



## **TRADE POLICY DEVELOPMENTS PAPER NO. 36**

**TRADE POLICY MONITORING REPORT  
OF  
EUROPEAN UNION  
(OCTOBER 2012- DECEMBER 2012)  
VOLUME VII**

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## ABBREVIATIONS

AD	-	Anti Dumping
ASEAN	-	Association of South East Asian Nations
ATA	-	Air Transport Association of America
BIT	-	Bilateral Investment Treaty
BNC	-	Bi-Regional Negotiations Committee
Bq	-	Becquerel
BTI	-	Binding Tariff Information
CCT	-	Common Customs Tariff
CEPA	-	Comprehensive Economic Partnership Agreement
CETA	-	Comprehensive Economic and Trade Agreement
EBA	-	Everything But Arms
ECB	-	European Central Bank
ECON	-	Economic and Monetary Affairs Committee
ECT	-	European Court of Justice
EEA	-	European Economic Area
EFTA	-	European Free Trade Agreement
EMU	-	Economic and Monetary Union
ENs	-	Electronic Entry Summary
ENSREG	-	European Nuclear Safety Regulator's Group
EPC	-	European Patent Convention
EPO	-	European Patent Office
ERM	-	Exchange Rate Mechanism
ESM	-	European Stability Mechanism
ETD	-	Energy Taxation Directive
EU	-	European Union
EU-ETs	-	European Union Emission Trading Scheme
(Euratom)	-	European Atomic Energy Community
FDI	-	Foreign Direct Investment
FIR	-	Foreign Investment Regime
FTA	-	Free Trade Agreement
GATT	-	General Agreement on Tariff And Trade

GDP	-	Gross Domestic Product
GM	-	Genetically Modified
GMOs	-	Genetically Modified Organisms
GPA	-	Government Procurement
GSP	-	Generalized System of Preferences
ICT	-	Information and Communication Technology
IMF	-	International Monetary Fund
JRC	-	Joint Research Centre
LDCs	-	Least Developed Countries
MEP	-	Member of European Parliament
PRC	-	People's Republic of China
SMA	-	Single Market Act
SPS	-	Sanitary and Phytosanitary measures
SVHCs	-	Seven Substances of very High Concern
TBR	-	Trade Barriers Regulation
TACs	-	Total Allowable Catches
TBT	-	Technical Barriers to Trade
TEC	-	Transatlantic Economic Council
TEC	-	Treaty Establishing European Community
TEU	-	Treaty on European Union
TFEU	-	Treaty on Functioning of the European Union
TKM	-	Tonne Kilometre Benchmark
USDOC	-	United States Department Of Commerce
VAT	-	Value Added Tax
WTO	-	World Trade Organization
WWAN	-	Wireless Wide Area Networking

## Executive Summary

- In order to supplement the domestic consumer demand in the face of the burgeoning sovereign debt crisis, EU continues to push for free trade agreements in the current quarter as well. To this effect, EU successfully negotiated a free trade deal with Singapore. It also entered into talks with Japan and Thailand to launch FTAs along the lines of the so-called 'new age agreements'.
- EU published its revised GSP during this quarter. EU's GSP will now be limited to 89 beneficiaries, resulting in a 50% reduction in the number of countries that have been benefitting from GSP treatment, the underlying objective being to grant preferences only to those countries that are truly in need.
- During the quarter, the EU General Court confirmed the decision of the Office for Harmonization in the Internal Market wherein it was held that there is a likelihood of confusion between 'BIMBO Doughnuts' and the 'Doughnuts' mark. The word 'doughnuts', which comprises the earlier trade mark (i.e., a registered and protected national mark), is descriptive or devoid of distinctive character in relation to the goods in question and hence would not be compatible either with the coexistence of Community trademarks and national trademarks. The BIMBO Group aggrieved by the judgment intends to appeal.
- The French Government rejected the imposition of a Special excise tax on palm oil, palm kernel and coconut oil, as it was inconsistent with Article 110 of the Treaty of the Functioning of the European Union which prohibits internal discriminatory taxation, direct or indirect, on products from other member states.
- EU finalized a project aimed at ensuring the protection of ten famous EU food names in China, the biggest consumer market in the world.

## TRADE POLICY MONITORING REPORT OF EUROPEAN UNION FOR THE QUARTERLY PERIOD: OCTOBER 2012- DECEMBER 2012

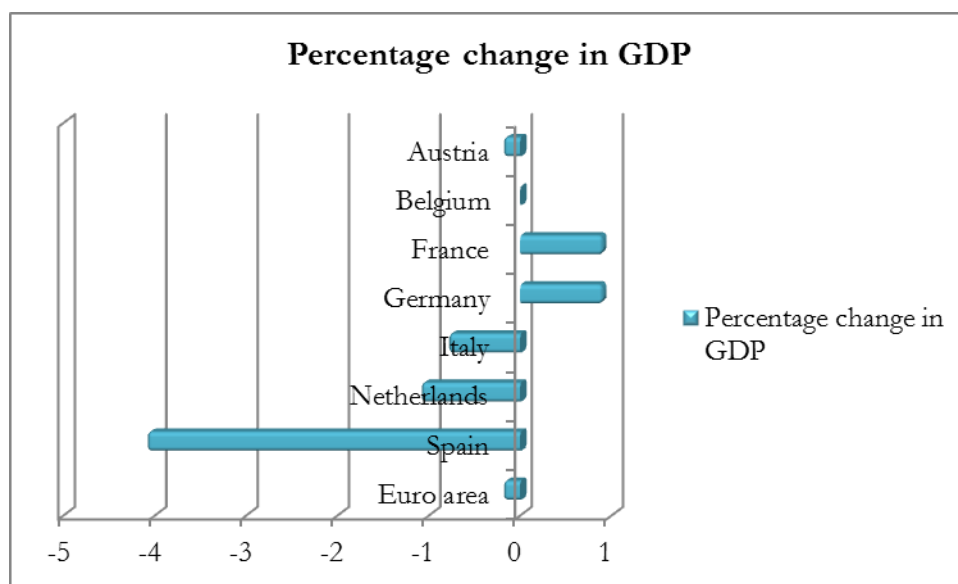
### I. INTRODUCTION

This is the seventh 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 the European Union during the period: October-December, 2012.

