FRATINIVERGANO
EUROPEAN LAWYERS
TRADE PERSPECTIVES©

Issue No. 21 of 16 November 2012

The French Senate rejects the introduction of a special excise tax on palm oil, palm kernel oil and coconut oil

On 15 November 2012, the French upper house (*i.e.*, the '*Senate*') Senators rejected by 186 votes to 155 a proposal for an amendment to next year's social security budget law ('*PLSS'* in its French acronym), consisting of an additional excise tax of EUR 300 per tonne of palm, copra (*i.e.*, coconut) and palm kernel oil for use in human food, which the Social Affairs Committee (*i.e.*, the '*Commission des Affaires Sociale*s') had introduced on 7 November 2012. This excise tax would have also applied to imported food products containing the said products as ingredients. The current excise tax rates are set at EUR 98.74 per tonne of palm oil and EUR 107.80 per tonne of coconut oil and palm kernel oil. The special excise tax for these three types of vegetable oils, for which the legal basis is established in Article L 1609 *vicies* of the French General Tax Code, would have resulted in the quadrupling of the current excise tax. According to the proposal, the fiscal contributions were supposed to be due for the above-mentioned oils or for food products incorporating them (according to the amount used in their composition) from manufacturers based in France, from importers and from persons that perform *intra*-EU acquisitions in France. The adoption of the excise tax could have resulted in manufacturers passing on the cost to their customers. However, it may also have encouraged manufacturers to use different vegetable oils, abandoning palm, coconut and palm kernel oil.

The objective of the proposal for a special excise tax on vegetable oils, as presented in the name of the Senate's Social Affairs Committee, was as follows (literal translation): '*Oils of coconut, palm and palm kernel are not strictly oils, but fats. They are solid at room temperature. Because of their high saturated fatty acids content, they are used in the manufacture of margarine and frying fats. They are used excessively by the catering and food industry. They are incorporated into products including biscuit and sweet or savoury food for children. According to ANSES* (*i.e.*, '*Agence Nationale de Sécurité Sanitaire de l'Alimentation, de l'Environnement et du Travail*', the French Food Safety Authority*), saturated fatty acids are consumed in excess by the French population (16% of energy intake on average, whereas the recommended dietary allowance is less than 12%). In the general population, they contribute to the development of obesity. They promote cardiovascular diseases. For public health reasons, it is therefore desirable to create an additional tax to the special tax provided for in Article L 1609 vicies of the General Tax Code, on fluid or solid vegetable oils, actually destined, in their current form or after incorporation into all food, for human consumption. This additional tax would apply to palm oil, coconut oil and palm kernel oil, which are particularly harmful to health. The rate would be set at 300 EURO per tonne. This tax would be a price signal, not to consumers, but for food manufacturers so that they replace these oils with new recipes that are more respectful of human health. France consumes 126,000 tons of palm oil for food purposes per year, or 2 kg per capita per year. Revenue of the additional tax would be around 40 million EURO'.*

If adopted, this levy would not have been the first French excise tax on specific foods. In December last year, in fact, France adopted a so-called '*soda tax*' on sugar sweetened beverages within the Finance Act 2012. The French legislation, which came into effect on 1 January 2012, is part of a trend in Europe to impose so-called '*sin taxes*' on food and drinks associated with poor health and obesity (see, in particular, Trade Perspectives Issue No. 1 of 13 January 2012, and also Issues No. 18 of 7 October 2011 and No. 8 of 20 April 2012). However, Denmark has recently decided to abolish its excise tax of DKK 6 (about EUR 2.15) per kilo of saturated fat, just a year after the tax was introduced. In addition, the Danish Government has decided to abandon its plans to introduce an excise tax on sugar.

