



**TRADE POLICY DEVELOPMENTS PAPER NO. 13**

**REPORT ON EUROPEAN UNION**

**(for the period October – December 2011)**

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## Table of Contents

<b><u>ABBREVIATIONS .....</u></b>	<b><u>4</u></b>
<b><u>EXECUTIVE SUMMARY .....</u></b>	<b><u>6</u></b>
<b><u>I. ECONOMIC ENVIRONMENT AND MONETARY POLICY .....</u></b>	<b><u>8</u></b>
<b><u>II. TRADE AGREEMENTS AND ARRANGEMENTS .....</u></b>	<b><u>11</u></b>
II A. EU'S ONGOING FTA/ ECONOMIC COOPERATION NEGOTIATIONS: .....	11
II B. BILATERAL SECTORAL AGREEMENTS.....	12
<b><u>III. UNILATERAL PREFERENCE SCHEMES .....</u></b>	<b><u>13</u></b>
III A. GENERALIZED SYSTEM OF PREFERENCES AND OTHER PREFERENTIAL ARRANGEMENTS ..	13
<b><u>IV. TRADE POLICIES AND PRACTICES BY MEASURE .....</u></b>	<b><u>13</u></b>
IV A. CUSTOMS CLEARANCE AND VALUATION .....	13
❖ IV B. TARIFF RATE QUOTAS.....	14
IV C. CARBON EMISSION TRADING SCHEME .....	14
IV D. IMPORT RESTRICTIONS.....	14
<b><u>V. CONTINGENCY TRADE PROTECTION .....</u></b>	<b><u>16</u></b>
V. I ANTI DUMPING: .....	16
<b><u>VI. MEASURES AFFECTING PRODUCTION AND TRADE.....</u></b>	<b><u>20</u></b>
VI A. PUBLIC PROCUREMENT .....	20
VI B. TAXATION AND TAX-RELATED MATTERS IN EU .....	20
VI C. SUBSIDIES AND OTHER FINANCIAL ASSISTANCE .....	21
<b><u>VII. INTELLECTUAL PROPERTY RIGHTS .....</u></b>	<b><u>21</u></b>
<b><u>VIII. EU COMPETITION POLICY .....</u></b>	<b><u>21</u></b>
<b><u>IX. TRADE POLICIES BY SECTOR.....</u></b>	<b><u>22</u></b>
IX A. AGRICULTURE .....	22
❖ X B. SERVICES .....	27
<b><u>X. WTO DISPUTE SETTLEMENT UPDATE .....</u></b>	<b><u>28</u></b>



## **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
BTI	-	Binding Tariff Information
CCT	-	Common Customs Tariff
CEPA	-	Comprehensive Economic Partnership Agreement
CETA	-	Comprehensive Economic and Trade Agreement
EBA	-	Everything but Arms
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
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
SMA	-	Single Market Act
SPS	-	Sanitary and Phytosanitary measures
SVHCs	-	Seven Substances of very High Concern
TBR	-	Trade Barriers Regulation
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

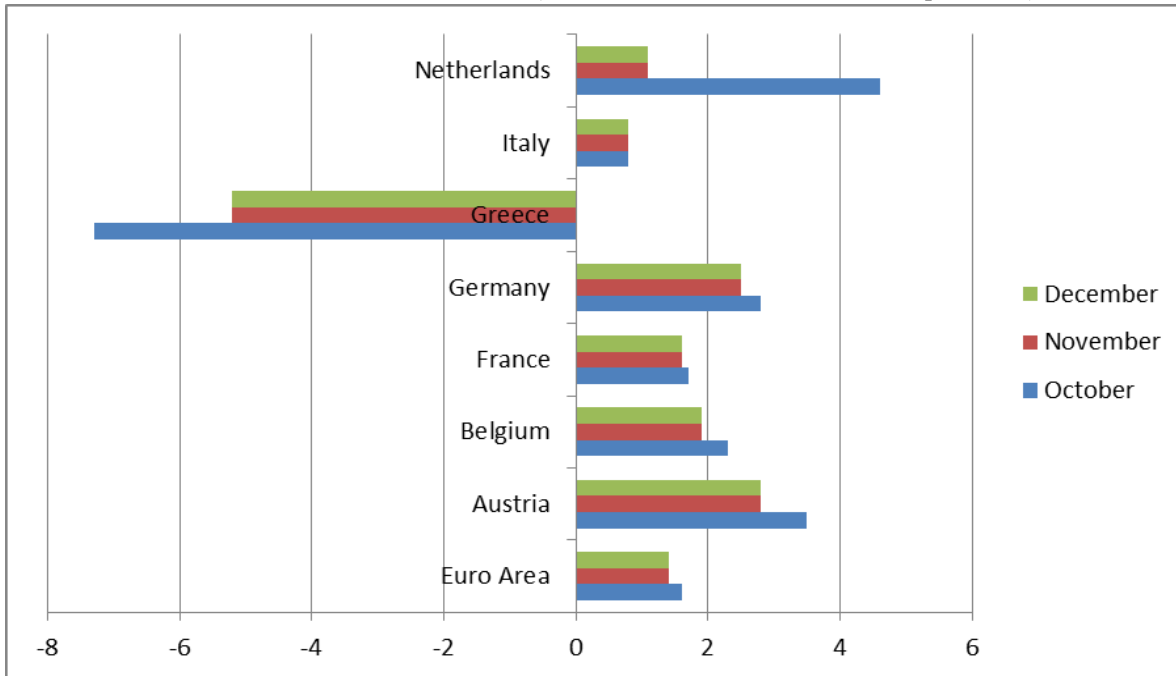
1. EU has been experiencing the worst time in the economic arena during the present quarter and its economy is contracted by 0.6%. To curb the debt crisis and to avoid similar issues in future, France and Germany put forward a formula for the existing EU Treaties- Formula for Amending existing EU Treaties.
2. The European Central Bank offered a three year loan with minimum interest and the IMF formulated a bail-out package for three years to help the EU economies overcome the sovereign debt crisis.
3. BRICs expressed its willingness through the IMF to help the EU economies recover from the debt crisis, provided the IMF continued its quota reforms in favour of the BRICs.
4. The ECJ in the case of US Air Transport Association v. Secretary of State for Energy and Climate Change, confirmed the validity of EU Directive 2008/101 and stated that each State has complete and exclusive sovereignty over its airspace; no State may validly purport to subject any part of the high seas to its sovereignty; and laid down the principle as regards the freedom to fly over the high seas. The U.S, China and India are against the views adopted by the European Court of Justice.
5. In the present quarter, EU entered into trade negotiations with Central American States- Costa Rica, Panama, Honduras; Georgia and Moldova; and, Egypt, Jordan, Morocco and Tunisia. The India- EU FTA is supposed to conclude within a short span, most probably in the next quarter, which will be discussed in the next quarterly report. EU also entered into Bilateral Sectoral Agreements with Western Balkans; Russia and Lao People's Democratic Republic.
6. The EU revised the GSP scheme which was expected to expire by 1 January 2012, and granted GSP+ status to Cape Verde, a Western African nation and thereby enabled to get preferential access to the EU market.
7. The EU Council for Trade in Goods expressed that the EU would continue to consult with the members on its waiver request for trade preferences for Pakistan, and placed its proposal to give tariff preferences for Pakistan in order to enable post flood recovery measures.
8. The EU engaged in a few import restrictions as regards the increased level of official controls on imports of certain feed and food of non-animal origin into the territories, import of certain fruits and vegetables, import of agricultural products, import of white sugar, import of crude oil, etc. from various countries, which is discussed in detail under the head "Import Restrictions" in the present report.
9. Anti-dumping duties have been levied by the EU on the goods of China, say imports of bicycles and other cycles, imports of coated wire of non-alloy steel, imports of oxalic acid, imports of citric acid, imports of citrus fruits, imports of certain compressors, imports of certain seamless pipes and tubes of stainless steel, imports of steel ropes and cables, imports of trichloroisocyanuric acid, imports of certain organic coated steel products, etc. Anti-dumping duties have been levied by the EU on the goods of US, say imports of bioethanol; on the goods of India, say imports of certain fatty alcohols; on the goods of Malaysia, say imports of certain open mesh fabrics of glass fibres, imports of certain iron or steel fasteners; on the goods of Russia, say imports of certain tube and pipe fittings of iron or steel, imports on iron or steel ropes and cables, etc.; on the goods of Thailand, say imports of hand pallet trucks and their essential parts; on the goods of Kazakhstan, say imports of white phosphorus.

10. EU proposed the Financial Transaction Tax (FTT), popularly known as “Tobin tax” on financial transactions taking place within the Union, where Britain vetoed the levy. France and Germany are thought of reintroducing stamp duty on stock exchange transactions as a primary step to the introduction of FTT.
11. A number of disputes as regards the present scenario, say Chinese Footwear case, Airbus case, US Large Civil Aircraft case, Phillipines- Taxes on Distilled Spirit, China-Definitive Anti-Dumping Duties on X-ray Security Inspection Equipment from EU, etc. have been discussed in the present report under the head ‘WTO Dispute Settlement Update’.

## I. ECONOMIC ENVIRONMENT AND MONETARY POLICY

The economic environment of EU witnessed the worst time in the present quarter. As per PMI<sup>1</sup> data the EU economy is contracted by 0.6%.<sup>2</sup> The following Graph represents the change in GDP over the last quarter.

**Graph 1:** GDP of Euro Area and Major EU countries over the quarter (October- December 2011)



**Source:** THE ECONOMIST, October to December Issues.

This graph represents the percentage change in GDP of various European economies during the last quarter. Netherlands had a significant growth in GDP in October 2011 when compared to November 2011 and December 2011. Italy had an equal growth in the GDP throughout the quarter. Greece had been facing a decrease in the GDP throughout the quarter, wherein the GDP rate was highly negative in October 2011 and tried to recover slowly in November 2011 and December 2011. Germany, France, Belgium, Austria and the euro area had a slightly higher growth in GDP in the month of October 2011 than in November 2011 and December 2011.

The leaders of the EU are very keen to find a solution to the debt crisis. In the EU Summit which took place on 9 December 2011, the delegates discussed the need to arrive at a political remedy. The German Chancellor, Angela Merkel called for the creation of a fiscal union which, according to her, is legally enforceable through the European Court of Justice. According to Merkel, the countries which failed to observe budget discipline should be given automatic sanctions.<sup>3</sup> A fiscal discipline framework has been put forward by Germany in this regard. The framework

<sup>1</sup> Purchasing Managers Index.