### II. ECONOMIC ENVIRONMENT AND MONETARY POLICY

In 2012, the European Union and the Eurozone economy contracted by 0.3% and 0.4% respectively. Higher taxes, reduced government spending and rising unemployment are the offsets to the positive effect of a gradual recovery in net exports of the 17-eurozone nations.

Germany, Europe's biggest economy, no longer appears immune from the crisis engulfing some smaller members of the EU. The overall economic activity is weak and the growth of money and credit could be subdued. The ECB expected the Eurozone inflation to fall below 2% next year.<sup>1</sup>



**Source:** THE ECONOMIST, December 2012.

This graph represents the percentage change in the GDP of various European economies during the present quarter. On comparison to the previous quarter, the GDP of Austria, Italy, Netherlands, Spain and euro area contracted by 0.2%, 0.8%, 1.1%, 4.1% and 0.2% respectively, whereas the GDP of France and Germany expanded by 0.9%. There was no change in the GDP of Belgium compared to the previous quarter.

<sup>1</sup> 'German economy shows signs of slowing', <http://money.cnn.com/2012/11/07/news/economy/german-economy-eurozone/index.html> (last visited 16 February 2013).

## **Eurozone Debt Crisis**

Investment strategists speak volumes about the dramatic improvement in the market sentiment towards the Eurozone. The end of 2012 was very crucial with the tensions about the Eurozone debt crisis being the highest at that time.

During July 2012, the President of the European Central Bank (ECB) Mario Draghi promised to “do whatever it takes” to save the Eurozone. He has significantly reduced the threat of Europe’s single currency area break up.

On the other hand, Spain focused on the foreign capital trickles that came back into its economy after months of outflow. The yield on Spanish benchmark 10-year bonds, which many investors treat as a proxy for risk in the eurozone as a whole, now stands at just under 5.4%, sharply down from 7.6%.

Investors have never been more sanguine about Italy, whose bond market collapsed at the end of 2011 and which was gearing up for a crucial parliamentary election, as it got sucked into the Eurozone crisis. Therefore, Italy has been selling 10 year bonds at pre-crisis yield levels.

The President of the ECB was successful in bond- purchasing pledge that drove down Spanish and Italian yields whereby attracting some foreign investors who see Italian bonds as a buying opportunity.<sup>2</sup>

## **III. TRADE AGREEMENTS AND ARRANGEMENTS**

### **EU and US**

The United States and European Union are considering a plan to create a huge US-EU free-trade bloc with the intent to draw the world’s economic output into an exclusively Western trade zone. A joint report by the White House-European Union committee “on whether it is politically realistic to try to create a massive US-EU free-trade bloc, pulling half the world’s economic output into a zone of lowered tariffs and coordinated regulation” is likely to be published during the next quarter, according to a US-based Washington Post, released during the present quarter. Proponents of the plan believe that by lowering business costs, reducing import duties and further opening markets on both sides of the Atlantic, there will be substantial benefits for both sides, adding nearly one percentage point to the European Union’s gross domestic product, about \$150 billion.<sup>3</sup> Also, a study by Sweden’s National Board of Trade estimated that trade between the two sides could surge by 20 percent, accounting to \$200 billion annually, if the agreement is entered into.

### **EU and Morocco**

On 1 October 2012, the new EU-Moroccan trade agreement entered into force, with EU becoming Morocco’s first trading partner. The agreement covers trade in agricultural and fisheries products. It was supposed to enter into force in July 2012, but was postponed due to slow ratification process by Morocco. The entering into force coincides now with the agricultural season in occupied Western Sahara.<sup>4</sup>

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<sup>2</sup> Nicholas Spiro, ‘Is the eurozone crisis almost over?’, <http://edition.cnn.com/2012/12/03/business/euro-crisis-over-spiro-op-ed> (last visited 16 February 2013).

<sup>3</sup> ‘US, EU Plan Joint Massive Free-Trade Zone’, <http://www.presstv.ir/detail/2012/12/12/277640/us-eu-plan-massive-freetrade-bloc/> (last visited 1 Feb. 2013).

<sup>4</sup> ‘EU Morocco trade agreement has entered into force’, <http://www.wsrw.org/a106x2414> (last visited 2 Feb. 2013).

## **EU and Japan**

On 29 November 2012, the European Automobile Manufacturers' Association (ACEA) took note of the European Council's decision to give the 'green light' to European Commission to open free trade negotiations with Japan. ACEA has persistently argued that a free trade agreement (FTA) with Japan will have a negative impact on the European automobile industry.<sup>5</sup> However, on the other hand, it is also argued that there's an effective 'safeguard clause' in place to protect sensitive European sectors and that the EU reserves the right 'to pull the plug' on the negotiations after a year, if Japan does not live up to its commitments on removing non-tariff barriers.<sup>6</sup>

After the conclusion of preliminary talks with regard to a free trade agreement with Japan, EU is now preparing to launch further negotiations with the country. The talks are planned to be held around March 2013. A lot of trade agreements that EU has entered into at present are modeled along the lines of the so called 'EU new generation agreements' and the bilateral trade agreement with Japan is not going to be an exception in this regard. The trade sectors due to be implicated under this agreement include agro-food, automotive, pharmaceuticals and the medical devices sector.

