



Legal Service
Director

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Note for the attention of Mr Vital MOREIRA
Chairman of the Committee on International Trade

Re: Agreement between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products

By letter of 11 November 2010 (annexed), received by the Legal Service on 12 November 2010, the Chairman of the Committee on International Trade sought the opinion of the Legal Service on the *Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part 2010/0248(NLE)*.

The questions raised in the letter are the following:

- "Does the Agreement as drafted include the territory of the Western Sahara?"
- If so, does the Legal Service consider this to be in accordance with the EU's obligations under international law, given the fact that the Western Sahara is recognized as a non-self-governing territory?"
- Article 8 of Annex 2 to the Agreement governs "geographical indications". How would this relate to products from the Western Sahara?"

"In the light of the above, the Legal Service reaches the following conclusions:

- a) The proposed Agreement under question consists of amendments to the existing EU-Morocco Association Agreement and its Protocols. The objective of the proposed Agreement – gradual implementation of liberalisation of reciprocal trade in agricultural and fishery products – is already foreseen in the Association Agreement;

- b) The Legal Service has no written evidence demonstrating that the Association Agreement has been applied in practice also to the territory of Western Sahara. It has also no written evidence that the existing agreement has not been applied to this territory. It is undisputed though that Morocco is exercising *de facto* the administration and control over that territory;
- c) Morocco as *de facto* administering power is not prohibited to carry out economic activities related to the non-self-governing territories. Such power is responsible for the economic advancement of those territories and has to promote to the utmost the well-being of the inhabitants of Western Sahara. However, all economic activities in Western Sahara must be taken in accordance with the wishes and interests of the people of those territories and must benefit the socio-economic development of those territories;
- d) The objective and content of the proposed Agreement are *per se* not more disadvantageous to the Western Sahara than the situation before, if it assumed that the existing Agreement has been applied to the territory of Western Sahara. The measures foreseen for the trade on agricultural products, processed agricultural products, fish and fishery products eliminate the custom duties from the goods originating in the application area of the Association Agreement. Such arrangements may be considered as a contribution to the socio-economic advancement of those territories, within the meaning of Article 73a of the UN Charter that is one of the duties of the administering power of the non-self-governing territory;
- e) However, the Legal Service lacks information whether and how the proposed Agreement will be applied to the territories of Western Sahara and how it will actually benefit the local people. It also lacks information whether the further liberalisation of those goods is in accordance with the wishes and interests of the people of Western Sahara. Under these circumstances, it seems appropriate to clarify these questions with the Commission before taking a position on the consent to the conclusion of the proposed Agreement;
- f) The European Union and Morocco have expressed their interest in negotiating and concluding an agreement on the protection of geographical indications. The geographical indications originating in Western Sahara would contribute to safeguard and respect the traditional cultures, geographical diversity and production methods in that territory."

The Legal Service remains at your disposal for any further information you may require.



By delegation of the Jurisconsult,
Ricardo PASSOS

Annex