<sup>2</sup> *EU Decline Eases, But Recession Looms*, THE FINANCIAL EXPRESS, (Dec. 16, 2011) at 6.

<sup>3</sup> Quentin Peel, *Merkel Calls for Rapid EU Treaty Change*, THE FINANCIAL EXPRESS, (Dec. 3, 2011) at 7.



provides that, “a state that is on life support under the planned European Stability Mechanism has to accept budget oversight from a central authority, say, European Stability Commissioner”.<sup>4</sup> French President, Nicolas Sarkozy also favoured ‘budget discipline’ as a solution to the debt crisis.<sup>5</sup>

The EU Summit discussed about treaty changes to give more power to the unelected EU representatives to keep the sovereign budgets within the fiscal norms. The ingredients of the solution includes in the first place, “the member nations in lieu of parting ways with a some of their sovereignty on financial issues would have their debt yields supported by a Central European or SPV structure like EFSF” and second, “the ECB may agree to monetize part of their debt”. The main issue with the above solutions is that of durability.<sup>6</sup>

France and Germany are so strong in their views on treaty change and the revision should “tighten up surveillance of national budgets and mandatory penalties for rule flouters”. The revision in this line will help to keep a control over the debt crisis. The sanction would extend to countries which are not following the EU deficit limit of 3% of GDP.<sup>7</sup> The main elements in the Sarkozy- Merkel formula for the Treaty Amendment on existing EU Treaties will include:-

- ❖ New Budget Rules: Automatic sanctions<sup>8</sup> for countries violating 3% deficit limit of GDP and the ‘Golden rule’ requesting a provision as to ‘balanced budget’ in their written constitutions.
- ❖ Bondholder Protection: To ensure the non-involvement of private investors in future bail-outs by the future Eurozone European Stability Mechanism.
- ❖ Majority Voting: The present unanimous system of voting in ESM<sup>9</sup> should be changed to a majority voting of 85%.
- ❖ Monthly Growth Summits: To analyze development, the frontrunners of the EU should meet for monthly summits till the end of the crisis.
- ❖ European Central Bank: Effective crisis management steps.
- ❖ Eurozone Bonds: Single European currency should be ruled out.<sup>10</sup>

Most of the EU leaders are in support of Sarkozy- Merkel suggestion but Britain got isolated.<sup>11</sup> The only exception to the automatic sanctions as agreed by the EU leaders is that, “three-quarters of state vote against the move, and approved a new fiscal rule on balanced budgets to be written into national constitutions”.<sup>12</sup>

## **EUROPEAN CENTRAL BANK AND DEBT CRISIS**

Due to the market stress on the previous quarter, the ECB largely favoured bond purchases as a temporary measure. In December 2011, the ECB offered a three year loan with minimum interest, thereby inducing certain banks to buy high yielding sovereign debt, anticipating a profit against the one per cent cost of the ECB loan. Juergen Stark, the Executive

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<sup>4</sup> Gireesh Chandra Prasad, *ECB Rules Out Monetising Debt*, THE FINANCIAL EXPRESS, (Dec. 3, 2011) at 2.

<sup>5</sup> *Sarkozy Seeks New Treaty*, THE FINANCIAL EXPRESS, (Dec. 3, 2011) at 6.

<sup>6</sup> Himanshu Jain, *Italy Should End Euro Experiment*, THE HINDU BUSINESS LINE, (Dec. 8, 2011) at 15.

<sup>7</sup> *France, Germany Vow ‘Powerful’ Deal This Week*, THE FINANCIAL EXPRESS, (Dec. 8, 2011) at 6.

<sup>8</sup> Sanctions embedded in EU Treaties relating to budget.

<sup>9</sup> European Stability Mechanism.

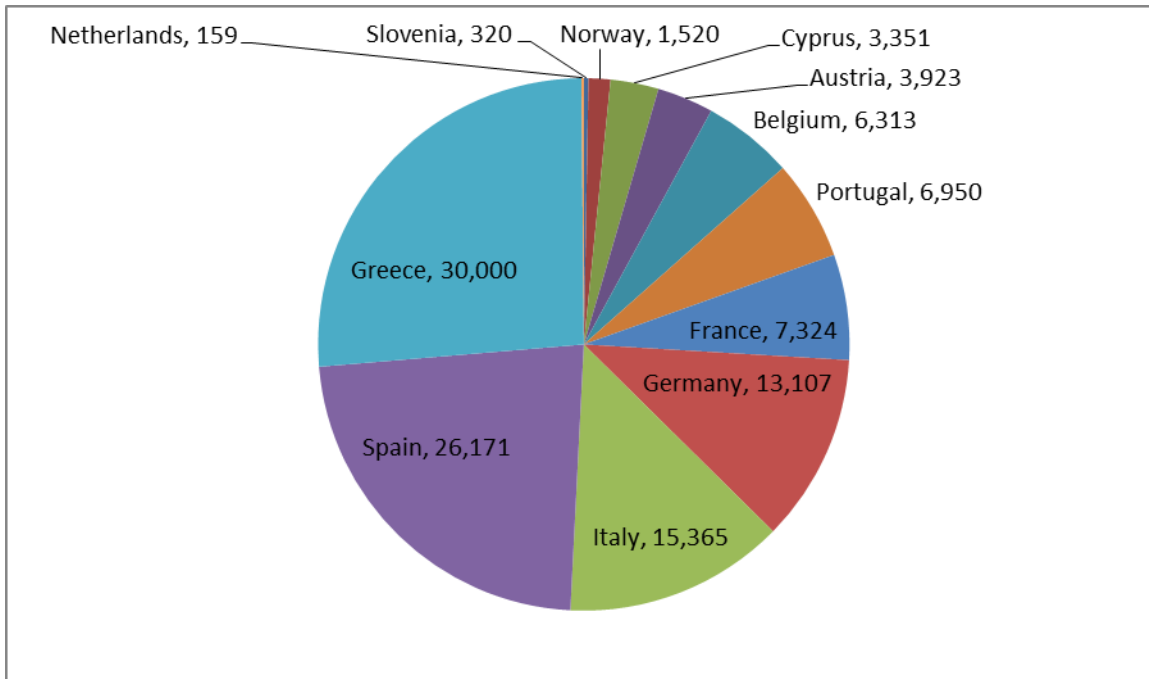
<sup>10</sup> *Key Points of Franco-German Agreement*, THE HINDU BUSINESS LINE, (Dec. 8, 2011) at 3.

<sup>11</sup> *Europe Moves Ahead with Fiscal Union, UK Isolated*, THE FINANCIAL EXPRESS, (Dec. 10, 2011) at 6.

<sup>12</sup> *EU Leaders Move Ahead with Fiscal Union, Britain Isolated*, THE FINANCIAL EXPRESS, (Dec.10, 2011) at 1.

Board Member of ECB viewed the only remaining solution as, “adjustment in relative prices in wages, in salaries, in costs”.<sup>13</sup> Mario Draghi, the ECB president called for a “fiscal compact” to create investor confidence between governments to solve the crisis.<sup>14</sup> The ECB also announced a further cut in interest rates making it 1%.<sup>15</sup> The following Graph represents the cash shortfall suffered by the European Banks.

**Graph 2:** Graph Representing cash shortfall of European banks



\* The values are in million euros

**Source:** *Stress Test by European Banking Authorities*.<sup>16</sup>

The Central Bank of Netherlands experienced a shortfall of 159 million euros in 2011 when compared to the previous year. The Central Bank of Slovenia experienced a shortfall of 320 million euros in 2011, the Central Bank of Norway experienced a shortfall of 1520 million euros in 2011, the Central Bank of Cyprus experienced a shortfall of 3351 million euros in 2011, the Central Bank of Austria experienced a shortfall of 3923 million euros in 2011, the Central Bank of Belgium experienced a shortfall of 6313 million euros in 2011, the Central Bank of Portugal experienced a shortfall of 6950 million euros in 2011, the Central Bank of France experienced a shortfall of 7324 million euros in 2011, the Central Bank of Germany experienced a shortfall of 13107 million euros in 2011, the Central Bank of Italy experienced a shortfall of 15365 million euros in 2011, the Central Bank of Spain experienced a shortfall of 26171 million euros in 2011, the Central Bank of Greece experienced a shortfall of 30000 million euros in 2011, when compared to their respective cash of the previous year. From this it can be said that there was a deep and significant debt crisis in the EU economies in 2011.

## **IMF AND DEBT CRISIS**

<sup>13</sup> *Bloc Must Cut Wages to Exit Crisis: Stark*, THE FINANCIAL EXPRESS, (Dec. 1, 2011) at 6.

<sup>14</sup> *Ralph Atkins, Draghi Calls for Eurozone 'Compact'*, THE FINANCIAL EXPRESS, (Dec. 2, 2011) at 11.

<sup>15</sup> *ECB Cuts Key Rate to 1%, May Delve Deeper into Toolbox*, THE FINANCIAL EXPRESS, (Dec. 9, 2011) at 12.

<sup>16</sup> *Stress Test by European Banking Authorities*, THE HINDU BUSINESS LINE, (Dec. 10, 2011) at 5.

There is an IMF-EU bailout package for three years to help the countries overcome bankruptcy and severe financial crisis. On 5 December 2011, the IMF agreed to give 2.2 billion euro aid to Greece as part of the scheme.<sup>17</sup>

## **BRICS AND DEBT CRISIS**

On 2 December 2011, Brazil offered conditional help to EU depending on their say in the IMF, provided continuity of the IMF quota reforms.<sup>18</sup> Chen Deming, China's Commerce Minister, announced an investment delegation in EU for the next year.<sup>19</sup>

The leaders of the EU as well as global leaders look forward to cure the debt crisis at the earliest. The next report shall examine further developments. The following table gives the economic overview of Europe in various terms.