The proposed and finally rejected French excise tax raises a number of factual and legal questions. The scientific background does not appear as simple as that which was stated in the objective of the proposal. The saturated fats of vegetable oils, including palm, coconut and palm kernel oil, need to be assessed in relation to the total fats consumption of the French population. The vast majority of saturated fats consumed in France comes from animal sources (*i.e.*, from meat, milk, cheese and butter). According to consumption statistics of the French Ministry of Agriculture, Food and Forestry ('*Agreste*' in its French acronym), in 2010, meat consumption in France was about 91.8 kgs of per capita per year (which means an average of 13.65 kgs of saturated fat intake). Milk consumption per capita was 65.9 litres (containing on average 2.63 kgs of milk fats, which belong to the saturated fats category). French consumers consume 23.9 kgs of cheese per capita (which provides 7.17 kgs of saturated animal fats, considering that cheese has, on average, 30% animal fat content). Butter consumption is at 7.8 kgs per capita (which is 80% saturated animal fats). Adding these figures up, the total animal saturated fats intake (only from meat, milk, cheese, and butter) per capita per year is around 30 kgs. As stated in the objective of the proposed French excise tax, in comparison, palm oil consumption per capita in France is only 2 kgs (with an average saturated fat content of about 1 kg). In addition, palm oil is free of trans fats and food manufacturers often use palm oil as a substitute for partially hydrogenated vegetable oils, which are rich in harmful trans fats. Palm oil, which is solid at ambient temperatures, is difficult to replace in a number of food products for quality reasons (*i.e.*, texture, taste and conservation). Its (*de facto*, if not *de jure*) '*ban*', by means of such a disproportionate and distortive excise duty, could have led to an increase in the use of partially hydrogenated sunflower or rapeseed oils, which are rich in trans fats. As a general comment, it appears questionable to focus on a few components of food instead of conducting a real policy to fight obesity and prevent people from eating too many processed foods, products that most likely contain harmful fats. If the proposed and finally rejected excise tax on palm, palm kernel and coconut oil had a truly scientific, health-driven and non-discriminatory base, products like, *inter alia,* butter, cheese, *foie gras* and lard should be even more severely taxed in order to discourage their consumption, given their saturated fat content and per capita consumption in France.

Palm oil is produced in 27 African, Asian and Latin American countries, but not in the EU or the US. Palm oil may well be processed in one EU Member State and then exported to another in a finished food product. What would have been the legal implications of adopting a *'palm oil tax'* in France? Firstly, France, as any other EU Member State, has to comply with EU internal market rules. Non-harmonised internal taxes of EU Member States must comply with the Treaty on the Functioning of the European Union (hereinafter, TFEU), in particular with Article 110 thereof, which prohibits internal discriminatory taxation, direct or indirect, on products from other Member States, in excess of that imposed on *'similar domestic products'*. Article 110 TFEU also prevents Member States from imposing any internal taxation on products from other Member States '*of such a nature so as to afford indirect protection to other products*'. In other words, if goods are similar (Article 110(1) TFEU), or if they are dissimilar but in competition with each other (Article 110(2) TFEU), this provision prohibits EU Member States from discriminating against imported products by means of imposing higher taxes on them than what is being imposed on goods of national origin.

Member States are not precluded *per se* from introducing special excise taxes on certain foods. However, in so doing, they must ensure to impose an identical tax on similar foodstuffs and foodstuffs that are in competition, so as to avoid any claim of discrimination or protectionism. It would need to be legally and factually assessed whether measures like the proposed and rejected French measure discriminate against products containing palm oil imported from other EU Member States and against '*similar*' imported products containing other fats, whether of vegetable or animal origin, as long as they all contain saturated fats or other fats considered harmful to health. From the elements available, it appears highly probable that the French measure, which has finally not been adopted, would have fallen short of meeting these requirements of non-discrimination under EU law.

