



## **TRADE POLICY DEVELOPMENTS PAPER NO. 8**

### **REPORT ON THE EUROPEAN UNION (for the period July - September 2011)**

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## Abbreviations

ACP	-	Africa-Pacific-Caribbean
AD	-	Anti Dumping
AIDCP	-	Agreement on the International Dolphin Conservation Program
ASEAN	-	Association of South East Asian Nations
BIT	-	Bilateral Investment Treaty
BNC	-	Bi-Regional Negotiations Committee
BRIC	-	Brazil, Russia, India, China
BTI	-	Binding Tariff Information
CCT	-	Common Customs Tariff
CEF	-	Connecting Europe Facility
CEPA	-	Comprehensive Economic Partnership Agreement
CETA	-	Comprehensive Economic and Trade Agreement
CFP	-	Common Fisheries Policy
CO <sub>2</sub>	-	Carbon-dioxide
CVD	-	Countervailing Duty
DCFTA	-	Deep and Comprehensive Free Trade Agreement
DOC	-	Department Of Commerce
DPCIA	-	Dolphin Protection Consumer Information Act of 1990
ECB	-	European Central Bank
ECDC	-	European Centre for Disease prevention and Control
ECON	-	Economic and Monetary Affairs Committee
ECJ	-	European Court of Justice
EEA	-	European Economic Area
EFSA	-	European Food Safety Authority
EFTA	-	European Free Trade Agreement
EFSF	-	European Financial Stability Fund
EMU	-	Economic and Monetary Union
ENS	-	Electronic Entry Summary
ENSREG	-	European Nuclear Safety Regulator's Group
ERM	-	Exchange Rate Mechanism
ETD	-	Energy Taxation Directive
EU	-	European Union

EU-ETS	-	European Union Emission Trading Scheme
EUSFTA	-	EU-Singapore Free Trade Agreement
Euratom	-	European Atomic Energy Community
FADs	-	Fish Aggregating Devices
FDI	-	Foreign Direct Investment
FIFG	-	Financial Instrument for Fisheries Guidance
FIR	-	Foreign Investment Regime
FSB	-	Financial Stability Board
FTA	-	Free Trade Agreement
FTT	-	Financial Transaction Tax
G-20	-	Group of Twenty
GATT	-	General Agreement on Tariff and Trade
GCC	-	Gulf Cooperation Council
GDP	-	Gross Domestic Product
GFSR	-	Global Financial Stability Report
GPA	-	Government Procurement
GSP	-	Generalized System of Preferences
IATTC	-	Inter-American Tropical Tuna Commission
ICAO	-	International Civil Aviation Organisation
ICT	-	Information and Communication Technology
IDCPA	-	International Dolphin Conservation Program Act
IMF	-	International Monetary Fund
LDCs	-	Least Developed Countries
MEP	-	Member of European Parliament
MMPA	-	Marine Mammal Protection Act of 1972
MRA	-	Mutual Recognition Agreement
NME	-	Non-Market Economy country
OCT	-	Overseas Countries and Territories
PRS	-	Public Regulated Service
R&D	-	Research and Development
SMP	-	Securities Market Programme
SPS	-	Sanitary and Phytosanitary measures
TARP	-	Troubled Asset Relief Programme
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
TIDP	-	Trade and Investment Development Programme
TKM	-	Tonne Kilometre Benchmark
TRIPS	-	Trade-Related aspects of Intellectual Property rights
USDOC	-	United States Department Of Commerce
WTO	-	World Trade Organization

## **Executive Summary**

1. Europe's sovereign debt crisis has spread during the last few months from smaller countries such as Greece which are on the rim of the single currency area to large economies such as Spain and Italy. According to the IMF, the real GDP growth in the Euro area is expected to slow from an annual rate of about 2 per cent in the first half of 2011 to ¼ per cent in the second half. Liquidity of the current EU banking system is at the centre of the economic crisis.
2. On 4 August 2011, the Council Implementing Regulation (EU) No 803/2011 repealed the countervailing duty on imports of certain broad spectrum antibiotics originating in India and terminated the proceeding in respect of such imports, following an expiry review pursuant to Article 18(2) of Council Regulation (EC) No 597/2009. As a result countervailing duties levied by the EU on broad spectrum antibiotics from India for more than a decade has come to an end.
3. The EU is being challenged at the European Court of Justice (ECJ) by the US Air Transport Association and US airlines Continental and United on the application of the European Union's Emission Trading Scheme (ETS). Recently, the ECJ Advocate General Juliane Kokott released an official opinion deeming that the inclusion of aviation in the EU emission trading system as fully compatible with international law. However, this matter has been strongly taken up by countries including China.
4. EU has limited its imports and has restrictions on certain imports like food stuffs and feed stuffs from Japan.
5. EU is proposing Financial Transaction Tax (FTT), popularly known as "Tobin tax" on financial transactions taking place within the Union.

#### **ISSUES FOR NEXT REPORT**

1. The next quarterly report will examine the various steps taken by the Euro Zone countries in averting the Euro debt crisis and the features of the financial assistance provided to the crisis ridden EU countries by other Euro Zone members and multilateral bodies such as the IMF.
2. The EU Commission is presently formulating legal proposals for making the Common Agricultural Policy (CAP) a more effective policy for fostering competitive and sustainable agriculture and vibrant rural areas. The developments in this area will be monitored.
3. The decision of the Court of Justice of the European Union on the application of Emission Trading System (ETS) to the Aviation sector, and specifically to foreign air carriers, is likely to be released in the forthcoming quarter. The developments in this area will be monitored.
4. The developments in the negotiation of various free trade agreements involving the European Union will be closely tracked and reported.
5. The proposals relating to EU GSP reforms will be identified.
6. The response of the EU Commission to the subsidies and government support provided by the China to the Energy sector and in more specific, solar and wind power sector, will be closely monitored.
7. The key developments in EU fisheries, fisheries trade policy and legislation which are undergoing reforms will be examined and reported

**EUROPEAN UNION**

**TRADE POLICY MONITORING REPORT**

**FOR THE QUARTERLY PERIOD**

**JULY 2011- SEPTEMBER 2011**

**I. INTRODUCTION**

This is the second Quarterly Trade Policy Monitoring Report prepared by the CITELE, 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 July- September, 2011.

**II. ECONOMIC ENVIRONMENT AND MONETARY POLICY**

The 27- member European Union accounts for about 30% of global GDP and 20% of global trade flows and has a key international currency, namely the Euro. The current financial and economic problems confronting the EU are ominous and pose serious challenges to existence of the Union and the single currency Euro. The Euro zone, a single currency area of 17 EU members and an integral part of the European Union is in a vicious circle. Europe's debt crisis has spread during the last few months from smaller countries such as Greece which are on the rim of the single currency area to large economies such as Spain and Italy. The sovereign credit of a number of countries within the Euro Zone is deteriorating making the banking system extremely vulnerable. The Global Financial Stability Report (GFSR) released by the International Monetary Fund (IMF) in September 2011 noted: "[A]fter four years of financial crisis, public balance sheets have been saddled with onerous debt burdens...Lower tax revenue, weaker growth prospectus, and large-scale support for financial institutions have driven public finances to precarious territory. In many cases, these challenges have been added to a legacy of fiscal irresponsibility, as some governments lived beyond their means during more benign times." The IMF Report says that nearly half of Euro 6500 billion of government debt issued by the Euro Zone countries show signs of heightened credit risk.

A number of Euro sceptics believe that the euro zone debt crisis might spread to France and Italy. It is also believed that distinction between the core and the periphery of the Euro zone has almost blurred as the crisis has deepened. Of all the Euro Zone economies, Germany has withstood the economic crisis in EU much better than any other country; on the other hand, even advanced economies such as France could be bracing for a serious crisis in view of the high exposure of French Banks to Greek sovereign assets.<sup>1</sup>

Some of the economic data coming out from Europe during the most recent quarter are staggering. Italy has the biggest sovereign debt in Europe which is to the tune of \$ 2.6 trillion (See Chart I). This will amount to almost 120% of its GDP. *Standard & Poor's*, the credit rating agency, has rated Greece CC, Portugal BBB-, Ireland BBB+, Poland A- and Spain AA. Even some of the countries that have AAA rating at present such as

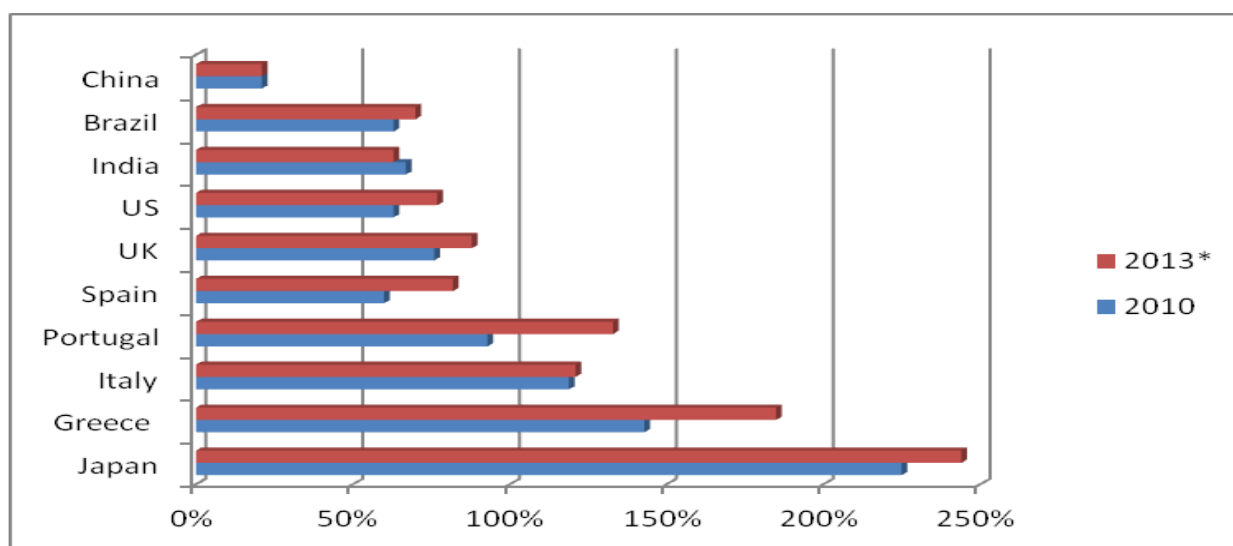
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<sup>1</sup> *Angst Over the Euro*, THE FINANCIAL EXPRESS, Sept. 6, 2011 at 12.