**Table 1:** Economic overview of major European Union countries

Country	Real GDP	Investments	Consumption Wanes	Unemployment rates	Consumer Price Index
UK	0.9	-2.4	-0.9	8.1	4.5
Spain	0.7	2.1	0.4	21.5	3
Germany	3	7.2	1	5.9	2.9
Netherlands	1.4	6.1	-0.7	4.3	2.5
Italy	0.7	0.7	0.9	8.1	2.7
France	1.4	2.8	0.6	9.2	2.1
Portugal	1.4	-	-3.7	12.5	3.5
Greece	-3.5	-	-5.3	16.6	3

**Source:** OECD Statistics.<sup>20</sup>

## **II. TRADE AGREEMENTS AND ARRANGEMENTS**

### **II A. EU'S ONGOING FTA/ ECONOMIC COOPERATION NEGOTIATIONS:**

**CENTRAL AMERICAN STATES:** The EFTA States, and Central American States- Costa Rica, Panama and Honduras decided to commence negotiations from next year, while the other Central American States are expected to join later.<sup>21</sup>

**GEORGIA AND MOLDOVA:** On 5 December 2011, EU launched deep and comprehensive free trade negotiations with Georgia and Moldova, which is expected to boost economic integration with Eastern European partners.<sup>22</sup>

**EGYPT, JORDAN, MOROCCO AND TUNISIA:** On 14 December 2011, the EU Foreign Affairs Council authorized the opening of trade negotiations with Egypt, Jordan, Morocco and Tunisia and the European Commission

<sup>17</sup> IMF to Release 2.2 bn Euro in Aid for Greece, THE FINANCIAL EXPRESS, (Dec. 7, 2011) at 12.

<sup>18</sup> BRICs Offer Conditional Help to Europe: Brazil, THE FINANCIAL EXPRESS, (Dec. 3, 2011) at 6.

<sup>19</sup> China Looking to Buy European Assets: Minister, THE FINANCIAL EXPRESS, (Nov. 29, 2011) at 4.

<sup>20</sup> OECD Statistics, THE FINANCIAL EXPRESS, (Jan. 21, 2012) at 9.

<sup>21</sup> EFTA and Central American states announce start of free trade negotiations, (Dec. 20, 2011), <http://EU%20TPR/EFTA/EFTA%20and%20Central%20American%20States%20announce%20start%20of%20free%20trade%20negotiations%20-%20EFTA.htm>

<sup>22</sup> Press Release, EU Launches Trade Negotiations with Georgia and Moldova, (Dec. 20, 2011), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=760>

has welcomed it.<sup>23</sup> The negotiations aim at the improvement of opportunities for market access as well as investment climate and to support the economic reforms within these countries. EU gave specific attention to increase regional economic integration particularly the process launched under the framework of Agadir Agreement.<sup>24</sup>

### **INDIA- EU FTA:**

From 30 November 2011 to 2 December 2011, the delegates of the four EFTA states headed by State Secretary, Marie-Gabrielle Ineichen-Fleisch from Switzerland, and India headed by Mr. Rajeev Kher, Additional Secretary in the Ministry of Commerce and Industry, met in New Delhi for negotiations on the Free Trade Agreement, which dealt with subjects relating to trade in industrial goods, agricultural products, fish, rules of origin, trade defence, competition, customs procedures and trade facilitation, trade in services, dispute settlement, sustainable development, institutional and legal issues, etc.<sup>25</sup>

It is reported that the Indian Government is set to release an announcement on basic import duty reduction to the extent of 50% to luxury cars imported from Europe as part of upcoming India-EU FTA talks to be conducted at Delhi on February 10, 2012.<sup>26</sup> The imports from Germany, the UK, Italy and France will attract the duty reduction. In exchange, India will be given larger access to its textile and agricultural industries as well as to services in Europe.<sup>27</sup>

## **II B. BILATERAL SECTORAL AGREEMENTS**

**WESTERN BALKANS:** On 30 December 2011, EU established the ‘exceptional autonomous trade preferences’ granted to all western Balkans till 2015.<sup>28</sup> At first, the EU established unlimited duty free access for almost all products originating in Western Balkans<sup>29</sup> in 2000. It was renewed in 2005. On 13 October 2011, the European Parliament voted in favour of the Commission’s proposal to extend the ‘autonomous preferential regime’ until 31 December 2015 and the Council adopted the proposal on 24 November 2011. In addition to the bilateral Stabilization and Association Agreements (SAAs)<sup>30</sup>, the preferential trade support will increase the economic integration of Western Balkans with EU. The autonomous trade preferences markedly permitted Kosovo to get benefitted from the present duty-free, quota-free treatment for nearly all products exported by it in spite of the absence of SAA.

**RUSSIA AND LAO PEOPLE’S DEMOCRATIC REPUBLIC:** On 16 December 2011, EU signed bilateral deals with Russia and Lao People’s Democratic Republic.<sup>31</sup> Russia is EU’s biggest trading partner and will give rise to many benefits.

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<sup>23</sup> Press Release, *EU Agrees to Start Trade Negotiations with Egypt, Jordan, Morocco and Tunisia*, (Dec. 20, 2011), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=766>

<sup>24</sup> Free Trade Agreement between Egypt, Jordan, Morocco and Tunisia.

<sup>25</sup> *Free Trade Negotiations between EFTA and India make further headway*, (Dec. 18, 2011), <http://EU%20TPR/EFTA/Free%20trade%20negotiations%20between%20EFTA%20and%20India%20make%20further%20headway%20-%20EFTA.htm>

<sup>26</sup> Shishir Sinha & Roudra Bhattacharya, *European Luxury Cars May Attract Lower Import Duty*, THE HINDU BUSINESS LINE, (Jan. 20, 2012) at 1.

<sup>27</sup> Roudra Bhattacharya & Arun S, *European Luxury Cars Set to Become Cheaper*, THE HINDU BUSINESS LINE, (Jan. 17, 2012) at 2.

<sup>28</sup> Press Release, *EU Reinstates Trade Preferences for the Western Balkans Until 2015*, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=772>

<sup>29</sup> Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo.

<sup>30</sup> Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia.

<sup>31</sup> Press Release, *EU Welcomes Three New Members to the World Trade Organization*, (Dec. 20, 2011), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=767>

### **III. UNILATERAL PREFERENCE SCHEMES**

#### **III A. GENERALIZED SYSTEM OF PREFERENCES AND OTHER PREFERENTIAL ARRANGEMENTS**

The EU has announced its willingness to revise Generalized System of Preferences on submission of requests under Art. 9.1 (a) (iii) of Council Regulation (EC) No. 732/2008 of July 2008, as amended by Regulation (EU) No. 512/2011 of the European Parliament and of the Council of 11 May 2011. EU is ready to grant the special incentive arrangement from 1 January 2012.<sup>32</sup>

The new comprehensive GSP package includes: “a proposal for the continuation of the existing system (“rollover”) until the end of 2013, to avoid the lapse of the scheme and allow eligible countries to submit applications for GSP+ and the proposal for a revised scheme (review) to come into force on 1 January 2014”. The three variants of the scheme are the overall GSP scheme, the GSP+ incentive scheme<sup>33</sup> and the “Everything but Arms” scheme.<sup>34</sup>

#### **DEVELOPMENTS DURING THE REVIEW QUARTER**

On 9 December 2011, EU granted GSP+ status to Cape Verde, a Western African nation and thereby enabled to get preferential access to the EU market. “As a Least Developed Country, Cape Verde has duty-free, quota-free access to EU markets except for arms and ammunitions through the Everything But Arms (EBA) initiative”.<sup>35</sup> Cape Verde’s major export (94%) and import (78%) partner is EU. The exporting items of Cape Verde include fisheries, meat, sugar, cocoa, coffee, tea and textiles. The import is mainly for industrial products. The fastest growing economic sector is tourism and services are not covered under the GSP.

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

#### **IV A. CUSTOMS CLEARANCE AND VALUATION**

- ❖ On 8 November 2011, the Commission Implementing Regulation (EU) No. 1281/2011 recommended on the minimum customs duty to be fixed in response to the first partial invitation to tender within the tendering procedure opened by the Implementing Regulation (EU) No. 1239/2011, wherein a standing invitation was opened up for imports of sugar of CN code 1701 at a reduced customs duty and based on the tenders received, and where the Commission decided either to fix a minimum customs duty or not to fix a minimum customs duty for sugar bearing 8 digit CN code 1701, whereas this Regulation adopted a minimum customs duty of 252,50 euros/ tonne for sugar of CN code 1701 11 10 and nil customs duty for sugar of CN codes 1701 11 90, 1701 12 10, 1701 12 90, 1701 91 00, 1701 99 10, 1701 99 90.<sup>36</sup>

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<sup>32</sup> European Commission, *Trade*, (Jan. 20, 2011), <http://ec.europa.eu/trade/wider-agenda/development/generalized-system-of-preferences/>

<sup>33</sup> In respect of labour, human, environmental & good governance rights and rules.

<sup>34</sup> For Least Developed Countries.

<sup>35</sup> Press Release, (Dec. 20, 2011), *Cape Verde Secures Access to EU Markets and Boosts its Development*, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=763>.

<sup>36</sup> 2011 O.J.(L 327) 60

#### ❖ **IV B. TARIFF RATE QUOTAS**

EU representative at the Council for Trade in Goods Meeting on 7 November 2011 said that EU would “continue to consult with the members on its waiver request for trade preferences for Pakistan”.<sup>37</sup> EU has placed its proposal for Pakistan to give tariff preferences in order to enable post flood recovery almost a year ago. It has now submitted a revised request that takes into account the systemic concerns expressed by several members, and stressed that the measure is for two years only.

#### **IV C. Carbon Emission Trading Scheme**

##### **Box I: EU Carbon Emissions Trading Scheme**

In continuation of the facts mentioned in the previous quarter report, Directive 2008/101 of EU provides for the inclusion of the aviation activities within the EU Emissions Trading Scheme and thereby all airlines are requested to acquire and surrender emission allowances for their arrival and departure at European airports from 1 January 2012. On 21 December 2011, the Grand Chamber of the Court of Justice of the EU given its judgment in the case of Air Transport Association of America and others v. Secretary of State for Energy and Climate Change case<sup>38</sup> (C-366/10), referred to it by the High Court of Justice of England and Wales. The Court of Justice confirmed the validity of EU Directive 2008/101 and laid down the following principles:

“Each State has complete and exclusive sovereignty over its airspace”;  
“No State may validly purport to subject any part of the high seas to its sovereignty”;  
“Freedom to fly over the high seas”.<sup>39</sup>

Isaac Valero Ladron, the spokesman of European Commission for Climate Action remarked that the ban on the airlines which do not comply with the Regulations will only be a measure of last resort and further said that the penalty will be much higher for noncompliance than for compliance. A fine of 100 euro per tonne of carbon dioxide has been fixed as an initial penalty for noncompliance.

