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WTO RULING ON HORMONE BAN A "VICTORY" FOR EU CONSUMERS

Victory, like beauty, is often in the eyes of the beholder.

This is certainly true in the recent World Trade Organization (WTO) Appellate Body's ruling on the EU's ban of meat imports treated with growth-promoting hormones, with both the US (the primary plaintiff) and the EU claiming "victory".

The EU had appealed an earlier WTO ruling against the ban (see EURECOM, September 1997), claiming, inter alia, that the WTO panel's conclusions limited the right of governments to determine the level of sanitary protection they consider appropriate for their citizens.

While the Appellate Body upheld some of the panel's findings, in particular that the EU ban **lacked a risk assessment based on scientific analysis of residues in hormone-treated cattle** — a "clear win" according to the US — it reversed the panel's two other conclusions, and modified a number of findings as well.

Of chief importance to the EU was the recognition that **WTO member governments have a sovereign and autonomous right to establish a higher level of sanitary protection for their own consumers** than that which results from international health standards, provided that they base such measures on a risk assessment.

In addition, the Appellate Body agreed with the EU that the assessment of risk to human health is not merely a function of quantitative scientific analysis, but must also cover **"risks in human societies as they actually exist in the real world** where people live, work and die." On this point, the EU claimed "victory" for European consumers "whose legitimate health concerns are allowed to be taken into account."

Further, the Appellate Body found that the EU ban was **neither discriminatory, nor did it result in a disguised restriction on international trade** as the US had charged.

The European Commission welcomed the WTO judgement as "well-informed", considering it a valuable contribution to the development of clearer rules for the conduct of WTO dispute settlement.

To comply with the WTO ruling, the EU has pledged to carry out a risk assessment within the next 15 months. In the meantime, the ban on hormone-treated beef will stay in place.

COMMISSION TO EXAMINE KPMG/ERNST&YOUNG MERGER

The European Commission has decided to proceed with an in-depth investigation into the proposed merger between KPMG (Peat Marwick LLP) and Ernst&Young (E&Y) under the EU's Merger Regulation. As two of the so-called "Big Six" audit and accounting firms, both groups provide auditing and accounting services, tax compliance and advisory services, management consulting services and corporate finance and insolvency services.

KPMG and E&Y first notified the Commission of their intention to merge their worldwide operations on December 23, 1997.

According to the Commission, the combination of the parties' activities could lead to high market shares in a significant number of industrial or commercial sectors in several member states, especially in auditing, accounting and tax services.

Given the global scope of the potential new entity, the Commission is carrying out consultations with US authorities, who are also examining its competitive impact.

Interestingly, two of the other four "Big Six" firms — Price Waterhouse and Coopers & Lybrand — have also proposed to combine their operations, a case that is already the subject of another in-depth EU investigation (announced January 22).

Since the Merger Regulation assesses the effects of mergers in terms of foreseeable future market developments, and because auditing services, the primary market affected by the two mergers, is already highly concentrated, the Commission will investigate the proposed KPMG/E&Y merger not only on its own merits, but also in light of the Price Waterhouse/Coopers &Lybrand case.

INTERNET TELEPHONY: NOT QUITE THE REAL THING

In the wake of the EU's full telecommunications liberalization, the Commission has published a notice defining its policy on voice telephony via the Internet.

In line with the latest technological developments, the notice distinguishes between three categories of voice services: **1)** commercial services provided from PC to PC; **2)** commercial services between PCs and telephone handsets connected to the Public Switched Telecommunications Network (PSTN); and **3)** the provision of calls between two telephone handsets connected to the PSTN. According to the Commission, only the third case is close to being genuine voice telephony. Close, but not quite, however, as the Commission has concluded that the provision of voice over the Internet is not yet "voice telephony", and may not be subjected by member states to individual licensing procedures.

Internet telephony will be defined as voice telephony — and therefore subject to standard voice telephony regulation — only if and when the following conditions are met: the communications are the subject of a **commercial offer**; the service is **provided for the public**; the service is provided **to and from PSTN termination points** on the fixed telephone network; and it involves **direct transport** and **speech in real time**.

At present, Internet telephony does not meet all the above criteria. Not being considered a venue for voice telephony will keep Internet markets open for innovation, which could lead to multimedia telephone applications over the Net. It also means that Internet access providers cannot be charged to fund universal (telephone) service obligations.

Nevertheless, both technical and market conditions (and users!) are evolving rapidly; hence, the Commission will conduct a review of the situation by January 2000 at the latest. The full text of the Commission's notice is available on the Internet at *http://www.europa.eu.int/en/comm/dgo4/lawliber/libera.htm.*

EU URGES REFORM IN JAPAN'S DISTRIBUTION SYSTEM

With the WTO's final ruling in the Kodak-Fuji case expected soon —one of the most significant cases handled by the WTO to date — the European Commission has again called for Japan to undertake fundamental reforms in its distribution system.