Possible '*palm oil taxes'* may also be considered inconsistent with international trade rules, inasmuch as they would discriminate against palm oil, palm kernel oil and coconut oil and products containing these oils. A preliminary legal assessment of the French '*palm oil tax'* (as proposed for discussion), indicated that it may have been considered inconsistent with international trade rules, *de facto* if not *de jure*, inasmuch as it would have discriminated against third country palm, palm kernel and coconut oils and imported products containing these oils. Article III:2 of the WTO's General Agreement on Tariffs and Trade (hereinafter, the GATT) prevents WTO Members from applying to imported products internal taxes in excess of those applied to '*like*' domestic products. In addition, it also prohibits internal taxation applied so as to afford protection to domestic production. Although the proposed French excise tax appeared to be origin-neutral, instances of discrimination relevant to France's WTO obligations may have nevertheless occurred where the tax *de facto* had favoured domestic production of '*like*' or '*directly competitive or substitutable*' products. It is a fact that there is no palm, palm kernel and coconut oil production in the EU and an excise tax would *de facto* favour local sunflower, rapeseed and soy production, if food business operators replace palm, palm kernel and coconut oil with new recipes, as explicitly stated in the objectives of the proposed excise tax. Inasmuch as the justification of the measure (*i.e.*, to discourage consumption of saturated fats) is concerned, there appears to be discrimination *vis-à-vis* other products like butter, cheese, lard and *foie gras*, In addition, measures such as the proposed French excise tax may have an impact on the international trade in the products concerned to the extent that it may subject imported products to additional certification requirements (to determine the saturated fat content of palm, palm kernel and coconut oil and therefore the tax base), which may be burdensome and cause administrative delays.

The social security budget law, including the proposal for a special excise tax for palm oil, palm kernel oil and coconut oil has been debated in the Senate since 12 November 2012. If the *'palm oil tax'* had been approved by the Senate, it would have been sent to the lower house ('*Assemblée Nationale*') for final approval. We recommend that all interested parties closely monitor ongoing legislative initiatives, like the proposed (and finally rejected) French one and urgently conduct a careful legal analysis of the EU and WTO consistency of such measures.

China requests WTO consultations with the EU and certain Member States due to domestic content requirements in feed-in tariff schemes

On 5 November 2012, China requested WTO consultations with the EU and certain EU Member States (*i.e.*, Italy and Greece) concerning feed-in tariff programmes enacted under EU legislation (*i.e.*, the Italian '*Quinto Conto Energia*', '*Quarto Conto Energia*', and their implementing measures; and Greek Law 4062/2012 (FEK A'70/30.03.2012) of 27 March 2012 on the '*Development of the Athens former airport of Hellinikon – Project HELIOS*' and its implementing measures, which appear to have been promulgated, *inter alia*, under EU *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*).

China alleges that Italian and Greek law authorise, for the stimulation of the sector of photovoltaic solar installations, high feed-in tariffs coupled with certain domestic content requirements. According to China, these domestic content requirements are inconsistent with the obligations of Italy and Greece under WTO law, inasmuch as they constitute illegal subsidies that accord more advantageous treatment to electricity produced by EU-made solar panels, to the detriment of electricity generated by solar panels from China, whose producers have no access to such support schemes in the EU.

In particular, China considers that the Italian and Greek measures constitute prohibited subsidies within the meaning of Article 3.1(b) and 3.2 of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter, ASCM). China also believes that these measures violate the national treatment obligation by affording protection to domestic over imported goods in the sense of Article III:1, III:4 and III:5 of the General Agreement on Tariffs and Trade (hereinafter, GATT). In addition, China claims that these schemes are inconsistent with Articles 2.1 and 2.2 of the WTO Agreement on Trade-Related Investment Measures (hereinafter, TRIMs Agreement) and that they breach the most-favoured nation obligation as laid down in Article I of the GATT.

Feed-in tariff schemes are popular measures enacted by countries as part of their efforts to combat climate change and for the promotion of renewable energies. Under such programmes, governments fix above-market prices for energy from renewable sources, so that grid operators pay the fixed rate to energy producers, and then charge the extra cost to electricity consumers, when supplying to the national electricity grid. The aim of feed-in tariff programmes is to stimulate the production of renewable energy by means of providing substantial benefits to those producers that generate energy from renewable sources. In the Italian and Greek cases at hand, the feed-in tariff programme is coupled with a domestic content requirement, consisting of higher incentives granted to renewable energy produced from solar installations, the main components of which are made in the EU. This extra incentive could amount to a prohibited subsidy under Article 3.1(b) of the ASCM, inasmuch as it constitutes a subsidy '*contingent...upon the use of domestic over imported goods*'.

