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## ABBREVIATIONS

EU	European Union
ECB	European Central Bank
EC	European Council
WTO	World Trade Organization
€	Euro
TTIP	Transatlantic Trade and Investment Partnership
GDP	Gross Domestic Product
GMO	Genetically Modified Organisms
TBT	Technical Barriers to Trade
SPS	Sanitary and Phytosanitary
TISA	Trade in Services Agreement

## EXECUTIVE SUMMARY

### Economy

- The EU economy has not fully recovered from the 2008 economic crisis. Seasonally adjusted GDP rose by 0.2% in the euro area (EA18) and by 0.3% in the EU28 during the first quarter of 2014, compared with the previous quarter.
- The Euro Zone could get bigger next year after the European Commission said Lithuania is ready to adopt the common currency. That is the conclusion of the convergence reports published on 4 June 2014 by the Commission and the European Central Bank, assessing eight EU countries' readiness to join the euro zone. A final decision will be made by the Council at the end of July after consulting the Parliament.
- The Executive Board of the International Monetary Fund (IMF) completed the fifth review of Greece's performance under an economic program supported by an Extended Fund Facility (EFF) arrangement. The completion of this review enables the disbursement of SDR 3.01 billion (about €3.41 billion, or US\$4.64 billion), which would bring total disbursements under the arrangement to SDR 10.22 billion (about € 11.58 billion, or US\$15.75 billion).
- Representatives of 26 EU member states (all EU member state except Sweden and the UK) signed an intergovernmental agreement on the transfer and mutualisation of contributions to a single resolution fund that will be established as part of Europe's banking union. The agreement will complement a regulation recently agreed with the European Parliament on the creation of a single resolution mechanism (SRM), which establishes the fund and also features a central decision making board. The single resolution fund will be fully financed by bank contributions.

### Trade and Investment Regime

- The European Commission adopted a new legal framework approved by the European Parliament and by the EU Council to better enforce EU rights under international trade agreements. The new rules will allow for a more effective EU response to illegal measures taken by its trading partners. The new regulation gives the EU a single horizontal framework to react swiftly and effectively to make sure that trade agreements translate into real benefits for the EU businesses and workers.
- The Economic and Financial Affairs Council agreed an amendment to EU's tax rules that will close a loophole which had allowed cross-border corporations to profit from double non-taxation. The agreed amendment to the parent-subsidiary directive (2011/96/EU) will put an end to the situation whereby cross-border corporate groups could exploit differences between national tax laws and profit from double non-taxation by means of hybrid loan arrangements.
- The EC has recently outlined its priorities and suggestions for modernizing and improving the EU's Dual-Use export controls regime in a Communication. The proposed approach focuses on 'smarter' controls, enhanced/improved exchange of information and intelligence between the authorities, a swifter reaction to emerging technologies, the de-listing of items which are commercially widely available, more focus on controls of intangible transfers, reducing the burden on companies, more international cooperation and the creation of a level playing field with in the EU and globally.

- The EU Parliament voted on making “Made-in” labelling mandatory for non-food products sold on the single market. Parliament also wants tougher penalties for firms selling non-compliant or potentially dangerous products.
- Certain stakeholders expressed disappointment on the agreement reached by the EU Environment ministers on the so-called ‘nationalisation proposal’ concerning GM crops cultivation. They provided that renationalizing a common EU policy, based on non-objective grounds, is a negative precedent and contrary to the spirit of the single market. In particular, it allows Member States to formally reject a technology on non-scientific grounds, which sets a dangerous precedent and sends a negative signal for innovative industries considering whether or not to operate in Europe.
- The Council is expected to reach a political agreement on draft directive amending directive 2001/18/EC as regards the possibility for member states to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory. The aim of the proposal is to facilitate the GMO authorization process by providing for a legal basis in the related EU legal framework in order to allow member states to restrict or prohibit the cultivation, in all or part of their territory, of GMOs that have been authorized at EU level. On 3 March 2014, the exchange of views held by the Environment Council confirmed the willingness of member states to re-open discussions on this legislative proposal on the basis of the presidency compromise text.
- The Council agreed on a general approach for establishing a new legal framework for the protection of trade secrets. The new framework aims at making it easier for national courts to deal with the misappropriation of confidential business information, remove the trade secret infringing products from the market and make it easier for victims to receive compensation for illegal actions.
- Securing energy supplies at affordable prices, improving energy efficiency and reducing harmful emissions will be high on the agenda of the European Parliament for the coming months and years. These issues will also be discussed at the Council summit in Ypres and Brussels during the week dedicated to sustainable energy and marked by hundreds of events throughout Europe. On 28 May 2014, the European Commission presented a plan on how to reduce the EU’s energy dependence, which will now be scrutinized and eventually be voted on by Parliament.
- The European Commission advocated a new European Energy Security Strategy. Diversifying external energy supplies, upgrading energy infrastructure, completing the EU internal energy market and saving energy are among its main points. The strategy also highlights the need to coordinate national energy policy decisions and the importance of speaking with one voice when negotiating with external partners.

## **TTIP**

- 5<sup>th</sup> round of negotiations were held from 19-23 May 2014 whereby the parties advanced their stance on various issues. The negotiators have started to deliberate on the draft texts in most areas under negotiations. Specific topics of concern: Market Access, Regulatory Compliance and Rules. The report provides information on the issues discussed this quarter relevant to the 6<sup>th</sup> round of TTIP negotiations to be held in July.

## **WTO**

- Indonesia has requested consultations with the EU in the WTO concerning anti-dumping measures imposed on imports of biodiesel into the EU.

- The EU requested consultations with Indonesia with particular respect to Indonesia's unilateral recourse to Article 22.2 of the DSU in the context of the compliance and arbitration panel proceedings in Case DS406 US – Clove Cigarettes, and the exclusion of third parties from those proceedings.
- The US questioned the EU regarding its subsidies to fisheries sector through the Committee on Subsidies and Countervailing Measures.
- Russia notified the WTO Secretariat of a request for consultations with the EU over measures applied by the EU relating to the so-called “Third Energy Package”.
- At the meeting of the Ministers responsible for the civil aerospace industry in Germany, France, Spain and the United Kingdom, it was noted that Airbus continues its internationalization strategy with the latest agreement to prolong its final assembly line in Tianjin, China, until 2025.
- US and EU revised the MoU regarding the importation of beef from animals not treated with certain growth-promoting hormones and increased duties applied by the United States to certain products of the European Communities, agreed between the United States and the European Communities.

#### **AGENDA FOR THE NEXT REPORT**

- Update on the TTIP negotiations and key issues raised by the EU and US regarding GMOs, data protection, financial services, energy as well as standards.
- Update on the leaked CETA Investment Text between the EU and Canada and plausible implications of the same on TTIP.
- Update on the panel request by the EU against Russia on AD Duties on Light Commercial Vehicles.
- Update on the ITC's report singling out the EU for digital trade barriers.
- Update on the sanctions against Russia and the compromise proposal to provide Ukraine with Gas during winters by the EU.
- Update on TISA negotiation which will focus on financial services, telecommunication and Domestic Regulation, Mode 4.
- Update on the EU's question to India about the local content requirements in electronics sector.
- Update on the EU's question to Indonesia for clarifying its new trade law, retail regulations.

## I. INTRODUCTION

This is the thirteenth Quarterly Trade Policy Monitoring Report prepared by the Centre for International Trade and Economic Laws (CITEL), Jindal Global Law School. This report will monitor and discuss the trade and macroeconomic policy developments that took place in European Union during the period of April - June 2014.

## II. ECONOMIC ENVIRONMENT

### II.A. Fiscal Environment

#### *II.A.1. GDP*

The EU economy has not fully recovered from the 2008 economic crisis. Seasonally adjusted GDP rose by 0.2% in the euro area (EA18) and by 0.3% in the EU28 during the first quarter of 2014, compared with the previous quarter. In the fourth quarter of 2013, GDP grew by 0.3% in the euro area and by 0.4% in the EU28. Compared with the same quarter of the previous year, not seasonally adjusted GDP rose by 0.9% in the euro area and by 1.5% in the EU28 in the first quarter of 2014, after +0.5% and +1.0% respectively in the previous quarter.

The Euro growth Indicator expects a growth remaining fragile in the second and third quarters of 2014, with 0.3% and 0.4% respectively, extending the weak recovery which started in the second quarter of 2013. In year-to-year comparison, the growth rates are 0.9% and 1.2% respectively. These weakening forecasted growths are mainly due to the substantial decrease in industrial managers' confidence probably stemming from the very low inflation, a sluggish German industrial growth and the widening conflict in Ukraine. On the other hand, the growth has been supported by the improving household confidence, the decreasing euro/US dollar exchange rate and the measures taken by the ECB to stimulate lending.

#### *II.A.2. Industrial production*

In May 2014 compared to April 2014, the seasonally adjusted industrial production fell by 1.1% in both the euro area (EA18) and the EU28, according to estimates from Eurostat. In April 2014 industrial production rose by 0.7% in both zones. In May 2014 compared with May 2013, industrial production grew by 0.5% in the euro area and by 1.1% in the EU28.

#### *II.A.3. Inflation*

Monthly inflation was 0.1% in June 2014. European Union annual inflation was 0.7% in June 2014, up from 0.6% in May. A year earlier the rate was 1.7%. Monthly inflation was 0.1% in June 2014.

#### *II.A.4. Employment*

The euro area (EA18) seasonally-adjusted unemployment rate was 11.5% in June 2014, down from 11.6% in May 2014, and from 12.0% in June 2013. This is the lowest rate recorded since September 2012. The EU28 unemployment rate was 10.2% in June 2014, down from 10.3% in May 2014, and from 10.9% in June 2013. This is the lowest rate recorded since March 2012. Eurostat estimates that 25.005 million men and women in the EU28, of whom 18.412 million were in the euro area, were unemployed in June 2014. Compared with May 2014, the number of persons unemployed decreased by 198,000 in the EU28 and by 152,000 in the euro area.

The euro area (EA18) seasonally-adjusted unemployment rate was 11.5% in June 2014, down from 11.6% in May 2014, and from 12.0% in June 2013. This is the lowest rate recorded since September 2012. The EU28

unemployment rate was 10.2% in June 2014, down from 10.3% in May 2014, and from 10.9% in June 2013. This is the lowest rate recorded since March 2012.<sup>1</sup>

Among the Member States, the lowest unemployment rates were recorded in Austria (5.0%), Germany (5.1%) and Malta (5.6%), and the highest in Greece (27.3% in April 2014) and Spain (24.5%). Compared with a year ago, the unemployment rate fell in twenty one Member States, increased in five and remained stable in the Netherlands and Sweden. The largest decreases were registered in Portugal (16.6% to 14.1%), Hungary (10.4% to 8.1% between May 2013 and May 2014), Ireland (13.6% to 11.8%), and Spain (26.2% to 24.5%), and the highest increases in Finland (8.1% to 8.8%), Luxembourg (5.9% to 6.3%) and Austria (4.7% to 5.0%). In June 2014, the unemployment rate in the United States was 6.1%, down from 6.3% in May 2014, and from 7.5% in June 2013.<sup>2</sup>

#### *II.A.5. Short-term interest rates*

Global short-term interest rates remain at very low levels. The Governing Council of the European Central Bank decided on July 3, 2014 that the interest rate on the main refinancing operations of the Eurosystem (0.15%) as well as other key ECB interest rates will be kept unchanged for an extended period of time in view of the current outlook for inflation. Up to now, the key official rates of the US Federal Reserve and Bank of Japan have been held at 0.25% and 0.1% respectively since end of 2008, and the UK's official bank rate has been unchanged at 0.5% since March 2009.

#### *II.A.6. Currency rate*

The euro / US dollar exchange rate (monthly average) in July 2014 remains on a decreasing trend since March, falling to USD 1.3539 from USD 1.3592 in June, and from USD 1.3732 in May 2014. In July 2014, the Euro depreciated against the USD, the Japanese Yen, the British Pound and the Swiss Franc as observed against the currencies of most of the euro area's main trading partners. To conclude, the extension of the Ukrainian crisis to a trade war between Russia, the EU and the USA would impact very negatively the world economic developments by rising energy prices<sup>3</sup>.

#### *II.A.7. Balance of goods*

The first estimate for the euro area (EA18) trade in goods balance with the rest of the world in June 2014 gave a €16.8 billion surplus, compared with +€15.7 bn in June 2013. The May 2014 balance was +€15.4 bn, compared with +€14.6 bn in May 2013. In June 2014 compared with May 2014, seasonally adjusted exports fell by 0.5% while imports rose by 0.5%. The first estimate for the June 2014 extra-EU281 trade balance was a €2.9 bn surplus, compared with +€8.6 bn in June 2013. In May 2014 the balance was +€0.5 bn, compared with +€15.0 bn in May 2013. In June 2014 compared with May 2014, seasonally adjusted exports fell by 0.3% and imports by 0.1%. The first estimate for the euro area (EA18) trade in goods balance with the rest of the world in June 2014 gave a €16.8 billion surplus, compared with +€15.7 bn in June 2013. The May 2014 balance was +€15.4 bn, compared with +€14.6 bn in May 2013. In June 2014 compared with May 2014, seasonally adjusted exports fell by 0.5% while imports rose by 0.5%. These data are released by Eurostat, the statistical office of the European Union. The first estimate for the June 2014 extra-EU281 trade balance was a €2.9 bn surplus, compared with +€8.6 bn in June 2013<sup>4</sup>

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<sup>1</sup> EuroStat, *Euro area unemployment rate at 11.5%*, 31 July 2014, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/3-31072014-BP/EN/3-31072014-BP-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-31072014-BP/EN/3-31072014-BP-EN.PDF) (last visited on 20 Sept. 2014).

<sup>2</sup> *ibid.*

<sup>3</sup> EuroStat, *Currency Rate*, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-BJ-14-008/EN/KS-BJ-14-008-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-BJ-14-008/EN/KS-BJ-14-008-EN.PDF) (last visited 20 Sept. 2014).

<sup>4</sup> EuroStat, *Balance of goods*, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/6-18082014-AP/EN/6-18082014-AP-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/6-18082014-AP/EN/6-18082014-AP-EN.PDF) (last visited on 20 Sept. 2014).



## II.A.8. International Trade

### Goods

*April 2014:* The first estimate for the euro area (EA18) trade in goods balance with the rest of the world in April 2014 gave a 15.7 billion euro surplus, compared with +14 billion in April 2013. In April 2014 compared with March 2014, seasonally adjusted exports fell by 0.2% and imports by 0.5%. The first estimate for the April 2014 extra-EU28 trade balance was a 1.3 billion euro surplus compared with +8.5 billion in April 2013. In April 2014 compared with March 2014, seasonally adjusted exports fell by 1.0% and imports by 0.9%.<sup>5</sup>

*May 2014* The first estimate for the euro area (EA 18) trade in goods balance with the rest of the world in May 2014 gave a € billion surplus, compared with +€14.6 billion in May 2013. The April 2014, balance was also +€15.4 billion, compared with +€14.2 in April 2013. In May 2014, compared with April 2014, seasonally adjusted exports rose by 0.6% and imports by 0.5%. The first estimate for the May 2014 extra – EU28; trade balance was a €0.6 billion surplus, compared with +€15 billion in May 2013. In April 2014, the balance was +€8.6 billion in April 2013. In May 2014 compared with April 2014, seasonally adjusted exports rose by 0.5% and imports by 1.4%.<sup>6</sup>

*June 2014:* The first estimate for the euro area (EA18) trade in goods balance with the rest of the world in June 2014 gave a €16.8 billion surplus, compared with +€15.7 BILLION IN June 2013. The first estimate for the June 2014 extra EU28 trade balance was a €2.9 surplus, compared with +€8.6 billion in June 2013.<sup>7</sup>

## II.B. Monetary Environment

### a) *Euro to gain currency as Lithuania adopts the common currency*

The Euro Zone could get bigger next year after the European Commission said Lithuania is ready to adopt the common currency.<sup>8</sup> That is the conclusion of the convergence reports published on 4 June 2014 by the Commission and the European Central Bank, assessing eight EU countries' readiness to join the euro zone. A final decision will be made by the Council at the end of July after consulting the Parliament. Convergence reports show how ready countries are to join the euro zone, which currently consists of 18 countries. They are only prepared for non-euro countries that are bound under the EU treaties to adopt the euro once they meet the strict economic convergence criteria required. The UK and Denmark are the only member states that are exempted from being expected to join the euro. To be eligible to join the euro, a member state has to comply with five criteria, which were set out in the Maastricht Treaty in 1992:

- Annual inflation rate should be at most 1.5% above the average of the three best performing EU countries.

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<sup>5</sup> EuroState, *Euro area international trade in goods surplus 15.7 bn euro*, 13 June 2014, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/6-13062014-AP/EN/6-13062014-AP-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/6-13062014-AP/EN/6-13062014-AP-EN.PDF) (last visited on 20 Sept. 2014).

<sup>6</sup> EuroStat, *Euro area international trade in goods surplus €15.4 billion*, May 2014, [http://webcache.googleusercontent.com/search?q=cache:m9w-ueCk8DoJ:epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/6-16072014-AP/EN/6-16072014-AP-EN.PDF+&cd=2&hl=en&ct=clnk&gl=in](http://webcache.googleusercontent.com/search?q=cache:m9w-ueCk8DoJ:epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/6-16072014-AP/EN/6-16072014-AP-EN.PDF+&cd=2&hl=en&ct=clnk&gl=in) (last visited on 20 Sept. 2014).

<sup>7</sup> EuroStat, *Euro area international trade in goods surplus €16.8 bn*, June 2014, [http://webcache.googleusercontent.com/search?q=cache:1JjAnPkIXOsJ:epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/6-18082014-AP/EN/6-18082014-AP-EN.PDF+&cd=2&hl=en&ct=clnk&gl=in](http://webcache.googleusercontent.com/search?q=cache:1JjAnPkIXOsJ:epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/6-18082014-AP/EN/6-18082014-AP-EN.PDF+&cd=2&hl=en&ct=clnk&gl=in) (last visited on 20 Sept. 2014).

<sup>8</sup> European Parliament, *Lithuania: how the euro could be gaining currency*, 5 June 2014, <http://www.europarl.europa.eu/news/en/news-room/content/20140604STO48906/html/Lithuania-how-the-euro-could-be-gaining-currency> (last visited on 20 Sept. 2014).

- Budget deficit should be at most 3% of the gross domestic product
- Government debt should be at most 60% of the gross domestic product
- Long-term interest rates should be at most two percentage points above the average of the three best performing EU countries in terms of price stability.
- The country should have been participating in the European exchange rate mechanism, which limits fluctuations between the euro and national currencies, for two years.

For some of these criteria there can be some leeway, for example if a country is near the limit or has made significant progress. In addition, the countries' legislation must fully comply with all the requirements for the adoption of the euro as laid down in the EU treaties, especially concerning the independence and role of their central banks. Once there is a positive convergence report, the European Commission produces a proposal and the European Parliament is consulted. This then forms the basis for a decision taken by the governments in the Council.

*b) ESM taps 10-year bond via auction*

The European Stability Mechanism (ESM) conducted a tap auction of a €3 billion 10-year bond maturing on 20 November 2023. An additional €990.75 million was issued, bringing the total size of the existing 2.125% bond to €3.99.75.<sup>9</sup> The weighted average price was 106.18% and the average yield was 1.42%. The bid/cover ratio was 3.9. Bids for the auction were transmitted through the Deutsche Bundesbank's ESM Bidding System (EBS). Christophe Frankel, CFO and Deputy Managing Director provided that the transaction is the first time they have ever re-opened an existing ESM bond via auction, although this has been done three times with bonds issued by the European Financial Stability Facility (EFSF). This transaction shows there was extensive demand for the reopened bond on the market. With this auction, it extended the issuance formats used by the ESM. It also helps to support the secondary market liquidity of our bonds, which is one of the most important drivers of our funding strategy.

*c) EBA publishes final draft technical standards on disclosure for the leverage ratio*

The European Banking Authority (EBA) published its final draft implementing Technical Standards (ITS) on disclosure for the leverage ratio.<sup>10</sup> These standards will be part of the EU Single Rulebook in the banking sector and aim at harmonizing disclosure of the leverage rationale across the EU by providing institutions with uniform templates and instructions. These draft ITS include all the items that are relevant for disclosure under the provisions set out in the Capital Requirements Regulation (CRR) and are aligned as much as possible, with the Basel disclosure framework. The disclosure framework set out in the ITS consists of four templates:

- A table reconciling the figures of the leverage ratio denominator with those reported under the relevant accounting standards;
- A table providing a break-down of the leverage ratio denominator by exposure category
- A table providing a further breakdown of the leverage ratio denominator by group of counterparty;
- A table with qualitative information on leverage risk.

The final ITS have been developed in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 (CRR) on prudential requirements for credits institutions and investment firms. The final standard have been sent to the European Commission for their adoption as

<sup>9</sup> European Stability Mechanism, *ESM taps 10-year bond via auction*, 24 June 2014, <http://www.esm.europa.eu/press/releases/esm-taps-10-year-bond-via-auction.htm> (last visited on 20 Sept. 2014).

<sup>10</sup> European Bank Authority, *EBA publishes final draft technical standards on disclosure for the leverage ratio*, 5 June 2014, <http://www.eba.europa.eu/-/eba-publishes-final-draft-technical-standards-on-disclosure-for-the-leverage-ratio> (last visited on 20 Sept. 2014).

Regulations that will be directly applicable throughout the EU. The European Commission has been empowered to enact a delegated act to change the calculation of the leverage ratio (Article 456(1)(j) of the CRR) before disclosure begins as of 1 January 2015. For this reason, the ITS in general, and the templates and instructions in particular, will be subject to future changes depending on the decisions made in the delegated act.

*d) ECB announces monetary policy measure to enhance the functioning of the monetary policy transmission mechanism*

In pursuing its price stability mandate, the Governing Council of the ECB has announced measures to enhance the functioning of the monetary policy transmission mechanism by supporting lending to the real economy.<sup>11</sup> In particular, the Governing Council has decided: 1) To conduct a series of targeted longer-term refinancing operations (TLTROs) aimed at improving bank lending to the euro area non-financial private sector excluding loans to households for house purchase, over a window of two years. 2) To intensify preparatory work related to outright purchases of asset-backed securities (ABS).

Counterparties will be entitled to an initial TLTRO borrowing allowance (initial allowance) equal to 7% to the total amount of their loans to the euro area non-financial private sector, excluding loans to households for house purchase, outstanding on 30 April 2014. In two successive TLTROs to be conducted in September and December 2014, counterparties will be able to borrow an amount that cumulatively does not exceed this initial allowance. During the period from March 2015 to June 2016, all counterparties will be able to borrow additional amount in a series of TLTROs conducted quarterly. These additional amounts can cumulatively reach up to three times each counterparty's net lending to the euro area non-financial private sector, excluding loans to households for house purchase, provided between 30 April 2014 and the respective allotment reference date in excess of a specified benchmark.

