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Mexico requests the establishment of a WTO panel in relation to the US measures affecting imports of tuna products

On 9 March 2009, Mexico requested the establishment of a WTO panel to rule on the US measures on the importation, marketing and sale of tuna and tuna products. The dispute brought by Mexico targets three categories of US measures: 1) the Dolphin Protection Consumer Information Act; 2) the Dolphin-safe labelling standards and the Dolphin safe requirements for tuna harvested in the Eastern Tropical Pacific Ocean by large purse seine vessels; and 3) the ruling in *Earth Island Institute v. Hogarth*. In relevant part, under the US measures and Court of Appeals ruling, 'dolphin-safe' labels cannot be used on tuna products if, *inter alia*, the tuna was harvested in the Eastern Tropical Pacific Ocean by a vessel using purse-seine nets and no certification proving that no dolphins were killed or seriously injured during the sets in which the tuna were caught was provided.

Mexico contends that its fishing practices are in compliance with the multilaterally agreed 'dolphin-safe' standard established by the Inter-American Tropical Tuna Commission, of which both Mexico and the US are part. Yet, unlike tuna originating from other countries, including the US, its tuna products are denied the 'dolphin-safe' label. According to Mexico, the US labelling requirements and the judgement discriminate Mexican tuna products vis-à-vis tuna products of other countries, in violation of the WTO most favoured nation treatment. Mexico also believes that the US measures and the judgement are in violation of the WTO national treatment obligation, to the extent that they discriminate in favour of US tuna products. In addition, Mexico alleges that the measures are in violation of the US obligations under the WTO TBT Agreement to the extent that they create unnecessary barriers to trade, are not proportionate and are not based on existing international standards.

The US and Mexico have already confronted each other in relation to measures affecting Mexico's exports of tuna products to the US. In 1991, Mexico challenged the US embargo of Mexican tuna products, required by its Marine Mammal Protection Act, under the GATT (the Tuna/Dolphin I dispute). The GATT dispute settlement system required the consensus of all Contracting Parties for the adoption of a panel report and the GATT panel on the US embargo on tuna products remained un-adopted. That panel found that the US embargo was illegal under GATT rules. However, it also found that the US labelling standard that prevented the use of the 'dolphin-safe' label if, *inter alia*, the tuna was harvested in the Eastern Tropical Pacific Ocean by a vessel using purse-seine nets which did not meet certain specified conditions for being considered dolphin safe, as required under the Dolphin Protection Consumer Information Act, was non-discriminatory.

Mexico requested WTO consultations on 24 October 2008. The EC and Australia requested to join the consultations. As the consultations failed to address the matter, Mexico requested the establishment of a WTO panel to rule on the WTO compatibility of the US measures. The WTO Dispute Settlement Body will consider Mexico's request during its forthcoming meeting scheduled for 20 March 2009.

Australia and New Zealand recognise Vietnam as a 'market economy' country for the purposes of anti-dumping procedures

In the framework of the negotiations and signing of the ASEAN-Australia-New Zealand Free Trade Agreement, Australia and New Zealand have granted to Vietnam the status of 'market economy' for the purposes of anti-dumping procedures. This implies that, when Vietnamese exports are subject to anti-dumping investigations, the normal value will be determined on the basis of Vietnamese prices or costs for the industry under investigation and not with reference to those of a third market economy country.

In anti-dumping procedures, the term 'non-market economies' refers to countries which have a complete or substantially complete monopoly of their trade and where all domestic prices are fixed by the State. When exports from such countries are concerned by anti-dumping investigations, the normal value is calculated on the basis of the price or costs in a third market economy country, instead of being based on the domestic prices or costs in the exporting country. The application of this methodology often results into findings of high dumping margins and consequently into high anti-dumping duties. WTO Members' anti-dumping legislation list the countries considered 'non-market economies'.

In Vietnam's Protocol of Accession to the WTO, WTO Members have reserved the right to treat Vietnam as a 'non-market economy' for the purposes of anti-dumping procedures. However, they have also committed to grant to Vietnam a 'special market economy regime', according to which Vietnamese exporting companies subject to anti-dumping procedures may be granted an individual market economy treatment if they can clearly show that they operate under market economy conditions. Such treatment is granted, upon request, in the course and for the purposes of the specific anti-dumping procedure. EC anti-dumping legislation currently grants this possibility to all exporting companies from China, Kazakhstan and Vietnam and also to any non market-economy country which is a member of the WTO at the date of the initiation of the investigation.

Australia and New Zealand are the first countries to grant to Vietnam the status of market economy since Vietnam joined the WTO in 2007. The US and the EC still treat Vietnam as a 'non-market economy'. Under Vietnam's Protocol of Accession, WTO Members can treat Vietnam as a 'non-market economy' until 31 December 2018.

The European Court of Justice (ECJ) rules that the right of public access to information applies to releases of Genetically Modified Organisms (GMOs)

On 17 February 2009, in the Case C-552/07, *Commune de Sausheim v. Pierre Azelvandre*, involving a request for disclosure of documents allowing an individual to know the location of the open field tests of GMOs, which have taken place within his/her Commune, the ECJ found that EC Member States cannot invoke a public order exception so as to prevent the disclosure of the location of release of GMOs.

The dispute concerned whether the competent authorities could disclose information and public documents to an individual showing where the deliberate releases of GMOs have taken place. In accordance to Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release of GMOs, 'deliberate release' stands for any intentional introduction into the environment of a GMO for which no specific containment measures are used to limit their contact with and to provide a high level of safety for the general population and the environment. As far as the location of release is concerned, the Court was led to the conclusion that it is defined by all the information submitted by the notifier

to the competent authorities of the EC Member State on whose territory the release is to take place.

