, on behalf of a Florida subclass. The plaintiff amended the complaint on 31 March 2014 by adding two more plaintiffs, as well as claims under New York General Business Law § 349, California Unfair Competition Law, Business and Professions Code § 17200, and California Consumer Legal Remedies Act, Civil Code § 1750. The amended complaint sought certification of a nationwide unjust enrichment class and three state subclasses for Florida, New York, and California for the consumer protection claims. The action alleged that AB's advertising, marketing and selling practices regarding *Beck's* pilsener beer were deceptive and sought a change to AB's marketing practices and Beck's' packaging.

At issue in the case was whether AB deceived consumers into thinking that *Beck's* sold in the US is brewed in Germany, despite the fact that production shifted to Missouri in 2012 and, in turn, whether this deception unjustly enriched AB by allowing it to sell *Beck's* as an imported, as opposed to domestic, beer. For more than 225 years, *Beck's* pilsener beer was brewed in the German city of Bremen using spring barley from Southern England, crystal water from the '*Rotenburger Rinne',* and '*Hallertau*' hops from South Germany. In 2012, AB began brewing *Beck's* in St. Louis, Missouri, in order to reduce costs and increase profit margins.

Plaintiffs in the case argued that there is substantial difference in ingredient source and type between German and US-brewed *Beck's*. Accordingly, *Beck's'* authenticity is derived from the fact that it is a German brand with German water, malt and hops. The plaintiffs further reasoned that, although water, hops, barley and yeast are the key ingredients in almost every beer, the source of these ingredients made *Beck's* special to US consumers. Also, US bars, restaurants and retailers would suffer from AB's alleged misrepresentations since they (falsely) market *Beck's* as an import beer. More specifically, the plaintiffs alleged that the labelling on *Beck's* six or twelve packs does not indicate that the beer is brewed in the US using domestic ingredients, including Missouri water. The packaging for *Beck's* states that it is '*German Quality*' beer '*brewed under the German Purity Law of 1516*' (*i.e.*, the *Reinheitsgebot*, which refers to beers made with only four ingredients: barley, hops, yeast and water) and that it '*Originated in Bremen, Germany*'. The *Beck's* Beer logo has not been substantially changed since production shifted to the US and still uses the City of Bremen's coat of arms, with bottles almost identical to old imported beer bottles. In the suit's words, only an '*obscure white text'* on a silver background that mentions manufacture in St. Louis has

been added. The claim also stated that this bottle labelling cannot be seen before 12-pack containers are purchased, cannot be seen in 6-pack packaging unless a bottle is removed and examined, and is inadequate to inform reasonable consumers that ***Beck's*** is no longer imported. It was claimed that reasonable consumers cannot or do not read the fine print on bottles until after they have already purchased ***Beck's*** Beer. Even then, the print on the bottled label is ambiguous and difficult to read. Whereas most breweries proudly display their location, the plaintiffs alleged that ***Beck's*** misrepresented its origins to mislead consumers into thinking that ***Beck's*** beer is the same imported product it has been for years. AB argued that ***Beck's*** beer was meticulously loyal to its German origins and to the German Purity Law in the 15 countries where it is brewed, and had been so for years. American brewmasters are employed to brew it according to the German standards where it was created and ***Beck's*** drinkers welcome its brewing in the US, since the brewmasters carefully maintain the brand's quality, taste and German recipe. AB noted that the label stated that it is a product of the US.

After the hearing on 6 April 2015, the Court ordered the parties to mediation, which was conducted on 26 May 2015. Under the settlement reached on 20 October 2015, AB agreed to give ***Beck's*** drinkers USD 0.10 back for every individual bottle purchased; USD 0.50 for a six-pack or USD 1.75 per 20-pack. Consumers who back up their claims with receipts can get refunds up to USD 50 a household. Claims without receipts are capped at USD 12. AB also agreed to include either the phrase '*Brewed in USA'* or '*Product of USA*' on *Beck*'s beer bottles, cans and front of all ***Beck's*** beer consumer-facing packages. Finally, AB agreed not to object to a motion by the class' lawyers for an award of attorney's fees and expenses in the amount of USD 3.5 million and a case contribution award not to exceed USD 5,000 to each of the three named plaintiffs. Reportedly, lawyers representing the plaintiffs said that the settlement approved by a judge confers over USD 20 million in cash benefits to class members. They are hoping for 170,000 claims, but said that 60,000 claims so far had been filed with the claims deadline on 20 November 2015. Reportedly, lawyers for both sides, however, do not expect the actual payout to class members to approach anywhere near that figure of 20 million USD.

Two matters are of particular interest when comparing the above-discussed situation to the one in the EU. First, would a case like the one of ***Beck's*** beer be considered as misleading under EU law; and second, what about class actions in the EU? Arguably, ***Beck's*** label could constitute misleading advertising under Article 7 of 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, FIR) on '*fair information practices'*. Paragraph 1(a) of Article 7 of the FIR states that "*Food information shall not be misleading, particularly as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production*". Another relevant provision could be Article 26(2)(a) of the FIR, whereby the "*[i]ndication of the country of origin or place of provenance shall be mandatory where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance.*" An average consumer, who is reasonably well informed and reasonably observant and circumspect, could understand, because of ***Beck's*** label, that the beer is brewed in Germany despite it being actually brewed in the US. A similar case could be, *inter alia*, the depiction of the colours of the Italian flag or the depiction of Italian symbols like Rome's Coliseum on the labelling of pasta produced in Germany - because of the label, consumers may reasonably think that it is an Italian product, if not explicitly stated that the pasta is produced in Germany.