In line with the new generation agreements, the bilateral trade agreement between Japan and EU is expected to include provisions in relation to tariffs, non-tariff measures including technical barriers to trade and sanitary and phytosanitary, non-tariff measures affecting trade in services, investment and public procurement. The agreement provisions will also elaborate upon obligations related to competition and intellectual property rights. The provisions relating to competition are still being deliberated by the countries which have a stake in the EU's automotive sector. France, Germany and Italy have expressed concerns that the signing of a free trade agreement with Japan could serve to worsen the market conditions faced by small and medium-sized EU car manufacturers who are affected by concessions granted to their Korean rivals under the EU-Korea free trade agreement. In addition to the problem of competition, gaining access for services in the Japanese market is also proving to be a burdensome feature for the EU companies. Lack of transparency in public procurement as well as problems regarding intellectual property rights' protection are the chief reasons for the apparent inaccessibility to the Japanese services market. Besides the implementation of trade policy instruments, such impediments to trade as noted above would also require some proactive domestic regulatory changes on the part of Japan. Additionally, it is also crucial that any future FTA between EU and Japan contains a well-conceived and effective safeguard mechanism in order to cope with the possible negative effects of the FTA.<sup>7</sup>

## **EU and Central America**

On 11 December 2012, the European Parliament ratified the EU-Central America Association Agreement designed to boost trade between the two blocs, by removing various tariffs and customs barriers. The agreement was concluded in May 2010 after a negotiation process that lasted for five years, but needed to be

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<sup>5</sup> Press release, 'Japan EU Free Trade Agreement A One-Way Street For EU Automobile', [http://www.acea.be/news/news\\_detail/press\\_release\\_japan\\_eu\\_free\\_trade\\_agreement\\_a\\_one-way\\_street\\_for\\_eu\\_automob](http://www.acea.be/news/news_detail/press_release_japan_eu_free_trade_agreement_a_one-way_street_for_eu_automob) (last visited 1 Feb. 2013).

<sup>6</sup> Press release, 'EU-Japan Free Trade Agreement: Commissioner De Gucht Welcomes Member States' Green Light To Start Negotiations', [http://europa.eu/rapid/press-release\\_MEMO-12-930\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-930_en.htm) (last visited 1 Feb. 2013).

<sup>7</sup> Fratini Vergano, Trade Perspectives, 'The EU and Japan reported to launch bilateral trade negotiations in the coming months', Issue No. 18 of 5 October 2012.



ratified by the European Parliament to come into force. It covers Costa Rica, Guatemala, Honduras, Panama, Nicaragua and Salvador.<sup>8</sup>

## **EU and Singapore**

The European Union and Singapore agreed to a free trade deal on 16 December 2012 – a move that is expected to further open the Asian country's markets to financial services making it easier for European automakers to export to Singapore. The EU Trade Commissioner Karel De Gucht remarked: "Singapore is a dynamic market for EU companies and is a vital hub for doing business across Southeast Asia. This agreement is key to unlocking the gateway to the region and can be a catalyst for growth for EU exporters".<sup>9</sup> The push for free trade agreements comes as the EU struggles with a sovereign debt crisis and tries to supplement stagnant domestic consumer demand with free trade pacts with the major economies. The agreement reached is one of the most comprehensive that EU has ever negotiated and will create new opportunities for companies from Europe and Singapore to do business together. The growing Singaporean market offers export potential for EU, inclusive of industrial, agricultural and services businesses. The EU-Singapore FTA will be the EU's second ambitious agreement with a key Asian trading partner, after the EU-Korea FTA, which is in operation since July 2011.

## **International Services Agreement**

The 'Real Good Friends of Services' (RGFS), a sub-group of WTO members, met in October 2012 to hold negotiations on the proposed International Services Agreement (ISA). It has been reported that the services sectors of banking, distribution and logistics, energy and environment, telecommunications, insurance, legal, accounting and construction stand to predominantly benefit from being part of this agreement. Among other things, the structure and form of the agreement will be discussed during the subsequent meetings which are due to be held in January 2013. Discussions are expected to center around the inclusion of the so-called 'ratchet-in' or 'stand-still' clauses. The inclusion of the latter would serve to refrain the participating countries from creating new obstacles to trade in services by indicating only the existing reservations or limitations to market access and/or national treatment. Whereas the inclusion of the former clause although would serve to inevitably speed up the negotiation process by doing away with the need for re-negotiation, it has the potential to discourage countries from later on becoming a party to the ISA. In selecting the clauses it will become clear as to which of the competing goals of the RGFS is prioritized – whether it is the aim of encouraging other WTO members to join RGFS or making services agreements more acceptable and obtainable in the long run.<sup>10</sup>

## **EU- Thailand FTA**

After regional 'block-to-block' negotiations between ASEAN and the EU were put on hold in 2009, EU decided to negotiate bilateral FTAs with individual ASEAN Member States instead. The EU's proposal to start negotiations for a Free Trade Agreement (FTA) with Thailand in January 2013 will be a step in this direction. Such bilateral trade agreements are expected to constitute 'stepping stones' on which the regional

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<sup>8</sup> Francesca Ghersenti, 'EU-Central America association agreement signed', <http://www.internationaldemocracywatch.org/index.php/home/520-eu-central-america-association-agreement-signed> (last visited 1<sup>st</sup> Feb. 2013).