The benchmark will be determined by taking into account each counterparty's net lending to the euro area non-financial private sector, excluding loans to households for house purchase, recorded in the 12-month period up to 30 April 2014. All TLTRO will mature in September 2018. The interest rate on the TLTROs will be fixed over the life of each operation at the rate on the Eurosystem's main refinancing operations (MRO) prevailing at the time of take-up, plus a fixed spread of 10 basis points. Interests will be paid in arrears when the borrowing is repaid.

The interest rate on the TLTROs will be fixed over the life of each operation at the rate on the Eurosystem's main refinancing operations (MROs) prevailing at the time of take-up, plus a fixed spread of 10 basis points. Interest will be paid in arrears when the borrowing is repaid. Starting 24 months after each TLTRO, counterparties will have the option to repay any part of the amounts they were allotted in that TLTRO at a six-monthly frequency. Counterparties that have borrowed under the TLTROs, and whose net lending to the euro area non-financial private sector, excluding loans to households for house purchase, in the period from 1 May 2014 to 30 April 2016 is below the benchmark will be required to pay back borrowings in September 2016.

The Governing Council has decided to intensify preparatory work related to outright purchases in the ABS market to enhance the functioning of the monetary policy transmission mechanism, given the role of this market in facilitating new credit flows to the economy. Under this initiative, the Eurosystem will consider purchasing simple and transparent ABS with underlying assets consisting of claims against the euro area non-financial private sector, taking into account the desirable changes in the regulatory environment and will work with other relevant institutions to that effect. The Eurosystem will work out the appropriate modalities for this policy measure, including the key requirements that the ABS will have to meet in order to be eligible.

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<sup>11</sup> European Central Bank, *ECB announces monetary policy measures to enhance the functioning of the monetary policy transmission mechanism*, 5 June 2014, [http://www.ecb.europa.eu/press/pr/date/2014/html/pr140605\\_2.en.html](http://www.ecb.europa.eu/press/pr/date/2014/html/pr140605_2.en.html) (last visited on 20 Sept. 2014).

e) *ECB introduces a negative deposit facility interest rate*

Deposit facility interest rate cut effective as of 11 June 2014. Negative rate to apply also to average holdings in excess of the minimum reserve requirements and other deposits held with the Eurosystem.<sup>12</sup> When deciding to lower the key ECB interest rates at its meeting, the Governing Council of the ECB took the decision to cut the interest rate on the deposit facility to -0.10%. This change will come into effect on 11 June 2014, together with the changes to the interest rates on the main refinancing operations and on the marginal lending facility.

The negative deposit facility interest rate will also apply to: (i) banks' average reserve holdings in excess of the minimum reserve requirements; (ii) government deposits held with the Eurosystem that exceed certain thresholds that will be set in the relevant Guideline to be published by 7 June 2014; (iii) Eurosystem reserve management services accounts if not currently remunerated; (iv) participants' account balances in TARGET2; (v) non-Eurosystem NCB balances (overnight deposit) held in TARGET2; and (vi) other accounts held by third parties with Eurosystem central banks when stipulated that they are not currently remunerated at the deposit facility rate.

f) *EBA publishes risk dashboard for EU banking sector*

The European Banking Authority (EBA) published on 6 May 2014 the first risk dashboard for 2014 summarizing the main risks and vulnerabilities in the banking sector in the EU, based on the evolution of Key Risk Indicators (KRI) from 55 banks across the EU in the fourth quarter of 2013.<sup>13</sup> This release of the Dashboard includes a one-off annex on aggregate risk parameters aimed at achieving transparency regarding EU banks' risk parameters, allowing comparison across countries and geographical areas.

Data in this edition of the EBA dashboard illustrates that EU banks' capital positions decreased as a result of cleaning up of balance sheets and taking on legal charges. This decrease of capital positions was outpaced by declining Risk Weighted Assets (RWAs), hence contributing to higher capital ratios. The quality of banks' loan portfolios deteriorated further, highlighting the importance of thorough assessment of asset quality, accompanied by consistent transparency. Profitability levels have also been severely affected by the clean-up of some of balance sheets structure. During this last quarter of 2013, weighted average of debt-to-equity ratio fell to the lowest level of the last 4 years. Loan-to-deposit ratio declined significantly, also reaching the lowest level of the last 4 years.

The EBA risk dashboard is part of the regular risk assessment conducted by the EBA and complements the Risk Assessment Report. It is based on Q4 2013 data and takes into consideration the evolution of a set of Key Risk Indicators from 55 EU banks that the EBA has been collecting on a quarterly basis since 2009. The update includes a one-off agenda on aggregate risk parameters taken from the Transparency Exercise. This part of the efforts to enhance data availability on EU banks and follows the work of the EBA on the consistency of RWAs.

g) *ESM reaches target level of €80 billion in paid-in capital*

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<sup>12</sup> European Central Bank, *June 2014- ECB introduces a negative deposit facility interest rate*, 5 June 2014, [http://www.ecb.europa.eu/press/pr/date/2014/html/pr140605\\_3.en.html](http://www.ecb.europa.eu/press/pr/date/2014/html/pr140605_3.en.html) (last visited on 20 Sept. 2014).

<sup>13</sup> European Banking Authority, *EBA publishes risk dashboard for EU banking sector*, 6 May 2014, <http://www.eba.europa.eu/-/eba-publishes-risk-dashboard-for-eu-banking-sector> (last visited on 20 Sept. 2014).

The European Stability Mechanism (ESM) has now reached its target level of €80 billion in paid-in capital, as ESM Members transferred the final tranche of €15.7 billion.<sup>14</sup> The payments were carried out in five tranches, starting in October 2012 when the ESM was inaugurated. Paid-in capital, along with committed callable capital of around €622 billion, contribute to the ESM's high creditworthiness. This enables the ESM to issue bills and bonds at favourable rates in order to finance loans provided to beneficiary Member States. Paid-in capital is invested in high quality liquid assets with capital preservation as a key objective.

Paid-in capital is invested in high-quality liquid assets with capital preservation as a key objective. Paid-in capital may not be used for lending purposes. The ESM Board of Directors may decide to distribute a dividend to the ESM Members in proportion to their paid-in capital after deductions of operational costs. ESM Managing Director provided that the completion of payments of paid-in capital by our Members means that the ESM has achieved full lending capacity of €550 billion. Nearly €450 billion of that amount is still available if necessary. Our paid-in capital of €80 billion is the highest among all international financial institutions worldwide. That is a major factor why investors regard the ESM as a highly reputable and trusted issuer.

*b) EBA publishes common methodology and scenario for 2014 test*

The European Banking Authority (EBA) released on 29 April 2014 a methodology and macroeconomic scenarios for the 2014 EU-wide stress test.<sup>15</sup> While the extensive process of banks' balance sheet test is already underway, to assess banks' resilience to hypothetical external shocks, will identify remaining vulnerabilities in the E banking sector and will provide a high level of transparency into EU bank's exposures. The EBA 2014 EU wide test comes into the midst of the process of repair of EU bank's balance sheets and will follow asset quality reviews (AQRs) undertaken by various competent authorities in the EU.

The EBA's common methodology will be used by all EU supervisory authorities to ensure that the main EU banks are all assessed against common assumptions, definitions and approaches. It will allow for results that are comparable across the EU, providing further clarity into the EU banking sector, and facilitating the work of supervisors. The EBA also released the macroeconomic scenarios, developed by the European Systemic Risk Board (ESRB) which will be used to assess the impact that changes in the economic environment have on EU banks. These are relevant to the entire EU single market and consistent throughout.

Key features of the methodology and the scenario:

- The common methodology and underlying assumptions cover a wide range of risks including credit and market risks, exposures towards securitization, sovereign and funding risks. To ensure consistency, the methodology is restrictive and rests on a number of key constraints.
- The adverse scenario designed by the ESRB reflects the systemic risks that are currently assessed as representing the most pertinent threats to the stability of the EU banking sector.

The EU-wide stress test will be conducted on a sample of 124 EU banks which cover at least 50% of each national banking sector, and will be run at the highest level of consolidation.

*i) ESM Board of Directors approves €150 million disbursement to Cyprus*

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<sup>14</sup> European Stability Mechanism, *ESM reaches target level of €80 billion in paid-in capital*, 1 May 2014, <http://www.esm.europa.eu/press/releases/esm-reaches-target-level-of-80-billion-in-paid-in-capital1.htm> (last visited on 20 Sept. 2014).

<sup>15</sup> European Banking Authority, *EBA publishes common methodology and scenario for 2014 EU-banks stress test*, 29 April 2014, <http://www.eba.europa.eu/-/eba-publishes-common-methodology-and-scenario-for-2014-eu-banks-stress-test> (last visited on 20 Sept. 2014).

The Board of Directors of the European Stability Mechanism (ESM) approved the disbursement of €150 million to Cyprus.<sup>16</sup> This follows the positive assessment of the third quarterly review of Cyprus's macroeconomic adjustment programme and approval of the supplemental Memorandum of Understanding (MoU) with Cyprus by the ESM Board of Governors. The current disbursement will bring the total amount of ESM financial assistance for Cyprus to €4.75 billion. The remaining portion of the approximately €9 billion committed to Cyprus by the ESM is scheduled to be paid in quarterly disbursements until 2016.

### III. TRADE AND INVESTMENT REGIME

#### III.A. Legal and Institutional Framework

*a) European Council agreed to amend the EU tax rules*

At the Economic and Financial Affairs Council meeting on 20 June 2014, the ministers agreed an amendment to EU tax rules that will close a loophole which had allowed cross-border corporations to profit from double non-taxation.<sup>17</sup> The agreed amendment to the parent-subsidiary directive (2011/96/EU) will put an end to the situation whereby cross-border corporate groups could exploit differences between national tax laws and profit from double non-taxation by means of hybrid loan arrangements. According to the agreed text the member state of the parent company would only refrain from taxing profits from the subsidiary to the extent that such profits are not deductible by the latter. The amendment is part of the EU's wider effort and international commitment to fight tax evasion and aggressive tax planning. Member states would have to transpose the amending provisions into national law 31 December 2015.

The amendment particularly tackles hybrid loan arrangements used by cross-border corporate groups. The hybrid loan arrangements are financial instruments that have characteristics of both debt and equity. For this reason, in some member states they are considered to be a simple loan, while in others they are classified as equity, and are therefore, treated as tax-deductible or tax-exempt depending on the country's tax law. This allowed cross-border companies to distribute their profits accordingly and thereby avoid taxation on profits perceived from hybrid loan arrangements in any of the member states. Such tax planning was not ruled out before, as the provisions of the original parent-subsidiary directive member states to exempt from taxation the profits that parent companies received from their subsidiaries operating in other member states. The euro area countries (meeting within the Council) adopted a recommendation to the Council of the EU that favors the decision which would enable Lithuania to join the euro area, following the convergence reports by the Commission and the European Central Bank. The proposal will be referred to the European Council for discussion and to the European Parliament for its opinion before the final decision is taken. If so agreed, Lithuania would adopt the euro as its currency on 1 January 2015.

*b) ECB publishes Single Supervisory Mechanism Framework Regulation*

Framework Regulation lays basis for the work of the Single Supervisory Mechanism after taking over as banking supervisor. ECB fully assumes its supervisory tasks on 4 November 2014.<sup>18</sup> This is an important milestone in the set-up of the SSM which is being delivered as scheduled. The identification of significant banks, which will be subject to a direct supervision by the ECB will take place according to criteria set out in

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<sup>16</sup> European Stability Mechanism, *ESM Board of Directors approves €150 million disbursement to Cyprus*, 2 April 2014, <http://www.esm.europa.eu/press/releases/esm-board-of-directors-approves-150-million-disbursement-to-cyprus.htm> (last visited 20 Sept. 2014).

<sup>17</sup> Council of the European Union, *Council closes a double non-taxation loophole*, 20 June 2014, <http://www.consilium.europa.eu/homepage/showfocus?lang=en&focusID=112917> (last visited 20 Sept. 2014).

<sup>18</sup> European Central Bank, *April 2014- ECB publishes SSM Framework Regulation*, 25 April 2014, <http://www.ecb.europa.eu/press/pr/date/2014/html/pr140425.en.html> (last visited on 20 Sept. 2014).

the SSM Council Regulation and further developed in the SSM Framework Regulation. The result of this process is due to be announced in September. The SSM Framework Regulation reflects the comments received from interested parties during a public consultation. These responses along with the Feedback Statement and the SSM Framework Regulation are published on the website of the ECB.

#### How Parliament and the Council Presidency work together

Italy takes the rotating presidency of the Council of the EU, where governments are represented in the EU decision-making, over from Greece on 1 July 2014. The European Parliament (EP) always works closely together with the presiding member state to ensure that the EU's legislative programme functions smoothly.

The presidency of the Council of the EU, where ministers sit, rotates between the 28 member states every six months. The presiding country chairs Council meetings, brokers agreements between member states and negotiates with other EU institutions, including Parliament and the Commission, on behalf of all Council members.

When a member state takes over the presidency, its representatives come to the Parliament plenary to announce their government's priorities for the six-month period. On 2 July 2014, it will be Italy's prime minister Matteo Renzi who will discuss the EP plenary what he sees as the most important issues the EU should deal with in the next six months. Italian ministers will later discuss these priorities in detail in EP committee meetings. As part of another tradition, the outgoing Greek presidency will on the same day debate with MEPs the result of its work at the helm of the Council. The presiding member state is present throughout the term at all plenary debates and committee meetings to represent the views of EU governments.

When the Lisbon Treaty made co-decision the standard way of law-making in the EU, negotiating with the Parliament became a much more important task for the presidency. In most areas the Parliament and the Council now have an equal say, so they try to stay informed of each other's views and find an acceptable compromise as quickly as possible. This is normally achieved at informal meetings of MEPs with the rotating presidency and Commission officials. In the rare cases where such meetings fail to resolve disagreements, a formal procedure known as conciliation force Parliament and Council representatives to sit together and either come up with a last minute compromise or give up in the respective legislative act.

#### c) Commission assesses eight EU countries' readiness to join the euro area; proposes that Lithuania join in 2015

The European Commission released its 2014 Convergence Report, which assesses eight Member State's readiness to join the single currency.<sup>19</sup> These countries have made uneven progress on the road to euro adoption, but Lithuania stands out from this group as it now fulfils the convergence criteria. The Commission is therefore proposing that the EU council of ministers decide that Lithuania can adopt the euro on 1 January 2015.

The Council will take the final decision on the matter in the second half of July, after EU Heads of State and Government have discussed the subject at the 26-27 June European Council, and after the European Parliament has given its opinion. Olli Rehn, Commission Vice-President responsible for Economic and Monetary Affairs and the Euro, said: "*Lithuania's readiness to adopt the euro reflects its long-standing support for prudent fiscal policies and economic reforms. That reform momentum, driven in part by Lithuania's EU accession ten years ago, has led to a striking increase in Lithuanian's prosperity: the country's per capita GDP has risen from just 35% of the EU28 average in 1995 to a projected 78% in 2015.* He provided that *The Economic and Monetary Union remains an attractive community to be in. The euro area today has more effective economic policy coordination, a robust financial firewall to safeguard stability and, from this year, a banking union. All of these Lithuania is committed to participating in and to further strengthening.* Of the seven other Member States with a so-called derogation (Bulgaria, the Czech Republic, Croatia, Hungary, Poland, Romania and Sweden), none currently fulfill all of the criteria to adopt the euro. Their situation will therefore be reassessed in two years' time.

<sup>19</sup> EUROPA, *Commission assesses eight EU countries' readiness to join the euro area; proposes that Lithuania join in the 2015*, 4 June 2014, [http://europa.eu/rapid/press-release\\_IP-14-627\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-14-627_en.htm?locale=en) (last visited on 20 Sept. 2014).

## ***Compliance of the eight countries with the convergence criteria***

### Inflation

Lithuania's average inflation rate during the 12 months to April 2014 was 0.06%, well below the reference value of 1.7% for the same month, and is likely below the reference value in the period ahead. The analysis of underlying fundamentals and the fact that the reference value has been met by a wide margin support a positive assessment of the fulfilment of the price stability criterion. The other countries satisfying this criterion are Bulgaria, the Czech Republic, Croatia, Hungary, Poland and Sweden. Romania does not fulfil the criterion.

### Public finances: debt and deficit levels

Lithuania is not the subject of a Council decision on the existence of an excessive deficit (under Article 126(6) of the Treaty). In Lithuania the general government deficit-to-GDP ratio declined from 5.5% in 2011 to 2.1% in 2013 and is projected to remain at 2.1% in 2014 according to the Commission's Spring 2014 Economic Forecast. The general government debt stood at 39.4% of GDP at end of 2013, well below the Maastricht limits.

The other countries satisfying this criterion are Bulgaria, Hungary, Romania and Sweden. The Czech Republic will also fulfil the criterion if the Council decides to abrogate the excessive deficit procedure, as proposed by the Commission. Two Member States (Croatia and Poland) are still subject to an excessive deficit procedure and hence do not fulfil the criterion.

### Exchange rate stability

If the Exchange Rate Mechanism II (ERM II), the exchange rate of a non-euro area Member State is fixed against the euro and is only allowed to fluctuate within set limits (standard fluctuation bands being +/-15% around the central rate). Lithuania has been a member of the ERM II since 28 June 2004. In the two-year reference period, the Lithuanian *litas* has not been subject to any tensions and there has been no deviation from the ERM II central rate. No other country currently satisfies the criterion as no other Member State is on ERM II.

### Long term interest rates

Lithuania's average long-term interest rate over the year to April 2014 was 3.6%, well below the reference value of 6.2%. The spreads vis-a-vis euro area long-term benchmark bonds have declined markedly since 2010 to very low levels, which reflect robust market confidence in Lithuania. All countries also satisfy this criterion.

### Qualitative criteria

Other factors have also been examined, including balance of payments developments and integration of product, labour and financial markets. Lithuania's external balance adjusted significantly during the past years, supported also by improvements in its external competitiveness. Lithuania's economy is well integrated within the EU economy through trade and labour market linkages, and it attracts sizeable levels of foreign direct investment. The integration of the domestic financial sector into the EU financial system is substantial, mainly due to a high level of foreign ownership of the banking system. Finally, Lithuania's legislation in the monetary field is fully compatible with EU legislation. Among the Member States, only Croatia's legislation is also fully compatible with EU legislation. The Commission's assessment is complemented by the European Central Bank's (ECB) own convergence report.



Throughout the crisis, Lithuania has successfully managed a difficult macro-economic adjustment process and returned to economic growth following deep recession in 2009. All EU Member States, except the UK and Denmark, are committed by the Treaty to adopt the euro once they fulfil the necessary conditions. 18 countries already share the single currency. This leaves eight other EU members still outside the euro area (i.e. Member States with a derogation). According to the EU Treaty, the Commission and the ECB, every two years or upon request of an EU Member State which would like to join the euro area, examine whether the Member States satisfy the necessary conditions to adopt the single currency.

The conditions for euro adoption consist of four stability-oriented criteria regarding the government budgetary position, price stability, exchange rate stability and convergence of long-term interest rates which need to be fulfilled in a sustainable manner. National legislation on monetary affairs must also be in line with the EU Treaty. According to the Treaty, additional factors also have taken into account in the assessment (balance of payments, market integration) as indicator that the integration of a Member State into the euro area will go ahead without problems and to broaden the view on the sustainability of convergence. The 2014 Convergence Report is accompanied by a Staff Working Document with a more detailed analysis of the fulfilment of the conditions.

*d) IMF Completes 5<sup>th</sup> Review under extended fund facility arrangement for Greece and Approves €3.41 Billion Disbursement*

The Executive Board of the International Monetary Fund (IMF) completed the fifth review of Greece's performance under an economic program supported by an Extended Fund Facility (EFF) arrangement.<sup>20</sup> The completion of this review enables the disbursement of SDR 3.01 billion (about €3.41 billion, or US\$4.64 billion), which would bring total disbursements under the arrangement to SDR 10.22 billion (about € 11.58 billion, or US\$15.75 billion). In completing the review, the Executive Board approved a waiver of nonobservance of the performance criterion on domestic arrears, given the corrective actions taken. In light of the delays in program implementation, the Board also approved the authorities' request for rephrasing three disbursements evenly over the remaining reviews in 2014.

The EFF arrangement, which was approved on 15 March 2012 is part of a joint package of financing with euro area member states amounting to about €173 billion over four years. It entails exceptional access to IMF resources equivalent to about 2,159% of Greece's quota. Deputy Managing Director and Acting Chair, provided that the Greek authorities have made a significant progress in consolidating the fiscal position and rebalancing the economy. The primary fiscal position is in surplus ahead of schedule, and Greece has gone from having the weakest to the strongest cyclically-adjusted primary fiscal balance in the euro area in just four years.

However, several challenges remain to be overcome before stabilization is deemed complete and Greece is back on a sustainable, balanced growth path. Additional fiscal adjustment is necessary to ensure debt sustainability, through durable, high-quality measures, while strengthening the social safety net. It is essential that the authorities continue to improve tax collection, combat evasion, and strengthen expenditure control. Public administration reforms need to be accelerated. The authorities are taking remedial actions to clear domestic arrears and expedite privatization.

Despite significant wage adjustment, export performance remains comparatively weak. The redoubling of efforts to liberalize product and service markets is therefore welcome. Further measures are necessary to remove regulatory barriers to competition in key sectors and to reform investment licensing. The authorities are committed to revitalizing labor market reforms and improving the business climate. Addressing the very high level of non-performing loans remains an important priority. While there is no acute

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<sup>20</sup> IMF, *IMF Completes Fifth Review Under Extended Fund Facility Arrangement for Greece and Approves €3.41 Billion Disbursement*, 30 May 2014, <http://www.imf.org/external/np/sec/pr/2014/pr14254.htm> (last visited on 20 Sept. 2014).

stability risk, it is critical for the economic recovery that banks be adequately capitalized upfront to recognize losses on the basis of realistic assumptions about loan recovery.

Efforts are being made to recapitalize the banking system and set aside the buffer of the Hellenic Financial Stability Fund to deal with contingencies that may arise during the program. The private debt resolution framework should also be strengthened expeditiously. Public debt is projected to remain very high well into the next decade, despite a targeted high primary surplus. The assurances of Greece's European partners are welcome that they will consider further measures and assistance, if necessary, to reduce debt to substantially below 110% of GDP by 2022, conditional on Greece's full implementation of the program.