In the Kodak-Fuji case, the US government took Japan to the WTO's Disputes Settlement Body over alleged restrictions on foreign companies' access — primarily through the distribution system — to the Japanese photographic film and paper market. Due to its own economic interest in this market, the EU joined the US' complaint as a third party. In a December 5, 1998 preliminary ruling, however, the WTO panel found that the US had not proved that Japan rigs its domestic market to prevent foreign exporters from capturing market share.

Commenting on the case, EU Trade Commissioner Sir Leon Brittan stressed that the Japanese distribution system needs urgent reform to reduce the high cost of doing business in the Japanese market, to improve market access for foreign exporters and to provide more consumer choice.

"The Commission has made many proposals to Japan (some 200 recently) and expects to see concrete improvements both through deregulation and rigorous enforcement of competition rules," said Sir Leon. "During the course of the Kodak-Fuji case, Japan stated that it had a policy of ensuring non-discriminatory access in the photographic film sector and other sectors. We intend to track closely the implementation of this policy," he added.

Despite the disappointing verdict, the Commission hopes that it will lead to an intensified discussion on trade and competition issues, and to the development of a framework for competition rules in the WTO. It also hopes that the US will abide by the ruling and refrain from any unilateral action against Japan.

EURO GUIDELINES FOR FINANCIAL INFO SYSTEMS

With the advent of the single currency drawing ever nearer, the Commission has just published practical guidelines on preparing financial information systems for the euro to facilitate a smooth and orderly changeover.

The guidelines aim to assist companies and organizations in developing changeover plans for their financial information systems (i.e. the combination of software and hardware used for recording, processing, and storing financial information such as accounts, invoices, payments, payrolls, inventories and orders). In addition, the document describes some strategic considerations related to the euro changeover, and presents a comprehensive analysis of both functional and technical aspects (e.g. rounding and conversion issues in computer software), suggesting possible actions to deal with these challenges.

The Commission draws three simple but important conclusions for participants in the euro: **1)** to take full advantage of the single currency, firms need to prepare themselves thoroughly; **2)** to cope with the changeover, information systems will often have to be modified; and **3)** to avoid significant inconveniences, the problem of rounding differences requires particular attention.

Although the effects of the euro's introduction will be limited for entities outside "Euroland", these companies and organizations must nevertheless be prepared for dealing with transactions denominated in euros. They could also experience an indirect "euro effect" through their subsidiaries in participating member states.

A full text of the guidelines is available at *http://europa.eu.int/comm/dg15.*

COMMISSION PROPOSES COMMUNICATIONS CHARTER

In an ever-expanding on-line world, industry, users and public interests require greater consistency in global rules for doing business (or various other activities) electronically. With this in mind, the Commission has issued a new Communication — ***Globalization and the Information Society: The Need for Strengthened International Coordination*** — which recommends the launch of an international debate on global communications policy to create a framework for international policy cooperation. Ultimately, this could lead to the adoption of an **International Communications Charter**.

The Communication envisages a Charter as "a multilateral understanding on a method of coordination to remove obstacles in the global electronic marketplace." It would not be legally binding and would not establish an international supervisory body. But it would recognize the work of existing international organizations, promote the participation of private sector and other relevant social groups and contribute to more regulatory transparency.

For the most part, the legal frameworks of the off-line world will be applied to the on-line world. Still, the technical possibilities of open networks like the Internet are already testing existing legal structures. Further, there are numerous initiatives and regulatory actions happening at the national and regional level across the globe. According to the Commission, an international Charter could help prevent divergent policy responses and fragmented regulation, which could hinder the development of the burgeoning on-line economy.

Current forecasts estimate that the total value of goods and services traded over the Internet will approach 300 billion ecu (1 ecu=$1.08) in 2002.

The Commission intends, after a round of consultations with governments, industry and consumer groups, to propose agreement on a Charter sometime in 1999.

QUOTES

"We have been able to show ourselves and the rest of the world that we are not a lost continent." EU Commissioner ***Martin Bangemann****, commenting on the EU's full telecommunications liberalization as of January 1, 1998.*

"If the creation of EMU has led to the defeat of inflation, its implementation will, over a period of time, force member states to tackle the structural cause of unemployment." European Commission Vice President ***Sir Leon Brittan****.*

"If labor costs can be made more responsive to market conditions, EMU will work. If labor market problems are left to fester, EMU will not work. But nor will anything else." Financial Times columnist (and brother of Sir Leon) ***Samuel Brittan****.*

"It is quite remarkable that...financial turmoil starting in Asia has no effect whatsoever on the relative exchange rates within Europe, which for me implies that the euro already has gained its credibility." European Monetary Institute President ***Wim Duisenberg****.*

"Unilateral sanctions are doomed to fail in an increasingly global economy. Rather than having the intended deleterious impact on the targeted regime, they have actually served to bolster despots by providing them with useful scapegoats and a good rallying cry." European Commission Ambassador to the US ***Hugo Paemen****.*

"The open door is the single most important feature in the architecture of the new Europe. Hence, the US' strong belief in the broadening as well as deepening of the EU, and hence our advocacy of Turkey's desire for eventual membership in the EU." US Deputy Secretary of State ***Strobe Talbott****.*

CHANGES PROPOSED FOR EU'S BANANA POLICY

To comply with the WTO's ruling against the EU's banana import policy (see EURECOM, October 1997), the Commission has proposed a modification to bring the "common organization" for the EU banana market into line with the EU's obligations under both the WTO and the Fourth Lomé Convention, while simultaneously protecting the interests of EU producers and consumers.