<sup>9</sup> 'EU, Singapore ink free trade deal', <http://www.euractiv.com/global-europe/eu-singapore-ink-free-trade-deal-news-516700> (last visited 1 Feb. 2013).

<sup>10</sup> Fratini Vergano, Trade Perspectives, 'Reports indicate that negotiations on the International Services Agreement, an initiative of the WTO-linked 'Real Good Friends of Services' Group, may begin early next year', Issue No. 19 of 19 October 2012.

EU-ASEAN FTA would be eventually erected. The EU-Thailand FTA is geared up to be designed on the lines of the so-called ‘new generation agreements’, insofar as it will cover areas beyond those traditionally covered by FTAs, including, among other things, intellectual property rights, investment, government procurement and competition.<sup>11</sup>

#### **IV. UNILATERAL PREFERENCE SCHEMES**

##### **IV A. GENERALISED SYSTEM OF PREFERENCES AND OTHER PREFERENTIAL AGREEMENTS**

On 31 October 2012, the EU published its revised ‘Generalised Scheme of Preferences for developing countries’ (or EU’s GSP) under Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012. The revision of the EU’s GSP initiated on 10 May 2011 was intended to make its GSP more effective by reducing the number of beneficiaries to ensure that the impact only pertains to those countries that are truly in need. Accordingly, Article 4 of the Regulation states that the EU’s GSP no longer benefits countries that (i) have been categorized by the World Bank as a ‘high-income or an upper-middle income country’ for the past three years; or (ii) benefit from a preferential market access to the EU, which provides substantially equivalent coverage as compared to the EU’s GSP; or (iii) have their own market access regulation and do not use the EU’s GSP. The revised new GSP will take effect from 1 January 2014. The revised GSP will remove several developing countries like Argentina, Brazil, Uruguay and Venezuela, from receiving the market access benefits that they have enjoyed for a long period of time under the previous GSP. Paraguay will be the only MERCOSUR member which will continue to partake in the market access benefit from the new EU’s GSP, inasmuch as it remains a ‘low-income or lower-middle income country’.<sup>12</sup>

#### **V. TRADE POLICIES AND PRACTICES BY MEASURE**

##### **V A. TECHNICAL BARRIERS TO TRADE**

###### **EU Commission’s proposal on biofuels**

In October 2012, the EU Parliament received a proposal on the use of biofuels by the EU commission. The proposal primarily dealt with the quality of petrol and diesel fuels and the promotion of the use of energy from renewable sources. To facilitate the inclusion of ILUC (Indirect Land Use Change) as a relevant factor for the estimation of greenhouse gas emissions, the proposal has sought to classify biofuels into two categories – the ‘first generation biofuels’ or the biofuels produced from food crops and the ‘advanced biofuels’ or the biofuels produced from feedstock that do not create an additional demand for land. This has also lead to a further sub-categorization of the first generation biofuels. Arguably, this measure may result in discrimination between: 1) food crops based biofuels and advanced biofuels and 2) among food crop based biofuels on the basis of the feedstock used for the production of biofuel. The polluting values with regard to the degree of emission of biofuels have an equivalent value of zero for the advanced biofuels whereas the value differs with respect to different first generation biofuels depending on the feedstock used. It is speculated that this measure of attributing different polluting values to different biofuels is likely to violate the EU’s obligations under Articles I and III of the General Agreement on Tariffs and Trade (GATT), which prevents WTO members from according discriminatory treatment to imported products, vis-à-vis ‘like

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<sup>11</sup> Fratini Vergano, Trade Perspectives, ‘Upcoming negotiations for an EU-Thailand FTA may embody the new EU framework on trade agreements and investment’, Issue No. 22 of 30 November 2012.

<sup>12</sup> Fratini Vergano, Trade Perspectives, ‘The new GSP adopted by the EU reduces the number of beneficiaries’, Issue No. 21 of 16 November 2012.

products' of foreign or domestic origin. Moreover, the measure in question is likely to result in import restrictions too as by the same logic it stands in violation of Article XI of the GATT.

Asymmetric differentiation between 'first generation biofuels' and 'advanced biofuels', as well as the sub categorization of biofuels only within the former group embodies a somewhat arbitrary distinction among biofuels, and the possible impact of this distinction on the EU's WTO obligations is likely to be the main focus of deliberations with regard to the adoption of this proposal during the coming plenary session of the EU Parliament.<sup>13</sup>

#### **Box: EU's Carbon Emission Scheme**

On 12 November 2012, the European Union backed down from its decision to levy carbon tax upon international flights entering and exiting the Union, due to protests from countries like the US, India, China and others claiming the Emission Trading Scheme or ETS to be an attack on their sovereignty. The decision by the European Commission for Climate Action was aimed to avert a global trade war. The deferment of the application of the Scheme is until the International Civil Aviation Organization (ICAO) General Assembly in autumn 2013, wherein the Commission believes that a global solution would be reached.

The chief of the International Air Transport Association welcoming the stand of EU stated that the move "represents a significant step in the right direction and creates an opportunity for the international community".

EU believes that the inclusion of aviation in the EU ETS would be a potential step towards tackling aviation emissions, and has been seeking an agreement for the past fifteen years through the International Civil Aviation Organization (ICAO). The EU also made it clear that the EU ETS legislation would be applied to all flights to and from non-European countries passing via EU, in case the ICAO General Assembly fails in making necessary recommendations. Further, the EU expects that the agreement in ICAO should include – delivering aviation emission reductions as the EU ETS has been doing; treating all airlines in a non-discriminatory manner; and contain target and measures for member countries belonging to the ICAO.

