



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate G - Trade Strategy and Analysis, Market Access
Market Access, Industry, Energy and Raw Materials

MAAC 2016-048

Brussels, 23 November 2016

All redactions marked with "*" are made under Art. 4.1(a)

All redactions marked with "* *" are made under Art. 4.2.

DRAFT MINUTES
MARKET ACCESS ADVISORY COMMITTEE
Conference Centre Albert Borschette, room 2C
Thursday 17 November 2016, 10:00 – 13:00

1. APPROVAL OF THE DRAFT AGENDA (MAAC 2016 – 043)

Following issues were requested to be added to the agenda:

- ** : Follow-up on the point on the Russian Decree which was discussed in the MAAC in October.

The agenda was adopted with this addition.

2. ANNOUNCEMENTS FROM THE CHAIR

Chair mentioned that the provisional calendar of MAAC meetings in 2017 was sent to the Committee for comments.

* noted that the date of 14 June would collide with those of the meeting of the TBT Committee and asked if COM could propose another date for the MAAC in June. COM agreed to look into the matter to find an alternative date.

3. KEY BARRIERS EXERCISE: PRESENTATION OF THE FINAL KEY BARRIERS LIST FOR INDIA

COM presented the revised list of key barriers, which included a prioritization of the barriers and a column with next steps. COM thanked participants for their extensive feedback at the last MAAC meeting and contributions in writing. COM tried to accommodate concerns in the present version. COM is still dealing with measures not mentioned in the key barrier list, such as mineral water, which was raised at the SPS/TBT JWG on 11 November together with many other items mentioned in the key barrier list.

** asked to include its concerns on compulsory registration. COM asked ** to clarify what they would like to change in the wording regarding the key barriers on Telecommunication. * thanked the Commission for including the barrier on BIS certificates for LED lights. * thanked the Commission for the list and added that India accepted cold treatment for Polish apples. * was grateful for the inclusion of the IPR issue on crop protection. ** appreciated the key barrier list as useful advocacy tool. * raised an issue on additional taxes on tyres and automobiles and promised to provide more information. ** thanked the COM for having put the reference to barriers relevant to the textile sector. ** was glad to have the reference to barriers related to labelling and food additives and underlined the importance of the Legal Metrology Act,

which entered into force on 1 November. COM informed about encouraging discussions with the Indian authorities to find alternatives to methyl-bromide (which should be based on the example followed by India to approve apples and other plant products from Poland, i.e. the starting point will be the list of plant pests included in the Indian legislation). On food additives, India promised to look into additional information. COM thanked MS and BU for their contribution to the discussion and encouraged them to contribute with more substantial information to support the EU's claims for India to approve more food additives. The Chair asked * to share information on the preoccupying news of additional taxes to the automotive sector, which is highly important to the EU economy.

4. DEBRIEFING ON THE DISCUSSION ON MARKET ACCESS BARRIERS IN THE EU-CHINA HIGH-LEVEL ECONOMIC AND TRADE DIALOGUE (HED) ON 18 OCTOBER 2016

COM briefed the group on the main trade and investment discussions of the 6th HED. This included BIT (Bilateral Investment Treaty) and GI agreement negotiations, Market Economy Status, overcapacity as well as connectivity issues and digital economy and 5G cooperation, as well as the follow up letter to Minister Gao with the EU key market access barriers in China. This briefing was well received by both MS and industry and followed up with a number of questions.

Several questions (**, *, **, **) revolved around the implementation of the Food and Safety Law in China including the issuing of certificates for food products. COM referred to discussions taking place the following day in the MAWG on SPS. ** asked if discussions on overcapacity dealt only with the steel sector and expressed fears of the upcoming overcapacities in other sectors such as metals and aluminum. ** echoed ** and asked if similar platforms (as for steel) could be set up for other sectors such as textiles which also suffer from overcapacity (i.e. polyester). COM replied that even if the Commission is currently focusing on the global forum for steel, it is also firmly raising the overcapacities in other sectors. * supported the COM on all its efforts to tackle the overcapacity problem and warned about its ramifications in other contexts such as the steel overcapacities in Algeria. * asked for a briefing on recent discussions on the global forum in China and COM referred to the briefings already given in the STIS meeting. * also thanked the Commission for efforts and showed interest in the key barriers list.

