

# Brussels Brief

A weekly overview of the regulatory, legal and political developments of the institutions and the issues facing the European Union



April 8, 2005

## KEY DEVELOPMENTS

### **Trade: Latin American Countries Request WTO Arbitration on EU's Proposed Banana Tariff**

Ashok Ramanujam

Six Latin American banana-producing countries, unhappy with the proposed European Union (EU) tariff of EUR 230 per ton, have decided to refer the level of the tariff to World Trade Organisation (WTO) arbitration. Following the WTO ruling in the EU-United States (US) and Ecuador banana dispute, the EU had agreed to do away with quotas and switch over to a tariff-only regime by 2006. The EU had also obtained a WTO waiver for the "Cotonou Agreement" which grants a preferential market access to the African, Caribbean and Pacific (ACP) countries. The terms of the waiver provides for settlement of the issue of level of EU tariff for bananas through WTO arbitration procedure.

### **Food Law: Validity of Food Supplements Directive called Seriously into Question**

Nicola Chesaites

The controversial European Directive on food supplements (2002/46/EC), the validity of which is currently being challenged before the European Court of Justice (ECJ), received damning criticism in the Opinion of the Advocate General assigned to the case, published on 5 April 2005. The latter advised the ECJ to declare the Directive, prohibiting trade in food supplements not on positive lists compiled at European level, invalid.

The Advocate General found the Directive infringed the principle of proportionality on three bases. First, the text mentions no standard for deciding whether to add vitamins to the positive lists. Second, it is unclear whether private persons may submit substances for evaluation and inclusion on those lists. Finally, as far as a procedure exists it does not provide for parties to be heard, no time-limits apply, and there is no certainty for parties that a final decision will ever be taken. The Directive is due to come into effect from 1 August 2005. The final hearing is expected in June 2005. (Case C-154/04 The Queen Alliance for Natural Health Nutri-Link Ltd v Secretary of State for Health).

### **Trade: Guidelines for Introducing Safeguards Against Chinese Textiles**

Philip Torbøl

Following the removal of import quotas on textiles on 1 January 2005, the EU has moved one step closer to introducing safeguard measures against textile imports from China. The guidelines, published by the European Commission, govern the way the EU may use safeguard measures to limit the dramatic increase of Chinese textile exports to Europe, and are drafted in accordance with China's protocol of accession to the WTO in 2001. The guidelines determine the thresholds for maximum yearly increases of Chinese textiles sold to the European market. Imports in excess of such thresholds will trigger an investigation followed by consultation (first informal, then within the WTO) with China, requiring the latter to limit its textile exports. Only if this is insufficient can safeguard measures be imposed in the form of import quotas applicable for one year at the time. The thresholds triggering the procedure vary between 10 and 100 per cent increase depending on the European market share of the product. The safeguard measures are designed to provide the market with a transitional period of adaptation and will no longer be allowed by the WTO after 2008.

### **Trade: EU Retaliation Against the US Byrd Amendment**

Ashok Ramanujam

In November 2004, the EU and ten other countries obtained WTO authorisation to suspend tariff concession *vis-à-vis* the US in view of the latter's continuing failure to repeal the WTO inconsistent law known as the "Byrd Amendment". This law mandates redistribution of the anti-dumping and countervailing duties to the US companies that brought or supported the complaints leading to the imposition of the duties. Pursuant to WTO authorisation, the European Commission has adopted a proposal for a Council Regulation that would permit imposition of 15 per cent *ad-valorem* duties in addition to the normal customs duties on imports of certain goods from the US with effect from 1 May 2005. The proposal enables the Commission to vary the products and the level of additional duties annually in order to ensure that the additional duties collected are within the WTO authorised levels, which are US\$ 28.7 million for 2005.

## **Biotechnology: Importation of Unauthorised GMO Bt10 into the EU**

Mélanie Bruneau

It has been discovered that Bt10 has been imported from the US into the EU even though it has not been authorised under the EU's comprehensive legislative framework for Genetically Modified Organisms (GMOs). Bt10 contains the gene conferring resistance to the antibiotic ampicillin. According to the US and the biotechnology company Syngenta, the developer of Bt10, up to 10 kg of Bt10 seed may have inadvertently been exported to Spain and France. In addition, an estimated 1000 metric tonnes of Bt10 food and feed products may have entered the EU since 2001. In order to enable Member States to stop further imports, the Commission has asked Syngenta to provide information regarding the molecular structure of Bt10 so as to detect it.

