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POSITION PAPER

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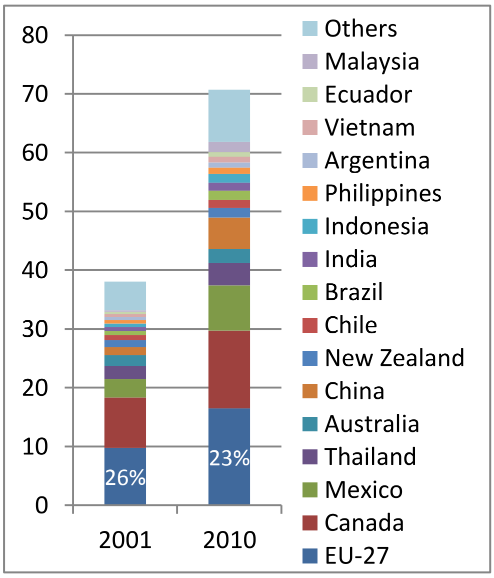
European Food and Drink industry recommendations for the EU-U.S. High Level Group on Growth and Jobs

Introductory remarks

The United States is the first export destination for European food and drink products and the third most important source of food imports after Brazil and Argentina. The European export of foodstuffs to the U.S. amounted to nearly €11 billion in 2010, while the import value reached nearly €3.7 billion. If we consider total agricultural trade, including commodities, these figures increase by €1 billion for the EU exports and double for the EU imports from the U.S.

A large part of the EU export value (59%) corresponds to trade in drinks. The single categories of products that follow are dairy, oils and chocolate. Conversely, the two largest categories of products imported from the U.S. after drinks are processed fruit and vegetables followed by oils and fishery products.

Share of particular countries in the total US imports, 2001 & 2010 *(in $ billion)*



Source: COMTRADE database 2011

The economic crisis resulted in a 20% reduction in food and drink exports to the US between 2006 and 2009. The value of imports from the US dropped by 7.4% over the same period with the most significant reduction recorded between 2008 and 2009. 2010 brought clear signs of recovery; the EU exports increased both in value and volume by 16% and 10%. The import value and volumes from the US registered an even more positive trend, increasing by 24% and 63% respectively over the same period.

Despite the crisis-related trade contraction, European products performed reasonably well in the U.S. market over the last decade (2001-2010) compared to exports of other countries. The value of EU food and drink products exported to the U.S. followed roughly the general upward trend of the U.S. imports. The decrease in market share was limited to 2 percentage points, which benefited mostly to China.

Need to focus on regulatory barriers to trade

In the context of the current discussions within the EU-U.S. High Level Working Group on Jobs and Growth, FoodDrinkEurope recognises that there is still a potential for growth and job creation that could be unleashed if the barriers in transatlantic agri-food trade are eliminated.

Considering that the tariff level for a major part of the food and drink exports to the US is already quite low, we believe that the EU food and drink industry as a whole has relatively little to gain from tariff dismantlement.

Different levels of regulatory constraints imposed however on the food industry on both sides of the Atlantic, including those with impact on access to competitively priced raw materials, place EU producers in a less favourable position compared to their American counterparts.

In these circumstances, the primary need is to eliminate the existing long-term barriers for EU exports to the U.S. and prevent any hindrance to trade that could be caused by the regulatory measures in the future, even if this will inevitably require a negotiation on regulatory issues important to the U.S.

The regulatory issues can be addressed both in forward-looking forum such as the Transatlantic Economic Council (TEC), which is dedicated to avoidance of diverging regulatory approaches in the new areas, but also in a potential new forum that could be created to focus more on existing trade irritants. Establishing a separate dialogue for existing trade barriers could prevent blockages to the TEC process, while enabling a discussion on existing food-related barriers.

Should the Commission opt instead for a comprehensive EU-US Economic and Trade Pact, FoodDrinkEurope would recommend engaging first in a thorough scoping exercise to determine whether the process can deliver an effective solution to the existing non-tariff barriers.

Which ever of the above options is chosen, the result should consist of regulatory cooperation with clearly defined objectives and appropriate timeframes, building on the TEC and open to issues relevant to trade in food.

The main issues in the food and drink sector that should be addressed include:

> Implementation of the Food Safety Modernisation Act

The current process of implementation of the Food Safety Modernisation Act (FSMA) signed into law in the beginning of 2011 is crucial for the future of EU food exports to the US, as it may potentially produce a significant number of new barriers to trade.

Regarding the rules that have already been published, FoodDrinkEurope is strongly concerned about the potential impact of the proposed reinspection fees. The system creates an additional risk for exporting companies, as it does not allow them to calculate the final cost of a potential reinspection. The fee calculated on an hourly basis may exceed by far the level affordable to the small and medium-sized company and the definition of reinspection itself leaves large room for extensive interpretation by the auditor.

In this context, FoodDrinkEurope believes that:

- Any (re)inspections on the territory of the EU can be successfully conducted by accredited local bodies. In countries with a robust food regulatory and inspection system, such as EU Member States, this role could be accomplished in a fully reliable manner by the governmental agencies. We understand that the existing bilateral sanitary agreement between the EU and U.S. and the new provisions under Section 306 of FSMA provide a sufficient framework to put such recognition in place.

- The equal treatment of different partners can also be questioned under the proposed assessment system, as the costs related to reinspection will depend on geographical location of the establishment. What could be suggested instead is to define a fixed fee coupled with the company's sales in the U.S.

