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SECTION I: European Union Developments

▶ EU Deadlocked Over GMO Rapeseed

In late December 2004, EU environment ministers failed to agree on a decision to allow imports of a Monsanto genetically modified (GMO) rapeseed known as GT73, despite having received approval from the EU Food Safety Authority. This is the ninth occasion in a row where the bloc has been deadlocked over biotech foods. Italy, Poland, Greece, Belgium, Denmark, Malta, Hungary, Latvia, Lithuania, Cyprus, Austria, Estonia and Luxembourg voted against, while the United Kingdom, Germany, Spain, Ireland, Slovenia and the Czech Republic abstained. France, Sweden, Finland, the Netherlands, Portugal and Slovakia were in favor. GT73, an herbicide-tolerant rapeseed, would have been used in animal feed and industrial processing, but was not up for approval for commercial growth in the EU. The European Commission will review the application in January, and an approval is expected.

Sarah Lukie
Washington, DC

▶ ECJ Rulings on National Collection System for Non-Reusable Packaging

On December 14, the European Court of Justice (ECJ) adopted two judgments (C-463/01 and C-309/02) requiring Germany to amend its national packaging collection system which it determined is a barrier to intra-Community trade. Under the judgments, Member States must ensure a sufficient number of return points when replacing a global collection system with a deposit and return system thus allowing the purchaser to recover the deposit without returning to the initial place of purchase. In addition, they must have a reasonable transitional period and a guarantee of continuity between the systems.

In case C-463/01, the Commission brought an infringement proceeding against Germany for its legislation imposing deposit and return obligations for mineral water bottles depending upon the amount of reusable packaging in the German market. The legislation was deemed a burden on other Member States since, under EU Directive 80/777/EEC, mineral water must be bottled at its source, and thus constitutes a barrier to intra-Community trade not justified by environmental protection reasons.

Case C-309/02 relates to a preliminary ruling required by Verwaltungsgericht Stuttgart (Germany) on a pending case brought by two Austrian firms against Land Baden-Württemberg and the Federal Republic of Germany in 2002. The case involved two Austrian firms, Radlberger and Spitz, who exported various carbonated drinks and table water to Germany in non-reusable packaging. They filed suit asserting that Germany's new rates and related deposit and return obligations for packaging and packaging waste violated Directive 94/62/EC and created a barrier to intra-Community trade.

Ursula Schliessner
Brussels

▶ **Aarhus Convention**

On December 20, the EU Environment Ministers reached a Political Agreement on a draft European Parliament and Council Regulation regarding the application of the provisions of the Aarhus Convention regarding access to information, public participation in decision-making and access to justice in environmental matters. The current agreement, after its finalization in all Community languages, will take the form of a Common Position and will be submitted to the European Parliament for Second Reading.

The draft Regulation applies the Aarhus requirements to the European Community institutions and bodies by:

- guaranteeing the right of public access to environmental information held by Community institutions and bodies;
- ensuring that environmental information progressively becomes available by means of electronic databases that are easily accessible to the public;
- providing for public participation with regard to plans and programs relating to environment; and
- granting access to justice in environmental matters at Community level under certain conditions.

Further, the Council unanimously agreed on a draft Decision on the conclusion on behalf of the European Community of the Aarhus Convention.

Koen Van Maldegem
Brussels

▶ **European Emissions Trading Scheme Entered into Force on January 1**

Following the December 6-18 Conference of the Parties to the Climate Convention in Buenos Aires and the December 20 meeting of the EU Environment Ministers, the EU has reaffirmed its commitment to continue to lead the way in combating climate change. Continued conversation regarding the post-2012 framework and commitment among the parties to the Climate Change Convention is scheduled for May 2005 in Bonn. Under the Kyoto Protocol, between 2008 and 2012, industrialized nations must reduce the combined emissions of carbon dioxide (CO₂) and five other greenhouse gases to 1990 levels.

On December 21, the EU announced that they are on track to meet their target of 8% below the 1990 level. In furtherance of their goal, on January 1, the Commission

commenced the world's first emissions trading scheme in compliance with the Protocol's commitment to reduce greenhouse gases. The scheme, regulated by Directive 2003/87/EC, covers only CO₂ emissions allowances to be traded within the energy and heavy industry fields of 21 Member States (upon amendment of Spain's plan). Poland, Italy, Greece and Czech Republic failed to present their national allocation plans in time for approval and will participate in the scheme upon approval of their plans by the Commission. In addition, the scheme is anticipated to encompass some other industries and the remaining five greenhouse gases in the future.

On December 21, the Commission also adopted a Regulation (to be published) regarding an electronic registry that keeps track of the ownership and trading of emission allowances beginning in 2005. This Regulation will complement the other legislative texts adopted by the EU in view of an early implementation of the Kyoto objectives.

Claudio Mereu
Brussels

▶ **EU Critical Use Exemptions for Methyl Bromide**

On December 10, the Member States' representatives (Regulatory Committee) approved the proposed Commission Decision setting critical use exemptions and corresponding quantities for the use of methyl bromide in the EU during 2005 (the Decision is currently being translated in all Community languages and will be published in the coming weeks/months). Methyl bromide is restricted under the UNEP Montreal Protocol on ozone depleting substances, transposed into EU law by Regulation 2037/2000/EC.

The quantities granted by the Commission for the critical use exemptions are substantially lower than those requested by Member States and/or agreed by the Parties to the Montreal Protocol.

Ruxandra Cana
Brussels

▶ **Batteries and Accumulators**

On December 20, the Environment Council adopted by qualified majority (Belgium, Greece, Ireland and Italy did not vote in favor) a Political Agreement on the Commission's Proposal for a Directive on batteries and accumulators and spent batteries and accumulators (Ref: COM (2003)723).

The future legislation will prohibit the marketing of certain batteries and accumulators and impose separate collection of all waste batteries and accumulators.

The Council agreement notably establishes:

- A partial ban on portable nickel-cadmium batteries that would not cover batteries used in medical equipment, emergency lighting, alarm systems and cordless power tools (this last exemption will be reviewed by the Commission within four years);