5. TRADE FOR ALL COMMUNICATION – MAS AND THE ENHANCED PARTNERSHIP: FOLLOW-UP AND NEW MACFLOW SYSTEM

COM gave an update on the analysis of the contributions received from MS (25) and business (10) following the questionnaire on the Enhanced Partnership. The analysis will first concentrate on working procedures relating to FTA implementation in MAAC discussions and in the MADB. Separately, COM also continues to look into the best practices of MS and business in terms of awareness raising on FTA implementation in MS's countries and on ways to share these best practices. COM further informed that on 8 November the new function of "Consistency officer for Implementation" was created and that a new working tool for Market Access cases – "MACFLOW" – is being finalised. This tool will provide a central repository of all Market Access cases and give a singly up-to-date overview of all trade irritants identified within MAAC and on which COM is working together with MS and business. This tool is now in a test phase. The barriers recorded in MACFLOW will eventually be included in the Market Access Database.

* informed that they are ready to do a presentation on their best practices at the MAAC of January 2017. Chair welcomed this proposal and invited other MS and business also to

volunteer to do such a presentation. * reiterated its request in regard to GI issue, explaining that there are no reliable statistics on trade of products protected by GI (such details are not available in TARIC) although this is politically very important. * invited COM to consider developing such statistics. * also suggested to enhance clarity on the coverage of GIs by FTAs (FTA negotiations generally including only short-lists of GIs). Finally * suggested that COM develops guidelines explaining how business can concretely make benefit from preferences under an FTA. Chair agreed on the importance to show the benefits of an FTA, if possible also by sector. COM promised to look into the GI issues and discuss further with TAXUD and AGRI. * invited to revive the Trade Barriers Regulation (complaints to direct the COM towards dispute settlement/enforcement under WTO/FTA). Chair agreed but underlined that many market access issues are not clear WTO/FTA violations.

6. DEBRIEFING OF THE TBT COMMITTEE MEETING, 10 – 11 NOVEMBER 2016, GENEVA

COM debriefed the Committee on the discussions in the TBT Committee meeting in Geneva and provided updates on issues of MS's and BU's particular concerns.

The TBT Committee held thematic sessions on technical assistance, transparency (one panel on the involvement of stakeholders and the other on the functioning of TBT enquiry points) and, in the framework of regulatory cooperation, on food labelling. On this last topic, some WTO Members presented in a technical and factual way their regulatory framework in the area of food labelling or their policies against nutrition problems.

57 Specific Trade Concerns (STCs) were discussed. The EU intervened on 31 offensive cases (of which 4 were new), made 2 supporting statements and defended 9 measures (7 previously raised EU measures and 2 newly raised EU measure).

There were 4 new offensive issues raised by the EU (i) Uganda — Alcoholic beverages specifications, (ii) Russian Federation — Medical devices; (iii) Russian Federation — Pharmaceutical products; and (iv) Mexico — Official Standard PROY-NOM-199-SCFI-2015: Alcoholic beverages.

* asked which actions COM intends to take against Russia on the cement certification case. COM stated that the situation will be assessed in the next months and that it was not in a position to make comments on possible future steps.

Following the request for clarifications by **, and *, COM detailed EU concerns on the Brazilian draft ordinance act n° 43 of 18 May, which revises the previous draft ordinance act n° 374. EU written comments were submitted in July 2016. Brazil clarified that the measure did not change the labelling and quality criteria currently in force, which comply with Mercosur regulations. Interested parties will be invited to a public hearing on the final text, for which the date of publication is not yet decided. At the bilateral meeting, Brazil noted that comments were still under revision.

At the request of * and **, COM provided detailed information on EU concerns on the Egyptian Decree 43/2016 on the registration of manufacturing companies and Decree 991/2015 on pre-shipment inspection of products. Egypt maintained that the two Decrees are independent and there is no duplication of registration requirements. The registration process has been accelerated and the number of companies registered has increased according to their information. Egypt clarified that: (i) self-certification is not accepted, since Egypt does not have a full-fledged market surveillance system; (ii) exemptions from registration are granted by the Minister of Trade in emergency cases; (iii) EU MS are encouraged to approach bilaterally the Egyptian authorities with concrete examples of obstacles faced by companies. All relevant documents for registration can be found at the GOIEC website and Egypt will consider the EU request for a public register of companies. There is currently no

procedure of appeal in case of refusal of registration. EU companies are given preferential treatment and priority, in view of the importance of the EU as a trading partner and they are encouraged to register. COM took note of the comments by ** and **.

