“Palm Oil and EU Food Law: How to Ensure Continued EU Market Access at a Time of Increasing Regulation, Misleading Advertising Campaigns and Unfair Labelling Practices”

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1. Introduction

- Aim of the presentation;
- International trade context;
- Growing complexity of regulatory and market conditions;
- EU and WTO frameworks;
- Palm oil and the EU food, energy and environmental focus;
- “Si vis pacem, para bellum”.
2. The new EU food labelling rules
(Food Information Regulation, FIR)
The labelling of palm oil as an ingredient in food is currently not mandatory in the list of ingredients under EU food labelling law;

Although, in principle, all ingredients of a foodstuff have to be indicated in the list of ingredients, there are exceptions, such as for ‘vegetable oils’;

Therefore, if a product contains palm oil, or sunflower oil, or both, the indication in the list of ingredients that it contains ‘vegetable oil’ is currently sufficient;

Certain vegetable oils, like soya or peanut oil, already need to be explicitly declared, as they are allergens (which palm oil is not).
The new EU food labelling rules (FIR)

- New EU food labelling rules (Food Information Regulation, FIR) were proposed in 2008;

- The exception for ‘vegetable oils’ not to indicate their specific vegetable origin was still foreseen in the legislative proposal of 30 January 2008;

- However, the EU Parliament introduced, during the legislative procedure, the idea that the origin of the vegetable oil should always be declared.
The new EU food labelling rules (FIR)

In the debate on the proposal on 15 June 2011 in the European Parliament, a MEP declared the following:

‘[...] Every single hour, tropical virgin forest equal in size to three hundred football pitches is turned into palm plantations. That is so that we can get palm oil, which is used to produce the foods on our shelves. However, this information is concealed from our fellow citizens. [...] It must be compulsory to list palm oil in foods which our fellow citizens find on supermarket shelves, so that our fellow citizens do not fund global deforestation, loss of biodiversity and climate change without wanting to do so and without knowing that they are doing so. We shall decide if citizens can assume environmental responsibility for the foods which they choose or if they are to finance companies, without knowing it, to destroy the environment and our common future’.
The new EU food labelling rules (FIR)

- The possibility for ‘vegetable oils’ like palm oil to be labelled under the category name ‘vegetable oil’ has, in the end, not been included in the new EU food labelling regulation;

- Under Regulation (EU) No. 1169/2011 (FIR), as of 13 December 2014, the specific vegetable origin (i.e., palm oil, must be indicated;

- By making it compulsory for the oil origin to be specified (so that a consumer can e.g., avoid products with palm oil), a mere look at the list of ingredients will tell consumers whether a product contains palm oil or not.
Practical application of the new EU food labelling rules (FIR)

- This is a current label of a product containing palm oil (with the generic reference to ‘vegetable oil’ as an ingredient);

- As of 13 December 2014, palm oil must be listed as such in the list of ingredients.
3. The damaging ‘palm oil free’ labelling campaigns
The damaging ‘palm oil free’ labelling campaigns

- The palm oil industry is facing ‘palm oil free’ labelling campaigns, primarily in France, which are soon likely to affect trade with the rest of Europe as well;
- A string of ‘anti palm oil’ campaigns is being orchestrated and directed by certain French retailers against palm oil in the food sector;
- Such actions are progressively pushing several food manufacturers to label their food packages as ‘palm oil free’, although such information is not required by law;
- In view of the campaigns and of the upcoming obligation to label palm oil as an ingredient as of 13 December 2014, manufacturers may abandon using palm oil in their products.
Some of the products bear ‘palm oil free’ logos without further information
All sorts of logos are displayed on the products
Potato chips also bear ‘palm oil free’ logos and claims
The ‘palm oil free’ logos and claims are often combined with environmental and nutrition claims

- “Palm oil free
  With a quality objective, since 2007 Lay’s produces chips with 100% sunflower oil. In addition, the sunflower oil has a better impact on the environment because it does not contribute to the deforestation.”
Other labels emphasise the nutritional properties of palm oil and that it is healthier not to consume it.