U.S., China and India are against the ECJ ruling, where the US officials considered the imposition of retaliatory measures or legal action, the Chinese authorities were not willing to adopt EU-ETS and is against the imposition of emission tax surcharges on its airline customers, and India directed the airlines to withhold data relating to carbon emission.<sup>40</sup>

#### **IV D. IMPORT RESTRICTIONS**

- ❖ On 8 November 2011, the Commission Implementing Regulation (EU) No. 1277/2011 amended Annex I to Regulation (EC) No. 669/2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin at the points of entry into the territories referred in Annex I to Regulation (EC) No. 882/2004. The Rapid Alert System for Food and Feed (RASFF) which notified the occurrence of food incidents, the Food and Veterinary Office which

<sup>37</sup> WTO News, *Rollback of Various Trade Restrictions Urged, EU to Consult on Pakistan Waiver*, (Dec. 20, 2011), [http://www.wto.org/english/news\\_e/news11\\_e/good\\_07nov11\\_e.htm](http://www.wto.org/english/news_e/news11_e/good_07nov11_e.htm)

<sup>38</sup> Air Transport Association of America, American Airlines Inc., Continental Airlines Inc., and United Airlines Inc. v. Secretary of State for Energy and Climate Change (C-366/10), where the interveners are International Air Transport Association (IATA), National Airlines Council of Canada (NACC), Aviation Environment Federation, WWF-UK, European Federation for transport and Environment, Environmental Defense Fund and Earthjustice.

<sup>39</sup> 2011 O.J.(C 49) 7

<sup>40</sup> *EU Aviation Emissions Levy Ruled Lawful By European Court As Measure Enters Into Force*, 16 (1) BRIDGES WEEKLY TRADE NEWS DIGEST, (Jan. 11, 2012) available at <http://ictsd.org/i/news/bridgesweekly/123063/>

carried out the finding of missions to third countries, and the submission of Member States to the Commission regarding the quarterly reports on consignments of feed and food of non-animal origin in accordance with Article 15 of Regulation (EC) No. 669/2009 show that the list should be amended. In accordance with it, certain amendments were made to Annexure I of Regulation (EC) No. 669/2009- feed and food including ‘groundnuts (in shell or shelled), peanut butter and groundnuts otherwise prepared and preserved (food and feed)’ from Argentina, ‘lauki (food)’ from the Dominican Republic, and ‘green beans (food)’ from Egypt were deleted; and the ‘decrease in frequency of physical and identity checks for dried spices (food)’ from India.<sup>41</sup>

- ❖ On 8 November 2011, the Commission Implementing Regulation (EU) No. 1279/2011 established the standard import values for determining the entry price of certain fruit and vegetables as provided in the Annex, in accordance with Article 136 of Implementing Regulation (EU) No. 543/2011 wherein the Commission fixed the standard values for imports from third countries in respect of the products and periods stipulated in Annex XVI, Part A, and with regard to the Council Regulation (EC) No. 1234/2007 which established a common organisation of agricultural markets and on specific provisions for certain agricultural products, Commission Implementing Regulation (EU) No. 543/2011 which laid down detailed rules for the application of Council Regulation (EC) No. 1234/2007 regarding fruit and vegetables and processed fruit and vegetable sector.<sup>42</sup>
- ❖ On 8 November 2011, the Commission Implementing Regulation (EU) No. 1280/2011 amended the representative prices and additional import duties for certain products in the sugar sector referred to in Article 36 of Regulation (EC) No. 951/2006 and fixed by Implementing Regulation (EU) No. 971/2011 for the marketing year 2011/12. The amended representative prices and additional import duties applicable to white sugar, raw sugar and related products are as follows:
  - The representative price of 100 kg net of the product belonging to CN codes 1701 11 10, 1701 11 90, 1701 12 10, 1701 12 90 is 39,86 euros, and the additional duty per 100 kg net of the product is 0,00 euros, 2,95 euros, 0,00 euros and 2,65 euros respectively. Similarly the representative price of 100 kg net of the product belonging to CN codes 1701 91 00, 1701 99 10, 1701 99 90 is 45,89 euros, and the additional duty per 100 kg net of the product is 3,70 euros, 0,57 euros, 0,57 euros respectively. Likewise, the representative price of 100 kg net of the product belonging to CN code 1702 90 95 is 0,46 euros, and the additional duty per 100 kg net of the product is 0,24 euros.<sup>43</sup>
- ❖ On 16 November 2011, the European Parliament and the Council adopted the Regulation (EU) No. 1228/2011 repealing the Council Regulation (EEC) No. 429/73 making special provisions for imports into the Community for processed agricultural products coming under the Regulation (EEC) No. 1059/69 and originating in Turkey. The repealed Regulation (EEC) No. 429/73 should be without prejudice to the Union acts adopted on the basis of the regulation, and the validity of amendments which are made to other Union acts by this regulation which are not repealed by this Regulation.<sup>44</sup>
- ❖ Commission Implementing Regulation (EU) No. 372/2011 fixed the quantitative limit at 650,000 tonnes for the exports of out-of-quota sugar and at 50,000 tonnes for out-of-quota isoglucose, which shall come into effect from 1 January 2012. The Commission Implementing Regulation (EU) No. 1238/2011 amending the Commission Implementing Regulation (EU) No. 372/2011 fixed the quantitative limit at 1,350,000 tonnes for exports without

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<sup>41</sup> 2011 O.J.(L 327) 42

<sup>42</sup> 2011 O.J.(L 327) 56

<sup>43</sup> 2011 O.J.(L 327) 58

<sup>44</sup> 2011 O.J.(L 326) 17

refund of out- of-quota white sugar falling within CN code 1701 99, and at 70,000 tonnes in dry matter for exports without refund of out-of-quota isoglucose falling within CN codes 1702 40 10, 1702 60 10 and 1702 90 30.<sup>45</sup>

- ❖ On 30 November 2011, Commission Implementing Regulation (EU) No. 1239/2011 opened a standing invitation to tender with prescribed conditions in relation to the quantity of sugar tendered, proposed amount of customs duty, etc. for 2011/2012 marketing year for imports of sugar of CN code 1701 at a reduced customs duty, which will be applicable till 30 September 2012.<sup>46</sup>
- ❖ On 1 December 2011, the Commission Implementing Regulation (EU) No. 1245/2011 implemented Regulation (EU) No. 961/2010 on restrictive measures against Iran including additional persons and entities in the list of persons, entities and bodies subject to restrictive measures as set out in Annex VIII to Regulation (EU) No 961/2010, in consideration of the continued concern over the expansion of Iran's nuclear and missiles programmes expressed by the European Council on 23 October 2011 and the Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran.<sup>47</sup>
- ❖ EU's Proposed Ban on Iranian Oil: The EU decided to impose a set of sanctions on Iran including financial sanctions as well as crude oil embargo following a law imposing sanctions on financial institutions which had dealings with the Central Bank of Iran as passed by the US at the end of December 2011. The sanctions apart from oil embargo will include partial asset freeze on Iranian Central Bank and ban on transfer of precious metals and gold from Iran to Europe. The ban on precious metals is aimed at the prevention of asset selling for foreign exchange. Most of the European countries depend on Iran for oil and the proposed ban will have adverse effects on economies of Italy, Turkey, Spain and Greece which characterized 80% of the European Demand for Iranian oil.

## **V. CONTINGENCY TRADE PROTECTION**

### **V. I ANTI DUMPING:**

#### **❖ EU AND CHINA**

On 3 October 2011, the Council Implementing Regulation (EU) No. 990/2011 imposed a definitive anti-dumping duty on imports of bicycles and other cycles, not motorised, falling within CN codes ex 8712 00 10 originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.<sup>48</sup>

On 4 October 2011, the European Commission issued a notice of initiation of a partial interim review of the anti-dumping measures (2011/C 291/04) applicable to imports of coated wire of non-alloy steel, not plated or not, wire of non-alloy steel plated or coated with zinc and stranded wire of non-alloy steel whether or not plated or coated with not more than 18 wires, containing by weight 0,6 % or more of carbon, 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 originating in the People's Republic of China.<sup>49</sup>

On 19 October 2011, the Commission Regulation (EU) No. 1043/2011 imposed a provisional anti-dumping duty on imports of oxalic acid whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form

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<sup>45</sup> 2011 O.J.(L 318) 2

<sup>46</sup> 2011 O.J.(L 318) 4

<sup>47</sup> 2011 O.J.(L 319) 11

<sup>48</sup> 2011 O.J.(L 261) 2

<sup>49</sup> 2011 O.J.(C 291) 6



(CUS number 0021238-4 and CAS number 144-62-7) and whether or not in aqueous solution, falling within CN code ex 2917 11 00, originating in India and the People's Republic of China.<sup>50</sup>

On 26 November 2011, the European Commission issued a notice (2011/C 346/04) concerning the anti-dumping measures in force in respect of imports into the Union of citric acid originating in the People's Republic of China: change of the name of a company subject to an individual anti-dumping duty rate.<sup>51</sup>

On 26 November 2011, the European Commission issued a notice (2011/C 346/05) concerning undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China: change of the name of a company.<sup>52</sup>

On 3 December 2011, the European Commission issued a notice (2011/C 353/10) regarding a partial reopening of the anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins etc.) originating in the People's Republic of China.<sup>53</sup>

On 12 December 2011, the Council Implementing Regulation (EU) No. 1306/2011 clarified the scope of the definitive anti-dumping duties imposed by Regulation (EC) No. 261/2008 on imports of certain compressors giving a flow not exceeding 2 cubic metres per minute, falling within CN codes ex 8414 40 10, ex 8414 80 22, ex 8414 80 28 and ex 8414 80 51, originating in the People's Republic of China.<sup>54</sup>

On 14 December 2011, the Council Implementing Regulation (EU) No. 1331/2011 imposed a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of stainless steel, excluding such pipes and tubes with attached fittings suitable for conducting gases or liquids for use in civil aircraft, falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00, originating in the People's Republic of China.<sup>55</sup>

On 15 December 2011, the European Union issued a Corrigendum to Implementing Regulation of the Council (EU) No. 400/2010 of 26 April 2010 extending the definitive anti-dumping duty imposed by Regulation (EC) No. 1858/2005 on imports of steel ropes and cables originating, inter alia, in the People's Republic of China to imports of steel ropes and cables consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, and terminating the investigation in respect of imports consigned from Malaysia.<sup>56</sup>

On 19 December 2011, the 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 an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.<sup>57</sup>

On 19 December 2011, the European Commission via (2011/876/EU) notified its decision of granting certain parties an exemption from the extension to certain bicycle parts of the anti-dumping duty on bicycles originating in the People's Republic of China imposed by Council Regulation (EEC) No 2474/93, lifting the suspension and revoking

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<sup>50</sup> 2011 O.J.(L 275) 1

