

### **EC Commission plans to support olive oil sector with storage aid**

The EC Commission issued a proposal for discussion by national experts from the 27 Member States on possible support for the struggling EC olive oil sector with private storage aid. The private storage aid would allow producers to temporarily keep their products in storage at the expense of the EC budget, preventing them from selling at a loss. Although the EC is the world's leading producer of olive oil, in the 2008/2009 marketing year, due to a sharp fall of demand for olive oil, EC producers risk selling below the level of minimum profitability. In the last weeks, on several major representative markets, the prices of extra virgin and virgin oil have fallen below the trigger levels used for private storage (*i.e.*, 1,779 Euros per tonne for extra virgin oil and 1,710 Euros per tonne for virgin oil).

Given the present market conditions, the Commission proposes to grant aid for the private storage of extra virgin and virgin olive oils for a period of 180 days and a maximum quantity of 110,000 tonnes. The aids will be offered through tender procedures, which will evaluate the bids of storage operators, containing the information on compensation required and storage facilities available. The best bids will be accepted and compensation per tonne and per day will be made at the end of the storage period. The tender will be opened as soon as possible during the coming months. Depending on the harvest forecast for the next marketing year, the measure may be extended.

Subsidised storage is a preferred policy of the EC, preventing farmers from selling at loss when the prices for a commodity fall below a predetermined trigger level. Under the WTO, all domestic support measures on agricultural products considered to distort production and trade fall (with some exceptions) into the category of the so-called 'Amber Box' subsidies. These are allowed up to the committed levels set out in Part IV of Section I to WTO Members' Schedules, unless such support falls within the *de minimis* level which, for developed countries, amounts to 5 per cent of agricultural production. 34 WTO Members, including the EC, made commitments to reduce these measures of domestic support. Should the EC exceed, through the granting of storage aid, its committed levels for domestic support, it would be in violation of WTO rules.

### **EC Commission proposes to impose definitive countervailing and anti-dumping duties on US biodiesel**

As a result of anti-dumping and anti-subsidies investigation, the EC Commission issued a proposal to the EC Anti-dumping Committee (composed of representatives of EC Member States and chaired by the Commission) to impose 'definitive' or permanent anti-dumping and anti-subsidies duties on the exports of US biodiesel for up to five years. These measures are meant to offset the effects of dumping practices and subsidisation that the US offers to its domestic biodiesel producers (see Trade Perspectives, Issue No. 4 of 27 February 2009).

The investigation into US biodiesel was initiated on 13 June 2008, following complaints submitted by the European Biodiesel Board. The investigations confirmed evidence provided by the EC industry that US producers of biodiesel exported biodiesel to the EC at dumped prices and have been benefited from a range of US federal subsidies, including 1) diesel fuel excise tax credits; 2) income tax credits, and 3) the US Department of Agriculture's bio-energy program, as well as from State subsidies, granted by the Governments of several US States. The above-mentioned subsidies have been causing material injury to the biodiesel industry in the EC. On 11 March 2009, the EC Commission issued two regulations, imposing provisional countervailing anti-dumping duties on imports of biodiesel originating in the US. These measures have been in place for three months while the investigations were carried-out. The level of the provisional measures ranged between 211.20 and 237.00 Euros per metric tonne for the countervailing duties and between 23.60 and 208.20 Euros per metric tonne for the anti-dumping duties (see Trade Perspectives, Issue No. 5 of 13 March 2009).

On the basis of the findings resulting from the new investigations, the EC is proposing an increase in duties against some firms and a decrease for the companies that cooperated with the investigation. It appears that the EC Commission is proposing that US agricultural conglomerate Archer Daniels Midland be subject to a combined duty of 359 Euros per metric tonne and Cargill products to a duty of 214 Euros per metric tonne, instead of, respectively, 261 and 275 Euro per metric tonne set in the provisional measures. In addition, under the proposed definitive measures, over 50 cooperating companies would face a combined duty of 335 Euros per metric tonne, whereas all others would pay a duty of 409 Euros per metric tonne. It appears that the EC Anti-dumping Committee has approved the proposed measures. After this approval, the measures still need to be backed by the EC Council.