As requested by * and *, COM reported that India has no intention to notify the modified draft measure on alcoholic beverages to the TBT Committee, since it was already notified the first time and maintains that the rules do not deviate from international standards. Comments received are under consideration and a transitional period will be included. Since the list of permitted additives was notified to the SPS Committee in September 2016, India considers that it is not necessary to notify it to the TBT Committee. The list is uploaded on the FSSAI website and a period for comments is currently open. India maintains that the additives list is aligned to the provisions of the International Organisation of Vine and Wine (OIV).

Following requests by *, * and **, COM reported on the Thai Regulation on the labelling of alcohol beverages. The Regulation is fully enforced since October 2015 and suspension is not possible at this stage. According to Thailand, the Regulation is based on scientific evidence and does not address alcohol labeling in general, but rather prohibits certain advertising practices also enforced in many other countries. The Regulation applies equally to imported and locally produced alcoholic products; does not prohibit the expression of quality and characteristics of the products as long as they are genuine and does not overrule any intellectual property right when they are legitimately obtained. The authorities will evaluate the implementation of the Regulation and will notify under TBT any measure on graphic health warnings in due time. Thailand did not reply to the EU requests for a bilateral meeting.

In answer to a request of ** and **, COM gave an update on the point of (Country of Origin Labelling) COOL measures by MS, raised at the TBT Committee by the * and supported by *. Main concerns are both procedural (failure by MS to notify the measures under TBT) and substantial (application to third parties' products and impact on imports). At bilateral meetings, this issue was raised by the *, **, and **.

Upon the request of *, COM provided an update of the discussions with India on the Amendment to the Legal Metrology. The EU conveyed its concerns in a bilateral meeting that took place with India in the margins of the TBT Committee; but the Indian delegation was not able to provide us with information. This issue was discussed the same week in the framework of the EU-India SPS/TBT Joint Working Group where the Commission reiterated its concerns and made it clear that the amendment should have been notified to the WTO TBT. India promised to revert back to us on the notification and to reply to our letter sent to the Ministry of Consumer affairs in November.

* enquired about Russia's regulation in regard to pharmaceutical products. COM indicated that it referred to the absence of notification and the negative impact of this measure on foreign trade. The EU requested that the specific issue for veterinary products of double inspection of sites manufacturing Active Pharmaceutical Ingredients and final products is reconsidered by the Russian Federation.

* asked about United Arab Emirates' Control scheme to restrict the use of hazardous materials in electronic and electrical devices. The EU raised this point for the third time at the formal Committee meeting, notably with regard to the need to include an updated list of exemptions to the proposed restrictions. However the UAE was not present at the meeting and further action is under consideration by the COM.

* asked about the summary reports of TBT meetings, which in the past were sent to the Committee. COM agreed to provide those.

7. MARKET ACCESS CASES:

7.1 Ukraine: wood export ban

COM gave an update on developments concerning Ukraine's wood export ban that has already entered into force in late 2015 and is clearly discriminatory towards non-Ukrainian buyers and, as such incompatible with Ukraine's obligations under the DCFTA and the WTO. In particular, this goes against Ukraine's commitment to "refrain from trade-distorting or trade-restricting measures". In early March 2016, the Ukrainian government submitted a draft law amending the law in force. Despite some marginal improvements, the amended version was still deemed incompatible with WTO and DCFTA commitments. Due to the change of Government in April 2016 the law had to be re-submitted to the Rada. The matter was discussed at the Association Committee (in Trade configuration) in April and was raised regularly in all bilateral contacts with Ukraine. Commissioner Malmström has also sent letters both to the previous as well as to the current Ministers of Economy and Trade.

COM further mentioned that on 14 October 2016, VP Dombrovskis has sent a letter to Ukrainian Prime Minister Groysman, calling upon him to urgently deal with this case and initiate the necessary legislative procedures to repeal the wood export ban, in line with reassurances President Poroshenko provided to President Juncker in previous contacts and with commitments Vice Prime Minister Kubiv made towards Commissioner Malmström.

COM explained that there are currently intense discussions for finalising a new draft of the legislation. COM is following developments closely. It is still too early to say whether the new draft law will be compatible with Ukraine's WTO and DCFTA commitments.