<sup>51</sup> 2011 O.J.(C 346) 7

<sup>52</sup> 2011 O.J.(C 346) 8

<sup>53</sup> 2011 O.J.(C 353) 15

<sup>54</sup> 2011 O.J.(L 332) 1

<sup>55</sup> 2011 O.J.(L 336) 6

<sup>56</sup> 2011 O.J.(L 332) 26

<sup>57</sup> 2011 O.J. (L 346) 6

the exemption of the payment of the anti-dumping duty extended to certain bicycle parts originating in the People's Republic of China granted to certain parties pursuant to Commission Regulation (EC) No 88/97.<sup>58</sup>

On 20 December 2011, the European Commission issued a notice concerning parties exempted, pursuant to Commission Regulation (EC) No. 88/97 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No. 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93, maintained by Council Regulation (EC) No. 1524/2000, last amended by Council Regulation (EC) No. 1095/2005 and last extended by Council Regulation (EU) No. 990/2011 which is changes in the name and address of certain exempted parties.<sup>59</sup>

On 20 December 2011, the European Commission issued a notice of initiation of an anti-dumping proceeding (2011/C 371/05) concerning imports of certain aluminium foil in rolls of thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled but embossed in low weight rolls of a weight not exceeding 10 kg, falling within CN codes ex 7607 11 11 and ex 7607 19 10, originating in the People's Republic of China.<sup>60</sup>

On 21 December 2011, the European Commission issued a notice of initiation of an anti-dumping proceeding (2011/C 373/10) concerning imports of certain organic coated steel products, i.e., flat-rolled products of non-alloy and alloy steel which are painted, varnished or coated with plastics on at least one side, excluding 'sandwich panels' of a kind used for building applications and consisting of two outer metal sheets with a stabilising core of insulation material sandwiched between them, and excluding those products with a final coating of zinc-dust, falling within CN codes ex 7210 70 80, ex 7212 40 80, ex 7225 99 00, ex 7226 99 70, originating in the People's Republic of China.<sup>61</sup>

## ❖ **EU AND UNITED STATES**

On 25 November 2011, the European Commission issued a notice of initiation of an anti-subsidy proceeding (2011/C 345/05) concerning imports of bioethanol, i.e., ethyl alcohol produced from agricultural products, denatured or undenatured, excluding products with a water content of more than 0,3% (m/m) measured according to the standard EN 15376 and ethyl alcohol produced from agricultural products contained in blends with gasoline with an ethyl alcohol content of more than 10% (v/v), falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 11 11, ex 2710 11 15, ex 2710 11 21, ex 2710 11 25, ex 2710 11 31, ex 2710 11 41, ex 2710 11 45, ex 2710 11 49, ex 2710 11 51, ex 2710 11 59, ex 2710 11 70, ex 2710 11 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97, originating in the United States of America.<sup>62</sup>

On 26 November 2011, the European Commission issued a notice of initiation of an anti-dumping proceeding (2011/C 345/04) concerning imports of bioethanol i.e. ethyl alcohol produced from agricultural products, denatured or undenatured, excluding products with a water content of more than 0,3% (m/m) and ethyl alcohol produced from agricultural products contained in blends with gasoline with an ethyl alcohol content of more than 10% (v/v), falling within CN codes ex 2207 10 00, ex 2207 20 00, ex 2208 90 99, ex 2710 11 11, ex 2710 11 15, ex 2710 11 21, ex 2710 11 25, ex 2710 11 31, ex 2710 11 41, ex 2710 11 45, ex 2710 11 49, ex 2710 11 51, ex 2710 11 59, ex 2710 11 70, ex 2710 11 90, ex 3814 00 10, ex 3814 00 90, ex 3820 00 00 and ex 3824 90 97, originating in the United States of America.<sup>63</sup>

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<sup>58</sup> 2011 O.J.(L 343) 86

<sup>59</sup> 2011 O.J.(C 371) 11

<sup>60</sup> 2011 O.J.(C 371) 4

<sup>61</sup> 2011 O.J.(C 373) 16

<sup>62</sup> 2011 O.J.(C 345) 13

<sup>63</sup> 2011 O.J.(C 345) 7

## ❖ EU AND INDIA

On 8 November 2011, the Council Implementing Regulation (EU) No. 1138/2011 imposed a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends with a carbon chain length of C8, C10, C12, C14, C16 or C18 including single saturated fatty alcohols and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8- C10, C10-C12 combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 and a combination of carbon chain lengths C16-C18, falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00, originating in India, Indonesia and Malaysia.<sup>64</sup>

## ❖ EU AND MALAYSIA

On 9 November 2011, the Council Implementing Regulation (EU) No. 1135/2011 initiated an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China by imports of certain open mesh fabrics of glass fibres consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration.<sup>65</sup>

On 15 November 2011, the Commission Regulation (EU) No. 1164/2011 initiated a review of Council Implementing Regulation (EU) No. 723/2011 (extending the definitive anti-dumping duty imposed by Council Regulation (EC) No. 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not) for the purposes of determining the possibility of granting an exemption from those measures to one Malaysian exporting producer, repealing the anti-dumping duty with regard to imports from that exporting producer and making imports from that exporting producer subject to registration.<sup>66</sup>

## ❖ EU AND RUSSIA

On 1 November 2011, the European Commission issued a notice of initiation of an anti-dumping proceeding (2011/C 320/04) concerning imports of certain tube and pipe fittings of iron or steel with an external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, originating in Russia and Turkey.<sup>67</sup>

On 13 December 2011, the European Commission issued a notice (2011/C 363/04) of the impending expiry of certain anti-dumping measures on iron or steel ropes and cables from the Russian Federation with effect from 1 November 2012.<sup>68</sup>

## ❖ EU AND THAILAND

On 10 October 2011, the Council Implementing Regulation (EU) No. 1008/2011 imposed a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts, i.e., chassis and hydraulics of CN codes ex 8427 90 00 and ex 8431 20 00, originating in the People's Republic of China as extended to imports of hand pallet trucks and their essential parts, i.e., chassis and hydraulics of CN codes ex 8427 90 00 and ex 8431 20 00, consigned from Thailand,

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<sup>64</sup> 2011 O.J.(L 293) 1

<sup>65</sup> 2011 O.J.(L 292) 4

<sup>66</sup> 2011 O.J.(L 297) 53

<sup>67</sup> 2011 O.J.(C 320) 4

<sup>68</sup> 2011 O.J.(C 363) 19

whether declared as originating in Thailand or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No. 1225/2009.<sup>69</sup>

#### ❖ **EU AND KAZAKHSTAN**

On 17 December 2011, the European Commission issued a notice of initiation of an anti-dumping proceeding (2011/C 369/07) concerning imports of white phosphorus falling within CN code ex 2804 70 00, also called elemental or yellow phosphorus, originating in Kazakhstan.<sup>70</sup>

#### ❖ **DEVELOPMENTS DURING REVIEW QUARTER**

On 21 December 2011, the European Commission issued a notice of the expiry of certain anti-dumping measures relating to Council Regulation (EC) No. 1911/2006 (OJ L 365, 21.12.2006, p. 26) as amended by Council Regulation (EC) No. 789/2008 (OJ L 213, 8.8.2008, p. 14) and as last amended by Council Implementing Regulation (EU) No. 1251/2009 (OJ L 338, 19.12.2009, p. 5) regarding solutions of urea and ammonium nitrate.<sup>71</sup>

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

#### **VI A. PUBLIC PROCUREMENT**

One WTO Ministerial Meeting took place at Geneva during 15-17 December 2011. On 15 December 2011, WTO's negotiations on government procurement concluded successfully when parties to the GPA reached revised set of rules of tender and additional market access commitments.<sup>72</sup> WTO estimates provide that this revision will open extra procurement opportunities of 100 billion euros annually. The important achievements of the negotiation will include "more transparent rules for international public procurement, new market access opportunities, accessions and benefits for developing countries and a future work addressing issues of sustainable procurement, support for small and medium enterprises and monitoring of exclusion and restrictions".

#### **VI B. TAXATION AND TAX-RELATED MATTERS IN EU**

##### **EU TAX ON FINANCIAL TRANSACTIONS**

EU is proposed to introduce the Financial Transaction Tax to get relief from the Euro zone crisis. The features and importance of the tax structure has been discussed in the previous quarter report. An official impact assessment on the proposed tax found that the shifting of businesses away from the EU as a major threat. European officials argued that the final tax structure will restrict the slab on the economy to 0.5% in the long run, since the collected levy aims the areas which have the potential to grow.<sup>73</sup> Britain vetoed the levy and Algirdas Semeta, the Bloc's Tax Commissioner requested the UK to agree on the levy and said, "taking into account the size of the financial sector in the UK, the FTT would collect significant amount of revenue, part of which would go into the EU budget. This would reduce the UK's contribution to the budget, which would help reduce the public deficit".<sup>74</sup> France and Germany are thought of reintroducing stamp duty on stock exchange transactions as a primary step to the introduction of FTT.

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<sup>69</sup> 2011 O.J.(L 268) 1

<sup>70</sup> 2011 O.J.(C 369) 19

<sup>71</sup> 2011 O.J.(C 373) 23

<sup>72</sup> Press Release, *Successful Conclusion of the WTO's Government Procurement Negotiation: EU Succeeds in Gaining More Market Access*, (Dec. 17, 2011), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=768>

<sup>73</sup> Alex Barker, *Transaction Tax Plan Raises Fears of Impact on Europe Business*, THE FINANCIAL EXPRESS, Sept. 29, 2011 at 11.

<sup>74</sup> Stanley Pignal, *Britain Will Pay Tobin Tax Anyway, EU Warns*, THE FINANCIAL EXPRESS,(Jan. 24, 2012) at 11.

### **Customs and Tax allowances:**

Travellers entering EU from a non-EU country get the benefit of importing the following items which are not of commercial nature, free of customs duties, VAT and excise duties with the following limits:<sup>75</sup>

- ❖ Fuel contained in the standard tank, in any means of motor transport and quantity of fuel not exceeding 10 litres which is contained in a portable container.
- ❖ Goods including perfume, tea, coffee, electronic devices, etc. limited to a value of € 430 for air and sea travelers and to a value of €300 for other travelers provided the value on an individual item is not split up, the value of personal luggage and medicinal products do not account for. The Member States may reduce the above said limits to € 150 for travellers who come under 15 years of age.

