



USDA Foreign Agricultural Service

# GAIN Report

Global Agriculture Information Network

Template Version 2.09

Voluntary Report - public distribution

**Date:** 1/12/2006

**GAIN Report Number:** IT6002

## Italy

### Trade Policy Monitoring

### EU Commission questions Italian measures for Avian Influenza recovery and chocolate labeling

### 2006

**Approved by:**

Geoffrey Wiggin  
U.S. Embassy

**Prepared by:**

Alberto Menghini

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**Report Highlights:**

The EU commission is likely to initiate a formal procedure against the Government of Italy for having introduced mandatory country-of-origin labelling on poultry meat and other market measures that conflict with EU internal market competition rules. A similar case sees Italian parliament and EU Commission opposed on chocolate labeling rules.

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Includes PSD Changes: No  
Includes Trade Matrix: No  
Unscheduled Report  
Rome [IT1]  
[IT]

**Table of Contents**

**EU concerns for Italian poultry industry measures ..... 3**  
**The ongoing case of Chocolate labeling rules ..... 3**

**EU concerns for Italian poultry industry measures**

As anticipated in IT5039, Italian poultry consumption and prices have been severely affected by the recent Avian Influenza scare. The Government of Italy approved a number of emergency measures to prevent the spread of the virus in the country and to help restore profitability of poultry industry.

A first measure was included in a ministerial ordinance of August 26, 2005 enforceable 45 days after the publication (October 10, 2005). The ordinance establishes mandatory country-of-origin-labeling (COOL) in all poultry meat products produced in Italy and imported both from EU and non-EU countries for direct consumption and further processing. From October 10 all consumer-ready poultry products marketed in Italy have to be labeled with:

- The country of origin of the meat;
- Where applicable the ID code of the farm where the animal was raised;
- The ID code of the slaughter plant;
- The expiry date and/or the lot number.

More industry measures were established by way of an emergency Legal Decree on October 1, 2005 which was subsequently converted into law by the Parliament on November 30, 2005 (Law 244/2005). Law 244/2005 allows the Government of Italy to:

- a) withdrawal from the domestic market 17,000 of poultry meat using a budget of 20 million euros (about 24 million dollars);
- b) allow a discount to affected farms on social security payments and other payments due to the Government for a cumulative amount of 10 million euros;
- c) use up to 20 million euros of a public disaster reserve to finance industry recovery.

The EU Commission, having learnt from the media about Italian initiatives, wrote a formal letter to the Government of Italy raising concerns about compliance of the poultry measures with EU's internal market competition rules. With regard to mandatory COOL, the Commission stresses that the Italian provision is not foreseen by EU Regulation 1906/90 (marketing standards for poultry products), nor by EU Directive 2000/13/EC (approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs). Furthermore, the EU Commission observed that the Italian measures breach article 28 of the Treaty establishing the European Union ("*Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States*") as it would pose extra burdens on products imported from other member states, therefore being equivalent to a quantitative restriction. Under EU competition rules, possible alternatives for Italy would then be to leave COOL as voluntary or to propose introduction of mandatory COOL at EU level, as is already the case for beef (EU Regulation 1760/2000). With regard to market withdrawals, the Commission objects that such measures are not allowed under EU's Common Market Organization for poultry meat.

While the labeling provision is operational, the market withdrawal is not as budget has not yet been made available. It is almost certain that the Commission will formally rule that the provisions constitute state aid and might even decide to initiate an infringement procedure against Italy.

**The ongoing case of Chocolate labeling rules**

Chocolate labeling is another area where the Government of Italy is likely to soon face problems with the EU Commission on internal market competition. Council Directive 73/241/EEC of 24 July 1973 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption allowed for products with less than 100% of cocoa butter to be labeled as chocolate and called for national laws to

adhere to this principle. However, until 2003, the manufacture and marketing in Italy of cocoa and chocolate products intended for human consumption were governed by Law No 351 of 30 April 1976. A subsequent Ministry of Health circular of 15 March 1996 specified that only products where cocoa butter is the only fat used could be labeled as "chocolate", while products containing vegetable fats other than cocoa butter, originating in the United Kingdom, Ireland and Denmark, had to be marketed within Italian territory as "chocolate substitute".

In 2000, EU Directive 2000/36/EC repealed the previous Directive and stated that "the addition of certain vegetable fats other than cocoa butter to chocolate products, up to a maximum of 5%, should be permitted in all Member States" and the product could still be labeled as chocolate. Member states were given 3 years of time to adapt their national regulations to this principle.

On January 16, 2003 the European Court of Justice ruled against Italy (European Court Case C-14/00; reports 2003 Page I-00513) stating that "by prohibiting cocoa and chocolate products which comply with the requirements as to minimum content laid down in Council Directive 73/241/EEC of 24 July 1973 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption to which vegetable fats other than cocoa butter have been added, and which are lawfully manufactured in Member States which authorise the addition of such fats, from being marketed in Italy under the name used in the Member State of production, and by requiring that those products may only be marketed under the name 'chocolate substitute', the Italian Republic has failed to fulfil its obligations under Article 30 of the Treaty (now, after amendment, Article 28 EC)."

Italy adopted EU Directive 2000/36/EC on June 12, 2003 with law (Decreto Legislativo) n. 178. Italian Law 178 however is more restrictive than the original EU Directive on labeling rules as it mandates in article 6 that only products containing 100% cocoa butter (without other fats) can be labeled as "Cioccolato puro" (pure chocolate) while other products can be labeled as chocolate.

In 2003 EU Commission initiated a new violation procedure against Italy (n. 2003/5258) for non-compliance of the above-mentioned chocolate labeling rules with EU internal market competition rules. On January 11, 2006 the Italian Ministry for EU Policies presented to the parliament a proposal to void the articles of the law that have been contested by the EU Commission and make Italian chocolate labeling and marketing rules compliant with European competition regulations. The Parliament rejected the proposal with an unusual bipartisan vote from parties of both the governing coalition and the opposition. Minister of EU Policies La Malfa, one of the few parliamentarians voting in favor of the proposal, observed that this vote is likely to result in a new costly violation procedure against Italy by the EU Commission in the near future.