*, echoed by *, expressed concerns about the extension of the wood export ban to pine products as from 1 January 2017 since this would aggravate the situation. * added that its wood processing industry had been very heavily affected with wood prices skyrocketing since the introduction of the ban. * called for considering other means of action beyond raising the matter in bilateral contacts with Ukraine. * pointed to very recent information according to which Ukraine might only repeal the ban if a 20% export duty on wood exports would be introduced. * and * also voiced concerns and called upon the COM to negotiate a practical solution with Ukraine at the earliest possible occasion. * added that there is a similar concern with Russia with regard to the possible ban of exports of birch logs.

COM took note of MS concerns and promised that strong efforts to achieve the repeal of the Ukrainian wood export ban will continue at all levels and that it is closely monitoring potential Ukrainian attempts in enlarging the product scope of the ban. COM also provided a preliminary analysis of the Russian draft decree which could lead to a ban of birch log exports in the future.

7.2 Kazakhstan: additional guarantee on importers of foreign liquor

COM informed participants that according to information received from Industry, in January 2016, the Kazak Ministry of Finance tabled a draft law which included a requirement for importers to pay an additional import guarantee in cash, to secure the "intended use of tax stamps", despite the fact that they already pay excise taxes in advance. In addition, the requirement would not apply to domestic producers.

COM indicated it had taken the opportunity of a pre-planned videoconference with Kazakh authorities on Monday, 14 November 2016, to already flag the issue. It had analysed the information received, but would need additional documents for a more complete legal analysis and would send a detailed request by e-mail. As a preliminary reaction, COM stated that it understands some concerns expressed by **, but would have to confirm these on the basis of a thorough review of the legal texts.

If the legal analysis determines that there are justifiable grounds to raise this, COM would likely follow up initially by email with their Kazakh counterparts and then discuss further at the next videoconference with Kazakhstan at a date still to be agreed.

* asked whether the measure applies to all alcoholic beverages and indicated they will have a bilateral meeting with Kazakhstan on 28 November.

* and * supported action.

** indicated since it relates to excise taxes, it probably applies to all alcoholic beverages and indicated their paper could be shared with participants.

8. AOB

8.1. Egypt: lack of 14 Member States on the Egyptian “List of Reference Countries”

* informed the COM about an issue faced by a * company which manufactures baby milk powder. The company exports to over 20 countries around the world. In the past it also exported to Egypt. Recently this company has been facing difficulties in registration of a new product range (baby milk powder) in Egypt. * explained that after a long and burdensome registration procedure, the Ministry of Health and National Nutrition Institute refused to allow the distribution of this product in Egypt due to the fact that * is not present on the “List of Reference Countries”.

COM replied that it is not aware how the “list of reference countries” is established and how to get the missing EU countries to the list. COM noted that the “list of reference countries” seems to be related to pharmacological products rather than food products. However, it seems that Egypt would require even for infant formula (which should be a food product rather than pharmaceutical product) that the country is listed on its “list of reference countries,” which does not include *. COM mentioned the equivalence of rules across Member States, i.e. if some MS are already on the reference list, it should be extended to all EU countries, as the rules concerned are the same for all EU MS.

COM asked the Member States to indicate if they have faced similar problems for infant formula or for other products they wish to export to Egypt due to the fact that they are not on the list of reference countries.

COM thanked * for the fact sheet but would also be grateful to receive additional information concerning the commercial value/cost of lack of * on the reference list. Once it has a more complete picture of the situation the COM will consider the actions to be taken to make sure that this list is not a trade barrier for EU exporters and to see which are the conditions to get missing Member States on the list.

* thanked the COM and stressed that the support of the COM is important as its bilateral interventions (the company’s, * administration) have not resulted so far in removing this longstanding barrier to trade.

* and * supported *. * mentioned that this case was similar to the issue related to the recognition by Korea of pharmaceutical compendia.

COM agreed to consider the possibility of a horizontal approach to this issue.

8.2. Follow-up of previous MAAC meetings

Key Barriers list for Mexico:

In the follow-up of the discussions on the key barriers list for Mexico in the previous MAAC meetings, COM indicated that it concluded to particularly focus its efforts on the removal of the barriers related to SPS measures, given their importance for all MS, and that these elements are important in the context of the negotiation of a reviewed agreement with Mexico. Further focus would be on the protection and enforcement of Intellectual Property Rights, and the protection of Geographical Indications and EU names.

Indonesia: import restrictions for wood-made products (MAAC September 2016)

COM provided an update on this case which was raised by ** in the MAAC meeting of September 2016. It concerns Indonesia's Regulation No. 97/M-DAG/PER/11/2015 on Import Provision of Forestry Products, which establishes due diligence requirements for importers of timber and timber products in order to ensure that the timber has been legally harvested.