*e) Member states sign agreement on bank resolution fund*

Representatives of 26 EU member states (all EU member state except Sweden and the UK) signed an intergovernmental agreement on the transfer and mutualisation of contributions to a single resolution fund that will be established as part of Europe's banking union.<sup>21</sup> The agreement will complement a regulation recently agreed with the European Parliament on the creation of a single resolution mechanism (SRM), which establishes the fund and also features a central decision making board. The single resolution fund will be fully financed by bank contributions. The SRM is aimed at ensuring the orderly resolution of failing banks without recourse to taxpayers' money. This will involve both a systemic recourse to the bail-in of shareholders and creditors, in line with a directive on bank recovery and resolution adopted earlier in the month May 2014.

The possible recourse to the single resolution fund (SRF). Under the intergovernmental agreement (IGA) signed the fund will be built up over 8 years, reaching a target level of at least 1% of the amount of covered deposits of all credit institutions authorized in all the participating member states. It is estimated that this will amount to about €55 billion. Under the agreement, contributions by banks raised at national level will be transferred to the SRF which will initially consist of compartments corresponding to each contracting party. These will be gradually merged over the eight-year transitional phase. The mutualization of paid-in funds will be front-loaded, starting with 40% in the first year and a further 20% in the second year, and continuously increasing by equal amounts over the subsequent six years until the SRF is fully mutualized.

The individual contribution of each bank will be calculated pro-rate to the amount of its liabilities (excluding own funds and covered deposits) with respect to the aggregate liabilities (excluding own funds and covered deposits) of all the institutions authorized in the participating member states. Contributions will be adjusted in proportion to the risk profile of each institution. Using an intergovernmental agreement to establish rules on the transfer and mutualization of contribution is intended to provide maximum legal certainty. The Council decided on this approach in December, given legal and constitutional concerns in certain member states. At the same meeting, ministers also adopted a statement specifying that bridge financing will be available during the initial build-up phase of the SRF. This will come from national sources, backed by bank contributions, or from the European Stability Mechanism in accordance with existing procedures.

Temporary transfers between national compartments will also be possible. During the transitional phase a common backstop will be developed to facilitate borrowings by the SRF, which will ultimately be reimbursed by contributors from banking sector. In declaration accompanying the IGA, the contracting parties commit to being bound by bail-in rules and principles as outlined in the bank recovery and resolution directive. This will be a precondition for accessing the fund.

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<sup>21</sup> EuroZone Portal, *Member states sign agreement on bank resolution fund*, 21 May 2014, <http://www.eurozone.europa.eu/newsroom/news/2014/05/member-states-sign-agreement-on-bank-resolution-fund/> (last visited on 20 Sept. 2014).

The IGA will enter into force on the first day of the second month following the date when instruments of ratification have been deposited by signatories participating in the banking union (i.e. those that join the single supervisory mechanism) that represent at least 90% of the aggregate of the weighted votes of all participants. The signatories to the agreement adopted a declaration signaling that they will strive to complete the ratification process in time to permit the SRM to be fully operational by 1 January 2016. Countries that have signed the IGA but are not yet part of the banking union (i.e. non-euro area member states) will only be subject to the rights and obligations stemming from the agreement once they become part of the SSM and SRM.

*f) European Commission, European Central Bank and International Monetary Fund on the fourth review mission to Cyprus*

Staff team from the European Commission (EC), European Central Bank (ECB), and the International Monetary Fund (IMF) visited Nicosia 6-17 May 2014 for the fourth review of Cyprus's economic programme, which is supported by financial assistance from the European Stability Mechanism (ESM) and the IMF.<sup>22</sup> Cyprus's programme seeks to ensure the recovery of economic activity to preserve the welfare of the population by reasoning financial sector stability, strengthening public finance sustainability and adopting structural reforms to support long-run growth. Cyprus's programme remains on track.

Fiscal targets for the first quarter of 2014 were met with a considerable margin, reflecting better-than-projected revenue performance and prudent budget execution. Progress has been made with the recapitalization and consolidation of the cooperative credit sector, and banks are advancing with their restructuring plans. This has allowed for a significant liberalization of domestic payment restrictions, in line with the government's roadmap. The authorities have also taken step toward implementing their ambitious structural reform agenda. While the recession this year is expected to be somewhat less severe than anticipated, the outlook remains challenging.

The contraction of output for 2014 has been revised down to 4.2% from 4.8%, given the better-than-expected outturn for 2013 and other recent indicators pointing to gains in confidence. Unemployment remains very high, and large non-performing loans are constraining the ability of banks to supply credit to the economy. As a result, the recovery is now expected to be more subdued than previously forecast, with growth projected at 0.4% in 2015 and gradually improving thereafter, as domestic demand is weighted down by the need to reduce very high levels of indebtedness.

The first key challenge is to effectively reduce non-performing loans. This is essential to allow for a resumption of credit to the private sector to support job creation. Reforming the legal framework for foreclosure and insolvency is paramount in order to provide balanced incentives to borrowers and lenders to negotiate and reach agreement on restructuring of non-performing loans, while avoiding undue hardship. At the same time, the supervisory authorities need to intensify their monitoring of banks' effective action to collect and restructure debt in compliance with the existing Code of Conduct and arrears management framework. The authorities are also strengthening supervision and regulation and the implementation of the Anti-Money-Laundering framework.

A second challenge is to maintain public finances on a sustainable path. The authorities are making progress in this area, having consistently exceeded programme fiscal targets. Still, prudent budget execution should be maintained, given still high macroeconomic uncertainty and downside risks which may weigh on fiscal outcomes. Over the medium term, the authorities will need to steadily reduce the fiscal deficit and gradually achieve a primary fiscal surplus of 4% of GDP in order to put public debt on a sustained downward path.

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<sup>22</sup> EUROPA, *Statement by the European Commission, ECB and IMF on the Fourth Review Mission to Cyprus*, 17 May 2014, [http://europa.eu/rapid/press-release\\_STATEMENT-14-161\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-14-161_en.htm) (last visited on 20 Sept. 2014).

The third challenge is to strengthen institutions. The authorities are preparing to launch the reform of the welfare system, introducing a guaranteed minimum income scheme of protect vulnerable groups during the current down turn. They are also making progress with reforming the revenue administration to increase its effectiveness and efficiency; they need as well as to strengthen collection powers to resolutely address tax evasion and non-compliance. Along with efforts to improve public financial management, they will need to take steps to address the management of fiscal risks.

Firm implementation of the government's privatization plan remains essential to increase economic efficiency, attract investment, and reduce public debt. Continued full and timely policy implementation remains essential from the success of the programme, given still high risks. Conclusion of this review is subject to the approval process of both the EU and the IMF. The matter is expected to be considered by the Eurogroup, the ESM Board of Directors, and the Executive Board of the IMF by early July. Their approval would pave the way for the disbursement of €600 million by the ESM, and about €86 million by the IMF.

*g) EU adopts stronger rules to better defend its rights under trade agreements*

The European Commission welcomed a new legal framework approved by the European Parliament on 2 April 2014 and by the EU Council to better enforce EU rights under international trade agreements.<sup>23</sup> The new rules will allow for a more effective EU response to illegal measures taken by our trading partners. The new regulation gives the EU single horizontal framework to react swiftly and effectively to make sure that trade agreements translate into real benefits for EU businesses and workers. If an international trade panel – a WTO panel or a dispute settlement panel created under a free trade agreement – finds an EU partner country does not abide by international trade rules, the Commission will now be able to adopt trade sanctions under a streamlined procedure.

Recourse to lengthy legislative procedures, which are ill-suited for the swift adoption of effective enforcement measures, will no longer be necessary. The Commission can now increase customs duties, set an import quota or impose limitations an access to public contracts in the EU by means of an executive decision to prompt the offending country to remove their illegal measures. The Commission will now also have legal powers to compensate for import restrictions imposed on EU products in exceptional situations (so-called safeguard measures), or to react to cases where a WTO member raises its import tariffs without adequate compensation for the EU.

## **II.B. Participation to the World Trade Organization**

### *II.B.1. EU Requests WTO Consultations with Indonesia over Compliance Process in Clove Cigarette Dispute*

On 13 June 2014 the European Union requested consultations with the Government of the Republic of Indonesia ("Indonesia") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") with particular respect to Indonesia's unilateral recourse to Article 22.2 of the DSU in the context of the compliance and arbitration panel proceedings in Case DS406 US – Clove Cigarettes, and the exclusion of third parties from those proceedings. Which were considered to be inconsistent with Articles 21.5, 22.2, 23.1 and 23.2(a) of the DSU, as well as Articles 10.1, 10.2 and 10.3 of the DSU<sup>24</sup>.

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<sup>23</sup> Inside US Trade, *EU adopt stronger rules to better defend its rights under trade agreements*, 8 May 2014, [http://insidetrade.com/iwpfile.html?file=may2014%2Fwto2014\\_1398b.pdf](http://insidetrade.com/iwpfile.html?file=may2014%2Fwto2014_1398b.pdf) (last visited on 20 Sept. 2014).

<sup>24</sup> WTO, *Indonesia – Recourse to Article 22.2 of the DSU in the US-Clove Cigarettes Dispute*, 19 June 2014 [http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014\\_1821a.pdf](http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014_1821a.pdf) (last visited on 20 Sept. 2014).

### *II.B.2. EU, U.S. Notify WTO of Revised MOU On Hormone-Free Meat<sup>25</sup>*

On 17 April 2014 the US and the EU revised the Memorandum of Understanding (MOU) regarding the importation of beef from animals not treated with certain growth-promoting hormones and increased duties applied by the United States to certain products of the European Communities, agreed between the United States and the European Communities on 13 May 2009, in relation to the dispute European Communities – Measures Concerning Meat and Meat Products (Hormones) (DS26).

### *II.B.3. U.S., EU Steel Groups Urge TF Committee To Focus On July 31 Deadline, Not Doha Single Undertaking<sup>26</sup>*

On 23 June 2014 the US and the EU released a joint statement expressing concern about proposals by some WTO member countries calling for provisional implementation of the TFA pending the conclusion of the stalled Doha Round trade talks, or calling for a conditional entry into force of the TFA pending a successful conclusion of the Doha Round's "single undertaking." They called on all WTO member countries, especially those working with the PCTF, to reject the highly problematic proposals, and work to complete the protocol of amendment so that it can be adopted by the WTO General Council by the agreed 31 July 2014 deadline. They believed that neither the Bali Ministerial Declaration announcing the adoption of the TFA nor the TFA itself contained any language allowing for the linkage of the TFA with the conclusion of the Doha Round.

### *II.B.4. Four Airbus Countries Signal New Boeing Tax Breaks Should Be Reviewed By Existing WTO Compliance Panel<sup>27</sup>*

On 20 May 2014 the Ministers responsible for the civil aerospace industry in Germany, France, Spain and the United Kingdom held their regular meeting. The Ministers noted that Airbus continues its internationalization strategy with the latest agreement to prolong its final assembly line in Tianjin, China, until 2025. The Asian market is predicted to be the fastest growing market within the next 20 years. Ministers acknowledged that this decision will offer a potential opportunity for growth in each of the member states' aerospace supply chains into Airbus. Ministers also discussed the two WTO cases concerning support given by European and US Governments to Airbus and Boeing. Ministers noted Airbus' views and shared their concern on the potential implications for the European aerospace industry, after the US State of Washington has extended major tax breaks which are linked to Boeing's B777X programme. They expressed the expectation that the legality of these subsidies will be reviewed by the Panel in the ongoing WTO procedures.

### *II.B.5. EU files dispute against Indonesia over DSB compliance/arbitration procedures<sup>28</sup>*

On 13 June EU requested a consultation with Indonesia concerning compliance and arbitration issues in the dispute over clove cigarettes between Indonesia and the US, in which the EU is a third party (DS406). The EU considered that Indonesia has acted inconsistently with the procedures of the Dispute Settlement Body (DSB) in unilaterally requesting "sanctions" against the US (for failing to comply with the recommendations and rulings of the DSB in the dispute) without requesting a "compliance panel" to consider whether the measures taken by the US were in compliance with what was recommended by the DSB.

The EU also complained that Indonesia rejected the participation of the EU, as a third party, at the compliance/arbitration panel procedures, preventing the interests of the EU from being taken into account.

<sup>25</sup> WTO, *European Communities – Measures Concerning Meat and Meat Products (Hormones)*, 17 April 2014, [http://insidetrade.com/iwpfile.html?file=apr2014%2Fwto2014\\_1130a.pdf](http://insidetrade.com/iwpfile.html?file=apr2014%2Fwto2014_1130a.pdf) (last visited on 17 April 2014).

<sup>26</sup> Inside US Trade, *Joint Statement of AHS Executive Director Richard Chriss and EUROMETAL Director General Georges Kirps*, 23 June 2014, [http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014\\_1841a.pdf](http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014_1841a.pdf) (last visited on 20 Sept. 2014).

<sup>27</sup> Inside US Trade, *Airbus Ministers' Meeting at the Berlin Air Show ILA – 20 May 2014*, [http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014\\_1830a.pdf](http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014_1830a.pdf) (last visited on 20 Sept. 2014).

<sup>28</sup> Inside US Trade, *EU files dispute against Indonesia over DSB compliance/arbitration procedures*, 13 June 2014, [http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014\\_1737a.pdf](http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014_1737a.pdf)

Both issues, the “sequencing” problem (the possibility of applying sanctions without waiting for the results of a compliance panel) and the participation of third parties at compliance/arbitration procedures, have been a subject of systemic concern by WTO members for a long time and are part of the current negotiations to improve the Dispute Settlement Understanding.

There was disagreement between the United States and Indonesia over compliance, and the matter was referred to arbitration. Indonesia requested “sanctions” against the US for US\$ 50.5 million to which the US objected. It was not possible to reach a “sequencing” agreement between both parties and Indonesia claimed it was not necessary to request a “compliance” panel because the US had taken “no action”

#### *II.B.6. Hopes for ITA Breakthrough Fall Flat As China Tells Others To Compromise<sup>29</sup>*

On 26 June at a meeting of the ITA Committee in Geneva, China's representative rebuffed criticism by more than a dozen members that it is not showing sufficient flexibility in the negotiations, and stressed its view that it is up to others to compromise. The "key to resolution of issues is not in hands of China," the official said, reiterating that China has compromised as much as it can on the duration of tariff phase-outs and product coverage in an expanded ITA. The US and EU tech industry representatives had expected that China would indicate its willingness to compromise at today's ITA committee meeting after they had previously laid out how they were willing to compromise in the negotiations. The next meeting of the ITA Committee has been scheduled for 31 Oct. 2014.

#### *II.B.7. Leaked Draft TISA text shows disagreement on data transfer, regulatory transparency*

The anti-secrecy group Wikileaks on 19 June 2014 released a draft text for a financial service annex to the Trade in Services Agreement (TISA) which is being negotiated among selected members of the WTO.<sup>30</sup> The draft financial services annex dated 14 April 2014, is a compilation of proposals, including from the US, Panama, Japan and Switzerland. A USTR declined to comment on the legitimacy or content of the leaked document. The heavily bracketed text reveals different approaches to the controversial issue of data transfers and insurance offered by postal insurance entities, as well as obligations regarding a party's right to impose prudential measures. It also reveals disagreements over which services can be offered across borders.

The 14 April 2014 dated document is the result of the sixth round of TISA negotiations held from 28 April 2014 to 2 May 2014. The goal of that round was to move from proposals to fully bracketed negotiating texts in five sectoral annexes, including financial service, telecommunications and e-commerce, also known as information and communications technology (ICT); and competitive delivery services. The others are transportation service and domestic regulation and transparency. The text reveals the parties even disagree over what the title should be for the section on data transfer rules.

The US proposes calling the section “Transfer of Information”, while the EU proposes the heading of “Transfers of Information and Processing of Information”. Panama seeks the heading “Data Processing and Treatment of Certain Information”, according to the draft. The US is proposing an absolute right to transfer information in electronic and other forms for data processing where such processing is required in the financial service supplier's ordinary course of business. As an alternative, the EU and Panama are proposing language that states no party shall prevent transfers of information or the processing of information, including transfers of data by electronic means for data processing or prevent transfers of equipment, subject

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<sup>29</sup> Inside US Trade, *Hopes For ITA Breakthrough Fall Flat As China Tells Others To Compromise*, 26 June 2014, <http://insidetrade.com/201406262475264/WTO-Daily-News/Daily-News/hopes-for-ita-breakthrough-fall-flat-as-china-tells-others-to-compromise/menu-id-948.html> (last visited on 26 June 2014).

<sup>30</sup> Inside US Trade, *Leaked Draft TISA Text Shows Disagreement On Data Transfer, Regulatory Transparency*, 19 June 2014, <http://insidetrade.com/201406192474629/WTO-Daily-News/Daily-News/leaked-draft-tisa-text-shows-disagreement-on-data-transfer-regulatory-transparency/menu-id-948.html> (last visited on 20 Sept. 2014).

to rules consistent with international agreements. The proposed paragraph backed by the EU and Panama provides that nothing in the deal shall restrict the right of a party to protect personal data, personal privacy or the confidentiality of individual records and accounts, so long as such right is not used to circumvent the agreement. Regarding the draft's section on prudential measures aimed at ensuring the soundness of the financial system, parties disagree over how to describe the obligations.

The EU and Panama want the text to read that parties are not prevented from taking measures for prudential reasons, while the US proposes they shall not be prevented from adopting or maintaining measures for prudential reasons. The text also shows that there is some disagreement over for whom government may invoke prudential safeguard that may otherwise be in breach of the deal. Parties agree the carve-out should apply to the protection of investors and depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier. But Panama and the US want this expanded to "financial market users". According to the leaked draft, the US and EU are proposing making this prudential carve-out subject to dispute settlement. Their proposal, which is bracketed, shows they want a panel dealing with prudential issues and other financial matters to have "the necessary expertise relevant to the specific financial service under dispute".

The US has also proposed language on a remedy in such disputes, which is bracketed. It states that where a panel finds a measure inconsistent with the agreement, but the impact is outside of the financial service sector, the wronged party cannot suspend benefits in the financial services sector. If a ruling on an inconsistent measure affects the financial services sector and any other sector, however, the complaining party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector. The draft also shows countries disagree on which financial services can be allowed to be offered across borders. It shows Norway is pushing for the cross-border supply of insurance on the exportation, development, and production of energy, as well as offshore energy properties.

This proposal is backed by the American Insurance Association. But that wording is bracketed, showing opposition to that proposal, as are Norway's proposals on allowing the cross-border provision of insurance for ocean-going fishing vessels as well as passengers, not just goods, in terms of maritime shipping, commercial aviation and space launches. The cross-border sale of insurance can raise objections by regulators because consumers under their jurisdiction by policies from foreign companies that are outside of their purview. This could pose a problem in terms of consumer protections if a company fails to make good on a policy. In the cross-border section, the leaked text shows the US is pushing to permit the cross-border supply of electronic payment services.

The draft annex section on parties' rights regarding new financial services reveals disagreement over the extent to which governments should be able to determine the form through which such a new service may be provided and the extent to which it requires government authorization. The draft annex also shows parties have vastly different views on what obligations they should establish on transparency in regulation. It contains different proposals on this issue from countries like Panama and the US that are bracketed from beginning to end. Panama's proposal on "transparent regulations" is the short-end of these and does not contain express obligations on how governments should go about developing regulations.

Instead, it only contains a general statement that parties recognize transparent regulations and policies governing the activities of financial institutions and financial services suppliers are important to facilitating market access and operations in a given market. The Panamanian proposal states parties should make available to interested persons their domestic requirements and applicable procedures for completing applications related to the supply of financial services and provide information about the status of a given application. An alternative proposed by the US under the heading "Transparency" includes obligations that mirror regulatory practices in the US, such as advance publication of a regulation and a comment period, as well as having a reasonable lapse between the publishing of the regulation and its effective date. Specifically,

the US provided that a party shall to the ‘extent practicable’, publish in advance any regulations of general applications relating to the financial services annex, and provide interested persons a reasonable opportunity to comment on the proposed regulations. It also says the parties should to the extent practicable address the substantive comments it received on proposed regulation.

#### *II.B.8. Indonesia filed dispute against the EU on biodiesel*

Indonesia has notified the WTO Secretariat on 10 June 2014, a request for consultations with the EU concerning anti-dumping measures imposed on imports of biodiesel into the EU.<sup>31</sup> The measures challenged by Indonesia are: certain provisions of November 2009 on anti-dumping measures on imports from non-EU member countries concerning the determination of normal value in anti-dumping investigations; and, anti-dumping duties on imports of biodiesel originating in inter alia Indonesia, imposed in May 2013 (provisional duties) and November 2013 (definitive duties). Indonesia claims that these measures are inconsistent with the EU’s obligations under the Anti-Dumping Agreement. Argentina has challenged in a separate case (DS473) one of the provisions also challenged by Indonesia (that of November 2009), as well as the same anti-dumping measures imposed by the EU on imports of biodiesel. A panel was established on 25 April 2014 to consider Argentina’s complaint, although this panel has not been composed yet.

#### *II.B.9. Russia alleged that the EU violated MFN by granting Unilateral Trade Preference to Ukraine*

At the Committee on Market Access meeting on 15 May 2014, Russia expressed concerns about measures taken by Brazil, the EU and Norway.<sup>32</sup> It provided that the EU had eliminated most of its duties on imports from Ukraine despite the absence of a free trade agreement. It said this was a breach of the most-favored nation principle of the WTO and discriminated against other members, including Russia, Argentina and Venezuela shared these concerns. Nicaragua, Ecuador and Cuba said that they would be following the matter closely. Russia said that Russian fishing vessels landing fresh catch, destined for a third country, in Norway are required to pay charges to a Norwegian fisherman’s sales organization. It said that this is discriminatory because EU fishing vessels are exempted from paying these charges. The Norwegian representative provided that he will transmit the concern to the capital. Switzerland expressed concern that Bahrain is applying duties on imported cigarettes (100% set in the Gulf Cooperation Council) higher than its bound rate (35%).

#### *II.B.10. US questions EU, Mexico and Japan on subsidies provided to fisheries, high tech and other sectors*

The US questioned the EU regarding its subsidies to fisheries sector through the Committee on Subsidies and Countervailing Measures on 6 May 2014. Categorically, it sought explanations on the below mentioned questions:

- a) *Please explain whether and to what extent this program assists Member States’ efforts to address overcapacity and overfishing in the industry.*<sup>33</sup>
- b) *Please explain recent or ongoing changes to the EFF. What is the expected life of this program? Are there any plans to reduce funding under the EFF?*
- c) *A number of EU Member State notifications provided information regarding support for the fisheries sectors, including Denmark, Ireland, Lithuania, Spain and Sweden. Some of the programs reported by those countries appear to be funded by the EU’s EFF while other funding appears to come directly from the Member States. Could the EU please*

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<sup>31</sup> Inside US Trade, *Indonesia files dispute against EU on biodiesel*, 11 June 2014, [http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014\\_1712a.pdf](http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014_1712a.pdf) (last visited on 20 Sept. 2014).