**Source:** [http://ec.europa.eu/clima/policies/transport/aviation/index\\_en.htm](http://ec.europa.eu/clima/policies/transport/aviation/index_en.htm), and news articles.

## **VI. CONTINGENCY TRADE PROTECTION**

### **ANTI-DUMPING**

- On 4 October 2012, the Council Implementing Regulation (EU) No. 924/2012 amended Regulation (EC) No. 91/2009 (by replacing the table of companies manufacturing the product concerned) which imposed a definitive anti-dumping duty on imports of certain iron or steel fasteners currently falling within CN codes 7318 12 90, 7318 14 91, 7318 14 99, 7318 15 59, 7318 15 69, 7318 15 81, 7318 15 89, ex 7318 15 90, ex 7318 21 00 and ex 7318 22 00, and originating in the People's Republic of China.<sup>14</sup>

<sup>13</sup> Fratini Vergano, Trade Perspectives, 'Questions arising from the EU Commission's proposal on biofuels', Issue No. 20 of 2 November 2012.

<sup>14</sup> Council Implementing Regulation (EU) No. 924/2012, OJ 2012 L 275/1.

- On 10 October 2012, the European Commission published a notice (2012/C 305/06) of initiation of an expiry review of the anti-dumping measures applicable to imports of peroxosulphates (persulphates) currently falling within CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842 90 80 20), and originating in the People's Republic of China.<sup>15</sup>
- On 10 October 2012, the Commission Decision (2012/629/EU) amended Decision 2008/577/EC accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia.<sup>16</sup>
- On 11 October 2012, the European Commission published a notice (2012/C 307/12) of the expiry of anti-dumping measures applicable to imports of Peroxosulphates (persulphates) imposed by Council Regulation (EC) No 1184/2007 and originating in Taiwan and United States of America. The anti-dumping duty imposed is likely to be expired on 12 October 2012.<sup>17</sup>
- On 18 October 2012, the European Commission published a notice (2012/C 314/10) concerning the anti-dumping measures on imports of ethanolamines currently falling within CN codes ex 2922 11 00 (monoethanolamine) (TARIC code 2922 11 00 10), ex 2922 12 00 (diethanolamine) (TARIC code 2922 12 00 10) and 2922 13 10 (triethanolamine) originating in the United States of America, and a partial reopening of the anti-dumping investigation concerning imports of ethanolamines originating in the United States of America.<sup>18</sup>
- On 22 October 2012, the Commission Regulation (EU) No. 973/2012 initiated an investigation as regards the possible circumvention of anti-dumping measures by imports of certain aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls which are not annealed, of a width exceeding 650 mm and of a weight exceeding 10 kg, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 20) and originating in the People's Republic of China (imposed by Council Regulation (EC) No. 925/2009). The customs authorities are directed to register the imports by taking appropriate steps, unless specifically exempted. Registration shall expire after nine months of this Regulation.<sup>19</sup>
- On 22 October 2012, the Council Implementing Regulation (EU) No. 986/2012 clarified the scope of the definitive anti-dumping duties imposed on imports of certain PSC wires and strands with a maximum cross-sectional dimension exceeding 3 mm, currently falling within CN codes ex 7217 10 90, ex 7217 20 90, ex 7312 10 61, ex 7312 10 65 and ex 7312 10 69 (TARIC codes 7217 10 90 10, 7217 20 90 10, 7312 10 61 11, 7312 10 61 91, 7312 10 65 11, 7312 10 65 91, 7312 10 69 11 and 7312 10 69 91), by Regulation (EC) No. 383/2009 originating in the People's Republic of China.<sup>20</sup>
- On 22 October 2012, the Council Implementing Regulation (EU) No. 987/2012 re-imposed a definitive anti-dumping duty on imports of ironing boards manufactured by Zhejiang Harmonic Hardware Products Co. Ltd., currently falling within CN codes ex 3924 90 00, ex 4421 90 98, ex 7323 93 00, ex 7323 99 00, ex 8516 79 70 and ex 8516 90 00 (TARIC codes 3924 90 00 10, 4421 90 98 10, 7323 93 00 10, 7323 99 00 10, 8516 79 70 10 and 8516 90 00 51), and originating in the People's

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<sup>15</sup> (2012/C 305/06), OJ 2012 C 305/15.

<sup>16</sup> Commission Decision (2012/629/EU), OJ 2012 L 277/8.

<sup>17</sup> (2012/C 307/12), OJ 2012 C 307/26.

<sup>18</sup> (2012/C 314/10), OJ 2012 C 314/12.

<sup>19</sup> Commission Regulation (EU) No. 973/2012, OJ 2012 L 293/28.

<sup>20</sup> Council Implementing Regulation (EU) No. 986/2012, OJ 2012 L 297/1.