As to the second question, whether such labelling cases could be addressed in class actions, it should be noted that, in keeping with the practices of most Anglo-Saxon countries (*e.g.*, US, Canada, or Australia), the possibility of a collective action or '*class action*' has been introduced

in a number of EU Member States (reportedly, in Belgium, Denmark, Germany, Italy, the Netherlands Portugal, Spain, Sweden, and the UK). However, the specific regulations, and particularly the ability to connect claims for compensation, are not organised in the same way in the different countries. The European Commission published on 11 June 2013 a *Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the EU Member States concerning violations of rights granted under Union Law* (hereinafter, the Recommendation), in which it urged EU Member States to introduce judicial collective redress mechanisms in their legal system in order to ensure effective access to justice. On 26 November 2014, the EU Commission adopted *Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union* (which was proposed the same day as the Recommendation). For example, Belgium has implemented both the Recommendation and (at that time proposed) Directive 2014/104/EU in the Law of 28 March 2014 adding a second title '*Procedure for collective recovery*' (*i.e.*, in Dutch '*Rechtsvordering tot collectief herstel*' and in French '*De l'action en réparation collective*') to book XVII '*Special court proceedings*' ('*Bijzondere gerechtelijke procedures*' or '*Procédures juridictionnelles particulières*') of the new *Code of Economic law* (*Wetboek van Economisch recht* or '*Code de droit économique*').

In Belgium, the claim for collective redress can only be brought against a company for failure to comply with its contractual obligations or for breach of the exhaustive list of legislation in the Law of 28 March 2014 and under certain EU legislation. These include, *inter alia*, the Code of Economic law itself, and legislation on the protection of competition, competition and market prices, market practices and consumer protection, intellectual property and legislation on drugs. One of the objectives of the EU's food information legislation is the protection of consumers, so it appears to fall squarely under the scope of Belgian legislation on collective redress. But there are differences vis-à-vis the US system. According to the Recommendation, the compensation awarded to natural or legal persons harmed in a mass harm situation should not exceed the compensation that would have been awarded had the claim been pursued by means of individual actions. In particular, punitive damages leading to overcompensation in favour of the claimant party of the damage suffered should be prohibited. In addition, EU Member States must ensure that the lawyers' remuneration and the method by which it is calculated do not create any incentive to litigation that is unnecessary from the point of view of the interest of any of the parties.

Due, in particular, to the high amount of damages awarded, US class actions often make news headlines. One need only think of the current Volkswagen case. Another class action on food advertising concerns the US fast food chain Subway, which is being sued by three men representing a class of Subway's customers for misrepresenting the length of their sandwiches (advertised as '*$5 Footlongs*'). The parties seem to have agreed on a settlement, and the final decision of a Milwaukee (Wisconsin) court is expected on 15 January 2016. While there are often class actions for misleading labelling and advertising of food in the US, in the EU there is not yet a harmonised system of collective redress in all EU Member States, and eventual cases need to be assessed at EU Member State level. Products with misleading labels are, to a certain extent, marketed in the EU. Whether they might justify millions of EURO in damages needs to be seen and assessed on a case-by-case basis. Food business operators are recommended to assess their labels as to compliance with EU food labelling law in order to avoid unpleasant surprises and costly judicial proceedings.

Recently Adopted EU Legislation

Market Access

- *Protocol amending the Marrakesh Agreement establishing the World Trade Organization*

- *Commission Delegated Regulation (EU) 2015/1979 of 28 August 2015 amending Annexes II, III and IV to Regulation (EU) No. 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences*

Trade Remedies

- *Commission Implementing Regulation (EU) 2015/1963 of 30 October 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of acesulfame potassium originating in the People's Republic of China*

- *Commission Implementing Regulation (EU) 2015/1952 of 29 October 2015 extending the definitive anti-dumping duty imposed by Council Implementing Regulation (EU) No. 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 4,0 mm but does not exceed 11,0 mm, originating in the People's Republic of China*

- *Commission Implementing Regulation (EU) 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America*

- *Commission Implementing Regulation (EU) 2015/1934 of 27 October 2015 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No. 1225/2009*

Food and Agricultural Law

- *Commission Implementing Regulation (EU) 2015/1991 of 5 November 2015 amending Regulation (EC) No. 555/2008 laying down detailed rules for implementing Council Regulation (EC) No. 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector*

- *Commission Implementing Regulation (EU) 2015/1980 of 4 November 2015 correcting Regulation (EC) No. 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No. 834/2007 as regards the arrangements for imports of organic products from third countries*

Other

- *Council Decision (EU) 2015/1942 of 26 October 2015 establishing the position to be taken on behalf of the European Union within the General Council of the World Trade Organisation on the United States' request for a WTO waiver to extend the AGOA programme*

NOTE TO SUBSCRIBERS

Intensive Seminar on '**Promoting access to biosimilar medicinal products through trade agreements**'

Dear Readers of Trade Perspectives©,

On 11 December 2015, *FratiniVergano* co-organises a dedicated seminar in Brussels, Belgium on the promotion of access to biosimilar medicinal products through the negotiation and implementation of international trade agreements.

Biological products represent one of the fastest-growing pharmaceutical industry sectors. With the expiry of patents on biologics, companies have started to develop and produce their own versions of existing biological medicines. Biosimilar medicines are biologics that are developed to yield the same clinical results as the reference biologics and the global market for these products is expected to rapidly expand in the next years.

The seminar will look in detail at current regulatory developments in Europe, the US and new emerging markets for biosimilar products, and will discuss opportunities for international convergence. The practical approach of the seminar aims at giving participants the chance to discuss their individual questions and examples, also offering a great networking opportunity with colleagues from all over Europe.

For more information, please click on the following link: *Intensive Seminar on '**Promoting access to biosimilar medicinal products through trade agreements**'*.

The Trade Perspectives© Team

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