The US reaction remains uncertain. The US could challenge the countervailing and anti-dumping measures before the WTO if it considers that the EC has not respected the relevant WTO rules. At the EC level, US exporters may challenge the measures before the European Court of First Instance, on the basis of the following possible grounds for action: the lack of competence of the EC institution adopting the measure; the infringement of an essential procedural requirement; the infringement of the EC Treaty or of any rule of law relating to its application; and the misuse of powers. However, despite the fact that the range of grounds for review appears quite broad, as the EC Courts have been traditionally reluctant to interfere in the merits of the Commission's and Council's determinations, the most successful challenge of such measures would appear to be the one based on infringement of procedural requirements. US exporters will also be in a position to request the EC Commission to initiate an interim review after one year from the date of imposition of the definitive measures.

## **EC – ASEAN FTA negotiations suspended**

After two years of trade talks, the EC and the Association of Southeast Asian Nations (hereinafter, the ASEAN, comprising of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam) have agreed to suspend negotiations on a free trade agreement (hereinafter, the FTA) at the ASEAN Meeting of Economic Ministers, held in Siem Reap, Cambodia, between May 4 and 5. EC-ASEAN FTA negotiations were officially launched in May 2007, with full implementation of an FTA expected by 2015. Negotiations were suspended over human rights issues in Myanmar and disagreement on whether the FTA should include within its scope issues such as environment and labour.

EC-ASEAN trade relations date back to 1980, when a forum for political and economic dialogue between two regions was created. Little progress had been made until 1996, when the first Asia-Europe meeting (ASEM) took place. The EC-ASEAN trade relations were then upgraded in 2003 after the implementation of the Trans-Regional EC-ASEAN Trade Initiative

(TREATI), which sought to expand trade and investment flows, to provide a framework for dialogue and regulatory cooperation, and paving the way for the future FTA.

The EC has considered the FTA with the ASEAN as one of its priorities. Such trade pact would cover trade among roughly one billion people, making it one of the largest in the world, if achieved. According to EC statistics, in 2006 the EC-ASEAN trade constituted 5 per cent of total world trade and has continued to grow steadily ever since. On the EC side, EC-ASEAN trade is of particular importance for the exporters of chemical products, machinery and transport equipment. In order to revive the EC-ASEAN trade negotiations, the UK proposed to pursue free trade talks with individual ASEAN Member States, excluding military-ruled countries.

### **New EC initiative on agricultural product quality policy**

With the objectives of maintaining its high quality reputation in the agricultural sector and of sustaining competitiveness and profitability, on 28 May 2009, the EC Commission issued a Communication to a range of European institutions, including the European Parliament, the Council and the European Economic and Social Committee, on the EC agricultural product quality policy. This Communication builds on the ongoing debate in the EC on possible strategic orientations to improve the agricultural market and it opens the way to future EC initiatives, such as guidelines and legislative proposals. The Communication states that quality is a vital part of the EC agri-food sector's strategy in the global market place, achieved through decades of hard work, investments and innovation, and, consequently, needs to be further improved.

A critical goal of the EC agricultural quality policy is to provide buyers and consumers with sufficient information about products' characteristics, production methods, place of farming and production. According to the Commission's Communication, this goal can be achieved via either 'certification-type' or 'labelling-type' schemes through the improvement of the following quality measures: EC farming requirements; marketing standards; geographical indications; organic farming; and traditional specialties. Even though the ways to improve such measures are still being discussed, the reforms will, most likely, include the adoption of obligatory place-of-farming labelling indicating the country of harvest; simplification and clarification of the geographical indications systems; the creation of a unique register for all geographical indications; the development of a new EC organic logo, which will apply obligatorily from 2010 onwards to all products farmed in the EC; and the replacement of the 'Traditional Specialties Guaranteed' scheme, which, with only 20 registrations since 1992, has failed to reach its objectives. In addition, the Commission is considering the possibility to devise labelling schemes in the areas of animal welfare and environment, such as products of 'high-nature value farming'. The concept of high-nature value farming is based on the recognition that the conservation of biodiversity in Europe depends on the continuation of low-intensity farming systems across large areas of countryside.

The above-indicated reforms may have various implications for food industries inside and outside of the EC and, therefore, require appropriate monitoring and active participation of all businesses affected. Whereas the initiative promises to add appeal to the products produced in the EC, emphasising their quality, and clear-up possible confusions as regards labelling, it may also result in far too detailed and complicated labelling requirements, discouraging exports to the EC. Depending on how the schemes will be devised, they may also run counter to applicable WTO rules, particularly GATT and TBT provisions. Careful monitoring and attentive legal drafting will be necessary to avoid commercial frictions and the possibility of international trade disputes.