The case at issue recalls the disputes brought before the WTO by Japan and the EU against feed-in tariffs coupled with domestic content requirements adopted by the Canadian province of Ontario (for a full background of such scheme, see Trade Perspectives Issue No. 9 of 7 May 2010, Issue No. 12 of 17 June 2011, Issue No. 15 of 29 July 2011, and Issue No. 2 of 27 January 2012). Although the WTO Panel is expected to deliver its report by the end of this month, informed sources indicate that, in its *interim* report, the Panel appears to have accepted the EU's and Japan's claims that the Canadian scheme violates the GATT and the TRIMs Agreement inasmuch as it discriminates *vis-à-vis* foreign products, whereas the claim that the feed-in tariff programme amounts to an illegal subsidy within the meaning of the ASCM would be rejected.

In accordance with WTO rules on the settlement of disputes, China and the EU now have 60 days to try to reach a mutually agreed solution. Should that not occur, China may resort to adjudicatory means by requesting the establishment of a Panel, which will be convened to clarify whether the Italian and Greek measures adopted under the relevant EU legislation violate WTO law. The request for consultations comes amid a trade defence war between China, the EU and the US in the sector of solar panels. Currently, the EU Commission is conducting an anti-dumping investigation on solar panels imported from China, after *prima facie* evidence was submitted in that regard. In addition, the launch of an anti-subsidy investigation on the same products was announced last week. Likewise, the US Commerce Department is currently applying anti-dumping and anti-subsidy duties on imports of Chinese solar cells, after an investigation concluded that they were being illegally dumped and subsidised. In turn, China's Ministry of Commerce also last week announced the launch of anti-dumping and anti-subsidy investigations on solar-grade polysilicon, a key component of solar panels, originating from the EU.

It is clear that at the heart of these disputes lies the issue of compatibility between domestic support measures taken to stimulate the production of renewable energies and WTO law. That kind of measures are often surrounded by controversy inasmuch as, although allegedly pursuing a legitimate objective (*i.e.*, the protection of the environment and the fight against climate change), they may directly or indirectly pursue protectionist agendas as well. In any case, environmental initiatives should not undermine the commercial interests of other WTO Members. Should that happen, the WTO provides for rules on the settlement of disputes and for the determination of whether a given measure complies with the strict requirements of the foreseen exceptions, or whether it does not, and hence must be withdrawn. In this regard, companies operating in the area of renewable energy are advised to closely monitor all related developments, in order to be able to operate and invest with the necessary degree of stability and predictability.

EU Environment Ministers approve stricter air pollution limits for shipping industry

Following the EU Parliament's approval of stricter rules for shipping operators in September 2012, the EU Environment Ministers have, on 29 October 2012, agreed to new limits on the sulphur content of shipping fuels, thereby bringing EU legislation in line with the marine fuel standards agreed to within the framework of the International Maritime Organisation (hereinafter, IMO). These limits, which aim at improving air quality by reducing the sulphur content of shipping fuels and, in turn, by reducing the level of sulphur dioxide emitted, will be phased-in from the beginning of 2015, with all limits scheduled to be in place by 2020.

These new rules, which will amend *Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels amending Directive 1993/12/EEC* (hereinafter, Directive 1999/32/EC, as amended – a number will be assigned when the Directive is published in the EU's Official Journal), include an 85% cut in the current sulphur limits, with the exception of the so-called '*Sulphur Emission Control Areas*' (hereinafter, SECAs), where a 90% cut will be imposed. Specifically, ships operating in the high-traffic SECA areas, which encompass the Baltic Sea, the English Channel and the North Sea, must comply with a limit of 0.1% by mass of sulphur for all fuel used as from January 2015. This will bring EU law in line with the international standards, following an *interim* period until the end of 2014, up to which point a 1% maximum will apply. This limit will be applicable to vessels of all flags, including those whose journey begins outside the EU. Outside these controlled areas, the general maximum permitted sulphur content of fuel will also be revised downward from the current 3.5% and 1.5% by m/m limits, which apply to cargo ships and passenger ships respectively, to a level of 0.5% m/m, which will be applicable to all shipping within EU Member States. Criticisms in relation to the effectiveness of penalties for breaching the national provisions adopted pursuant to Directive 1999/32/EC have been addressed in this new directive with the addition of the requirement that penalties set by EU Member States be calculated in such as way as to ensure that fines imposed are at least equivalent to any benefits deriving from the infringements to the provisions of the directive.