France are not supposed to be immune from the crisis that is engulfing the Union. The unemployment rates in the EU are at an all-time high of 9.4%. In some of the countries such as Italy and Spain, the unemployment rates are much higher and are in double-digit figures. A number of these countries run a serious risk of defaulting on their sovereign debt obligations and are also facing an extended recession. For instance, the Greek economy is forecast to shrink by 5.5 per cent in 2011 and a further 2.5 per cent in 2012, bringing the total contraction since 2008 to 14 per cent. Research undertaken by *Financial Times*, a newspaper, indicates that the degree on financial pain confronting Greek population is twice as severe as that in Ireland and Portugal.<sup>2</sup>

**Chart I: Government Debt as Percentage of GDP- Leading Economies**



**Source:** Citi Investment Research and Analysis

After a strong first quarter, growth in the Euro area fell sharply in the second quarter of 2011. According to the IMF, the real GDP growth in the Euro area is expected to slow from an annual rate of about 2 percent in the first half of 2011 to ¼ per cent in the second half. As one commentator put it, “the problem of Europe is that of weak governments and weak banks”. Therefore any rescue scheme for Europe is likely to revolve round the following agenda:

- Stabilisation of Greece, Italy, Spain and Ireland (most notably Greece)
- Capitalisation of EU Banks
- Flexibility to the EURO 440 bn rescue fund, officially known as EFSF.

At the centre of the current economic crisis is the liquidity of the EU Banking system. With \$55,000 in assets, this sector is more than four times of the size of its US counterpart. In September 2011, *Moody's*, a credit rating agency, placed Dexia a Franco- Belgium Banking Group on review for a possible downgrade. Dexia which had received a financial assistance of euro 6.4 billion in 2008 at the start of the initial crisis has exposure to Greek, Italian and other troubled economies of the Euro Zone to the tune of euro 20.9 billion — more than its entire equity base. The share prices of leading European Banking institutions such as France's

<sup>2</sup> Sally Gainsbury and Kerin Hope, *Greece's pain twice that of Ireland and Portugal*, FINANCIAL TIMES, Oct. 18, 2011.

BNP Paribas and Societe Generale or Italy's UniCredit plunged by an average of more than 45 per cent in 2011 alone. It is believed that the European Banking Authority's July 2011 stress test had done apparently little to stabilize bank stocks within the EU. Most of these banks are very highly exposed to the peripheral sovereign debts in Greece, Italy and Spain. As part of the July 2011 bailout plan, impairment charges have only been taken on Greek government debt with banks writing down by 21 per cent the book value (commonly known as 'hair cut'). If the government bonds which these banks hold default or are otherwise written down, the EU Banking system could face a catastrophic collapse. It is in this context that a proposal has been made to allow the EFSF to take over sovereign bonds, especially the Greek Bonds. The basic idea is to leverage the EFSF to buy sovereign debt held by national banks or to hold it in reserve to deter markets from bidding up countries' borrowing costs. In spite of the efforts, it is reported that ten-year bond spreads between Greece/Spanish bonds and German (bunds) bonds widened significantly during the quarter.

Even more striking is the role of the European Central Bank (ECB). Taking a marked departure from its role as a monetary agency—i.e. making markets lend at reasonable rates — the ECB has started buying sovereign debts. This is presumably done under its mandate to ensure financial stability. The July 21st Summit of Euro Zone members expanded EFSF's remit with a view to helping it to buy government bonds in secondary markets. The ECB launched its Securities Market Programme (SMP) in May 2010, when the first Euro Zone rescue of Greece was arranged. As of September 2011, the SMP holds Euro 150 billion worth of government securities from Greece, Ireland and Portugal.

### GDP Growth of Euro zone- Past and Projection

ECONOMY	1993-2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2016
Euro Area	2.1	0.7	2.2	1.7	3.2	3	0.4	-4.3	1.8	1.6	1.1	1.7

**Source:** World Economic and Financial Surveys, IMF, Sept 2011, World Economic Outlook.

Bundestag,<sup>3</sup> the German Parliament, is about to enact a legislation to approve extended powers for a temporary fund, the European Financial Stability Facility (EFSF) for enabling indebted euro countries to fight against the severity of the euro crisis.<sup>4</sup>

A number of proposals have been floated to save the Euro and the Euro Zone. In addition to using the Euro 440 billion EFSF as a guarantee for European bank debts, a few radical proposals have also come up. One such proposal is the idea of a "Euro TARP" reminiscent of the Troubled Asset Relief Programme (TARP) set up in the United States in 2008. According to this plan, the governments could inject money into the domestic banks in the form of preference shares or convertible bonds which could be turned into stock. Another proposal is to let Greece default and use the EFSF to protect the EU banks directly. Those who advocate this approach hope that the improved institutional set up will be sufficient to deal with contagion. Proposals are also currently afoot in increasing the size of EFSF to almost Euro 1 trillion.

<sup>3</sup> The lower House of the Parliament of Germany.

<sup>4</sup> Angst Over the Euro, *supra* note 1.

## **EU and G-20**

The leaders of the Group of 20 (G-20), large economies agreed in 2010 that they would work together to find a solution to the Euro Zone sovereign debt crisis. The G-20 also agreed that they would work together to make cross-border bank failures easier to work with and they asked the Financial Stability Board (FSB) to come up with a detailed plan for the next G-20 meeting scheduled in Cannes, France in November.

The Third Trade Policy Quarterly Monitoring Report will review the developments.

### **EU and the BRICs Countries:**

A critical issue is whether countries such as the BRICs would be willing to help the EU at this stage? In particular, the role of China in bailing out the EU will be an interesting development. The EU is the highest buyer of Chinese exports and the bilateral trade between EU and China is already significant.<sup>5</sup> However, accepting Chinese help may have significant diplomatic and political implications in addition to China seeking improved market access for Chinese goods in EU.

The 3<sup>rd</sup> Trade Policy Monitoring Report shall study developments in this field.

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

### **III A. Regional Trade Agreements**

#### **EU's Ongoing FTA / Economic Cooperation Negotiations/Bilateral discussions**

The EU is currently engaged in negotiations on free trade agreements with the following partners. Some of the most recent developments are indicated below:

#### **EU and South Korea**

The EU-South Korea FTA is first of the new generation FTAs launched as part of the “Global Europe Initiative” to be concluded in the recent past. It is also one of the most comprehensive FTAs negotiated and concluded by the EU.

On 27 October 2011, the Commission conducted a high level conference on the EU- South Korea FTA in Brussels. The conference was chaired between South Korean Trade Minister Kim Jong-Hoon and the EU Trade Commissioner Karel De Gucht. The Commission published a guide entitled “The EU-Korea Free Trade Agreement in Practice” to provide an overview of the steps that EU companies have to take to fully benefit from the FTA the EU has concluded with South Korea. The practical issues as well as the first experience of the FTA have been discussed by the Commission with business representatives, the EU Parliament and the member states.<sup>6</sup>

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<sup>5</sup> International Affairs, Free Trade Agreements, [http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/index\\_en.htm#h2-1](http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/index_en.htm#h2-1), (last visited July 18, 2011)

<sup>6</sup> See South Korea, *available at* [http://trade.ec.europa.eu/doclib/2011/October/tradoc\\_148326.pdf](http://trade.ec.europa.eu/doclib/2011/October/tradoc_148326.pdf) (last visited Oct. 26, 2011)

The first meeting of the EU- South Korea Trade Committee was held in Seoul on 12 October 2011 in which both sides took stock of the success of the deal for business, for example, both parties agreed on ways forward to bridge outstanding implementation issues in the areas of motor vehicles and electronics. On motor vehicles, the parties tackled market access issues on tyre and after sale verification rules for diesel emissions and safety standards of cars. On electronic goods, the meeting addressed the need to recognize agreed ways of listing electronic products.

Commissioner De Gucht also stressed the need to use FTA and deepened the partnership to help common standards on products such as electric vehicles (e-cars) in the future.<sup>7</sup> The meeting also identified a number of areas where further work by officials on both sides is needed to cut through red-tape hindering trade, such as, overly complex procedures to allow certain EU food and agricultural imports into South Korea.<sup>8</sup>

### **EU and Ukraine**

Under the European Neighbourhood Policy, the EU is in negotiations for a Deep and Comprehensive Free Trade Agreement (DCFTA) with Ukraine as part of a future Association Agreement. The last round of negotiations took place on 19- 23 September 2011. The DCFTA is designed to deepen Ukraine's access to the European market and to encourage further European investment in Ukraine. The negotiations include mutual opening of markets for goods and services – the abolition of import duties and ‘behind the border’ issues on products including dairy and meat products. On 20 October 2011, the EU and Ukraine jointly announced that they concluded the negotiations.

### **EU and Canada**

The eighth round of negotiations took place in Brussels on 11-15 July 2011. The next round is scheduled in Ottawa on 17-21 October 2011.

### **EU and India**

Thirteen rounds of negotiations have been held under the India-EU FTA and the agreement is expected to be concluded in early 2012. The main objectives of the FTA are for reciprocally liberalizing all trade in goods and services and tackling existing and future non-tariff barriers to trade. It is reported that the EU is seeking increased market access in sectors such as banking, insurance, legal, accounting, postal, maritime and security services. The negotiations include the various problems on technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), agricultural policy, industrial policy and EU market access issues.<sup>9</sup> The Minister of State for Commerce and Industry Jyotiraditya Scindia stated in a written reply to the Lok Sabha that the legal texts of the proposed agreement in all these areas have been exchanged.<sup>10</sup>

### **EU and Russia**

The EU and the Russian Federation are currently negotiating a new agreement to provide for the contractual framework for EU- Russia relations replacing the ten year old Partnership and Cooperation Agreement. This

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See [Ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/india/](http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/india/) (last visited Oct. 26, 2011)

<sup>10</sup> *India-EU FTA negotiations at advanced stage: Scindia*, <http://www.bilaterals.org/spip.php?article20019> (last visited Sep. 10, 2011)

new legally binding agreement should provide a comprehensive framework for bilateral relations with stable, predictable and balanced rules for bilateral trade and investment relations.<sup>11</sup>

As regards Russia's investment regime for car production, a balance has been found between the different concerns of European car companies that have already invested in Russia.