<sup>32</sup> Inside US Trade, *At WTO, Russia Charges EU Violated MFN Principle By Granting Ukraine Unilateral Trade Preferences*, 23 May 2014, <http://insidetrade.com/201405232472003/WTO-Documents/Text-Document/at-wto-russia-charges-eu-violated-mfn-principle-by-granting-ukraine-unilateral-trade-preferences/menu-id-174.html> (last visited on 20 Sept. 2014).

<sup>33</sup> WTO, *Questions posed by the US regarding the new and full notification of the EU*, G/SCM/Q2/EU/35, [http://insidetrade.com/iwpfile.html?file=may2014%2Fwto2014\\_1328a.pdf](http://insidetrade.com/iwpfile.html?file=may2014%2Fwto2014_1328a.pdf) (last visited on 6 May 2014).



*explain whether the lack of any reporting regarding funding provided by Member States for the fisheries sectors indicate that these Member States do not provide any such funding? Alternatively, if such Member State funding for the fisheries sectors does exist, could the EU please explain why those Members States did not report it?*

#### *II.B.11. Russia requested consultation over EU's regulations in the energy sector*

Russia notified the WTO Secretariat on 30 April 2014 of a request for consultations with the EU over measures applied by the EU relating to the so-called "Third Energy Package".<sup>34</sup> The measures concern the production, supply and transmission of natural gas or electricity, the alleged discriminatory certification requirements in relation to third countries in this sector and the requirement in respect of granting access to natural gas and electricity network capacity by transmission service. Russia alleges violation of GATS, ASCM and the Agreement Establishing the WTO.

#### *II.B.12. WTO Upheld EU Ban On Seal Product*

Canada and Norway challenged EU's ban on seal products in WTO. The Appellate Body has upheld EU's ban on the importation and marketing of seal products. The reason for upholding EU's right to ban seal products on moral grounds related to animal welfare and the way the seals are killed. Though WTO Appellant Body has criticized the way in which the exception for Inuit hunts has been designed and implemented. The European Commission has welcomed EU's upholding on the ban and decided to review the findings on the exceptions to the ban and consider options for implementation.<sup>35</sup>

### **II.C. Preferential Trade Agreements and Arrangements**

#### *II.C.1. EU adopted Stronger Rules to Better defend its Rights Under Trade Agreement*

On 2 April, 2014 the European Parliament has approved a new legal framework and European Commission need to enforce EU right under International trade agreement. After the implementation of the new rules EU response to illegal measures by their trading partners will be more effective. These regulations give EU a single horizontal framework to react effectively to make sure that the trade agreement would translate into real benefits for EU businesses and workers. Under the new rules if an EU partner country not abiding by international trade rules is found so by the Commission, it will be able to adopt trade sanctions against that country. Lengthy legislative procedure is no longer required. The Commission can now increase customs duties, set an import quota or impose limitations on access to public contracts in the EU by means of an executive decision to prompt the offending country to remove their illegal measures. The Commission will now also have legal powers to compensate for import restrictions imposed on EU products in exceptional situations (so-called safeguard measures), or to react to cases where a WTO member raises its import tariffs without adequate compensation for the EU.<sup>36</sup>

#### *II.C.2. European Union Exchange Offers To Open Markets*

In April 2014 the officials from EU and Japan met in Tokyo for the fifth round of negotiation for a free trade agreement and also made headway towards consolidating the future agreement and putting on paper some

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<sup>34</sup> US Inside Trade, *Russia files dispute against EU over regulations in the energy sector*, 30 April 2014, [http://insidetrade.com/iwpfile.html?file=may2014%2Fwto2014\\_1271a.pdf](http://insidetrade.com/iwpfile.html?file=may2014%2Fwto2014_1271a.pdf) (last visited on 20 Sept. 2014).

<sup>35</sup> European Commission, *WTO upholds EU ban on seal products*, 22 May 2014, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1084> (last visited on 20 Sept. 2014).

<sup>36</sup> European Commission, *EU adopts stronger rules to better defend its rights under trade agreements*, 8 May 2014, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1064> (last visited on 20 Sept. 2014).

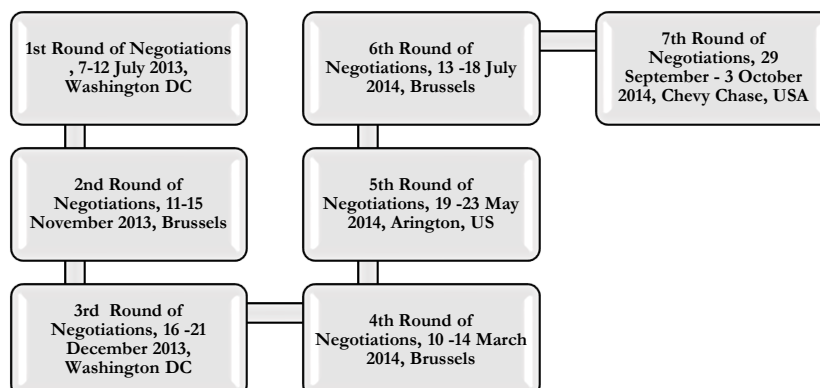
new joint provision. There was a discussion of a whole range of areas including tariffs and quotas, rules related to anti-dumping, anti-subsidy measures and bilateral safeguards, technical barriers to trade, health and hygiene rules having an impact on trade, rules of origin, facilitation of customs procedures, access to public tenders, and protection of intellectual property, including geographical indications. They also talked about trade in services, investment, the links between trade and sustainable development, animal welfare, corporate governance and the business environment, electronic commerce, competition policy; and the resolution of disputes under the future agreement. As per the EU's negotiating mandate they will first review progress achieved during the first year of talk and assess implementation of commitments made by Japan.<sup>37</sup>

### *II.C.3. Quarterly update on Trans-Atlantic Trade and Investment Partnership*

The transatlantic trade and investment partnership (TTIP) is a free trade agreement being negotiated between the EU and the US. The agreement has three main elements:

- i) Market access: removing customs duties on goods and restrictions on services, gaining better access to public markets, and making it easier to invest.
  - Improved regulatory coherence and cooperation by dismantling unnecessary regulatory barriers such as bureaucratic duplication of effort.
  - Improved cooperation when it comes to setting international standards.

Given €2 billion trade flows daily between the US and EU, it is stated to be one of the most ambitious trade arrangement between two economies.



### ***5<sup>th</sup> Round of Negotiations, 19 -23 May 2014, Arlington, US***

From 19-23 May 2014, the US and EU trade representatives met in Arlington for the 5<sup>th</sup> negotiating round of the TTIP. According to the USTR Michael Froman, the Parties have advanced from discussing a conceptual framework to defining specific ideas which reflects the fact that negotiators have started to deliberate draft texts in most areas under negotiation. Notably, the US and the EU negotiators agreed that ‘they are where they should be after 11 months’.

Areas contemplated during the 5<sup>th</sup> round are summarized as follows:

**Market Access:** The talks covered tariff commitments, trade in services, investment and government procurement. With respect to tariffs, the EU chief negotiator Bercero noted that discussions were of a technical nature to clarify some elements of the US’ and EU’s respective offers, while US Chief Negotiator Mullaney shared that both Parties are moving towards second tariff offers, albeit with not specific timeframe. The EU is also reportedly taking an offensive approach to secure market access commitments at the US state

<sup>37</sup> European Commission, *EU and Japan exchange offers to open markets*, 4 April 2014, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1056> (last visited on 20 Sept. 2014).

level, specifically those related to government procurement with the aim of provisions beyond the WTO Government Procurement Agreement (GPA). In terms of rules of origin, reports indicate that US negotiators have offered for a potential separate chapter on textiles, which would provide specific treatment for covered products. However, as a rule of thumb, the EU does not negotiate free trade agreements (FTAs) with a specific chapter on textiles, unlike the US that has a textile chapter or annex in recent FTAs to which it is a party (e.g. bilateral FTAs with Korea, Colombia and Panama).

**Regulatory Compatibility:** Negotiators discussed a range of sectors, including medical devices, pharmaceuticals, cosmetics, information communication technologies, automobiles, pesticides, and chemicals. The EC published on 14 May 2014 its negotiating positions with respect to regulatory compatibility in five sectors, including for motor vehicles. In the case of motor vehicles, the EU's chief negotiator noted that both negotiators and regulators focused on comparing the US's and EU's respective technical regulations on safety, while identifying and discussing the type of data needed to find compatible levels of safety and means to compile such data. More broadly, the EU's chief negotiator stressed that TTIP negotiators will address regulatory compatibility on a sector-specific basis, due to fundamental differences in each sector.

**Rules:** Parties have advanced discussion based on draft legal texts in the areas of technical barriers to trade (TBT), competition, state-to-state dispute settlement, and small and medium enterprises (SMEs). The talks reportedly also involved non-text based discussions on sustainable development, labor, and environment. Notably, the discussion on energy and raw materials, a key offensive area for the EU, focused on determining whether to have a separate energy chapter that addresses specific issues and identifying the extent to which other parts of the Agreement already reflect commitments that affect the energy trade.

Progress made by TTIP parties during the 5<sup>th</sup> round is more comprehensive than expected, particularly in light of the 25 May 2014 European Parliament elections, which engendered fear that they would compromise the EU's ability to establish a clear negotiating position. Nevertheless, the outcomes of the 5<sup>th</sup> round suggest that the Parties have exercised the maximum negotiating space possible in advance of greater political instruction. In this respect, it has become increasingly clear that concluding the TTIP will face political obstacles on both sides of the Atlantic: a US Congress in gridlock over trade and TPA, and a generally pro-trade but fragmented European Parliament.

The US and EU have consolidated texts on seven areas including Technical Barrier to Trade, Competition and State-To-State Dispute Settlement. Text on those areas, in addition to trade in goods and certain aspects of trade facilitation, have already been consolidated meaning that the positions of both sides are reflected in a single document. Negotiations are taking place on rules of origin and Small and Medium Sized Enterprises (SMEs). The EU chief Negotiator provided on 23 May 2014 that both sides have begun with a common text on SMEs.

### ***6th Round of Negotiations, 13 -18 July 2014, Brussels***

#### ***Issues raised during the quarter***

- ***Services***

The EC planned to table its offer for market access in services under TTIP before the next round of negotiations to be held in Brussels in mid-July. However, it provided the financial services will not be included in the same. The key elements of the EU offer is based on a positive list of affirmative commitments for specific sectors which are reflected in the '**Leaked EU Services Draft**'. According to the *Inside US Trade*, informed sources have provided that the final offer will contain some changes from the leaked text and the commission is deliberating how to schedule certain services.

Consistent with TISA, the EU will apply negative list approach to national treatment obligations which is reflected in the draft leaked version of its TTIP offer. The EU will apply positive list approach to schedule market access in services which differs from the US offer on services and investment market access tabled in the 5<sup>th</sup> Round of TTIP Negotiations. The US scheduled its TTIP services offer under the negative list

approach alike to its deal in KORUS as it presumes that sectors are open to foreign firms unless they are specifically exempted. The leaked document provides that the US and EU would exchange offers in services and investment between the 5<sup>th</sup> and 6<sup>th</sup> TTIP negotiating rounds. It provides the offers by the EU on services ‘mirror’ those submitted by the EU in TISA negotiations in November 2013 both in terms of format and substance with two main exceptions:

- 1) The draft TTIP offer does not contain any commitments on financial services. Such reflects that there should be close parallelism in the negotiations on market access and regulatory aspects of financial services. Given the firm US opposition to include regulatory cooperation on financial services in TTIP, it is considered appropriate not to include any commitments on financial services in TTIP in the EU’s market access offer at this stage. However, the situation may change in future if the US show willingness to engage ‘solidly’ on regulatory cooperation in financial services in TTIP.
- 2) For market access mode 1 and 2 the draft offer contains a mere reference to EU’s TISA offer. This is along the lines of the usual US approach e.g. in the US-Korea FTA where a mere reference to US commitments in GATS is made.

There has been an adaption for the reservation on broadcasting transmission that better reflects the EU interests and current regulation in this area. The offer covers establishment in non-services using the TISA approach. In terms of substance, the offer is based on the EU-Korea FTA. The explanatory note lays out a very careful approach which allows for further change.

It provides that in the context of forthcoming discussions with the US on respective services and investment offers, the issue of transparency of State level measures on the US side will be discussed. In a consultations of the TPC SI in May 2013, Member States were asked to provide examples of market access or national treatment restrictions in the US at State level. Such would be extremely important information for the forthcoming discussions with the US on the respective offers. The Commission stated to be grateful to receive the same by 30 June 2014.

The explanatory note further explains that *given the unprecedented depth in market access and regulatory matters in TTIP, the EU has decided to undertake a thorough examination of the interface between measures relevant to the functioning of the internal market and the EU’s present and future international obligations.* It further stated that the EU *maintains the right to submit to a review (e.g. an authorization and/or notification procedure) the direct or indirect acquisition and/or control of a company or firm or the establishment of a new company or firm in their respective territories on national security grounds, under existing or future legislation, will be preserved through exceptions in the TTIP text.*

- ***Investment Regulation***

Advocates of strong international investment protection rules in the US are questioning EU’s interest in changing the prevailing model of investment treaties. As they provide that a weak TTIP could invite weak investment agreements in future. However, according to the EU its aim is to clarify the obligations that government must uphold with a closed list of factors which could violate fair and equitable treatment. The list includes: 1) fundamental breach of due process, manifest arbitrariness, targeted discrimination on manifestly wrongful grounds and abusive treatment of investors. According to the EU, its agreement with Canada which has yet to be concluded as setting the basis for negotiations with the US. The EU will close its 3 month period for comments on Investment and ISDS in TTIP on 6 July 2014 and will release the input so received.

As regards, ISDS, given the international unpopularity of such provisions in BITs provided the question over neutrality of arbitrators and the extraordinary costs on tax payers due to the legal fees (roughly \$8 million a case), the consideration to include such a provision has been seen in a new light. The EU is aiming to establish an appellate mechanism for ISDS arbitrator rulings. The US has been in agreement with the EU over the same given that most of the US’ deal already cover such an establishment but on a future date given an unresolvable conflict.

- ***Government Procurement and the ‘Buy American’ laws***

A low-profile meeting was held between the USTR and EU Trade Commission to deliberate on the EU's demands for greater access to the US public procurement market and the US' demand to ensure export opportunities for its farm products in Europe. The meeting was held on 18 June 2014 weeks ahead of the next round of TTIP negotiations. The EU considers that there is a lack of engagement on government procurement by the US at federal as well as sub-federal level. The US negotiators have signaled that they will not be able to negotiate the demands for waiving the 'Buy American' provisions at the federal level as well. Given the coming elections, the US indicated to address the demands at the end of TTIP talks. The EU however is hopeful to gain new market access opportunities at the State-level procurement in addition to the rules that go beyond the plurilateral agreement on Government Procurement.

The US on the other hand demanded negotiations on the scope of market access commitments and the degree to which the EU will remove non-tariff measures that effectively restrict US agri-food imports.

- **Intellectual Property Rights and Information Technology (Geographical Indications and data protection)**

House Means and Ways chairman Dave Camp on 19 June 2014, accused the EU of using the guise of National Security Agency (NSA) Surveillance to object against a strong protection for cross-border data flows. He urged that TTIP must include strong rules allowing free flow of data across borders. On IPR, the US argued against the EU's proposal to reserve certain food names for the EU producers based on their geographic origin but showed willingness to help protect their brand value by bilateral talks. The US argued that the EU's demand to provide GI protection to generic names like 'feta cheese' is incompatible with the US' trademark system and would unfairly limit market access for the US' producers. Almost all of the 28 Agriculture Ministers of the EU raised the GI concerns. However, the US' trademark system which only protects an identity or a brand which carries commercial value and not mere generic value.

The US' claims that the EU efforts to protect cheese and other food names as geographical indications (GIs) amount to a wholesale threat to US food labels. The Ambassador on 9 June 2014 in a letter to the Congress provided that such is due to the fact that a bulk of US industrial meat and cheese production is sold under terms that are not protected as GIs in the EU such as cheddar, mozzarella or bologna. Further, many of the cheese names used in the US like, 'American Cheese' or 'Monetary Jack' are not used in the EU.

- **Standards (Genetically Modified Organisms and Regulatory Cooperation)**

The US' Soybean Industry questioned the statements by senior European Commission officers providing that the EU's law on Genetically Modified Organisms (GMOs) is not on the table for negotiations. The industry seniors while testifying to the Senate Finance Committee stated that the EU's biotech laws which discriminates against the US' products should be addressed in the TTIP. The industry wants the EU to establish "commercially meaningful" thresholds for accidental commingling to unauthorized GMOs in otherwise approved commodity shipments.

As the EU law maintains 'zero' tolerance for unauthorized GMOs but the Commission has set a de facto minimum threshold for the presence of unproved GMOs in shipments of feed and has promised since long to set a similar threshold for food. The industry also provided that the EU' mandatory traceability and labeling requirements must be modified or replaced with non-discriminatory rules. The industry referred to a Polish law banning the GMOs in animal feed imports, providing the lack of scientific basis while restrictive to trade and against the EU's WTO obligations.

The US' poultry industry provided that the EU's food safety rules refuses to approve the substances used in the US poultry processing to reduce contamination. Such substances include hyper-chlorinated water. National Chicken Council provided that various attempts to get the EU to approve alternative substances besides the hyper-chlorinated water also used for pathogen reduction has failed despite the substances receiving positive reviews from the European Food Safety Authority (EFSA) as the Member States would not approve their use. NCC provided that such exports have been out of the EU's market for past 18 years and there is still a lack of indication under the TTIP to remedy the situation. The USDOA submitted an

application for the approval of peroxyacetic acid (PAA) as a pathogen reduction treatment for poultry meat and in March 2014 it received positive review from the EPSA, however it is uncertain whether the EU Member States will approve of the same.

However, the US wants the EU to synchronize the approval of bioengineered crops and to drop its ban on beef raised with growth hormones. After the US' WTO action against the EU's ban on beef, there was a MoU between the parties. However, the US provides that the MoU did not solve the problem for future. The US also provided concerns regarding the slow approval process of GMOs in the EU. After EPSA certifies a product as 'safe' it takes 48 months or more by the EC and the Member States to implement the same. In comparison, the US takes 18 months at the most. In the US' view, the regulatory and approval processes should be synchronized and harmonized.

On 16 June 2014, the US' Agriculture Secretary met with the EU Member States 28 Agriculture Ministers to raise further issues on: 1) biotechnology; 2) cloning; 3) regulatory simplification and 4) pathogen reduction treatments. The latter are substances typically used to remove bacteria from raw meat and poultry to reduce the risk of food borne illnesses. In the EU, GMOs are allowed but the Member States are given right to ban or not allow certain GMOs.

- ***Energy***

The EU is pushing for strong energy chapter in the TTIP which will broadly abolish restrictions on trade and investment in energy and raw materials bilaterally and set guidelines for government regulators. In addition, the EU is seeking rules which are more relevant to global than just bilateral energy trade, such as freedom of transit applied to pipelines, though those are not necessarily meant as binding negotiations. The energy issue was on agenda during the 5<sup>th</sup> Round of TTIP negotiations. However, during the May press conference, the parties provided that they have not decided whether energy will have a separate chapter and whether the rules of trade in goods will be applied on the same. USTR claimed that nothing in the US laws will change with respect to the oil and gas trade due to TTIP. Sources according to the *Inside US Trade* have informed that the EU is pursuing energy and raw materials trade and investment in TTIP including the efforts to reduce restrictions on energy export.

On 14 May 2014, in the run-up to the 5<sup>th</sup> negotiating round taking place 19-23 May 2014 in the US, the EC published its negotiating positions in the ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiation for the following five key sectors: chemicals, cosmetics, motor vehicles, pharmaceutical products, and textiles and clothing.<sup>38</sup> The publication of these papers is part of an effort to improve transparency in the negotiating process, following severe criticism by the civil society.

The papers shed some light on the Commission's negotiating priorities and areas where a certain level of regulatory convergence may be achieved. To a large extent, these draw from contributors prepared by the respective industry sectors on both sides of the Atlantic as to which issues should be covered under TTIP. The papers given an indication of how regulatory commitments could be embodied within the future agreement, and therefore on the possible structure of the future agreement. It seems increasingly likely that, next to a "horizontal" text applicable to all sectors, a set of separate, sectoral annexes reflection the specific outcome for these sectors may be included.

***Chemicals.*** The chemicals position paper acknowledged that neither full harmonization nor mutual recognition seems feasible on the basis of the existing framework legislations in the US and EU. EU focus is therefore on identifying and agreeing on all possibilities for regulatory co-operation/convergence within the

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<sup>38</sup> White & Case, *EU publishes TTIP negotiating positions for five key sectors to increase transparency*, 20 May 2014, <http://www.whitecase.com/files/Publication/d79d5809-8afa-46a6-a852-68d6cd7dc060/Presentation/PublicationAttachment/3643ba1b-93c1-4fba-a428-8d19352c090d/alert-eu-publishes-ttip-negotiating-positions-may-2014.pdf> (last visited on 20 Sept. 2014).

limits of the existing basic legal frameworks. To that effect, the paper identifies “four main areas...in which a higher degree of convergence may be sought”, as follows:

- a) Co-operation in prioritizing chemicals for assessment and assessment methodologies;
- b) Promoting alignment in the classification and labelling of chemicals;
- c) Co-operation on new and emerging issues, such as endocrine disruptors, nanomaterials or mixture toxicity; and
- d) Enhanced information sharing and protection of confidential business information (CBI).

The paper suggests ways to implement mechanisms for mutual consultation and cooperation. For example, regarding enhanced information sharing and protection of CBI, the Commission proposes the identification of possible obstacles to exchanging (confidential) data and benefits of such exchange, and perspective for reciprocity. It also suggest that TTIP could include a periodical review of the functioning of these mechanism. Finally, the paper calls for future convergence of the parties regulatory regimes, in the form of an effective bilateral cooperation and consultation mechanism in the horizontal regulatory chapter, through which the parties could consult and comment on each other’s regulation before adoption. This may in the long term, lead to an increased level of convergence, in particular in the area of risk management.