Shipping operators will be obliged to either switch from the traditional so-called '*bunker fuels*' to cleaner fuels, which comply with the newly imposed limits or, alternatively, continue to use fuels exceeding this limit, once the ships concerned have been equipped with modern exhaust gas cleaning systems, such as wet scrubbers. These systems remove the sulphur from emissions before they enter the atmosphere and can be employed under the Directive 1999/32/EC, as amended, where they will continually achieve reductions at least equivalent to those which would be achieved by using alternative marine fuels. Directive 1999/32/EC, as amended, provides for extended access to abatement technologies, which would reduce emissions, in order to facilitate the adaptation of the industry to these new limits. The EU Commission is urged to promote the development and testing of such methods. In addition to imposing these limits on operators in the shipping industry, marine fuels exceeding the specified level can no longer be marketed within EU Member States.

There has been strong opposition from shipping operators to Directive 1999/32/EC, as amended, on the grounds that the costs of compliance for the shipping industry, particularly from Finnish and Polish operators, which export via the Baltic Sea, are overly burdensome. It has been reported that the fuel switch could increase costs by between 60% and 90%, thus damaging the competitiveness of the shipping industry and likely result in a modal shift from sea to land. In order to address these concerns, Directive 1999/32/EC, as amended, permits EU Member States to provide operators with support in the form of financial measures to aid investment costs attributed to their compliance with these rules, insofar as this would not amount to a breach of EU State Aid rules. Nevertheless, the trade impact of these limits is set to be significant, considering the fact that over 90% of global trade is currently transported by sea.

In addition to the trade impact of Directive 1999/32/EC, as amended, it should be kept in mind that further regulation in this area is possible. While these pollution rules have been introduced to bring EU legislation in line with the IMO standards, the limits are also being introduced in the context of the EU Commission's estimation that air pollution from shipping would have outstripped land-based emissions by 2020 without further action. While there has been little regulation of emissions in this sector in the past, the issue has been on the EU Commission's agenda recently, with a review of air quality policy scheduled for next year set to consider possibilities on how to reduce air pollution, including in the territorial seas of EU Member States. In addition, the greenhouse gases resulting from the use of marine fuels have yet to be addressed. While, up to now, much of the focus has been placed on carbon emissions from land-based and aviation sources, with the EU seemingly satisfied with the multilaterally negotiated standards in the context of the IMO, the possibility of extending the EU Emissions Trading Scheme (hereinafter, ETS) to the marine transport industry has recently been discussed. Progress in reducing emissions through the establishment of international market-based measures has, up to now, not been forthcoming, which has led the EU Commission to warn that it is prepared to introduce its own ETS in order to force the pace of the IMO negotiations. The EU had acted similarly in relation to aviation emissions, following continued frustrations with the lack of negotiations toward the limitation or reduction of greenhouse gas emissions within the UN's International Civil Aviation Organization (hereinafter, ICAO), as required of so-called Annex I Parties under the Kyoto Protocol. So far, this tactic seems to have paid off for the EU, considering the fact that ICAO members, unhappy with the EU's controversial unilateral mechanism, are finally showing signs of movement toward a possible multilateral deal on global aviation emissions. The EU, for its part, has delayed the application of its ETS measures to aviation for one year in recognition of this progress.

The new GSP adopted by the EU reduces the number of beneficiaries

The EU published its revised '*Generalised Scheme of Preferences for developing countries*' (hereinafter, EU's GSP) on 31 October 2012 under *Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No. 732/2008* (hereinafter, the Regulation).