### **VI C. SUBSIDIES AND OTHER FINANCIAL ASSISTANCE**

Australia, Brazil and Thailand together alleged that the EU is likely to exceed WTO Commitments by its decision “to authorize the export of an additional 700,000 tons of out-of-quota sugar for 2011/2012”.<sup>76</sup> Australia believed that the additional export would lower the world sugar price and thereby adversely affect the unsubsidized Australian and other sugar producers. Brazil holds the view that, “EU couldn’t authorize the exports of subsidized sugar in excess of its WTO commitments” and Thailand requested EU to observe its ‘WTO export subsidy commitments for sugar’.

EU said that it didn’t violate its ‘international commitments on export subsidies for sugar’ and ‘the increase of 650,000 up to 1,350,000 tons of export for out-of-quota exports for year 2011-12’ out of the recent decision is well within the ‘WTO quantitative commitments on export subsidies’ since the limit is of 1,374,000 tons.

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

EU proposed large amount of fine for the breach of EU privacy rules to strengthen data protection.<sup>77</sup> The business firms who violate the privacy rule will have to pay a fine up to 5% of their global turnover. The new proposal covers mishandling of any personal data in the hands of the company including that of their customers, suppliers or of employees. The rules are being fixed within the European Commission and are waiting for the approval by the national governments. The present set of rules is supposed to increase the powers of EU to curb issues in data protection by the strengthening of data protection rules by the global companies themselves. The new rules are expected to come into force within a period of two years.

### **VIII. EU COMPETITION POLICY**

To put an end to the sovereign debt crisis, the European Union regulators extended looser rules permitting governments to bail out the banks in trouble till the market witnessed improvement. The new guidelines came into force on 1 January 2012. The EU Competition Commissioner, Joaquin Almunia, said that the rules are extended for a period of one year till the end of 2011. The reason behind the extension is expressed by the Commissioner, “given the stronger tensions in sovereign debt markets and the transmission of those tensions to interbank markets and to the

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<sup>75</sup> *Travellers entering the EU: Customs and tax allowances for travellers,*

[http://ec.europa.eu/taxation\\_customs/common/travellers/enter\\_eu/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/travellers/enter_eu/index_en.htm)

<sup>76</sup> *WTO News,* [http://www.wto.org/english/news\\_e/news11\\_e/dsb\\_19dec11\\_e.htm](http://www.wto.org/english/news_e/news11_e/dsb_19dec11_e.htm)

<sup>77</sup> Stanley Pignal, *Companies Face Big Fines in Plan to Bolster EU Data Protection,* THE FINANCIAL EXPRESS, (Dec. 6, 2011) at 7.

funding conditions for banks". Generally the average price for a guarantee will be 1% including minimum fee of 0.4%. By the new policy, the Commission is expected to reduce the guarantee costs around 0.2%.<sup>78</sup>

## **IX. TRADE POLICIES BY SECTOR**

### **IX A. AGRICULTURE**

#### **COMMON AGRICULTURAL POLICY:**

- ❖ On 7 November 2011, the Commission Implementing Decision 2011/820/EU amended Council Directive 2002/56/EC, wherein it provided that the Member States could not determine for themselves the equivalence of seed potatoes harvested in third countries with the seed potatoes harvested within the Union with effect from certain dates, which was subsequently extended until 31 March 2011 for reason of incomplete work to establish a Union equivalence as regards seed potatoes from all the third countries. This Council Directive 2002/56/EC was amended as regards the date laid down in Article 21(3) until which Member States are authorised to extend the validity of decisions concerning equivalence of seed potatoes from third countries from 31 March 2011 to 31 March 2014.<sup>79</sup>
- ❖ On 8 November 2011, the European Council made a decision (2011/818/EU) on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Norway concerning additional trade preferences in agricultural products reached on the basis of Article 19 of the Agreement on the European Economic Area.<sup>80</sup>
- ❖ On 8 November 2011, the Commission Implementing Regulation (EU) No. 1278/2011 approved the active substance bitertanol, in accordance with Regulation (EC) No. 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market subject to certain conditions as provided in Annex I to the regulation, and amending the Annex to Commission Implementing Regulation (EU) No. 540/2011 as provided in the annex II, and Commission Decision 2008/934/EC by deleting the line concerning bitertanol.<sup>81</sup>
- ❖ On 16 November 2011, the European Parliament and the Council adopted the Regulation (EU) No. 1229/2011 repealing certain obsolete Council acts- Council Regulation (EEC) No. 2052/69 on the Community financing of expenditure arising from the implementation of the Food Aid Convention; Council Regulation (EEC) No. 1467/70 fixing certain general rules governing intervention on the market in raw tobacco; Council Regulation (EEC) No. 3279/75 on the standardization of the treatment applied by the individual Member States to imports from non-member countries of live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage; Council Regulation (EEC) No. 1078/77 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds; Council Regulation (EEC) No. 1853/78 adopting general rules in connection with special measures for castor seeds; Council Regulation (EEC) No. 2580/78 extending the 1977/78 marketing year for olive oil and providing for special measures for this sector, and amending Regulation (EEC) No. 878/77 as regards the exchange rates to be applied in agriculture; Council Regulation (EEC) No. 1/81 laying down general rules for the system of accession compensatory amounts for cereals; Council Regulation (EEC) No. 1946/81 restricting investment aids for milk production; Council Regulation (EEC) No. 2989/82 on the granting of aid for the consumption of butter in Denmark, Greece, Italy and Luxembourg; Council Regulation (EEC) No. 3033/83 abolishing the 'accession' compensatory amount applicable to liqueur wines; Council Regulation (EEC) No. 564/84 on suspension of aids for

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<sup>78</sup> *EU Extends Bank Aid Rules, Cites Market Tensions*, THE FINANCIAL EXPRESS, (Dec. 2, 2011) at 10.

<sup>79</sup> 2011 O.J.(L 327) 66

<sup>80</sup> 2011 O.J.(L 327) 1

<sup>81</sup> 2011 O.J.(L 327) 49

investments in the field of milk production; Council Regulation (EEC) No. 2997/87 laying down the amount of aid to producers for the 1986 harvest in respect of hops and providing for special measures for certain regions of production; Council Regulation (EEC) No. 1441/88 on the common organization of the market in wine; Council Regulation (EEC) No. 1720/91 on the establishment of a common organization of the market in oils and fats which introduced several exceptional measures in the common organisation of the market in oils and fats; Council Regulation (EEC) No. 740/93 setting Community compensation for definitive discontinuation of milk production in Portugal; Council Regulation (EEC) No. 741/93 on application of the common intervention price for olive oil in Portugal; Council Regulation (EEC) No. 744/93 laying down general rules for applying the supplementary trade mechanism to deliveries in Portugal of products other than fruit and vegetables; Council Regulation (EC) No. 2443/96 providing for additional measures for direct support of producers' incomes or for the beef and veal sector; Council Regulation (EC) No. 2200/97 on the improvement of the Community production of apples, pears, peaches and nectarines; Council Regulation (EC) No. 2330/98 providing for an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade; Council Regulation (EC) No. 2800/98 on transitional measures to be applied under the common agricultural policy with a view to the introduction of the euro; Council Regulation (EC) No. 2802/98 on a programme to supply agricultural products to the Russian Federation; Council Regulation (EC) No. 660/1999 fixing the premiums and guarantee thresholds for leaf tobacco by variety group and Member State for the 1999, 2000 and 2001 harvests; Council Regulation (EC) No. 546/2002 fixing the premiums and guarantee thresholds for leaf tobacco by variety group and Member State for the 2002, 2003 and 2004 harvests; and Council Regulation (EC) No. 527/2003 authorising the offer and delivery for direct human consumption of certain wines imported from Argentina which may have undergone oenological processes not provided for in Regulation (EC) No. 1493/1999, in the field of the common agricultural policy. The repealed regulations should be without prejudice to the Union acts adopted on the basis of the regulations, and the validity of amendments which are made to other Union acts by these regulations which are not repealed by these Regulations.<sup>82</sup>

- ❖ On 16 November 2011, the European Parliament and the Council adopted the Regulation (EU) No. 1230/2011 repealing certain obsolete Council acts- Council Regulation (EEC) No. 1471/88 concerning the arrangements applicable to imports of sweet potatoes and manioc starch intended for certain uses; Council Regulation (EEC) No. 478/92 opening an annual Community tariff quota for dog or cat food, for retail sale and falling within CN code 2309 10 11 and an annual Community tariff quota for fish food falling within CN code ex 2309 90 41, originating in Faroe Islands; Council Regulation (EEC) No. 3125/92 on the arrangements applicable to the importation into the Community of sheep meat and goat meat products originating in Bosnia-Herzegovina, Croatia, Montenegro, Serbia, Slovenia and the former Yugoslav Republic of Macedonia; Council Regulation (EC) No. 2184/96 concerning imports into the Community of rice originating in Egypt; Council Regulation (EC) No. 2398/96 opening a tariff quota for turkey meat originating in Israel as provided for in the Association Agreement and the Interim Agreement between the European Community and the State of Israel; Council Regulation (EC) No. 1722/1999 on the import of bran, sharps and other residues of the sifting, milling or other working of certain cereals originating in Algeria, Egypt and Morocco and the import of durum wheat originating in Morocco; Council Regulation (EC) No. 2798/1999 laying down general rules for the import of olive oil originating in Tunisia for the period 1 January 2000 to 31 December 2000; Council Regulation (EC) No. 215/2000 renewing the measures laid down in Regulation (EC) No. 1416/95 for the year 2000, establishing certain concessions in the form of Community tariff quotas in 1995 for certain processed agricultural products; Council Regulation (EC) No. 278/2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Poland; Council Regulation (EC) No. 999/2003 adopting autonomous and transitional measures concerning the import of certain processed agricultural products