Satisfactory outcomes have also been achieved on the other outstanding issues, such as clearer rules for exporting agricultural products and food stuffs to Russia and a reliable quota regime for wood exports.<sup>12</sup>

The EU has also secured a guarantee from Russia that an agreement to amend the system of Siberian Over Flight Payment, which is costing EU airlines would be implemented in the coming weeks.<sup>13</sup>

## **EU and China**

On 14 July 2011, China announced its policy on rare earths quotas for 2011. The EU Trade Spokesman, John Clancy made a statement on China's rare earths policy that it was highly disappointing and called upon the Chinese authorities to revisit their export restriction policy to ensure that there is full, fair, predictable and non-discriminatory access to rare earths supplies as well as other raw materials for EU industries.<sup>14</sup> According to EU Spokesman, China has not made any noticeable changes to the quotas but has added one for item, viz., ferro- alloys to quotas.<sup>15</sup>

## **EU and Mercosur**

Negotiations were re-launched at the EU- Mercosur Summit in May 2010. The ninth round of negotiations took part in Brussels on 4-8 July 2011. The negotiations included trade in goods and services, investment, intellectual property aspects including protection of geographical indications, government procurement, TBT and SPS aspects. Until now, negotiations focused only on the normative part of the agreement and the next round is scheduled in Montevideo on 7-11 November 2011.

## **EU and ASEAN**

Seven negotiations rounds were held with ASEAN in the past but this initiative is considered to have failed.

## **EU and Singapore**

Singapore was one of the first Southeast Asian countries to have launched FTA negotiations with the EU. The EU Commissioner for Trade, Karel De Gucht and the Singapore Minister for Trade and Industry, Lim Hng Kiang met on 15 July 2011 in Singapore for discussing EU-Singapore Free Trade Agreement (EUSFTA). Discussions focussed on further improving access to each other's market for goods and service providers as on strengthening trade rules on issues such as intellectual property protection and rules of

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<sup>11</sup> See [Ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/Russia/](http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/Russia/) (last visited Oct. 26, 2011)

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> John Clancy, The EU Trade Spokesman on China's Announcement of Rare Earths Quotas For 2011, (Jul. 14, 2011), [trade.ec.europa.eu/doclib/press/index.cfm?id=728](http://trade.ec.europa.eu/doclib/press/index.cfm?id=728)

<sup>15</sup> Press Release, European Commission –Trade, available at <http://ec.europa.eu/trade/news-and-events/> (last visited Oct. 20, 2011)

origin.<sup>16</sup> According to the newly appointed EU Ambassador to Singapore, the FTA is likely to be concluded within the next few months. The Ambassador also noted that the Government of Singapore Corporation has partly taken global efforts to finance Ireland's bailout.

## **EU and Malaysia**

Five rounds of negotiations have been completed. The sixth round is scheduled for 8-12 February 2012 with an objective to conclude negotiations in 2012.

## **III B. Bilateral Sectoral Agreements**

A new trade and development scheme has been entered into by the EU with 78 partners of the Africa-Pacific-Caribbean (ACP) group with the intention of assimilating them into the global economy.<sup>17</sup> The EU has a free trade agreement deal with Africa, Mexico and Chile, and is negotiating a deal with Oman, Qatar, Bahrain, Kuwait, Saudi Arabia and the United Arab Emirates which are members of the Gulf Cooperation Council (GCC) and also with Argentina, Brazil, Paraguay and Uruguay- the Mercosur group.<sup>18</sup>

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

### **IV A. Rules of Origin**

On 18 November 2010, the European Commission adopted a regulation revising the rules of origin for products imported under the Generalised System of Preferences (GSP). This regulation which is in application from 1 January 2011 relaxes and simplifies the rules and procedures for developing countries wishing to access the EU's preferential trade arrangements, while ensuring the necessary controls are in place to prevent fraud. It also includes certain special provisions for Least Developed Countries (LDCs) which would allow them to claim origin for many more goods which are processed in their territories, even if the primary materials do not originate there. It takes into account the specificities of different sectors of production, and in particular, processing requirements amongst other things and is expected to benefit the industries and economies of the world's poorest countries at large.<sup>19</sup>

From 2017, the current system of certification of origin carried out by the third country authorities will be replaced by statements of origin made out directly by exporters registered via an electronic system which will allow the authorities of the exporting country to re-focus their resources on better controls against fraud and abuse, while reducing red-tape for businesses.<sup>20</sup>

The forthcoming trade policy monitoring reports will track the developments taking place in this area.

### **IV B. Import Restrictions**

#### **EU bans imports from Syria over repression**

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<sup>16</sup> See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=729> (last visited Oct. 26, 2011)

<sup>17</sup> *Committed to Free and Fair Trade* (May 26, 2011), [http://europa.eu/pol/comm/index\\_en.htm](http://europa.eu/pol/comm/index_en.htm)

<sup>18</sup> *Id.*

<sup>19</sup> New Developments, *The Future of Rules of Origin* (last updated on Oct. 25, 2011) (*available at* [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/rules\\_origin/preferential/article\\_777\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_777_en.htm)).

<sup>20</sup> *Id.*

EU has banned oil products from Syria, a mark of raising its voice against the violent repression in that country.<sup>21</sup> The EU ban covers the purchase, import and transport of oil and other oil products from Syria.<sup>22</sup> The EU has banned European banks from opening finance for such sales, and has also prohibited insurance companies from insuring the same.<sup>23</sup> Since Germany and Italy are the leading destinations for Syrian imports and since 95 per cent of its exports have to pass through Europe, this ban will have a serious impact on Syria and might weaken the Syrian regime.<sup>24</sup>

### **Restriction on imports of feedstuffs and foodstuffs from Japan**

Commission Regulation No. 961/2011 (27 September 2011) repealing Regulation (EU) No 297/2011 includes the amendment of special conditions for imports of feedstuffs and foodstuffs from regions of Japan affected by the nuclear crisis. The imports from these regions are to be submitted to a declaration attesting that: (i) the products have been harvested and/ or processed before 11 March 2011; or (ii) the place of origin and consignment of the product is a prefecture other than Fukushima, Chiba, Kanagawa, Gunma, Ibaraki, Tochigi, Saitama, Tokyo, Miyagi, Nagano, Yamanashi and Shizuoka; or (iii) the products though consigned from Fukushima, Chiba, Kanagawa, Gunma, Ibaraki, Tochigi, Saitama, Tokyo, Miyagi, Nagano, Yamanashi and Shizuoka, but strictly do not originate from any of these prefectures and have not been exposed to radioactivity during their transit; or (iv) where the place of origin of the products being Fukushima, Chiba, Kanagawa, Gunma, Ibaraki, Tochigi, Saitama, Tokyo, Miyagi, Nagano, Yamanashi and Shizuoka, do not include levels of radionuclides iodine-131, caesium-134 and caesium-137 above the maximum levels provided by Euratom, including the products harvested or caught in the coastal waters of the prefectures, irrespective of the place of landing of the products.

### **IV C. Tariff Rate Quotas**

Communication No. 2011/C 289/03 (1 October 2011)<sup>25</sup> from the Commission relates to the overall allocation of certain quotas opened by the European Union for import of rice originating in the overseas countries and territories (OCT) in 2011. The overall allocation of the quota for 2011 is zero per cent for products originating from Netherlands Antilles and Aruba and Least developed OCTs.

### **IV D. Technical Barriers to Trade (TBT)**

#### **Notification Received by the WTO Committee on Technical Barriers to Trade**

- On 29 August 2011, the Committee on Technical Barriers to Trade (TBT Committee) received a communication from EU regarding the lists of mineral substances that can be added to foods.<sup>26</sup>

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<sup>21</sup> *EU Bans Oil Products from Syria over Repression*, FINANCIAL TIMES, Sept. 2, 2011.

<sup>22</sup> *See EU Bans Import of Syrian Oil*, DECCAN HERALD, Sept. 27, 2011.

<sup>23</sup> *Id.*

<sup>24</sup> *Supra.*

<sup>25</sup> Official *Communication*, EUR-LEX, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:289:0003:0003:EN:PDF> (last visited Oct. 4, 2011).

<sup>26</sup> *See* World Trade Organization, G/TBT/N/EEC/400 (Aug. 29, 2011).

- On 14 September 2011, the TBT Committee received a communication from EU regarding the marketing standards of domestic and imported products.<sup>27</sup>
- On 14 September 2011, the TBT Committee received a communication from EU relating to the recreational craft and personal watercraft.<sup>28</sup>
- On 15 September 2011, the TBT Committee received a communication from EU regarding the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).<sup>29</sup>

### **European Commission- Benchmark for allocating greenhouse gas emission allowances**

On 26 September 2011, the European Commission, pursuant to Article 3e of Directive 2003/87/EC of the European Parliament and of the Council, published benchmarks for allocating greenhouse gas emission allowances free of charge to aircraft operators. Subsequently, free aviation allowances will be distributed to a number of aircraft operators.

The decision of the Commission sets out to determine two benchmark values – (i) calculated for the period starting from 1 January to 31 December 2012 and (ii) calculated for the trading period from 1 January 2013 to 31 December 2020. In 2012, the aircraft operators will receive 0.6797 allowances per 1,000 tonne-kilometres free of charge. However, this number will be reduced in 2013- 2020, and the airlines will receive only 0.6422 allowances during this period.

In 2012, the total quantity of allowances will be equal to 97% of the EEA-wide 2004-2006 average of CO<sub>2</sub> gas emissions from aviation sector. In the period of 2013-2020, this percentage will be reduced by 2%. In addition, 85% of aviation allowances will be allocated for free to aircraft operators in 2012, and in the period 2013-2020 this percentage will be reduced by 13%. The remaining 15% will be auctioned every year starting from 2012. From 2013, 3% of allowances will be held in a special reserve in order to distribute to new entrants and fast growing airlines.