***Cosmetics.*** The elements laid down in the cosmetics paper largely build upon the issues discussed in the context of the ICCR forum (International Cooperation on Cosmetics Regulation). Focus is on the following areas:

- Mutual recognition of substances that are either authorized (positive list) or prohibited in cosmetics (negative list). UV filters are listed as an example where the EU and US could explore mutual recognition of scientific findings on their safety;
- Mutual recognition of good manufacturing practices, in line with the international standard for cosmetics (ISO 22716).
- Development and acceptance of validated alternative tests methods to animal testing;
- Harmonization of test methods and requirements;
- Greater alignment of labeling requirements (in particular by using the International Nomenclature FOR Cosmetics Ingredients as a basis); and
- Reinforced regulatory cooperation within ICCR, but also on emerging issues such as nanotechnologies or alternative test methods.

### ***Motor Vehicles***

The negotiation position for motor vehicles identifies this as one sector where very substantial efficiency gains and costs savings are possible by addressing regulatory divergences in addition to eliminating tariffs, without lowering safety or environmental protection levels. It recognizes that the levels of safety required by both sides are broadly comparable and that equivalence of outcome is achieved even if technical divergences exist. The paper also stresses that a joint EU-US approach could have the potential to create a basis for genuine international leadership globally on motor vehicle regulations through reinforcement of the UNECE framework. Accordingly, the ultimate objectives pursued by the TTIP negotiations for this sector should in the EU’s view by twofold:

- The recognition of motor vehicles (as well as their parts and compendents) manufactured in compliance with the technical requirements of one party as complying with the technical requirements of one party- to be achieved gradually after the conclusion of TTIP, but based on a built in agenda

- A significant strengthening of EU-US cooperation in the framework of the 1998 UNECE Agreement, including on new technologies, with the objective of developing Global Technical Regulations in the future.

The paper suggests a number of methodological steps that could help achieving both objectives, by identifying which precise regulations are equivalent as a first step.

### ***Pharmaceutical Products***

The negotiation position for pharmaceuticals acknowledges the existence of well-established regulatory cooperation between the EU and the US in the pharmaceutical area. The EU suggests the following ways to reinforce these processes:

- Establishing bilateral commitments that would facilitate pharmaceutical products authorization processes and optimize agencies' resources, in particular in the areas of Good Manufacturing Practice (GMP) inspections and exchange of confidential and trade secret information;
- Fostering additional harmonization of technical requirements, for example as regards authorizations for bio-similars, pediatrics, and generics and by harmonizing the terminology used for pharmaceuticals products; and
- Reinforcing joint approaches on scientific advice and evaluation of quality by design applications in order to avoid unnecessary clinical trials/testing replication.

### ***Textiles and Clothing***

The Commission is proposing to reinforce existing cooperation as follows:

- **Labelling requirements:** the EU is looking to minimize the number of compulsory labels to be affixed to the product, to achieve the approximation or alignment of the names used to designate textile fibers on the basis of ISO standards, to harmonize or mutually recognize care instruction symbols, to promote the use of non-permanent labels to fulfil legitimate requests for additional labelling information, and to see the acceptance of country of origin marking or labelling requirements designating the whole territory of a party (such as made in the EU).
- **Convergence and/or harmonization of approaches to guarantee product safety and consumer protection:** the EU's proposals in the area aim for approximation on issues such as textiles' flammability, the establishment of a common list of substances prohibited in textiles and the technical requirements for certain specialized textile and clothing products (such as technical textiles, personal, personal protective equipment or children's clothing); and
- **Standards approximation:** this part of the proposal deals more specifically with standards which can be used to demonstrate compliance with technical requirements, as these are different in the EU and US and are seen as an important trade barrier. The paper suggests a mechanism for the comparison and possible approximation/harmonization of such standards, with the involvement of the relevant standardization organizations. This could cover standards to test burning behavior and flammability, child safety, technical textiles, protective clothing or textile floor coverings.

Both the EU and US have, on numerous occasions (including stakeholder meetings and press briefings in the fringes of earlier negotiating round), requested stakeholders to keep presenting their views and concerns and ideally to present joint papers with concrete ways to achieve regulatory cooperation and convergence. The publication of these five position papers reflects such views, but of course does not exclude further input from stakeholders.



The next round of TTIP negotiations is taking place in the US FROM 19-23 May 2014, and regulatory cooperation and convergence will be discussed. In view of the European Parliament elections (also taking place in May), the negotiations are expected not to result in important breakthroughs on sensitive TTIP negotiating areas (including on tariffs, public procurement, financial services regulation, ISDS), but the discussions are likely to focus on a wide range of technical issues. The following round is reported to take place in Brussels in July. European Parliament Socialists Release Position Paper on TTIP.<sup>39</sup> The Socialists and Democrats made a number of crucial demands to the agreement.

- **No lowering of EU standards**

The EU's *Acquis Communautaire* must not be compromised. The opening of markets and any increase in competition must not be detrimental to consumer safety or terms and conditions of employment. In relation to food and consumer protection, the European Commission must insist for the EU precautionary principle to be maintained.

- **Data protection**

Data protection should not be dealt with in TTIP and EU Data protection legislation should be adopted and in force before TTIP enters into force. Data flows across the Atlantic should be subject to it.

- **Regulation of financial markets**

TTIP must include binding and common measures with regard to the regulation of financial markets, including the regulations of financial services and financial market products. It should not be forgotten that it was not least the unregulated transatlantic financial flow that exported the financial crisis from the USA to the EU.

- **No circumvention of democratic legislative processes**

Any joint consultative body created in the framework of TTIP should not infringe on the legislative powers and the prerogatives of the European parliament. This would not only risk creating a highly intransparent procedure, but it would also circumvent parliaments and the US Congress as the responsible legislative bodies.

- **Labour Rights**

TTIP provides an opportunity to reinforce workers' rights in the USA. The fundamental standards of the ILO regarding the freedom of association, the recognition of trade unions and the creation of works councils should be used as a guideline in that regard and should be embedded within the treaty itself.

- **Investor to State Dispute Settlement**

It has become clear that the US negotiators and the European Commission wish to agree upon what is known as an investor-state dispute resolution mechanism (ISDS). This mechanism could enable investors to circumvent conventional domestic judicial procedures and to initiate legal proceedings before international arbitration courts against the EU or the US as well as individual Member States directly, in order to claim compensation for an alleged loss of investment value.

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<sup>39</sup> Inside US Trade, *EU US Negotiations for a Transatlantic Trade and Investment Partnership- TTIP Position Paper of the S&D Group*, [http://insidetrade.com/iwpfile.html?file=apr2014%2Fwto2014\\_1127a.pdf](http://insidetrade.com/iwpfile.html?file=apr2014%2Fwto2014_1127a.pdf) (last visited on 20 Sept. 2014).

### ***Leaked Paper Details Draft EU Services Offer In TTIP<sup>40</sup>***

On 13 June 2014 an NGO called the Associated Whistleblowing Press, leaked what purports to be the draft of the European Union's services offer for the Transatlantic Trade And Investment Partnership, sent for review to the Trade Policy Committee on 26 May 2014.

### ***U.S.-EU 'Safe Harbor' Talks Snag Over National Security Exception Limits<sup>41</sup>***

The top U.S. and European Union officials in charge of negotiating reforms to the "Safe Harbor" framework governing trans-Atlantic data transfers on June 10 signaled their talks are hung up over an EU demand for new U.S. assurances that it will invoke the arrangement's national security exception only in limited circumstances.

The ability of both sides to bridge their differences on how to update Safe Harbor will have a direct bearing on the ability of the European Commission in the Transatlantic Trade and Investment Partnership (TTIP) to agree to U.S. demands for provisions permitting the free flow of data across the Atlantic. The U.S.-EU Safe Harbor framework provides a legal basis for companies to conduct transfers of EU personal data to the U.S. that would otherwise breach EU law, provided they adhere to certain safeguards for privacy protections.

## **II.E. Foreign Investment**

### **II.E.1. Foreign Investment Regime**

#### *a) EIB lending to strengthen growth and innovation across Europe*

At the annual meeting of the EIB's Board of Governors, the EU's 28 finance ministers, President Hoyer highlighted the importance of continued increased lending for SMEs, innovation, infrastructure and climate action.<sup>42</sup> He confirmed that he expected lending by the EIB, the world's largest multilateral lending institution, to be similar over the next two years to the EUR 72 billion provide for long-term investment in 2013.

The EIB will contribute to the creation of the "Institution for Growth in Greece" (IfG) to overcome existing temporary and structural funding gaps in the Greek economy. IfG is being launched by Greece, with the guidance and support of KfW Development Bank of Germany, the EIB Group and other investors.

The EIB and Jazz Telecom SA signed, in Madrid a EUR 150 million loan agreement for financing the company's fibre-to-the-home network. The project will consist of rolling out a fibre optic network from the backbone infrastructure to three million homes. Investments financed by this loan will be located in Spain, with 25% in convergence regions.

### **II.E.2. Bilateral Investment Treaties**

#### *a) German Newspaper Leaks April 3 CETA Investment Text<sup>43</sup>*

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<sup>40</sup> <http://insidetrade.com/201406132474003/WTO-Documents/Text-Documents/leaked-paper-details-draft-eu-services-offer-in-ttip/menu-id-174.html>

<sup>41</sup> Inside US Trade, *US-EU 'Safe Harbor' Talks Snag Over National Security Exception Limits*, 12 June 2014, <http://insidetrade.com/201406122473799/WTO-Daily-News/Daily-News/us-eu-safe-harbor-talks-snap-over-national-security-exception-limits/menu-id-948.html> (last visited on 20 Sept. 2014).

<sup>42</sup> European Investment Bank Newsletter, May 2014, <http://www.eib.europa.eu/infocentre/newsletters/2014-may.htm> (last visited on 20 Sept. 2014).

<sup>43</sup> [http://insidetrade.com/iwpfile.html?file=apr2014%2Fwto2014\\_1125a.pdf](http://insidetrade.com/iwpfile.html?file=apr2014%2Fwto2014_1125a.pdf)

**18 April 2014** investment text for the Comprehensive Economic and Trade Agreement between the European Union and Canada was published in Die Zeit, an established German newspaper.<sup>44</sup> A comprehensive analysis shall be provided in the next quarterly report. The main chapters under the agreement are:

- a) Public Procurement
- b) Public Services
- c) Regulation
- d) Intellectual Property Rights
- e) Trade, Tariffs and Transport
- f) Agriculture and Food Sovereignty
- g) Workers and the Environment
- h) Investment

A report by the experts from Canada and the EU analyzed the Comprehensive Economic and Trade Agreement (CETA) to provide that it is unbalanced, favouring large multinational corporations at the expense of consumers, the environment and the greater public interest.<sup>45</sup> The study which will be comprehensively discussed in the next quarter provides an analysis of the CETA's most controversial chapters as exposed by a series of leaks in August. Such include assessments of the agreement's impacts on intellectual property rights for pharmaceutical products; investment protection, investor state dispute settlement and financial regulation, infrastructure procurement and buy-local food policies; public services and other such areas.

## **II.F. Aid for Trade**

### *II.F.1. Council of EU Adopts Regulations Granting Loan Guarantees, Trade Preferences to Ukraine*

On 14 April 2014 the two approved measures aimed at providing economic and financial support to Ukraine. It adopted a decision for providing up to €1bn in macro-financial assistance to Ukraine to support its economic stabilization and its structural reform agenda, supplementing resources made available under a financial arrangement with the IMF (8346/14). It also adopted a regulation granting unilateral trade preferences to Ukraine, providing for the temporary reduction or elimination of customs duties in accordance with a schedule of concessions set out in an annex to the EU-Ukraine association agreement (73/14). The support package was announced by the Commission on 5 March 2014 in response to the unprecedented developments in Ukraine, and is intended to assist with the country's political transition and encourage political and economic reforms. The package was endorsed by the European Council on 6 March 2014.<sup>46</sup>

## **III. TRADE POLICIES AND PRACTICE BY MEASURE**

### **III.A. Measures Directly Affecting Imports**

#### **III.A.1. Rules of origin**

- a) *Proposal to amend the rules of origin for the European market*

On 15 April 2014, the European Parliament passed a proposal to reform the rules of origin for the European market. Currently, a product could be labeled “made in Country A” even though it was mainly assembled in

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<sup>44</sup> Please find the CETA text here: [http://insidetrade.com/iwvfile.html?file=apr2014%2Fwto2014\\_1125a.pdf](http://insidetrade.com/iwvfile.html?file=apr2014%2Fwto2014_1125a.pdf). Also visit: <http://www.tagesschau.de/download/ceta-111.zip>.

<sup>45</sup> Canadian Centre for Policy Alternatives, *An analysis of the final text of the Canada-European Comprehensive Economic and Trade Agreement*, 25 September 2014, <https://www.policyalternatives.ca/publications/reports/making-sense-ceta> (last visited on 20 Sept. 2014).

<sup>46</sup> Council of the European Union, *Council approves financial support and trade measures for Ukraine*, 14 April 2014, [http://insidetrade.com/iwvfile.html?file=apr2014%2Fwto2014\\_1076b.pdf](http://insidetrade.com/iwvfile.html?file=apr2014%2Fwto2014_1076b.pdf) (last visited on 20 Sept. 2014).

Country B, reflecting the regulation of individual EU member states. The new provisions are based on the idea of “last substantial transformation” and regulations at the national level are no longer valid. Therefore the measure is considered a simplification to the current labelling rules and may well facilitate trade. The new regulation also foresees a “Made in EU” label in case a product is mainly produced by two or more different member states<sup>47</sup>.

### III.A.2. Import control and restrictions

#### a) *EU updates sanctions against Libya and Syria, and introduces import ban for Crimean products*

The EU Council on 23 June 2014 took several sanctions-related actions, all effective on 24 or 25 June 2014, including:

- ➔ The introduction of an EU import ban for products from Crimea and Sevastopol (and related financing/insurance services);
- ➔ An update of the EU sanctions against Libya with respect to implement a recent UN Security Council Resolution aimed at prevailing illicit crude oil transactions involving vessels designated at UN level (while also removing two entities from the asset freeze list); and
- ➔ The addition of 12 individuals to the Syria asset freeze list.<sup>48</sup>

To provide for its earlier condemnation of the annexation of the Autonomous Republic of Crimea and the city of Sevastopol, the EU is banning the import goods originating in Crimea or Sevastopol, the EU is banning the import goods originating in Crimea or Sevastopol as of 25 June 2014 through Council Regulation 692/2014 and Council Decision 2014/386/CFSP. The provision of direct/indirect financing or financing or (re-) insurance related to such imports is also prohibited.

Originating goods for the purpose of this import ban shall be goods “wholly obtained” in Crimea or Sevastopol, or goods which have undergone their last substantial transformation there (i.e. the classical EU non-preferential origin rule applies here). Knowingly and intentionally participating in circumvention of these measures is also forbidden. Like all EU sanctions measures, these measures apply within the EU and on board aircraft/vessels under EU Member State jurisdiction, to any EU nationals (anywhere in the world) and entities falling under EU Member State laws, and to any business done in whole or in part in the EU.

However, the ban will not apply to goods which have been made available to the Ukrainian authorities for examination and for which compliance with the preferential origin rules for Ukrainian products are satisfied and an origin certificate has been issued by the Government of Ukraine. The prohibitions will not apply for the execution until 26 September 2014 of contracts concluded before 25 June 2014 (and ancillary contracts) provided that the activities related to their execution are notified at least 10 working days beforehand.

In addition, the Regulation also forbids the satisfaction of claims in connection with prohibited goods imports or related to contracts/transactions whose performance is affected by these measures if these are made by or on behalf of parties listed under the EU’s Ukraine-related asset freeze list (set out in Annex I of Regulation 269/2014), or parties that are found by an arbitral judicial or administrative decision to have

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<sup>47</sup> GlobalTradeAlert, *EC “Made in” labelling to enhance product traceability*, 17 April 2014, <http://www.globaltradealert.org/measure/ec-%E2%80%9Cmade-in%E2%80%9D-labelling-enhance-product-traceability> (last visited on 20 Sept. 2014).

<sup>48</sup> White and Case, *EU updates sanctions against Libya and Syria, and introduces import ban for Crimean products*, 24 June 2014, <http://www.whitecase.com/files/Publication/d8499ae5-3d87-47d3-b17a-2d9dfd5e214e/Presentation/PublicationAttachment/99a867d9-ef27-4374-b2ce-1356d69cd0f4/wc-alert-eu-updates-sanctions-against-libya-and-syria.pdf> (last visited on 20 Sept. 2014).

infringed Regulation 692/2014. The main aim of Regulation 690/2014- which applies from 25 June 2014 – is to implement the UN Security Council Resolution 2146 (2014) adopted in March 2014 to stop disruptions of Libya’s energy exports and to reiterate that all facilities should be transferred back to the proper authorities.

To this end, Council Regulation 690/2014 introduced a new provision which states that it is prohibited to load, transport or discharge crude oil from Libya on “designated vessels” flying the flag of an EU Member State unless this has been authorized by the competent Member State authority after consultations with the Government of Libya focal point). As appointed and notified by the Libyan Government to the UN Sanctions Committee). The list the designated vessels will feature in a new Annex V to Regulation 204/2011, which will also specify the UN Sanctions Committee measures applicable to these. Annex V as yet is empty but the European Commission has been empowered to insert the details following the UN Sanctions Committee’s determination of the vessels and the applicable measures.

Access to EU ports for these vessels is prohibited, except where entry is necessary for inspection, in an emergency situations, or when the vessel is returning to Libya. The provision of bunkering and ship supply services (as well as other servicing of vessels) to designated vessels will also be forbidden by EU national, or from the EU territory, if the UN Sanctions Committee has so specified. The EU Member States may grant exemptions from this ban for humanitarian or safety or safety purposes, or when the vessel is returning to Libya) subject to notification of the UN Sanctions Committee and the European Committee).

Financial transactions related to crude oil abroad designated vessels (including the sale of the crude oil or its use as credit) and the taking out of related transport insurance is prohibited if the UN Sanctions Committee has specified this. Port fees can however be accepted where a designated vessel is allowed to enter an EU port under the above exemption. In parallel, Council Regulation 289/2014 updates the asset freeze list: With Council Regulation 693/2014, the EU adds 12 Ministers to the asset freeze list contained in Annex II of the EU Syria Sanctions Regulation 36/2012 as of 24 June 2014. The list note contains almost 200 natural persons and over 50 entities.

*b) EU broadens Ukraine sanctions and adds two companies and 13 individuals to sanctions list*

On 12 May 2014, the EU Council broadened the scope of EU sanctions in response to the situation in Ukraine.<sup>49</sup> The legal basis for EU sanctions was broadened notably to cover obstruction notably to cover obstruction of the work of international organizations and involvement in the transfer of ownership of entities in Crimea or Sevastopol. In addition, 13 persons and for the first time – to Crimea-linked companies were added to the list of sanctioned parties. These changes entered into force on 12 May 2014. The EU Council has reiterated that work possible targeted EU measures continues, to enable further steps depending on future events.

*c) EU, Faroe Islands Reach Deal To Lift Herring Ban Soon*

On 11 June 2014 EU announced that they would lift its import ban on herring from the Faroe Islands within this month if they reach a deal to protect fish stock in the Atlantic. The reason for the ban was the overfishing the world biggest importer said that it had to protect a fish stock referred to as the Atlanto-Scandian herring. Both of them came to the conclusion that once the limit is fixed, the EU would end the ban

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<sup>49</sup> White & Case, *EU broadens Ukraine sanctions and adds two companies and 13 individuals to sanctions list*, 13 May 2014, <http://www.whitecase.com/files/Publication/8f989f08-8e74-40ee-9b2a-301f8c6ecab4/Presentation/PublicationAttachment/3239f830-5b41-4d28-b5b8-526e858e9fbb/alert-eu-broadens-ukraine-sanctions-13-may-2014.pdf> (last visited on 20 Sept. 2014).

on Faroese imports. Once the RU ends the trade ban, the Faroese have agreed to withdraw their case from WTO.<sup>50</sup>

*d) Sanctions against the Ukrainian crisis*

Based on Council conclusions issued on 12 May 2014, the EU has amended its sanctions in relation to the situation in Ukraine. First, the EU has decided to broaden the legal basis for restrictive measures in response to actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (originally featured in Regulation 269/2014). These changes are made in Regulation 476/2014, which was published and entered into force on 12 May 2014. This means that the EU has expanded the scope of criteria for imposing an asset freeze (and, in the case of persons, a visa ban) on certain parties in relation to the Ukraine crisis.

Previously, an asset freeze could be imposed on parties “responsible for” actions which undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine. Now, the EU may more broadly designate parties (and their associated) for actively supporting or implementing such related actions and policies and also for other activities relating to obstruction of the worked of international organizations and the transfer of ownership of entities in Crimea or Sevastapol. In other words, this amended legal basis enables the EU to impose sanctions on more parties deemed responsible for unrest in Ukraine.

Second, the EU has decided to add another 13 persons and two entities to the list of parties subject to a visa ban and asset freeze under Regulation 269/2014. This change was introduced through Implementing Regulation 477/2014, which also entered into force on 12 May 2014, and brings the total count of this designated parties list to 61 persons and two entities. Such is a separate list from the EU asset freeze list in relation to alleged misappropriation of Ukrainian state fund and human rights violations in Ukraine, which currently feature 22 persons. As a result of the asset freeze, all funds and economic resource belonging to, or controlled by, the listed persons and that fall under EU jurisdiction (e.g. held by EU banks) will be frozen.

Furthermore, no funds or economic resources may be made available- directly or indirectly- to or for the benefit of the listed persons by parties falling under EU jurisdiction. Member States can authorities derogations from the asset freeze in certain limited circumstances. There are two notable situations (in addition to the standard provisions relating to basic needs, legal services, etc.): first where release of funds is to satisfy a court or arbitral decision that predates the asset freeze, where the beneficiary is not the listed person; and second, where payment by a listed party is due under a contract that pre-dates the asset freeze provided the payment does not benefit that listed party.

These sanctions apply to the EU territory (including its airspace), national of EU Member States (including those located outside the EU), and board vessels and aircraft under Member State jurisdiction. Sanctions further apply to companies incorporated or registered under the law of an EU Member State and to other non-EU companies in respect of business done in whole or in part in the EU. This means that non-EU companies can be convened by the newly adopted measures, depending on the particular circumstances under which they perform their business activities in the EU. With respect to potential further expansion of EU sanctions in response to Ukraine-related developments, the Council reiterated in its conclusions of 12 May 2014 that the work on a proposal for possible targeted measures continues to enable further steps depending on future events. While the Council statement confirms that particular attention will be paid to the upcoming Ukraine elections in this context, the timing of such additional EU sanctions continues to be unclear.

### **III.A.3. Contingency measures**

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<sup>50</sup> Reuters, *EU, Faroe Islands reach deal to lift herring ban soon*, 11 June 2014, <http://www.reuters.com/article/2014/06/11/eu-faroese-fishing-idUSL5N0OS22920140611> (last visited on 20 Sept. 2014).