Republic of China. The rate of anti-dumping duty shall be 26,5%. The provisions as regards customs duty apply to the import unless specifically mentioned.<sup>21</sup>

- On 27 October 2012, the European Commission published a notice (2012/C 330/06) of initiation of an expiry review of the anti-dumping measures applicable to imports of certain iron or steel ropes and cables, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, with fittings attached or not, currently falling within CN codes ex 7312 10 81, ex 7312 10 83, ex 7312 10 85, ex 7312 10 89 and ex 7312 10 98, and originating in the Russian Federation.<sup>22</sup>
- On 29 October 2012, the Council Implementing Regulation (EU) No. 1039/2012 imposed a definitive anti-dumping duty and collected definitively provisional duty imposed on imports of aluminium radiators and elements or sections of which such radiators are composed, whether assembled in blocks or not, excluding radiators and elements and sections of electrical type, currently falling within CN codes ex 7615 10 10, ex 7615 10 90, ex 7616 99 10 and ex 7616 99 90, and originating in the People's Republic of China.<sup>23</sup>
- On 6 November 2012, the European Commission published a notice (2012/C 336/10) of the expiry of anti-dumping measure imposed by Council Regulation (EC) No. 1292/2007 on Polyethylene terephthalate (PET) film originated or exported from Brazil, India and Israel, to be expired on 7 November 2012.<sup>24</sup>
- On 10 November 2012, the European Commission published a notice (2012/C 342/02) of initiation of an anti-dumping proceeding concerning imports of stainless steel tube and pipe butt-welding fittings, whether or not finished, currently falling within CN codes 7307 23 10 and 7307 23 90, and originating in the People's Republic of China and Taiwan.<sup>25</sup>
- On 14 November 2012, the Commission Regulation (EU) No. 1071/2012 imposed a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10), and originating in the People's Republic of China and Thailand.<sup>26</sup>
- On 14 November 2012, the Commission Regulation (EU) No. 1072/2012 imposed a provisional anti-dumping duty on imports of ceramic tableware and kitchenware, excluding ceramic knives, currently falling within CN codes ex 6911 10 00, ex 6912 00 10, ex 6912 00 30, ex 6912 00 50 and ex 6912 00 90 (TARIC codes 6911 10 00 90, 6912 00 10 11, 6912 00 10 91, 6912 00 30 10, 6912 00 50 10 and 6912 00 90 10), and originating in the People's Republic of China. The provisions as regards customs duty apply to the import of ceramic tableware and kitchenware unless specifically mentioned.<sup>27</sup>

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<sup>21</sup> Council Implementing Regulation (EU) No. 987/2012, OJ 2012 L 297/5.

<sup>22</sup> (2012/C 330/06), OJ 2012 C 330/5.

<sup>23</sup> Council Implementing Regulation (EU) No. 1039/2012, OJ 2012 L 310/1.

<sup>24</sup> (2012/C 336/10), OJ 2012 C 336/19.

<sup>25</sup> (2012/C 342/02), OJ 2012 C 342/2.

<sup>26</sup> Commission Regulation (EU) No. 1071/2012, OJ 2012 L 318/10.

<sup>27</sup> Commission Regulation (EU) No. 1072/2012, OJ 2012 L 318/28.

- On 15 November 2012, the European Commission published a notice (2012/C 349/06) of initiation of an expiry review of the anti-dumping measures applicable to imports of dicyandiamide currently falling within CN code 2926 20 00, and originating in the People's Republic of China.<sup>28</sup>
- On 15 November 2012, the European Commission published a notice (2012/C 349/07) of the impending expiry of certain anti-dumping measures imposed on – powdered activated carbon by Council Regulation (EC) No. 649/2008 and originating in the People's Republic of China; and Ammonium nitrate by Council Regulation (EC) No. 661/2008 and originating in Russia. The anti-dumping duties imposed are likely to be expired on 11 July 2013 and 13 July 2013 respectively.<sup>29</sup>
- On 3 December 2012, the Council Implementing Regulation (EU) No. 1153/2012 imposed a definitive anti-dumping duty on imports of chamois leather and combination chamois leather, including crust chamois leather and combination crust chamois leather, currently falling within CN codes 4114 10 10 and 4114 10 90, and originating in the People's Republic of China. The rate of anti-dumping duty for chamois leather shall be 58,9%. The provisions as regards customs duty apply to the import of chamois leather unless specifically mentioned.<sup>30</sup>
- On 5 December 2012, the European Commission published a notice (2012/C 375/08) of the expiry of certain anti-dumping measures imposed on Silico-manganese (including ferro- silico-manganese) by Council Regulation (EC) No. 1420/2007 and originating in the People's Republic of China and Kazakhstan. The anti-dumping duty imposed is likely to be expired on 6 December 2012.<sup>31</sup>
- On 11 December 2012, the Council Implementing Regulation (EU) No. 1241/2012 amended Implementing Regulation (EU) No. 1138/2011 (by replacing an entry) which imposed a definitive anti-dumping duty and collected definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia.<sup>32</sup>
- On 12 December 2012, the European Commission published a notice (2012/C 382/10) of the expiry of certain anti-dumping measures imposed on gas-fuelled, non-refillable pocket flint lighters and certain refillable pocket flint lighters by Council Regulation (EC) No. 1458/2007, and originating in the People's Republic of China and Taiwan. The anti-dumping duty imposed is likely to be expired on 13 December 2012.<sup>33</sup>
- On 12 December 2012, the Commission Regulation (EU) No. 1192/2012 terminated the registration of imports of gas fuelled, non-refillable pocket flint lighters consigned from Vietnam, whether declared as originating in Vietnam or not.<sup>34</sup>
- On 12 December 2012, the Regulation (EU) No. 1168/2012 of the European Parliament and the Council amended Council Regulation (EC) No. 1225/2009 as regards protection against dumped imports from countries that are not members of the European Community. Amendment has been

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<sup>28</sup> (2012/C 349/06), OJ 2012 C 349/10.

<sup>29</sup> (2012/C 349/07), OJ 2012 C 349/19.

<sup>30</sup> Council Implementing Regulation (EU) No. 1153/2012, L 334/31.

<sup>31</sup> (2012/C 375/08), OJ 2012 C 375/17.