The European Commission in Commission Decision No. 389/2011 on 30 June 2011 decided that the Union-wide quantity of allowances referred to in Article 3e(3)(a) to (d) of Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community should be (i) 212 892 053 for the period from 1 January 2012 to 31 December 2012 as per Article 3c(1); (ii) 208 502 526 for each year of the period beginning on 1 January 2013 as per Article 3c(2); (iii) 31 933 808 for the period from 1 January 2012 to 31 December 2012 as per Article 3d(1); (iv) 31 275 379 for each year of the period beginning on 1 January 2013 as per Article 3d(2); (v) 50 040 608 for special reserve as per Article 3f(1); (vi) 180 958 245 for the period from 1 January 2012 to 31 December 2012 as per Article 3e(3)(d); (vii) 170 972 07 for each year of the period beginning on 1 January 2013 as per Article 3e(3)(d).<sup>30</sup>

#### **Box: III: EU Emission Trading Scheme and the Aviation Industry**

The European Union's Emissions Trading Scheme (ETS) will be applicable to aircraft operators, whether EU or foreign-

<sup>27</sup>See World Trade Organization, G/TBT/N/EEC/401 (Sep. 14, 2011).

<sup>28</sup>See World Trade Organization, G/TBT/N/EEC/402 (Sep. 14, 2011).

<sup>29</sup>See World Trade Organization, G/TBT/N/EEC/403 (Sep. 15, 2011).

<sup>30</sup>See *Decision*, EUR-LEX, <http://eur-lex.europa.eu/LexUriServ/> last visited Oct. 4, 2011).



based, that choose to operate flights on routes to, from, or between EU airports.

The EU ETS on Aviation Industry, launched in 2005 is an *ex facie* non-discriminatory measure since it treats all airlines in the same manner. The Scheme currently covers all land-based installations within EU and from 2012, the Scheme is supposed to cover all aircrafts flying to and from EU airports. According to the EU, since the International Community failed to adopt measures for checking in carbon-emissions on a global basis, the EU adopted measures for checking in the same in the territory of European Union.

However, the application of the ETS on the Aviation sector is considered as a breach of sovereignty in as much as it applies to foreign carriers. There was a joint declaration by a group of 25 countries including India, U.S., China, Argentina, Brazil, Canada, Mexico, Chile, Columbia, Cuba, Egypt, South Korea, Japan, Malaysia, Nigeria, Paraguay, Peru, Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, Thailand, Turkey, and the United Arab Emirates condemning the EU's emission tax on airlines as violative of the Chicago Convention governing international aviation and the WTO norms, wherein the International Civil Aviation Organisation (ICAO) was requested to continue its undertaking of efforts in reducing aviation emissions and the EU was urged to work in collaboration with the rest of the international community in addressing aviation emission problems.<sup>31</sup>

AMR Corp.'s American Airlines, United Continental Holdings Inc. and the Air Transport Association of America, a trade group, in 2009 challenged the EU Plan to regulate greenhouse emissions by the airplane in a British Court. The Court in turn asked the ECJ to rule on the legality of the issue. Recently, the ECJ Advocate General Juliane Kokott released an official opinion deeming that the inclusion of aviation in the EU emission trading system as fully compatible with international law.<sup>32</sup>

China and other members of ICAO are expected to take a stand on this issue in the Montreal meeting of the ICAO scheduled in November.

**Source:** Financial Times (June 24, 2011)

## **IV E. Sanitary and Phytosanitary Measures (SPS)**

### **Committee on Sanitary and Phytosanitary Measures- Notifications**

On 22 September 2011, the Committee on Sanitary and Phytosanitary Measures issued an Addendum to the notification submitted by the EU on the maximum level of residue for captan, carbendazim, cyromazine, ethephon, fenamiphos, thiophanate-methyl, triasulfuron and triticonazole, in or on certain products.<sup>33</sup>

On 22 September 2011, the Committee on Sanitary and Phytosanitary Measures made an Addendum to the notification by the EU on the maximum level of residue for abamectin, acetamiprid, cyprodinil, difenoconazole, dimethomorph, fenhexamid, proquinazid, prothioconazole, pyraclostrobin, spirotetramat, thiacloprid, thiamethoxam and trifloxystrobin, in or on certain products.<sup>34</sup>

On 22 September 2011, the Committee on Sanitary and Phytosanitary Measures made an Addendum to the notification by EU on the maximum level of residue for benalaxyl, boscalid, buprofezin, carbofuran,

<sup>31</sup> *India, US, China call EU airline tax unacceptable*, MINT Oct. 1, 2011 at 5.

<sup>32</sup> *See Daniel & Torello, European Court Backs Plan To Regulate Carrier Emissions*, THE WALL ST. J., Oct. 7-9, 2011 at 5.

<sup>33</sup> *See World Trade Organization, G/SPS/N/EEC/389/Add.1* (Sep. 22, 2011).

<sup>34</sup> *See World Trade Organization, G/SPS/N/EEC/393/Add.1* (Sep. 22, 2011).

carbosulfan, cypermethrin, fluopicolide, hexythiazox, indoxacarb, metaflumizone, methoxyfenozide, paraquat, prochloraz, spirodiclofen, prothioconazole and zoxamide, in or on certain products.<sup>35</sup>

On 22 September 2011, the Committee on Sanitary and Phytosanitary Measures made an Addendum to the notification by EU on the maximum level of residue for biphenyl, deltamethrin, ethofumesate, isopyrazam, propiconazole, pymetrozine, pyrimethanil and tebuconazole, in or on certain products.<sup>36</sup>

On 22 September 2011, the Committee on Sanitary and Phytosanitary Measures made an Addendum to the notification by EU on the maximum level for polycyclic aromatic hydrocarbons in foodstuffs.<sup>37</sup>

### Trade Policy Review Body- Corrigendum

On 28 September 2011, the Trade Policy Review Body of the European Union issued a Corrigendum with respect to the Mutual Recognition Agreement (MRA) on SPS or on TBT as mentioned in paragraph 491 of page 74 (WT/TPR/M/248/Corr.1).<sup>38</sup>

## V. Contingency Trade Protection

### Anti-Dumping

In Quarter 2, the Commission initiated two original investigations — both against China. The following table provides a summary of the ongoing investigations which are pending a decision of the European Commission or the Council of the European Union. Investigations are listed chronologically with the most recent initiation first.

Case number	Product	Countries	Type	Initiation
R533	Steel wire ropes and cables (SWR)	Republic of Korea	New Exporter Review, Article 11(4)	30-Sep-11
R536	Plastic sacks and bags	Thailand, People's Republic of China	Expiry Review, Article 11(2)	27-Sep-11

<sup>35</sup> See World Trade Organization, G/SPS/N/EEC/394/Add.1 (Sep. 22, 2011).

<sup>36</sup> See World Trade Organization, G/SPS/N/EEC/395/Add.1 (Sep. 22, 2011).

<sup>37</sup> See World Trade Organization, G/SPS/N/EEC/403/Add.1 (Sep. 22, 2011).

<sup>38</sup> See World Trade Organization, WT/TPR/M/248/Corr.1 (Sep. 28, 2011).

R532	Chamois leather	People's Republic of China	Expiry Review, Article 11(2)	13-Sep-11
AD578	Aluminium radiators	People's Republic of China	Initial Investigation, Article 5	12-Aug-11
AD577	Tartaric acid	People's Republic of China	Initial Investigation, Article 5	29-Jul-11
R531	Seamless pipes and tubes of iron or steel (certain)	Ukraine	Partial interim review, Article 11(3) part.	29-Jul-11
R529	Tartaric acid	People's Republic of China	Partial interim review, Article 11(3) part.	29-Jul-11
AD576	Glass fibre fabrics (woven and/or stitched)	People's Republic of China	Initial Investigation, Article 5	28-Jul-11
R530	Lever arch mechanisms	People's Republic of China	Expiry Review, Article 11(2)	23-Jul-11
R526	Furfuraldehyde	People's Republic of China	Full Interim Review, Article 11(3)	05 July 2011

**Source:** European Commission

The following section provides a snapshot of the developments in the field of trade defence measures taken by the EU vis-à-vis other leading trading partners.

#### **EU and China:**

- On 28 June 2011, the Council Implementing Regulation (EU) No 655/2011 terminated the anti-dumping measures applicable to imports of coumarin originating in the People's Republic of China.<sup>39</sup>
- On 3 August 2011, Council Implementing Regulation (EU) No 791/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China.<sup>40</sup>
- On 9 August 2011, the Commission decided to terminate the anti-dumping proceeding concerning imports of tris (2-chloro-1-methyl- ethyl) phosphate originating in the People's Republic of China.<sup>41</sup>

<sup>39</sup> 2011 O.J.(L 180) 1

<sup>40</sup> 2011 O.J.(L 204) 1

<sup>41</sup> 2011 O.J.(L 205) 35

- On 16 August 2011, Council Implementing Regulation (EU) No 831/2011 imposing a definitive anti-dumping duty on imports of barium carbonate originating in the People's Republic of China.<sup>42</sup>
- On 26 August 2011, Council Implementing Regulation (EU) No 871/2011 terminated the expiry and partial interim review of the anti-dumping measures concerning imports of certain castings originating in the People's Republic of China and repealed those measures.<sup>43</sup>
- On 6 September 2011, the Council Implementing Regulation (EU) No 907/2011 amending the Implementing Regulation (EU) No 1105/2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of high tenacity yarn of polyesters originating in the People's Republic of China, and terminating the proceeding concerning imports of high tenacity yarn of polyesters originating in the Republic of Korea and Taiwan.<sup>44</sup>
- On 12 September 2011, Council Implementing Regulation (EU) No. 917/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles falling within CN codes 6907 10 00, 6907 90 20, 6907 90 80, 6908 10 00, 6908 90 11, 6908 90 20, 6908 90 31, 6908 90 51, 6908 90 91, 6908 90 93 and 6908 90 99, originating in the People's Republic of China.<sup>45</sup>
- On 29 September 2011, the Commission terminated the anti-dumping proceeding concerning imports of certain graphite electrode systems used for electric furnaces, with an apparent density of 1,5 g/cm<sup>3</sup> or more and an electrical resistance of 7 µΩ.m or less, currently falling within CN code ex 8545 11 00 and nipples used for such electrodes currently falling within CN code ex 8545 90 90, originating in the People's Republic of China.<sup>46</sup>
- On 29 September 2011, the Council Implementing Regulation (EU) No. 400/2010 initiated a review of Implementing Regulation Council (EC) No 1225/2009 for establishing whether the imports of steel ropes and cables including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, 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 (TARIC codes 7312 10 81 13, 7312 10 83 13, 7312 10 85 13, 7312 10 89 13 and 7312 10 98 13) originating, inter alia, in the People's Republic of China consigned from the Korean Republic and produced by SEIL Wire and Cable (TARIC additional code A994), subject to the anti-dumping duty, declared as originating in the Republic of Korea or otherwise for determining the possibility of granting exemption from those measures to one Korean exporter, repealing the anti-dumping duty with regard to imports from that exporter and making imports from that exporter subject to registration.<sup>47</sup>
- On 3 October 2011, Council Implementing Regulation (EU) No. 990/2011 imposed a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China.<sup>48</sup>

