Food and Drink Federation

Delivering Sustainable Growth

Major non-tariff barriers for food and drink exports to US

Food and drink manufacturing is the UK's largest manufacturing sector in terms of both turnover (£76.2bn) and Gross Value Added (£20.9bn). We have continued to grow throughout the economic downturn. Exports of food and non-alcoholic drink are set to exceed £11bn in 2011 having increased in each of the last six years.

UK-US food and drink trade in figures

FDF supports the launch of ambitious negotiations on a trade agreement with the United States. Wide-ranging negotiations may well provide the best possible opportunity to secure a satisfactory resolution to long standing issues of disagreement on regulatory issues. Even if not the case, significant gains are still achievable for the agri-food and drink sectors.

Overall, the EU enjoys a substantial export surplus for trade with the US in food and drink manufacturing – in 2009 this figure stood at €6.3bn. With regard to UK manufacturing, the United States is the UK's largest non-EU export market (£491m) and the second largest non-EU source of imports (£864m). UK exports of food and non-alcoholic drinks to the United States have increased by more than 106% between 2007 and 2011. An ambitious trade agreement including agriculture should provide a substantial boost to already rapidly expanding UK exports. Liberalisation of trade would also offer significant benefits in terms of EU and UK food security.

UK exports in 2011 to the US are dominated by fish and seafood (46%), miscellaneous food preparations (12%), baked produce (8%) and dairy (6%). Key UK imports from the US are fruit and nuts (16%), animal feed (16%) grain and seeds (13%) and miscellaneous food preparations (12%). Further information on UK food and drink exports can be found here.

Below is an overview of horizontal and product-specific issues that affect or potentially affect food and drink exports to the US.

Horizontal issues affecting exports to US

- **Implementation of the food safety modernisation act**

The Food Safety Modernization Act (FSMA), formerly known as Dingell or Durbin Bill, was passed by the US Congress on 21 December 2010 and signed into law by President Obama in the beginning of January 2011. The FSMA is an attempt to increase food safety in the US. The Act requires importers to perform supplier verification activities strengthening importer accountability, authorises FDA to refuse admission to imported food if the foreign facility or country refuses to allow an FDA inspection, introduces third party audit and certification, establishes a voluntary qualified importer program and introduces fees for re-inspection of foreign facilities.

Although the immediate consequences for companies exporting to the US are quite limited, the real impact of the FSMA on EU exports will depend on how it is implemented. Many provisions require new guidance, implementing regulations,

procedures and/or budget funding to be put in place over the next year. The implementing procedures have already been launched.

The FSMA introduces a "Foreign Supplier Verification Program" which requires suppliers to verify the application of hazard analysis and preventive controls according to the new standards for domestic producers. In this context, FDF asks the Commission to intervene to ensure that the procedures already implemented by food exporters (e.g. HACCP control system) are accepted in forthcoming guidelines for all EU products.

According to FSMA, the Food and Drug Administration (FDA) will also develop recommendations for bilateral and multilateral agreements and drastically increase the number of controls in foreign productions plants. For this reason, FDF calls upon the Commission to reach a bilateral agreement with the US on equivalence of EU internal inspections.

- **Ending hormone beef retaliation**

In 1999, further to the WTO ruling concerning the EU ban on meat and meat products treated with certain growth hormones, the US imposed retaliatory measures on a number of agri-food products from several EU Member States worth in total $116.8 million.

In 2009, under the threat of application of the carousel law that would rotate products subject to retaliation and cause further serious long-lasting damage to food exports to the US, the European Commission reached a provisional agreement on the hormone beef dispute. Although implementation of the carousel law was avoided and the US reduced the retaliation list, the majority of products targeted by prohibitive retaliatory duties remained.

FDF welcomes approval by the European Parliament of the additional quota for imports of high quality beef. The decision taken by Parliament is a step forward in the implementation of the Memorandum of Understanding on Hormone Beef signed by the EU and US in 2009. The additional duties on a range of EU food products subject to retaliatory measures were suspended by the US almost a year ago. We hope this situation will remain permanent and the hormone beef dispute can be consigned to the past.

We are also aware that the US links the use of this quota and the approval of lactic acid as an anti-microbial wash for beef carcasses in Europe. We hope this issue can be solved in the coming weeks/months by a positive vote by Member States and with these import issues resolved, the EU can focus attention on the resumption of beef exports to the US which were banned due to concerns around BSE.

- **Trade security requirements**

The Container Security Initiative was introduced in 2002 to counter potential terrorist threats to the international maritime container trade system. One of the measures envisaged within this initiative is the X-ray scanning of all containers exported to US. This would cause additional costs for exporters including food and drink manufacturers. FDF strongly supports the Commission's efforts in finding alternative solutions to the 100% scanning proposal and would welcome mutual recognition of the EU AEO and US C-TPAT schemes.