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<sup>82</sup> 2011 O.J.(L 326) 18

originating in Hungary and the export of certain processed agricultural products to Hungary; Council Regulation (EC) No. 1039/2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Estonia and the exportation of certain agricultural products to Estonia; Council Regulation (EC) No. 1086/2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Slovenia and the exportation of certain processed agricultural products to Slovenia; Council Regulation (EC) No. 1087/2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Latvia and the exportation of certain processed agricultural products to Latvia; Council Regulation (EC) No. 1088/2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Lithuania and the exportation of certain processed agricultural products to Lithuania; Council Regulation (EC) No. 1089/2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Slovak Republic and the exportation of certain processed agricultural products to the Slovak Republic; Council Regulation (EC) No. 1090/2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Czech Republic and the exportation of certain processed agricultural products to the Czech Republic; Council Regulation (EC) No. 1923/2004 establishing certain concessions for the Swiss Confederation in the form of Community tariff quotas for certain processed agricultural products; as well as Council Decision 98/658/EC on the conclusion of Additional Protocol to the Interim Agreement on trade and trade related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Republic of Slovenia, of the other part, and to the Europe Agreement between the European Communities and their Member States, of the one part, and Republic of Slovenia, of the other part; Council Decision 2004/910/EC on the conclusion of Agreements in the form of an Exchange of Letters between the European Community and, of the one part, Barbados, Belize, Republic of Congo, Fiji, Cooperative Republic of Guyana, Republic of Côte d'Ivoire, Jamaica, Republic of Kenya, Republic of Madagascar, Republic of Malawi, Republic of Mauritius, Republic of Surinam, Saint Christopher and Nevis, Kingdom of Swaziland, United Republic of Tanzania, Republic of Trinidad and Tobago, Republic of Uganda, Republic of Zambia and Republic of Zimbabwe and, of the other part, the Republic of India on the guaranteed prices for cane sugar for the 2003/2004 and 2004/2005 delivery periods; Council Decision 2007/317/EC establishing the position to be adopted, on behalf of the Community, within the International Grains Council with respect to the extension of the Grains Trade Convention 1995; in the field of common commercial policy. The repealed regulations should be without prejudice to the Union acts adopted on the basis of the regulations, and the validity of amendments which are made to other Union acts by these regulations which are not repealed by these Regulations.<sup>83</sup>

- ❖ On 16 November 2011, the European Parliament and the Council adopted the Regulation (EU) No. 1231/2011 amending the Council Regulation (EC) No. 378/2007 as regards the rules for the implementation of voluntary modulation of direct payments under the common agricultural policy. Article 4(1) of the Council Regulation (EC) No. 378/2007 is replaced by the introductory words:

“1. The net amounts resulting from the application of voluntary modulation shall be fixed by the Commission, by means of implementing acts without the application of Article 6a, based on:”

Article 6 is replaced by the words:

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<sup>83</sup> 2011 O.J.(L 326) 21



“1. The Commission shall, by means of implementing acts, adopt specific provisions for the integration of voluntary modulation in the rural development programming. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6a(1);

2. The Commission shall, by means of implementing acts, adopt specific provisions for the financial management of voluntary modulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6a(2).”

Article 6a with the words:

“1. The Commission shall be assisted by the Rural Development Committee established by Regulation (EC) No. 1698/2005. That committee is a committee within the meaning of Regulation (EU) No. 182/2011 (\*).

Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

2. The Commission shall be assisted by the Committee on the agricultural funds established by Regulation (EC) No 1290/2005. That committee is a committee within the meaning of Regulation (EU) No 182/2011.

Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.”

is inserted.<sup>84</sup>

## ❖ **FOOD AND FOOD PRODUCTS**

On 27 October 2011, the Commission Implementing Regulation (EU) No. 1086/2011 amended Annex II to Regulation (EC) No. 2160/2003 of the European Parliament and of the Council which insists on the control of salmonella and other specified food-borne zoonotic agents, and Annex I to Commission Regulation (EC) No. 2073/2005 as regards salmonella in fresh poultry meat wherein fresh poultry meat from animal populations including the fresh meat of breeding flocks of Gallus gallus, laying hens, broilers and breeding and fattening flocks of turkeys should meet the relevant microbiological criterion for the absence of Salmonella typhimurium, Salmonella enteritidis in 25 grams as regards monophasic Salmonella typhimurium set forth in Row 1.28 of Chapter 1 of Annex I to Commission Regulation (EC) No. 2073/2005 to be fit for human consumption.<sup>85</sup>

## ❖ **COMMON FISHERIES POLICY**

On 14 October 2011, the Commission Implementing Regulation (EU) No. 1021/2011 implemented operating deductions from fishing quotas available for certain stocks in 2011, on account of overfishing of other stocks in the previous year. The fishing quotas fixed in the Council Regulation (EU) No. 1124/2010, Council Regulation (EU) No. 1225/2010, Council Regulation (EU) No. 1256/2010, Council Regulation (EU) No. 57/2011, and Commission Regulation (EC) No. 147/2007 and Commission Implementing Regulation (EU) No. 1016/2011 for the year 2011 are reduced by 3,60 for Spurdog or dogfish from the area of EU waters of IIIa; 3,60 for Cod from the area of Skagerrak; 74,30 for Spurdog or dogfish from the area of EU and international waters of I, V, VI, VII, VIII, XII and XIV; 74,30 for Ling from the area of EU and international waters of VI, VII, VIII, IX, X, XII and XIV; 5,70 for Spurdog or dogfish from the area of EU waters of IIa and IV; 5,70 for Anglerfish from the area of EU waters of IIa and IV; 33,30 for deep-sea sharks from the area of EU waters and waters not under the sovereignty or jurisdiction of third countries

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<sup>84</sup> 2011 O.J.(L 326) 24

<sup>85</sup> 2011 O.J.(L 281) 7

of V, VI, VII, VIII and IX; 33,30 for Roundnose grenadier from the area of EU and international waters of Vb, VI, VII; 35,20 for Flatfish from the area of Faroese waters of Vb; 35,20 for Plaice from the area of VI, EU and international waters of Vb, and international waters of XII and XIV.<sup>86</sup>

On 8 November 2011, the European Commission implemented Commission Regulation (EU) No. 1276/2011 amending Annex III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards the treatment to kill viable parasites in fishery products for human consumption. It provided for certain requisites concerning parasites wherein the food business operators selling fishery products derived from finfish or cephalopod molluscs should ensure the raw material or the finished product must be subject to a freezing treatment so as to kill the parasites which may be a threat to the health of the consumer, unless they have undergone a heat treatment or have been preserved as frozen fishery products for a sufficient long period so that the viable parasites are killed, or where there is an epidemiological data available indicating that the fishing grounds from where fishes are netted do not cause any health hazard to the consumers duly authorized by the competent authority, or where the fish products are derived from fish farming, cultured from embryos and fed exclusively on a diet that cannot contain viable parasites. In the case of parasites other than trematodes, the freezing treatment shall be a minimum temperature of – 20° C for not less than 24 hours or – 35° C for not less than 15 hours, unless the product is heated to a temperature of 60° C or more for at least one minute. The above products sold by the food business operator must be accompanied by a document issued by the food business operator stating the type and details of the requirements concerning viable parasites which have been complied with.<sup>87</sup>

#### ❖ **INFORMATION TECHNOLOGY**

In the meeting of the Information Technology Agreement (ITA) which the Committee conducted on 24 October 2011, EU pushed for ITA expansion to “refocus efforts on a sectoral agreement on information technology products from the Doha Round to the ITA Committee”.<sup>88</sup> The EU reiterated its plan to enlarge the scope of products as well as participants in response to the questions by the ASEAN members. According to EU, “negotiating an IT sectoral in the ITA Committee is more promising than in the NAMA (Non Agricultural Market Access) Negotiating Group”. EU made it clear that, “non-tariff barriers in the IT sector that have been discussed in NAMA could also be taken up in the ITA Committee”. Russia has announced its willingness to become part of the Agreement.

#### ❖ **DEVELOPMENTS DURING THE REVIEW QUARTER**

On 6 October 2011, the Commission Implementing Regulation (EU) No. 993/2011 approved the active substance 8-hydroxyquinoline subject to certain conditions as regards purity, uses, date of approval, expiry, etc., in accordance with Regulation (EC) No. 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No. 540/2011 wherein hydroxyquinoline of not less than 990 g per kilogram is added to Part B of the Annex.<sup>89</sup>

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<sup>86</sup> 2011 O.J.(L 270) 16

<sup>87</sup> 2011 O.J.(L 327) 39

<sup>88</sup> *EU pushes for ITA expansion, Russia wishes to join*, (Dec. 20, 2011), [http://www.wto.org/english/news\\_e/news11\\_e/ita\\_24oct11\\_e.htm](http://www.wto.org/english/news_e/news11_e/ita_24oct11_e.htm)

<sup>89</sup> 2011 O.J.(L 263) 1

On 16 November 2011, the European Parliament and the Council adopted the Regulation (EU) No. 1232/2011 amending the Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.<sup>90</sup>

On 16 November 2011, the European Parliament and the Council adopted the Regulation (EU) No. 1233/2011 on the application of certain guidelines in the field of officially supported export credits with regard to the application of the Arrangement, Delegation of power, Exercise of the delegation, Urgency procedure, Transparency and reporting, etc., and repealing the Council Decisions 2001/76/EC on the application of certain guidelines in the field of officially supported export credits, and 2001/77/EC on the application of principles of a framework agreement on project finance in the field of officially supported export credits.<sup>91</sup>

On 16 November 2011, the European Parliament and the Council adopted the Directive 2011/89/EU amending Directives 98/78/EC on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group, 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, 2006/48/EC relating to the taking up and pursuit of the business of credit institutions, and 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as regards the supplementary supervision of financial entities in a financial conglomerate.<sup>92</sup>

## ❖ **X B. SERVICES**

### **ENERGY**

On 25 October 2011, the European Parliament and the Council adopted the Regulation (EU) No. 1227/2011 on wholesale energy, market integrity and transparency, regarding the subject matter, scope and relationship with other Union legislation; prohibition of insider trading; obligation to publish inside information; prohibition of market manipulation; technical updating of definitions of inside information and market manipulation; market monitoring; data collection; registration of market participants; sharing of information between the Agency and other authorities; data protection; operational reliability; implementation of prohibitions against market abuse; right of appeal; obligations of persons professionally arranging transactions; cooperation at Union and national level; professional secrecy; penalties; International relations; exercise of the delegation; Committee procedure, etc.<sup>93</sup>

## ❖ **TRAINING**

On 7 November 2011, the Commission Implementing Decision 2011/821/EU pursuant to Directive 2008/106/EC of the European Parliament and of the Council recognized Cape Verde as regards the systems for the training and certification of seafarers. <sup>94</sup>

## ❖ **CONTRIBUTION TO WTO**

EU's total contribution to the WTO trust funds becomes CHF 12 million.<sup>95</sup> Recently, EU donated 92,672 CHF (75,000 EUR) to the special trust fund for financing the travel costs of the least developed country's delegation in the 8<sup>th</sup>

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<sup>90</sup> 2011 O.J.(L 326) 26

<sup>91</sup> 2011 O.J.(L 326) 45

<sup>92</sup> 2011 O.J.(L 326) 113

<sup>93</sup> 2011 O.J.(L 326) 1

<sup>94</sup> 2011 O.J.(L 327) 67

<sup>95</sup> WTO Press Release No.648 dated (Nov. 30, 2011) *available at* [http://www.wto.org/english/news\\_e/press11\\_e/pr648\\_e.htm](http://www.wto.org/english/news_e/press11_e/pr648_e.htm)

Ministerial Conference, which took place from 15-17 December 2011. The WTO Director General, Pascal Lamy opined that this new contribution will give enough support to LDC's in benefitting completely from the multilateral trading system.