“Why does Frial not contain palm oil, differently from most of the frying oils available on the market?
Because palm oil contains many saturated fatty acids that, when consumed in excess, are harmful to the cardiovascular system”.
The French retailer Casino has been particularly active in these campaigns and it visibly claims, on its website, that 350 of its products are now ‘palm oil free’
The retailer Casino has now launched a ‘palm oil free’ hazelnut/chocolate spread with an aggressive campaign of comparative advertisement.
4. Possible legal avenues and remedies
Administrative actions

- In France, the General Directorate for Competition, Consumers and Fight against Fraud (DGCCRF), a general directorate of the Ministry of Economy, Finance and Trade is competent for all complaints in relation to the labelling of foodstuffs on the market;

- In August 2012, the MPOC has launched administrative complaints (asking DGCCRF to investigate) against 5 producers/retailers whose products bear ‘palm oil free’ logos and further claims;

- The DGCCRF must be ‘convinced’ that something contrary to the law is taking place.
Legal grounds for the complaints

- Not Permitted Nutrition Claim;
- False and Misleading Claims;
  - Misleading and False Nutrition Claim; and
  - Misleading Green/Environmental Claim;
- No Scientific Substantiation of the Nutrition Claim;
- Illegal Comparative Nutrition Claim; and
- Prohibited Health Claim.
Judicial actions

- Before the competent *Tribunal de Commerce* for a *Commercial Action* (Grounds: Deceptive, false and misleading advertisement; Illegal nutrition and health claim; and/or General claim based on the damages);

- Before the competent *Président du Tribunal de Commerce* or *Président du Tribunal de Grande Instance* for a *Civil Action* (Ground: *Interim* relief for an immediate stop of the labelling campaign(s) – Need to show urgency);

- Before the competent *Tribunal de Grand Instance* for a *Criminal Action* (Ground: Deceptive, false and misleading advertisement / behaviour, through the use of a non-authorised nutritional and environmental claim).
Potential WTO avenue?

- The French Government (through its Food Safety Agency, AFSSA) has acted upon Palm Oil’s food safety and nutritional properties, basically discouraging its use (AFSSA Opinion of 1 March 2010 on the update of French population reference intakes for fatty acids);

- In order to mount a WTO case, it must be shown that the French Government has acted and taken discriminatory measures (even though only as AFSSA guidelines, but provided that they are not scientifically justified or justifiable);

- Malaysia, not the MPOC has standing to the WTO;

- Palm oil must become a trade issue, not just a labelling matter between private parties.
5. How to ensure continued EU market access?
“Policing work” in Brussels (EU) and Geneva (WTO)

- Key to any trade escalation to protect the legitimate interests of the palm oil industry is constant monitoring at EU and WTO level, pro-active engagement with the EU and EU Member States authorities, and systematic use of all trade instruments in all relevant trade fora;
- EU regulatory and legislative process;
- EU-Malaysia FTA negotiations, but also EU-Indonesia, EU-ASEAN, etc.;
- WTO Committee meetings (Agriculture, SPS and TBT);
- WTO multilateral negotiations;
- Building alliances.
Palm oil and the EU food, energy and environmental focus

- The regulatory and commercial threats to palm oil are not just in relation to its food applications and nutritional properties;
- Concerted actions are also being taken in relation to its biofuel applications;
- Blanket regulation and legislation is being drafted and adopted, largely based on environmental objectives;
- Market access can only be preserved if a comprehensive, effective and well-defined strategy is adopted and implemented by the palm oil industry.
6. Conclusion
Three-pronged strategy for the palm oil industry:

- The palm oil industry must **urgently** mobilize the commercial, financial, human and legal resources to implement a **coordinated strategy** that rests on three lines of action:

  1) Public relations / Advertisement;
  2) Administrative / Judicial; and
  3) Trade / Diplomatic.

- **There is no “silver bullet”**. The EU market is still an attractive and lucrative one, but it is also highly sophisticated and regulated by complex, costly and resource-intensive mechanisms.
“Si vis pacem, para bellum”

- There is no other way;
- Time is of the essence;
- The right alliances are critical;
- You have plenty of “allies”, identify them, reach out to them, mobilize them and “wage war”;
- Pick you “battles” wisely;
- Do not feel ashamed to protect your interests, if need be by means of (EU and/or WTO) judicial action; and
- Ensure that palm oil becomes a trade issue.
THANK YOU!

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