<sup>32</sup> Council Implementing Regulation (EU) No. 1241/2012, OJ 2012 L 352/1.

<sup>33</sup> (2012/C 382/10), OJ 2012 C 382/12.

<sup>34</sup> Commission Regulation (EU) No. 1192/2012, L 340/37.

made to the time period as regards certain requirements to be followed by the producer. The Regulation is applicable to new and existing investigation from 15 December 2012.<sup>35</sup>

- On 19 December 2012, the Commission Regulation (EU) No. 1236/2012 initiated an investigation as regards possible circumvention of anti-dumping measures by imports of certain slightly modified molybdenum wires, containing by weight 97% or more but less than 99,95% of molybdenum where the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 30), and originating in the People's Republic of China (imposed by Council Implementing Regulation (EU) No. 511/2010). The customs authorities are directed to register the imports by taking appropriate steps, unless specifically exempted. Registration shall expire after nine months of this Regulation.<sup>36</sup>
- On 21 December 2012, the Council Implementing Regulation (EU) No. 1269/2012 amended Implementing Regulation (EU) No. 585/2012 (replacing an entry) wherein a definitive anti-dumping duty was imposed on imports of certain seamless steel pipes, of iron or steel of circular cross-section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86, currently falling within CN codes ex 7304 11 00, ex 7304 19 10, ex 7304 19 30, ex 7304 22 00, ex 7304 23 00, ex 7304 24 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 80, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 89, ex 7304 59 92 and ex 7304 59 93, originating in Russia.<sup>37</sup>

#### **ANTI-SUBSIDY**

- On 8 November 2012, the European Commission published a notice (2012/C 340/06) of initiation of an anti-subsidy proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers), currently falling within CN codes ex 3818 00 10, ex 8501 31 00, ex 8501 32 00, ex 8501 33 00, ex 8501 34 00, ex 8501 61 20, ex 8501 61 80, ex 8501 62 00, ex 8501 63 00, ex 8501 64 00 and ex 8541 40 90, and originating in the People's Republic of China.<sup>38</sup>
- On 10 November 2012, the European Commission published a notice (2012/C 342/03) of initiation of an anti-subsidy proceeding concerning imports of biodiesel, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 95, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 90 97, 3826 00 10 and ex 3826 00 90, and originating in Argentina and Indonesia.<sup>39</sup>
- On 14 November 2012, the European Commission published a notice (2012/C 346/07) amending the notice of initiation of an anti-subsidy proceeding concerning imports of bicycles originating in the People's Republic of China, and extending the anti-subsidy proceeding to imports of such bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia.<sup>40</sup>
- On 20 December 2012, the Commission Decision (2012/825/EU) terminated the anti-subsidy proceeding concerning imports of bioethanol, currently falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 12 11, ex 2710 12 15, ex 2710 12 21, ex 2710 12 25, ex 2710 12

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<sup>35</sup> Parliament and Council Regulation (EU) No. 1168/2012, OJ 2012 L 344/1.

<sup>36</sup> Commission Regulation (EU) No. 1236/2012, OJ 2012 L 350/51.

<sup>37</sup> Council Implementing Regulation (EU) No. 1269/2012, OJ 2012 L 357/1.

<sup>38</sup> (2012/C 340/06), OJ 2012 C 340/13.

<sup>39</sup> (2012/C 342/03), OJ 2012 C 342/12.

<sup>40</sup> (2012/C 346/07), OJ 2012 C 346/7.

31, ex 2710 12 41, ex 2710 12 45, ex 2710 12 49, ex 2710 12 51, ex 2710 12 59, ex 2710 12 70, ex 2710 12 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97, and originating in the United States of America. The registration of such imports imposed by Regulation (EU) No. 771/2012 is terminated, and countervailing duties shall not be collected.<sup>41</sup>

## **VII. MEASURES AFFECTING PRODUCTION AND TRADE**

### **VII A. INTELLECTUAL PROPERTY RIGHTS**

#### **EU General Court confirms decision of the OHIM and finds likelihood of confusion between BIMBO DOUGHNUTS and earlier DOGHNUTS mark**

In its judgment dated 10 October 2012, the EU General Court upheld the decision of the Office for Harmonization in the Internal Market (OHIM) in the case of Bimbo SA v. Office for Harmonization in the Internal Market. In the EU General Court's ruling, the appeal of BIMBO SA (the Spanish subsidiary of the Mexican Bimbo Group) to change its Spanish trademark from "DOGHNUTS" to a community trademark called "BIMBO DOUGHNUTS" was denied on the ground that it might cause confusion in the minds of the general public with regard to the nature of the product. In this regard, the Court noted that the word 'doghnuts' like 'doughnuts' carries no meaning for the relevant Spanish public, which for the most part is not familiar with English and thus the word 'doghnuts' like the word 'doughnuts' will be perceived merely as a fancy foreign term. Pointing to Article 8(1)(b) of Regulation (EC) No. 207/2009 when read in conjunction with Article 8(2)(a)(ii), the Court observed that the word 'doghnuts', which comprises the earlier trade mark (i.e., a registered and protected national mark), is descriptive or devoid of distinctive character in relation to the goods in question and hence would not be compatible either with the coexistence of Community trademarks and national trademarks. The BIMBO Group intends to appeal this judgment of the EU General Court which essentially renders the Mexican Group unable to market its bakery products under the community trademark BIMBO DOUGHNUTS within the EU.<sup>42</sup>