## EC – Andean FTA is under the risk of failure over intellectual property rights

The recent meeting in Brussels between representatives of the EC and the Andean countries (*i.e.*, Colombia, Ecuador and Peru) on the EC-Andean Community Association Agreement had an uneven outcome. Whereas the EC negotiations with Peru appear to move forward smoothly, difficulties have arisen in negotiations with Ecuador and Colombia. It should be recalled that Bolivia, another member of the Andean Community, abandoned negotiations with the EC in 2007.

The negotiations between the EC and Colombia are frustrated mainly because of the EC concerns over labour and human rights abuses in this country. In relation to Ecuador, one of the main obstacles appears to be the firm EC stance on intellectual property rights (hereinafter, the IPRs). Andean countries, as well as the Latin American pharmaceutical industry, appear to share concerns over ambitious and rigid IPRs provisions contained in the EC proposals. In particular, the proposal appears to include IPRs regulations, which restrict and delay generic competition and promote 'data exclusivity' (*i.e.*, the protection of clinical test data required to be submitted to a regulatory agency to prove safety and efficacy of a new drug, and prevention of generic drug manufacturers from relying on this data in their own applications) for up to 11 years; provisions on patent law and enforcement; other WTO 'TRIPs-plus' commitments, exclusively formulated to protect the rights of IPRs holders. Depending on the contents, Andean countries consider that these proposed provisions may constitute a serious barrier to access to essential medicines (through generic drugs) in the Andean countries and will inevitably result in higher medicine prices and inflated Andean governments' health budgets.

The EC's firm position on IPRs has been criticised by some NGOs. It should be recalled that in May 2008, the EC committed itself to the Global Strategy & Plan of Action on Public Health, Innovation and Intellectual Property (GSPA), at the World Health Assembly. This resolution pays significant attention to IPRs and their impact on public health, emphasising the concerns over the practice of including far-reaching IPRs clauses in bilateral trade deals.

Negotiations between the EC and the Andean Community for an Association Agreement between the two blocks started in June 2007, building on the same principles and objectives of the Political Dialogue and Cooperation Agreement signed between the two regions in 2003. In addition to trade, the Association Agreement includes chapters on political dialogue and cooperation. For the Andean Community, the EC is the second largest trading partner and investor after the US. For the EC, the Andean group holds the 35<sup>th</sup> position among the EC's trade partners. The EC exports to Andean countries mainly machinery, manufactured goods, chemical products and transport equipment, and imports mining and agricultural products. The Andean countries have preferential access to the EC market under the EC General System of Preferences.

### Recently adopted EC legislation:

[Commission Regulation \(EC\) No 457/2009 of 3 June 2009 on the issue of licences for the import of garlic in the subperiod from 1 September to 30 November 2009](#)

[Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC](#)

[Commission Regulation \(EC\) No 433/2009 of 26 May 2009 amending Regulation \(EC\) No 1282/2006 as regards export licences and export refunds for milk and milk products](#)

*Commission Regulation (EC) No 434/2009 of 26 May 2009 amending Regulation (EC) No 1580/2007 as regards the trigger levels for additional duties on tomatoes, apricots, lemons, plums, peaches, including nectarines, pears and table grapes*

*Council Decision of 25 May 2009 on the conclusion of the Agreement between the European Community and the Swiss Confederation amending the Agreement between the European Community and the Swiss Confederation on trade in agricultural products*

FratiniVergano specializes in European and international law, notably WTO and EU trade law, EU agricultural and food law, EU competition and internal market law, EU regulation and public affairs. For more information, please contact us at:

**FRATINVERGANO**  
EUROPEAN LAWYERS

Rue de Haerne 42, B-1040 Brussels, Belgium Tel.: +32 2 648 21 61 - Fax: +32 2 646 02 70  
[www.FratiniVergano.eu](http://www.FratiniVergano.eu)

Trade Perspectives® is issued with the purpose of informing on new developments in international trade and stimulating reflections on the legal and commercial issues involved. Trade Perspectives® does not constitute legal advice and is not, therefore, intended to be relied on or create any client/lawyer relationship.

To stop receiving Trade Perspectives® or for new recipients to be added to our circulation list, please contact us at:

[TradePerspectives@FratiniVergano.eu](mailto:TradePerspectives@FratiniVergano.eu)