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<sup>42</sup> 2011 O.J.(L 214) 1

<sup>43</sup> 2011 O.J.(L 227) 1

<sup>44</sup> 2011 O.J.(L 232) 29

<sup>45</sup> 2011 O.J.(L 238) 19

<sup>46</sup> 2011 O.J.(L 254) 20

<sup>47</sup> 2011 O.J.(L 254) 7

<sup>48</sup> 2011 O.J.(L 261) 18

### **EU and Thailand:**

- On 5 August 2011, Council Implementing Regulation (EU) No 792/2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain ring binder mechanisms originating in Thailand.<sup>49</sup>
- On 10 October 2011, Council Implementing Regulation (EU) No 1008/2011 imposing a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China is extended to imports of hand pallet trucks and their essential parts, i.e., chassis and hydraulics currently falling within CN codes ex 8427 90 00 and ex 8431 20 00 (TARIC codes 8427 90 00 11 and 8431 20 00 11) consigned from Thailand, whether declared as originating in Thailand or not.<sup>50</sup>

### **EU and Malaysia:**

- On 18 July 2011, Council Implementing Regulation (EU) No 723/2011 extending the definitive anti-dumping duty imposed by 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.<sup>51</sup>

### **EU and USA:**

- On 16 August 2011, Commission Regulation (EU) No 821/2011 imposing a provisional anti-dumping duty on imports of vinyl acetate originating in the United States of America.<sup>52</sup>

### **EU and India:**

- On 12 August 2011, Council Implementing Regulation (EU) No 824/2011 terminated the partial reopening of the anti-dumping interim review investigation concerning imports of polyethylene terephthalate (PET) film originating in India.<sup>53</sup>
- On 1 September 2011, Council Implementing Regulation (EU) No. 905/2011 terminated the partial interim review concerning the anti-dumping measures on imports of certain polyethylene terephthalate (PET) originating in India.<sup>54</sup>
- On 2 September 2011, the Council Implementing Regulation (EU) No 906/2011 amending Regulation (EC) No 193/2007 imposing a definitive countervailing duty on imports of polyethylene

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<sup>49</sup> 2011 O.J.(L 204) 11

<sup>50</sup> 2011 O.J.(L 268) 11

<sup>51</sup> 2011 O.J.(L 194) 6

<sup>52</sup> 2011 O.J.(L 209) 24

<sup>53</sup> 2011 O.J.(L 211) 1

<sup>54</sup> 2011 O.J.(L 232) 14

terephthalate originating in India, and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in, inter alia, India.<sup>55</sup>

- On 19 October 2011, Commission Regulation (EU) No. 1043/2011 imposing a provisional anti-dumping duty on imports of oxalic acid originating in the People's Republic of China and India.<sup>56</sup>

#### **EU and Russia:**

- In June 2011, Commission Notice 2011/C 303/09 initiated a partial interim review of the anti-dumping measures applicable to imports of certain seamless pipes and tubes of iron or steel originating in Russia.<sup>57</sup>

#### **Anti-Subsidy Investigations:**

##### **Anti-subsidy proceedings against India:**

- On 4 August 2011, the Council Implementing Regulation (EU) No 803/2011 repealed the countervailing duty on imports of certain broad spectrum antibiotics originating in India and terminated the proceeding in respect of such imports, following review pursuant to Article 18(2) of Council Regulation (EC) No 597/2009.<sup>58</sup>
- On 6 September 2011, the Committee on Subsidies and Countervailing Measures made a notification on the questions posed by the European Union regarding the new and full Subsidy Notification of India (G/SCM/N/123/IND/Suppl.1).<sup>59</sup>
- On 6 September 2011, the Committee on Subsidies and Countervailing Measures made a notification on the questions posed by the European Union regarding the new and full Subsidy Notification of Mexico (G/SCM/N/220/MEX).<sup>60</sup>

#### **Box IV: Termination of Anti-subsidy Measures on Broad Spectrum Antibiotics against Indian Exporters**

The EU had been maintaining anti-subsidy duties against Indian exporters of broad spectrum antibiotics since 1998. The antibiotics covered include amoxicillin trihydrate, ampicillin trihydrate and cefalexin. Based on a request of the EU domestic industry, an expiry review investigation was initiated on 12 May 2010 for the continuation of the measures. The Indian schemes which were the focus of the anti-subsidy investigation included the Advance Authorisation Scheme, the Duty Entitlement Passbook Scheme, Focus Market Scheme, Export Oriented Units/Special Economic Zones and the Export Credit Scheme.

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<sup>55</sup> 2011 O.J.(L 232) 28

<sup>56</sup> 2011 O.J.(L 275) 1

<sup>57</sup> 2011 O.J.(C 303) 11

<sup>58</sup> 2011 O.J.(L 206) 1

<sup>59</sup> World Trade Organization, G/SCM/Q2/IND/19 (Sep. 6, 2011).

<sup>60</sup> World Trade Organization, G/SCM/Q2/MEX/20 (Sep. 6, 2011).

The expiry review investigation arrived at the finding that the identified schemes operated by the Government of India and by some other state governments such as Punjab cannot be considered as proper substitution drawback schemes and that they provided recurring benefits to Indian pharmaceutical companies that exported to the EU. The Commission also commented that there were no indications that the alleged subsidy schemes would be phased out or modified in the foreseeable future. However, the Commission concluded that the CVD duties maintained against Indian exporters, even if allowed to expire, are not likely to cause material injury to the EU's pharma industry. This was because the EU local industry had developed positively over the review period despite significant and increasing imports of such products from other countries that were priced similarly to Indian exports. The investigation arrived at the finding that the EU industry was already facing competition from other exporting countries with the same pricing behaviour without suffering any material injury.

**Source:** Council Regulation 803/2011 of 4 Aug. 2011

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

### **VI A. Public Procurement**

On 7 June 2011, the European Commission launched a public consultation on the EU initiative on international public procurement.<sup>61</sup> On 8 July 2011, the Commission organized a public hearing on third country access to the EU's public procurement markets, which serves to be a part of an impact assessment carried out by the European Commission, to analyse how to set proportionate, coherent and effective terms of access to the EU public procurement market for foreign goods, services and companies.

### **VI B. Taxation and tax-related matters in EU**

#### **EU tax on financial transactions:**

In order to combat the crisis, the EU Commission is proposing Financial Transaction Tax (FTT), popularly known as "Tobin tax"— named after James Tobin, a Nobel economics laureate who put forward a similar scheme for currency markets in 1972—on all financial transactions including derivatives, stocks and currencies. The Tobin tax would be applied from January 2014 and all securities transactions involving an EU based financial institutions<sup>62</sup> would be taxed at 0.1 percent and all over the counter (OTC) derivatives deals at 0.01 percent of the notional principal amount.<sup>63</sup> The tax is supposed to raise about 57 Billion euros (\$78 Billion) a year<sup>64</sup> and would give benefit to long term investors.<sup>65</sup> The exemptions include primary equity and bond issues, spot foreign-exchange deals and deals involving central clearing houses.<sup>66</sup> Retail products such as

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<sup>61</sup>Press Release, *European Commission consults public authorities, business and civil society on access to external public procurement markets* (Jun. 7, 2011) (available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=713>).

<sup>62</sup>Banks, investment firms, insurance companies, pension funds, stock blockers and hedge funds. *See EU Proposes \$78 B Financial Transaction Tax*, THE ECONOMIC TIMES, Sept. 29, 2011 at 10.

<sup>63</sup>*See The Blizzard from Brussels*, THE ECONOMIST, Oct. 1, 2011 at 75.

<sup>64</sup>*Supra*.note 63

<sup>65</sup>John Plender, *Long Term Investors Would Benefit from Tobin Tax*, THE FINANCIAL TIMES, Sept. 28, 2011 at 20.

<sup>66</sup>*Supra* note 63

mortgages will also be exempt.<sup>67</sup> The big flaw in the plan is that taxable transactions are likely to migrate outside the EU.<sup>68</sup>

This tax has the potential to condense financial markets' speculative activity to an extent of \$600 trillion. Countries in the EU viz., France and Germany are now imposing financial transaction tax to rise to an extent of 200 billion euros an year to realize obligations to the domestic budget. It is widely believed that this tax will have serious implications for the UK and the City of London, the financial centre of Europe.

## VII. TRADE POLICIES BY SECTOR

### VII A. Agriculture

**Common Agricultural Policy:** The EU being a significant trader in the agricultural sector, the change in its policies would have a major impact on the global agricultural market and could potentially affect other countries also. The EU Commission is presently formulating legal proposals for making the Common Agricultural Policy (CAP) a more effective policy for fostering competitive and sustainable agriculture and vibrant rural areas. A new CAP Regulation is expected to come into force after 2013, and it is likely to include separate regulations for direct payments, rural development payments, revising the single Common Market Organisation regulation (CMO), and, monitoring, management and financing of the CAP. On the whole, it appears that the objective of the revised CAP is to encourage agricultural practices seeking to address environment as well as climate policy objectives.

**EU Support to Food Safety and Food Quality:** The food and drinks sector is of significant importance to the economy of the EU, and is one of the largest manufacturing sectors in the EU in terms of employment, turnover, number of companies and added value and the largest importer and exporter of food and drinks.<sup>69</sup>

Regulation No. 854/2004 ensures safety of imported fish and sea food to the European Union. The European Union (EU) delegates the control of food safety to a Competent Authority in each country exporting fish and sea food products to the EU, who in turn ensures that exporting farms, vessels and processors are producing safe food under a system equivalent to that in the European Union - the principle of equivalence, and the national laws are "harmonized" with that of the European Union. When the laws of any third country are harmonized and systems to monitor and control food (fish) processing establishments and vessels are deemed equivalent, the exporting country shall be approved for export to the European Union. The individual companies shall be checked by the Competent Authority of the respective country and, if deemed appropriate, shall be listed as approved in a national register, with a certification number. This register checked by the Competent Authority is passed to the European Commission (EC) which makes the information public via its website and other public documents. These are called the List I<sup>70</sup> countries. The countries that are in the process of gaining approval but are deemed to be producing safe foods are publicised

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> John Dalli, Member of the European Commission for Health and Consumer Policy, Speech at the Conference on Food Safety and Quality: *Good Practices in Europe- The Challenges of the Next Decade, The EU and the Challenges of the Next Decade in the Food Safety Area* (July 14, 2011) (available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/526&format=HTML&aged=0&language=EN&guiLanguage=en>).