The revision of the EU's GSP was initiated on 10 May 2011 (for more details, see Trade Perspectives, Issue No. 9 of 6 May 2011) and was intended to make its GSP more effective by reducing the number of beneficiaries to ensure the impact only pertains to those countries truly in need. In addition, the EU recognised that key developing economies no longer need GSP incentives to enhance their exports to the EU, as they have become globally competitive. Accordingly, Article 4 of the Regulation now states that the EU's GSP no longer benefits countries that (i) have been classified by the World Bank as a '*high-income or an upper-middle income country*' 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, (*e.g.,* a Free Trade Agreement, hereinafter, FTA); or (iii) have their own market access regulation and do not use the EU's GSP (*e.g.*, overseas countries and territories of the EU). The revised new EU's GSP will apply as of 1 January 2014.

First created in 1971, the EU's GSP is a series of unilateral trade concessions, which reduce or eliminate tariffs on a range of exports from 176 developing countries, 35 of which are non independent countries and territories of EU Member States. The purpose of the EU's GSP scheme is to increase export revenue in developing countries in order to reduce poverty and promote sustainable development and good governance. The EU's GSP was adopted following UNCTAD recommendations and in accordance with WTO law, specifically with the so-called '*enabling clause',* which allows for an exception to the most-favoured nation principle (for more details, see Trade Perspectives, Issue No. 9 of 6 May 2011). Since then, the EU's GSP has been implemented over periods of ten years, through successive Regulations, and it has been revised several times in order to consider changes in trade patterns (*i.e.,* each year during the second period (1981-1991), with respect to, *inter alia*, changes in product coverage, quotas, ceilings and their administration; in 1991, concerning industrial and agricultural products; in 2002, with regard to the different arrangements; in 2004, with respect to the number of arrangements; and in 2008, incorporating a few technical changes).

This time, the main features reviewed concern: (i) a better focus on those countries in need; and (ii) the further promotion of core principles of sustainable development and good governance (*i.e.,* the '*GSP+*'). With regard to the first feature, countries that became '*high-income or an upper-middle income country'* in terms of the World Bank *per capita* income classification, and/or that have an alternative market access arrangements with the EU, will be de-listed from the EU's GSP. On this basis, the EU's GSP now will be limited to 89 beneficiaries, resulting in a 50% reduction in the number of countries that have been benefiting from GSP treatment. The objective is to grant preferences only to the least developed countries (hereinafter, LDCs) and other developing economies that do not have other preferential arrangements to access the EU market, so that they take advantage of the scheme with less competition from more advanced developing economies. Currently, 15 countries enjoy additional duty-free access on a wider selection of goods under the '*GSP+*' programme. This is a special incentive programme, which provides for additional tariff reductions in exchange for the ratification and implementation of 27 international conventions in the areas of sustainable development and good governance. The new EU's GSP will, *inter alia*, add 4 more tariff lines under the '*GSP+*', which will expand the opportunities to export and it will allow applications from countries at any time and not every 1.5 years as now, which will enhance the use of the programme. In the implementation of these new features, the EU Commission will have to strictly adhere to the WTO's decision in the '*EC – Tariff Preferences*' dispute, and ensure that '*similarly situated'* GSP beneficiaries be treated identically (see Trade Perspectives, Issue No. 9 of 6 May 2011).

The revised GSP will deprive several developing Latin American countries, including 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. Paraguay remains the only

MERCOSUR member that will continue benefiting from the new EU's GSP, inasmuch as it remains a '*low-income or lower-middle income country*'. MERCOSUR's exports are expected to drop, considering that the EU is MERCOSUR's second largest trading partner and that Brazil and Argentina are major exporters to the EU. For years, Brazil and Argentina have been dependant on the EU's GSP to guarantee market access for as much as half of their exports. In particular, commercial impacts are likely to be substantial for exporters operating in key sectors, such as Brazilian exports of bovine meat, which represent more than USD 400 million to the EU per year. Thus, given this new EU's GSP, countries may accelerate negotiations to achieve an FTA with the EU in order to maintain trade preferences within the EU market, as most '*high-income and upper-middle income countries'* removed from the EU's GSP have already done. Arguably, by withdrawing GSP preferences from such large exporters, the EU may be attempting to create incentives for its key trading partners to conclude FTAs with the EU. In respect to MERCOSUR, FTA negotiations between the two blocks had already been launched in 1999, interrupted in 2004 and resumed again in 2010.