## **Trade: Commitment on Free Trade Agreement between EU and Oil-Rich States by End of 2005**

Frank Schoneveld

The European Union and the Gulf Cooperation Council (GCC) have agreed to conclude a long-awaited free trade agreement by the end of 2005. The GCC comprises the oil and gas rich states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE). After a meeting between EU and GCC representatives, the Bahraini foreign minister said the two blocs had agreed to sign the free trade agreement by the end of the year. A major issue for final negotiation is the high import tariffs on petrochemicals and aluminium. Non-trade issues concerning human rights, terrorism, weapons of mass destruction and migration remain possible impediments to conclusion of the free trade agreement. However these issues are now expected to be settled before the end of 2005. The next negotiating round will take place in Brussels from June 7 to 9, 2005.

## **Internal Market: Proposal on Restructuring and Employment**

Patrice Corbiau

The European Commission has proposed a new package of financial and other measures to promote the adaptability of workers and economic diversification in the regions suffering most from the effects of globalisation. The Commission proposes establishing a "growth adjustment" fund of around EUR 1 billion (annually) to provide support to areas affected by restructuring. The Commission also proposes that Member States hold a reserve for unforeseen restructuring consequences. Between 2007-2013, the cumulative contribution from these sources could be up to EUR 11.3 billion. The Commission also proposes the strengthening of social dialogue in order to prepare for change. In particular, the Commission urged European social partners to focus on developing their best practice guidelines, on restructuring, and

to look further at how the European Works Councils could contribute in managing restructuring changes.

## **Satellite Communications: Galileo Satellite System on Track**

Javier Berasategi

The European Commission has decided to seek the EU Council's approval to open negotiations with Argentina on a cooperation agreement for the development of Galileo, Europe's global navigation satellite system. Following the interest expressed by several Latin American countries in the course of the joint EU-Latin America summit in May 2004, negotiations with Brazil, Chile and Mexico are currently underway. The EU has already signed cooperation agreements with China and Israel, and negotiations are progressing with India, Russia, Ukraine, South Korea, Malaysia and Australia.

## **NEXT WEEK'S EVENTS**

### **Monday 11 April – Friday 15 April 2005**

#### **COUNCIL MEETINGS**

- Economic and Financial Affairs Council (12 April 2005)
- Justice and Home Affairs Council (14 April 2005)

#### **COURT OF JUSTICE**

##### **Judgments**

##### Agriculture

- C-385/03 Käserei Champignon Hofmeister
- C-335/03 Portugal v Commission
- C-468/02 Spain v Commission
- C-256/04 Commission v Greece

##### Competition

- C-299/04 Commission v Greece

##### Customs union

- C-460/01 Commission v Netherlands
- C-104/02 Commission v Germany

##### EA

- C-61/03 Commission v United Kingdom

##### Energy

- Joined Cases C-128/03, C-129/03 AEM

##### Environment and consumers

- C-6/03 Deponiezweckverband Eiterköpfe
- C-441/03 Commission v Netherlands

- C-171/04 Commission v Netherlands
- C-163/03 Commission v Greece
- C-146/04 Commission v Netherlands

#### External relations

- C-265/03 Simutenkov

#### Fisheries policy

- C-22/04 Commission v Greece

#### Freedom of movement for persons

- C-157/03 Commission v Spain

#### Freedom to provide services

- C-341/02 Commission v Germany

#### Law governing the institutions

- C-243/04P M v Court of Justice

#### Social policy

- C-519/03 Commission v Luxembourg

#### Social security for migrant workers

- C-145/03 Keller

#### State aid

- C-110/03 Belgium v Commission

### Opinions

#### Agriculture

- C-295/03 P Alessandrini and Others v Commission

#### Common Customs Tariff

- C-495/03 Intermodal Transports

#### Environment and consumers

- C-270/03 Commission v Italy

#### Freedom of establishment

- C-253/03 CLT-UFA

#### Freedom of movement for persons

- C-231/03 Coname

#### Free movement of capital

- C-329/03 Trapeza tis Ellados

#### State aid

- C-276/03 P Scott v Commission

### COURT OF FIRST INSTANCE

#### Judgments

##### Intellectual property

- T-353/02 Duarte y Beltrán v OHMI – Mirato (INTEA)
- T-286/03 Gillette v OHMI – Wilkinson Sword (RIGHT GUARD XTREME sport0

#### Law governing the institutions

- T-2/03 Verein für Konsumenteninformation v Commission

#### Staff Regulation of Officials

- T-191/02 Lebedef v Commission

#### State aid

- T-141/03 Sniace v Commission
- T-88/01 Sniace v Commission

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