## **X. WTO DISPUTE SETTLEMENT UPDATE**

### **❖ CHINESE FOOTWEAR CASE**

WTO circulated a panel report on EU's anti-dumping measures on certain footwear from China on 28 October 2011.<sup>96</sup> China filed a complaint against EU and Australia, Brazil, Colombia, Japan, Turkey, US, Vietnam are the third parties. WTO reviewed the request for consultation on 4 February 2010 and circulated panel report on 28 October 2011. The complaint was in connection with three EU measures regarding imposition of anti-dumping duties on imports of certain leather footwear from China.

China challenged Art. 9(5) of the Basic EC Anti-Dumping Regulation which states that, "in cases involving imports from NME countries, the anti-dumping duty shall be specified for the supplying country concerned and not for each individual supplier". China argues that, "applicable WTO rules require that an individual margin and duty be determined and specified for each known exporter and producer and not for the supplying country as a whole". China notes the Basic Regulation which states that, "an individual duty will only be specified for exporters that demonstrate that they fulfill the criteria set forth in Art. 9(5), the Individual Treatment rules, and thereby it is inconsistent with various provisions of WTO Agreement, China's Protocol of Accession, the GATT 1994, and the Anti-Dumping Agreement". Another challenge is with respect to the inconsistency of the Review and Definitive Regulation imposing anti-dumping duties on footwear imports from China including the aspects of expiry and original determinations and the underlying investigations on those regulations.

The consultation was held between China and the EU on 31 March 2010 but it was not fruitful. China requested the WTO on 8 April 2010 for the establishment of a panel. On 20 April 2010, the establishment of a panel was deferred by the DSB. However, on 18 May 2010, a panel was established by the DSB.

The panel found that Art. 9(5) of the Basic AD Regulation was inconsistent with the EU's WTO obligations, and that the EU had acted inconsistently with the AD Agreement in some aspects of the original investigation and expiry review,<sup>97</sup> and also Art. 1:1 of the GATT, 1994 and Art. XVI:4 of the WTO Agreement. The panel also found that China had not established its bulk of the specific claims of violation in respect of the original investigation, expiry review, and resulting Definitive and Review Regulations.<sup>98</sup>

The panel considered that, "Art.17.6 (i) of the AD Agreement does not impose any obligations on the investigating authorities of WTO members in anti-dumping investigations that could be subject of a finding of violation", and thereby rejected China's claim under Art. 17.6 (i).

On 6 December 2011, China and EU requested the DSB to adopt a decision extending the 60 days period stipulated under Art. 16.4 of the DSU to 22 February 2012. On 19 December 2011, the DSB agreed on the above request in the absence of (i) any consensus within DSB to the effect of not doing so; or (ii) China's or EU's decision to appeal.

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<sup>96</sup> *European Union — Anti-Dumping Measures on Certain Footwear from China*, (Dec. 20, 2011), [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds405\\_e.htm#bkmk405r](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds405_e.htm#bkmk405r)

<sup>97</sup> Arts. 2.2.2 (iii), 6.5, 6.5.1, 6.10, 9.2, 18.4

<sup>98</sup> Arts. 6.10.2, 2.4, 11.3, 2.1, 2.4, 2.6 read together with 3.1 & 4.1, 3.3, 3.4, 3.1, 3.2, 3.5, 6.1.2, 6.4, 6.5, 6.2, 6.5.2, 6.5.1, 6.8, 6.9, 12.2.2, 9.1, 9.2. Also refer Art. VI.1 of GATT.

## ❖ AIRBUS CASE

This is a case between EU and United States on the ‘measures affecting trade in Large Civil Aircrafts’.<sup>99</sup> On 9 December 2011, US requested for consultation with EU to resolve the dispute and consultations were scheduled for early January 2012.<sup>100</sup> EU objected to the US request and DSB agreed to refer the matter to arbitration by virtue of Art. 22.6 of the DSU. Dispute Settlement Body of WTO met on 19 December 2011. In this meeting EU intimated WTO that, “it had taken all appropriate steps to implement the Airbus rulings”. EU also expressed serious concern over actions made by the US for the suspension of concessions.<sup>101</sup> On 22 December 2011, United States in the Dispute Settlement Body meeting requested for authorization to take countermeasures, since certain US member states failed to comply with the Agreement on Subsidies and Countervailing Measures (SCM Agreement), according to the US. US Trade Representative, Ron Kirk said that EU is continuing with the violation of WTO ruling with special mention to ‘launch aid’ and threatened to request permission for the imposition of around 7 billion dollar to 10 billion dollar trade sanctions.<sup>102</sup> On 13 January 2012, the original panel constituting Mr. Carlos Perez del Castillo (Chairman), Mr. John Adank and Mr. Thinus Jacobez (Members) were appointed as arbitrators.<sup>103</sup>

## ❖ US- LARGE CIVIL AIRCRAFT (II COMPLAINT)

This complaint has been brought by EU against the United States. Australia, Brazil, Canada, China, Japan and Republic of Korea reserved their rights as third parties. The agreements cited include Arts. 3.1, 3.2, 5, 1.1, 6.3, 2, 32, Art. 23 of DSU and Art. III:4 of GATT 1994. The WTO received the request for consultation on 27 June 2005 and the DSB established a panel on 17 February 2006. On 31 March 2011, the panel circulated its report. The Appellate Body heard the second session of hearing in October 2011.

## ❖ PHILIPPINES TAXES ON DISTILLED SPIRITS CASE

EU by a notification dated 28 September 2011 notified its decision to proceed by an appeal to the Appellate Body against the findings of the DSB regarding “issues of law covered and legal interpretations” pursuant to articles 16.4 and 17 of the DSU in the Distilled Spirits case.<sup>104</sup> Simultaneously, EU by virtue of Rule 23(1) of the Working Procedures for Appellate Review, filed Notice of Other Appeal with the Appellate Body Secretariat. In appeal, EU requested the Appellate Body to reverse or modify the conclusion of the panel, since the panel violated Arts. 3.7 and 21.1 of the DSU by erring on “the interpretation and application of Art.7, para 1&2 of the DSU, and/or failed to make an objective assessment pursuant to Art. 11 of the DSU, and/or falsely exercised judicial economy”. The panel wrongly characterized the claim of EU under GATT Art. III:2, second sentence as ‘alternative’. The Appellate Body was requested to complete the analysis. The Appellate Body issued report on 21 December 2011. Regarding Art. III:2, first sentence of GATT 1994, the Appellate Body upheld the panel’s finding in para 7.85 and found that the panel didn’t act inconsistently with Art. 11 of the DSU. The Appellate Body also upheld the panel finding in para 7.90 and 8.2(a) of US Panel Report and reversed the panel finding in para 7.77. Regarding Art. III:2 second sentence, the Appellate Body

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<sup>99</sup> WT/DS316/20

<sup>100</sup> *US retaliation request in Airbus case referred to arbitration*, [http://www.wto.org/english/news\\_e/news11\\_e/dsb\\_22dec11\\_e.htm](http://www.wto.org/english/news_e/news11_e/dsb_22dec11_e.htm)

<sup>101</sup> WTO News, *EU Informs WTO of its Implementation of Airbus Rulings*, [http://www.wto.org/english/news\\_e/news11\\_e/dsb\\_19dec11\\_e.htm](http://www.wto.org/english/news_e/news11_e/dsb_19dec11_e.htm)

<sup>102</sup> Alan Beattie, *US Threatens EU with 10 bn dollar in Sanctions*, THE FINANCIAL EXPRESS, (Dec. 12, 2011) at 7.

<sup>103</sup> WTO News, *Arbitrator for Airbus Case*, [http://www.wto.org/english/news\\_e/news12\\_e/ds31](http://www.wto.org/english/news_e/news12_e/ds31).

<sup>104</sup> WT/DS396/8, WT/DS403/8

upheld panel finding in para 7.138, 7.187, 7.188 and 8.2(b). The Appellate Body finally recommended the DSB request to Philippines to bring its measures in conformity with its obligations under GATT, 1994.<sup>105</sup>

The EU Trade Commissioner, Karel De Gucht said, “the Appellate Body has confirmed that the excise tax regime in the Philippines is designed and applied to protect the domestic industry against the competition of imported spirits and violates the important principle of ‘non-discrimination’ enshrined in the WTO Agreement” and opined that, “this longstanding tax discrimination remains an important obstacle to imports of spirits into the Philippines”, also believed that, “the Philippines will promptly take the necessary steps to remedy this longstanding situation in the light of the clear findings of the WTO Appellate Body”<sup>106</sup>.

❖ **PANEL REQUEST IN CHINA-DEFINITIVE ANTI-DUMPING DUTIES ON X-RAY SECURITY INSPECTION EQUIPMENT FROM EU**

On 19 December 2011, EU requested for the establishment of a panel in ‘DS 425: China-Definitive Anti-Dumping Duties on X-ray Security Inspection Equipment from EU’ to review the Chinese anti-dumping duties on x-ray scanners.<sup>107</sup>

The EU contended that the anti-dumping duties imposed by China were inconsistent with the WTO Anti-Dumping Agreement. EU hoped that the present request will lead to the removal of anti-dumping duties by China and will result in the establishment of a fair market for EU products in China. China objected the EU’s argument and said that the measures were fully consistent with WTO, Anti-Dumping Rules and made a regret over the request for a panel instead of making consultations.

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<sup>105</sup> *Panel Report by Appellate Body on Distilled Spirits Dispute*, [http://www.wto.org/english/tratop\\_e/dispu\\_e/396\\_403ab](http://www.wto.org/english/tratop_e/dispu_e/396_403ab).

<sup>106</sup> Press Release, *EU and US Prevail in WTO Appeal against Philippines Tax Regime Discriminating against Imported Distilled Spirits*, (Dec. 20, 2011), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=771>.

<sup>107</sup> *WTO News*, [http://www.wto.org/english/news\\_e/news11\\_e/dsb\\_19dec11\\_e.htm](http://www.wto.org/english/news_e/news11_e/dsb_19dec11_e.htm)