<sup>70</sup> Countries and territories covered by a specific decision under Council Directive 91/493/EEC.



in List II.<sup>71</sup> Shipments from the List II countries are subject to 100 per cent border checks. In the case of processors, they can be exported to European Union only through this route even if a processing establishment meets the international standards of safety and quality. Also, a border inspection system is operated by the EU to verify regularly that the EU requirements are effectively implemented in the exporting country.<sup>72</sup>

Certain Health Directive or Hygiene Directive Regulations have been implemented by the EU from time to time. The European Parliament and Council Regulation (CE) 852/2004 on the hygiene of foodstuffs covers the general requirements of primary production, technical requirements, HACCP, registrations/approval of food businesses, national guides to good practice, etc. The European Parliament and Council Regulation (CE) 853/2004 lay down specific hygiene rules for food of animal origin. The European Parliament and Council Regulation (CE) 854/2004 lays down specific rules for the organization of official controls on products of animal origin intended for human consumption which contains detailed rules for the organization of official controls on products of animal origin. The Council Regulation (CE) 882/04 lay down health rules governing the production, processing, distribution and importation of products of animal origin.

**E-Coli Crisis:** The EU aims in delivering a “farm to fork approach” in implementing the review methods to be adopted and expand the scope of regulations from animal health and welfare to plant health and seed rules, and improving the sustainability of food chain with a measure to reduce the wastage of food without compromising on food safety. The European Centre for Disease prevention and Control (ECDC) and the European Food Safety Authority (EFSA) play a significant role in helping to achieve food safety and security by preventing the E.Coli crisis.<sup>73</sup>

### **Common Fisheries Policy:**

Maria Damanaki, EU’s Maritime Commissioner conceded while unveiling a new Common Fisheries Policy that after 28 years of the EU's CFP, 88 per cent of European fish stocks were over-fished, compared to 25 per cent elsewhere in the world and made Europe dependent on imports for two thirds of its fish. The essential elements of the new Fisheries Policy are as follows:

- laying down rules to ensure Europe's fisheries are sustainable and do not damage the marine environment;
- providing national authorities with the tools to enforce the rules and punish offenders;
- monitoring the size of the European fishing fleet and preventing it from further expanding;
- providing funding and technical support for initiatives that can make the industry more sustainable;
- negotiating on behalf of EU countries in International Fisheries Organisations and with non-EU countries around the world;
- helping producers, processors and distributors to get a fair price for their produce and ensuring that consumers can trust the seafood they eat;
- supporting the development of a dynamic EU aquaculture sector (fish, seafood and algae farms);

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<sup>71</sup> Countries and territories meeting the terms of Article 2(2) of Council Decision 95/408/EC.

<sup>72</sup> Rules and regulations governing fish and seafood safety and quality (2005) (*available at* <http://www.fao.org/docrep/008/y5924e/y5924e06.htm>).

<sup>73</sup> *Supra*.

- funding scientific research and data collection, which ensures to be a sound basis for making policies and decisions.<sup>74</sup>

### **Box III: EU Fisheries Sector Subsidies**

In the EU, subsidies are reported to be given to various aspects of fisheries which include: grants for vessel construction; training; tax breaks (e.g. on fuel); infrastructure development; preferential loans; market support; third-country fishing-access fees, etc. EU members provide around \$3 billion of subsidies a year, with the bulk of this as capacity enhancing subsidies. A recent project entitled 'www.fishsubsidy.org' indicates how subsidies have been allocated between 1994 and 2006 under the EU's financial instrument for fisheries guidance (FIFG). According to this Project, European fishing vessels were paid €3.4 billion in subsidies, €2.3 billion of which came from the EU budget, and a further €1.1 billion from national budgets under the FIFG's co-financing rules. The report shows payments grouped by port, clearly indicating that major EU long-distance fishing nations (Spain, France and Greece) are the biggest users of subsidies. The map does not show other EU/state-aid provided to the long-distance fisheries sector, such as tax breaks on fuel or fuel aid, or payments for access to non-EU fisheries through Fisheries Partnership Agreements (FPAs). Nor does it include FIFG payments that are made to recipients other than vessels (e.g. port authorities, producer groups and processing plants). It has been estimated that FPA financial compensation covers up to 80% of access costs.

**Source:** www.fishsubsidy.org

## **VII B. SERVICES**

### **Aeronautics Industry:**

The European aeronautics industry develops and manufactures a broad range of products, such as, civil and military aircraft, aero-engines, helicopters, unmanned aerial vehicles, as well as systems and equipment. It also encompasses maintenance and service companies which carry out repair, training or other activities linked to the different products.<sup>75</sup>

The European Commission had tabled a plan which will fund Euro 50 billion worth of investment to improve Europe's transport, energy and digital networks. The targeted investments in key infrastructures will help to create jobs and boost Europe's competitiveness at a time when Europe needs it the most. The "Connecting Europe Facility" will finance projects which fill the missing links in Europe's transport, energy and digital backbone, and will make Europe's economy greener by promoting cleaner transport modes, high speed broadband connections and facilitating the use of renewable energy in line with the Europe 2020 Strategy. In addition, the funding for energy networks will further integrate the internal energy market, reduce the EU's energy dependence and bolster the security of supply. The Commission has also adopted the terms for the Europe 2020 Project Bond Initiative, in order to assist the financing of the Connecting Europe Facility, which will be one of a number of risk-sharing instruments upon which the facility may draw in order to attract private finance in projects.<sup>76</sup>

<sup>74</sup> The Common Fisheries Policy (CFP), Management of fisheries in the EU (last updated on Sep. 15, 2011), (*available at* [http://ec.europa.eu/fisheries/cfp/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/index_en.htm)).

<sup>75</sup> *Aeronautic industries* (Aug. 23, 2011), [http://ec.europa.eu/enterprise/sectors/aerospace/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/aerospace/index_en.htm)

<sup>76</sup> *Connecting Europe Facility: Commission adopts plan for €50 billion boost to European networks*, [http://ec.europa.eu/enterprise/newsroom/ce/itemlongdetail.cfm?item\\_id=5509&lang=en&tpa\\_id=122](http://ec.europa.eu/enterprise/newsroom/ce/itemlongdetail.cfm?item_id=5509&lang=en&tpa_id=122)

By focussing on smart, sustainable and fully interconnected transport, energy and digital networks, the Connecting Europe Facility will help in completing the European single market. The Commission has singled out projects where additional EU investment can have significant impact. The Commission also expects Connecting Europe Facility investments to act as a catalyst for further funding from private and public sectors, by giving infrastructure projects credibility and lowering their risk profiles. For the first time, the Commission is proposing a single funding instrument for three network sectors, to fulfil its commitment to create synergies and simplification of rules.<sup>77</sup>

Also, Europe took a major step on 21 October 2011 by launching the first two operational Galileo satellites from Kourou, French Guiana with a Soyuz launcher to reach their orbit at 23.000 kilometres.<sup>78</sup>

Europe is closer to having its own smart satellite navigation system, which will bring many benefits to the economy of EU. The European industry is in a pole position to benefit from Galileo programme, by providing businesses and citizens, direct access to a satellite navigation signal powered in Europe.<sup>79</sup>

From 2014, the new constellation will offer three services, the Open Service (free of charge), and the Public Regulated Service (PRS) the Search-and-Rescue Service and will enable improved services including more precise in-car navigation, effective road transport management, search and rescue services, secure banking transactions as well as reliable electricity provision, which all rely heavily on satellite navigation technologies to work efficiently. The overall economic impact of the Galileo programme is estimated to be around 90 billion euro over the next 20 years.<sup>80</sup>

### **Investment in broadband**

On 19 October 2011, the European Commission proposed to spend 9.2 billion euros from 2014 to 2020 on pan-European projects to give EU citizens and businesses access to high-speed broadband networks and the services. The funding which is a part of the proposed Connecting Europe Facility (CEF), would take the form of both equity and debt instruments and grants. It would complement private investment and public money at local, regional and national levels and EU structural or cohesion funds.<sup>81</sup>

### **E-Business:**

E- Business enables companies to sell to consumers and work with partners without being physically present, which is essentially helpful to SMEs to bring prices down and give "Europe's Best" to the world.<sup>82</sup> E-Business is much more than e-Commerce, which is buying and selling online. Companies are increasingly using Information and Communication Technologies (ICTs) to link together their business processes and systems

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<sup>77</sup> *Id.*

<sup>78</sup> *Galileo: Europe launches its first satellites for smart navigation system* (Oct. 21, 2011), [http://ec.europa.eu/enterprise/newsroom/cf/itemlongdetail.cfm?item\\_id=5520&lang=en&tpa\\_id=122](http://ec.europa.eu/enterprise/newsroom/cf/itemlongdetail.cfm?item_id=5520&lang=en&tpa_id=122)

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Digital Agenda: Commission proposes over €9 billion for broadband investment* (Oct. 19, 2011), [http://ec.europa.eu/information\\_society/newsroom/cf/itemlongdetail.cfm?item\\_id=7430](http://ec.europa.eu/information_society/newsroom/cf/itemlongdetail.cfm?item_id=7430)

<sup>82</sup> *A Dynamic eBusiness Environment for Europe* (Mar. 2007), [http://ec.europa.eu/information\\_society/tl/ecowor/ebusiness/index\\_en.htm](http://ec.europa.eu/information_society/tl/ecowor/ebusiness/index_en.htm)

by hooking departments together internally with those of their suppliers, distributors and other partners; with public authorities; etc. to provide better products and more responsive services efficiently.<sup>83</sup>

### **Nuclear Safety**

On 16 September 2011, the European Commission adopted the 1st Situation Report on Education and Training in the Nuclear Energy Field which provides a comprehensive picture of the situation of human resources in the nuclear energy sector in the EU, identifies the current challenges, and presents the spectrum of both current and planned EU, national and international initiatives in the nuclear field.<sup>84</sup>