The reduction of beneficiaries under the EU's GSP can potentially provide significant opportunities for the remaining beneficiaries, namely LDCs, which have not yet been integrated in the global markets and whose exports compete with those of bigger economies. Nevertheless, once the new EU's GSP 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 again in case their situation changes and they can no longer be classified as '*high-income or upper-middle income countries'*. Likewise, countries no longer fulfilling the criteria to be beneficiaries will be de-listed in the future. Businesses operating in countries affected by the new EU's GSP are advised to assess the impact of the revised GSP, as well as to monitor all related developments and relevant changes, so as to harness any opportunity that the new regime may offer.

Recently Adopted EU Legislation

Market Access

- *Commission Implementing Regulation (EU) No. 1036/2012 of 7 November 2012 amending Annex II to Decision 2007/777/EC and Annex II to Regulation (EU) No. 206/2010 as regards the entries for Croatia in the lists of third countries or parts thereof from which the introduction of fresh meat and of certain meat products into the Union is authorized*

- *Commission Implementing Regulation (EU) No. 1012/2012 of 5 November 2012 amending Regulation (EC) No. 2074/2005 and Regulation (EC) No. 1251/2008 as regards the list of vector species, the health requirements and the certification requirements concerning epizootic ulcerative syndrome and as regards the entry for Thailand in the list of third countries from which imports of certain fish and fishery products into the Union are permitted*

Trade Remedies

- *Council Implementing Regulation (EU) No. 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the People's Republic of China*

Customs Law

- *Commission Implementing Regulation (EU) No. 1055/2012 of 9 November 2012 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff*

Food and Agricultural Law

- *Commission Regulation (EU) No. 1047/2012 of 8 November 2012 amending Regulation (EC) No. 1924/2006 with regard to the list of nutrition claims*

- *Commission Regulation (EU) No. 1048/2012 of 8 November 2012 on the authorisation of a health claim made on foods and referring to the reduction of disease risk*

- *Commission Implementing Decision of 8 November 2012 as regards measures to prevent the introduction into and the spread within the Union of the genus Pomacea (Perry) (notified under document C(2012) 7803)*

- *Commission Implementing Regulation (EU) No. 1018/2012 of 5 November 2012 amending Regulations (EC) No. 232/2009, (EC) No. 188/2007, (EC) No. 186/2007, (EC) No. 209/2008, (EC) No. 1447/2006, (EC) No. 316/2003, (EC) No. 1811/2005, (EC) No. 1288/2004, (EC) No. 2148/2004, (EC) No. 1137/2007, (EC) No. 1293/2008, (EC) No. 226/2007, (EC) No. 1444/2006, (EC) No. 1876/2006, (EC) No. 1847/2003, (EC) No. 2036/2005, (EC) No. 492/2006, (EC) No. 1200/2005, and (EC) No. 1520/2007 as regards the maximum content of certain micro-organisms in complete feedingstuffs*

Other

- *Commission Implementing Regulation (EU) No. 1022/2012 of 6 November 2012 amending Implementing Regulation (EU) No. 700/2012 operating deductions from fishing quotas available for certain stocks in 2012 on account of overfishing in the previous years*

- *Regulation (EU) No. 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation')*

- *Regulation (EU) No. 1029/2012 of the European Parliament and of the Council of 25 October 2012 introducing emergency autonomous trade preferences for Pakistan*

- *Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC*

Patricia Arratíbel, Ignacio Carreño, Eugenia Laurenza, Anna Martelloni, Louise O'Farrell, Blanca Salas and Paolo R. Vergano contributed to this issue.