### III.A.3.1. Anti-dumping and countervailing

#### a) *EU Solar Industry Accuses Chinese Firms Of Selling Below Agreed-To Price Floor*<sup>51</sup>

On 5 June 2014 the European solar industry initiative EU ProSun submitted over 1,000 pages of documentation to the Directorate-General for Trade of the European Commission, containing about 1,500 proposals by Chinese solar companies offering prices below the minimum level agreed by the EU Commission and China. The EU imposed anti-dumping duties on Chinese solar imports in mid-2013, after state-subsidized dumping from China drove dozens of European solar companies to ruin. In order to circumvent these duties of around 50 percent, over 100 Chinese solar manufacturers offered the EU a contractual undertaking to only import above a minimum price of 56 cents per watt. The European Commission and the European Council agreed to this minimum price offer. However, it is believed that Chinese companies are neither paying duties, nor observing the minimum price agreement.

### III.A.4. Technical regulations and standards

#### a) *New regulation to assess the reproductive toxicity of chemical substances*

On 18 June 2014 introduced draft Regulation proposing the modification of Annexes VIII, IX and X in order to adapt the standard information requirements to a new test method which was developed to assess the reproductive toxicity of chemical substances. The amended standard information requirement implements the new test method – extended one-generation reproductive toxicity study (EOGRTS) – which will replace the two-generation reproductive toxicity study which is currently the standard information required in certain cases for REACH registration<sup>52</sup>.

On 19 June 2014, the EU implemented regulation approving tralopyril as a new active substance for use in biocidal products for product-type 21<sup>53</sup> On 30 June 2014 the EU introduced a draft Commission Implementing Regulation approves permethrin as an existing active substance for use in biocidal products for product-types 8 and 18.<sup>54</sup> On 21 May 2014 the EU introduced draft regulation as a mere technical amendment of certain elements of entries 50, 51 and 52 in Annex XVII to the REACH Regulation (originally notified under reference G/TBT/N/EEC/52). This draft regulation does not affect the scope of the existing restrictions.<sup>55</sup>

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<sup>51</sup> Inside US Trade, *Massive violation of EU trade deal by Chinese solar manufacturers*, 5 June 2014, [http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014\\_1671a.pdf](http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014_1671a.pdf) (last visited on 20 Sept. 2014). [http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014\\_1671a.pdf](http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014_1671a.pdf)

<sup>52</sup>[http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country\\_ID=EU&num=217&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=217&basnotifnum2=&bastyp epays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=122&whatYear=2014](http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country_ID=EU&num=217&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=217&basnotifnum2=&bastyp epays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=122&whatYear=2014)

<sup>53</sup>[http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country\\_ID=EU&num=215&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=215&basnotifnum2=&bastyp epays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=122&whatYear=2014](http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country_ID=EU&num=215&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=215&basnotifnum2=&bastyp epays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=122&whatYear=2014)

<sup>54</sup>[http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country\\_ID=EU&num=218&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=218&basnotifnum2=&bastyp epays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=122&whatYear=2014](http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country_ID=EU&num=218&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=218&basnotifnum2=&bastyp epays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=122&whatYear=2014)

<sup>55</sup>[http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country\\_ID=EU&num=213&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=213&basnotifnum2=&bastyp epays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=121&whatYear=2014](http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country_ID=EU&num=213&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=213&basnotifnum2=&bastyp epays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=121&whatYear=2014)

2 April 2014 the EU introduced the Title Draft Commission Decision amending Commission Decision 2012/88/EU on the technical specification for interoperability relating to the control-command and signaling subsystems of the trans-European rail system<sup>56</sup>

### III.A.5. Sanitary and phytosanitary standards (SPS)

a) *EC provides a roadmap to defining criteria for identifying Endocrine Disruptors*

Chemicals with endocrine-disrupting properties (“endocrine disruptors” – ED) impact on the hormone system of animals and humans. Endocrine disruption is a relatively recent way of looking at the toxicity of chemicals.<sup>57</sup> There is now scientific consensus in many areas, though diverging views exist on specific points within the scientific community and regulators worldwide. There is a general consensus on the WHO/IPCS (2002) definition of an Endocrine Disruptor. It is defined as an exogenous substance or mixture that alters functions of the endocrine system and consequently causes adverse health effects in an intact organism, or its progeny, or subpopulations.

Although provisions on ED are in force in some sectoral EU legislation, no formal criteria have been established, internationally or at the EU level, for identifying ED. The placing on the market of plant protection products and biocidal products are regulated by two separate pieces of Union legislation namely the Plant Protection Product Regulation (EC) 1107/2009 (PPPR) and the Biocides Product Regulation (EU) 528/2012 (BPR). Under each instrument, the co-legislators have empowered the Commission to establish scientific criteria to identify substances with endocrine disrupting properties. The BPR and the PPPR also set the regulatory consequences for substances considered as ED: Annex II, Section 3.6.5 of the PPPR and Article 5 of the BPR stipulate that substances having endocrine disrupting properties which may cause adverse effects will not be approved for the receptive use, unless:

- *For a Plant Protection Product*

- a- The exposure is negligible or
- b- The substance is necessary to control a serious danger to plant health which cannot be contained by other available means including non-chemical method (this provision can only be applied for a maximum period of 5 years).

- *For a Biocidal Product*

- a- The risks are negligible, in particular where the product is used in closed systems or under other conditions which aim at excluding contact with humans and release into the environment, or
- b- The substance is essential to prevent or control serious dangers to human health, animal health or the environment, or
- c- Not approving the substance would have disproportionate negative impacts on society when compared with the risks.

Further, Article 19(4) of the BPR stipulates that substances having endocrine disrupting properties (i.e. not specifying “which may cause adverse effects”) will not be approved for use by the general public. The

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<sup>56</sup>[http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country\\_ID=EU&num=210&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=210&basnotifnum2=&bastypays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=120&whatYear=2014](http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=Search.viewDetail&Country_ID=EU&num=210&dspLang=EN&nextpage=1&basdatedeb=&basdatefin=&baspays=EU&baspays2=&basnotifnum=210&basnotifnum2=&bastypays=ANY&baskeywords=&fromform=viewBasic&FromWhatNew=WhatNew.viewOld&whatNum=120&whatYear=2014)

<sup>57</sup> European Commission, *Defining criteria for identifying Endocrine Disruptors in the context of the implementation of the Plant Protection Product Regulation and Biocidal Products Regulation*, June 2014, [http://insidetrade.com/iwfile.html?file=jun2014%2Fwto2014\\_1918a.pdf](http://insidetrade.com/iwfile.html?file=jun2014%2Fwto2014_1918a.pdf) (last visited on 20 Sept. 2014).



provisions in the PPPR and the BPR regarding EDs were adopted in the context of substantial scientific, policy and legislative activity within the EU and internationally during the past 15 years. The development of criteria that will be used to identify substances with endocrine disrupting properties under the Biocides Regulation and the Plant Protection Products Regulation is related to the general calls on the Commission to establish horizontal hazard-based scientific criteria to identify endocrine disruptors by both the Council and the European Parliament, in the form of Council conclusions and an own initiative report, respectively. Recently, through the agreement in ordinary procedure on the 7<sup>th</sup> Environmental Action Programme, this action was reconfirmed by both co-legislators.

Concerning EU legislation, apart from the PPPR and the BPR, specific provisions governing endocrine disruptors are included in several other pieces of the EU legislation that regulate the marketing and use of chemical substances. However, there are differences in wording in relation to ED among and within EU legislation. All provisions refer to endocrine disrupting properties, some provisions make also a reference to adverse effects and describe causal relation between the endocrine disrupting properties and adverse effect and some provisions provide additional qualifier for the adverse effect.

Other sectorial legislation (e.g. on EU Occupational Safety and Health, on Pharmaceuticals and on Food Contact Materials) regulate ED together with other chemicals on a case by case basis, with no specific provisions related to ED. Finally, the CLASSIFICATION, Labelling and Packaging Regulation transposes the UN Globally Harmonized System for Classification and Labelling into EU law. This enables the identification and categorization of most known adverse effects relevant for human health and the environment. These include the main adverse human health effects expected to be caused by endocrine disruptors (i.e. reproductive toxicity and some cancers). Under the CLP Regulation, the relevance to humans of adverse effects observed in animal studies is based on the mode of action of the substance, but without explicitly considering specifically endocrine disruption.

Given the absence of criteria for identifying ED, no ex-post analysis of the existing policies has been carried out. However, impact assessments were carried out during the legislative process of the PPPR by different organizations (PSD, UK, KEMI, Sweden and European Parliament) aiming at determining which substances used as plant protection products have endocrine disrupting properties which may cause adverse effects and thereby would not be approved. These assessments were based on preliminary and not yet agreed criteria to identify endocrine disruptors. The implied costs and benefits of such action were not assessed.

*b) EU Parliament Backs Proposal To Require 'Made-In' Labelling For Non-Food Consumer Products*<sup>58</sup>

On 15 April 2014 The EU Parliament voted on making "Made-in" labelling mandatory for non-food products sold on the single market. Parliament also wants tougher penalties for firms selling non-compliant or potentially dangerous products. Mandatory "made in" labelling would improve the traceability of goods and thus strengthen consumer protection, said MEPs, who backed the European Commission's proposal that mandatory "made-in" labelling in Europe for non-food products should replace the current voluntary system. Today, around 10% of goods picked up by the EU's RAPEX alert system cannot be traced back to the manufacturer.

*c) 4<sup>th</sup> Biennial Consumer Product Safety Trilateral Summit*

Since 2008, the Authorities (Health and Consumers Directorate General – United States; Consumer Product Safety Commission – General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China) have pursued joint efforts to strengthen non-food consumer product safety and

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<sup>58</sup> Inside US Trade, *MEPs push for mandatory "made-in" labelling to tighten up product safety rules*, 14 April 2014, [http://insidetrade.com/iwfile.html?file=apr2014/wto2014\\_1101a.pdf](http://insidetrade.com/iwfile.html?file=apr2014/wto2014_1101a.pdf) (last visited on 20 Sept. 2014).

protect the end consumer.<sup>59</sup> This regular international regulatory cooperation and coordination allows for shared implementation to help make consumer product markets safer.

With the effective protection of consumers being at the heart of their mission, the Authorities have decided to take stock of previous achievements and to build on those to deepen the trilateral cooperation in furtherance of consumer product safety. During the 4<sup>th</sup> Biennial High-Level Consumer Product Safety Trilateral Summit held on 19 June 2014 in Brussels, the authorities exchanged views and information concerning further improvements to consumer product safety, including the significant enhancement of the product safety culture by industry.

The Tripartite Participants discussed the practical use of the concept of “seamless surveillance” of consumer products, with the objective of establishing reinforced product safety controls throughout the supply and distribution chains. The Tripartite Participants also considered additional joint activities that could be undertaken trilaterally or bilaterally to reinforce the culture of safety among economic actors. The topics of consumer product tracking and traceability and dissemination of consumer product safety information was also discussed.

The Tripartite Participants share the view that:

- 1) The safety of consumer products is of utmost importance. Enhanced international regulatory cooperation contributes to the improvement of the safety of products.
- 2) Reinforced application of cooperation in product safety controls at every stage along the supply chain, from design, through production, export and import, leads to the manufacture and distribution of safer consumer products and builds consumers’ trust. This, in turn, contributes to economic growth and international trade.
- 3) Promoting a culture of safety within the entire supply and distribution chains for international consumer product trade contributes to the effective protection of consumers. This can include promoting company management systems that have product safety as their core value, incorporating safety into product design and appropriate company controls.
- 4) DG SANCO, AQSIQ and CPSC, individually and collectively, play a vital role in working to ensure that industry places the safety of consumers first.

### **Specific Actions**

The Tripartite Participants intent to engage, bilaterally and trilaterally, as appropriate, on the following specific actions within the context of their overall cooperation framework:

- a) Lay out additional steps, resources permitting, to support implementing the Points of Consensus;
- b) Exchange information regularly, and as early as possible, on major safety issues and on new and prospective developments in their respective consumer product surveillance systems;
- c) Specify additional practical aspects of how authorities can cooperate to implement the concept of seamless surveillance, taking into account changes in product safety control systems of authorities and with the objective of providing effective product safety controls and cooperation among authorities;
- d) Continue education for industry stakeholders, to encourage the adoption and further development of a strong safety culture along the supply and distribution chains;

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<sup>59</sup> Inside US Trade, *Fourth Biennial Consumer Product Safety Trilateral Summit*, 19 June 2014, [http://insidetrade.com//index.php?option=com\\_iwppfile&file=jun2014/wto2014\\_1809.pdf](http://insidetrade.com//index.php?option=com_iwppfile&file=jun2014/wto2014_1809.pdf) (last visited on 20 Sept. 2014).

- e) Continue discussions on relevant standards for consumer products of shared concern exchange information on technical regulations and standards for these products and explore jointly the possible convergence of safety requirements in furtherance of consumer product safety;
- f) Continue reinforcing consumer product traceability against the backdrop of our respective regulatory systems; and
- g) Engage other relevant administration departments or governmental organizations, as appropriate, dealing with consumer product safety in order to maximize opportunities for effective cooperation in the area.

The next summit will be held in 2016.

*d) Declaration of the specific vegetable oil used in food will soon be mandatory in the EU*

The recently Adopted EU Legislation in the form of the Declaration of the specific vegetable oil used in food will soon be mandatory in the EU. There are important changes in terms of the labelling of the different vegetable oils as ingredients in foodstuffs under Regulation (EU) No. 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (hereinafter, the Food Information Regulation, FIR), which are due to apply across the EU as of 13 December 2014.

By making it compulsory that the oil origin be specified (so that a consumer can make an informed choice in the selection of food products), a mere look at the list of ingredients will tell consumers whether a product contains a specific vegetable oil or not. ‘Free-from certain oils’ campaigns directly on the products packaging should, therefore, be seen not only as illegal or deceptive (as argued above), but also unnecessary in the near future, since any consumer will be able to tell what vegetable oil is present or not in any food product. There will be no need to use these dubious ‘free-from certain oils’ campaigns in order to ‘help’ consumers make informed choices.

However, it is possible (and perhaps even likely, given the ‘hidden agendas’ that these campaigns pursue) that such harmful and misleading information campaigns, based on the skilful use of ‘free-from’ labels, may still be addressed at consumers. Authorities and commercial operators need to closely scrutinise the market and challenge these anti-competitive practices. The expectation is that EU authorities and EU Member States will take labelling seriously and, while they impose costly new rules on producers, they also ensure that consumers are not misled by astute marketing techniques that have no informative agenda, but simply aim at denigrating certain vegetable oils in order to promote others or to convince consumers that what is ‘free’ from a certain oil is a better product.

### **III.B. MEASURES DIRECTLY AFFECTING EXPORTS**

#### **III.B.1. Restrictions and controls**

*a) European Commission provides insight into possible directions for future EU dual-use export control regime*

The EC has recently outlined its priorities and suggestions for modernizing and improving the EU’s Dual-Use export controls regime in a Communication.<sup>60</sup> The proposed approach focuses on ‘smarter’ controls, enhanced/improved exchange of information and intelligence between the authorities, a swifter reaction to emerging technologies, the de-listing of items which are commercially widely available, more focus on controls of intangible transfers, reducing the burden on companies, more international cooperation and the creation of a level playing field within the EU and globally. The EU Council and European Parliament will

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<sup>60</sup> White & Case, *European Commission Provides insight into possible directions for future EU dual-use export control regime*, 23 June 2014, <http://www.whitecase.com/files/Publication/45745f9d-dfe6-4ae7-b4f7-b45b1a6352bf/Presentation/PublicationAttachment/08c8dc7c-9c9b-43f6-9f17-cb8bc131127f/alert-Dual-Use-Export-Control-Regime.pdf> (last visited on 20 Sept. 2014).

first consider these ideas, and after that concrete legislative proposals are expected to be prepared. Meanwhile, the current rules (set out in Regulation 428/2009) have recently also been amended, essentially to allow a swifter updating of the EU's Dual-Use control in line with changes in the various international control lists on which the EU list is based.

The EU's review process started three years ago with the publication of a Green Paper to launch the public debate. Based on the result of a public consultation, the Commission prepared a Communication outlining the reasons for the review of the current regime, the priorities it sees, and concrete suggestions on how these could be addressed. The Commission considers the review justified and necessary for the following reasons:

- There is a growing weapons of mass destruction (WMD) proliferation challenge.
- Export controls must focus more on intangible technology transfers since faster diffusion (including through cloud computing entails the risk of “cyber-proliferation”, unlike in the case of physical exports, no border controls are possible for these transfers.
- Supply chains are increasingly global and there is a clear need for level playing field in what is controlled, and how.
- The lines between civilian and defense technology and companies are blurring, and the increasing difficulty to distinguish between purely civil and dual-uses leads to an increase in the share of dual-use trade.
- Different levels of controls exist in third countries but also within the EU, and this distorts competition.

The Commission's priorities have been grouped according to four themes, for each of which a number of concrete suggestions are proposed.

**Priority 1:** Adjusting to evolving security environment and increasing the EU contribution to international security:

- Recognizing that security and human rights are interlinked and that controls should be broadened to focus not only on WMD/military items, but cover strategic items.
- Adopting a ‘smart security’ approach by:
  - Ensuring rapid reaction to challenges posed by emerging technologies (e.g. cloud computing, 3D printing, nanotechnology), while de-listing obsolete items or items widely commercialized.
  - Clarifying controls of cyber tools (by promoting multilateral decisions, or introducing EU list or special catch-all mechanism), but without hindering competitiveness of EU ICT industry; and/or
  - Modernizing the control approach by clarifying the ‘export’/‘exporter’ concepts; clarifying which authority is competent; updating the control of ‘technological assistance’; enhancing consistency in brokering and transit controls; introducing anti-circumvention provisions; shifting emphasis to end-use monitoring and facilitating legitimate exports.
  - Addressing the challenge posed by intangible technology transfers, including through clarification of the control of dual-use research, while avoiding obstacles to free flow of knowledge and global competitiveness of EU science and technology; this could entail the introduction of special Union General Export Authorizations (UGEAs) for intra-company R&D, more focus on pre-transfer controls (registration and self-auditing), combined with post-transfer monitoring (compliance audits), and a possible code of conduct for scientists.

**Priority 2:** Promoting convergence and a global playing field:

- Swifter updating of the EU control list.

- Optimizing licensing processes and minimizing delays in obtaining via:
  - a) The regular review of national general export authorizations and their possible transformation into UGEAs;
  - b) The introduction of new USEGAs for low value shipments, encryption intra-company technology transfers, intra-EU transfers, and large projects;
  - c) Ensuring that UGEAs are up to date in terms of covered destinations and items
  - d) Harmonizing certain licensing conditions and the validity period of licenses; and/or
  - e) Developing guidelines on best practices (e.g. on processing times).
  - f) Promoting global convergence including active outreach and cooperation with partner countries in developing convergent regulatory, and to avoid conflicting regulatory requirements of key trading partners.

**Priority 3:** Developing an effective/competitive EU export control regime and addressing ‘asymmetric’ implementation within the EU to minimize distortions of competition and reduce transaction costs associated with controls within the EU.

- a) Developing a robust common risk management framework.
- b) Harmonizing the definition of ‘catch-all’, strengthening consultations, and reinforcing a policy of ‘no undercutting’, and possibly the creation of a partially public ‘catch-all’ database.
- c) Re-evaluating intra-EU controls in order to minimize barriers in the single market, possibly by reviewing the intra-EU control list, introducing special UGEAs and shifting to post-shipment verification.

**Priority 4:** Supporting effecting/consistent implementation enforcement through a more integrated framework

- More exchange of information between EU export control authorities including on destinations, end-users, incidents and violation through expansion of the secure Dual-Use Electronic (DUeS).
- Enhancing strategic/ operational cooperation with enforcement agencies (such as customs to increase effectiveness, for example, through joint operations.
- Ensuring coherence with other EU policies/regulations, such as those on explosives precursors and firearms.
- Capacity building and training of officials (including customs officials) and pooling of experts.
- Recognizing the crucial role of the private sector and the need for a true partnership with companies to enhance security, by:
  - Encouraging the use of internal compliance programmes and possibly introducing standard requirements for these;
  - Promoting convergence with customs trusted operators’ programmes (Authorised Economic Operators) to reduce duplication of controls;
  - Publishing reports with non-sensitive control information and guidelines; and/or
  - Developing common EU IT tools and electronic licensing systems.
  - Cooperation with third countries, e.g. on end-use monitoring of third-country companies and mutual recognition of assessments.

At this stage, the Commission has not put forward any concrete legislative proposals. Such will happen after the EU Council and the European Parliament have had a chance to consider these proposed directions for the future regime. Meanwhile, the Commission will also carry out impact assessments for the various options. Until now, the updating of the list of items subject to dual-use export controls (Annex I to Regulation 428/2009) had to happen via the normal legislative procedure, i.e. the adoption of an amendment to the

Regulation by both the EU Council and the European Parliament based on a formal proposal by the European Commission. The process has often been – rightly – criticized for being too slow to align the EU control list with updates of the international control lists on which it is based. This leads to a divergent approach at international level. It may also disadvantage EU companies if their competitors outside the EU may not need a license if items on an international list are narrowed. With Regulation 599/2014, the EU Council and European Parliament have now delegated the power to update the EU control list to the European Commission, which will cut short the current lengthy procedures. The Commission will also have the power to immediately remove destinations for which EU arms embargoes are introduced from the list of destinations covered by UGEAs.

### III.C. MEASURES AFFECTING PRODUCTION AND TRADE

#### III.C.1. Intellectual property rights

a) *Biotech Industry disappointed with ministers' agreement to renationalize decisions on GM crop cultivation*

EuropaBio, the European Association for Bioindustries, is disappointed by the agreement reached by the EU Environment ministers on the so-called 'nationalization proposal' concerning GM crops cultivation.<sup>61</sup> This deal shows the lack of willingness of the EU institutions and Member States to correctly implement the current regulatory framework for GMO approvals they have decided upon themselves. They provided that renationalizing a common EU policy, based on non-objective grounds, is a negative precedent and contrary to the spirit of the single market. In particular, it allows Member States to formally reject a technology on non-scientific grounds, which sets a dangerous precedent and sends a negative signal for innovative industries considering whether or not to operate in Europe. They provided that in the end it should be up to farmers to decide what they want to plant in their fields.