### **Health services:**

EU associated with WHO programmes for capacity building and R&D has been funding projects and programs in developing countries covering production, research, procurement, delivery, quality control, etc. The EU has donated 872 million euros, one of the biggest contributors to the Global Fund to fight against the severe diseases- AIDS, Malaria, Tuberculosis, etc. and has allocated 6.1 billion euros to R&D of health sector worldwide under the Co-operation Program of its 7th R&D Framework Program (2007-2013). The EU is an active participant in the WHO work addressing health needs in developing countries, particularly, 'The Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property'. The facilities in the TRIPS agreement is supported by the EU and has implemented the WTO decision permitting the developing countries with problems relating to health and does not possess adequate production capacities, to manufacture and export generic medicines under the compulsory licensing.<sup>85</sup>

### **Contribution to the WTO development fund for trade facilitation:**

For the year 2011, the EU announced a donation of EUR 180,000 to the WTO Trade Facilitation Trust Fund, which will be utilized to finance technical assistance programmes to assist least developed and low income countries to participate more effectively in the WTO trade facilitation negotiations in the Doha Round. The EU's contribution to the various WTO development trust funds has reached CHF 10.9 million totally.<sup>86</sup>

EU's WTO Ambassador Angelos Pangratis remarked, "Trade Facilitation is crucial for developing countries to continue to fully participate in the multilateral trading system. This new contribution is only part of the EU's strong commitment to assist developing countries in improving their trading capacity and in making trade an engine for sustainable growth, development and poverty reduction." Trade facilitation emphasizes on the procedures and controls governing the movement of goods across national borders and methods for improving it to reduce costs and burdens.<sup>87</sup>

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<sup>83</sup> *Id.*

<sup>84</sup> *Nuclear safety*, [http://ec.europa.eu/energy/nuclear/safety/safety\\_en.htm](http://ec.europa.eu/energy/nuclear/safety/safety_en.htm)

<sup>85</sup> *EU-India FTA negotiations and access to medicines*, [http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc\\_146191.pdf](http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc_146191.pdf)

<sup>86</sup> *WTO Press Release*, The European Union offers EUR 180,000 to the WTO development fund for trade facilitation (Sep. 2, 2011), [http://www.wto.org/english/news\\_e/pres11\\_e/pr639\\_e.htm](http://www.wto.org/english/news_e/pres11_e/pr639_e.htm)

<sup>87</sup> *Id.*

The WTO Director General Pascal Lamy appreciating EU's funding stated, "I welcome the EU's contribution which demonstrates its commitment to help developing countries integrate in the global economy and take better advantage of the multilateral trading system."<sup>88</sup>

#### VIII. WTO DISPUTE SETTLEMENT INVOLVING EU- UPDATE

##### *European Communities - Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (Complaint by EU and China)*

The Panel in the European Communities - Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China held that: (i) Article 9(5) of the Regulation was inconsistent with Articles 6.10, 9.2 and 18.4 of the Anti-Dumping Agreement; (ii) Article 9(5) of the Regulation was inconsistent with Article I:1 of GATT; (iii) EU investigating authorities acted inconsistently with AD Agreement Articles 3.1 and 3.2 with respect to the consideration of the volume of dumped imports; (iv) EU was inconsistent with AD Agreement Articles 3.1 and 3.5 with respect to the causation analysis; (v) EU was inconsistent with AD Agreement Articles 6.4 and 6.2 with respect to aspects of the normal value determination; (vi) EU was inconsistent with AD Agreement Article 6.5.1 with respect to non-confidential versions of questionnaire responses of two European producers; (vii) EU was inconsistent with AD Agreement Article 6.5 with respect to confidential treatment of information in the questionnaire response of an Indian producer; (viii) EU was inconsistent with AD Agreement Article 6.5 with respect to the confidential treatment of the Eurostat data on total EU production of fasteners; and, (ix) EU was inconsistent with Article XVI:4 of the WTO Agreement. With regard to producers from non-market economy countries, the individual treatment test embodied in this provision conditioned the calculation of individual dumping margins and the imposition of individual duties on the fulfilment of certain criteria.

The Panel rejected China's claims with reverence to the standing determination, definition of domestic industry, product under consideration, dumping determination, price undercutting determination, treatment of imports from non-sampled producers, consideration of the consequent impact of dumped imports on the domestic industry, non-disclosure of the identity of the complainants and the supporters of the complaint, confidential treatment of the Eurostat data on total EU production of fasteners, procedural aspects of the domestic industry definition, and the amount of time provided for responses to requests for information; and found that China's claims concerning the definition of like product, alleged non-disclosure of aspects of the normal value determination; and the procedural aspects of the domestic industry definition were not within its terms of reference and declined to make findings on these claims. Further, the Panel applied judicial economy with respect to some of China's claims regarding the Basic Regulation and the Definitive Regulation.

The Panel recommended that the DSB request the European Union to bring its measures into conformity with its obligations under the WTO Agreement, and declined to make any suggestion on how the DSB recommendations and rulings may be implemented by the European Union.

The European Union appealed certain findings of the Panel under Articles 6.2, 6.4, 6.5, 6.5.1, 6.10, 9.2, and 18.4 of the Anti-Dumping Agreement, Article I:1 of the GATT 1994, and Article XVI:4 of the WTO Agreement. China cross- appealed certain other findings of the Panel under Articles 2.4, 3.1, 4.1, 6.1.1, 6.2, 6.4, 6.5, and 6.5.1 of the Anti-Dumping Agreement.

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<sup>88</sup> *Id.*

The Appellate Body upheld the findings of the Panel that Article 9(5) of the European Union's Basic Anti-Dumping Regulation (the “Basic AD Regulation”) was inconsistent “as such”, and “as applied” in the fasteners investigation, with Articles 6.10 and 9.2 of the Anti-Dumping Agreement because it conditions the determination of individual dumping margins, and the imposition of individual anti-dumping duties, on the fulfilment of an “Individual Treatment Test”. Under Article 9(5) of the Basic AD Regulation, ‘an exporter or producer from a WTO Member designated as a non-market economy country (“NME”) under EU law, like China, will receive a country-wide dumping margin and a country-wide anti-dumping duty unless it can demonstrate that its export activities are sufficiently independent from the State to warrant individual treatment’. The European Union argued that country-wide margins and duties were justified for the reason that, in NME countries, the State itself can be considered the country's single exporter. The Appellate Body agreed with the Panel that Article 6.10 of the Anti-Dumping Agreement requires an investigating authority to calculate individual dumping margins for each foreign exporter or producer, and that Article 9(5) of the Basic AD Regulation does not fall under any of the applicable exceptions to this rule. The Appellate Body also agreed with the Panel regarding Article 9.2 which requires the imposition of an anti-dumping duty on each foreign exporter or producer named in an investigation, and that no exception to this rule applied to Article 9(5) of the Basic AD Regulation. Furthermore, the Appellate Body did not take into account that the purpose of Article 9(5) of the Basic AD Regulation was to identify a single State exporter on whom to impose a single anti-dumping duty.

The Appellate Body under Article 4.1 of the Anti-Dumping Agreement found that the European Union acted inconsistently with its obligations because the domestic industry defined by the European Commission did not constitute producers whose production represented a “major proportion” of the total domestic production within the meaning of Article 4.1. It also found that the Commission failed to ensure that the domestic industry definition would not introduce a material risk of distortion to the injury analysis by defining the domestic industry as comprising producers accounting for 27 per cent of total estimated EU production of fasteners, and by including only those producers who were willing to be part of the sample for purposes of the Commission's injury determination.

The Appellate Body upheld the findings of the Panel under Articles 6.2 and 6.4 of the Anti-Dumping Agreement that the European Union failed to disclose information regarding product categorizations that was necessary for the presentation of the Chinese producers' case in the dumping determination and for the defence of their interests in a timely manner. The Appellate Body also found that the European Union's failure to disclose such information was inconsistent with its obligation under Article 2.4 of the Anti-Dumping Agreement to indicate the investigation as to what information was necessary to the parties to ensure a fair comparison for purposes of the dumping determination.

Finally, the Appellate Body made several findings regarding procedural aspects of the fasteners investigation. It upheld the Panel's finding that the European Union did not act inconsistently with its obligations under Article 6.1.1 of the Anti-Dumping Agreement when it allowed Chinese exporters and producers less than 30 days to reply to the Market Economy Treatment and/or Individual Treatment Claim Form. Also, the finding of the Panel that the European Union acted inconsistently with Article 6.5.1 of the Anti-Dumping Agreement by failing to ensure that domestic producers provide appropriate statements of the reasons why confidential information was not susceptible of non-confidential summary, and that the European Union did not act inconsistently with Article 6.5 of the Anti-Dumping Agreement when it treated the identity of the complainants and the supporters of the complaint as confidential information was upheld by the AB. The

Appellate Body reversed the finding of the Panel that the European Union acted inconsistently with its obligations under Article 6.5 when it treated information submitted by the analogue country producer participating in the investigation as confidential without requiring a “good cause” showing, and found instead that China had failed to substantiate this claim before the Panel.

On 28 July 2011, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

On 18 August 2011, the European Union informed the DSB that it intends to implement the recommendations and rulings of the DSB in a manner that respects its WTO obligation and that it will need a reasonable period of time to comply with the recommendations.

***EU to file appeal against the findings of the Panel in China – Measures related to the Exportation of various Raw Materials***

On 12 September 2011, the European Union notified the Dispute Settlement Body of its decision to appeal against the findings of the panel in China – Measures relating to the Exportation of various Raw Materials (WT/DS395/R).<sup>89</sup>

***Panel Report on United States – Measures concerning the Importation, Marketing and Sale of Tuna and Tuna products [EU was a Third Party]***

In United States – Measures concerning the importation, marketing and sale of tuna and tuna products, Mexico requested consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 14 of the Agreement on Technical Barriers to Trade (TBT Agreement), in relation to certain measures taken by the United States concerning the importation, marketing and sale of tuna and tuna products, on 24 October 2008. On 17 December 2008, Mexico held consultations with the United States, but the consultations failed in resolving the dispute. So, Mexico requested the establishment of a panel on 9 March 2009. Countries, such as, Argentina, Australia, Brazil, Canada, China, Ecuador, the European Communities, Guatemala, Japan, Korea, New Zealand, Chinese Taipei, Thailand, Turkey and Venezuela reserved their rights to participate in the Panel proceedings as third parties.