According to COM assessment, this Indonesian Regulation is an integral part of the Indonesian Timber Legality Assurance system established under the EU-Indonesia FLEGT (Forest Law Enforcement, Governance and Trade) Voluntary Partnership Agreement (VPA) which is the basis for a FLEGT licensing scheme that has entered into application on 15 November 2016. COM underlined that the EU supports the objective of this Regulation and it would therefore not be appropriate to raise the issue at WTO level at this point in time. However, the FLEGT VPA has its own governance structure which allows raising questions and obtaining information on any element regarding the implementation of the agreement as well as the related Indonesian Regulation. COM suggested using this channel to address any remaining concerns.

** thanked the COM for the update and announced that it would communicate any possible remaining issues with the implementation of the Indonesian Regulation.

Egypt: registration of operators eligible to export products

COM provided a brief update on this case, which was on the agenda of several MAAC meetings, last time in September 2016. COM asked MS and BU to provide as many details as possible in regard to the registration procedure (how many companies are affected, how long the procedure takes etc) to substantiate the EU arguments. *, *, *, ** and ** contributed. COM thanked for the input.

COM reported that it met senior officials from the Egyptian Ministry to agree on the agenda for a future technical meeting on enhancing trade and investment through removing trade barriers. It was agreed in the meeting to include a point on "recent regulations requiring mandatory registration for foreign companies wishing to export to Egypt". COM insisted to look at practical ways to improve the process (eg. transparency, publication of companies approved, feedback to those who applied, flexibility in terms of the certification required etc). Egypt asked to know the concrete sectors where we experience problems and COM agreed to gather available data on the time of applications processed including various industries. In this respect COM reiterated its request for more information from MS and BU.

* reported that recently less complaints were received from * companies, but it remains unknown whether this is due to the fact that companies are less exporting to Egypt or whether they succeeded in registering. * noted that according to **, shipments were no longer blocked, however, there were still delays in the

registration process. ** reiterated its concerns and asked COM to channel any information as soon as possible to Egypt.

Other AOB:

** noted that it received different feedback in regard to the point raised in the last MAAC on Russia's Decree introducing Russian preferences in the context of SOEs and asked the COM for clarification. ** noted that in 2014 RU already published a decree to promote domestic industry and ban imports of goods from foreign suppliers in the context of procurement. ** wanted to know if any other measures affecting specifically the textile sector are in preparation. COM took note and will provide clarification in a next MAAC meeting.

FOLLOW-UP ACTIONS:

* to share information on the preoccupying news of **additional taxes to the automotive sector** in India.

Egypt - lack of 14 Member States on the Egyptian "List of Reference Countries":
COM to report on the possibility of a horizontal approach to this issue.

FOR MEMBER STATES ONLY:

9. APPROVAL OF THE DRAFT MINUTES OF THE MAAC MEETING OF 20 OCTOBER 2016 (MAAC 2016-042)

The minutes of the MAAC meeting in October were distributed on 31 October 2016, a revised version was circulated on 14 November, following comments from *, ** and *.

10. TRADE FOR ALL COMMUNICATION – MAS AND THE ENHANCED PARTNERSHIP: NEW MACFLOW SYSTEM

COM gave an online presentation of the new MACFLOW tool, which the COM outlined in the previous session of this MAAC meeting under point 5 of the agenda. COM explained that the database was already available to MS and indicated the link and the procedure to obtain access to the application. COM agreed to send the presentation to the Members of the Committee after the meeting and invited MS to review the fiches and provide their views and comments within 2 weeks after this MAAC.

MS welcomed this initiative. * asked for a centralised contact point (COM indicated that a contact e-mail address is mentioned in the presentation). * agreed that this new tool is useful for the follow-up of cases and asked whether COM could introduce the possibility of a notification of updates on a given case. COM replied that it will investigate whether the system can be adapted to channel follow-up actions to MS.

* and * asked about the added value of this tool, compared to the barrier sections of the MADB. COM replied that MACFLOW has a new technology, allowing more interactivity. Eventually, some factual information from MACFLOW will be integrated in the MADB barrier section (the general description of the case). * asked about the key barriers lists which are discussed in the MAAC meetings. COM agreed to consider the possibility to integrate those in MACFLOW.

FOLLOW-UP ACTIONS:

New MACFLOW system: MS to review the fiches and provide their views and comments until 1st December 2016.

DG TRADE, Unit G.3