The proposal would maintain the banana tariff-quota at the present level of 2.2 million metric tons at a duty of 75 ecu per ton, and would also keep the 765 ecu duty on imports beyond the quota. It would also create a supplementary tariff-quota of 353,000 tons at a duty of 300 ecu per ton duty in order to take account of the EU's last enlargement.

Most important, the modification would replace the current import licensing system — the heart of the case brought by the US government and supported by large-scale banana producers Ecuador, Guatemala, Honduras and Mexico — with a clearly WTO compatible system (i.e. a "traditional/newcomer" system). In addition, it would grant shares of the tariff-quota to all suppliers with a substantial interest, rather than allocating shares to individual countries within the total allocation for African, Caribbean and Pacific (ACP) suppliers.

To enable traditional ACP suppliers to maintain their presence on the EU market, the Commission has also proposed a special framework of technical and financial assistance to improve their competitiveness.

For the proposed reforms to take effect, Council approval (by qualified majority) is necessary.

...IN BRIEF

...The **European Investment Bank** (EIB), the EU's main financing arm and the world's largest, non-sovereign lending and borrowing agency, provided a record 26.2 billion ecu in loans in 1997 to encourage job-creating investment. This investment (of which 23 billion ecu went to the member states) supports the EU's growth and employment policies, regional development, Trans-European Networks and its cooperation and aid policies with non-member countries. The EIB has also been actively preparing for the advent of the euro, having been the first borrower to issue in the euro (1.3 billion in January/February 1997).

...United Parcel Service's (UPS) seventh annual **Europe Business Monitor**, a survey of 1,500 business leaders from Belgium, France, Germany, Italy, the Netherlands, Spain and the UK, indicates that the debate about the euro — at least among top executives — is over. According to the poll conducted by the Harris Research Centre, **89% of the executives favor their nation joining EMU**, and 63% believe the single currency would be good for their own company. A vast majority (79%) also expects the currency to be strong and stable against the US dollar.

For the first time in the Monitor's

history, Germany was not chosen as the country expected to show the strongest economic growth in the coming year. Not only did **the UK** supplant Germany in terms of growth prospects in this year's poll, but it also considered to have the political climate most conducive to business.

...EU average annual unemployment fell to 10.5% in December 1997 from 10.6% in the previous month. According to Eurostat, the jobless rate fell in 1997 in most member states, and by at least one percentage point in the Netherlands, Portugal, Finland, Sweden, the UK and Ireland. Only Germany's unemployment rate witnessed a noticeable rise, growing from 9.2% in December 1996 to 10% in August 1997, where it has remained. Spain's 21% (December 1997) was still by far the EU's highest rate, followed by Finland's 12.6% and France's politically explosive 12.3%. The lowest rates were in Luxembourg (3.6%) and Austria (4.4%).

...EU trade in goods and services registered average annual growth between 1986 and 1995 of 7.8% to reach 58.2% of EU GDP. In particular, trade in services doubled over the decade, growing at an annual 8.2% clip (albeit import led). The EU's services' balance gradually eroded from an almost 30 billion ecu surplus in 1986 to a 2.2 billion ecu surplus in 1995. Intra-EU trade in services accounted for 56% of total transactions, which grew by an annual average of 10.6%, compared with 5.5% annual growth for extra-EU trade in services.

...**"Marketplace"**, the University of Southern California's innovative business and global economics program heard on 250 public radio stations in the US, recently won the Alfred I. duPont-Columbia Award for excellence in broadcast journalism, broadcast journalism's highest honor. Besides being a subject of its reporting, the European Union is also one of the proud sponsors of "Marketplace"!

...Recently, talk of a broad transatlantic trade agreement between the EU and the US has resurfaced. Going beyond talk, **Ellen L. Frost**, Senior Fellow at the Institute for International Economics, has written ***Transatlantic Trade: A Strategic Agenda***, an extremely useful contribution to the debate on EU-US commercial relations. Frost argues against a Transatlantic Free Trade Agreement (TAFTA) and for a broader, more strategic North Atlantic Economic Community (NATEC). NATEC would combine the ambitious goals, broad scope and fixed deadline of the Asia Pacific Economic Cooperation (APEC) forum with a new foreign policy dimension. For ordering information, please call (202) 328-9000.

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