The EU legal framework for the cultivation of GM products, initially adopted in 2001 (Directive 2001/18/EC), has never been correctly implemented. GM products for cultivation are regularly not put to Member States for a vote as required by law. EuropaBio reiterates its call for products that fulfil the EU's science based risk assessment requirements as set out in the EU legislation to be authorized without undue delay. After more than 15 years of large scale GMO cultivation in main countries globally, existing evidence has shown that GM crops are at least as safe as their conventional counterparts. The biotech industry firmly believes that failing to support the EU's own best science is the single most damaging element for growth, innovation, investment climate and, indeed, consumer confidence. Decision makers should now focus on finding a solution to the testing and sampling and in food, as this represents an economic loss for a wide range of operators and threatens trade flow of commodities on which the EU heavily depends. Both Belgium and Luxembourg abstained from the vote.

b) *EU Member States reached deal on new GMO Directive allowing bans for non-health, safety reasons*

The Council reached a political agreement on draft directive amending directive 2001/18/EC as regards the possibility for member states to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory.<sup>62</sup> The aim of the proposal is to facilitate the GMO authorization process by providing for a legal basis in the related EU legal framework in order to allow member states to restrict or prohibit the cultivation, in all or part of their territory, of GMOs that have been authorized at EU level. On 3 March 2014, the exchange of views held by the Environment Council confirmed the willingness of member states to re-open discussions on this legislative proposal on the basis of the presidency compromise text.

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<sup>61</sup> Inside US Trade, *Biotech Industry disappointed with ministers' agreement to renationalize decisions on GM crop cultivation*, 12 June 2014, [http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014\\_1735a.pdf](http://insidetrade.com/iwpfile.html?file=jun2014%2Fwto2014_1735a.pdf) (last visited on 20 Sept. 2014).

<sup>62</sup> Inside US Trade, *EU Member States Poised To Reach Deal On New GMO DIRECTIVE Allowing Bans For Non-Health, Safety Reasons*, 10 June 2014, <http://insidetrade.com/201406102473515/WTO-Documents/Text-Documents/eu-member-states-poised-to-reach-deal-on-new-gmo-directive-allowing-bans-for-non-health-safety-reasons/menu-id-174.html> (last visited on 20 Sept. 2014).

Since then, the Hellenic presidency has convened several meetings of the ad hoc working party on GMOs, which showed that a new revised proposal could gather broad support. The Commission presented the GMO cultivation proposal in July 2010 with the aim of providing for a legal basis to allow member states to restrict or prohibit the cultivation of GMOs in their territory on grounds other than health and environment considerations, which has already been addressed during the EU authorization process for GMOs. The proposal has been examined during several presidencies. The European Parliament adopted, at first reading, a set of amendments to the Commission proposal in July 2011. The Environment Council of 9 March 2012 was not able to reach a political agreement as a blocking minority of delegations still had concerns regarding certain issues.

On 12 June 2014, ministers in the Council adopted the political agreement text on the draft GMO directive and held policy debates on the 2030 framework and the clean air package GMO cultivation. The draft directive on genetically modified organisms (GMOs) provides a legal basis for member states to restrict or prohibit the cultivation of GMOs on their territory for reasons other than health or environment considerations. The proposal, presented by the Commission in July 2010, applies to GMOs that are authorised or under authorisation at EU level. Possible grounds that can be used by member states to ban or restrict GMOs include: socioeconomic reasons, land use and town planning, agricultural policy objectives and public policy issues. The Council's political agreement draws a line under several years of negotiations on the draft directive and will allow for formal adoption of the Council's position at 1st reading. The incoming Italian presidency is then expected to start negotiations with the European Parliament in early autumn 2014<sup>63</sup>.

- c) *U.S. Dairy Groups Urge EU to Commit To Permanent Generic Status For Cheddar, Other Foods; Roll Back Existing GIs*<sup>64</sup>

On 16 June 2014, the US urged the EU to put to rest U.S. concerns about terms not subject to GI restrictions today such as provolone, cheddar, bologna, mozzarella and camembert, as well as other meat and wine terms, will always be generic and would never in time face the same fate as havarti, parmesan and feta, which were produced by multiple countries both in the EU and outside of it prior to the EU's move to declare them protected terms. They held that if the EU is serious in its efforts to uproot these concerns, it will commit to not restrict the use of terms of concern through GIs or traditional terms or in any other manner in the future and not simply at this current snap shot in time.

Finally, they urged the EU to take steps to roll back the restrictions it had already wrongfully put in place in its own market and others. U.S. companies want to be able to again sell "parmesan" to the EU and want to be able to continue to sell "asiago" to Canada without being barred from doing so by geographical indication restrictions. Until the EU uproots the trade barriers it has already planted in its own market as well as those of other FTA partners, USDEC and NMPF will continue to shine a spotlight on the EU's abuse of GIs as a barrier to fair competition globally.

- d) *US dairy industry coalition criticizes EU Havarti GI Application as undermining Codex*

The Consortium of Common Food Names (CCFN), an international industry group led by US dairy producers, has criticized a pending application to register Havarti as a geographical indication (GI) in the EU by insisting that a 2007 standard for the cheese developed by the Codex Alimentarius is evidence that the

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<sup>63</sup> Council of the European Union, *Council reaches political agreement on new rules for growing GMOs*, 12 June 2014, <http://www.consilium.europa.eu/homepage/highlights/council-reaches-political-agreement-on-new-rules-for-growing-gmos?lang=en> (last visited on 20 Sept. 2014).

<sup>64</sup> Inside US Trade, *NMPF & USDEC Statement on EU GI Letter to Congress*, June 2014, [http://insidetrade.com/iwfile.html?file=jun2014%2Fwto2014\\_1749a.pdf](http://insidetrade.com/iwfile.html?file=jun2014%2Fwto2014_1749a.pdf) (last visited on 20 Sept. 2014).

term should be considered a common name.<sup>65</sup> At issue is an application by Danish producers to protect as a GI the term Havarti, which is named for the farm in Denmark where it was first made. CCFN formally submitted a statement of opposition to the EC, to instigate consultations between CCFN and the Danish body that lodged the GI application request. They must take place within two months of CCFN's submission, if the commission finds the submission admissible.

The consultation period will last a maximum of three months, unless the commission decides to extend it by another three months. Specifically, CCFN argued that GI protection for Havarti would undermine a food safety standard set by the Codex Alimentarius for the production of Havarti, which it insisted was partially due to the fact that this cheese is produced and marketed in many countries. Approval of such an application would call into question the EU's commitment to the international standard-setting process. Further, the EU ambassador to the US made clear in a letter to Congress that the EU is not seeking to protect the term 'bologna' as a GI. An EU list of GIs presented to the US in the TTIP negotiations only contains the compound name "Mortadella di Bologna". The US dairy called on the EU to roll back the GI protection on such terms as parmesan and asiago. Parmesan is protected as a GI as the translation of the Italian compound name Parmigiano Reggiano, and asiago is protected as a single term.

e) *New EU framework for protection of trade secrets*

The Council agreed on a general approach for establishing a new legal framework for the protection of trade secrets.<sup>66</sup> The new framework aims at making it easier for national courts to deal with the misappropriation of confidential business information, remove the trade secret infringing products from the market and make it easier for victims to receive compensation for illegal actions. Under the agreement, the new framework would include the following main features:

- A minimum harmonization of the different civil law regimes, whilst allowing member states to apply stricter rules;
- The establishment of common principles, definitions and safeguards, in line with international agreements, as well as the measures, procedures and remedies that should be made available for the purpose of civil law redress;
- A limitation period of six years for claims or bringing actions before courts;
- The preservation of confidentiality in the course of legal proceedings, while ensuring that the rights of the parties involved in a trade secret litigation cases are not undermined;
- The establishment of a favourable regime to employees in what concerns their liability for damages in case of violation of a trade secret if acting without intent.

Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business competitiveness and research innovation management tool. They cover a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans or market research and strategies. Trade secrets have an important role in protecting the exchange of knowledge between businesses and research institutions within and across the borders of the internal market in the context of research and development and innovation.

In order to promote fair competitiveness and an innovative business environment, restriction to the use of trade secrets are justified in cases where the relevant know-how of information has been obtained from the

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<sup>65</sup> Inside US Trade, *Industry Coalition Fights EU Havarti GI Application As Undermining Codex*, 25 June 2014, <http://insidetrade.com/201406252475076/WTO-Daily-News/Daily-News/industry-coalition-fights-eu-havarti-gi-application-as-undermining-codex/menu-id-948.html> (last visited on 20 Sept. 2014).

<sup>66</sup> Council of the European Union, *New EU framework for protection of trade secrets*, 26 May 2014, [http://insidetrade.com/iwfile.html?file=may2014%2Fwto2014\\_1559b.pdf](http://insidetrade.com/iwfile.html?file=may2014%2Fwto2014_1559b.pdf) (last visited on 20 Sept. 2014).



trade secret holder against its will through dishonest means. The assessment of whether and to what extent such restrictions are necessary is subject, on a case-by-case basis, to judicial control. To this end, the Commission submitted on 28 November 2013, the draft directive regarding the protection of trade secrets against their unlawful acquisition, use and disclosure, within the context of the strategy for the development of the single market for intellectual property. The new provision would come into force, at the latest, one year after the final adoption of the directive.

*f) U.S Will Allow EU Citizens To Sue Over Data Privacy*

The US have agreed to enact legislation by giving right to the European Union to sue U.S if EU thinks that their private data has been released or misused by US citizen. Even the EU citizen would have the same right to seek judicial redress for intentional or willful disclosures of protected information and for refusal to grant access to rectify any errors in that information. Due to the allegations of vast U.S spying programmes EU-US ties were at a delicate moment in transatlantic relations, as Brussels and Washington negotiate a free- trade pact that would encompass almost half of world's economy.<sup>67</sup>

#### IV. TRADE POLICY BY SECTOR

##### IV.A. Agriculture

In the Meeting on 14 April in Luxembourg, the Agriculture and Fisheries Council discussed a report on the fruit and vegetable sector and adopted a number of legislative measures without discussion.

The EU's fruit and vegetable sector Ministers in the Council held an exchange of views on a report on the functioning of the fruit and vegetable sector. The report, which was prepared by the Commission, looks at the implementation of provisions for producer organisations, operational funds and operational programmes since the 2007 reform. The debate in the Council focussed on a number of questions exploring how to improve conditions in the fruit and vegetable sector. In particular, ministers discussed how to encourage organisation in the sector across the EU, potential improvements to current tools or instruments and the best allocation of financial resources. For most member states, there is a need to simplify the current system. This would enable an increased overall organisation rate of producers, and reduce the imbalance in levels of organisation between regions and member states<sup>68</sup>.

On 19 May 2014, Ministers in the Agriculture Council held an exchange of views on minor uses of plant protection products. The term 'minor uses' covers areas where there is little financial incentive for industry to develop and/or apply for authorisation for plant protection products. This usually means either a pest problem for a minor crop, or a minor pest problem for a major crop. Ministers supported the creation of a European fund to deal with the problem of minor uses. The fund, suggested in a recent Commission report on plant protection products, would help develop additional tools to control diseases for minor crops.

**Food waste:** Ministers looked at the issue of food loss and food waste, and discussed some potential solutions to the problem. One of the suggestions discussed was to exempt more products from the requirement to display a best before date. Some products with a long shelf life keep their quality longer are often still safe to eat after the indicated best before date. Certain foodstuffs such as wine, cooking salt, solid sugar and some confectionary products are already exempt from the rules.

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<sup>67</sup> Reuters, *U.S. will allow EU citizens to sue over data privacy*, 25 June 2014, <http://www.reuters.com/article/2014/06/25/usa-europe-dataprotection-idUSL6N0P63OG20140625> (last visited on 20 Sept. 2014).

<sup>68</sup> Council of the European Union, *Council discusses conditions in the EU's fruit and vegetable sector*, 14 April 2014, <http://www.consilium.europa.eu/homepage/highlights/council-discusses-conditions-in-the-eus-fruit-and-vegetable-sector?lang=en> (last visited on 20 Sept. 2014).

During the meeting, ministers also looked at:

- whether there is a need to revise current rules on animal welfare during transport
- a request for agricultural ministers to also be involved in Council discussions on the 2030 framework for climate and energy
- a request for reinforced measures on the import of citrus fruit from South Africa, to prevent black spot disease entering the EU
- Difficulties relating to the 2014-2020 draft guidelines for state aid in the agriculture and forestry sector and in rural areas.

The Council also adopted conclusions welcoming the new EU forest strategy<sup>69</sup>.

#### **IV.B. Services**

##### *a) EU Member States call on the Commission to intensify push for Maritime Services Provisions in FTAs*

The EU Member States provided that the EU is highly dependent on maritime transport both for its internal and external trade since 75% of the Union's imports and exports and 37% of the internal trade transit through seaports and that shipping is a highly mobile industry facing increasingly fierce competition from third countries.<sup>70</sup> The shipping and related services are an important contributor to the European economy and to the quality of life of European citizens, providing jobs and being essential for European competitiveness. The EU's blue economy currently represents 5.4 million jobs and a gross added value of almost €500 billion per year. Shipping is a key element of the security of the EU supply chain in particular as regards the importation of energy and raw materials.

The European maritime sector faces significant challenges and further action is needed to maintain and develop and ensure open maritime markets and access to cargoes without restraints. The European shipping faces significant challenges in relation to strengthened environmental requirements. The EU Member called for concrete actions towards enhancing maritime know-how and improving the attractiveness of maritime careers for both men and women with the active involvement of all relevant parties by encouraging links between education and industry to promote labour mobility and transferability of skills as well as the effective implementation of relevant international Conventions; in the context, REFFIRM that the TTE Council Conclusions of 2003 and 2005 "on improving the image of Community shipping and attracting young people to the seafaring profession" remain fully pertinent.

#### **IV.C. Energy**

##### *a) EU's energy challenges*

Securing energy supplies at affordable prices, improving energy efficiency and reducing harmful emissions will be high on the agenda of the European Parliament for the coming months and years.<sup>71</sup> These issues will

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<sup>69</sup> Council of the European Union, *Council discusses agricultural issues*, 20 June 2014, <http://www.consilium.europa.eu/homepage/highlights/council-discusses-agricultural-issues?lang=en> (last visited on 20 Sept. 2014).

<sup>70</sup> Council of the European Union, *Council conclusions on the Mid-Term Review of the EU's Maritime Transport Policy until 2018 and Outlook to 2020*, [http://insidetrade.com/iwfile.html?file=jun2014%2Fwto2014\\_1664a.pdf](http://insidetrade.com/iwfile.html?file=jun2014%2Fwto2014_1664a.pdf) (last visited on 20 Sept. 2014).

<sup>71</sup> European Parliament, *Powering up: the energy challenges facing Europe*, 24 June 2014, <http://www.europarl.europa.eu/news/en/news-room/content/20140624STO50302/html/Powering-up-the-energy-challenges-facing-Europe> (last visited on 20 Sept. 2014).

also be discussed at the Council summit in Ypres and Brussels on 26-27 June 2014 during week dedicated to sustainable energy and marked by hundreds of events throughout Europe. On 28 May 2014, the European Commission presented a plan on how to reduce the EU's energy dependence, which will now be scrutinized and eventually be voted on by Parliament. The main aims of the proposal are reducing energy consumption, diversifying energy sources and suppliers and improving energy production and cooperation between countries in the EU. The Commission already proposed on 22 January 2014 new climate and energy targets for the period up to 2030. These included a 40% cut CO2 emissions compared to 1990 levels, a renewable energy target of at least 27% of EU energy consumption and new energy efficiency target expected to be announced before the summer break. In response to this plan, Parliament called in February for a 40% reduction in energy consumption, adding that targets should be binding. The Parliament will also continue working on legislation that would limit the amount of fuel produced from food crops and help shift to biofuels that are produced from non-food sources, such as waste.

*b) Comprehensive strategy to strengthen security of supply*

The European Commission reacts on the current geopolitical environment and the EU's import dependence: It advocates a new European Energy Security Strategy. Diversifying external energy supplies, upgrading energy infrastructure, completing the EU internal energy market and saving energy are among its main points.<sup>72</sup> The strategy also highlights the need to coordinate national energy policy decisions and the importance of speaking with one voice when negotiating with external partners. It builds on the progress already achieved since the gas crisis in 2009. The proposals of the Commission, including actions to ensure uninterrupted supplies this winter, will be discussed by EU Heads of State or Government at the European Council on 26-27 June 2014.

The European Commission President provided that the EU has done a lot in the aftermath of the gas crisis 2009 to increase its energy security. Yet it remains vulnerable as the Ukraine again drove home this message. He provided that: *We want strong and stable partnerships with important suppliers, but must avoid falling victim to political and commercial blackmail. We also need to complete the internal energy market, improve our infrastructure, become more energy efficient and better exploit our own energy resources. Moreover, we need accelerate the diversification of external energy suppliers, especially for gas.* In order to ensure uninterrupted supplies this winter, the Commission proposes comprehensive risk assessments (stress tests). These would be conducted on the regional or EU level by simulating a disruption of the gas supply. The aim is to check how the energy system can cope with security of supply risks and based on that develop emergency plans and create back-up mechanisms. Such mechanisms could include increasing gas stocks, decreasing gas demand via fuel-switching (in particular for heating), developing emergency infrastructure like, for example, completing reverse flow possibilities and pooling parts of the existing energy security stocks.

To address the medium and long-term security of supply challenges, the Commission proposes actions in several key areas:

- 1) Completing the internal energy market and building missing infrastructure links is essential to quickly respond to possible supply disruptions by directing energy flows across the EU as and where needed. The Commission has identified 33 infrastructure projects which are critical for the EU's energy security. Apart from that, the Commission proposes to extend the target as regards interconnection of installed electricity capacity to 15% by 2030 while taking into account the cost aspects and the potential of commercial exchanges in the relevant regions. (Member States have already committed to ensure interconnectivity of 10% by 2020).
- 2) Diversifying supplier countries and routes. In 2013, 39% of EU gas imports by volume came from Russia, 33% from Norway and 22% from North Africa (Algeria, Libya). While the EU will maintain

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<sup>72</sup> European Commission, *Energy Security: Commission puts forward comprehensive strategy to strengthen security of supply*, 28 May 2014, [http://insidetrade.com/iwfile.html?file=may2014%2Fwto2014\\_1595a.pdf](http://insidetrade.com/iwfile.html?file=may2014%2Fwto2014_1595a.pdf) (last visited on 20 Sept. 2014).

its relationship with reliable partners, it will seek ties to new partner countries and supply routes, e.g. in the Caspian Basin region by further expanding the Southern Gas Corridor; by developing the Mediterranean Gas Hub and by increasing LNG supplies.

- 3) Strengthening emergency and solidarity mechanisms and protecting critical infrastructure. In this respect the Commission will for example review the provisions and implementation of the Security of Gas Supply Regulation.
- 4) Strengthening emergency and solidarity mechanisms and protecting critical infrastructure. In this respect the Commission will for example review the provisions and implementation of the Security of Gas Supply Regulation.
- 5) Increasing indigenous energy production: This includes further deployment of renewables, and sustainable production of fossil fuels.
- 6) Improving coordination of national energy policies and speaking with one voice in external energy policy. The Commission aims to be involved at an early stage in envisaged intergovernmental agreements with third countries that could have a possible impact on security of supply. Moreover, the Commission will ensure that all such agreements and all infrastructure projects on EU territory fully comply with the relevant EU legislation.
- 7) Further developing energy technologies.
- 8) Increasing energy efficiency. As buildings are responsible for 40% of our energy consumption and a third of natural gas use, this sector plays a crucial role.

Global energy demand is growing and is expected to increase by 27% by 2030. On the other hand EU domestic energy production has decreased by almost one-fifth between 1995 and 2012. Today more than 50% of the EU's energy needs are covered by external suppliers: in 2012 almost 90% of oil, 66% of gas and 42% of solid fuels consumed in the EU were imported, representing a bill of more than €1 billion per day.