On 18, 19 and 20 October 2010, the Panel held its first meeting with the parties. On 19 and 20 October 2010, the Panel held its meeting with the third parties. On 16 and 17 December 2010, the Panel held its second meeting. On 2 February 2011, the Panel issued the descriptive part of the Panel Report to the parties. On 5 May 2011, the Panel issued its interim report to the parties, and, on 8 July 2011, the Panel issued its final report.

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<sup>89</sup> World Trade Organization, WT/DS395/12 (Sep. 12, 2011).

There is a natural association between tuna and dolphins in the ETP, schools of tuna tend to aggregate and swim – to "associate" – near certain species of dolphins in ocean waters. Scientific research indicates that there are associations of tuna and dolphins in the oceans of the world - including the Eastern and Western Atlantic, Indian Ocean, Central and Western Pacific, and Gulf of Mexico.

Due to the association between dolphins and tuna in the ETP, the fishermen locate schools of underwater tuna by finding and chasing dolphins on the ocean's surface and intentionally encircling them with purse seine nets to harvest the tuna below waters. In the early years of fishing, by setting on dolphins, there was considerable incidental dolphin mortality in the ETP.

The United States enacted legislation imposing restrictions on fishing in the ETP- the US vessels began to fish for tuna elsewhere, outside the ETP. In the case of Mexico, there was no reason for Mexican fleet to relocate, outside its natural and traditional fishing area within the ETP. But, the problem was not ignored by the Mexican fleet. Eventually, multilateral action was taken by the United States, Mexico, and other countries in the region by establishing an international dolphin conservation program, to reduce overall dolphin mortality.

A popular fishing method, alternative to the method of setting purse-seine nets around dolphins, is "Fish Aggregating Devices", or "FADs", which consists in casting shadows that attract tuna and other fish species. The FAD attract and kill more immature tuna and a variety of other by catch, including sea turtles, sharks and other threatened and endangered species.

When using the dolphin set method, it is possible to virtually eliminate dolphin mortalities if certain procedures recommended or required by the AIDCP are observed. Thus, the dolphin set method, when administered under the AIDCP, is the most environmentally sound method for harvesting tuna.

The international effort to provide for suitable conservation of stocks of tuna, dolphins and other species in the fisheries of the ETP originated in the Convention for the Establishment of an Inter-American Tropical Tuna Commission ("IATTC"). In 1976, the IATTC broadened its responsibilities to include the treatment of problems arising from the tuna-dolphin relationship in ETP, which led to the creation of a program that was later known as the International Dolphin Conservation Program. The multilateral endeavours of the IATTC were then encompassed in a series of multilateral agreements that were negotiated in the wake of the "tuna-dolphin" controversy in the ETP, viz., the La Jolla Agreement (1992), the Panama Declaration (1995), and the Agreement on the International Dolphin Conservation Program (1998). Both Mexico and the United States are parties to all of the said agreements.

The Agreement on the International Dolphin Conservation Program ("AIDCP") consists of the most recent and comprehensive program to protect dolphins while fishing for tuna. The AIDCP, awarded by the United Nations Food and Agriculture Organization, had enormously reduced dolphin mortality to statistically insignificant levels while promoting sustainable fishing practices, and was put into force on 15 February 1999.

The principal US law relating to the protection of dolphins and other marine mammals is the Marine Mammal Protection Act of 1972, as amended (the "MMPA").

The United States amended provisions of the MMPA to prohibit the import into the United States of any marine product, and any fish or fish product harvested where there was not a program comparable to that of



the United States in minimizing the incidental taking of marine mammals in 1988. Pursuant to the amendments, in August 1990, the United States imposed an import embargo on imports of tuna from Mexico (and other countries) for failure to achieve comparability with US tuna harvesting standards that prohibited setting on dolphins. Mexico challenged this embargo in dispute settlement proceedings under the General Agreement on Tariffs and Trade ("GATT").

In 1990, in addition to the direct ban on imports, the United States enacted a legislation that established a standard for labelling tuna products as "dolphin safe", and the law, known as Dolphin Protection Consumer Information Act of 1990 ("DPCIA"), amended the MMPA. According to the standard, with respect to tuna harvested by a vessel using purse-seine nets in the ETP, the DPCIA provided that the product could not be labelled "dolphin safe" if caught on a trip involving intentional deployment on, or encirclement of, dolphins. Accordingly, Mexican tuna and tuna products harvested while setting on dolphins were denied the label, "dolphin safe" in the US marketplace, even if no mortality or serious injury of a marine mammal was observed.

In 1997, to comply with the commitments of the Panama Declaration, the US Congress enacted the International Dolphin Conservation Program Act ("IDCPA"), which became effective on February 15, 1999. The IDCPA amended the MMPA so that a country would be permitted to export tuna fished from ETP to the United States if it provided documentary evidence that (a) it participated in the IDCP and is a member of the IATTC; (b) it met its obligations under the IDCP and the IATTC; and (c) it did not exceed specified dolphin mortality limits.

In the 1995 Panama Declaration it was also agreed that the definition of "dolphin safe" would be changed from "no encirclement of dolphins" to "no dolphin mortality or serious injury. The legislation also authorized a change in the "dolphin safe" labelling standard, but not immediately or automatically, but contingent on the outcome of studies, it required the Department of Commerce ("DOC") to perform "whether the intentional deployment on or encirclement of dolphin with purse-seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean". Thus, the standard would be changed in accordance with the US international obligation unless there was clear evidence that the method of fishing had a significant adverse impact on dolphin stocks.

In May 1999 and December 2002, the DOC published its initial and final findings pursuant to the IDCPA, in which the DOC determined that there was insufficient evidence to conclude that intentional encirclement of dolphins with purse-seine nets was having a significant adverse effect on "depleted dolphin stocks in the ETP".

Certain NGOs challenged both the Initial and Final Findings. The District Court held that the DOC abused its discretion when it triggered a change in the dolphin safe label standard on the ground that it lacked sufficient evidence of no significant adverse impacts, and in both the cases, the Court of Appeals for the Ninth Circuit affirmed the Districts Court's Decision. Last ruling of the Ninth Circuit, in 2007, is known as Hogarth Ruling. Thus, despite the international commitment of United States, the standard remained unchanged.

Despite the evidence that dolphins and other marine mammals were killed in fisheries in the US domestic waters, the United States had adopted requirements for the dolphin safe label for tuna or other fish caught in those fisheries remotely comparable to the standards applied by the US regulations for the ETP.

In the period between 1980 and 1987, Mexico developed a fleet of 85,000 tons of carrying capacity, along with an associated infrastructure and employment base. A number of coastal communities were built effectively and sustained on the comparative advantage given by the strength of the tuna resource along Mexico's coast, and the markets for that resource around the world.

Aware of the importance of protecting dolphins, the Mexican fleet invested large amounts of money in the dolphin protection efforts such as training of captains and crews, development of fishing gear less harmful to dolphins, research and monitoring programs, limiting its fishing operations to daylight, and carrying an independent observer in every fishing trip of the Mexican fleet, the efforts contributed to the reduction of dolphin mortality to insignificant levels in the ETP.

The US measures had direct and indirect adverse effects. The direct adverse effect related to tuna products imported, distributed and sold in the US market. The US distribution and retail networks for tuna products were acutely aware of the dolphin safe issue and the fact that they would encounter actions such as boycotts, promoted by certain economically interested NGOs, if they carried tuna that was not designated as dolphin safe. Large US grocery chains had indicated that they would be unable to carry any Mexican tuna products unless the tuna products bore a US government approved dolphin safe label. The indirect adverse was that the three major processors of tuna brands sold in the United States – StarKist, Bumblebee, and Chicken of the Sea – refused to purchase tuna caught in the ETP including Mexican tuna because tuna products containing such tuna could not be labelled as dolphin safe.

The Panel, in its decision, held that the US dolphin-safe provisions: (i) were not inconsistent with Article 2.1 of the TBT Agreement; (ii) were inconsistent with Article 2.2 of the TBT Agreement for the reason that they were more trade-restrictive than necessary to achieve a legitimate objective; (iii) were not inconsistent with Article 2.4 of the TBT Agreement.

The Panel exercised judicial economy with respect to Mexico's claims under Articles I:1 and III:4 of the GATT 1994.

Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, the Panel concluded that, to the extent that the United States had acted inconsistently with the provisions of the TBT Agreement, it had nullified or impaired benefits accruing to Mexico under that Agreement. Therefore, the Panel recommended that the DSB request the United States to bring its measures into conformity with its obligations under the TBT Agreement.<sup>90</sup>

### ***EU issued addendum in European Communities – Measures affecting the Approval and Marketing of Biotech Products***

On 16 September 2011, the European Union issued an addendum to the Dispute Settlement Body on the Status Report regarding the implementation of the DSB recommendations and rulings in the European Communities – Measures affecting the Approval and Marketing of Biotech Products (WT/DS291).<sup>91</sup>

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<sup>90</sup> World Trade Organization, WT/DS381/R (Sep. 15, 2011).

<sup>91</sup> World Trade Organization, WT/DS291/37/Add.44 (Sep. 16, 2011).

***Arbitrator issued a Communication to the Dispute Settlement Body in United States – Laws, Regulations and Methodology for calculating Dumping Margins ("Zeroing")***

On 16 September 2011, the Arbitrator issued a Communication to the Chairperson of the Dispute Settlement Body regarding United States – Laws, Regulations and Methodology for calculating Dumping Margins ("Zeroing").<sup>92</sup>

***EU to file appeal against the findings of the Panel in Philippines- Taxes on Distilled Spirits***

On 28 September 2011, the European Union notified the Dispute Settlement Body of its decision to appeal against the findings of the panel in Philippines- Taxes on Distilled Spirits (WT/ DS 396/8 and WT/DS 403/8).<sup>93</sup>

***Committee on Import Licensing Replies to the Questionnaire on Import Licensing Procedures***

On 29 September 2011, the Committee on Import Licensing made a notification on the replies to questionnaire on import licensing procedures.<sup>94</sup>

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<sup>92</sup> World Trade Organization, WT/DS294/40 (Sep. 16, 2011).

<sup>93</sup> World Trade Organization, WT/DS/396/8 and WT/DS/403/8 (Sep. 30, 2011).

<sup>94</sup> World Trade Organization, G/LIC/N/3/EEC/14/Add.1 (Sep. 29, 2011).