### **VII B. TAXATION AND TAX RELATED MATTERS**

#### **Special excise tax on palm oil, palm kernel oil and coconut oil**

On 15 November 2012, the French Senators rejected through a majority of 186 votes, a proposal to amend next year's social security budget law, consisting of an additional excise tax of EUR 300 per tonne of palm, coconut and palm kernel oil for use in human food. The Social Affairs Committee of France had introduced the Bill on 7 November 2012. The legal basis for exercising these taxes on the vegetable oils is established in Article L 1609 of the French General Tax Code. The imposition of this tax would have resulted in the quadrupling of the current excise tax. The tax imposition was however rejected by the Senate, among other reasons, as it was inconsistent with Article 110 of the Treaty of the Functioning of the European Union which prohibits internal discriminatory taxation, direct or indirect, on products from other member states. Possible 'palm oil taxes' may also be considered inconsistent with international trade rules, in particular with Article III:2 of the WTO's GATT which prevents members from applying to imported products internal taxes in excess of those applied to like domestic products.<sup>43</sup>

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<sup>41</sup> Commission Decision (2012/825/EU), L 352/70.

<sup>42</sup> Fratini Vergano, 'EU General Court confirms decision of the OHIM and finds likelihood of confusion between BIMBO DOUGHNUTS and earlier DOGHNUTS mark', Issue No. 19 of 19 October 2012.

<sup>43</sup> Fratini Vergano, Trade Perspectives, 'The French Senate rejects the introduction of a special excise tax on palm oil, palm kernel oil and coconut oil', Issue No. 21 of 16 November 2012.



## VIII. DISPUTE SETTLEMENT UPDATE

### **Russia may contest EU energy laws at the WTO**

Russia is set to table its first trade dispute before the WTO ahead of its March 2013 deadline for compliance with the provisions of EU's Third Energy Package. Russia seeks to show that the requirements under the Third Energy Package, in so far as they result in its' energy products being discriminated vis-à-vis to third country products or EU products in the EU market, violate the MFN and the national treatment principles under Article I and III of the GATT. The specific requirements that Russia seeks to highlight in this respect include the EU's rule of 'unbundling' which requires the separation of production and supply activities from the running of transmission networks which would in turn lead to a loss in control which the Russian company Gazprom could exert over its European pipeline assets. The other problematic rule pertains to the grounds on which the certification to operate in the EU can be denied to the third country companies. The certification can be denied by the EU national regulators if the third country companies do not 'demonstrably and unequivocally' comply with the requirements of unbundling or where, under the 'third country clause', it is considered that such certification would threaten the EU's energy security.<sup>44</sup>

### **Measures affecting the renewable energy generation sector**

On 5 November 2012, China requested consultations with the European Union, Greece and Italy regarding certain measures followed by the latter which affect the renewable energy generation sector. These measures relate to the feed-in tariff programs of the EU member States, including but not limited to Italy and Greece. China has alleged that the law which allows for feed-in-tariffs which are purported to encourage the use of solar power generators, also allows for certain prohibited subsidies. China claims that these prohibited subsidies discriminate them against foreign companies and are thus contrary to WTO rules.<sup>45</sup>

Pursuant to the complaint by China, Japan had requested to join the proposed consultations. This request was subsequently accepted by the EU and the same was conveyed to the DSB. A panel to hear the dispute is yet to be established and so far, no withdrawal or mutually agreed solution has been notified by either of the parties.<sup>46</sup>

### **European Communities — Measures Prohibiting the Importation and Marketing of Seal Products**

On 4 October 2012, a WTO panel was composed to hear Canada's and Norway's concerns on the EU's seals regime. The panel's main job will be to assess whether the complainant countries' longstanding allegation of the EU's measures affecting trade in seals being inconsistent with WTO rules, is justified or not.<sup>47</sup> "In particular Norway and Canada claimed that the EU's seals regime is a quantitative restriction on trade inconsistent with Article XI:1 of the GATT and/or Article 4.2 of the Agreement on Agriculture".<sup>48</sup>

### **EU seeks a panel establishment to rule over Argentina import restrictive measures**

After efforts by the EU to find a solution with Argentina through WTO dispute settlement consultations did not result in a positive outcome, the EU on 6 December 2012 requested the WTO to take a decision over the

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<sup>44</sup> Fratini Vergano, Trade Perspectives, 'Russia may contest EU energy laws at the WTO', Issue No. 18 of 5 October 2012.

<sup>45</sup> Alan Beattie, Joshua Chaffin, 'China takes solar power dispute to WTO', <http://www.ft.com/cms/s/0/b5b8a1cc-2768-11e2-8c4f-00144feabdc0.html#axzz2KY99YPGK> (last visited 11 February 2013).

<sup>46</sup> DS 452

<sup>47</sup> Fratini Vergano, Trade Perspectives, 'A WTO Panel will be composed to hear Canada's and Norway's concerns on the EU's seals regime', Issue No. 18 of 5 October 2012.

<sup>48</sup> Ibid.

dispute of Argentina's import restrictions which have since long been damaging European trade and investment. Japan and the United States have also backed this step of EU, in a bid to force Argentina to lift its restrictive measures which not only harm EU exports but also violate international trade rules. Pinning hopes on the establishment of a panel to deliver EU out of this difficult situation, the EU Trade Commissioner Karel De Gucht remarked: "It is the EU's last resort to see Argentina's unfair trade practices lifted and free and fair trade re-established according to the WTO rules to which Argentina has subscribed."<sup>49</sup>

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<sup>49</sup> European Commission Press Release, *EU requests WTO dispute settlement panel over Argentina's import restrictions*, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=849> (last visited 11 February 2013).