## V. ANNEXES

### A. SANITARY AND PHYTOSANITARY MEASURES

Notification	Agency Responsible	Product	Regions	Purpose	Description	International Regulating Authority
G/SPS/N/EU/64	European Commission, Health and Consumers Directorate-General	Novel foods	All trading partners	food safety	The proposed regulation repeals Regulation (EC) No 258/97 on Novel Foods. It creates in the European Union (EU) a centralised authorisation system, with a scientific risk assessment based on food safety and a Commission authorisation decision for the placing of novel foods on the EU market. It provides greater certainty, simplifies and speeds up the authorisation process for applicants thereby reducing administrative burden and costs. The proposed regulation also	None

					introduces an appropriate authorisation process for foods, which are new in the European Union but are traditional in third countries. If a history of safe food use can be demonstrated in a third country and there are no food safety objections from the European Food Safety Authority (EFSA) or EU member States the food will be allowed to be placed on the EU market on the basis of a notification from the third country's food business operators.	
1. G/SPS/ N/EU/82 2.	European Commission, Health and Consumers Directorate-General	Aluminium lakes of INS 101 Riboflavins and INS 120 Carmines	All trading partners	food safety	<p>The European Food Safety Authority in its opinion of 22 May 2008 lowered the tolerable weekly intake (TWI) for aluminium and the conditions of use for food additives containing aluminium, including aluminium lakes were amended by Commission Regulation (EU) No 380/2012 in order to ensure that the revised TWI was not exceeded.</p> <p>Applications for authorisation of the use of aluminium lakes of riboflavins (E 101) and the extension of use of aluminium lakes of cochineal, carminic acid, carmines (E 120) to certain specific foods were received and considered with a special attention to a possible exposure to aluminium in order not to undermine Regulation (EU) No 380/2012. It is not expected that the considered authorizations would have a significant impact on the total exposure to</p>	CODEX

					aluminium. Therefore, it is appropriate to authorise the requested uses and to modify the specifications for INS 101 with regard to the use of aluminium lakes of colours.	
3. 4. G/SPS/ N/EU/83	European Commission, Health and Consumers Directorate-General	Meat and meat preparations	All trading partners	Food safety	<p>In the interest of legal clarity it is appropriate to use for the purposes of category 8 the terms "fresh meat", "meat preparations" and "meat products" as defined in Regulation (EC) No 853/2004.</p> <p>The Commission has received requests for the uses certain additives in meat preparations and it is appropriate to include those uses in the Union list, where they comply with the general conditions of use of food additives laid down in Regulation (EC) No 1333/2008 and taking into account the need to maintain certain traditional products on the market in some member States: Curcumin (E 100), Carmines (E 120), Caramels (E 150a-d), Paprika extract (E 160c) and Beetroot red (E 162) for the colouring of merguez type products and salsicha fresca, mici, butifarra fresca, longaniza fresca, chorizo fresco, biftteki, soutzoukaki, kebab, cevapcici and pljeskavice;</p> <p>The use of Acetic acid and acetates (E 260 - 263), Lactic acid and lactates (E 270, E 325-327), Ascorbic acid and ascorbates (E 300-302), Citric acid and citrates (E 330-333);</p> <p>Phosphoric acid - phosphates - di - tri- and polyphosphates (E</p>	None

					<p>338 - 452) only in preparations where brine has been injected and in Kasseler, Bräte, Surfleisch, toorvorst, šašlökk, ahjupraad and burger meat with a minimum vegetable and/or cereal content of 4% mixed within the meat and Finnish grey salted Christmas ham;</p> <p>Nitrites (E 249 - 250) as a preservative in certain traditional products: lomo de cerdo adobado, pincho moruno, careta de cerdo adobada, costilla de cerdo adobada, Kasseler, Bräte, Surfleisch, toorvorst, šašlökk, ahjupraad, kieübasa surowa biaüa, kieübasa surowa metka and tatar wouowy (danie tatarskie);</p> <p>Alginates (E 401 - 404), Carrageenan (E 407), Processed echema seaweed (E 407a), Locust bean gum (E 410), Guar gum (E 412), Tragacanth (E 413), Xanthan gum (E 415), Acetylated distarch phosphate (E 1414) and Hydroxy propyl distarch phosphate (E 1442) in meat preparations to which ingredients have been injected and in meat preparations composed of meat parts that have been handled differently: minced, sliced or processed and that are combined together, e.g. roulades containing minced meat;</p> <p>? Sodium carbonates (E 500) as humectant in poultry meat preparations, mici, bifteki, soutzoukaki, kebab, seftalia, cevapcici and pljeskavice; and</p> <p>? Acetylated distarch phosphate (E</p>	
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					1414) and Hydroxy propyl distarch phosphate (E 1442) in preparations in which ingredients have been injected, in meat preparations composed of meat parts that have been handled differently and in gyros, souvlaki, bifteki, soutzoukaki, kebab and seftalia	
5. G/SPS/ N/EU/80	European Commission, Health and Consumers Directorate-General	Certain heat-treated meat products	All trading partners	Food safety	<p>There is a technological need to use Ethyl lauroyl arginate as a preservative in heat-treated meat products in order to improve the microbiological quality of those food products, including inhibiting the growth of harmful micro-organisms such as <i>Listeria monocytogenes</i>. As the use of Ethyl lauroyl arginate in heat treated meat products will help maintaining their quality and safety, it is appropriate to authorise its use in heat-treated meat products and to assign number E 243 to that food additive.</p> <p>In July 2013, the European Food Safety Authority published a statement on a refined exposure assessment of Ethyl lauroyl arginate based on this uses as a food additive and concluded that the exposure for all population groups is below the Acceptable Daily Intake (ADI) .</p>	CODEX
6. G/SPS/ N/EU/81		Cereals and cereal products	All trading partners	Food safety	<p>This amendment to Commission Regulation (EC) 401/2006 is to establish:</p> <ul style="list-style-type: none"> <li>• specific methods of sampling of very large lots;</li> <li>? sampling of spices with a large particle size;</li> <li>? sampling</li> </ul>	None



					procedure for food supplements ; ? performance criteria for the analysis of T-2, HT-2 and citrinin; and ? criteria for screening methods of analysis for mycotoxin	
7. G/SPS/N/EU/77	European Commission, Health and Consumers Directorate-General	Food additives	All trading partners	Food safety	Authorisation of Advantame as food additive (sweetener) and setting of specifications.	None
8. G/SPS/N/EU/78	European Commission, Health and Consumers Directorate-General	Certain selected commodities of plant and animal origin	All trading partners	Food safety	The regulation implements CXLs adopted by the Codex Alimentarius Commission on 5 July 2013, except where the European Union has provided a scientific justification to maintain a higher level of protection than provided by an international standard.	CODEX
9. G/SPS/N/EU/79	European Commission, Health and Consumers Directorate-General	Entire fresh fruit and vegetables	All trading partners	Food safety	A program for the re-evaluation of these food additives is laid down in Commission Regulation (EU) No 257/2010. Interested business operator(s) and any other interested party shall submit the data related to the re-evaluation of a food additive within the period set by EFSA in its calls for data. Where the information necessary for the completion of the re-evaluation of a particular food additive is not provided, the food additive may be removed from the Union list.  EFSA launched public calls for scientific data on montan acid esters (E 912) in February 2012. No data on toxicokinetics and reproductive and developmental toxicity of montan acid esters were available. The	None

					<p>available data on short-term and subchronic toxicity, genotoxicity and chronic toxicity and carcinogenicity of montan acid esters were limited. No data on the usage was submitted. Based on these limitations EFSA concluded that the safety of montan acid esters as a food additive could not be evaluated.</p> <p>Therefore, Annex II to Regulation (EC) No 1333/2008 should be amended by removing montan acid esters (E 912) from the Union list of authorised food additives as the absence of recent scientific evidence no longer justifies its inclusion in the list. At the same time, the additives should be removed from Commission Regulation 231/2012 laying down its specifications.</p>	
10. G/SPS/N/EU/76	European Commission, Health and Consumers Directorate-General	Blood products not intended for human consumption that could be used as feed material, intended for dispatch to, or for transit through, the European Union	All trading partners	animal health	Protective measures in relation to porcine diarrhoea caused by a new deltacoronavirus and replacing temporarily the health certificate set out in Regulation (EU) No 142/2011 as regards the animal health requirements for imports of spray dried blood and blood plasma of porcine origin intended for the production of feed for farmed porcine animals.	OIE
11. G/SPS/N/EU/75	European Commission, Health and Consumers Directorate-General	Materials and articles in contact with food including catering containers and materials and articles in contact with drinking water	All trading partners	Food safety	The proposed Commission Regulation is amending and correcting Commission Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food. Regulation (EU) No	None

					<p>10/2011 of 15 January 2011 is a specific Regulation within the meaning of the framework Regulation (EC) No 1935/2004 which sets out the main principles and procedures applicable to food contact materials.</p> <p>The proposed Commission Regulation is updating the Union list in Annex I to (EU) No 10/2011. It amends the authorisation for nine substances, includes six new substances with a favourable assessment by the European Food Safety Authority (EFSA) for their use in plastic materials and articles intended to come into contact with food, and deletes one authorisation.</p>	
12. G/SPS/N/EU/74	European Commission, Health and Consumers Directorate-General	Bovine semen	All trading partners	Animal health	Imports into and transit through the European Union of consignments of bovine semen collected from donor bulls complying with more than one condition for declaring the absence of the bluetongue and epizootic haemorrhagic disease, listed in the health attestation in Part II of the model animal health certificate set out in Section A of Part 1 of Annex II to Implementing Decision 2011/630/EU, as they provide the same level of animal health guarantees.	OIE
13. G/SPS/N/EU/70	European Commission, Health and Consumers Directorate-General	Cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables	All trading partners	Food safety	These notified annexes to the draft Regulation set proposed maximum residue levels (MRLs) for amitrole, dinocap, fipronil, flufenacet, guazatine, pendimethalin,	CODEX

					propyzamide, and pyridate in Annex II to Regulation (EC) No 396/2005. MRLs for these substances in certain commodities are changed: either increased or lowered. Higher MRLs are set to accommodate new uses in the European Union and in third countries which export those commodities to the European Union. Lower MRLs are set after updating the limit of determination and/or deleting old uses which are not authorised any more in the European Union or for which there is not enough data for an MRL to be set.	
14. G/SPS/N/EU/71	European Commission, Health and Consumers Directorate-General	Cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables	All trading partners	Food safety	These notified annexes to the draft Regulation set proposed maximum residue levels (MRLs) for benfuracarb, carbaryl, carbofuran, carbosulfan, furathiocarb, procymidone and profenofos. MRLs for these substances are lowered in certain commodities. Lower MRLs are set after updating the limit of determinations and/or deleting old uses which are not authorised any more in the European Union or for which a human health concern may not be excluded.	CODEX
15. G/SPS/N/EU/72	European Commission, Health and Consumers Directorate-General	Certain selected commodities of plant and animal origin	All trading partners	Food safety	These notified annexes to the draft Regulation set proposed maximum residue levels (MRLs) for anthraquinone, benfluralin, bentazone, bromoxynil, chlorothalonil, famoxadone, imazamox, methyl bromide, propanil, propargite and sulphuric acid in	CODEX

					Annexes II and V to Regulation (EC) No 396/2005. MRLs for these substances in certain commodities are changed: either increased or lowered. Higher MRLs are set to accommodate new uses in the European Union and in third countries which export those commodities to the European Union. Lower MRLs are set after updating the limit of determinations and/or deleting old uses which are not authorised any more in the European Union or for which there is not enough data for an MRL to be set.	
16. G/SPS/ N/EU/73		HS Codes: ex 07049090, ex 07081000, ex 07082000, 07096010, 07093000, 07096010, ex 07096099, ex 07099990, ex 07102200, 071022, 07108051, ex 07108059, ex 07108095, 07133900, 08051020, 08051080, ex 08054000, 080620, 08101000, 081110, 0902, 090420, 09042110, 09042190, ex 09042200, 09081100, 09081200, 091050, 09109105, ex 11063090, 12024100, 12024200, ex 12077000, ex 12119086, 20081110, 20081191, 20081196, 20081198, ex 20089999, ex 14049000, 3507	Afghanistan, Brazil, China, Dominican Republic, Egypt, India, Indonesia, Kenya, Morocco, Nigeria, Sierra Leone, Sudan, Thailand, Turkey, Viet Nam, Uzbekistan	Food safety	The Regulation reviews the list of imports of feed and food of non-animal origin which are subject to an increased level of official controls. The changes concern the removal from the list of dried noodles from China and the inclusion in the list of betel leaves from India and Thailand, enzymes from India, groundnuts and derived products from Sudan and vine leaves from Turkey.	None

17. G/SPS/ N/EU/69	European Commission, Health and Consumers Directorate- General	Cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables	All trading partners	Food safety	These notified annexes to the draft Regulation set proposed maximum residue levels (MRLs) for asulam, cyanamide, dicloran, flumioxazin, flupyrulfuron- methyl, picolinafen and propisochlor in Annexes II, III and V to Regulation (EC) No 396/2005. MRLs for these substances in certain commodities are changed: either increased or lowered. Higher MRLs are set to accommodate new uses in the European Union and in third countries which export those commodities to the European Union. Lower MRLs are set after updating the limit of determination and/or deleting old uses which are not authorized any more in the European Union or for which there is not enough data for an MRL to be set.	CODEX
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*Source:* WTO Documents Online

## V.2. CONTINGENCY TRADE PROTECTION

### V A. ANTI-DUMPING

On 29<sup>th</sup> May 2014 the EU set out fresh guidelines on how to apply for a refund of anti-dumping duties under Article 11(8) of Council Regulation (EC) No 1225/2009). These guidelines repealed and replaced those published in 2002. The purpose of the guidelines is to clarify for the different parties involved in a refund procedure the conditions to be fulfilled by an application and to give a comprehensive step-by-step explanation of the procedure which may lead to a reimbursement<sup>73</sup>.

#### *EU and China*

- EU initiated anti-dumping proceeding concerning imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan. The European Commission received a complaint alleging that imports of stainless steel cold-rolled flat

<sup>73</sup> (EC) No 1225/2009 [http://trade.ec.europa.eu/doclib/docs/2014/june/tradoc\\_152525.guidelines.en.C164-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/june/tradoc_152525.guidelines.en.C164-2014.pdf)

products, originating in the People's Republic of China and Taiwan, are being dumped and are thereby causing material injury to the Union industry<sup>74</sup>.

- On 13 May 2014 the EU imposed a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China<sup>75</sup>
- On 23 May 2014 amending Council Implementing Regulation (EU) No 1389/2011 imposed a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China following a 'new exporter' review pursuant to Article 11(4) of Council Regulation (EC) No 1225/2009<sup>76</sup>
- On 13 May 2014 amended Council Implementing Regulation (EU) No 102/2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in the People's Republic of China. The investigation confirmed that Goodwire was a genuine producer of the product under review and that it was not related to any Chinese exporters or producers subject to the anti-dumping measures in force. <sup>77</sup>
- The EU initiated an expiry review of the anti-dumping measures applicable to imports of certain candles, tapers and the like originating in the People's Republic of China<sup>78</sup>
- On 12 May 2014 EU terminated the anti-dumping proceeding concerning imports of agglomerated stone originating in the People's Republic of China<sup>79</sup>
- On 9 April 2014 EU imposed a definitive anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China and Russia<sup>80</sup>.
- On 13 May 2014 the EU imposed definitive countervailing duties on imports of solar glass originating in the People's Republic of China<sup>81</sup>

### ***EU and Malaysia, India and Indonesia***

- On 26 May 2014 EU terminated the partial reopening of the anti-dumping investigation concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia<sup>82</sup>

<sup>74</sup>(2014/C 196/07) [http://trade.ec.europa.eu/doclib/docs/2014/june/tradoc\\_152620.init.en.C196-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/june/tradoc_152620.init.en.C196-2014.pdf)

<sup>75</sup> Commission Implementing Regulation (EU) No 470/2014 [http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc\\_152500.def.en.L142-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152500.def.en.L142-2014.pdf)

<sup>76</sup> EU Implementing Regulation No 569/2014 Available at [http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc\\_152519.amend.en.L157-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152519.amend.en.L157-2014.pdf)

<sup>77</sup> No 493/2014 [http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc\\_152496.amend-Goodwire.en.L139-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152496.amend-Goodwire.en.L139-2014.pdf)

<sup>78</sup> Regulation (2014/C 144/05)

<sup>79</sup>(2014/272/EU) [http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc\\_152499.term.en.L138-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152499.term.en.L138-2014.pdf)

<sup>80</sup> Commission Implementing Regulation (EU) No 360/2014 [http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc\\_152347.def.en.L107-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc_152347.def.en.L107-2014.pdf)

<sup>81</sup> Commission Implementing Regulation (EU) No 471/2014 [http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc\\_152501.def.en.L142-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152501.def.en.L142-2014.pdf)

## EU and USA

- On 14 April 2014 the EU terminated the partial interim review concerning the anti-subsidy measures on imports of biodiesel originating in the United States of America, as extended to imports consigned from Canada, whether declared as originating in Canada. The investigation established that the applicant is a genuine producer of biodiesel and that it is not related to any producer of biodiesel located in the United States of America<sup>83</sup>.

### V.3. TECHNICAL BARRIERS TO TRADE

Notification & Date	Agency Concerned	Products Concerned	Purpose of Notification
G/TBT/N/EU/218 30/06/2014	European Commission	Biocidal products	This notification concerns protection of public health and of the environment. Harmonisation of the EU market on biocidal products. This draft Commission Implementing Regulation approves permethrin as an existing active substance for use in biocidal products for product-types 8 and 18. <sup>84</sup>
G/TBT/N/EU/217 26/06/2014	European Commission	Minerals	This notification concerns Protection of human health or safety. This draft Commission Regulation concerns the inclusion of certain substances in the positive lists of Directive 2002/46/EC and Regulation (EC) 1925/2006.  The purpose of this draft Regulation is to amend the positive lists of the above-mentioned legislation by adding new mineral substances that may be used for the manufacture of food supplements and for which the European Food Safety Authority has given a favourable opinion. <sup>85</sup>
G/TBT/N/EU/214 28/05/2014	European Commission	T-category motor vehicles	This notification concerns the environmental and propulsion performance requirements of agricultural and forestry vehicles. Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles (OJ L 60, 2.3.2013, p.1) sets out a comprehensive Union type-approval system for agricultural and forestry vehicles. It also sets out the fundamental rules and principles on functional safety, occupational safety and environmental performance and delegates to the European Commission the power to lay down the technical specifications in delegated acts.  According to Article 19 of Regulation (EU) No 167/2013, the specific limit values, test procedures and requirements for polluting exhaust emissions laid down for mobile machinery in Directive 97/68/EC shall apply to agricultural and forestry vehicles. In addition, Directive 2000/25/EC sets out, in its Annexes I and II, the requirements for EU type-approval of a type of engine or engine family as a separate technical unit in terms of the pollutants emitted,

<sup>82</sup>EU Implementing Regulation No 570/2014  
[http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc\\_152520.term.en.L157-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152520.term.en.L157-2014.pdf)

<sup>83</sup> [http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc\\_152438.term.en.L115-2014.pdf](http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc_152438.term.en.L115-2014.pdf)

<sup>84</sup> Available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=125549,125476,125376,125383,125087,125086,124917,124873,124874,124864&CurrentCatalogueIdIndex=0&FullTextSearch=](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=125549,125476,125376,125383,125087,125086,124917,124873,124874,124864&CurrentCatalogueIdIndex=0&FullTextSearch=)

<sup>85</sup> Available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=125549,125476,125376,125383,125087,125086,124917,124873,124874,124864&CurrentCatalogueIdIndex=1&FullTextSearch=](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=125549,125476,125376,125383,125087,125086,124917,124873,124874,124864&CurrentCatalogueIdIndex=1&FullTextSearch=)



			<p>and the requirements for the EU type-approval of an agricultural and forestry vehicle type equipped with an internal combustion engine. That Directive will be repealed by Regulation (EU) No 167/2013 with effect from 1 January 2016 and therefore its provisions must be carried over to the notified draft. Finally, Directive 2009/63/EC sets out, in its Annex VI, the requirements for EU type-approval of wheeled agricultural and forestry vehicles in terms of the permissible external sound levels. That Directive will be repealed by Regulation (EU) No 167/2013 with effect from 1 January 2016 and therefore its provisions must be carried over to the notified draft too.</p> <p>The Commission is empowered to make reference to specific testing procedures and emission limit values set-out in Directive 97/68/EC and to carry over the specific technical requirements and test procedures for environmental performance of agricultural and forestry vehicles from the repealed Directives, adapted when necessary to technical progress. As far as possible, the requirements are based on, or refer to, international requirements adopted under the UNECE framework (Revised 1958 Agreement) . Moreover, the enclosed draft is fully aligned to the provisions of Directive 97/68/EC with respect to the recognition of alternative type approval according to UNECE regulations. In this respect, type-approvals and, where applicable, the pertaining approval marks for the emissions of exhaust pollutants are recognised as being equivalent to an approval covered by the notified draft for the engine types and engine families of agricultural and forestry vehicles.<sup>86</sup></p>
G/TBT/N/EU/213 21/05/2014	European Commission	Extender oils for the production of tyres or parts of tyres. Phthalates in toys and childcare articles.	<p>Draft Commission Regulation amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards polycyclic aromatic hydrocarbons and phthalates</p> <p>The draft regulation is a mere technical amendment of certain elements of entries 50, 51 and 52 in Annex XVII to the REACH Regulation (originally notified under reference <a href="#">G/TBT/N/EEC/52</a>) . It does not affect the scope of the existing restrictions.<sup>87</sup></p>
G/TBT/N/EU/212 07/04/2014	European Commission	Active substances for medicinal products for human use.	<p>Draft Commission Delegated Regulation supplementing Directive 2001/83/EC of the European Parliament and of the Council with regard to principles and guidelines of good manufacturing practice for active substances for medicinal products for human use.</p> <p>This draft Commission Delegated Regulation addresses the EU principles and guidelines of good manufacturing practice for active substances for medicinal products for human use.</p> <p>This draft Delegated Regulation is largely based on the existing guidelines of good manufacturing practice (GMP) for active substances for medicinal products for human use published by the Commission in EudraLex - <i>the rules governing medicinal products in the European Union, volume 4</i>. In practice, this draft Delegated Regulation will not modify the current EU standards of good manufacturing practice for active substances but will structure them into a legal framework to facilitate their enforcement.</p>

<sup>86</sup> Available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=125549,125476,125376,125383,125087,125086,124917,124873,124874,124864&CurrentCatalogueIdIndex=6&FullTextSearch=](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=125549,125476,125376,125383,125087,125086,124917,124873,124874,124864&CurrentCatalogueIdIndex=6&FullTextSearch=)

<sup>87</sup> Available at: [http://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=124780,124674,124624,124573,124577,124443,124136,123936,123942,123870&CurrentCatalogueIdIndex=0&FullTextSearch=](http://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=124780,124674,124624,124573,124577,124443,124136,123936,123942,123870&CurrentCatalogueIdIndex=0&FullTextSearch=)

			This is important in the context of the recent entry into force of the new EU rules on active substance importation (Articles 46b and 111b of Directive 2001/83/EC) . Existing written confirmations certifying compliance with standards equivalent to those of the EU will not need to be reissued following the entry into force of this Delegated Regulation. Similarly, non-EU countries having been assessed as having manufacturing standards equivalent to those in the EU according to Article 111b of Directive 2001/83/EC will not need to be re-assessed following the entry into force of this Delegated Regulation. <sup>88</sup>
G/TBT/N/EU/211 04/04/2014	European Commission	Agricultural products and food	This notification concerns Production methods, labelling and control of organic food. Proposal for a Regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No 834/2007 (COM(2014) 180 final). This draft Commission Regulation establishes the principles of organic production of agricultural products and lays down the rules concerning organic production and the use of indications referring thereto in labelling and advertising. It contains detailed production rules applying to organic production and processing.
G/TBT/N/EU/209 02/04/2014	European Commission	Subsystem 'rolling stock - noise'.	The draft Commission Regulation establishes in its Annex the technical specification for interoperability (TSI) relating to the subsystem 'rolling stock - noise'. The TSI:  a) indicates its intended scope (chapter 1);  b) gives the definition of the subsystem (chapter 2);  c) lays down essential requirements for the concerned domain and their link to the essential requirements (chapter 3);  d) establishes the functional and technical specifications to be met by the subsystem and its interfaces vis-à-vis other subsystems (chapter 4);  e) states, in each case under consideration, which procedures are to be used for the 'EC' verification of the subsystems (chapter 6);  f) further defines the application of the TSI to new and existing rolling stock and indicates country specific cases (chapter 7) . In order to keep pace with technological progress and better protect citizens from rail noise.
G/TBT/N/EU/210 02/04/2014	European Commission	Control Command and Signalling system.	This notification concerns the update of the Decision to take into account changes to the system specifications, extend its geographical scope and clarify some provisions. This Decision amends the current Decision in the following way:  - it updates the Annex A to take into account changes to the detailed system specifications managed by the European Railway Agency; - it extends the scope of the Decision to "off-TEN" networks; - it clarifies the conformity assessment in case of partial conformity; - it makes Baseline 3 mandatory for on-board equipment; - it reduces the open point on reliability.

**Source:** WTO Documents Online

<sup>88</sup> Available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=124780,124674,124624,124573,124577,124443,124136,123936,123942,123870&CurrentCatalogueIdIndex=9&FullTextSearch=](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=124780,124674,124624,124573,124577,124443,124136,123936,123942,123870&CurrentCatalogueIdIndex=9&FullTextSearch=)