According to the Court, national authorities cannot prevent the disclosure of the planting record for the parcels of land and of the map showing where the releases have occurred on the ground, even though this may be foreseen by a public order provision under domestic law. In addition, the Court has recognised the right of third party access to information relating to the release, which can in no way be kept confidential. This interpretation was based on the application of the precautionary principle and is in line with the fact that, according to the provisions of the above-mentioned directive, the environmental risk assessment may not be kept confidential.

The importance of this decision lies on the enhancement of transparency in the releases of GMOs, which is in fact an application of the precautionary principle. On the one hand, persons interested in the release of GMOs in the environment are obliged to submit a prior notification containing all required information. On the other hand, national authorities are under the obligation to follow the rules of transparency for the authorisation procedure of measures relating to the preparation and implementation of releases and allow proper access to information and related public documents. By this approach, the Court is delimitating the scope of what can be protected by national public domain and be kept confidential, as far as GMOs are concerned.

Canada and the EC appear set to enhance their trade relations

While both the *EC - Hormones* case and the possible EC seals products ban look set to trigger new trade confrontations, Canada and the EC are nevertheless demonstrating the willingness to conclude a trade pact and appear close to an agreement on the areas of negotiation. Comprehensive negotiations could begin very soon, with the view of enhancing Canada/EC trade relations with respect to trade in goods, services and capitals. However, the scope of a wide-ranging economic agreement is yet to be defined and the critical points for its successful conclusion are to be established. On 5 March 2009, a joint report was issued on an EC-Canada Scoping Exercise that argued that expanded trade liberalisation will be beneficial for both sides.

After concluding a number of bilateral agreements, the EC and Canada previously held negotiations in 2005 and 2006 for a new bilateral Trade and Investment Enhancement Agreement, but discussions were put on hold in 2006 in order to wait for the outcome of the Doha negotiations. In the meantime, Canada has expressed interest in a wider FTA with the EC. In the context of this possible bilateral negotiation, topics to be discussed could include: food safety, technical barriers to trade, intellectual property, investment, rules of origin, mutual recognition of professional qualifications, regulatory cooperation, government procurement, environmental provisions and the temporary movement of business persons.

The EC is currently involved in a number of bilateral trade negotiations, ranging from, *inter alia*, economic partnership agreements involving FTAs (such as the one currently being negotiated with certain ACP regional groupings), to association agreements (also involving FTAs) with Central American Countries and with the Andean Pact, to partnership and cooperation agreements (such as the one launched with China in 2007). The EC has already concluded FTAs with Chile, Mexico and South Africa, and is currently engaged in a series of FTA negotiations with other third countries such as Korea, India and the ASEAN countries, as well as Ukraine. At the same time, the EC keeps an ongoing ‘transatlantic dialogue’ with the US.

The European Commission decides to apply temporary duties on US biodiesel

On 11 March 2009, the EC Commission issued two regulations imposing provisional anti-dumping and countervailing duties on imports of biodiesel from the US. The EC measures follow a formal complaint lodged by the European Biodiesel Board on behalf of the EC biodiesel producers on 29 April 2008 (for more details see Trade Perspectives, Issue No. 4 of 27 February 2009).

The two sets of measures are applied together. The individual anti-dumping duties range from 23,6 EUR per tonne (Archer Daniels Midland Company) to 208,2 EUR per tonne (Peter Cremer North America LP). The residual duty amounts to 182,4 EUR per tonne and the one applied to non sampled US co-operating exporting producers is set at 122,9 EUR per tonne. The countervailing duties range from 237 EUR per tonne (applied to Archer Daniels Midland Company as well as to non-cooperating US exporting companies) to 211,2 EUR per tonne (Peter Cremer North America LP, Vinmar Overseas Limited and World Energy Alternatives LLC). The duty for non sampled co-operating exporting producers amounts to 219,4 EUR per tonne.

These provisional measures came into effect on 13 March 2009. Both regulations grant interested parties in the proceedings the possibility to request disclosure of the essential facts and considerations on the basis of which the measures were adopted, to make their views known in writing and to apply to be heard orally by the EC Commission, within 16 days of the date of entry into force of the measures. The anti-dumping duties will be in place for a maximum of six months while the countervailing duties will apply for four months. Definitive duties will be imposed by the EC Council only if so decided by EC Member States after the final recommendations of the Commission.

Recently Adopted EC Legislation:

Commission Regulation (EC) No 193/2009 of 11 March 2009 imposing a provisional anti-dumping duty on imports of biodiesel originating in the United States of America
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:067:0022:0049:EN:PDF

Commission Regulation (EC) No 194/2009 of 11 March 2009 imposing a provisional countervailing duty on imports of biodiesel originating in the United States of America
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:067:0050:0084:EN:PDF

Commission Regulation (EC) No 182/2009 of 6 March 2009 amending Regulation (EC) No 1019/2002 on marketing standards for olive oil
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:063:0006:0008:EN:PDF

Council Regulation (EC) No 179/2009 of 5 March 2009 amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:063:0001:0002:EN:PDF

Commission Regulation (EC) No 172/2009 of 4 March 2009 fixing the import duties applicable to certain husked rice from 5 March 2009
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:061:0010:0010:EN:PDF

Commission Regulation (EC) No 173/2009 of 4 March 2009 fixing the import duties applicable to semi-milled and wholly milled rice from 5 March 2009

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:061:0011:0011:EN:PDF