However, other risk-based measures can also be burdensome for foreign business. For instance, this is the case of the Import Security Filling (or "10+2") introduced in 2009 and fully enforced since January 2010. According to this rule, companies are required to transmit information for security purposes at least 24 hours before goods are loaded onto an ocean vessel for shipment to the US. Some of the information required is difficult to obtain or commercially sensitive. FDF hopes these measures will be abolished – at least for companies recognised as AEOs – once mutual recognition is in place.

- **Dairy import assessment and its potential impact on composite products**

The US Farm Bill requires the Dairy Promotion Program to levy an assessment of $0.075 (7.5¢) per hundredweight of milk, or the equivalent thereof, on many imported products including cow's milk (dairy products, confectionery, chocolate, ice-cream, food preparations etc.). The measure was adopted in March 2011 and implemented from August 2011.

The income from the levy should finance dairy sales promotion, education and research programs. However, imported products are unlikely to benefit from initiatives financed by the levy, which constitutes a form of discrimination as imports of dairy products to the US are limited by tariff-quotas. At the same time, given obesity concerns, it is difficult to conceive that the US could engage in consumption promotion of chocolate and ice-cream for example.

- **Import of products containing eggs**

Since June 2009 the US has imposed more stringent rules regarding the application of sanitary permits for products with meat ingredients. This change didn't cause major problems to exporters, however FDF is concerned by plans to extend enhanced enforcement measures to products containing eggs. No EU egg suppliers are approved to export to the US and only The Netherlands has been recognised as eligible to register its production plants. Therefore, introduction of sanitary import permits for products containing even less than 2% of eggs – in order to certify that all ingredients come from eligible sources – may close off the US market for many products. Such measures would also be difficult to justify in light of the WTO SPS agreement.

- **Lack of harmonisation within the US**

The abundance of regulation at the state level presents particular problems for companies without offices in the US. There are more than 2,700 state and municipal authorities in the US requiring particular safety certifications or respect of particular environmental rules for products sold within their jurisdictions. These requirements are not always consistent with each other and not always transparent. Food imports are often confronted with additional state-level requirements leading to obstacles to trade.

Non-trade barriers affecting particular categories of products

- **Import Restrictions of Pasteurised Milk Products (Grade A)**

Certain dairy products, called "Grade A milk products" which include pasteurised milk and milk based products (fluid milk, cream, cottage cheese and yoghurt), are

regulated under a US Federal/State cooperative program administered jointly by the Food and Drug Administration (FDA) and the National Conference on Interstate Milk Shipments (NCIMS).

According to an FDA notice published in January 2000, foreign companies willing to export Grade A milk products to the US have three options, (i) the exporting company must sign a contract with a US State, which must accept to treat it as if it were within its own jurisdiction (including the inspection and control of observance of the US regulation by inspectors of the State several times per year); or (ii) the region/country of the exporting firm must adopt and comply with US rules, in order to become a member of the Conference; or (iii) the program and regulations in the exporting country are recognised equivalent to the US programme by the FDA.

The first two options are closed to EU producers, because no Federal State is currently prepared to accept an application from a foreign company or country and full compliance with the Pasteurized Milk Ordinance is almost impossible for an EU company. Only two EU companies have been able to register on the NCIMS list, considering the requirement to meet all PMO provisions and to finance the ongoing inspections by US state officials.

Upon the European Commission's request, the FDA agreed to enter into equivalence discussions with the EU and a working plan for these discussions was agreed in October 2005. Several meetings have since been held but progress has been limited. FDF hopes that these discussions can be advanced to enable export of European Grade A milk products to the US.

- **Tariff quotas on Milk Protein Concentrates and casein/caseinates**

A proposal to impose a TRQ for Milk Protein Concentrates (MPCs) is periodically introduced in the US Senate. If eventually adopted, it should trigger an immediate call for compensation by the EU according to the WTO rules. Similar requests would be expected from other major milk protein exporters to the US such as New Zealand.

- **Import Restrictions of uncooked meat products**

Exports to the US of uncooked meat products (sausage, ham and bacon) have been subject to long-standing prohibition. Following EU interventions, US import regulations were modified to permit the import of certain products including Parma ham, Serrano hams, Iberian hams, Iberian pork shoulders and Iberian pork loins. However, the US still bans other uncooked meat products despite coming from disease-free regions and/or that processing involved renders any risk as negligible.

- **Approval of meat-processing facilities**

EU companies exporting meat-based products to the US are facing increasing difficulties obtaining approval of their processing facilities from US veterinary services. The US approval process requires significant investment in terms of both time and money from the whole food chain. This discourages EU companies from requesting approval of their facilities.