- An adaptation of the hourly rate of the reinspection fee may be necessary to ensure the continuity of exports by small and medium-sized companies that make up for 99.1% of the European food and drink producers.

Concerning the implementing proposals that are still to be published, FoodDrinkEurope awaits in particular for the rules governing the "Foreign Supplier Verification Program". As by FSMA, the programme will require suppliers to verify the application of hazard analysis and preventive controls according to the new standards for domestic U.S. producers. In this context, FoodDrinkEurope insists that the procedures currently developed in the U.S. should be in line with HACCP principles elaborated in the *Codex Alimentarius* document *General Principles of Food Hygiene CAC/RCP 1-1969*, amended in 1999 and revised in 1997 and 2003.

It is also essential to ensure that the implementing measures on import certification and accreditation of third party auditors do not create additional trade barriers for food products. Therefore, we count on the Commission to make a particular effort in the current crucial phase to ensure that the implementation of the FSMA does not result in any trade disruptions.

> Ensuring no return to hormone beef retaliation is possible

FoodDrinkEurope welcomes the progress in the implementation of the Memorandum of Understanding on Hormone Beef signed in 2009 (i.e. the recent approval of the additional quota for high quality beef). We are aware of the sensitivities regarding the current process of authorisation of lactic acid as an anti-microbial wash, but we trust that the Commission will ensure that the retaliatory measures withdrawn last year by a unilateral decision of the U.S. will soon be considered as belonging to the past and the US will not be in a position to make further claims with regard to the hormone beef dispute in the future.

> 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, confectionary, chocolate, ice-cream, food preparations etc.). This measure became effective from the beginning of August 2011.

The income from the levy should finance dairy sales promotion, education and research programs. However, imported products cannot in practice benefit from the initiatives financed by the levy, given that they are either limited by a tariff-quota or are used as ingredients in processed products such as chocolate and ice-cream that are unlikely to be subject to sales promotion, given obesity concerns. The fact that the levy applies to imports, constitutes therefore a form of discrimination. It is a question of principle that EU products should not be subjected to this additional and unjustified fee.

> Import of products containing eggs

As of June 2009 the US became more stringent regarding the application of sanitary permits for products with meat ingredients. This change did not cause major problems to European exporters. Nevertheless, FoodDrinkEurope is concerned by a possibility of extending this enhanced enforcement measures to processed products containing eggs. There is not a single egg supplier in Europe listed for exports to the US and only one EU Member State has been recognised as eligible to register its production plants. Therefore, introduction of the 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 EU products. Such measures would also be difficult to justify in light of the WTO SPS agreement. Therefore, FoodDrinkEurope hopes the equivalence for egg products can be reached soon and invites the Commission’s services to ensure that the proposal expected in the coming months clarifies the current FSIS import requirements in the manner excluding a risk of an export ban on EU products containing eggs.

> 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 2700 state and municipal authorities in the US, which require 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. FoodDrinkEurope recommends working closely with the US to increase transparency of internal US rules for EU exporters.

> Import Restrictions of Pasteurised Milk Products (Grade A)

Certain dairy products, defined as "Grade A milk products" (including 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). The Pasteurised Milk Ordnance (PMO) details which products are covered by “Grade A” and lists the detailed specifications which dairy plants need to fulfil to produce these products.

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 the control of the observance of the US regulation by inspectors of the State several times per year); (ii) the region/country of the exporting firm must adopt and comply with the US rules, in order to become a member of the Conference; (iii) the program and the regulations in the exporting country are recognised equivalent to the US programme by the FDA.

The first two options are effectively closed to EU producers, as full compliance with the PMO is almost impossible for an EU company. Only a limited number of EU companies have been able to be registered on the NCIMS list, considering the extremely burdensome requirement to meet all PMO provisions and to finance regular inspections by US state officials. Furthermore, a revision of the PMO in 2007 extended the scope of "Grade A" beyond the pasteurised products for which it was initially intended.

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 been held since then, but progress has been limited. FoodDrinkEurope hopes that these discussions can be accelerated to enable the export of European "Grade A" milk products to the U.S.

> Tariff quotas on Milk Protein Concentrates and casein/caseinates

Proposal to impose a TRQ for Milk Protein Concentrates (MPCs) is periodically introduced in the U.S. Senate. If eventually adopted, it should trigger an immediate call for compensation by the EU according to the WTO rules. Similar requests can also be expected from other major milk protein exporters to the U.S. (e.g. New Zealand).

> Import restrictions of uncooked meat products

Imports into the U.S. of uncooked meat products (sausage, ham and bacon) have been subject to a long-standing prohibition. Following the EU interventions, US import regulations were modified to permit the import of Parma ham, Serrano hams, Iberian hams, Iberian pork shoulders and Iberian pork loins. The remaining problem hindering today's exports of these products consists in complex and costly authorisation procedures for exporting plants and their raw material providers (see below).

However, the U.S. still bans other types of uncooked meat products despite the fact that meat products may come from disease free regions and/or that the processing involved should render any risk negligible. This for instance is the case of some Italian products dried less than 400 days.

> Approval of meat-processing facilities

EU companies exporting meat-based products to the U.S. are facing increasing difficulties obtaining approval of their meat processing facilities from the US veterinary services. The U.S. approval process is stringent, requiring significant investment in time and money from the complete food chain. This has led to discouragement from EU companies to request approval of their facilities.